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HOUSE OF REPRESENTATIVES

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CONTENTS

MARCH 5, 2008

Page

OPENING STATEMENTS

The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and acting Chairperson, Committee on the Judiciary 1
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Ranking Member, Committee on the Judiciary 2

WITNESSES

The Honorable Michael Chertoff, Secretary, U.S. Department of Homeland Security
Oral Testimony 3
Prepared Statement 8

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Committee on the Judiciary 69
Prepared Statement of the American Civil Liberties Union (ACLU) 72
Responses to Post-Hearing Questions received from the Honorable Michael Chertoff, Secretary, U.S. Department of Homeland Security 80

DEPARTMENT OF HOMELAND SECURITY

WEDNESDAY, MARCH 5, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:43 a.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (acting Chairperson of the Committee) presiding.

Present: Representatives Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Sánchez, Cohen, Johnson, Sutton, Baldwin, Schiff, Smith, Sensenbrenner, Coble, Goodlatte, Cannon, Issa, Pence, King, Feeney, Franks, and Gohmert.

Staff present: Ur Mendoza Jaddou, Majority Counsel; and Crystal Jezierski, Minority Counsel.

Ms. LOFGREN. Good morning. The Committee will come to order. I would like to welcome everyone. Without objection, the Chair is authorized to declare a recess of the Committee at any time.

We are pleased today to welcome the Secretary of Homeland Security, Mr. Michael Chertoff. We are holding this hearing pursuant to our oversight responsibilities regarding certain offices and programs at the Department of Homeland Security that fall within the jurisdiction of the Judiciary Committee. The Homeland Security Committee has jurisdiction over the organization and administration of this Department generally over all homeland security and a number of specified security issues.

But our hearing will focus not on the Department and its mission broadly, but instead more narrowly on matters relating to criminal law enforcement functions such as at the Secret Service and the Air Marshals, to name two; immigration policy and non-border enforcement; privacy, civil rights and civil liberties protections as they pertain to the Department's responsibilities. That focus should guide our discussion and our questions this morning.

I believe this is a particularly important time for us to be conducting this hearing, and I hope we will explore a variety of topics. I will touch on just a couple now related to immigration policy and enforcement.

At a hearing last month in the Immigration Subcommittee, we heard a number of reports of raids and removals and apparent neglect of basic due process and fourth amendment protections. One was a 15-year-old girl in Georgia who walked out of her bedroom to find armed ICE agents had entered her home without permission while her mother was out. If they had a warrant, they never showed it to her. She was a U.S.-born citizen, as was her mother.

There are also reports of ICE failing to provide basic medical care to immigration detainees, of detainees with HIV or other serious chronic conditions deprived of lifesaving medications or needed diagnostic procedures during extended periods of detention. In one instance, a doctor's request for a biopsy of a detainee was repeatedly denied over a period of 10 months. By the time the individual was finally permitted to get the biopsy, the cancer had spread and wasn't curable. Meanwhile, there is a growing backlog of actualization cases, despite hikes in fees with the promise to speed the process up.

I expect our Members to have a variety of questions for you, Mr. Secretary, and I appreciate your being with us. There is a strong interest here in your Department's work and in helping ensure that in the areas of our jurisdiction, you have the resources and the commitment to do that work.

I would now recognize our Ranking Member, Lamar Smith of Texas, for an opening statement.

Mr. SMITH. Thank you, Madam Chairman. I join you in welcoming Mr. Secretary to I think his first appearance before the House Judiciary Committee.

Since its creation, the Department of Homeland Security has made significant strides in revitalizing the immigration enforcement efforts that had been left to languish under both Democratic and Republican administrations. I am especially appreciative of the renewed attention to worksite enforcement, alien fugitive apprehension and criminal alien removal. However, we cannot forget all the work that is left to do. There are still 7 million illegal immigrants working in the United States, and DHS estimates that there are 605,000 foreign-born aliens incarcerated in state and local facilities, half of whom are illegal immigrants.

Given the current state of the economy, securing American jobs is more important now than ever. DHS's continued worksite enforcement efforts are critical to promoting the American economy and protecting the American workers. Companies which had long relied on illegal immigrant labor are for the first time in years raising wages, improving working conditions, and recruiting more American workers.

To enforce immigration laws and keep America safe, Congress must grant DHS additional tools. For example, DHS needs the basic pilot program, or E-Verify, to be reauthorized and made mandatory so that DHS can finally turn off the job magnet for illegal immigration. And DHS needs to have the ability to detain dangerous criminal aliens and keep them off our streets.

However, DHS's first goal must be to secure the border. So I am disappointed by the Administration's failure to seek funding for anywhere near the number of immigration detention beds and interior enforcement agents that Congress called for in the Intelligence Reform and Terrorism Prevention Act of 2004. The Administration may have ended catch-and-release for non-Mexicans along the southern border, but catch-and-release is alive and well in the interior of the U.S.

Most illegal aliens picked up in the interior of the country are released the next day due to lack of detention space. This and other forms of catch-and-release in the interior will only be ended by dra-

matic increase in immigration detention beds and interior enforcement agents.

I regret that the Administration has not implemented an exit control system for immigrants more than a decade after Congress called for its creation. I am disappointed by the Administration's unwillingness to cut off visas to countries that do not accept back their citizens, over 100,000 who have been ordered deported from the U.S. I am also disappointed by the Administration's failure to require the Social Security Administration and the Internal Revenue Service to share information with DHS that could make DHS's job of immigration enforcement so much easier. Mr. Secretary, I think you may share my disappointment in that area.

Finally, I am disappointed that only 167 miles of physical fencing are being built along the southern border. I am disappointed that the Administration is not seeking to build more double-fencing.

I look forward to the Administration addressing these and other concerns, and I look forward to hearing from Mr. Chertoff today on ways to continue to make immigration law enforcement more effective.

Madam Chairman, America has the most generous immigration system in the world. We admit over one million legal immigrants every year. So I don't think it is too much to ask that our laws, our borders and our sovereignty be respected by others. Before I yield back my time, Madam Chair, I would like to say that I know it was unpreventable, but many Republicans are not here right now because of a Republican conference that was all but mandatory, and I expect that we will have a number of Members show up in just 10 or 15 minutes.

The other thing I wanted to mention is that unfortunately I have a suspension bill on the floor, and at some point this morning I will have to absent myself and go handle that suspension bill. I will regret missing a part of your testimony and responses, Mr. Secretary, as well.

With that, Madam Chair, I will yield back.

Ms. LOFGREN. The gentleman yields back.

We could recess this hearing until 10:15, at the end of the conference, but I thought there was an interest in proceeding. So the interest is in proceeding, then? All right, then we will proceed. Thank you.

Without objection, other Members' opening statements will be included in the record.

We would now turn to Secretary Chertoff and invite him to give us his statement. Welcome, Secretary Chertoff.

TESTIMONY OF THE HONORABLE MICHAEL CHERTOFF, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. CHERTOFF. Thank you, Congresswoman Lofgren and Congressman Smith and other Members of the Committee. I have a full written statement that was submitted that I ask the——

Ms. LOFGREN. Without objection, the full statement will be made part of the record.

Mr. CHERTOFF. I appreciate the opportunity to talk about the Department's continued efforts to secure the country and protect the American people. I appreciate this Committee's role in providing

guidance on the issue of immigration. Together with the strong support and partnership that Chairman Thompson and Ranking Member King have given this Department through their oversight on the House Homeland Security Committee, which is our authorizing Committee, we are able to work together in partnership with Congress to enhance our national security.

As you know, this is the fifth anniversary week of the Department. Over the last 5 years, we have in fact made enormous strides in building national capabilities, plans and partnerships to defend our country against all hazards. I have divided our mission into five basic priority goals: protecting our Nation from dangerous people; protecting our Nation from dangerous things or goods; protecting our critical infrastructure; strengthening our emergency preparedness and response capabilities; and integrating our management and operations.

Today, I would like to focus my testimony on our substantial progress toward these goals, focused on the issue of our efforts to secure the border and manage immigration. Last August, Secretary Carlos Gutierrez and I laid out 26 reforms the Administration would pursue to address the Nation's immigration challenges within the framework of our existing laws. We have made substantial progress toward these goals, although we have not yet achieved them. I would like to highlight some of that work today.

Let me begin at the border, because the challenge of immigration and illegal immigration begins at the border, although it does not end at the border. In the time that has intervened, particularly since we announced our secure border initiative in 2006, we have made dramatic increases, adding fencing, border patrol, and technology between the ports of entry, and we have also made significant steps in tightening the travel document requirements and other security measures that apply at our ports of entry, including the use of biometrics in the transition from a two-print biometric system to a 10-fingerprint biometric system, which is currently underway not only overseas at our consulates, but here at our airports of entry.

We have constructed 303 miles of fencing along the southern border, including about 168 miles of pedestrian fencing and about 135 miles of vehicle fencing. This places us on-target to have 670 miles of barriers in place at the end of the year. To give you some visual sense of what that means, that will mean that the vast majority of the area from the Pacific Ocean to the Texas-New Mexico border will have some kind of a barrier in place by the end of this year, except in those areas where there is a natural barrier like a mountain or something of that sort.

We have currently expanded the Border Patrol to more than 15,500 agents, with plans to reach over 18,000 by the end of the year. Again, by way of comparison, when the President took office in 2001, we had somewhat over 9,000 agents, so we are going to have doubled the number of Border Patrol agents in this intervening period of time.

We have also continued to deploy technology to the border as part of our Secure Border Initiative, SBInet. Here, because of a triumph of inaccurate press reporting, I am going to take the opportunity to lay out in fact what we are doing technologically at the

southwest border. SBInet is a strategy of using a number of different kinds of technological systems to enhance the ability of the Border Patrol to identify people illegally crossing the border and to apprehend them.

This includes things such as unmanned aerial vehicles. We took delivery of the fourth unmanned aerial vehicle about 2 weeks ago. These UAVs cruise above the border with cameras. I have personally witnessed how they allow us to identify groups of illegal aliens in remote areas or groups of drug smugglers in remote areas so that we can communicate with ground-or air-based Border Patrol assets in order to intercept and apprehend these smugglers.

Our technology also involves the use of ground sensors, and we will have in place more than 7,500 ground sensors by the end of this fiscal year. It also includes what we call mobile surveillance systems. Again, I have had the opportunity to witness these work. These are basically radar systems and camera systems that are inplace on vehicles that can be situated in various places at the border. We currently have about a half-dozen. By the end of this year, we will be at 40.

So these systems are working. They produce real value. We are expanding them and we will continue to expand them.

One element of this strategy is the development of an integrated approach to using fixed-base radar and cameras along a swath of border. We began the process of testing this approach through a prototype system that we deployed along 28 miles of the border in the vicinity of Sasabe, Arizona. This is known as Project 28.

Some people have misconceived Project 28 as the entirety of SBInet. I would say the more accurate way to describe it is Project 28 is to SBInet as a single battle cruiser is to the United States Navy fleet. It is an element of the capability, but it is not the entirety of the capability.

This project, Project 28, was delayed about 5 to 6 months before acceptance due to some problems with the technology. When the problems arose last summer, I personally had a conversation with the CEO of Boeing, which I would describe as an unvarnished conversation, in which I told him that we were not wedded to using this approach and that if the approach could not be made to work properly, we would not pursue it any further.

To his credit, he overhauled the team that was working on the project. Most of the material problems were corrected by December. We took conditional acceptance. We began to work with it directly and operationally. The remaining material problems were corrected. Immaterial problems were dealt with by our receiving a credit. The additional effort and time put into fixing the system, the money for that was eaten by Boeing. We didn't pay extra. It was a $20 million system and we paid $20 million, less the credits we got.

The system is now functional and working. I have asked the Border Patrol. I have looked them in the eye from the chief of the Border Patrol down to the project manager, to the senior people at the border. I have said to them: Does this add value? Because if it doesn't, I am happy to use all the other tools that we have. They have looked me in the eye and they have said it does add value. Now, we need to take it to the next level, and that is what we are

in the process of doing. We expect to begin further deployments this year in 2008 in other parts of Tucson and a sector at the border.

At the ports of entry, we recently ended the practice of accepting all declarations of citizenship. This actually received a little bit of controversy, although I frankly thought the remarkable thing was that we had ever accepted oral declarations. But we have ended the practice. This will reduce false claims of U.S. citizenship. We have ended the practice without causing large backups at the border. In fact, there has been a very high level of compliance with our new document requirements.

Let me take the opportunity to address this issue of identification documents in the larger context of the Western Hemisphere Travel Initiative (WHTI) which Congress has now delayed implementation of until June 2009, and in the context of the REAL ID Act. It is my conviction based upon what I have observed, every time we have made secure documents available to the American public, that the public wants secure documents.

The enhanced driver's license which the state of Washington has recently begun to issue, which is REAL ID-compliant and which will be WHTI-compliant, these are going like hotcakes. People want it. All we have to do is give it to them, and the market will operate. So I propose we continue to move along this course.

As Congressman Smith noted, interior enforcement is a critical element of this process because the economic engine that brings people into the country is the largest factor in controlling illegal immigration. I set a new record last year with 863 criminal arrests in worksite enforcement cases, including 92 people in the employer supervisory chain. We further had over 4,000 administrative arrests.

Let me say that just in the last couple of days, Richard Rosenbaum, the former president of a contract cleaning service who we arrested last year for harboring illegal aliens and for conspiracy to defraud the U.S. and harbor illegal aliens, was sentenced to 10 years in prison. Ten years in prison is a sentence that will get an employer's attention because it is comparable to the kinds of sentences that serious felons get for other kinds of crimes.

So we are going to continue moving forward with this. We have raised the fines. We have worked with the Department of Justice to raise fines against employers by 25 percent. E-Verify, again, is a system and the marketplace is speaking. We are adding between 1,000 and 2,000 employers a week to the system. We are up to more than 54,000 nationwide. I join Congressman Smith in urging Congress to reauthorize the system that employers want because it allows them to follow the law. That is what they want to do, the vast majority of them.

Finally, let me say that ICE has removed more than 31,000 fugitives in fiscal year 2007, nearly double the previous year, and initiated removal proceedings against 164,000 illegal aliens in U.S. jails in 2007, which is compared to 70,000 the prior year. So we are dramatically ramping up our removals. Although I agree with Congressman Smith that some countries are not being cooperative and we have to find a way to address this issue. We want to continue

to build on this progress which the President's proposed budget in 2009 would do.

Finally, we recognize that there is a need for labor in certain sectors of the economy that has previously been satisfied through the use of undocumented workers, that we are going to have to find a lawful way to satisfy. And that is why last month Secretary Chao and I proposed changes to the H2A seasonal agricultural worker program to allow employers to have a legal way to bring temporary workers in to perform agricultural work. We want to work with Congress to modify some other programs like the H2B program, which are lawful ways people can come into the country and work.

So with these efforts and others, we hope to continue to build the kinds of capabilities that will move us forward toward an immigration system that is protective of American interests, that is fair, but that respects the rule of law, and that also deals with legitimate economic needs that we have in this country.

Thank you for hearing me, and I look forward to answering questions.

[The prepared statement of Mr. Chertoff follows:]

PREPARED STATEMENT OF THE HONORABLE MICHAEL CHERTOFF

The Honorable Michael Chertoff

Secretary
United States Department of Homeland Security

Before the
United States House of Representatives
Committee on the Judiciary

March 5, 2008

Chairman Conyers, Ranking Member Smith, and Members of the Committee:

Thank you for inviting me to appear before the Committee to discuss the Department's progress in securing our homeland and protecting the American people. At the outset, I'd like to thank the Committee for its past support of the Department and your continued guidance as we take aggressive steps to achieve our mission.

As you know, on March 1st we reached an important milestone with the five-year anniversary of the Department's creation. In those five years, we have acted with great urgency and clarity of purpose to meet our five priority goals, which are protecting our nation from dangerous people, protecting our nation from dangerous goods, protecting critical infrastructure, strengthening emergency preparedness and response, and continuing to integrate the Department's management and operations.

Today I would like to focus my attention on one of those goals, namely protecting our nation from dangerous people. In particular, I would like to discuss the Department's efforts with respect to the critical issue of immigration. As you know, we are a nation of immigrants and our country draws tremendous strength from the fact that people all over the world choose the United States to live and work and raise their families. But we are also a nation of laws, and illegal immigration threatens our national security, challenges our sovereignty, and undermines the rule of law.

We remain committed to doing everything within our power and within the law to promote legal immigration and to end illegal immigration. For this reason, on August 10, 2007, Commerce Secretary Carlos Gutierrez and I announced a set of 26 reforms the Administration would immediately pursue to address our nation's immigration challenges within existing law. We have been aggressively pursuing this agenda since then, as my testimony will illustrate.

Today I would like to summarize the Department's efforts across five key areas:

I. Strengthening border security through greater deployment of infrastructure, manpower, and technology;
II. Enhancing interior enforcement at worksites, providing new tools to employers, and identifying and arresting fugitives, criminals, and illegal alien gang members;
III. Making temporary worker programs more effective;

IV. Improving the current immigration system; and
V. Assimilating new immigrants into our civic culture and society.

In each category, you will see clear progress over the past year, reflecting our determination to make a down-payment on credibility with the American people and to meet their rising demands to secure the border and tighten immigration enforcement.

But I want to emphasize at the outset that despite our substantial gains over the past year, enforcement alone will not permanently solve this problem. As long as the opportunity for higher wages and a better life draws people across the border illegally or encourages them to remain in our country illegally, we will continue to face a challenge securing the border and enforcing immigration laws in the interior. For this reason, I remain hopeful that Congress will once again work together to take up this issue and provide a solution that will fix this long-standing problem.

I. STRENGTHENING BORDER SECURITY

I would like to begin today by discussing our efforts to secure the border through installation of tactical infrastructure, including pedestrian and vehicle fencing; hiring and training new Border Patrol agents; and deploying a range of technology to the border, including cameras, sensors, unmanned aerial systems, and ground-based radar.

Pedestrian and Vehicle Fencing

We made a commitment to build 670 miles of pedestrian and vehicle fencing on the Southern border by the end of this calendar year to prevent the entry of illegal immigrants, drugs, and vehicles. We are on pace to meet that commitment. We have built 302.4 miles of fence, including 167.7 miles of pedestrian fence and 134.7 miles of vehicle fence.

In building this fence, we have sought the cooperation of land owners, state and local leaders, and members of border communities. We are willing to listen to any concerns communities have with respect to fence construction and we are willing to seek reasonable alternatives provided the solution meets the operational needs of the Border Patrol.

For example, in February of this year, I traveled to Hidalgo County, Texas, to meet with county leaders who were planning to build a levee along the Rio Grande River for purposes of flood control. Although we still need help from Congress, we were able to negotiate an agreement to design our fence plans in coordination with their levee construction, allowing us to effectively satisfy two goals at the same time.

Though we will try to accommodate landowner concerns, we cannot indefinitely delay our efforts or engage in endless debate when national security requires that we build the fence. Moreover, in areas where we have used our authority to waive certain environmental laws that threaten to impede our progress, we have done so only after the necessary environmental studies have occurred and we have taken reasonable steps to mitigate the impact of our construction. Of course, we will provide appropriate compensation for any property the federal government acquires through the process of eminent domain.

U.S. Border Patrol

Fencing is an important element of a secure border, but it does not provide a total solution. For this reason, we also have continued to expand the Border Patrol to guard our nation's frontline and respond to incursions with speed and agility.

Over the past year, we have accelerated recruitment, hiring, and training of Border Patrol agents. 15,439 Border Patrol agents are currently on board and we will have over 18,000 agents by the end of this year – more than twice as many as when President Bush took office. This represents the largest expansion of the Border Patrol in its history, and we have grown the force without sacrificing the quality of training the Border Patrol Academy prides itself on delivering.

As an additional force multiplier, we continue to benefit from the support of the National Guard under Operation Jump Start. This has been an extremely fruitful partnership. We are grateful to the Department of Defense as well as governors across the United States for allowing us to leverage the National Guard in support of our border security mission.

Technology and SBInet

A third critical element of border security is technology. While not a panacea, technology allows us to substantially expand our coverage of the border, more effectively identify and resolve incursions, and improve Border Patrol response time.

Over the past year, we have deployed additional technology as part of our Secure Border Initiative (SBI), which includes the development of the Project 28 (P-28) prototype in Arizona to test our ability to integrate several border technologies into a unified system. There has been some confusion about the purpose of the P-28 prototype and its role in the Department's larger efforts at the border. Allow me to put P-28 into its appropriate context.

P-28 was designed to be a demonstration of critical technologies and system integration under the broader SBInet initiative. Specifically, its purpose was to demonstrate the feasibility of the SBInet technical approach developed by the contractor, Boeing, and to show that this type of technology could be deployed to help secure the Southwest border. After successful field testing, we formally accepted P-28 from Boeing on February 21st of this year. We have a system that is operational and has already assisted in identifying and apprehending more than 2,000 illegal aliens trying to cross the border since December.

It is important, however, to recognize that different segments of the border require different approaches and solutions. A P-28-like system would be neither cost-effective nor necessary everywhere on the border. Accordingly, we are building upon lessons learned to develop a new border-wide architecture that will incorporate upgraded software, mobile surveillance systems, unattended ground sensors, unmanned and manned aviation assets, and an improved communication system to enable better connectivity and system performance.

As part of our broader SBI effort, we are continuing to deploy additional assets and technology along both the southern and northern borders. This includes a fourth unmanned aerial system, with plans to bring two more on-line this fiscal year. One of these systems will be operating on the northern border. We also anticipate expanding our ground-based mobile surveillance systems from six to forty. And we will acquire 2,500 additional unattended ground sensors this fiscal year, with 1,500 of those planned for

deployment on the northern border and 1,000 on the southwest border. These will supplement the more than 7,500 ground sensors currently in operation. To continue to support these kinds of technology investments, we have requested $775 million in funding as part of the President's Fiscal Year 2009 budget.

Metrics of Success

Have these efforts achieved their desired impact? If we look at the decline in apprehension rates over the past year and third-party indicators such as a decrease in remittances to Mexico, the answer is unquestionably yes.

For Fiscal Year 2007, CBP reported a 20 percent decline in apprehensions across the Southern border, suggesting fewer illegal immigrants are attempting to enter our country. This trend has continued. During the first quarter of Fiscal Year 2008, Southwest border apprehensions were down 16 percent, and nationwide they were down 18 percent over the same period the previous year.

Through programs like Operation Streamline, we have achieved even greater decreases in apprehension rates in certain sectors. Under Operation Streamline, individuals caught illegally crossing the border in designated high-traffic zones are not immediately returned across the border. Instead, they are detained and prosecuted prior to removal. In the Yuma sector, for example, apprehension rates dropped nearly 70 percent in Fiscal Year 2007 after we initiated Operation Streamline. In the first quarter of this year, the Department of Justice prosecuted 1,200 cases in Yuma alone. And in Laredo, we experienced a reduction in apprehensions of 33 percent in the program's first 45 days.

In addition to the decline in apprehensions, our frontline personnel also prevented record amounts of illegal drugs from entering the United States last year. In Fiscal Year 2007, CBP officers seized 3.2 million pounds of narcotics at and between our official ports of entry. Keeping these drugs out of our country not only protects the border, but it protects cities and communities where these drugs may have ultimately been sold or distributed.

Unfortunately, there is another sign our efforts at the border are succeeding: an increase in violence against the Border Patrol, up 31 percent in Fiscal Year 2007. Last month, for example, the Border Patrol discovered a piece of wire that had been stretched across a road between double fencing so it could be pulled tight to seriously harm or kill an agent

riding on an all-terrain vehicle. We will not tolerate violence against our agents. The Border Patrol is authorized to use force as necessary and appropriate to protect themselves.

Ports of Entry

Of course, it makes little sense to secure the long stretches of border between our official ports of entry if we continue to have possible gaps in border security at the ports of entry themselves.

Since the Department's creation, we have continued to make major advances to prevent dangerous people from entering our country through official ports of entry. We have fully implemented US-VISIT two-fingerprint capabilities at all U.S. ports of entry. The State Department has deployed 10 fingerprint capabilities to all U.S. consulates overseas. We also have begun deploying 10 fingerprint capabilities to select U.S. airports, with the goal of full deployment to airports by the end of this calendar year.

As you know, US-VISIT checks a visitor's fingerprints against records of immigration violators and FBI records of criminals and known or suspected terrorists. Checking biometrics against immigration and criminal databases and watch lists helps officers make visa determinations and admissibility decisions. Collecting 10 fingerprints also improves fingerprint-matching accuracy and our ability to compare a visitor's fingerprints against latent fingerprints collected by the Department of Defense and the FBI from known and unknown terrorists all over the world.

In January of this year, we also ended the routine practice of accepting oral declarations of citizenship and identity at our land and sea ports of entry. People entering our country, including U.S. citizens, are now asked to present documentary evidence of their citizenship and identity. Not only will this help to reduce the number of false claims of U.S. citizenship, but it reduces the more than 8,000 different documents our CBP officers must currently assess. By requiring a narrower set of documents, we are able to improve security and efficiency at the ports of entry, and create an effective transition period for implementation of the land and sea portion of the Western Hemisphere Travel Initiative in June 2009.

I might add that we implemented these most recent changes in travel document requirements without causing discernable increases in wait times at the border. Compliance rates are high and continue to increase. U.S. and Canadian citizens are presenting the requested documents when crossing the border. This is a great "non-news" story, demonstrating that we can improve security at the ports of entry without sacrificing convenience.

II. ENHANCING INTERIOR ENFORCEMENT

Our second major area of focus is interior enforcement, which includes targeted worksite enforcement operations across the United States; increasing fines and penalties against those who break the law; providing better tools to help employers maintain a stable, legal workforce; and identifying, arresting, and removing fugitives, criminals, and illegal alien gang members who pose a threat to the American people.

In Fiscal Year 2007, Immigration and Customs Enforcement (ICE) removed or returned more than 280,000 illegal aliens as part of a comprehensive interior enforcement strategy focused on more efficient processing of apprehended illegal aliens and reducing the criminal and fugitive alien populations.

This strategy has resulted in sustained advances across multiple areas of ICE's mission, including the continuation of "catch and return," a reengineered and more effective detention and removal system, and new agreements with foreign countries to ensure prompt and efficient repatriation of their citizens, including most recently a Memorandum of Understanding with Vietnam signed on January 22, 2008.

Worksite Enforcement

Fiscal Year 2007 represented a banner year for ICE's worksite enforcement efforts. ICE made 4,077 administrative arrests and 863 criminal arrests in targeted worksite enforcement operations across the country. Ninety-two of those arrested for criminal violations were in the employer's supervisory chain and 771 were other employees.

The majority of the employee criminal arrests were for identity theft. The employer criminal arrests included illegal hiring, harboring, conspiracy, and identity theft. Some cases also included money laundering charges.

Some recent worksite enforcement cases include:

Universal Industrial Sales, Inc: On February 7, 2008, fifty-seven illegal aliens were arrested during a worksite enforcement operation conducted at Universal Industrial Sales Inc. (UIS) in Lindon, Utah. ICE forwarded roughly 30 cases to the Utah County Attorney's Office for possible criminal prosecution for offenses such as identity theft, forgery, and document fraud. On the federal side, the U.S. Attorney for the District of Utah unsealed two indictments charging the company and its human resource director with harboring illegal aliens and encouraging or inducing workers to stay in the United States illegally.

George's Processing: In January of 2008, a federal jury convicted a former human resources employee at George's Processing – a poultry plant in Butterfield, Missouri – of harboring an illegal alien and inducing an illegal alien to enter or reside in the United States. Under federal statutes, this individual is facing up to 10 years in federal prison without parole. Another former employee recently pleaded guilty to aggravated identity theft. A total of 136 illegal aliens were arrested as part of this investigation into identity theft, Social Security fraud, and immigration-related violations at the plant.

RCI Incorporated: In October of 2007, the former President of RCI Incorporated – a nationwide cleaning service – pled guilty to harboring illegal aliens and conspiring to defraud the United States. He will pay restitution to the United States in an amount expected to exceed $16 million. He also agreed to forfeit bank accounts, life insurance policies, and currency totaling more than $1.1 million for knowingly hiring illegal aliens.

Stucco Design Inc.: On March 7, 2007, the owner of an Indiana business that performed stucco-related services at construction sites in seven Midwest states pled guilty to violations related to the harboring of illegal aliens. He was sentenced to 18 months in prison and forfeited $1.4 million in ill-gotten gains.

Michael Bianco, Inc.: On March 6, 2007, in New Bedford, Massachusetts, a textile product company owner and three other managers were arrested and charged with conspiring to encourage or induce illegal aliens to reside in the United States and conspiring to hire illegal aliens. Another person was charged in a separate complaint with the knowing transfer of fraudulent identification documents. Approximately 360 illegal

workers were arrested on administrative charges as part of the operation, representing more than half of the company's workforce.

These are the kinds of cases that have high impact on those who would hire and employ undocumented and illegal aliens often facilitated through identity theft and document fraud.

Increasing Fines Against Employers

As a further disincentive to hire illegal aliens, we have partnered with the Department of Justice to increase civil fines on employers by approximately 25 percent, which is the maximum we can do under existing law. This action was one of the 26 administrative reforms we announced in August and is intended to change behavior and hold unscrupulous employers accountable for their actions.

Expanding Workforce Tools

As we are holding employers accountable for breaking the law, we are also providing honest employers with an expanded set of tools to maintain a stable, legal workforce.

We are moving ahead with supplemental rule-making to our No-Match Rule published last year. As you may know, this rule provided a safe harbor for employers that followed a clear set of procedures in response to receiving a Social Security Administration Employer No-Match Letter that indicated a potential problem with an employee's records, or receiving a Department of Homeland Security letter regarding employment verifications. Unfortunately, the American Civil Liberties Union and others have sued the Department to stop the rule from taking effect. We have made progress in addressing the judge's concerns through additional rulemaking and we will be publishing an updated proposed rule in the near future.

We are also working to promote the use of E-Verify, an on-line system administered by U.S. Citizenship and Immigration Services that allows employers to check, in most cases within seconds, whether an employee is authorized to work in the United States. Some states have begun to require employers to enroll in E-Verify, most notably Arizona, where the system is adding about 1,000 new users per week. Nationally, we are adding 1,800 new E-verify users per week. More than 54,000 employers are currently enrolled,

compared to 24,463 at the end of Fiscal Year 2007, and nearly 2 million new hires have been queried this fiscal year. We are expanding outreach to Georgia and will be working in other states to increase participation. To support this work, we have requested $100 million in the Fiscal Year 2009 budget.

We recognize no system is perfect, and there have been some reports of employers misusing E-Verify. For this reason, we are establishing a robust monitoring and compliance unit to check employers' use of E-Verify and respond to situations where employers use the system in a discriminatory or otherwise unlawful manner. We are also increasing our outreach to employers and the American public to ensure that employers and employees understand their respective rights and obligations.

E-Verify is a critical program that businesses across our country rely upon to obtain quick, accurate information about a worker's legal status. It is important that Congress take the appropriate action to reauthorize E-Verify this year so that employers can continue to benefit from this valuable system.

Finally, the federal government will continue to lead by example. In the near future, the Administration will issue a proposed rule requiring federal contractors to use E-Verify. As there are more than 200,000 companies doing business with the federal government, this will significantly expand the use of E-Verify and make it more difficult for illegal immigrants to obtain jobs through fraud.

Boosting State, Local, and International Cooperation

Of course, while immigration enforcement is primarily a federal responsibility, we also work with state and local law enforcement who want to participate in our immigration enforcement efforts by receiving training and contributing to joint federal, state, local, and international law enforcement initiatives.

Much of this work is organized through the ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ICE ACCESS) program, which includes training under the 287(g) program, participation in Border Enforcement Security Task Forces (BEST) and Document and Benefit Fraud Task Forces (DBFTF).

Through the 287(g) program, ICE delegates enforcement powers to state and local agencies who serve as force multipliers in their communities. As of September 30, 2007, ICE has signed 38 memoranda of agreement (MOAs) with state and local law enforcement agencies to participate in the program. Last year, ICE trained 426 state and local officers. In the program's last two years, it has identified more than 26,000 illegal aliens for potential deportation.

ICE also has continued to expand its BEST teams to work cooperatively with domestic and foreign law enforcement counterparts to dismantle criminal organizations operating near the border. In Fiscal Year 2007, ICE launched new BEST teams in El Paso and the Rio Grande Valley, and in San Diego, bringing the total number of teams to five. These task forces have been responsible for 519 criminal arrests and 1,145 administrative arrests of illegal aliens, the seizure of 52,518 pounds of marijuana and 2,066 pounds of cocaine, 178 vehicles, 12 improvised explosive devices, and more than $2.9 million in U.S. currency.

ICE DBFTFs are a strong law enforcement presence that combats fraud utilizing existing manpower and authorities. Through comprehensive criminal investigations, successful prosecutions, aggressive asset forfeiture and positive media, the DBFTFs detect, deter and dismantle organizations that facilitate fraud. The task forces promote the sharing of information, ensure the integrity of our laws, and uphold public safety. In April 2007, ICE formed six new task forces, bringing the total number of DBFTFs to 17. These task forces have been responsible for 804 criminal convictions and 1,917 seizures worth more than $8 million in value.

Targeting Fugitives, Criminals, and Gang Members

Finally, our interior enforcement efforts have focused on identifying, arresting, and removing fugitives, criminals, and illegal alien gang members in our country.

In Fiscal Year 2007, ICE Fugitive Operations Teams arrested 30,407 individuals, nearly double the number of arrests in Fiscal Year 2006. The teams, which quintupled in number from 15 to 75 between 2005 and 2007, identify, locate, arrest and remove aliens who have failed to depart the United States pursuant to a final order of removal, deportation, or exclusion; or who have failed to report to a Detention and Removal Officer after receiving notice to do so. In Fiscal Year 2008, Congress authorized an

additional 29 teams. Fugitive Operations Teams have arrested more than 10,000 individuals this year.

ICE also expanded its Criminal Alien Program (CAP) in Fiscal Year 2007, initiating formal removal proceedings on 164,000 illegal aliens serving prison terms for crimes they committed in the United States. ICE has already initiated more than 55,000 formal removal proceedings against additional criminal aliens in the first quarter of Fiscal Year 2008. ICE is developing a comprehensive strategic plan to better address CAP.

In addition, in Fiscal Year 2007 ICE arrested 3,302 gang members and their associates as part of Operation Community Shield. This total includes 1,442 criminal arrests. For Fiscal Year 2008, ICE has arrested 723 gang members and their associates, which is a 34 percent increase over the same period last year.

As an added layer of protection against the entry of known gang members, we have worked with the Department of State to expand the list of known organized street gangs whose members are barred from entry into the United States. This action will ensure that any active member of a known street gang from El Salvador, Honduras, Guatemala, or Mexico will be denied a visa.

In all of these enforcement operations, we work cooperatively with state and local law enforcement to make sure we achieve our purpose with minimal disruption to surrounding communities. We also work with community organizations to ensure that children of illegal immigrants directly impacted by these operations are treated humanely and given appropriate care according to established protocols.

III. MAKING TEMPORARY WORKER PROGRAMS MORE EFFECTIVE

When Secretary Gutierrez and I announced the 26 reforms to strengthen border security and immigration last August, we noted the importance of improving the effectiveness of existing temporary worker programs to ensure the needs of our country's labor force continue to be met.

One of the consequences of our stepped-up enforcement has been that some economic sectors in our country have experienced labor shortages, most notably the agricultural sector. Of the 1.2 million agricultural workers in the United States, an estimated 600,000

to 800,000 are here illegally. This is not an argument for lax enforcement. Rather, we need to make sure our temporary worker programs are effective. To this end, we have joined the Department of Labor in proposing changes to modernize the H-2A seasonal agricultural worker program to remove unnecessarily burdensome restrictions on participation by employers and foreigners, while protecting the rights of laborers.

Under our proposed rule, which we announced in February, an employer will only need to identify an H-2A worker by name in its petition if the worker is already in the United States, even if there is only one worker. It is unreasonable to expect - given the realities of labor recruitment in the agricultural industry - that an agricultural employer in the U.S. would know the names of all the workers it hires from abroad. We have proposed to extend the amount of time a worker can remain in the United States after the end of his or her employment from 10 days to 30 days. This will make it easier for H-2A workers to extend their stay through a job with a new agricultural employer.

In addition, we have proposed to shorten the time period that a worker must wait outside our country before U.S. agricultural employers may petition again for that worker. Currently, workers must wait six months after their H-2A status expires before they can return. We want to cut that time in half to three months.

Of course, while it is important to make the H-2A process as flexible as possible for U.S. agricultural employers, we also want to protect workers. Our proposal requires an employer to attest, under penalty of perjury, that it will not materially change the scope of the foreign worker's duties and place of employment. This will help prevent the employment of H-2A workers in a manner different from what the employer stated on the petition. Employers will also be required to identify any labor recruiter they used to locate foreign workers to fill the H-2A positions. And employers and labor recruiters will be prohibited from imposing fees on foreign workers as a condition for H-2A sponsorship.

To ensure that we have appropriate law enforcement and security measures in place, we are also seeking to prohibit the approval of H-2A petitions for nationals of countries that consistently refuse or unreasonably delay repatriation of their citizens that we are trying to remove from the United States. We are requiring employers to notify us within 48 hours if an H-2A employee is fired or absconds from a worksite.

Finally, we are seeking to implement a land border exit pilot program for certain H-2A guest workers, requiring the temporary workers to register their departure through designated ports of departure before exiting the country. The objective is to ensure that temporary workers in the United States comply with the requirement to leave the country when their work authorization expires.

In addition to these proposed modifications to the H-2A program, we continue to work with federal partners on a number of other reforms announced last August to improve our temporary worker programs. These include reforms of the H-2B program for temporary or seasonal non-agricultural workers; an extension from 1 year to 3 years of the period that professional workers from Canada and Mexico may stay in the U.S. under the TN visa program; and potential improvements to visa programs for high-skilled workers. We will continue to keep the Committee apprised as these efforts proceed.

IV. IMPROVING EXISTING IMMIGRATION PROCESSES

As we take steps to meet the lawful needs of our economy, we are also working to improve existing immigration benefits and services for those seeking to live in, work in, or immigrate to the United States.

As you know, USCIS has faced a challenge keeping pace with unprecedented levels of citizenship applications. During Fiscal Year 2007, USCIS received 1.4 million requests for citizenship, which is nearly double the 730,000 received in Fiscal Year 2006. In June, July, and August 2007 alone, it received more than 3 million immigration benefit applications and petitions of all types, compared to 1.8 million during the same period the previous year. In fact, for the months of June and July 2007, the spike in naturalization applications represents a 360 percent increase compared to the same period in 2006. We anticipate that it will take 16 to 18 months to work through these citizenship cases. The normal processing time is seven months.

Much of this spike in citizenship applications came in anticipation of an increase in application processing fees that USCIS implemented in July 2007 to add needed resources and capacity to its operations. USCIS is a fee-funded agency and draws its operating expenses from the fees it collects from applicants. By raising fees, USCIS has put itself on a path to modernize its aging business practices and meet an ever-expanding set of responsibilities.

It will take time for these improvements to be fully realized. In the interim, we are taking immediate action to address the current backlog. USCIS has begun hiring 1,500 new employees, 723 of whom are adjudicators. These new employees will be trained through a nine-week intensive basic immigration training program. More than 580 permanent employees (274 adjudicators) have already been hired. USCIS will also hire an additional 1,800 employees as part of its backlog reduction plan and has been approved to rehire experienced retirees on a temporary basis to assist with adjudications.

USCIS also has created the Office of Fraud Detection and National Security (FDNS) to enhance the integrity of the legal immigration system by identifying threats to national security and public safety, detecting and combating benefit fraud, and removing other vulnerabilities. During Fiscal Year 2007, FDNS submitted approximately 8,700 fraud or criminal alien referrals to ICE. While USCIS works through the backlog of cases, it remains committed to ensuring the preservation of high quality standards and anti-fraud counter-measures.

In addition, USCIS has updated its guidance for adjudicating Green Card cases that have pending FBI name checks to make it consistent with the procedures used by ICE. Under this new guidance, USCIS will continue to require that a definitive FBI fingerprint check and Interagency Border Inspection Services (IBIS) check be obtained and resolved before granting a Green Card. USCIS will also continue to require initiation of the FBI name checks, but it will approve an adjustment of status application if the individual is otherwise eligible and no actionable derogatory or adverse information has been returned by the FBI within 180 days. At that point, the name check will continue, and if actionable information emerges as a result, the Department may revoke the adjustment of status. This change will help reduce the backlog of adjustment of status applications without compromising our commitment to national security or the integrity of the immigration system.

Beyond the August 2007 initiatives to improve border security and immigration, USCIS also continues to work closely and cooperatively with the State Department to process refugees from foreign countries, including Iraqi nationals. The Department's role in this process is to interview and adjudicate cases, perform certain security checks, and make sure that cases are approved once all the necessary steps have been completed. The U.S. government has put in place the resources necessary to process and admit 12,000 Iraqi

refugees this fiscal year. This remains an attainable but challenging goal. The results depend on a number of factors and variables outside our control.

While USCIS officers are currently interviewing Iraqi refugee applicants in Jordan, Syria, Egypt, Turkey, and Lebanon, limits on our refugee processing capacity in Syria continue to make it difficult for the program to reach its full potential. To further assist this process, we are implementing in-country refugee processing in Iraq for U.S. Embassy staff. This could potentially allow even greater numbers of individuals who have assisted U.S efforts in Iraq to seek resettlement in the U.S.

Thus far, USCIS has completed interviews of over 6,000 Iraqi refugee applicants this fiscal year, and nearly 2,400 applicants are scheduled for interview in the last month that remains of the second quarter. This will yield approximately 8,400 Iraqi applicants interviewed in the first half of the fiscal year. USCIS plans to interview approximately 8,000 more Iraqis during the third quarter. Since the program's inception last spring, a total of 19,840 individuals have been referred for resettlement. Altogether, USCIS has completed interviews of 10,562 individuals. To date, 3,434 Iraqi refugees have been admitted to the United States in Fiscal Years 2007 and 2008.

We remain committed to working with the State Department to process eligible Iraqis as efficiently as possible. However, we will not compromise our nation's security by relaxing our standards or cutting corners.

V. ASSIMILATING NEW IMMIGRANTS INTO OUR CIVIC CULTURE

Finally, we have continued to take the necessary actions to assimilate new Americans into the rich tapestry of American culture and society.

Part of this effort involves revising the naturalization test for U.S. citizenship to create a testing process that is more standardized, fair, and meaningful. The new test design, which USCIS announced last fall and expects to implement in October of this year, emphasizes fundamental concepts of American democracy and the rights and responsibilities of citizenship. It is designed to encourage citizenship applicants to learn and identify the basic values we all share as Americans, rather than simply memorize a set of facts.

Of course, knowledge of English is one of the most important components of assimilation. By learning English, immigrants are able to communicate and interact with their fellow Americans. It is the first step to full integration. Assimilation does not mean losing cultural identity or diversity. It means learning English and embracing the common civic values that bring us together as Americans and adopting a shared sense of those values.

To promote assimilation, USCIS' Office of Citizenship provides a number of educational products, resources, and training opportunities for community and faith-based organizations, civic organizations, adult educators, and volunteers who work with immigrants. This includes hosting regional training seminars. Adult educators, volunteers, and other organizations also use USCIS' publications and videos to teach English as a Second Language and American history, civics, and the naturalization process to immigrant students. Several new educational resources are initiatives of the Task Force on New Americans.

USCIS and USA Freedom Corps' New Americans Project are also currently engaged in a public service and educational campaign to promote volunteer opportunities among both U.S. citizens and immigrants to help newcomers adjust to life in the United States. The project also offers opportunities for immigrants to get involved in their communities through volunteer service.

VI. CONCLUSION

Immigration is an issue that goes to the very core of what it means to be an American. We must continue to welcome new generations of immigrants to the United States to pursue their dreams and enrich our civic culture and our society. But, as we also know, immigration has become an issue that is inextricably linked to our national security.

What I hope is clear from my testimony today is that we take our commitments with respect to immigration seriously and that we have made a great deal of progress over the past year. We have set clear goals and established strategies and timelines to meet those goals using the resources and authorities currently available to us.

As I stated at the beginning of my testimony, however, an enforcement-only approach will not address the full breadth of the nation's immigration challenges over the long term. Only congressional action will achieve that goal.

We stand ready to work with Congress this year to build on our success at the border and in the interior and to advance reforms that will create the necessary temporary worker programs and pathways to citizenship for those already in our country. Taking these actions will remove pressure from the border and allow our Department to continue its focus on protecting our nation against dangerous people while making progress across all areas of our mission. I look forward to working with this Committee to achieve these very important objectives for our nation.

Ms. LOFGREN. Thank you, Mr. Secretary.

We will now move to questions by Members of the Committee. I will begin.

As you are aware, I spend much of my time here in Congress on my assignment as Chair of the Immigration Subcommittee. One of the things that has become clear to us is that we have a problem with service-members and their families, particularly now in this time of war. It seems to me there is no greater duty that we owe than to those men and women who are serving in our armed services, especially in a combat zone. The last thing we want to do is to add stress to them at a time of their service.

Now, I have recently been advised that USCIS has issued a number of notices to appear to soldiers and sailors for deportation because of paperwork glitches. For example, if one is the recipient of a petition based on marriage to an American citizen, there is a condition on the permanent residence that is removed after 2 years, and you have to file a piece of paper to remove the condition. But because we allow soldiers and sailors to naturalize on a more expeditious basis, the Army has suggested that you just proceed on the naturalization petition. Instead of that, we have issued deportation orders to our soldiers.

I am very concerned also about family members. We had a sailor appear before our Subcommittee last year. He came in his Navy whites. His wife was undocumented, and he was about to be deployed for the third time to the Gulf. And he told us in his testimony that he is having a hard time concentrating on his work defending our country because he was so worried about whether his wife would be deported while he was deployed to the Gulf.

So I think we need legislation to address these situations. I am working on that right now, but I think there are some things that your Department can do in the interim to help our soldiers and family members in those circumstances. For example, last year Specialist Alex Jimenez was serving in Iraq. He was attacked and listed as missing. His wife was undocumented and was facing deportation. Your Department granted her parole to avoid her deportation and allow her to adjust her status and get a green card.

Can you advise us what steps you are prepared to take while we are working on legislation, to make sure that the husbands and wives of our soldiers don't get deported while they are serving?

Mr. CHERTOFF. You know, it is very hard to generalize. First of all, I share your appreciation for the work that service-people do. I was in Iraq last year and I got to participate in a naturalization ceremony for service-members who had come from all over the world. I think we want to be as fair and as considerate as possible of service-people.

Now, I can't generalize as to why sometimes a family member is deportable. If it is merely a paperwork violation or a glitch in something that prevents someone who would otherwise be entitled to adjust, if there is some technical issue where they have missed some piece of paperwork, we should work to address those issues. If there is some more substantive reason someone is going to be deported, then that may not be something we can address. So I think we need to be practical and humane about it.

Ms. LOFGREN. Could you, if not today, get back to us? Because it just seems to me, the last thing we want is notices to appear being issued to our soldiers in the field. I mean, we have to stop that.

Mr. CHERTOFF. I agree. And certainly that is the kind of thing I think we can correct. Will something slip through the cracks sometimes? Experience tells me that in a large organization with many, many transactions, a few things slip through the cracks. But I agree with your basic principle.

Ms. LOFGREN. Let me turn to another question. I understand that the Department is actively considering an extension of the optional practical training program known as OPT for students. I have written you a letter, in fact, asking that the OPT be extended for up to 29 months. I think this is one of the easiest ways to make sure that there is reform to the visa program, especially as it relates to highly skilled individuals, which I know from our prior discussions you feel is an important component of immigration to America.

It is important if we are going to do this that this regulation be issued before graduation this spring so that employers and graduating students can make their plans. I am hoping that if we are going to do this, we can do it promptly.

I want to talk about a rumor that I have heard that OPT would be conditioned on mandatory E-Verify, which seems to me unnecessary because E-Verify will not give us any more information on these students than we already have. All of these students are already tracked through CEVUS, which DHS runs, and they are already work-authorized because we have given their work authorization.

So I am just hoping that this simple idea doesn't sink with additional mandates that actually won't provide any additional information to the Department except just paperwork. Can you address those two issues?

Mr. CHERTOFF. Well, (A) I agree with you. I think we do want to get this new regulation out in as timely a way as possible. As you know, under the law, because it is in the regulatory process, if I were to start to identify specific issues and talk about them, I would pretty much guarantee being in court and the whole thing would get derailed. So we take seriously all the comments we get. We take them onboard and we will try to get this thing out as quickly as possible.

Ms. LOFGREN. All right.

I will turn now to Mr. Smith for his questions.

Mr. SMITH. Thank you, Madam Chair.

Mr. Secretary, thank you again for being here and appearing before us. It so happens that I think you have the second-toughest job in all the Federal Government, although I realize the attorney general may question that. But still, I appreciate your answering questions.

I want to ask some questions in regard to securing the border. As you know, the Secure Fence Act requires 700 miles of double-fencing. It is my understanding that was made optional by a Senate amendment to the omnibus bill. It is my understanding that

now the plan it to build about 30 miles of double-fencing of that 700 miles of other kinds of fencing. Is that correct?

Mr. CHERTOFF. I think we may now have about 30 miles of double-fencing. What we are committed to doing by the end of this calendar year is 670 miles, and then how much of that will be double-fencing, I don't have a figure for that because I think we are going to make a decision after we build this, based on the advice of the Border Patrol, where double-fencing makes sense and where it doesn't make sense.

Mr. SMITH. Okay. Do you consider pedestrian fencing and vehicle barriers to be as effective as double-fencing?

Mr. CHERTOFF. In many areas, yes, I do.

Mr. SMITH. Double-fencing stops about 99.5 percent of the traffic.

Mr. CHERTOFF. I disagree. I don't think double-fencing stops anybody. All fencing does is slow people up.

Mr. SMITH. Where they have had double-fencing in San Diego, it is my understanding that there was a virtual halt to people coming over the fences.

Mr. CHERTOFF. No, here is what the ground truth is. The double-fencing slows people up. Now, where there was nothing going on in other parts of the border, the smugglers moved to a place which was easier. That is just common sense. As we have actually built up in other parts of the border, the number of people sneaking across in the San Diego sector has gone up again slightly.

I can tell you people go through the fencing. They go over the fencing. They go under the fencing. Now, that doesn't mean the fencing doesn't have value. It slows people up.

Mr. SMITH. And you think that the pedestrian fences, for example, are as effective as the double fences?

Mr. CHERTOFF. I think in many areas, it is as effective because if you are out in the desert, the marginal value of the second layer of fence to slow somebody up for 15 minutes is really, frankly, useless in terms of the Border Patrol's ability to get someplace.

Mr. SMITH. Okay. What are your plans for the other 1,300 miles of our southern border? You have mentioned the 670 miles. What are your plans for the remainder?

Mr. CHERTOFF. It is going to vary. As you know, because you are from Texas, Congressman, there are large parts of the border that have a river that creates a barrier and makes it hard to cross.

Mr. SMITH. I have seen the Rio Grande both dry and at six inches. I have watched people splash across as they run.

Mr. CHERTOFF. That is right. So in some places, we are building fences in Texas. I know you know that that is not a matter without controversy.

Mr. SMITH. Right.

Mr. CHERTOFF. So the answer is we are going to do a mix of things. We will build additional fencing and barriers beyond the 670 miles in some areas. In some areas, we will rely upon cameras and sensors.

Mr. SMITH. The virtual fence?

Mr. CHERTOFF. We may cut some of the Carrizo cane down, which will create an unobstructed view in some areas. And in some areas where there is a mountain, it is really pretty much a natural barrier.

Mr. SMITH. Mr. Secretary, how much of the 2,000-mile southern border do you have plans to somehow have some type of system in place to guard against——

Mr. CHERTOFF. We will eventually have a system in place on every mile. It is going to vary depending on what the mile is.

Mr. SMITH. Okay. And when would that system be in place for the 2,000 miles?

Mr. CHERTOFF. I would expect that we will have—well, of course, we have something in place now almost everywhere, so we are going to continue to improve it and build it. I would imagine a lot of work will be done over the next 2 years to fully deploy technology and the next generation technology.

Mr. SMITH. But it may go beyond this Administration, so you really can't say when?

Mr. CHERTOFF. I can tell you where we are going to be at the end of this calendar year. We are going to have over 7,500 sensors, 670 miles of fencing, and the other technical systems I have talked about.

Mr. SMITH. I understand that, Mr. Secretary. Thank you for those answers.

Let me squeeze in one more question, and that is to your credit, the number of removals of criminal aliens has dramatically gone up. But it is still my understanding that those criminal aliens who are now incarcerated in state and local jails, the vast majority of those individuals will still be released into our communities this year. Is that an accurate statement?

Mr. CHERTOFF. I don't know that I would agree that the vast majority of people incarcerated will be released——

Mr. SMITH. I didn't say "vast majority." I just said a majority.

Mr. CHERTOFF. I don't know that I would say a majority will be released this year because I don't think their sentences are all going to expire this year.

Mr. SMITH. Okay. Well, of those who are set to expire, then will the majority be released into our communities?

Mr. CHERTOFF. Well, I don't know that I could say that either. I do agree with you, though, that we are not at the point now where we can deport everybody.

Mr. SMITH. I know you are working on that, but today it is my understanding from the inspector general that over half will still be released into our communities. I know you are working on it and I know you are improving it, but do you agree or disagree with that statement?

Mr. CHERTOFF. I can't verify that statement. I know there are supposed to be several hundred thousand illegal aliens in custody. Since I am assuming that their sentences don't all expire in 1 year, I can't tell you how many would get out that wouldn't be covered by our programs. So I can't disagree, and I can't agree with your statement.

Mr. SMITH. Thank you, Mr. Secretary.

Thank you, Madam Chair.

Ms. LOFGREN. Thank you.

I will now recognize the Chair of our Constitution Subcommittee, the gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you.

Mr. Secretary, in February of 2003, Congress provided $1 billion in 9/11 disaster assistance to FEMA, in the words of the statute, "to establish a captive insurance company or other appropriate insurance mechanism for claims arising from debris removal which may include claims made by city employees." The purpose of the fund was to remove the financial burden from the city, while providing compensation to those working at Ground Zero who had been injured thereby.

FEMA subsequently signed a grant agreement with the city of New York establishing the World Trade Center Captive Insurance Company to handle 9/11 claims. Unfortunately, the WTCC has argued that is has "a duty to defend every claim," and has litigated every single claim in Federal court. Congressional intent was to pay claims, not to fight claims. They have spent so far over $50 million in legal fees and $45,000 in claims to someone who fell off a ladder and broke his arm.

There are about 10,000 lawsuits pending or 10,000 claimants who claim to have suffered health effects from the pollution at 9/11, mostly first responders. Since FEMA reports to DHS, are you doing any oversight on the captive insurance company to see that it does its job?

Mr. CHERTOFF. I guess I have a question for the Chair. I recognize there is a lot of latitude in Committee hearings, but I actually thought this subject matter and the jurisdictional basis for the hearing was immigration. I know our main authorizing Committee has jurisdiction obviously over the whole Department. I guess my question is, is this the kind of——

Ms. LOFGREN. Actually, the Judiciary Committee does have jurisdiction over claims.

Mr. CHERTOFF. So the short answer is, not having anticipated being asked about this captive insurance company, I am not in a position to give you an answer.

Mr. NADLER. Could you please give us an answer in the next couple of weeks to two questions? What are you doing about oversight of the captive insurance company? And do you believe that Congress provided this money to fight the claims of the heroes of 9/11?

Because essentially what they are doing is they say that they are there to protect the city and the contractors and that they must litigate every single claim, sort of like an insurance company that says if you get into a car accident, we won't pay you unless you sue us first. Not that we will investigate it and decide whether to pay you, but automatically you have to bring a lawsuit, which doesn't make any sense.

We have been dealing with this now for 3 years, with $50 million in legal fees, $45,000 paying out one claim. I don't think that was the congressional intent, and it is under your jurisdiction. You did get the money, so I hope you will take a look at it.

Mr. CHERTOFF. I will find out about it.

Mr. NADLER. Thank you.

My second question has nothing to do with that, you will be relieved to know. Going to the so-called "rendition" cases, in this case the Arar case, I am sure you are familiar with that, the Maher Arar case——

Mr. CHERTOFF. Yes.

Mr. NADLER [continuing]. Which was a case some people say was another example of extraordinary rendition. The Department has said that no, no, no, this was an expedited removal because Mr. Arar in coming through Kennedy Airport, even though he was coming only to switch planes to continue on to Canada, was entering the country, and rather than enter the country, we shipped him off to Syria, having gotten assurances from the Syrian government that they wouldn't torture him, assurances which were subsequently not honored.

Now, a week ago Representative Delahunt and I sent a letter to you asking for specific information as to the diplomatic assurances given in the Arar case and the extent to which those assurances complied with regulations implementing the obligations of the United States under article III of the Convention Against Torture. Now, we have not received an response, but we only sent that letter to you about 1½ weeks ago. But I do ask if you will commit to us to provide a response to Representative Delahunt and myself within the next 10 days or so.

Mr. CHERTOFF. I guess the only question I have is, DHS did not exist during the time of this case. So I don't know whether the appropriate recipient of that request is the Department of Justice or the Department of Homeland Security. I know the legacy of INS is now in DHS, but I guess we are going to have to sort out with the attorney general who the right person is——

Mr. NADLER. There are really two questions. Sort it out with the attorney general. It may be that you should delegate part of the answer to him, but I also ask that you commit to providing the Committee, and what I am about to say would be your Department, with copies of regulations or other guidance promulgated by or applicable to DHS that as required by the Foreign Affairs Reform and Restructuring Act of 1998, assure compliance with the Convention Against Torture.

Mr. CHERTOFF. All right. Whatever is within our domain, we will supply.

Mr. NADLER. I see that my time has run out, so thank you very much.

Ms. LOFGREN. The prior Chairman of the Committee, the gentleman from Wisconsin, Mr. Sensenbrenner, is now recognized.

Mr. SENSENBRENNER. Thank you very much, Madam Chair.

Mr. Secretary, I want to ask a couple of questions that would require only a yes or no answer. The first one is, is the basic pilot program relative to verification of Social Security numbers working or not?

Mr. CHERTOFF. Yes. We call it E-Verify, but it does work.

Mr. SENSENBRENNER. Okay. The second subset, is E-Verify working?

Mr. CHERTOFF. Yes. The basic pilot is now E-Verify, so it is the same thing.

Mr. SENSENBRENNER. Okay. As I was driving in this morning, I was listening to my favorite morning talk show.

Mr. CHERTOFF. NPR?

Mr. SENSENBRENNER. No, sir. Guess again. [Laughter.]

Our former colleague, Fred Grandy, is more of a repository of wisdom, now that he is not in Congress, than when he was. He was

talking about an incident in Prince William County in the last week where they have a new program relative to cracking down on illegal immigrants.

Apparently, the Prince William County police identified four illegal immigrants in that county who were stopped either for traffic offenses or something else that was relatively minor, and the local law enforcement called up ICE and asked them to come and pick these folks up and ICE refused. Why is that?

Mr. CHERTOFF. I don't know the specifics of the case. I can tell you in general, like everybody else, there is some limit to resources. We try to respond to requests, but we may not be able to drop what agents are doing at any given particular moment and go out to respond to a call.

So we try to work with locals to find out an efficient way, so if there are a number of people who are illegal and they have a basis to hold them until we get to a number that we can efficiently apprehend and remove, we work with it that way. Otherwise, we wind up literally running from pillar to post, and it would be hard to actually, for example, chase fugitives or criminal aliens or things of that sort.

Mr. SENSENBRENNER. Don't we expand the resources in enforcing our immigration laws when a jurisdiction like Prince William County, Virginia authorizes its local law enforcement officers to check on the immigration status of people who are stopped for other offenses, mainly traffic offenses?

Mr. CHERTOFF. Actually, what we try to do in the first instance is, if they are willing to do it, is train them so they can do some of the work themselves, and that relieves some of the burden. Secondly, although we can take a little bit of account of the traffic flow, there are a finite number of agents. If we put a lot of agents in Prince William County, they are coming out of other places.

Mr. SENSENBRENNER. With all due respect, Mr. Secretary, you don't need more agents. Here, you had local law enforcement. They pick four people up. They called up ICE and said come and pick them up and hopefully put them in removal proceedings, and ICE was too busy. So it really didn't require an awful lot of work for ICE agents to do that.

Mr. CHERTOFF. I guess where we are disagreeing slightly is you still have to send a couple of agents over a distance for a certain amount of time. I can tell you from my own experience working with police over the years, it probably winds up being somewhere between a half day and 1 day of work for a couple of agents. I am not saying we shouldn't do it. I am just observing practically that we are trying to juggle. Even with additional resources, we still have more demand than supply.

Mr. SENSENBRENNER. Do you know the message that you are sending to local communities that want to help enforcing the immigration laws by saying, well, what you are doing is really a low priority for us. That is what you just said.

Mr. CHERTOFF. No. Let me be clear about what I said. I said first of all, we would love to help you, train you so you can do some of this yourself. But I find myself in the same position in answering that question that anybody who has made a career in law enforce-

ment has. You are not able necessarily to prosecute or respond to every crime.

When I was a prosecutor in New York doing drug cases, we could not arrest every single low-level drug dealer, even though we wanted to. There just weren't enough agents and there weren't enough prosecutors. So we made choices about who were the worst people and those are the people you go after. Now, as we get more resources, we can do more and that is what we are doing.

Mr. SENSENBRENNER. I grant you that, but again listening to what was on the radio this morning as I was driving in, the taxpayers of Prince William County, Virginia are spending their own money to try to identify illegal immigrants and to put them into the judicial process so that they would be removed from the country. In my opinion, that is an expansion of resources on that. I believe that the election for county commission in that county last fall, that was a major issue and the voters reelected the people who wanted to crack down on illegal immigration.

Now, immigration is a Federal issue. I think we all realize that. But Mr. Secretary, you have got to do a better job of coordinating your resources with those local jurisdictions that want to spend their own money and their own personnel to try to enforce the immigration law, rather than simply doing what ICE did and that is blowing off Prince William County's officials.

My time is up and I yield back.

Ms. LOFGREN. The gentleman yields back.

We would now invite the Chair of the Crime Subcommittee, Mr. Bobby Scott of Virginia, to begin his questions.

Mr. SCOTT. Thank you.

Mr. Secretary, how many members of your senior staff are with you today?

Mr. CHERTOFF. I guess maybe one. I do have the general counsel with me.

Mr. SCOTT. Do you have other members of your staff?

Mr. CHERTOFF. Yes, I have some legislative staff people. I don't know if you consider them senior.

Mr. SCOTT. Can all your staff stand up? Could you have all your staff stand up, please?

Mr. CHERTOFF. My personal staff? Yes, stand up.

Mr. SCOTT. Everybody from the Department.

Thank you.

Mr. CHERTOFF. A lot of them are legislative affairs. We have a press guy here and other people with specific expertise.

Mr. SCOTT. Thank you.

I represent an area where port security is a big deal. Some of the port people have indicated that they are having problems with port security grants because they have to deal with several agencies—FEMA, TSA, DOJ—each agency with their own particular regulations and processes. Is any effort being made to streamline the port security grant program?

Mr. CHERTOFF. Yes, I think it is actually streamlined. I don't know why you would be dealing with DOJ, unless it is a separate grant. The grants are all done——

Mr. SCOTT. Okay. Let me get you some specifics, and I will ask a more focused question. Right now, you can't use the grants for personnel costs?

Mr. CHERTOFF. That is largely true. There are some few exceptions.

Mr. SCOTT. Okay. Port security identification, how is that program working?

Mr. CHERTOFF. We have tens of thousands of people who have currently enrolled in the TWIC program, so it is proceeding very well. I think 40 or 50 ports are now part of that process.

Mr. SCOTT. And are the IDs being issued on an expedited basis?

Mr. CHERTOFF. Yes.

Mr. SCOTT. Consumer ID theft is a problem nationwide. Is that under your jurisdiction, under Secret Service?

Mr. CHERTOFF. We share jurisdiction over that.

Mr. SCOTT. One of the problems with consumer ID theft is that after the credit card is cancelled and the person's account is reimbursed, nothing ever happens. That is why the ID theft is such a lucrative practice. Are you pursuing consumer ID theft cases?

Mr. CHERTOFF. We pursue ID theft cases in general. We don't have jurisdiction over consumer matters per se, but in the context of what we do with, for example, illegal immigrants, we do have documents and benefits for our task forces. We do make criminal cases involving identity theft. The case involving the 10-year sentence I just mentioned grew out of an investigation involving identity theft.

Mr. SCOTT. Most ID theft is not even investigated, much less prosecuted. Is that true?

Mr. CHERTOFF. I can't answer that. I am not in a position to either agree or disagree with that.

Mr. SCOTT. Okay. On the no-fly lists or the watch lists, if someone gets their name on a no-fly list, is there any way to correct the information if it is not accurate?

Mr. CHERTOFF. Yes. There is a redress process that TSA has that is both online and in person. The biggest challenge we have is that under the current system, because we are not yet into what we call Secure Flight, when we make a correction we communicate it to the airlines. Some airlines do a good job of changing their records to reflect the correction and some do not. For those airlines that do not, the mistake sometimes continues to get repeated because either the airline is incapable or not interested in making the effort in order to correct the problem.

Mr. SCOTT. Once you get the list, each airline has to update the list?

Mr. CHERTOFF. Yes. The current system is that we provide the list to the airlines and they run the list against their manifest. What we would like to do is reverse the process. That is what we are trying to do with Secure Flight.

Mr. SCOTT. Citizenship, many people who are properly documented and want to become citizens are having to wait. What is the wait time to become a citizen for a routine case? And what is being done to eliminate the backlog?

Mr. CHERTOFF. It has gone up because we had a doubling in the number of applications. We are in the process of hiring I think

1,500 additional adjusters or something like that. We are trying to deal with two separate issues. One is simply the volume of intake, which requires us to hire more people to adjudicate the cases and also we are trying to get from a paper-based system to an electronic-based system.

The second, and probably more difficult thing for a minority of people, is the background check process, because for the FBI name check, most people go through very quickly, within a matter of a few months, but for some if the name crops up in an old paper-based file, the FBI has to go back and hunt for the actual file. They are sometimes not capable of doing that within a reasonable period of time.

So now we have put more money into the name check process and we are working with the FBI to try to find a way to, (A) input a lot of those records into databases so they can be searched more readily; and, (B) we are trying to examine the system to see if there is any way we can make it more efficient. That is the second obstacle.

Mr. SCOTT. Thank you.

Ms. LOFGREN. The gentleman's time has expired.

I recognize the Ranking Member of the Courts Subcommittee, Mr. Howard Coble from North Carolina.

Mr. COBLE. Thank you, Madam Chairman.

Mr. Secretary, good to have you with us today.

Mr. Secretary, I am told that there may be as many as 600,000 fugitives in the United States illegally and that there may be as few as 30,000 beds to detain them. Let me ask you a two-part question, assuming these figures are correct. How are you approaching this dilemma, (A)? And has the Administration budgeted for additional beds to address the problem?

Mr. CHERTOFF. We more than doubled over the last year or so what we call the fugitive apprehension task force. Last year, we doubled the number of fugitives we apprehended. We are also asking for more beds in the 2009 budget which should get us up to 33,000. The limiting factor in apprehending fugitives is not the number of beds at this point. It is finding them. Fugitives, not surprisingly, hide, and it is a big country.

So we have added more teams to go hunt for them, and I think that is why we have been able to increase or double the number of fugitives we apprehend. But again, it is the sheer work involved in finding them that is the limiting factor.

Mr. COBLE. Is the 600,000 figure approximately correct?

Mr. CHERTOFF. It sounds like it is about right, but I can't verify it or not.

Mr. COBLE. Mr. Secretary, put on your Coast Guard hat. You wear many hats at DHS I know. What challenges does the Coast Guard face in deterring illegal immigration over the Nation's coasts and waterways? And does the Department have the necessary tools to prosecute alien smugglers?

Mr. CHERTOFF. You are quite right, Congressman, that the Coast Guard actually does play an important role with respect to migrant smuggling. That is particularly true in the general area of the southeast United States. We do have the plans and capabilities,

and on a regular basis we deploy them to intercept illegal migrants who are trying to come in by way of seas.

Most often it is not a question of prosecuting them, it is just a question of returning them to the place from which they came. We do have capabilities obviously if necessary to prosecute them in the United States if we actually get a smuggler, but my preferred thing is just to send them back where they came from.

Mr. COBLE. Do you need additional tools to aid in the drug interdiction mission?

Mr. CHERTOFF. I think at this point, working with the Navy, the Coast Guard does have and we have in the budget some additional capabilities, does have the capabilities necessary to perform its mission. But we do rely upon the Department of Defense and Customs and Border Protection, and Coast Guard to work together in terms of drug interdiction.

Mr. COBLE. I am told that the Coast Guard is responsible for a six million square mile area between the U.S. mainland and the Caribbean, the Gulf of Mexico and the Eastern Pacific. I don't know how they accomplish that mission. Sort of like your bed situation with the fugitives.

Mr. CHERTOFF. They do a great job. There are a couple of things that help: (A) we do partner with the Navy and that gives us additional capabilities; second, the use of intelligence allows us to more effectively deploy our resources. We had a record number of cocaine seizures last year, including one very large seizure off a boat. But it is the ability to identify something that is coming, based on intelligence, that allows us to put our helicopters and our cutters where they need to be to intercept these vessels.

Mr. COBLE. Thank you, Mr. Secretary.

Madam Chair, I want you to award credit to me for yielding before the red light illuminates.

Ms. LOFGREN. Credit will certainly be due.

We turn now to the other gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Madam Chair. I presume that credit spills over?

Ms. LOFGREN. It doesn't belong to the state, no.

Mr. WATT. To the rest of the state. [Laughter.]

Mr. Chertoff, Mr. Scott made a point, but I am not sure you understood the point, nor did the record get the purpose of his point when he asked you to have your staff stand up. Just for the record, I think the point Mr. Scott was making is you brought 10 staff people with you, all White males. I know this hearing is not about diversity of the staff, but I hope you have more diversity in your staff than you have reflected here in the people that you brought with you. Please reassure me that that is the case.

Mr. CHERTOFF. That is definitely the case. I wouldn't assume that the ethnic background of everybody behind me is self-evident.

Mr. WATT. I wouldn't assume that the ethnic background of everybody behind you is self-evident either, but I think I know an African American when I see one, and if I see one back there, if anyone wants to stand up and volunteer and tell me they are an African American, I hope they will do it right now. If anybody is a fe-

male that is sitting back there and wants to stand up and volunteer to tell me that, I hope they will do it right now.

And I want the record to show clearly that nobody stood up to volunteer in either one of those categories. So if you want to make that point and be cute about it, let me be explicit about it, Mr. Chertoff. If we are going to do law enforcement in this country, we need to understand that there is an element of diversity in our country that I don't see represented here. I will take your word that it is represented more effectively in the composition of the rest of your staff, and move on to what I would like to really ask about.

There is a provision in 8 CFR that allows an immigration officer on a reasonable suspicion based on specific articulable facts that a person being questioned is in the U.S. illegally, to briefly detain the person for questioning. One of the concerns that people have expressed and has been reported is the definition of "brief" and the definition of "specific articulable facts," which apparently has gone to "escaping" in your enforcement efforts.

In particular, when ICE raided Swift and Company, a meatpacking plant in 2006, you detained hundreds of workers, many of them U.S. citizens or lawful permanent residents. Can you tell me how you all define "brief" and how you define what "specific articulable facts" that create a reasonable suspicion would be?

Mr. CHERTOFF. I think it is a well-settled area of the law. Basically, in the circumstance where you have a reason to believe there may be a large number of undocumented workers, I think the law is clear that we have the right to ask everybody in the facility what their status is and to briefly question them. Now, if at that point there is reason to believe that the answers aren't making sense and you want to inquire further, we have the right and the legal ability to do that.

Mr. WATT. And you have the right to deny them food and water and contact with their families and union representatives and lawyers during that brief interval? What is "brief"?

Mr. CHERTOFF. The courts, the law books, as you know, are full of courts defining it and I don't think there is a specific amount of time that has ever been determined, like 2 minutes or 3 minutes. I think the courts look at all the facts and——

Mr. WATT. Well, we are not talking about 2 or 3 minutes here. I hope you are not trying to imply for the record the same thing you were trying to imply about the status of the people sitting behind you. We are not talking about a 2-or 3-minute detainment, Mr. Chertoff.

Mr. CHERTOFF. You are asking what the definition was.

Mr. WATT. How long did you all detain those people?

Mr. CHERTOFF. I am comfortable that given the fact——

Mr. WATT. Are you familiar with the case that I am talking about?

Mr. CHERTOFF. I am very familiar.

Mr. WATT. How long did you detain the people?

Mr. CHERTOFF. I can't give you the answer to that right now. I am comfortable that the decisions that were made, based on a warrant that allowed us to do the searches, and that yielded literally hundreds of undocumented workers in the course of these raids, in-

cluding many who had committed identity thefts and therefore were victimizing innocent people——

Mr. WATT. So you are saying that whatever you do to innocent American citizens, if you get some illegal aliens, you are justified in doing it. That is essentially what you are saying.

Mr. CHERTOFF. I disagree. That is not essentially what I have said. What I have said is there are well-settled legal rules.

Ms. LOFGREN. The gentleman's time has expired.

Mr. CHERTOFF. We follow the legal rules and they yield positive results.

Ms. LOFGREN. The gentleman's time has expired.

I would turn now to the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Madam Chairman.

Mr. Secretary, welcome. We are pleased to have you with us here today.

I would like to change the subject over to agricultural workers. I have long believed that the H2A program has been unworkable for our Nation's farmers and is in bad need of reform, from the artificially inflated adverse effect wage rate, to the redundant bureaucratic hoops that farmers must jump through to comply with the program.

I have been pushing legislation to make the H2A program a realistic option for our Nation's farmers, and I was glad to see that you issued regulations to grant some relief to farmers as well. As you know, farmers seeking to use the H2A program are those who are trying to comply with our Nation's immigration laws and do it the right way.

Would you elaborate on the ways that you have reformed the H2A rules and how you believe they will help our Nation's farmers and, to what extent you can, elaborate on how those rules are coordinated with the Department of Labor and what they have done?

Mr. CHERTOFF. I think, Congressman, as you observed in the question, a lot of this really falls in the domain of the Department of Labor. So for example, they retooled the wage-rate calculation so that it is more precisely tailored to the particular geographic area and particular occupations, instead of having a rate that was really not well suited for determining what the actual economic realities were.

We have tried to streamline the process in terms of making it easier for workers to change jobs without having to go through the process all over again; to allow employers to sign up with the program with less paperwork, and even if they haven't specifically identified every individual worker, to grant them a blanket approval so that they can then later supply us with the necessary information about the workers.

The idea is to eliminate paperwork or bureaucratic obstacles that don't really add value to the program, but have built up over time in a way that simply, as you point out, makes it just inhospitable to those who want to follow the law.

Mr. GOODLATTE. Thank you.

I also want to note your efforts to step up enforcement of employer sanction laws. Quite frankly, given some of the problems in some economic sectors, I think we need to see more focus on this. In the meantime, I wonder what advice you would recommend that

I give to constituents who are trying to play by the rules by hiring U.S. citizens, and oftentimes paying higher wages to them, only to see that their businesses have been undercut by a competitor who is hiring illegal aliens to perform the same jobs.

If you are in the roofing business and the guy down the street is hiring people at a lower rate who are not legally in the country, and you are trying to bid to get contracts, that is pretty unfair competition. I have had numerous employers contact me about this problem, and the best advice I can give them is to contact the appropriate law enforcement authorities to have other businesses investigated.

Mr. CHERTOFF. That is actually great advice. Some of the biggest cases that we made, that resulted in convictions and fines, as well as locating a lot of illegal workers, have been based on tips. Therefore, I would encourage those who have specific facts that suggest there is illegal activity, they do report it to the authorities.

Mr. GOODLATTE. Let me ask you a follow up to that. What is the probability that when a business does that, that the business that has been so identified will actually be prosecuted?

Mr. CHERTOFF. Frankly, it frankly depends on how good the information is. The fact that you don't like your competitor and you decide you are going to make an accusation is not necessarily going to resulting in a prosecution if there are no facts. But I can tell you we have a significant number of cases and obviously in those jurisdictions where local law enforcement participates in the 287(g) program, that is a force multiplier in terms of the ability to investigate these cases.

Mr. GOODLATTE. And a follow up on that, what is the likelihood that the illegal aliens that have been hired in these circumstances will actually be deported if they do not have previous criminal records? We have had a problem with deportation proceedings other than for those who have committed serious crimes. If they have committed an minor offense or simply are illegally in the country, we don't seem to get much action.

Mr. CHERTOFF. I would say my experience in the last couple of years has been if we apprehend them, we will get them deported. Now, some of them do raise defenses or make asylum claims. Those generally are not successful. But I will also tell you that we are fighting a legal headwind because we do have a lot of groups that are resistant to the idea of deporting illegal workers and they will take whatever tool is available to slow up the process. But we are pretty good about deporting the vast majority of people that we apprehend in these kinds of operations.

Mr. GOODLATTE. And are you getting increased cooperation from local law enforcement? Is your training program working to authorize them to detain those who are not legally in the country?

Mr. CHERTOFF. Yes, we are.

Mr. GOODLATTE. Should we expand that program?

Mr. CHERTOFF. The budget for 2009 does seek additional funds to expand the program and I think it has worked well. I think frankly what they are doing, like the state of Arizona where they are using their business licensing law, reflects a very creative approach to incentivizing compliance on the part of employers.

Mr. GOODLATTE. Thank you, Madam Chairman.

Ms. LOFGREN. The gentleman's time has expired.

I would recognize now the gentlelady from California, our colleague Congresswoman Waters.

Ms. WATERS. Thank you very much. I wish we had more time. I thank you for being here, Mr. Secretary.

We have a backlog of 145,250 applications in Los Angeles, and we have already been told that it is going to take until 2010 to get the backlog taken care of. I would like to have from you a report, if I may, Madam Chairwoman, to our Committee on what and how this backlog can be speeded up and how we can do better for people who are trying to do the right thing and who got in line. We want to make sure that we are not putting them at greater risk by not being able to process their application.

So Madam Chair, if that could be an official request of this Committee?

Ms. LOFGREN. We will officially request it, and I see the secretary is nodding his agreement to provide that report.

Ms. WATERS. Thank you.

Secondly, FEMA. We have families, I guess about 38,000 that are still living in formaldehyde trailers. The response that I have heard about when they will be removed and placed in safer living conditions has not been good or adequate. Have you ever thought about talking with the President about HUD and FEMA and others getting together and instead of continuing to spend money on trailers that are not safe, you have all the section 8 money, et cetera, et cetera. Why don't you all just build some manufactured housing and put people in it? It has been almost 2½ years now. Can't you do this any better?

Mr. CHERTOFF. I am delighted to answer that question, although I guess I have to reserve again to the Chair, and I think I owe this to my regular authorizers, that I think we are not in the normal scope of what I would imagine——

Ms. LOFGREN. We would note that this is beyond the scope of the Judiciary Committee, but it is an opportunity to——

Mr. CHERTOFF. I will answer the question. Let me say this. First of all, these are not formaldehyde trailers or FEMA trailers. These are trailers sold on the open market of the United States. We buy these and we bought these the same way every other American who has a trailer or a mobile homes buys them.

Ms. WATERS. Do they have formaldehyde in them?

Mr. CHERTOFF. Like every other trailer——

Ms. WATERS. Do they have formaldehyde in them? Then they are formaldehyde trailers. I don't care who buys them. I don't care who made them.

Mr. CHERTOFF. Then every trailer and mobile home in the United States is a formaldehyde trailer.

Ms. WATERS. I am talking about FEMA now. We have 38,000 families in formaldehyde trailers.

Mr. CHERTOFF. I am more than happy to answer the question, but I need to be given the opportunity——

Ms. WATERS. Well, I don't want an excuse, sir.

Mr. CHERTOFF. I am not giving you an excuse. I am giving you——

Ms. WATERS. But I don't care about others that I don't have jurisdiction over.

Mr. CHERTOFF. Well, I care about making a very clear and straight record about what the facts are.

Ms. WATERS. Do you have formaldehyde? Has it been documented?

Mr. SMITH. Madam Chair, I would like the witness to be able to answer the very good questions posed by the gentlewoman from California.

Ms. LOFGREN. And I am sure the gentlelady would like to be answered.

Ms. WATERS. I do not interfere with anybody else's questions, and I don't want anybody interfering with mine.

Do you have formaldehyde in the trailers?

Mr. CHERTOFF. In every trailer as far as I know that is on the open market, there is some formaldehyde.

Ms. WATERS. I just want to know about the ones that FEMA has.

Mr. CHERTOFF. Like with every other trailer.

Ms. WATERS. Okay. FEMA has formaldehyde trailers. What are you going to do about it?

Mr. CHERTOFF. What we are doing is this, and what we have done over the last year is this: We are using every means at our disposal to urge people to leave those trailers. If people are eligible for section 8 housing, and assuming again what the line is for that housing, because I don't know that we can jump people ahead of the line, I would be more than happy to have them go there. The response we have often gotten is people don't want to move where the section 8 housing is.

Now, you might ask why don't we build more section 8 housing in New Orleans? The answer is because there is litigation that is stopping HUD from doing that. So, therefore, they can't build it because the courts are preventing it. I would love to see us deal with this issue, but between the legal tangles and the disagreements that individuals have about whether they want to leave the trailers, this has been a much slower process than I would like to have it be.

Ms. WATERS. It is unconscionable, and it is shameful.

I have to move on to another question. What is your plan to deal with gangmembers who are responsible for violence in the greater Los Angeles area, who go back and forth across the border and enter the country and leave after they have committed murders and other kinds of gang violence?

Mr. CHERTOFF. First of all, I agree with you it is a big problem. Second, we have an operation underway where we have deported more than 3,000 gangmembers nationally. Regrettably, a number of them when they go back to their home country sneak back across the border again. That is exactly why we are building fences and getting border patrol and putting measures at the border. That is why we are working with the Mexican government because they are trying to tackle organized crime on their side of the border.

I would agree with you that this issue of gangmembers and organized drug gangs is one of the biggest hemispheric issues we now face. One of the things we could do is we could fund the President's MERIDA initiative, which would give Mexico additional law en-

forcement support so they can effectively tackle the criminals that are on that side of the border.

Ms. LOFGREN. The gentlelady's time has expired.

We turn now to the gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Madam Chair.

And thanks for being here with us today, Mr. Secretary.

May I just follow up on your last comment and say that what we are doing on our side of the border and how we are helping work with the Mexicans on their side of the border to combat the kind of crime and violence that is proliferating there I think is remarkably important. I appreciate your involvement.

My state legislature just passed a bill that would direct the state attorney general to execute one of these 287(g) agreements that would allow for local enforcement in Utah. I have historically been a supporter of those agreements. We continue to have a problem with drug dealers coming from Mexico, but our U.S. attorneys have done a fairly good job of stanching that.

Some years ago, we had a police chief named Ortega who wanted to do this. I was very supportive. We looked at it and decided in the city of Salt Lake that they would not do it, but now they are being directed. I would just like to hear from you what the implications of that are, if many states are directing their attorneys general to work with you. Are you going to be able to handle that? Are there things we could do to be more helpful in the process of combining local forces with your forces?

Mr. CHERTOFF. First of all, we have asked for some more money in the 2009 budget to continue to increase this 287(g) process, but we also have something called ICE Access, which is what I would call 287(g) lite. It is a way we can even without additional money help enable local jurisdictions to assist us in enforcing the law, or at least know how to enforce these immigration laws.

One of our main concerns is this. If we have people who are in custody in state and local jails, and local officials can begin the process of starting deportation procedures while they are in jail, we can essentially kill two birds with one stone. These people can serve their sentences and then we can tee it up so as soon as the sentence is over with, we can pick them up, stick them on an airplane, and send them back where they came from.

So again, obviously it depends on getting the budget money for 2009, but we want to continue to build on this and we want to encourage local communities in this respect.

Mr. CANNON. But the problem with that is that local communities are not going to put these guys in jail. I had a mayor who called me enraged because an illegal alien who was driving drunk killed a couple of people in his town, and then the end of the discussion was you have a choice. You can prosecute him and put him in jail for the crimes he has committed in your jurisdiction, or you can turn him over to ICE, in which case they will prosecute the crime they have jurisdiction over, which will result in deportation. And he yelled at me, "then he will be right back next week." And so we have this dilemma of whether or not we put them in jail, but putting people in jail costs money.

Mr. CHERTOFF. It is a worse dilemma. Sending him back costs money. It would probably amaze people to reflect upon the fact that

in many instances we have to pay air fares to deport people back to their home country.

Mr. CANNON. But with all due respect, that is Federal money and not coming out of the city coffer.

Mr. CHERTOFF. Speaking as a taxpayer for a minute, it all comes out of the same pocket eventually, which is the pocket of the taxpayer.

I couldn't agree more, the solution here is to focus our attention on making it very difficult, if not impossible, for criminals to get back across the border.

Mr. CANNON. I am sitting here with Mr. King in front of me, and Mr. King made a statement on the floor a few months ago which startled me, and I came up, and he said that we had only built 13½ miles of fence. Now, Mr. King and you and I were on the border about a year ago, and we saw a lot of fence going up. Mr. King said that only 13½ miles of fence had been built, and I said, where did you get that number, Mr. King? And he emailed his office, checked with his Texas office, and said "I got it from DHS." And then I had my staff call DHS, and we got the same number, 13½ miles of fence, which I knew, and I think Steve probably agrees, was not the number of miles actually built.

Mr. CHERTOFF. Wherever that came from, it has been corrected. We are up to 304 or 305 miles.

Mr. CANNON. That is a lot more fence. Thank you for the correction. We sent you a letter suggesting that you put cameras on the border so that people could see what was happening, or put maps on the Internet so people could see where the fence was built, when it was built, and what is being built currently. There is a lot of antagonism on this point. Can we just give some information about it?

Mr. CHERTOFF. That is actually a great idea.

Mr. CANNON. Thank you. Ask the underlings who got the letter and didn't respond, about what happened to it.

Mr. CHERTOFF. Obviously, we don't want to reveal things that are going to allow bad people to know what we are doing, but I think we could at least in general terms maybe put on the Web a tracker of what we do in terms of miles of fencing and things of that sort. That might be a very interesting and useful thing to do.

Mr. CANNON. I have a bunch more questions, but I note that my time is up.

Ms. LOFGREN. Your time has expired.

Mr. CANNON. There is always too little time for this sort of thing, so I yield back what doesn't remain. Thank you.

Ms. LOFGREN. Thank you.

The gentlelady from California, Ms. Sánchez, is recognized for 5 minutes.

Ms. SÁNCHEZ. Thank you, Ms. Chairman.

Secretary Chertoff, over the last 7 years, the detention of immigrants, including the detention of children, has risen. A 2005 House Appropriations Committee report concluded that children should not be placed in government custody unless their welfare was in question and specified that DHS should release families or use alternatives to detention wherever possible.

Instead of following the Committee's recommendations, DHS has chosen to incarcerate children, including those of asylum seekers, in former prisons such as the Hutto Center in Texas. This is the first time, I will note, since the internment of Japanese Americans during World War II that families with children are being incarcerated by the U.S. government. Why has DHS resorted to incarcerating children, including those whose parents have suffered persecution in their home countries?

Mr. CHERTOFF. Well, first of all, if somebody has a legitimate claim of asylum, almost invariably they are released. Now, a lot of people claim asylum that don't have a legitimate claim of asylum. It is easy to claim it. It is not so easy to substantiate. So the fact that someone has claimed that they are entitled to asylum, if they have been turned down, does not make them a legitimate refugee. It just means that they have made a claim that has been rejected.

Ms. SÁNCHEZ. I understand that, but my concern is that the recommendation is that they use alternatives to detention for children wherever possible, and it appears that does not seem to be happening.

Mr. CHERTOFF. There really is not a practical alternative in most cases, because what happens is, and we actually saw this happen at the border, the word got out very quickly that if people pretended to be a family group, they would get released, and then they wouldn't show up again for court. We get a two-thirds or three-quarters absconder rate. These are people who defy court orders to appear. So is it like any other system that requires people to play by the rules.

Ms. SÁNCHEZ. I understand that, but we are talking about instances in which these are in fact families and there are in fact children that are being detained, and I am curious to know, and it sounds like basically from what you are telling me, that there is a plan to continue to incarcerate families with children. My question is, will these families with children continue to be detained in facilities, in Hutto, or whether they be in Bucks County, Pennsylvania?

Mr. CHERTOFF. Well, we use both. Hutto has been re-constructed or rehabilitated so that I think now even those who were originally critical of the physical setting have acknowledged that it is maybe family-friendly overstates it, but it is appropriate for families.

By the way, the reason that children are kept there is the old process was we separated children from their parents. The parents were incarcerated in one facility and the children were sent somewhere else because they obviously couldn't be left on their own. This has I think the better approach of keeping the families together in a more appropriate facility.

Ms. SÁNCHEZ. I would agree that keeping families together is probably the best option. But last year, DHS was sued for the deplorable conditions at the Hutto facility, including inadequate sanitation and a lack of an immunization program, and that was discovered because chicken pox had broken out in the facility.

Some of the guards' practices at that facility included confining children to their cells for 12 hours a day without crayons or anything to do, refusing to allow children to use the rest room at times, waking them up in the middle of the night by shining lights

at them, and threatening to separate them from their parents if they misbehaved. I am just wondering if you think that that is an acceptable way to treat children at these facilities?

Mr. CHERTOFF. Again, I can't validate whether those allegations are true or not true, but I do know that eventually this was resolved to the satisfaction of the plaintiffs and everybody else. My understanding is, obviously people would prefer not to be apprehended, but that the people who originally complained, the lawsuit has been resolved and settled and everybody seems satisfied.

Ms. SÁNCHEZ. Let me ask you this. Prior to that litigation, was DHS inspecting the facility on a regular basis?

Mr. CHERTOFF. Yes, it was. It was.

Ms. SÁNCHEZ. And yet they weren't catching these practices?

Mr. CHERTOFF. All I can tell you, congresswoman, is I don't know which of these are accurate allegations, it is not in my experience. Sometimes allegations are exaggerated in this kind of a case. I can't judge because I wasn't there. We do inspect.

Ms. SÁNCHEZ. Ultimately, you and the Department are responsible for the conditions.

Mr. CHERTOFF. And ultimately it got resolved to everybody's satisfaction.

Ms. SÁNCHEZ. My last question is, DHS has entered into more and more contracts with private companies, including Corrections Corporation of America, to incarcerate immigrants and CCA runs some of the facilities in the worst conditions, including the facilities at Hutto and San Diego. Do you think that private prisons are less accountable than public prisons about their daily operations?

Mr. CHERTOFF. No. One of the reasons we contract out is because our need for bed space fluctuates depending on conditions in particular parts of the country. There is no point in us building Federal facilities that will be vacant. That would be a waste of the taxpayers' money. Sometimes we contract with local county and state facilities. Sometimes those entities themselves contract with private facilities.

I think that they are held to certain standards contractually under their requirements. I think, for example, Hutto now has actually cured some of the issues that were complained about.

Ms. LOFGREN. The gentlelady's time has expired.

I recognize the gentleman from California, Mr. Issa, for 5 minutes.

Mr. ISSA. I thank the Chair.

Just like my predecessor here in questioning, I will run out of time before I run out of questions, but I would like to first of all ask, the array of dark-and light-haired people behind you, are most of them political appointees?

Mr. CHERTOFF. Probably some are and some aren't. I have a Coast Guard captain behind me who is my military aide. I have the leg affairs people, and some of them are and some of them are not. We have some career people from CIS.

Mr. ISSA. So these people, the majority of them apparently, got to the positions they are and are reportable to you because on a merit basis, they rose to the top of their selected areas.

Mr. CHERTOFF. That is exactly right. And during my tenure, we have both in the political and in the career path, elevated a very diverse group of people to leadership positions in the Department.

Mr. ISSA. I want to commend you on that, and I want to obviously at the right time and right place look into that further as appropriate. I certainly don't want this hearing to appear as though we are disparaging people who through 15, 20, 30 years of service have risen to these positions, that somehow because of the color of their skin, their merit is diminished. I don't think Congress meant to say, and I don't think the previous people meant to say that.

As political appointees, as a Member of Congress, I have political appointees. My entire staff is at my whim, and I appreciate that they may be disproportionately home state or in some other way similar to my politics. But for those who serve not at the whims of the President, it is gratifying to see that in fact merit matters.

I don't want to dwell on the issues that we have dealt with in other Committees long, but isn't it true that the vast majority of the people 2½ years later still in trailers, are in fact not reporting problems with formaldehyde? That that was, although regrettable, not 100 percent, and that even in the hearings that you, of course, were made aware of, many people when finding an unacceptable trailer, got a second trailer and it was acceptable. Isn't that true?

Mr. CHERTOFF. Well, yes. And what is true is, there was a range of findings, and I can't tell you that these are out of line with what you find in the industry in general. What I can tell you is last summer I and the head of FEMA announced to everybody, if you don't want to be in a trailer, we will move you to someplace else. We begged people to leave trailers. People resisted leaving trailers. We are trying even harder to get them out of trailers. Some of them don't want to leave their trailers.

Mr. ISSA. Just start charging them rent. It will change their tune.

Mr. CHERTOFF. You know, some people, and particularly those who are in trailers on their personal property, have reasons to want to stay. I can't tell you there is no medically safe level. For all I know, there is formaldehyde in this room. Maybe I should be asking that it be tested before I come into testify.

All I can tell you is I think it is well past due to get people out of this temporary housing, and we are working very hard to do it.

Mr. ISSA. I appreciate that. If you don't mind, to the extent that you have information that can be readily made available to the gentlelady from California and to myself, because I serve on the Committee that has been looking into this, the measures you are taking going forward in purchasing in the future would be appreciated. Because our hearings didn't just show formaldehyde. Obviously, they showed a propensity for mold and mildew and other things, which I was not shocked to find out you have in Louisiana.

Mr. CHERTOFF. I will tell you, I have announced that we are not buying trailers anymore. So that is going to take care of that problem. The issue of mobile homes is more complex, and I might add, many people in the United States live in mobile homes. So I suggest that Congress carefully study the implications of this issue as we move forward.

Mr. ISSA. Just two more questions. The first is, I am sure you are aware that the new U.S. attorney in San Diego has done a huge about-face and is doing prosecutions of coyotes in large numbers to help with the border enforcement effort. How is that impacting border security in the San Diego area where I represent?

The second one is more complex, and I think it directly goes to this Committee's various works over the years. Many people who are in the process of gaining citizenship complain about two problems. One is, sometimes unaware and sometimes perhaps aware, they leave the country for a period of time that is outside of the current rules that Congress has set. That then catch-22s them when they go to apply and they essentially re-set for another 7 years.

If Congress took action to allow greater flexibility in the process for departure from the U.S. that is not inherently contrary to their intent to become valid U.S. citizens, would that help you? That would be action that this Committee I believe would have to take to move it up.

Last but not least, if we authorized a period of time prior to full qualification for the citizenship application so that you had, let's say, an extra 2 years before their statutory period in which they can become citizens—in other words, we moved up the application date earlier than the allowing date—would that also make your job more effective? I realize I am giving you three questions. Some of them you may have to answer for the record.

Ms. LOFGREN. And the gentleman's time has expired, so a very prompt response would be necessary.

Mr. CHERTOFF [continuing]. Prosecutions are enormously helpful. They have a very, very good deterrent impact. I am pleased that we are getting more of those.

Generally speaking, if we have an ability to work with Congress to clean up some of the anomalies, we would welcome the opportunity to do that. You always have to be careful about unintended consequences, but I think we would welcome it. We are living with some of the unfairnesses that are unintended consequences of prior reforms, and if we could clean those up, I think it would help everybody.

Mr. ISSA. Thank you.

And I thank the gentlelady, who I know is very interested in working on those issues.

Ms. LOFGREN. I thank the gentleman, and I hope that we can follow up on a bipartisan basis and do some improvements on the existing immigration laws that in some cases are a little irrational.

I recognize now Mr. Cohen, the gentleman from Tennessee.

Mr. COHEN. Thank you, Madam Chair.

Mr. Secretary, on the 29th of January, a letter was addressed to you by four Members of this Congress—Mr. Smith, Ms. Horono, Mr. Johnson and myself—expressing concerns about the REAL ID law—privacy issues, cost issues, and just the basis of the arbitrary date chosen, May 11, to punish states that haven't fallen in line with the requests of the Federal Government. We have not received a response to this letter. Are you familiar with the letter? Or should we blame the postal authorities?

Mr. CHERTOFF. I am sure that there is a response being worked on because we have gotten much better at turning these around more quickly. But I am certainly familiar with the issue, and I can tell you, as we publicly announced, we cut the cost of this program by three-quarters.

Mr. COHEN. Let me ask you, before you go on, are you sure a response is being prepared? This has been 1½ months. Is 1½ months the time that you are considering better? Does one of your staff members know about this letter? One of the gentlemen does know.

Mr. CHERTOFF. It depends when it arrived.

Mr. COHEN. Can this gentleman tell us if the letter is being responded to?

Mr. CHERTOFF. I don't know that he is in a position to tell us.

Mr. COHEN. He seems to think he is.

Mr. CHERTOFF. I am going to lay down the law here. If a staff member is to be called to testify, they should sit at the table and be asked to testify. I am not going to have everybody I bring into a hearing room subject to questioning. I spent too many years in a courtroom to let that kind of thing go on.

Ms. LOFGREN. The witness is correct. He is the witness and the questions do need to be directed to him. Mr. Cohen, if you would——

Mr. COHEN. Thank you, Madam Chair.

He may be correct, but when you don't answer a letter from four Members of Congress in 1½ months, there is a problem.

Mr. CHERTOFF. Well, I don't know when the letter arrived, but I would say certainly we try to turn the answers around within 30 days. So if it was sent on January 29, by my calculations——

Mr. COHEN. January 23.

Mr. CHERTOFF. By my calculation, depending on when it got to the Department, we may be slightly over 30 days, but I don't think we are much over 30 days.

Mr. COHEN. Why did you pick May 11 as your date?

Mr. CHERTOFF. I think it is in the statute.

Mr. COHEN. You think it is in the statute.

Mr. CHERTOFF. Yes, I think it is.

Mr. COHEN. If I am correct, it is not, but I may be wrong. Does anybody here know if that is in the statute?

Mr. CHERTOFF. I believe it is. I could double-check it. I think it is a statutory deadline. I think it is based on when the original bill was passed or whatever.

Mr. COHEN. The REAL ID law has certain issues concerning privacy. Have those issues been addressed since it was passed?

Mr. CHERTOFF. I believe they have, and I believe the system we have worked out actually increases the privacy protection. This will actually be a net-positive for privacy of American citizens compared to where we are now.

Mr. COHEN. I have a lot of questions to ask, Madam Chair, but I would like to ask the secretary if he would consult with his staff and you can answer the question, if you would be so kind, but if your staff member who has come here has the answer to whether or not that letter is being responded to, I think it would be pertinent.

Mr. CHERTOFF. All right. If you will excuse me——

Ms. LOFGREN. We certainly will excuse the secretary to consult with his staff.

Mr. CHERTOFF. Here is what I am informed. I am informed that it arrived on the 31st and I believe the answer was signed out today.

Mr. COHEN. Thank you, and I look forward to the response.

Let me ask you this, sir. One of the issues and areas of your jurisdiction is to minimize the damage and assist in the recovery from a terrorist attack. I know that public hospitals is not under your jurisdiction, however our public hospital system is in great danger.

Mine in Memphis, Tennessee, the Med, and most public hospitals throughout this country are not well funded. Have you thought about the need for Homeland Security to have funding possibly through Homeland Security to help see that we have a series of public hospitals that could be available in case of a terrorist attack?

Mr. CHERTOFF. I agree with you that an important part of not just a terrorist attack, but a natural hazard like the tornadoes we had in your area, which I was at a few weeks ago, or a pandemic flu, does require surge capability from the public hospital system. That is in the domain of HHS. I wouldn't want give a Department response for doling that money out because it is not our expertise area. But I agree that has to be part of the general plan.

Ms. LOFGREN. The gentleman's time has expired.

Mr. COHEN. Thank you.

Ms. LOFGREN. I would remind Members that the best questions would be for those that are within the Committee's jurisdiction and within the Department's jurisdiction.

Mr. Pence is now recognized for 5 minutes.

Mr. PENCE. Thank you, Chairman.

I want to thank the secretary for being here. I want to thank you for your service to the country. My little family sleeps a little better at night because you are the head of the Department of Homeland Security, and I mean that very sincerely. And I think that is a bipartisan view on Capitol Hill.

Mr. CHERTOFF. Thank you. I appreciate that.

Mr. PENCE. I am going to bring up a topic that I think, I wasn't here for the Ranking Member's remarks or the Chairman's, so I want to defer to them, but I haven't heard other colleagues bring up this issue. We have talked about some pretty interesting topics in this hearing so far. I would like to talk about terrorism, the threat of terrorism, and the threat of a terrorist attack on the United States of America, which if memory serves, is why we created this Department.

I know that you and I have worked together on issues about immigration reform. Border security falls within the purview of the Department. That is important. It is something of an object lesson for me to see the secretary of a Department that was created to focus on protecting us from another 9/11 being questioned appropriately—and Members of Congress can question you on any topic—being questioned just the way any other Department head would be questioned.

This kind of confirms my limited government views and my general view of bureaucracy as a whole. I would like to focus you on that particularly, Mr. Secretary. I was in the Kunar Province of Afghanistan about 36 hours ago. I met with President Karzai. I met with our commanders down-range in Afghanistan and Iraq. There is extraordinary progress in Iraq, as you know well, with 60 percent reduction in violence in Baghdad and all over the country actually.

But my sense is that we are having a great deal of success, particularly in Iraq, driving terrorists and insurgent and al-Qaida elements out of the center part of the country. Mosul appears to be still a focal point and a problem. I was there Sunday in Iraq when President Ahmadinejad arrived and articulated almost Washington-like talking points, saying that America needs to get out of Iraq. It certainly would be in his interest if America was not in Iraq.

I guess my question to you is, as someone who I respect more than anyone other than the President on these topics, is the threat of a spring counteroffensive in Afghanistan that is very real. The progress that, other than by the political class, is not being denied by anyone, including the pages of the *New York Times*, how does that impact our threat assessment here?

It does strike me, and in Indiana we identify with the view that if we are fighting them there, we are probably not going to have to fight them here. But the thought does occur, as we succeed there, is there a concern in your good offices that al-Qaida and its patrons in places like Syria and Iran, growing frustrated with their ability to project force in that region, may be more motivated to project violence here.

I know that is somewhat counterintuitive. Some of us are celebrating the progress of stability and security and political progress in Iraq, and others are denying it. But regardless of that, you want to be pleased about that, but it struck me that we have a lethal enemy who desires to do us harm.

We are driving them from the center of the central front in the war on terror, which is Baghdad. Does that create in your mind a greater possibility of threats against U.S. interests abroad, embassies—the USS Cole comes to mind as a type of incident about which we should be concerned. And of course, here at home.

Mr. CHERTOFF. You know, I don't want to take up the whole hearing on this. Let me give you three brief points in answer to that question. The first is I think that there has never been a drop in the determination and the intent of the enemy to attack us here at the homeland. That is still to al-Qaida, in my view, that is the home run, the number one thing they want to do.

The second point is they have not succeeded in doing it since 9/11, largely because of the strategies we have undertaken: (A) to fight them over there, to put them off balance and to keep them focused on their near-term problems; and second, because of the steps we have taken to make it harder to get into this country and carry out an attack. Of course, you see attacks and efforts in Europe, which reminds us that there is still an intent, and it is certainly not that they have decided they like the United States. So it is what we have done to defend ourselves.

Ms. LOFGREN. The gentleman's time has expired, so if we could just wrap up.

Mr. CHERTOFF. The third piece is this. I think it is terribly important to recognize that we are having a success in Iraq which is under-noticed. Al-Qaida in Iraq is really on the ropes and it has been the people that they thought were their constituency that have turned on them. That is a huge embarrassment and a problem for al-Qaida in general, because they are having trouble explaining why, if they have the wind at their back and they are the wave of the future, why their own people are rejecting them. That ultimately, in my view, makes us safer.

Mr. PENCE. Great.

Ms. LOFGREN. The gentleman from Massachusetts, Mr. Delahunt, is recognized.

Mr. DELAHUNT. Thank you, Madam Chair.

Mr. Secretary, how many al-Qaida in Iraq, I hear varying estimates in terms of numbers, anywhere from 800 to 2,000. Give us your number.

Mr. CHERTOFF. I didn't come prepared, since we kind of got completely off the topic of immigration.

Mr. DELAHUNT. I am going to get back——

Mr. CHERTOFF. I can't say I came prepared with a number. I don't think it is arguable, however—and they pretty much admitted it—that they are suffering reverses and that the so-called "awakening" or the Sunni tribes have really turned on them. Not that they are done, not that they out of——

Mr. DELAHUNT. A number, I would appreciate—a guess.

Mr. CHERTOFF. I wouldn't do that——

Mr. DELAHUNT. Okay. Let me talk about the same subject, terrorism and threats, and when we make mistakes, because we want to take steps so that we ensure that we don't make those mistakes again. Congressman Nadler indicated earlier that he and I have an interest in this case of Meher Arar. I would like to go through the facts as I know them, and end with a question and a request to you.

My understanding is on September 22, 2000, Mr. Arar flew from Deir ez-Zor to Montreal with a stopover at JFK. He was on his way back to Montreal. He was detained and interrogated for hours by New York police, along with the FBI, and detained in a cell. He was then sent to a detention facility in Brooklyn, where he was also interrogated for hours. An INS official informed him that they would like him to voluntarily return to Syria. He said no, he wanted to on to Canada, where he was a citizen. When he asked for an attorney, he was told that he had no right to an attorney.

On September 28, he was given a document saying he is inadmissible under section 235 because he was a member of al-Qaida. He continued to ask for an attorney and a phone call, but his requests were denied. On October 2, he was permitted a 2-minute phone call to his mother-in-law in Ottawa, and he told her that he was afraid that they were going to send him to Syria. On October 4, he had a visit from the Canadian consul. He told her that he is frightened that he will be deported to Syria. She reassured him that that would not happen.

On October 6, he was asked why he does not want to go to Syria, and he responded that he was afraid that he would be tortured there because he didn't do his military service before leaving Syria when he was a teenager, and that he is a Sunni. On October 8, he is read a document saying that they decided, based on classified information, that they think he is a member of al-Qaida and that the INS director has decided to send him to Syria. He protested, saying that he will be tortured there, but that is again ignored.

What I would request from you, and Chairman Nadler indicated earlier, that we forwarded a letter to you. But what I would request from you is not classified information, but simply how the decision was reached to send him to Syria, rather than Canada. Maybe you have information at your disposal here. I don't presume you do. But I would appreciate your personal review and a commitment from you, without disclosing any information that is classified, as to why the decision to Syria rather than Canada.

Mr. CHERTOFF. I think there is an inspector general report in the works on this, because I think it was requested. I don't know if it has been finalized or not. I think that is probably going to be the definitive investigative conclusion——

Mr. DELAHUNT. There is an inspector general's report, in my understanding, but portions of it are classified. What I am looking for is something very discreet and specific: Why Syria rather than Canada?

Mr. CHERTOFF. I think what I am going to have to do is, and obviously you can see the classified portions.

Mr. DELAHUNT. I have not seen them, no.

Mr. CHERTOFF. And I don't control the IG's releasing this, but I presume he will show you the classified portions.

Ms. LOFGREN. The gentleman's time has expired.

Mr. CHERTOFF. Again, I have to assume the answer to the question is in that report. I could have someone read the report and extract it for you, or direct you to the pages, but I think we are ultimately going to wind up taking you back to that report as the investigative finding.

Ms. LOFGREN. If I may, I think the request is straightforward and if you could respond subsequent to the hearing, that would be appropriate.

The gentleman from Iowa, the Ranking Member of the Immigration Subcommittee, is recognized for 5 minutes.

Mr. KING. Thank you, Madam Chair.

Mr. Secretary, I appreciate your testimony. I would point out that you have gone down and done hands-on fence construction on the border, and I have watched you weld a bead on a vertical landing mat. So thank you for the hands-on portion of this.

On that fencing, just quickly, I want to touch a clarification. The data that I have from your Department is dated February 6 on fence construction. It concurs with your testimony, and I am looking at that data now. It says primary pedestrian fence, 167.5 miles, identical to your testimony. Secondary fencing, I don't think you were specific on that, says 31 miles. And then tertiary fencing, the triple-fencing, says seven miles as of February 6. Tertiary fencing, even though that may be the dinosaur era, means triple-fencing.

I wanted to ask you, as we looked at that fence down there in San Luis south of Yuma, I asked the question there, if the triple-fencing had been defeated by anyone at that time? And the answer I received from yourself and Chief Aguilar was no, not at that point. Are you aware of any case where triple-fencing has been defeated?

Mr. CHERTOFF. No. But as I said earlier in response to a question, I think a lot of times anything can be defeated. The question is, it is like a car, they look for the car that is easiest to break into. So they will move along the border and as we build up in other parts, they are going to come back and take another run. But the key is that the Border Patrol is in the area, so it is not——

If we left it alone, people would get over it. What it does is it slows you up, so we can get there with the Border Patrol, and in an urban area where the Border Patrol is posted, that gives us the ability to get people before they vanish into the town, which is what we are concerned about.

Mr. KING. So statistically, though, I understand they are not going to go through the most difficult portion, and triple-fencing is the most difficult portion, and as we continue to build that out, it raises the transaction costs of coming into the United States. It gets more difficult, and that is the value of it, in my estimation.

I know that the number of interdictions on the border has dropped over the last year. The previous year, if I remember right, was 1,188,000. I think the year before was 1,157,000, and you are about 880,000. I recognize that you view that as less border attempts meaning less interdictions, but I will point out that we have Border Patrol testimony before the Immigration Subcommittee in this room that has testified that they think they stop one-fourth to one-third of the attempted border crossings. I ask if you could comment on that.

Mr. CHERTOFF. I have actually heard a different figure. The figure that I have heard is that basically we think we apprehend two for every one that gets in. I have asked the question about the metrics which show about a 20 percent decrease. They look at some collateral issues, too. They look at what is going on south of the border in terms of staging areas. They do some validation by, if you can believe it, literally counting the footsteps in certain areas.

So I am always careful to say the 20 percent drop is not a precise figure, but I think it is pretty indicative of the fact there has been a positive movement.

Mr. KING. If I could say I have been along that border a number of times, and I have passed by those footsteps without them stopping to count either, so there could well be a number that is higher than that.

But I wanted to go to the E-Verify portion of this. It hangs in front of this Congress to be addressed for reauthorization by fall. The progress has been made there of new employees that are legal to work in the United States, 99.4 percent effectiveness; 99.9 percent of native-born workers are authorized immediately; and the longest delay I can create in that is 6 seconds. So "immediately" is within that period of time.

I am going to ask you if you will support reauthorizing E-Verify to make it permanent, and also to allow employers to utilize it for current employees as well as new employees.

Mr. CHERTOFF. Yes, I think we would support that. Obviously, we have to look at the details of the specific legislation, but I think the program has not only proven itself to be effective, but employers want it. That is why they are signing up. That is the best test of success, the marketplace.

Mr. KING. Thank you.

And then my concluding question is this, and it reflects off of what Mr. Pence raised from a national security standpoint. We have had persons of interest from nations of interest that have been interdicted on all of our borders and our ports of entry, but in particular with our southern border where we have a lot of traffic across that.

Can you inform this Committee, if it is unclassified, the numbers of persons who are persons of interest from nations of interest who have been interdicted at the border, that number since September 11?

Mr. CHERTOFF. I can probably supply you with the answer, but I need to make one thing clear. "Persons of interest" is different than "nations of interest." "Nations of interest" simply means a nation that has been associated with terrorist activities or training. It does not mean necessarily that, and in fact in the vast majority of cases, it doesn't mean that the individual is suspected of being a terrorist.

Ms. LOFGREN. The gentleman's time has expired.

Mr. CHERTOFF. But with that caveat, we can probably get you that information.

Ms. LOFGREN. The request is for later information. I am advised that we are going to have a vote in about 10 minutes, so I am going to ask people to——

Mr. KING. Madam Chair, if I could just ask your indulgence. I think the gentleman was within 10 seconds of prepared to give me that answer.

Ms. LOFGREN. I thought he was going to respond later.

Mr. CHERTOFF. With that caveat, we can provide the number. I don't have it off the top of my head.

Mr. KING. Fine, thank you.

Ms. LOFGREN. The gentleman from Georgia, Mr. Johnson, is recognized for 5 minutes.

Mr. JOHNSON. Thank you, Madam Chair.

Secretary Chertoff, one of the functions of the Department of Homeland Security is the Transportation Security Administration, under whose authority employees are hired at various airports throughout the land to provide baggage screening. These employees are on the front line in this war against terrorism to make sure that we don't have another 9/11 scenario unfold with the use of planes as offensive weapons for terrorist purposes. What they do is screen baggage.

Mr. Secretary, I have had an opportunity to tour first-hand the security screening facilities at my hometown airport, which is Atlanta's Hartsfield-Jackson Airport, the busiest airport in the Na-

tion and the world. I think by and large the employees out there are doing an excellent job.

However, they do complain about employment conditions out there. They complain of a culture of favoritism, a culture of racism and sexism in the areas of job assignments and promotions. They complain of harassment when they speak out about job conditions that make the job more difficult.

They have problems with the performance accountability and standards system which is supposed to be a standardized employee evaluation and promotion system, which they say is being inconsistently and arbitrarily applied. It is biased against non-management employees. They talk about being unable to get the pay raises for which they have received promotions into job which call for pay raises.

They talk of problems on the job with on-the-job injuries because they are having to pick up large bags for screening purposes. They talk about lost paperwork on their workers comp compensation claims, and they also talk about a lack of light-duty jobs that they can perform when they are medically in line for light-duty jobs, and there are no light-duty jobs to be performed and then they end up losing their jobs. They talk about having to pay for parking, and parking at the airport is a tremendous expense.

So basically, a decline in morale, a bad staff morale at the airport in Atlanta, even though they try to do as best a job as they can to keep Americans safe.

My question, sir, is are the working conditions and security environment at the Atlanta Hartsfield-Jackson Airport better or worse than that of airports throughout the country?

Mr. CHERTOFF. I am not particularly familiar with Atlanta Hartsfield. I have actually visited with screeners at airports all over the country. I can tell you that the administrator of TSA, Kip Hawley, spends a great deal of time focused on the issue of morale.

First of all, we all agree the screeners do a remarkable job under very difficult circumstances, not least because of the congestion with air travel—airports are not necessarily happy places for passengers these days. Some of the things he is doing is this. He is broadening and expanding the career path for TSA screeners.

Mr. JOHNSON. These are Federal employees, too, are they not?

Mr. CHERTOFF. Correct. He is talking about, for example, allowing them to specialize and take training in behavioral detection techniques, document and verification checking techniques. This has a couple of positive benefits. First of all, it opens up the idea of being a screener as a career path where you advance, rather than stay where you are.

Mr. JOHNSON. These employees certainly look at this job as a place where they should be able to advance, and they are motivated to advance, but they feel that the apparatus and the process that is in place for advancement is not working. I would implore you to take a look at it.

Mr. CHERTOFF. I certainly will, and I will raise it with Administrator Hawley.

Mr. JOHNSON. All right. Thank you so much.

I yield back.

Ms. LOFGREN. The gentleman yields back.

I recognize the gentleman from Florida, Mr. Feeney, for 5 minutes.

Mr. FEENEY. Thank you, Madam Chairperson.

Secretary Chertoff, Florida is a great tourism state. One of our concerns is the visa waiver program and other ways that people come legally to the United States. Recently, America has been branded widely throughout the world as the least attractive place to travel because of hassles and security issues.

I wonder if at some point in the near future you could give us a report of how you are accommodating the need for enhanced security since September 11, but also facilitating actual reasonable ways for people that are here. It is not just tourism, it is international businesses that are deciding where to locate their business, and increasingly America is an unattractive place to do business. We are holding up businessmen and tourists from London, while our border goes unsecured.

Would you be willing to get an updated to myself? I know Congressman Keller is interested and probably other Members of the Committee.

Mr. CHERTOFF. Yes, we can send you something that will explain what our approach here is. I agree with you. The good news is we keep refining our procedures so we are more able to focus on the people we want to keep out and less hindrance to the people who are legitimate travelers.

Mr. FEENEY. It is a two-pronged effort. Number one, we have to have reasonable access for people with legitimate purposes coming here. And number two, then private sector tourism folks want to go out and spread the word that we are no longer the problem we used to be.

Mr. CHERTOFF. Yes, I am glad to do that.

Mr. FEENEY. But we have to make sure we have the problem on the front end fixed before we start bragging about having fixed it.

Secondly, I want to add my comments. I was out for my leisurely 4-mile run this morning when I listened to the same radio show. Prince William County has spent $26 million of its own money trying in part to apprehend and then put behind bars, until you guys can come pick them up, illegals. The mission statement for your Department says we will lead the unified national effort to secure America. And it goes on to say later that we will ensure safe and secure borders.

It is hardly a unified effort if the locals that are trying to do enforcement—and this is happening in various ways throughout the country. People are terribly frustrated at the Federal Government's real and perceived failure to do its job to secure our borders. I think it is a horrible message. If we can't go pick up four guys that have been apprehended thanks to the extraordinary efforts of law enforcement, I am really disappointed. I want to echo Congressman Sensenbrenner's comments.

With respect to the border, Secretary Chertoff, a few years ago, I have to tell you. I came to Congress as an agnostic on immigration. There are some great things about immigration—the shining city on the hill, opportunity for people, the relatively inexpensive labor. There are a lot of industries and we just can't find employees. I recognize all that.

But after 9/11 and the huge burdens on our social welfare system—education, hospital systems—I started becoming a very quick skeptic about the job the U.S. was doing. I sat in on a question where our colleague, John Carter from Texas, asked Mr. Rove about the problems of the totally porous border, and essentially Mr. Rove denied that there was a problem.

I went sometime after that to Arizona. I am going to have my staffer, if I can, give you a map and just three of the 100 photos I took down in Arizona, and I also ask for permission to insert these in the record.

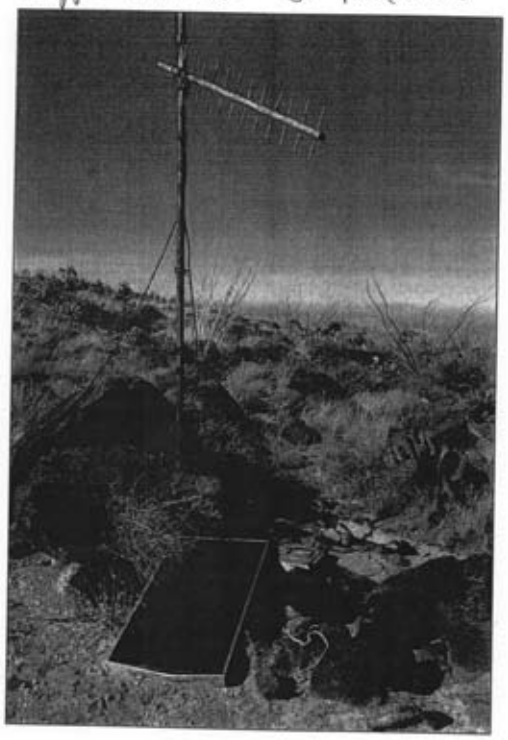
Ms. LOFGREN. Without objection.

[The information referred to follows:]

Table Top Wilderness
Table Top mountain.

Photos of Illegal Communication Site at Point C.

Smuggler Radio site 30' pole (antenna)



Backpack load of dope 78 miles N of Border

Smugglers / look outs. shot at BP Agents
52 miles N of Border

Mr. FEENEY. The map that you see, one of the places I visited was a place called Casa Grande north of Route 8, which is 70 miles inside the American Arizona border. What I found there was a machine gun nest that had been occupied periodically, based on a queue, and it was the 13th of the series of nests that drug and individual smugglers were using on a repeated basis.

What I was disturbed and shocked to find is that Homeland Security, ICE, Border Patrol—nobody else would take me up there. They are simply not doing their job, in my view, or that is what it looked like. I think Congressman King will agree with much of that. The only group doing its job when I was there was the environmental agency, the Bureau of Land Management.

They have to clean up the mess. The cost of bringing an illegal immigrant over the border had dropped because there were these various organizations willing to do it. It had dropped from about $3,000 a head to $1,500 a head. For Middle-Eastern men, however, the price was about $35,000.

What have you done since I visited the border, number one, to make sure that the terrorists that Steve King just talked about, but also the 12 million to 20 million people that are already here are no longer—and by the way, we got pictures 78 miles inside the border of dope. What has been done since I was there?

Mr. CHERTOFF. When were you there?

Mr. FEENEY. This would have been 3 years ago.

Ms. LOFGREN. The gentleman's time has expired, so we are going to have to ask for a very short monosyllabic answer.

Mr. CHERTOFF. I could send you a lot as part of a long answer. I think we have transformed what we have done in 3 years there. I think in 3 years in terms of tactical infrastructure, capabilities, and almost doubling the Border Patrol, we have done a huge amount to change it.

But here, I am going to ask for your help. As I try to build a fence and I try to put this stuff up on the border, what I hear is I hear complaints from environmentalists that the fence is going to interfere with the movement of some kind of animal or something. And I say, well, wait a second. It has got to be better for the local habitat to stop drug dealers from coming in with drugs or using vehicles.

Ms. LOFGREN. Mr. Secretary, that request is noted. I am going to move this along to the gentleman from California, so Mr. Gohmert will also have a chance to ask his questions.

Mr. Schiff?

Mr. SCHIFF. Thank you, Madam Chair.

Thank you, Mr. Secretary, for being here. One of the areas that I am most concerned about in terms of our homeland security is the area of nuclear terrorism. I would like to ask you what efforts the Department is making, what additional assistance you need on two fronts: One, in keeping the material out of the country in terms of the development of the portal technology or other efforts.

I think probably the most significant thing we can do to protect ourselves is to prevent the wrong people from getting the material in the first place. That is probably beyond your purview, but if you could talk about efforts we are making to keep it our of the coun-

try. I know there has been some disappointment with the progress of the technology.

But second, I am also very concerned about the nuclear material that is already in this country. Really, I am talking about the radiological material that is in our hospitals and other locations that is too accessible and could be used for a devastating radiological attack. So if you could address in open session what efforts you are making, what help you need, what Congress can do to assist you in those efforts.

Mr. CHERTOFF. I am happy to, Congressman. It is true that the first line of defense is overseas, working with other countries, and through the antiproliferation security initiative, to prevent the materials from getting in the hands of terrorists in the first place. That is obviously, a lot of that lies in the domain of other departments.

From our standpoint, obviously, keeping people out who are terrorists is critical, and we are doing a lot of stuff, as I have explained, about that. We are currently scanning virtually 100 percent of all containers that come in from overseas for radioactive or nuclear material. That is as opposed to zero percent 5 years ago. That is a big step forward.

We are beginning, as was announced in the paper today, we are implementing a new initiative to screen crews and passengers and ultimately to scan private aviation as it comes in from overseas, so people don't put a nuclear bomb on a private jet and fly it into the United States and detonate it. That is something that we have underway, again as a way of keeping the bad stuff out of the country.

Similarly, we have a small-boat strategy that the Coast Guard is developing, after taking appropriate input from boaters, so that we don't have people using private boats to smuggle nuclear weapons in. So we have a comprehensive approach both to keeping dangerous people and WMD-types of materials out of the country.

The last piece, but you are quite right and it is probably——

Mr. SCHIFF. Mr. Secretary, before you get to the radiological material, did you say you are screening 100 percent of containers coming in for nuclear material?

Mr. CHERTOFF. Virtually 100 percent.

Mr. SCHIFF. And what kind of accuracy does our technology have? If you have nuclear material in a lead container——

Mr. CHERTOFF. Shielding is a problem. Now, if we have a basis to put a container through an X-ray machine, we can detect the fact of the shielding. So we have to use a combination of the scanning which detects active radiation, and also the intelligence that we have about the nature of the containers to determine which ones ought to be X-rayed as well as scanned. The problem with X-raying every container is you wouldn't be able to allow the driver to drive the truck through because the driver would get irradiated. So there are some technological things we are addressing to try to deal with that issue.

Beyond that, we are also doing more scanning overseas. We have three overseas radiation scanning, combined with X-ray and scanning operations overseas, including in Pakistan, because we are trying to do more of this before the container actually even comes into the U.S.

Just so I don't run out of time, the last piece on the radiological stuff, which is often under-noticed, that you are quite right about, we are beginning this year and working with the medical community, rolling out a plan to retrofit, working with the Department of Energy, existing medical machines that use this kind of radiological material so that it is very much harder to remove that radiological material from the machine. I don't want to get too specific, but the idea is that over the course of the next fiscal year, we will retrofit machines that use a certain kind of radioactive material so that you can't just take the material out.

Mr. SCHIFF. Do you have the resources to do that, or do you need us to work on that with you?

Mr. CHERTOFF. I think we do have the resources. Frankly, the companies that actually do this are going to have to do the work. The cost per machine is pretty modest, so I think it can be handled by the hospitals themselves. We are also partnering with the Department of Energy. So I think we have the authorities. We do have money in the budget for this, so we are funding the necessary part on our end, and just to complete the answer, we are trying to work with the industry to actually——

Ms. LOFGREN. The gentleman's time has expired.

Mr. CHERTOFF [continuing]. To do actually a different kind of radiological material that is not susceptible to being made into a weapon. That is the more long-term solution.

Ms. LOFGREN. The gentleman's time has expired. Before going to the Ranking Member——

Mr. CHERTOFF. I can give you more information——

Mr. SCHIFF. Say for 10 seconds, and I want to echo the Chair's concerns on the issue of how long it is taking them to get background checks for people applying for citizenship.

Ms. LOFGREN. We are going to take a brief detour here on something that the Ranking Member and Chairman have agreed on, and the Committee will come to order. Without objection, the Chair is authorized to declare a recess.

[Whereupon, at 11:52 a.m., the Committee proceeded to other business.]

[Whereupon, at 11:53 a.m., the Committee resumed the hearing.]

Ms. LOFGREN. We return to the hearing and recognize Mr. Gohmert for his 5 minutes.

Mr. GOHMERT. Thank you, Madam Chair.

So many questions, so little time. Thanks for your vigilance, Mr. Secretary.

Following up on Mr. Feeney's question and Mr. Sensenbrenner's, this is an ongoing problem. Our local law enforcement is willing to pick people up. They do pick people up. They can't afford to not only do the Federal Government's job in picking up, but then also pay for detention until they are removed. Is there any way that if they pick them up and they hold them that they can be compensated sometimes $50 a day to hold them, until Homeland Security can pick them up, ICE can pick them up and remove them?

Mr. CHERTOFF. I think the 287(g) program does have some provision——

Mr. GOHMERT. But you know, 287(g) has so many requirements and so many requirements for training, and additional costs to local communities.

Mr. CHERTOFF. There was a program on paying for criminal aliens which is run out of the Justice Department. That is a budget issue, to be honest with you.

Mr. GOHMERT. I understand. That is why I am asking, can you help out the locals——

Mr. CHERTOFF. Whatever is available, I can't speak to their budget. It is not my department. I don't now what the budget is.

Mr. GOHMERT. Is ICE under you?

Mr. CHERTOFF. ICE is, but I think the reimbursement for jails and prisons comes under DOJ and does not come out of ICE.

Mr. GOHMERT. Well, we have a lot of local law enforcement that is doing the Federal job and they are willing to do it, as we see it, but they need some help in reimbursement for holding people.

Let me move on, since we don't have a good answer there.

On the REAL ID Act, that has been demonized in a lot of ways, but those of us who supported it believe in states rights. A state has a right to decide who uses their highways, but it can also, as the Federal Government, we also have the right to say who gets in transportation and interstate commerce. So in order for that to be received, then it has to be a state ID or driver's license where the states don't just hand it out to anybody illegally here.

I know there is also a great fear or a national ID card. In trying to consider that and also meet the needs of ensuring that immigrants who are here legally can be properly identified, I was wondering about observing states' rights by saying, okay, you decide who gets a driver's license, but you have to meet these requirements. I was wondering about adding an amendment to the REAL ID Act to require those driver's licenses also have a place on them that indicates that someone is a U.S. citizen or U.S. national, yes or no, and if the answer is no, then have a tamper-proof card that you have to furnish as an immigrant legally here. What do you think about that possibility?

Mr. CHERTOFF. The REAL ID license is only available if you are here in the country lawfully. The idea is if you are here on a temporary basis lawfully, it has to expire at the end of you period.

Mr. GOHMERT. That is correct.

Mr. CHERTOFF. Between distinguishing between U.S. citizens and legal permanent residents, I am actually not sure that that is legal to do, even constitutionally. And I am not sure that we ought to distinguish between a legal permanent resident and citizens on the license, since both are here——

Mr. GOHMERT. No, it would be U.S. nationals and U.S. citizens, yes or no. If the answer is no, then you would have to have a tamper-proof card to show that you were lawfully here as a legal immigrant who was not a citizen or a national. We are not going to discriminate between nationals and citizens, but we do require that you have a green card. I don't think that is discriminating under the Constitution.

Mr. CHERTOFF. I think from a practical standpoint, adding another document, I don't now if it would——

Mr. GOHMERT. We are not adding another document. We need to have a green card that is tamper-proof.

Mr. CHERTOFF. I agree the green card should be tamper-proof. We now issue a better quality, and there is a whole debate about whether we should recall the old ones and transition to the new ones. So the short answer is, I agree in principle with your idea that we ought to move forward with this. I want to make sure we don't make what is already turned out to be a very complicated thing——

Mr. GOHMERT. That is what I am trying to simplify.

Mr. CHERTOFF. I don't want to make it more complicated, more contentious by introducing new requirements because I am afraid that is going to set us back.

Mr. GOHMERT. Well, you can't require somebody to produce a green card or a tamper-proof card if they are a U.S. citizen or U.S. national, well, how do you know, everybody would say, oh, I am a U.S. citizen or U.S. national if they have a state driver's license that says they are a citizen or national, then that should take care of that.

Mr. CHERTOFF. I understand your point. I could reflect on it.

Mr. GOHMERT. I am trying to simplify, but I see that my time is running out.

Let me ask this real quickly. We had a Border Patrol agent who was following some illegals by airplane and all of a sudden just crashed. There are people back in Henderson, Texas that are concerned he was shot down, but nobody that they know of has ever been allowed to see the airplane. Would I be able to see the airplane to see if there are bullet holes?

Mr. CHERTOFF. I am familiar with an incident where somebody was following illegals with an airplane. We have had some helicopters——

Mr. GOHMERT. I know it happened. I went to the funeral. So anyway, I wondered if I might be able to see the airplane.

Mr. CHERTOFF. I would have to find out about that. I can't answer.

Mr. GOHMERT. So a Member of Congress may not be allowed to see the airplane?

Mr. CHERTOFF. You are catching me about something I know nothing about, so I have to find out about it.

Mr. GOHMERT. Okay. So that doesn't give me a lot of encouragement. It looks like we need a hearing on that.

As far as adjudicators, have we increased the number of adjudicators with proper security clearances so that we can move things? I have a guy that has been waiting since 1996 to get lawful status here.

Mr. CHERTOFF. That is not a problem with the number of adjudicators. There are problems with——

Ms. LOFGREN. The gentleman's time has expired.

Mr. CHERTOFF. The answer is we are dealing with both. We are hiring more adjudicators and we are working to be more efficient on the backlog.

Mr. GOHMERT. Thank you, sir.

Ms. LOFGREN. We only have 4 minutes left until the vote is called on the floor. We have two Members that want to ask ques-

tions, so I think by agreement each will get 2 minutes and submit the rest of their questions in writing.

Sheila Jackson Lee is recognized for 2 minutes.

Ms. JACKSON LEE. Madam Chair, let me thank you for your indulgence. This is difficult when we have votes, and I apologize for being delayed in my district.

Mr. Secretary, I am going to repeat and ask you to have these questions in writing. I am concerned about the Hutto facility that is actually in Texas, to give me precise answers about the waking of children with flashlights. You may not be aware of it, but we should get something in response. We have been following this for a couple of years.

The other is I want to ensure—let me just ask a specific question. Do you know the average tenure of ICE agents?

Mr. CHERTOFF. Not off-hand.

Ms. JACKSON LEE. What I would like to weave that into is retention and training. We know that their job is difficult and has been made more difficult because of the, in essence, feat of trying to use them to have immigration reform when we should really have laws. So they are finding themselves invading frightened civilians who have no interest in terrorizing us, and of course it is in many instances very hostile. I would like to know about their retention and training, if you would, if you don't know the answer.

The other question I would ask is, what is the policy for providing life-saving medication to those who are held in detention? We are finding that that is particularly a problem.

Mr. CHERTOFF. The policy is to do it.

Ms. JACKSON LEE. I am sorry?

Mr. CHERTOFF. The policy is we do obviously provide life-saving medicine to people in detention.

Ms. JACKSON LEE. My last one, if can do in writing, is I do think that even though it is the FBI, you need to give us a response on what efforts are being made, whether you put it in a classified form, what efforts are being made on this waiting list? It is torturous. It is destroying people's lives.

Mr. CHERTOFF. And it is very frustrating for us, too. We have actually spent a lot of time tackling this issue, so we can give that to you.

Ms. LOFGREN. We will get a report in writing on that.

Ms. JACKSON LEE. Thank you. I have other questions I will submit for the record.

Thank you, Madam Chair.

Ms. LOFGREN. Thank you.

Mr. Franks is recognized for 2 minutes.

Mr. FRANKS. Thank you, Madam Chair.

Thank you, Mr. Secretary. I had the privilege, as you know, of traveling with you and the President down to the Arizona border and witnessed this double-fence that was being built there, and was convinced that this was a very, very effective mechanism. My greatest concern, Mr. Secretary, is very simple. Outside of immigration, I am concerned about the national security component, and that the border is probably a terrorist's most available means to penetrate this country.

With that said, do you know, sir, and this may have to be answered later, do you know, sir, if the double-fence with the surveillance and the road between them has ever been breached by any—?

Mr. CHERTOFF. I think it has. I think the double-fence with the road has been breached, and we have had people just recently what they did is they tied a wire across the double-fence and when you pulled it tight, it would be at the level of the neck of a Border Patrol agent riding on an ATV, and it would take his head off. So obviously, they got through it. They put up this booby-trap in the double fence and we were lucky that we found it.

Mr. FRANKS. What I would like just for the record, maybe you could give us examples of when the double-fence, as it is being built in Arizona now with the sheet steel going four feet into the ground so they can't be tunneled under very easily, of being breached. If you could do that, because I think that is a pretty effective mechanism.

But again, my great concern is the stopping terrorist at the border. What do you think is our greatest vulnerability as far as terrorists being able to come in and either hit this country with a nuclear capability or with other weapons of mass destruction?

Mr. CHERTOFF. I think the greatest vulnerability right now is private aircraft, somebody flying a private aircraft from overseas with a nuclear bomb, and they wouldn't even land. They would just detonate it. That is why we are in the process of requiring new and stringent security measures for private aircraft.

Mr. FRANKS. I see. That is a good answer, Mr. Secretary.

Last question, what do you need from us more than anything else to protect this country?

Mr. CHERTOFF. I need the continued support of Congress for measures like REAL ID Act, like western hemisphere traveling issues, of secure documentation, continued support for building the low-tech and the high-tech at the border, continued support for hiring Border Patrol and ICE. That is in my department.

Mr. FRANKS. Thank you for all your good work.

Ms. LOFGREN. The gentleman's time has expired.

Mr. Secretary, we appreciate your presence here today. Many Members have additional questions. We will forward those questions that are within the Committee's jurisdiction to you. I would ask that if at all possible that the answers—we are only going to send questions to you that are important to us—that the answers be prepared and promptly responded to, if that would be possible.

Mr. CHERTOFF. We will. Thank you very much.

Ms. LOFGREN. With that, this hearing is adjourned.

[Whereupon, at 12:04 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, COMMITTEE ON THE JUDICIARY

Mr. Chairman, thank you for your leadership in convening today's very important hearing on the oversight of the Department of Homeland Security. I would also like to thank the ranking member the Honorable Lamar Smith. Welcome Secretary Michael Chertoff.

The Department of Homeland Security was established five years ago. The National Strategy for Homeland Security and the Homeland Security Act of 2002 served to mobilize and organize our nation to secure the homeland from terrorist attacks. To this end, the primary reason for the establishment of the Department of Homeland Security (DHS) was to provide the unifying core for the vast network of organizations and institutions involved in the efforts to secure our nation. In order to better do this and to provide guidance to the 180,000 DHS men and women who work every day on this important task, the Department developed its own high-level strategic plan. The vision, mission statements, strategic goals and objectives provide the framework guiding the actions that make up the daily operations of the Department.

DHS's vision is simple: to preserve our freedoms, protect America, and secure our homeland. Its mission is to lead the unified national effort to secure America; prevent and deter terrorist attacks and protect against and respond to threats and hazards to the nation; and ensure safe and secure borders, welcome lawful immigrants and visitors, and promote the free-flow of commerce.

DHS has seven strategic goals and objectives. These include, awareness, prevention, protection, response, recovery, service, and organizational excellence.

The magnitude and severity of the tragic events of September 11, 2001, were unprecedented, and that dark day became a watershed event in the Nation's approach to protecting and defending the lives and livelihoods of the American people. Despite previous acts of terror on our Nation's soil, such as, the 1993 attack on the World Trade Center and the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, homeland security before the tragic events of September 11th existed as a patchwork of efforts undertaken by disparate departments and agencies across all levels of government. While segments of our law enforcement and intelligence communities, along with armed forces, assessed and prepared to act against terrorism and other significant threats to the United States, we lacked a unifying vision, a cohesive strategic approach, and the necessary institutions within government to secure the Homeland against terrorism.

The shock of September 11 transformed our thinking. In the aftermath of history's deadliest international terrorist attack, we developed a homeland security strategy based on a concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, and minimize the damage and recover from attacks that do occur. To help implement that strategy, DHS enhanced homeland security and counterterrorism architecture at the Federal, State, local, Tribal, and community levels.

The Department's understanding of homeland security continued to evolve after September 11, adapting to new realities and threats. Most recently, our Nation endured Hurricane Katrina, the most destructive natural disaster in U.S. history. The human suffering and staggering physical destruction caused by this national disaster was a reminder that threats come not only from individuals, inside and outside of our borders, but also from nature. Indeed, certain natural events that reach catastrophic levels, such as hurricanes and other natural disasters, can have significant implications for homeland security. The resulting national consequences and

possible cascading effects from these events might present potential or perceived vulnerabilities that could be exploited.

Over six years after September 11, 2001, DHS is moving beyond operating as an organization in transition to a Department diligently working to protect our borders and critical infrastructure, prevent dangerous people and goods from entering our country, and recover from natural disasters effectively. The total FY 2009 budget request for DHS is $50.5 billion in funding, a 7 percent increase over the FY 2008 enacted level excluding emergency funding. The Department's FY 2009 gross discretionary budget request is $40.7 billion, an increase of 8 percent over the FY 2008 enacted level excluding emergency funding. Gross discretionary funding does not include mandatory funding such as the Coast Guard's retirement pay accounts and fees paid for immigration benefits. The Department's FY 2009 net discretionary budget request is $37.6 billion, which does not include fee collections such as funding for the Federal Protective Service and aviation security passenger and carrier fees.

DHS has engaged in much good work over the past six years, but more needs to be done. The Department of Homeland Security has been dogged by persistent criticism over excessive bureaucracy, waste, and ineffectiveness. In 2003, the Department came under fire after the media revealed that Laura Callahan, Deputy Chief Information Officer at DHS, had obtained her advanced computer science degrees through a diploma mill in a small town in Wyoming. The Department was blamed for up to $2 billion of waste and fraud after audits by the Government Accountability Office revealed widespread misuse of government credit cards by DHS employees. The frivolous purchases included beer brewing kits, $70,000 of plastic dog booties that were later deemed unusable, boats purchased at double the retail price (many of which later could not be found), and iPods ostensibly for use in "data storage".

The Associated Press reported on September 5, 2007 that DHS had scrapped an anti-terrorism data mining tool called ADVISE (Analysis, Dissemination, Visualization, Insight and Semantic Enhancement) after the agency's internal Inspector General found that pilot testing of the system had been performed using data on real people without required privacy safeguards in place. The system, in development at Lawrence Livermore and Pacific Northwest national laboratories since 2003, has cost the agency $42 million to date. Controversy over the program is not new; in March 2007, the Government Accountability Office stated that "the ADVISE tool could misidentify or erroneously associate an individual with undesirable activity such as fraud, crime or terrorism". Homeland Security's Inspector General later said that ADVISE was poorly planned, time-consuming for analysts to use, and lacked adequate justifications.

Increasingly, the Department has come under growing scrutiny because of its immigration and deportation practices. In February 2007, the Judiciary Subcommittee on Immigration held a hearing investigating the problems with U.S. Immigration and Customs Enforcement (ICE) interrogation, detention, and removal procedures as applied to U.S. citizens. During that hearing, there were many reports of our immigration system targeting American citizens by detaining, interrogating and forcibly deporting U.S. citizens under the pretext that these citizens were illegal aliens. The citizens targeted have been some of the most vulnerable segments of American society. ICE has targeted the mentally-challenged and youths.

ICE detention facilities nationwide have been criticized, including the detention facility at the T. Don Hutto Correctional Center in Williamson County, Texas. Corrections Corporation of America (CCA) operates the 512-bed facility under a contract with Williamson County. The facility was opened in May 2006 to accommodate immigrant families in ICE custody. As history has shown us, even the best of intentions can go astray, which is what happened at the Hutto Detention Center.

Due to the increased use of detention, and particularly in light of the fact that children are now being housed in detention facilities, many concerns have been raised about the humanitarian, health, and safety conditions at these facilities. In a 72-page report, *"Locking Up Family Values: The Detention of Immigrant Families,"* recently released by two refugee advocacy organizations, the Women's Commission for Refugee Women and Children and the Lutheran Immigration and Refugee Service concluded that the T. Don Hutto Family Residential Center and the Berks Family Shelter Care Facility, were modeled on the criminal justice system. In these facilities, "residents are deprived of the right to live as a family unit, denied adequate medical and mental health care, and face overly harsh disciplinary tactics."

The American Civil Liberties Union (ACLU) filed a lawsuit against ICE in March 2007 on behalf of several juvenile plaintiffs that were housed in the facility at the time claiming that the standards by which they were housed was not in compliance

with the government's detention standards for this population. The claims were, amongst other things, improper educational opportunities, not enough privacy, and substandard health care. The relief being sought was the release of the plaintiffs.

In August 2007, the ACLU reached a landmark settlement with the ICE that greatly improves conditions for immigrant children and their families in the Hutto detention center in Taylor, Texas.

Since the original lawsuits were filed, all 26 children represented by the ACLU have been released. The last six children were released days before the settlement was finalized and are now living with family members who are U.S. citizens or legal permanent residents while pursuing their asylum claims. Conditions at Hutto have gradually and significantly improved as a result of litigation. Children are no longer required to wear prison uniforms and are allowed much more time outdoors. Educational programming has expanded and guards have been instructed not to discipline children by threatening to separate them from their parents. Despite the tremendous improvements at Hutto, the facility still has a way to go.

As one of the principal and long-standing supporters of comprehensive immigration reform in the US Congress and an author of a comprehensive immigration reform bill, the SAVE AMERICA Act, I hope that today's hearing will serve as a catalyst for closer scrutiny of our immigration detention system and the immigration enforcement functions of DHS.

The Administration has more work to do to secure our border. The Border Patrol needs more agents and more resources. The Rapid Response Border Protection Act, H.R. 4044, a bill that I co-sponsored, would meet these needs by providing critical resources and support for the men and women who enforce our homeland security laws.

This would include adding 15,000 Border Patrol agents over the next 5 years, increasing the number of agents from 11,000 to 26,000. It would require the Secretary of the Department of Homeland Security (DHS) to respond rapidly to border crises by deploying up to 1,000 additional Border Patrol agents to a State when a border security emergency is declared by the governor. It would add 100,000 more detention beds to ensure that those who are apprehended entering the United States unlawfully are sent home instead of being released into our communities. And, it would provide critical equipment and infrastructure improvements, including additional helicopters, power boats, police-type vehicles, portable computers, reliable radio communications, hand-held GPS devices, body armor, and night-vision equipment.

The Department has achieved much over the past five years in ensuring that America is a safer place; however, much work is still required. I am hopeful that this new federal agency will become more effective and diverse. The members of Congress and the Department all want a safe and secure America. Again, I welcome the testimony from our distinguished panelist, Secretary Chertoff.

Thank you. Mr. Chairman, I yield the remainder of my time.

PREPARED STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION (ACLU)

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Written Statement
For a Hearing on

"Oversight Hearing on the Department of Homeland Security"

Submitted to the House Judiciary Committee

Wednesday, March 5, 2008

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Introduction

The American Civil Liberties Union ("ACLU") commends the House Judiciary Committee for conducting an oversight hearing of the Department of Homeland Security ("DHS"). We urge the Committee to initiate a rigorous oversight process to ensure that DHS is held accountable to Congress and the public for its enforcement practices. The following written statement, submitted on behalf of the ACLU, will address a range of problematic Immigration Customs Enforcement ("ICE"), a sub-department of DHS, practices at the interrogation, detention, and removal stages.[1]

The ACLU is a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. The ACLU consists of hundreds of thousands of members, several national projects, and 53 affiliates nationwide. The ACLU was born during the "Red Scare" in 1920, a time when then U.S. Attorney General A. Mitchell Palmer ordered immigrants summarily detained and deported because of their political views. Since its founding, the ACLU has consistently defended and protected immigrants' rights. The ACLU has the largest litigation program in the country dedicated to defending the civil and constitutional rights of immigrants. Through a comprehensive advocacy program including litigation, public education, and legislative and administrative advocacy, the ACLU is at the forefront of major struggles securing immigrants' rights including legal challenges to ICE's unconstitutional laws and practices.

People charged with being removable are entitled to due process including a hearing before an immigration judge and review by a federal court. Among the specific rights that apply in removal proceedings are the right to be represented by counsel (at no expense to the government); to receive reasonable notice of the charges and of the time and place of the hearing; to have a reasonable opportunity to examine adverse evidence and witnesses; to present favorable evidence; to receive competent language interpretation; and to have the government prove its case by clear, convincing, and unequivocal evidence.

ICE has systematically chipped away at these core constitutional protections by pursuing an unprecedented campaign of interrogations, detention, and removal of immigrants. Since 2006, with the initiation of Operation Return to Sender, ICE has aggressively ramped up punitive deportation-only initiatives including:

- large-scale, mass raids in worksites and homes;
- dramatic increase in detention beds;
- expansion of federal immigration enforcement to include state and local police;
- denial of access to counsel for people facing removal from the U.S.;
- mass transfers of detainees to facilities hundreds of miles from their homes;
- incarceration of detainees in unsanitary inhumane conditions;
- denial of medical and dental care to detainees, including those with serious, life-threatening conditions.

[1] This written statement is submitted in conjunction with the written and oral testimony of Mark Rosenbaum of the ACLU of Southern California. The testimony of Mr. Rosenbaum and James Brosnahan of Morrison & Foerster focused solely on the experiences of their client Pedro Guzman, a U.S. citizen born in California who was illegally deported to Mexico in 2007.

I. Unprecedented large-scale round-up raids

Since the launch of Operation Return to Sender in 2006, ICE has engaged in an unprecedented round of raids, both at worksites and in homes, hitting many regions of the country. Below is a snapshot of just a few of the regions that have been hard hit by large-scale immigration raids:

Swift raids: On December 12, 2006, six Swift & Company facilities located in Greeley, Colorado; Cactus, Texas; Grand Island, Nebraska; Hyrum, Utah; Marshalltown, Iowa and Worthington, Minnesota were raided by ICE. ICE estimates that approximately 1,282 Swift employees were detained on immigration violations, and 65 were charged with criminal violations related to identity theft.

New Bedford, Massachusetts raid: On March 6, 2007, the New Bedford community was devastated by one of the nation's largest immigration raids, resulting in the arrest of 361 workers of the Michael Bianco factory. All but a few were detained, and 206 were transferred to detention facilities in Texas, hundreds of miles from their families, homes, and counsel. An estimated 100 to 200 children were separated from their parents. In response, the ACLU and a coalition of groups filed a lawsuit, challenging ICE's misconduct during the raid.

Van Nuys, California raid: On February 7, 2008, more than 100 ICE agents raided a printer supply manufacturer in the San Fernando Valley, taking into custody over 130 employees on immigration-related charges and arresting eight on federal criminal charges. Following the raid, ICE officials denied the workers access to counsel during ICE's interrogation of the workers, even after the attorneys had filed Form G-28s Notice of Entry of Appearance. The ACLU, the National Immigration Law Center, and the National Lawyers Guild recently filed a lawsuit on behalf of the workers, challenging ICE's denial of access to counsel.

Long Island suburbs raids: In September 2007 teams of 6 to10 armed ICE agents raided the homes of Latinos without court-issued search warrants. The raids were conducted during late night or pre-dawn hours. ICE agents pounded on and/or broke down doors and windows while screaming loudly at the inhabitants inside the house. ICE agents represented themselves as "police" and bullied or forced their way into people's homes without obtaining their consent to enter. The ACLU filed a lawsuit challenging that ICE violated the immigrants' Fourth amendment rights by entering and searching their homes without valid warrants or voluntary consent and in the absence of probable cause and exigent circumstances.

Georgia raids: In September 2006 armed federal agents searched and entered private homes without warrants and detained and interrogated people solely on the basis that they looked "Mexican." These raids swept so broadly that they covered homes where all the residents are U.S. citizens. In addition, the agents used excessive and wholly unnecessary force and destroyed private property without cause. The ACLU filed a class action suit on behalf of U.S. citizens who "appear Mexican," challenging that the federal agents violated the citizens' Fourth amendment rights by entering and searching homes without valid warrants or voluntary consent and in the absence of probable cause or exigent circumstances. The ACLU suit further

challenges that the federal agents violated the citizens' Fifth amendment rights by targeting them on the basis of race/ethnicity and/or national origin in violation of the Equal Protection Clause.

DHS Secretary Chertoff has claimed that the ICE enforcement operations launched in 2006 are aimed at capturing "fugitive aliens," with the highest priority on apprehending individuals who pose a threat to national security or the community and whose criminal records include violent crimes. However, 94 percent of those arrested by the San Francisco Fugitive Operations Team between January 1 and March 31, 2007, did not fit within the category of "criminal fugitives." A majority were not even subject to outstanding removal orders according to a letter from the acting ICE director to Congresswoman Anna Eshoo. These numbers indicate that ICE's raids, though purportedly targeted at "fugitive aliens," in reality have swept so broadly that the vast majority of people arrested under Operation Return to Sender were innocent bystanders.

Among the thousands of people who have been rounded up by ICE under the auspices of Operation Return to Sender is Kebin Reyes, six years old at the time of his arrest in March 2007. A native-born U.S. citizen, Kebin was sleeping when ICE officers stormed into his home. Kebin's father Noe told the ICE agents that Kebin is a U.S. citizen, and asked permission to call a relative to care for Kebin while Noe was detained. The ICE agents refused. Instead they made Noe wake up Kebin, who watched as officers handcuffed his father, and then took father and son to the ICE booking station in San Francisco. Kebin spent 10 hours locked in a room with his father. ICE agents never allowed Noe to call someone to pick up Kebin. It was only when a relative heard from neighbors what happened and came to the ICE facility that Kebin was able to leave.

Like Kebin, children all over the country have been traumatized by seeing their parents swept up and taken away or by being left behind without care after school when parents have been arrested without notice. After the raids in which Kebin was arrested, the San Rafael City Schools Board of Education wrote to Congresswoman Lynn Woolsey, reporting, "The ICE raids sent our schools into a state of emergency. Many students were and remain distracted from school work as they worry about their loved ones. Most of these children are, by and large, American-born, full-fledged citizens with a right to a quality education and to live in this country for the rest of their lives." To vindicate Kebin's rights under the Fourth Amendment and to prevent future abuses, the ACLU, the Lawyers' Committee for Civil Rights, and the law firm of Coblentz Patch Duffy & Bass filed a lawsuit against ICE in April 2007.

Just as troubling as the sweeping breadth of recent raids are accompanying reports of rampant constitutional violations. Both DHS Secretary Chertoff and ICE Assistant Secretary Myers have publicly stated that administrative warrants cannot be used by ICE agents to enter people's homes. However, in practice, ICE agents have been entering people's homes, even without consent. ICE's response that people are voluntarily consenting to questioning is insupportable when considering that ICE agents, fully armed and identifying themselves as "police," are banging on people's doors and windows in the pre-dawn hours as the inhabitants are sleeping. Sweeping and overbroad raids are terrorizing immigrant communities across the U.S. while doing little, if anything, to improve the safety and security of the U.S.

Recommendations: The ACLU urges that ICE:

- Halt large-scale, pre-dawn raids, both at worksites and in homes;
- Refrain from investigating and/or detaining family members, roommates, housemates, neighbors, and other bystanders, without individualized suspicion.
- Clarify standards for determining "consent"
- Not identify themselves as "police."
- Not question any persons represented by counsel without counsel present during the interview.

II. Expansion of federal immigration enforcement to include state and local police

In recent years ICE has entered into an increasing number of 287(g) agreements with states and localities. Under 287(g) agreements, state and local law enforcement can identify, process, and detain immigrants whom they encounter during their daily law-enforcement activity, including traffic stops. The ACLU has challenged such 287(g) agreements on the basis that state and local law enforcement lack the inherent authority to arrest individuals for civil immigration violations. Enforcement of federal immigration laws is an exclusive federal function based on Congress's plenary powers to regulate immigration.

For example, the ACLU has sued Danbury, Connecticut for arresting 11 immigrants in September 2006 in a public park in an undercover immigration sting operation at a public park. A Danbury police officer disguised himself as a contractor/employer looking to hire day laborers. The ACLU lawsuit challenges the arrests on civil immigration violations on the basis of failure to have valid warrants, lack of probable cause, or lack of reason to believe that the detained were engaging in unlawful activity. Additionally, the suit challenges Danbury's immigration enforcement activities on the grounds that federal law preempts state or local police from civil immigration enforcement activity, thereby leaving Danbury without appropriate authority cognizable under 8 U.S.C. § 1357. The case also challenges the detentions on the basis on race, ethnicity, perceived national origin, asserting that the 11 immigrants were subjected to selective law enforcement arising out of a malicious and bad faith intent to drive them out of Danbury.

Supporters of 287(g) agreements often have little or no understanding of immigration law and its complexities. Some proponents envision a fictional database system where a local police officer can enter a person's name in the computer and immediately get an answer from ICE that the person is "legal" or "illegal." In reality, determining an individual's immigration status requires extensive training and expertise in immigration law and procedures, and thus is simply not suitable for state and local law enforcement.

Section 287(g) supporters fail to understand that immigration status is complex, fluid, and very case-specific. For example, many people are in the U.S. pursuant to a non-immigrant visa for employment, study, investment, travel, and other reasons. Most of them are typically admitted to the U.S. for a certain period of time, but many can then request to extend their stay or to change to a different status with the DHS Citizenship Immigration Services ("CIS"). During the pendency of their application, they may have no documentation that proves they are in current

lawful status even though CIS is aware of their presence in the U.S. and permits them to remain here until a decision is made on their application. Many people in the U.S. are in the midst of applying for permanent resident status, sponsored by a family member or employer. Others are seeking refugee protection. Others have been granted special status based on being a victim of family abuse, trafficking in persons, or a violent crime. Still others are in immigration removal proceedings but are applying for relief with an immigration judge. Still others have been denied relief by an immigration judge but are appealing their removal orders to the Board of Immigration Appeals. Finally, it is not uncommon for a single individual to be pursuing simultaneously multiple forms of immigration relief. These are just a few of the many permutations that could apply to a single individual who is arrested by a local police officer.

The practice of deputizing state and local police to enforce federal immigration laws has proven to be highly ineffective and dangerous. No case illustrates this better than that of Pedro Guzman, a U.S. citizen born in California who was deported to Mexico because an employee of the Los Angeles County Sheriff's Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, cognitively impaired and living with his mother prior to being deported, ended up in Mexico – a country where he had never lived – forced to eat out of trash cans and bathe in rivers. His mother, also a U.S. citizen, took leave from her Jack in the Box job to travel to Mexico in search of her son. She combed the jails and morgues of northern Mexico in search of her son. After he was located and allowed to reenter the U.S., Mr. Guzman was so traumatized that he could not speak for some time. To vindicate Mr. Guzman's rights and to prevent future DHS errors and abuses, the ACLU and the law firm of Morrison & Foerster filed a lawsuit against ICE last year.

In addition, deputizing state and local law enforcement to become deportation agents pushes immigrant communities farther and farther away from police protection. Fearful that a call to the police will result in deportation, immigrant victims of crime, including battered women, are choosing not to summon the police, thereby subjecting themselves and their children to further violence. Ultimately this dynamic jeopardizes all segments of society, not just immigrant communities. Police rely heavily on tips from witnesses or people familiar with suspects. If the police are cut off from these sources of information, they will encounter greater difficulties in apprehending suspects and solving criminal cases.

Finally, charging state and local law enforcement with the responsibility of enforcing immigration laws opens the door for law enforcement to engage in racial profiling. Latinos, Asians, and other immigrants will be at risk of being stopped, arrested, interrogated, and detained by state and local law enforcement for no reason other than looking or sounding "foreign."

Recommendations: The ACLU urges that ICE:

- Halt entering into future 287(g) agreements with states and localities;
- Cease recognition and compliance with 287(g) agreements currently in operation.

III. Growth and expansion of inhumane immigration detention

Immigration detention has more than quadrupled over the past 15 years. Each year Congress allocates more money to ICE for detention bed space and more personnel. The vast majority of detainees have no counsel to represent them in bond matters or immigration removal proceedings. Free or low-cost immigration legal services are completely absent in many regions. Frustrated by the unending incarceration and the lack of assistance in navigating the immigration system, many detainees – even those with legitimate immigration applications – simply give up and are deported. Their stories are the product of a failed immigration system – a system that purports to be premised on due process, but in actuality pushes people out of the U.S. by subjecting them to long periods of incarceration in unsanitary inhumane conditions, without access to appointed counsel.

These due process violations have been exacerbated by ICE's growing practice of transferring detainees to facilities far from their location of arrest, often hundreds of miles away from their homes and workplaces. For example, in October 2007 ICE closed down the San Pedro detention facility in Southern California and subsequently transferred over 420 detainees to facilities in Texas, Arizona, Washington State, and other parts of California. Prior to transferring the detainees to remote facilities, ICE did not notify the detainees' counsel. In many cases an immigration judge had already commenced merits hearings on the detainees' cases. The mass transfer of detainees out of state has resulted in unnecessary prolonged detention, with many detainees forced to start their cases all over again before a new immigration judge in a different jurisdiction.

In addition to challenging the constitutionality of mandatory detention and prolonged detention, the ACLU has been at the forefront of challenging ICE's inhumane unsanitary conditions of confinement including ICE's policy of family detention which resulted in the prolonged detention of families with children. In 2007 the ACLU and the University of Texas Law School sued on behalf of children incarcerated at the Hutto, Texas prison as their parents were pursuing bona fide asylum claims. At the time the lawsuits were filed, the children were receiving only one hour of education per day, were required to wear prison uniforms, were held in jail cells for much of the day, and were often disciplined by guards with threats of separation from their parents. In August 2007 the parties reached a settlement which mandated major improvements in conditions at Hutto. Although those families represented by the ACLU and University of Texas were eventually released from Hutto, other families with children are being detained in Hutto and other facilities.

In 2007 the ACLU filed a class action lawsuit against a Corrections Corporation of America facility in San Diego where detainees were incarcerated in grossly overcrowded quarters. A separate ACLU lawsuit against the San Diego facility challenged the inadequate medical and mental health care afforded to detainees. One of the detainees whose serious medical needs was grossly neglected was Francisco Castaneda, who testified before this Subcommittee on October 4, 2007, at a hearing on "Detention and Removal: Immigration Detainee Medical Care." Detained for eight months in the San Diego facility, Mr. Castaneda suffered extremely painful bleeding and discharge from his penis. Numerous health care professionals—both on-site and off-site—stated that Mr. Castaneda required a biopsy to determine whether he was suffering from penile cancer. But the biopsy was never authorized. Instead of diagnosing and treating his serious condition, medical professionals provided Mr. Castaneda with pain medication and an

order for clean boxer shorts on a daily basis, to replace the boxer shorts that he regularly soiled with blood and discharge. Only after relentless advocacy by the ACLU was Mr. Castaneda released from ICE custody. Mr. Castaneda promptly received a biopsy at the emergency room and learned that he had developed metastatic penile cancer that had already spread to other parts of his body. In February 2008, just four months after testifying before this Subcommittee, Mr. Castaneda passed away, succumbing to the cancer.

Recommendations for Congress:

- Congress should strengthen the long-established statutory right to counsel for all people facing removal from the U.S. by assuring access to appointed counsel.
- Congress should mandate that no detainee be housed in a facility that fails to comply with the detention standards. ICE shall codify, through the promulgation of regulations, national detention standards that are consistent with internationally recognized human rights principles.
- Congress should require that all immigration deaths in detention—including deaths at SPCs, CDFs, and IGSAs—be publicly reported by ICE to Congress on a regular basis.

Recommendations for ICE oversight:

- ICE shall develop non-penal alternatives to detention to decrease the number of people detained and/or subject to ICE supervision, especially with respect to asylum seekers, torture survivors, victims of human trafficking, juveniles, families with children, sole caregivers, survivors of domestic abuse and other violent crimes, and long-term permanent residents.
- ICE shall ensure that all detainees be given a constitutionally adequate custody review before an immigration judge or impartial adjudicator. In cases where ICE seeks to detain an individual beyond six months, ICE shall bear the burden of proving by clear and convincing evidence that prolonged detention is justified. Where ICE cannot make its burden, ICE shall release such detainees on bond with reasonable conditions.
- ICE shall not transfer detainees to remote facilities where a Form G-28 Notice of Entry of Appearance has been filed on behalf of a detainee, where the detainee has requested a bond hearing, where the detainee has filed an application with the immigration court, and/or when an immigration judge has conducted a merits hearing in the detainee's case.
- ICE shall ensure the transfer of complete medical records along with detainees so that receiving facilities have all of the information needed to ensure prompt, necessary treatment.

The ACLU appreciates the opportunity to submit this written statement and urges the Committee to exercise meaningful oversight over DHS and ICE by implementing the proposed recommendations.

RESPONSES TO POST-HEARING QUESTIONS RECEIVED FROM THE HONORABLE MICHAEL CHERTOFF, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Question#:	1
Topic:	E-Verify
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: There seems to be some confusion at DHS surrounding the accuracy rate of the Basic Pilot electronic employment eligibility verification program, which your agency recently renamed "E-Verify."

In an article in the Dallas Morning News dated February 28, 2008, DHS spokeswoman Laura Keehner stated that E-Verify's error rate is "a fraction of 1 percent." On the next day, February 29, USCIS spokeswoman Marie Sebrechts told the Christian Science Monitor that E-Verify's tentative non-confirmation rate as "7 percent."

What is the correct tentative non-confirmation rate for E-Verify?

Response: Currently, 99.5 percent of all work-authorized employees verified through E-Verify were verified without receiving a tentative non-confirmation or having to take any type of corrective action. In other words, the rate of false negatives in E-Verify is just a fraction of 1 percent. Of the two statistics cited in your question, this one is closer to a true error rate.

By contrast, the tentative non-confirmation (TNC) rate does not represent an error rate of the system. TNCs are actually an expected result of E-Verify use and can often occur because an employee is not authorized to work in the United States. According to a recent independent review of E-Verify, 94.2% of all queries were verified instantly. Of the 5.8% of employees who receive a TNC, the vast majority do not contest the result. Some of these employees may not contest the result because they know that they are, in fact, not work-authorized and would receive a final non-confirmation at the end of the process. Fewer than one percent of all queries run though E-Verify contest the findings.

There are approximately 163 million workers in the United States, the vast majority of whom are U.S. citizens. Even though DHS administers the E-Verify program, it relies on the Social Security Administration (SSA) database to verify the work authorization of U.S. citizens. In general, when U.S. citizens receive a tentative non-confirmation from E-Verify, they must go to SSA field offices to resolve any discrepancies between their identifying data input to E-Verify and SSA's records. USCIS recently implemented a new process for cases where U.S. citizenship is claimed by the worker but is not confirmed by the SSA record. Under the new process, the worker may either visit SSA to resolve the discrepancy or contact USCIS by phone.

Question: Given the tentative non-confirmation rate for E-Verify, do you think that the

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SSA is ready to handle the millions of U.S. citizens who will have to visit SSA field offices in order to prove that they are authorized to work in the United States if E-Verify becomes mandatory for all workers?

Response: USCIS has made changes to E-Verify recently, and has plans for several more, to enable SSA to more efficiently resolve its contested E-Verify mismatches. In October 2007, USCIS in partnership with SSA, launched "EV-STAR," which allows SSA to digitally resolve its contested mismatches through the E-Verify system. Under the new process, SSA offices communicate case dispositions to the employers via EV-STAR. In most cases, there is no additional E-Verify action for employers. Previously, employers had to re-query E-Verify to ascertain the outcome of a contested SSA mismatch. EV-STAR has also allowed us to capture and analyze more data on SSA's timeframes for resolving its contested mismatches. That data indicates that SSA is resolving its contested mismatches promptly, which gives us confidence that SSA will be able to continue resolving its mismatches as E-Verify grows. We will continue to monitor the EV-STAR data and will work with SSA to address any concerns that emerge.

On May 5, USCIS implemented the first two phases of a three-part enhancement to E-Verify. This improvement added an automated check against the USCIS naturalization database for all U.S. citizen new hires who would have received a citizenship mismatch with their SSA records. In addition, employees who receive a tentative non-confirmation are now able to call DHS directly to resolve their status, in addition to the option of resolving the mismatch in person at an SSA field office. USCIS and SSA are exploring an enhancement that would update SSA's database with naturalized citizen data through a direct data share.

These efforts will further reduce the number of E-Verify mismatches for naturalized citizens, thus reducing the instances of "walk-ins" to SSA offices for naturalized citizens. We also are working with the Department of State to add a query by U.S. passport number capability to E-Verify in the summer of 2008, which will help reduce the number of SSA mismatches over citizenship, especially for derivative citizens.

We expect that the mismatch rate will continue to decline as our improvements take effect. At the same time, it is expected that E-Verify will continue to generate mismatches as long as persons without work authorization use fraudulent information in the employment verification process since fraud detection is its purpose. The latest evaluation of the E-Verify program found that approximately 5% of E-Verify queries were associated with persons who did not have work authorization.

Question#:	2
Topic:	refugee goals
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: In each of the six fiscal years prior to FY 2008, the President set the refugee admissions goal at 70,000. Yet the Administration has never come close to meeting that goal. While admission numbers have met or surpassed targets in the last quarter of each fiscal year, the Administration has repeatedly fallen far short of targets in the first three quarters of those fiscal years. At the annual refugee consultation with the Secretary of State, Secretary Rice and senior DHS personnel indicated that they had taken steps to correct this pattern in FY 2008, during which they intended to raise the admissions target from 70,000 to 80,000. Yet despite the increased admissions goal, the first quarter of FY 2008 has proven to be the worst quarter since FY 2003.

Why has the first quarter of FY 2008 turned out to be the worst-performing quarter since FY 2003, especially in light of indications by your staff that it would outperform the first quarters of the last few years?

Is DHS fully committed to working with the State Department to meet the target of admitting 80,000 refugees in FY 2008?

What kind of coordination is taking place between DHS and the State Department to ensure that both agencies work toward this goal?

Response: The Department of State (DOS), Bureau of Population, Refugees and Migration (PRM), has overall management responsibility for the U.S. Refugee Admissions Program (USRAP). PRM takes the lead in proposing admissions ceilings and processing priorities through the Annual Report to Congress on Refugee Admissions. DOS is also responsible for coordinating travel of approved refugees through their Overseas Processing Entities (OPE).

DHS is fully committed to working with the State Department to maximize the number of refugee admissions in FY 2008 and to come as close as possible to the ceiling of 70,000 admissions, which has been funded and allocated by regions of the world. (The additional 10,000 slots represent the unallocated reserve.) We work regularly, closely and cooperatively with DOS to assess progress towards meeting the goal and to identify ways to facilitate and streamline processing. This fiscal year, the Departments made a concerted effort to devise a schedule in which DHS officers could complete as many interviews as possible in the first three quarters in order to permit approved refugees to travel by Sept. 30th. In the first two quarters of this fiscal year alone, we fielded 33 circuit ride teams around the world with over 140 interviewing officers. This is double

Question#:	2
Topic:	refugee goals
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

the amount of circuit rides performed for the same time period in FY07. As in any year, there are factors outside the control of the U.S. government that affect the pace of refugee admissions, including, for example, host government cooperation and the medical needs of refugees.

Question#:	3
Topic:	Refugee Corps
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: How are Refugee Corps officers being trained and deployed so that we might reach a more even flow of arrivals throughout the fiscal year?

Response: The USCIS Refugee Affairs Division trained 17 new Refugee Corps officers in September and October of last year. These officers were able to participate in their first circuit rides in mid-October 2007—right after the fiscal year began. This was part of the plan to front-load the interviewing process so that DOS can prepare refugees for departure before the end of the fiscal year. The second large group of circuit rides began in January and continued throughout the second quarter.

In addition, this month we are holding a special training class to prepare 22 USCIS Administrative Appeals Officers, attorneys from the Office of Chief Counsel, and International Operations officers to adjudicate refugee cases. These officers will be available for deployment upon completion of the course.

Question: Do you plan to increase the number of officers in the Refugee Corps in FY 2009? If not, why not?

Response: Yes, USCIS is in the process of augmenting the Refugee Corps by adding an additional 15 Full Time Equivalent (FTE) positions; this translates to hiring 10 new Refugee Corps officers and 5 new Refugee Corps supervisors. This will lead to a total of 50 FTE slots for Refugee Corps officers and 12 Refugee Corps supervisors. Once the hiring process is complete and the subsequent background checks and training have taken place, those individuals will be prepared to interview refugees in FY 2009.

Question: Does DHS have enough resources and funding to maintain a full Refugee Corps team to interview refugees around the world on a regular basis this year?

Response: Yes, DHS has sufficient resources and funding. The Refugee Corps was created 2 ½ years ago to be a mobile, flexible, global resource to respond to refugee resettlement needs anywhere in the world. With Congressional support, the Corps has become a reality. While we continue to expand the Refugee Corps – 15 new FTEs in FY08 – we are supplementing that staff with detailees from the Asylum program and well-trained staff from other programs within USCIS to sustain both the Iraqi program and the worldwide refugee admissions program. Currently, the Asylum Corps, Administrative Appeals Unit, and the Office of the Chief Counsel have personnel detailed to the field to supplement the Refugee Corps. In addition, certain USCIS officers

Question#:	3
Topic:	Refugee Corps
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

posted overseas also conduct refugee interviews. This model is consistent with the design of the Refugee Corps, which contemplated that the Corps would be supplemented by staff drawn from other programs. This provides flexibility and surge capacity to USCIS' refugee adjudications program.

Question: Would you benefit from a greater amount of funding to meet the FY 2008 target of 80,000 refugee admissions?

Response: USCIS' role in the U.S. refugee admissions program is supported by the fees paid for immigration benefits. This funding is sufficient to allow USCIS to adjudicate refugee applications in support of the annual admissions goal.

Question#:	4
Topic:	Iraqi refugee - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: The Administration has committed to bringing into the U.S. some 12,000 vulnerable Iraqi refugees in FY 2008. At the annual refugee consultation, Secretary Rice and senior DHS personnel indicated that we would see about 1,000 refugee admissions per month in order to reach that goal. Yet for the entire first quarter of FY 2008, the Administration was able to admit only 1,432 refugees, well short of the 4,000 planned for that quarter.

Is DHS fully committed to working with the State Department to meet the target of admitting 12,000 Iraqi refugees in FY 2008?

Response: Yes, USCIS is committed to working with DOS and other program partners to meet the Administration's goal of admitting 12,000 Iraqi refugees to the U.S. in FY 2008. This is an annual goal, and it was never contemplated that the admissions would be spaced in even monthly increments. Achieving this target is an ambitious goal and certain variables critical to success lie outside DHS' control. However, we are working with State to do everything we can in a streamlined and more efficient manner. Along with DOS we have put together an aggressive schedule interviewing over 8,700 Iraqi refugee applicants in the first half of the fiscal year and another 8,000 Iraqi refugee applicants in the 3rd quarter alone.

Question: What is being done to ensure that both agencies work toward this goal?

Response: Monthly arrivals fluctuate, and we did not anticipate that we would admit 1,000 Iraqis a month; the 12,000 goal is for the fiscal year as a whole. USCIS and DOS coordinate daily at the staff-level to work to achieve this important goal. In addition, the departments hold biweekly meetings at a senior level – between Ambassador James Foley and Special Advisor Lori Scialabba - to assess progress towards meeting the 12,000 Iraqi refugee admissions goal for FY 2008. These meetings are used to identify ways to facilitate and streamline processing to meet the target admissions number.

The biggest step USCIS is taking to achieve this goal is maintaining a current and timely interview schedule. Since spring 2007, USCIS officers have interviewed Iraqis primarily in Jordan, Syria, Egypt, Turkey, and Lebanon. USCIS is also adapting its circuit ride planning and staffing model to meet changing needs and conditions. USCIS has teams of adjudicators in the region today, and is scheduled to field teams on a nearly continuous basis in the coming months as cases become ready for interview. USCIS is working with

Question#:	4
Topic:	Iraqi refugee - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

DOS to put together a schedule of up to another 8,000 interviews for Iraqi refugee applicants during the third quarter.

Question#:	5
Topic:	Iraqi refugee - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Ms. Scialabba and Ambassador Foley have both stated that DHS plans to interview 8,000 Iraqi refugees in the third quarter of this year—that's 8,000 interviews between April and June.

Can you please describe how DHS plans to meet that target, which will mean interviewing more Iraqis in a three month period than were interviewed between February 2006 and February 2007?

Response: The refugee program has increased capacity significantly in the Middle East since the expanded Iraqi admissions goal was announced in February 2007. Iraqis had not been designated as a priority group in the FY 2007 Annual Report to Congress on Refugee Admissions. On February 14, 2007, the U.S. government committed to processing a larger number of Iraqi refugee applicants, and UNHCR committed to make 7,000 referrals to the USRAP during FY 2007. In the relatively short time span of the past year, all refugee program partners – DOS, DHS, UNHCR and the OPEs - have substantially increased their capacities to process cases in the Middle East, building the infrastructure to support a large-scale operation where it previously did not exist. This increase in capacity is evidenced by the fact that UNHCR is now able to refer more cases directly to the USRAP and OPEs are able to prescreen more cases for DHS interview. The increase in DHS interviews in the third quarter of FY 2008 is a result of more Iraqi refugee cases being referred and prescreened. The greater number of cases also reflects the expanded access categories for individuals to come forward for a U.S. refugee interview as a result of the passage of the Refugee Crisis in Iraq Act in January 2008.

In terms of staffing these interviews, USCIS is being flexible in our circuit ride planning and staffing model. We are supplementing Refugee Corps staff with staff from the Asylum Corps and other USCIS offices. Moreover, we are scheduled to field teams on a nearly continuous basis in the coming months as cases become ready for interview.

Question: If DHS has the capacity to interview 8,000 Iraqis in three months, why are you planning to wait to do this until the end of the fiscal year? Why not attempt to bring more refugees in earlier?

Response: We are working to resettle these refugees as soon as practicable, given the steps necessary before USCIS becomes involved. USCIS' role in refugee processing is to interview and adjudicate the applications for refugee resettlement, perform certain security checks, apply the material support exemption authority when necessary and

Question#:	5
Topic:	Iraqi refugee - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

warranted, and approve eligible cases once all necessary steps have been completed. Under established protocols, USCIS does not interview refugee applicants until they are prescreened by one of DOS' Overseas Processing Entities (OPE). OPEs collect basic biographical information from all applicants, including educational, work, and military service history, and interview the principal applicant regarding the refugee claim. In addition, even prior to OPE prescreening, the majority of applicants are interviewed by the United Nations High Commissioner for Refugees (UNHCR). As previously stated, as UNHCR and OPEs increase their capacity to refer and prescreen more cases, more cases will be interviewed by USCIS officers.

Question#:	6
Topic:	SIVs - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: As noted in a recent Washington Post article, the special immigrant visa (SIV) program for Iraqi and Afghan translators reached its 500 person cap in February 2008. As a result, there are hundreds of translators with approved petitions who are left out in the cold. It is my understanding that DHS and State have recently determined that recently-enacted legislation—which provides an additional 5,000 visas for Iraqis who have worked with the U.S. government—will not be available until Fiscal year 2009.

Will you support us in passing legislation to ensure those 5,000 visas are available now and that persons who have approved petitions under the old program can be rolled over into the new program?

Response:, Section 1244(c) states that the number of visas available "may not exceed 5,000 per year for each of the five fiscal years beginning after the date of the enactment of this Act." Since the first fiscal year beginning after January 28, 2008 – the date of enactment – is fiscal year 2009, beginning Oct. 1, 2008, the plain language of this statute authorizes visas beginning next fiscal year. It is also the case that the specific statutory requirements for section 1244 petitions are different from those under the preexisting section 1059 translator program in a number of ways, rendering it impossible simply to use section 1244 numbers for approved section 1059 petitions absent statutory revision.

We support S. 2829, "To make technical corrections to section 1244 of the National Defense Authorization Act for Fiscal Year 2008, which would provide authority to begin the special immigrant program under section 1244 in the current fiscal year, and authority to convert approved petitions under section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (NDAA 2006) (providing special immigrant status for certain Iraqi and Afghan translators and interpreters), for which a visa is not immediately available, to approved status under section 1244. S.2829 passed the Senate on April 28, 2008, and is pending before the House. This legislation would move the effective date of section 1244 into the current fiscal year and authorize the use of available section 1244 numbers for approved section 1059 petitions affected by the section 1059 cap. USCIS was immediately responsive to requests from committee staff for technical drafting advice on this subject on March 7, 2008.

Question#:	7
Topic:	SIVs - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Congress recently made Iraqis who enter the U.S. as special immigrants, rather than as refugees, eligible for Reception and Placement (R & P) benefits. This is important because Iraqis who have previously entered without these benefits (including those who have worked with our forces in Iraq) have faced substantial hardships upon their arrival. DHS has yet to agree to procedures issued by the State Department for the issuance of these benefits.

Could you explain why there has been a delay in coming to agreement on these procedures?

Could you give us a timetable for coming to an agreement?

Response: We are unaware of any issue or matter that is pending at DHS relating to DOS procedures for refugee benefits for the Iraqi or Afghan special immigrants made eligible for these and other public benefits for eight or six months, respectively, by recent legislation. USCIS has been communicating with DOS on a continuous basis in reference to the implementation of this law. USCIS has responded rapidly and thoroughly to requests for technical assistance from the Department of Health and Human Services (HHS) in promulgating guidance to implement these provisions for HHS programs, and we would be pleased to provide similar assistance to DOS or any other involved agency upon request.

Question#:	8
Topic:	material support - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: For years, hundreds of applications for permanent residency filed by refugees and asylees living in this country have been placed on hold because of the "material support" and other related bars to admission. Legislation was recently enacted giving you the authority to waive such bars for deserving individuals. Nevertheless, DHS has recently started denying the long-pending applications without any consideration of whether the applicants are deserving of waivers under this new authority or previously existing authority.

Why is DHS suddenly denying these cases without considering them for waivers?

Response: In 2007, the Secretary exercised his discretionary authority under INA § 212(d)(3)(B)(i) not to apply the material support inadmissibility provision at INA §212(a)(3(B)(iv)(VI) with regard to material support provided to certain undesignated terrorist organizations (whether or not it was provided under duress), as well as to material support provided under duress to all undesignated terrorist organizations as defined at INA § 212(a)(3)(B)(vi)(III) (Tier III). USCIS issued implementing guidance in May 2007 directing its adjudicators to adjudicate those cases that could benefit from these exercises of authority and to deny or refer those cases that could not, either because these cases did not fall under the Secretary's exercise of this authority or because they involved other grounds of ineligibility, such as engaging in combat or receiving military-type training from a terrorist organization. That guidance, however, directed USCIS adjudicators to continue to withhold adjudication of cases involving the provision of material support *under duress* to designated terrorist organizations pursuant to INA § 212(a)(3)(B)(vi)(I) and (II) (Tier I or Tier II) in anticipation of the possibility that the Secretary would exercise his discretionary authority with respect to those cases. In April 2007, the Secretary exercised his discretionary authority not to apply the material support inadmissibility provision at INA §212(a)(3)(B)(iv)(VI) with regard to material support provided under duress to designated (Tier I or Tier II) terrorist organizations. Since that time, DHS has authorized USCIS to exercise the Secretary's exemption authority with respect to material support provided under duress to the following designated terrorist organizations: the National Liberation Army of Colombia (ELN); the Revolutionary Armed Forces of Colombia (FARC); and the United Self-Defense Forces of Colombia (AUC).

The Consolidated Appropriations Act of 2008 ("CAA"), enacted on December 26, 2007, amended the Secretary of Homeland Security's discretionary authority (as well as that of the Secretary of State) not to apply certain terrorism-related inadmissibility grounds as

Question#:	8
Topic:	material support - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

they relate to undesignated terrorist organizations or to individual aliens. The CAA also named 10 groups that were not to be considered terrorist organizations under the INA based on activities prior to the enactment of the CAA (all of the named groups had previously been determined qualified for group-based material support exemptions by the Secretary of Homeland Security). The use of the discretionary authority as amended by the CAA requires action by the Secretary of Homeland Security, and USCIS has presented to DHS certain categories of cases for which USCIS believes a discretionary exemption would be appropriate.

In light of the CAA provisions, USCIS issued a memorandum, "Withholding Adjudication and Review of Prior Denials of Certain Categories of Cases Involving Association with, or Provision of Material Support to, Certain Terrorist Organizations or Other Groups," dated March 26, 2008, instructing adjudicators to withhold adjudication of cases filed by certain categories of applicants who may benefit from future exercises of the Secretary's authority under the new legislation.

In accordance with this memorandum, USCIS is reviewing all cases denied on or after December 26, 2007, the effective date of the CAA, on the basis of a terrorism-related ground of inadmissibility. Denied cases that fall within one of the hold categories will be reopened on a Service motion and placed on hold. An applicant whose case has been reopened will receive notice of such action. Additionally, the memorandum provides that applicants whose cases were denied on or after December 26, 2007 based on terrorism-related provisions and who have not been referred for removal proceedings may file motions to reopen or reconsider and that those motions and accompanying fee waiver requests should be favorably considered if they fall within certain categories of cases that may benefit from the new exemption authority or that involved one of the 10 groups granted relief by the CAA. USCIS will also consider requests to reopen or reconsider decisions issued before the CAA's enactment to determine whether the change in law may now benefit the applicant.

It should also be noted that in response to NGO concerns over denials of adjustment cases that might be eligible for exemption under expanded CAA authority, USCIS Service Center Operations instructed adjudicators to withhold denials of such cases beginning at the end of February.

Why has DHS resisted the creation of an application process by which deserving individuals may apply for such waivers?

Response: A working group of USCIS, ICE, and the Executive Office for Immigration Review (EOIR) representatives has been diligently examining the most effective process

Question#:	8
Topic:	material support - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

for the identification and presentation to USCIS of cases appropriate for consideration of the Secretary's exemption authority. The possibility of creating an application process was considered, but it was determined that an application process would not be the most effective way to proceed. Many applicants are unrepresented by legal counsel, and there is a possibility that many such applicants would be disadvantaged by an application process. Instead, it was determined that a process requiring consideration of the availability of and eligibility for an exemption in every case is a more effective means to implement this authority. This process would be coupled with a robust training effort and quality assurance process. As always, when making a determination on a case, USCIS will consider all evidence submitted by or on behalf of the applicant.

Initial proposals for the process are being reconsidered in light of the changes resulting from the Consolidate Appropriations Act (CAA), and USCIS, ICE, and EOIR are looking to move forward to establish this process. In the interim, on March 26th, USCIS issued a directive for all USCIS adjudications programs to hold all denials of certain categories of cases that could be affected by the amended exemption authority. In addition, USCIS was directed to review all cases denied on or after December 26, 2007 (the effective date of the CCA) to identify, reopen, and hold, any cases that fall within the new hold categories. USCIS has taken swift action toward completing this review by April 30, 2008. Individuals whose cases are reopened as a result of this review will receive a notice to that effect.

How do you intend to implement the new waiver authority so that all deserving individuals may be considered for waivers?

Will DHS commit to cease further denials of cases eligible for waivers until a process is in place that would provide an opportunity for all deserving individuals to access existing waiver authority?

Response: As stated previously, DHS is currently considering several groups and categories of cases as possible candidates for additional terrorism-related inadmissibility provision exemptions under the new legislation. While working to implement fully the new legislation, including identifying categories of cases for additional discretionary exemptions, USCIS has placed a hold on denials of cases falling within certain categories that could benefit from this new authority.

Question#:	9
Topic:	material support - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: DHS has suggested that the above individuals who have had their applications denied because of "material support" or other related issues may file motions to reopen, but such motions come with a hefty fee and are subject to a 30-day deadline. Most of these applicants are refugees and asylees with limited resources and little access to legal counsel. In addition, the denial letters being issued to them do not provide information regarding the possibility of reopening their cases. Instead, the letters state that there is no possibility of appeal.

Will DHS commit to reopening cases sua sponte for individuals who are statutorily eligible for available waivers so that they can be considered for such waivers?

Response: USCIS has initiated a review of all cases denied or referred on or after December 26, 2007 on the basis of a terrorism-related ground of inadmissibility. Cases that were denied on or after that date and that fall within any of the hold categories will be reopened on a Service motion and placed on hold. Applicants whose cases are reopened will receive notice of the Service action. USCIS adjudicators have been instructed to give favorable consideration to any motions to reopen or reconsider, as well as to any accompanying fee waiver requests, filed by applicants whose cases were denied on or after December 26, 2007 and that could benefit from the expanded exemption authority or that involved one of the 10 groups granted relief by the CAA. For cases in which jurisdiction has not vested with the Executive Office for Immigration Review, USCIS will also consider requests to reopen or reconsider decisions issued before the CAA's enactment to determine whether the change in law may now benefit the applicant.

Question#:	10
Topic:	material support - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: At a press conference on February 4, 2008, DHS Senior Advisor on Iraqi Refugee Issues, Lori Scialabba, said that 17% of Iraqi refugees interviewed by DHS have been placed on hold. That would amount to approximately 1,300 individuals.

How many of those cases were placed on hold for reasons because of the "material support" bar to admission?

Of those, how many involved cases where the "material support" was provided under duress?

What is DHS doing to review and adjudicate Iraqi cases placed on hold because of the "material support" bar?

What percentage of Iraqi refugee cases placed on hold eventually receive approval, and what percentages of these cases are denied?

Response: As of April 11, 2008, there are 237 Iraqi cases on hold for material support. Some of these cases include instances of material support under duress to a Tier I or Tier II organization, which require additional steps before they can be finally adjudicated.

USCIS adjudicators have encountered many Iraqi refugee applicants who describe paying ransom in order to secure the release of kidnapped family members. Many of these individuals are eligible for consideration of an exemption to the material support inadmissibility provisions, since such material support was provided under duress. USCIS has approved exemptions for over 230 such cases, which may include a principal applicant and family members.

In order to allow as many qualified individuals as possible to travel this fiscal year, USCIS has agreed to devote additional resources to reviewing material support cases that may be eligible for duress exemptions. We have allocated overtime funds to allow officers to process material support exemptions outside of regular work hours.

We do not currently track the percentage of Iraqi refugee cases placed on hold that eventually receive approval or denial. Cases may be on hold for multiple reasons and different hold reasons clear at different points in time. However, it is possible to say that most cases that are conditionally approved (on hold pending clearance of security name checks and fingerprints) are eventually approved for resettlement.

Question#:	11
Topic:	material support - 4
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What guidance is being issued to officers in the Refugee Corps regarding the application of "material support" waivers? For example, when DHS authorized waivers for persons who had provided material support under duress to the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), how was the implementing information relayed to the adjudicating officers?

Response: On May 24, 2007, the USCIS Deputy Director issued signed instructions to all USCIS adjudicators on the implementation of the exemptions for material support provided to certain Tier III (undesignated) terrorist organizations or provided under duress to a Tier III terrorist organization. This memo also required all USCIS adjudicators to receive specialized training on the terrorist inadmissibility grounds in general and the material support ground in particular.

On August 8, 2007, the Refugee Affairs Division issued specific instructions for processing refugee applications (I-590s) involving material support to all USCIS officers adjudicating or reviewing refugee cases involving material support, consistent with the general instructions provided in the May 24, 2007 memorandum.

On September 6, 2007, DHS authorized USCIS to consider the April 27, 2007 exemption authority with respect to material support provided under duress to the Revolutionary Armed Forces of Colombia (FARC) and USCIS issued a memo to adjudicators with this information. On December 18, 2007, DHS authorized USCIS to consider the April 27, 2007 exemption authority with respect to material support provided under duress to the National Liberation Army of Colombia (ELN). This information was transmitted to adjudicators through the Material Support Working Group. These authorizations were shared with the public as well.

Question#:	12
Topic:	material support - 5
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Given the changes in the law, some refugees who were previously denied admission under this bar could be admitted under the new law, but have no knowledge of this and no way of knowing how and when to reapply.

Is USCIS planning to review previously denied cases to re-adjudicate them, since they already have in their files all the information necessary to do so?

If not, has there been any discussion of informing previously denied refugees of their right to reapply under the new law? If not, why not?

Response: As previously stated, USCIS has initiated a review of all cases denied or referred on or after December 26, 2007 on the basis of a terrorism-related ground of inadmissibility. Cases that were denied and that fall within any of the hold categories will be reopened on a Service motion and placed on hold. Applicants whose cases are reopened will receive notice of the Service action. USCIS adjudicators have been instructed to give favorable consideration to any motions to reopen or motions to reconsider, as well as any accompanying fee waiver requests, filed by applicants whose cases were denied on or after December 26, 2007 and that could benefit from the expanded exemption authority, or that involved one of the 10 groups granted relief by the CAA. For cases in which jurisdiction has not vested with the Executive Office for Immigration Review, USCIS will also consider requests to reopen or reconsider decisions issued before the CAA's enactment to determine whether the change in law may now benefit the applicant.

The USCIS Refugee Affairs Division is working with their DOS partners to identify refugee cases denied overseas that would be appropriate for re-presentation to USCIS given the changes made by the CAA and USCIS' new hold policy.

Question#:	13
Topic:	material support - 6
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: At a press conference on January 11, 2007, it was announced that DHS would begin considering exemptions from the "material support" and other bars for asylum seekers and others in the domestic asylum/immigration context. Over a year after that announcement, DHS and DOJ have still not set up a process by which asylum seekers can apply for waivers, or for others whose cases have been pending before the immigration courts, the Board of Immigration Appeals or the U.S. federal courts.

When will DHS announce this process?

What provision will be made for cases that have already been denied on material support grounds before the process was implemented?

Response: Immigration judges and the Board of Immigration Appeals do not have the authority to exempt terrorism-related provisions of the Act. A working group of representatives from USCIS, Immigration and Customs Enforcement, and the EOIR is diligently examining the most effective process for the identification of and presentation to USCIS of cases in removal proceedings that are appropriate for exemption consideration.

Question#:	14
Topic:	material support - 7
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What steps are you taking to identify cases in removal proceedings that should be considered for waivers in light of the new legislation and under previously existing waiver authority?

Response: As previously stated, for applicants who are in removal proceedings, although immigration judges and the Board of Immigration Appeals do not have authority to exempt terrorism-related provisions of the Act, a working group of representatives from USCIS, Immigration and Customs Enforcement, and the EOIR is diligently examining the most effective process for the identification and presentation to USCIS of cases in removal proceedings that are appropriate for exemption consideration.

Question#:	15
Topic:	material support - 8
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: We understand that DHS is currently taking the position that the provision of medical aid by refugees, including medical workers who have been kidnapped by armed groups, constitutes "material support." One of these cases involves a Nepalese medical worker who was kidnapped by Maoist rebels and forced at gunpoint to treat injured rebels.

What is the basis for this position?

Does this position not conflict with longstanding principles of medical ethics, not to mention the Geneva Convention?

Response: The issue of whether the provision of material support under 212(a)(3)(B)(iv)(VI) includes the provision of medical assistance is currently in litigation before the Board of Immigration Appeals, and is an issue that has been raised by several NGOs. Accordingly, DHS will refrain from commenting on the issues in this pending litigation. Additionally, USCIS has placed all cases involving this issue on hold, except in cases that may be considered for an existing duress-based exemption, pending the resolution of this legal issue.

Question#:	16
Topic:	USCIRF report - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: In February 2005, the U.S. Commission on International Religious Freedom (USCIRF) issued its 500 page report on the detention and expedited removal of asylum seekers. This bipartisan Commission found that the detention of asylum seekers in jail-like facilities across the country created a serious risk of psychological harm. The Commission also concluded that asylum seekers are at risk of improper return to their countries of persecution because of serious problems in the implementation of the expedited removal process.

It is now three years later, and we understand that DHS has still not issued its response to the Commission's recommendations. Can you tell us when DHS will issue its formal response to the recommendations that are detailed in the Commission's report?

Response: DHS has not set a date for issuing a written response to the USCIRF report. We note, however, that many of the suggestions in the report already have been implemented, including the appointment of a Refugee and Asylum Advisor and the institution of more comprehensive explanations of asylum evaluations by asylum officers. DHS does aim to provide a report to the Commission about the fair treatment of asylum seekers who are subject to expedited removal, including measures taken in response to the Report's recommendations

Question#:	17
Topic:	USCIRF report - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: In November 2007, ICE rescinded prior parole guidance and issued a new parole "directive" relating to asylum seekers. We understand that Michael Cromartie, the Chair of USCRIF, wrote to you on December 14, 2007 to express USCIRF's concern that the new directive is inconsistent with the Commission's recommendations relating to the parole of asylum seekers. We also understand that a large number of refugee assistance groups have also written to express their concerns about the policy's impact on refugees who seek asylum in this country.

Can you tell us what steps if any ICE and DHS are taking to reassess this policy and/or otherwise ensure that asylum seekers who establish their identity and present no risks are not detained for long periods of time?

Response: The intent of ICE's parole policy is to promote consistent and high-quality parole decisions throughout the agency for cases in which aliens have been found to have a credible fear of persecution. Currently, ICE is not taking any steps to revise this policy.

ICE, however, has taken steps to establish a quality assurance process. ICE is currently gathering information relating to the decisions made based on this policy. More specifically, as part of the process, ICE is collecting information about the total and percentage of decisions to grant and deny parole requests, in addition to information about the primary grounds for decisions. This information will then be used to evaluate quality assurance and consistency. In addition, in conjunction with the Office of the Principal Legal Advisor and the Office of Policy, DRO held two "train the trainer" courses in January 2008. We invited two representatives from the Office of the United Nations High Commissioner of Refugees (UNHCR) to give presentations explaining the United States' international obligations towards asylum seekers and to help make our officers more aware of issues that are unique to asylum seekers. The DHS Office for Civil Rights and Civil Liberties' Asylum Overview CD-ROM presentation was also presented to our participants during these two courses. The training course outlined the parole policy and related procedures for cases in which aliens have been found to have a credible fear of persecution and included case examples of such parole requests.

Question#:	18
Topic:	human trafficking
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: The rapid increase in human trafficking has resulted in thousands of victims passing through the U.S./Mexico border each year. Without proper training, Customs and Border Patrol (CBP) agents and members of the Asylum Corps may not be able to distinguish such victims from persons being smuggled. Trafficking victims will thus remain in bondage and the U.S. will have missed a critical opportunity to intervene for their protection.

What is DHS doing to ensure that the appropriate personnel are well-trained in identifying trafficking victims and referring them to appropriate care?

Specifically, what programs are in place to train Border Patrol officers and other adjudicators, such as the asylum corps officers, in identifying victims?

If there are no such programs in place, what do you propose for the future?

Response: DHS employs a variety of methods to address this issue through training and awareness programs in agencies within the Department directly involved with, or responsible for investigations of human trafficking cases. When Border Patrol field offices encounter cases involving human trafficking victims, Border Patrol coordinates with Immigration and Customs Enforcement Office of Investigations, which is the lead agency with responsibility for investigating such crimes.

Currently, Customs and Border Protection (CBP) does not have a national training program in place for CBP Border Patrol agents specifically addressing identification of human trafficking victims. CBP is in the initial stages of development of a CBP-wide training curriculum and public awareness campaign in coordination with CBP Office of Public Affairs, Office of Field Operations, Office of Training and Development, Office of Border Patrol and the Department of State. Human trafficking is one component of the initiative. This effort already resulted in the development of trafficking awareness posters and informational cards in several languages for distribution to the field. The training program, which is still being developed, will be implemented and available through the CBP Virtual Learning Center upon completion.

Additionally, over the last several years, CBP Border Patrol has participated in various conferences across the United States involving multiple entities, both government and

Question#:	18
Topic:	human trafficking
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

non-government, which has resulted in an increased awareness to this issue at the local levels.

Lastly, Border Patrol agents receive both academy and post academy training in immigration law as it applies to immigrant and nonimmigrant classifications, which include visas available to trafficking victims and their families, interview and interrogation techniques, and acquire additional skills as they processes human smuggling cases in the field environment. CBP basic training covers the classifications that reference individuals who may fall into the T-1 through U-3 categories. These categories refer to the non-immigrant classifications for "Victims of Severe Form of Trafficking in Persons" ("T") to "Victims of Criminal Activity" ("U"). The "Victims of Trafficking Act" is not addressed in CBP's basic training curriculum except where it references the classifications T-1 through U-3. The Border Patrol curriculum that covers the above noted classifications includes: identifying who merits the classification, definitions of "Victims of Severe Forms of Trafficking in Persons" and the "Victims of Trafficking" as identified in the Victims of Trafficking and Violence Act of 2000(VTVPA) Section 103.

It should be noted that human trafficking cases are often not readily identifiable during the initial encounter because potential victims may be unaware that they may be exploited through force, coercion, threats, or deception until they are in the interior of the United States.

Question#:	19
Topic:	refugee detention
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: We understand that DHS has been detaining refugees, and holding them without charge, if they fail to apply for permanent residency within one year of their arrival to the United States. This has been most prevalent in Arizona, although we are concerned that the practice may be more widespread.

What is your authority to detain a person for months with no charge?

Is there an immigration charge that would apply to refugees simply for failing to initiate the residency process on the first anniversary of their admission.

How is detaining such refugees consistent with the humanitarian goals of our refugee admissions program?

Question: What is your authority to detain a person for months with no charge?

Response:

ICE does not have a policy of detaining aliens for months with no charge. INA § 209(a)(1) provides that a refugee admitted to the U.S. and physically present in the U.S. for 1 year and who has not adjusted to lawful permanent resident status "shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant." Although not eligible for bond, an alien admitted as a refugee may seek release by requesting parole from the Detention and Removal Operations Field Office Director (FOD).

Question: Is there an immigration charge that would apply to refugees simply for failing to initiate the residency process on the first anniversary of their admission?

Response:

INA § 209(a)(1) provides that a refugee admitted to the U.S. and physically present in the U.S. for 1 year and who has not adjusted to lawful permanent resident status "shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as

Question#:	19
Topic:	refugee detention
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

an immigrant." An alien who is found to be admissible (except under certain exceptions specified in section 209) will be granted permanent resident status. ICE does not charge aliens as being inadmissible or removable based solely on the fact that the alien failed to initiate the residency process within one year of being admitted as a refugee.

Question: How is detaining such refugees consistent with the humanitarian goals of our refugee admissions program?

Response:

INA § 209(a)(1) mandates that certain refugees "return or be returned to the custody of the Department of Homeland Security for inspection and examination." Through appropriate coordination between agencies within the Department of Homeland Security, DHS will administer those statutory requirements consistent with the humanitarian goals of the refugee admissions program.

Question#:	20
Topic:	ATD programs
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: In FY 2007, DHS spent about $1.2 billion to detain about 320,000 immigrants in detention facilities and state or county prisons and jails. This detainee population includes large numbers of asylum seekers, women, children, families, and individuals who pose no threat to public safety or security. The government spends an average of $95/day for each person detained. By comparison, Alternatives to Detention (ATD) programs cost about $6.00 to $14.00/day, or about one-tenth the cost of detention. These programs have yielded an appearance rate of over 95% of participating aliens. Despite their efficacy and significant cost savings, however, only about 10,000 aliens participate in ATD programs, or less than 3 percent of all those detained.

What is the Department's view of the importance of ATD programs in operating an efficient and humane system of detention and adjudication?

Recognizing that the federal government spent $1.2 billion last year to detain 320,000 immigrants—including large numbers of asylum seekers and other vulnerable populations—explain why DHS continues to seek increases in detention bed space when cheaper, more humane, and also highly effective alternatives to detention could be used instead?

Does the Department support expanding ATD programs, such as the Intensive Supervision Appearance Program (ISAP), to reach a greater percentage of detainees?

Does the Department see a role for non-profits and state and local agencies in administering ATD programs?

Question: What is the Department's view of the importance of ATD programs in operating an efficient and humane system of detention and adjudication?

Response: Alternatives to detention programs were created by DHS for specific groups of aliens, such as those who are non-criminals, do not pose a risk to the community, are not a flight risk, or for other compelling reasons, pending immigration hearings and/or their removal. The reach of these programs has grown steadily since their inception.

Question#:	20
Topic:	ATD programs
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

ATD programs offer an alternative to secure detention for individuals whose circumstances meet the criteria for release under conditions of supervision. ATD programs offer benefits to both DHS and the individual. DHS incurs lower daily detention costs. The ATD programs maintain regular contact with the alien, facilitate the alien's appearance for hearings, and, in many cases, even facilitate obtaining travel documents for the alien thus expediting their removal.

Question: Recognizing that the federal government spent $1.2 billion last year to detain 320,000 immigrants—including large numbers of asylum seekers and other vulnerable populations—explain why DHS continues to seek increases in detention bed space when cheaper, more humane, and also highly effective alternatives to detention could be used instead?

Response: There are currently two initiatives that involve close supervision as an alternative to detention for individuals in immigration proceedings: the Intensive Supervision Appearance Program (ISAP) and the Enhanced Supervision/Reporting (ESR) Program.

While alternatives to detention remain a viable option for specific groups of aliens awaiting immigration hearings and/or removal, the cost of these programs is not necessarily less than secure detention due to the length of proceedings for non-detained cases. The national average of length of detention for detained cases is approximately 38 days. At a daily cost of approximately $97.00 per detainee the approximate average cost per alien held in secure detention is $3,686. While processing times and costs vary among the ATD programs, the average length of time to conclude an immigration case in proceedings for ISAP cases is 332 days. At a daily cost of $17.75 per participant per day, the approximate average cost per alien in ISAP is $5,893.00. Although the daily cost of ATD is less than detention, the overall cost of ATD can be higher than detention due to the greater length of time involved in the adjudication of a non-detained case.

The cost data associated with the Electronic Monitoring (ESR) programs are not as comprehensive, as these programs have only recently commenced. Deployment of the ESR Electronic Monitoring Only program commenced on December 12, 2007 and Full-Service ESR commenced on February 1, 2008, with many of the locations coming onboard in March of 2008.

Likewise, the costs associated with programs that involve monitoring through the use of a radio or GPS frequency bracelet also vary. While not the only costs of the program, the

Question#:	20
Topic:	ATD programs
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Radio Frequency Bracelet alone averages $2.50 per day and the GPS Bracelet averages $5.50 per day.

ICE uses telephonic reporting as another ATD tool, generally for cases with final orders in which the alien poses no flight risk or risk to the community. Costs for this program average approximately $0.35 per day, but again its deployment is limited to very particular cases.

Additionally, it is important to note that enrolling an alien into an Alternative to Detention (ATD) program is not as effective as detaining them in a secure environment for purposes of assuring that an alien will depart the country after receiving a final order of removal. The Intensive Supervision Appearance Program maintains a final hearing appearance rate of 94%, but this does not reflect the actual probability of removal. The removal rate for cases in an ATD program averages 33%, whereas the removal rate for secure detention cases averages 99%.

ICE remains committed to using ATD in appropriate cases and has increased participation slots in all the ATD programs. The agency's ATD programs remain an important enforcement option for eligible participants.

Question: Does the Department support expanding ATD programs, such as the Intensive Supervision Appearance Program (ISAP), to reach a greater percentage of detainees?

Response: Yes. In addition to ISAP, ICE awarded a similar contract in September 2007: the Enhanced Supervision/Reporting (ESR) Program. The contract is composed of a full-service component and an Electronic Monitoring-Only (EM-Only) component. ESR EM-Only Services is available nationwide to an unlimited number of participants. Full-Service ESR currently has 7,000 participant slots. In addition, the ISAP contract was modified in September of 2007 to increase the available participant slots to 4,000, and the ESR and ISAP contracts can be modified to allow for periodic increases in participant slots as dictated by available funding.

The full-service component of ESR will provide services within a 50-mile radius of the 24 DRO Field Offices and three Sub-Offices (Charlotte, NC; Hartford, CT; and Orlando, FL). As of March 28, 2008, all twenty-seven (27) locations have been approved to commence with full-service operations.

Current ESR EM-Only participation levels nationwide are as follows: 6,108 active participants currently in ESR EM-Only and 1,197 participants in ESR Full-Service.

Question#:	20
Topic:	ATD programs
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

The unlimited capacity for ESR EM-Only and the increased slots in the ESR Full-Service offers ICE increased flexibility for dealing with candidates who are deemed to not be a flight risk or a threat to the community.

Question: Does the Department see a role for non-profits and state and local agencies in administering ATD programs?

Response: Yes. ICE administers the ATD program, but non-profits and state and local agencies play an important role in its success by making available their services to program participants when they are referred to them. ATD has learned that it needs to remain actively engaged with community-based NGOs to ensure that available resources for participants are kept current and that the NGO's involved fully understand the benefits of ATD programs. Currently, ATD requires the ISAP contractor to offer a "Community Resource Plan" for the participants. This encompasses the use of community contacts and referrals that are relevant to the participant population. The ISAP contractor has made referrals to organizations including: Health Care for the Homeless, Mi Casa and El Comite, Community Action Council, and the Volunteers of America. ICE intends to maintain this type of relationship with non-profits and state and local agencies in administering ATD programs.

Question#:	21
Topic:	medical care in detention
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: According to testimony at several congressional oversight hearings, persons who are on life-saving medications are regularly prevented from continuing on their medication regimens upon detention by ICE. There are repeated and consistent reports, for example, of persons infected with HIV who are prevented from continuing their current treatment and are denied appropriate treatment for weeks, if not months, upon detention. These reports are especially concerning considering the well-known risks of developing drug resistant infections when therapy is interrupted.

What is being done to ensure that persons on life-saving medications are allowed to receive uninterrupted therapy, including moving such individuals into Alternatives to Detention programs?

What steps need to be taken to ensure that such persons who continue to be detained may continue with life-saving therapy without interruption?

Why does DHS deny detainees who are willing to pay for and arrange delivery of their own medications the ability to do so?

Response: ICE utilizes the Division of Immigration Health Services (DIHS), an agency in the U.S. Department of Health and Human Services, to provide medical care at its Service Processing Centers (SPCs), Contract Detention Facilities (CDFs), and a number of its Inter-Governmental Service Agreements (IGSAs). ICE personnel do not make any medical determinations/decisions. DIHS is the medical authority for all ICE detainees, and DIHS medical personnel make all medical decisions on ICE's behalf, including decisions to prescribe and dispense prescriptions. The dispensing of prescriptions occurs in accordance with the DIHS Policy that is discussed below. Where DIHS is not present, medical service is contracted out to private companies and operated under the same standards as DIHS.

In accordance with requirements of ICE's National Detention Standards (NDS), all immigration detainees receive an intake screening during their initial processing into an ICE detention facility. This process is specifically designed to identify several factors, including whether or not the detainee has any conditions that require medical attention and/or the prescription of medications, so that such conditions can be treated at the earliest possible opportunity by the appropriate medical personnel.

Question#:	21
Topic:	medical care in detention
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

DIHS provides specific parameters as to how immigration officers and medical staff should handle detainees who present medications to them over the course of their processing into a detention facility. More specifically, medical professionals inspect all medications brought to detention facilities by detainees, whether they are transfers from another ICE facility or new admissions to an ICE detention facility, as a necessary part of the admission process. The medical professional documents the medication in the detainee health record and determines if they are still medically necessary. The medications will then be placed into the detainee's property, and medication stocked by the in-house clinic/pharmacy will be issued in its place, assuming there is still a valid need for this particular therapy. If the detainee arrives at a time when the pharmacy is closed, and the DIHS medical provider feels the detainee nevertheless requires the medication, the medication shall be placed on the "pill line" and administered on a dose-by-dose basis until the pharmacist can process the new prescription, again, assuming the need for this therapy has continued.

To be clear, DHS does not permit detainees to bring in medications from uncertified sources, as they could be a source of contraband. Only medications that are properly labeled and bear clear markings on the tablet/capsule that indicate a legitimate manufacturer will be used. However, if: (i) the particular medication required is not stocked by the clinic pharmacy, and (ii) the provider feels that a comparable substitute is not available – assuming the medication is appropriately labeled – the detainee may be permitted to use the medication that s/he had on his/her person. If non-formulary medication is needed, the Non-Formulary Medication Request Form should be filled out and forwarded to the DIHS Pharmacy Consultant. If the detainee is determined to have asthma or some other emergent medical condition, he or she are allowed to keep inhalers and nitroglycerin that are in their possession with them while they are detained.

The Alternative to Detention (ATD) program remains a viable enforcement option for aliens who meet eligibility criteria, regardless of whether or not they have pre-existing medical conditions. Among other factors, a detainee's medical issues are taken into account when deciding whether or not to release an alien under one of the ATD programs. However, other factors such as flight risk and threat to public safety are also weighed.

Question#:	22
Topic:	NDS
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: The ICE National Detention Standards (NDS) require that medical records accompany detainees during transfers from one facility to the next. But we have heard numerous credible reports of detainees who are transferred between facilities without having their medical records or medications transferred with them. According to recent testimony submitted by ICE, "[w]hen detainees are transferred from DIHS [Division of Immigration Health Services] sites, they are accompanied by a written medical transfer summary and any current medications that are currently prescribed." But ICE did not provide an answer regarding detainees who are transferred from or to sites that are not associated with DIHS. Moreover, according to ICE testimony, "ICE does not currently have a national system or other mechanism to track transfers of medication and/or medical records of detainees."

Given the importance of ensuring that persons with chronic conditions receive appropriate medical treatment, including uninterrupted access to life-saving medications, shouldn't ICE have a mechanism to track transfers of medication and medical records with detainees?

What steps would DHS need to take to set up such a system so that it can track transfers?

Response: The current system of intake medical screening, described above (see answer to Question 21) ensures that ICE detainees receive proper medical attention either at initial book in or book in after transfer. The medical summary created based upon the intake sceening referenced above is sent to the receiving facility as a requirement for transfer.

Moreover, ICE/DRO issued policy reminders of what records must accompany detainees when being transferred. Medical records are included in the required documents. Transportation officers and receiving officers must check to see that all documents including medical records accompany the detainee.

ICE has taken additional steps to ensure that facilities are in compliance with the ICE National Detention Standards (NDS) by entering into contracts with independent companies to conduct onsite compliance monitoring at all facilities that house ICE detainees and to conduct the annual evaluations and After Action reviews of conditions of confinement in all such facilities. These contractors provide ICE with subject-matter experts experienced in conducting independent quality assurance reviews, which will

Question#:	22
Topic:	NDS
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

enhance compliance monitoring at all facilities. With the combined efforts of these two companies, the standards are monitored and incidents of non-compliance are reported to ICE. In order to promote public awareness of ICE's Detention Facility Inspection Program, ICE will voluntarily report semi-annually on agency-wide compliance with ICE's NDS.

Question#:	23
Topic:	transfers - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: The ICE National Detention Standards (NDS) require that ICE take into consideration whether an individual has legal representation before transferring that person to a distant detention center. We have heard reports of many cases, however, where represented detainees are transferred thousands of miles from their counsel, often without notice to the counsel.

What criteria does ICE use to select which individuals will be transferred from a facility when it becomes overcrowded?

What are ICE's protocols and procedures to ensure that ICE officials across the country know and comply with their obligation under the detention standards to consider whether an individual has counsel before transferring that person?

If a represented person is transferred, what are ICE's protocols and procedures to ensure that notation of the consideration is made and that ICE does in fact notify counsel of the transfer as required by the detention standards?

Response: On July 17, 2006, ICE established the Detention Operations Coordination Center (DOCC). The DOCC was specifically established to manage bed space on a national scale while also ensuring that all Field Offices have adequate detention space for routine apprehensions and coordinate special operations requiring large numbers of detention beds. Detainees from Field Office jurisdictions with detention capacity shortages are moved to Field Office jurisdictions with surplus capacity.

ICE policy requires that when deciding whether to transfer a detainee, consideration be given to, among other things, whether the detainee is represented, the detainee's stage within the removal process, whether the attorney of record is located within reasonable driving distance of the detention facility and where immigration court proceedings are taking place. Though ICE prefers to avoid transferring detainees who are represented by counsel or who are in removal proceedings, there are compelling circumstances (i.e. medical related) that warrant, if not mandate such transfers.

Prior to transferring an alien to another Area of Responsibility (AOR), the transferring office must conduct records checks, to determine if the alien is represented, and ensure that all transfers are in compliance with the National Detention Standards (NDS). Accordingly, the DOCC historically moves new cases where venue is not yet established,

Question#:	23
Topic:	transfers - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

or Final Order (FO) cases. If it becomes necessary to transfer an alien who is represented by counsel, ICE will notify the attorney of record. The NDS requires that the notification to the detainee's attorney of record be recorded in the detainee's A-file, if available, or in the work file. Notification is also to be notated in the comments screen in the Deportable Alien Control System (DACS). The attorney is to be notified of the reason for the transfer and shall be provided with the name, address and telephone number of the receiving facility.

Question#:	24
Topic:	transfers - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Does DHS have any policies or procedures regarding the transfer of persons who are caretakers of children in the United States in order to maximize visitation by children and immediate family members?

Please describe such policies and procedures.

Response: The National Detention Standards, which prescribes policy and procedures for detainee transfers, does not specifically address the transfer of persons who are caretakers of children in the United States in order to maximize visitation by children and/or immediate family member. However, in practice, ICE attempts not to transfer these individuals unless it is operationally necessary. Additionally, whenever appropriate, ICE seeks to release sole-caregivers on alternative to detention programs.

Question#:	25
Topic:	LOP
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: DHS, ICE, and the Executive Office for Immigration Review (EOIR) work collaboratively on the Legal Orientation Program (LOP), which educates alien detainees about their rights and responsibilities, improves detainee morale, and decreases the time aliens spend in court. At FY 2008 funding levels and at current detention levels, LOP is expected to reach 40,000 detained aliens in removal proceedings, compared to over 320,000 individuals who will be detained during the year.

Assistant Secretary Myers reported in October 2007 that ICE would be working with EOIR to expand LOP to additional sites throughout the country. Please explain how ICE plans to expand LOP to reach more alien detainees in its custody.

Response: DHS and DOJ continue to work collaboratively to ensure that detained individuals in ICE custody have access to legal information. One of the best ways of doing this is through the Executive Office for Immigration Review's (EOIR) Legal Orientation Program (LOP), which provides group orientations, individual orientations, self-help workshops, and pro bono referrals to individuals in ICE custody. EOIR is an agency within the Department of Justice and it coordinates and oversees the Legal Orientation Program.

EOIR has worked with ICE, DHS' Office of Civil Rights and Civil Liberties and several NGOs to expand our partnership with the legal community. Most recently, EOIR, through the Vera Institute of Justice, distributed Request for Letters of Intent to advocacy groups interested in participating in the LOP program at current and new detention facilities. The request also seeks suggestions on innovative ways of: working with immigrant detainees with mental health issues; developing models to reach more individuals in remote facilities; and serving individuals with criminal convictions who are not held in ICE custody. Once these suggestions are received and NGOs interested in participating in the program are identified, DHS will work with EOIR to determine which groups best meet the criteria, including giving preference to those detention facilities that have the most need for the LOP. DHS and EOIR hope to have LOPs in six to ten additional facilities by the end of fiscal year 2008.

Additionally, on February 5, 2008, the LOP was implemented in the Otay Mesa facility in San Diego, California. On average, the Otay Mesa facility houses 650 ICE detainees. As of today, the LOP operates at twelve detained immigration court locations and serves aliens detained at fourteen ICE detention facilities

Question#:	25
Topic:	LOP
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Finally, on March 6, 2008, EOIR and the Vera Institute presented the findings of the LOP Evaluation Report to DHS representatives. There will be follow-up meetings to discuss how to improve data-sharing, communication, and collaboration on areas and issues identified from this study, including additional expansion of the LOP program.

Question#:	26
Topic:	alien children - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: The FY 2008 DHS budget contained several important directives to reform the treatment of vulnerable unaccompanied alien children including: ensuring their timely transfer to the Office of Refugee Resettlement (ORR) within 72 hours; ending reliance on fallible bone and dental forensics for age determinations; ending the use of confidential medical and psychological ORR records against the children for litigation advantage; and working with ORR and the Department of State to develop safe and secure repatriation programs. We understand that despite these new provisions, DHS has yet to implement any changes in their policies and practices with respect to unaccompanied children.

What steps has DHS taken thus far to implement these important policy changes consistent with Congressional intent?

What steps still need to be taken?

Response: This question presents issues that are currently the subject of litigation. DHS may not comment on matters that may affect ongoing litigation.

Question#:	27
Topic:	alien children - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: According to Customs and Border Protection (CBP) estimates, approximately 10% of all undocumented aliens apprehended along the Southern border are unaccompanied alien children, the vast majority of which are Mexican children who are repatriated swiftly to Mexico. We have heard many reports from advocates about abuse and mistreatment of such children upon arrest by CBP officials. We have also heard reports that children are sometimes kept at border patrol stations beyond the 72 hour maximum authorized by law. At these stations, children are deprived of a proper diet, education, recreation, and physical and mental health care.

What training, if any, do Customs and Border Protection (CBP) officials receive in processing unaccompanied alien children? What NGOs or child welfare experts, if any, participate in any such training?

Please explain the specific policies and procedures CBP has in place to document and investigate any allegation of abuse and mistreatment by an unaccompanied child? How are such policies and procedures communicated to such children?

What specific standards, if any, control the confinement of unaccompanied alien children at border patrol stations?

If such standards exist, how are they monitored and enforced?

Response:
It should be noted that of all illegal aliens apprehended along the Southern border, 10% are juveniles. Of that number, approximately 10% are unaccompanied alien children (UAC). Thus, the total number of UAC accounts for about 1% of all undocumented aliens arrested along the southern border.

Border Patrol Agent interns receive on-the-job training from Field Training Officers, as part of a nationally structured Field Training Program. Part of their training includes alien processing, to include processing UAC. Additionally, new Border Patrol Agent interns receive training on the Flores v. Reno Settlement Agreement during their probationary training period. This training, which is now available online through U.S. Customs and Border Protection's (CBP) Virtual Learning Center, is required for all agents to complete each year and was designed to provide greater awareness of and sensitivity to the special needs of UAC in custody.

Question#:	27
Topic:	alien children - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Non-Government Organizations (NGOs) do not participate in training Border Patrol Agents on processing UAC. However, the Border Patrol does collaborate extensively with Department of Homeland Security/Office for Civil Rights and Civil Liberties (DHS/CRCL), Health and Human Services/Office of Refugee Resettlement (HHS/ORR), and Immigration and Customs Enforcement/Detention and Removal Operations (ICE/DRO) to ensure that all UAC are properly cared for.

The procedure for reporting complaints is also posted throughout the processing areas of Border Patrol stations. UACs are read and provided with a Notification of Rights and Request for Disposition Form. As written on the form, UAC are notified of their rights to a phone call to make contact with an adult relative or adult friend, the right to be represented by a lawyer, and the right to a hearing before a judge. Additionally, UACs are interviewed by a representative of their respective country's consulate prior to repatriation.

CBP adheres to strict, uniform guidelines for receiving, processing and investigating allegations of CBP employee misconduct. Allegations of misconduct on the part of CBP employees can be reported 24x7 to the DHS Office of Inspector General (OIG), the ICE Office of Professional Responsibility (OPR) or by contacting the Joint Intake Center (JIC). Regardless of method of receipt, all misconduct allegations are entered into a secure, electronic database and routed through JIC, which is located in Washington, DC.

In accordance with DHS policies, allegations received by OPR or JIC are initially referred to OIG for independent review and investigative consideration. OIG maintains the "right-of-first-refusal" for any misconduct allegation involving a DHS employee or contractor. Allegations that are not accepted for investigation by OIG are referred to the various components' internal affairs offices for investigation or inquiry.

The CBP Office of Internal Affairs (IA) employs a permanent cadre of highly skilled and experienced investigators to address criminal and serious misconduct allegations involving CBP employees. Less serious allegations are referred to specially trained, collateral duty fact finders for administrative inquiry.

Investigative findings are referred to the CBP Office of Human Resources Management (HRM) for independent review and action in conjunction with responsible management officials. CBP management is committed to taking appropriate and timely discipline and corrective action in cases of substantiated misconduct. HRM is responsible for ensuring that discipline is administered fairly and consistently throughout CBP. The Privacy Act restricts the release of information related to agency disciplinary actions or proceedings.

Question#:	27
Topic:	alien children - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

CRCL also receives allegations and complaints from ORR, as well as from the public. Depending upon the severity of the situation, these may be referred to JIC or to the appropriate CBP component for consideration and/or immediate action.

On March 1, 2003, the Homeland Security Act of 2002, Section 462, transferred functions under U.S. immigration laws regarding the care and placement of UAC from the Commissioner of the Immigration and Naturalization Service to the Director of ORR. ORR is responsible for providing UAC with a safe and appropriate environment from the time the minor is placed into ORR custody until his/her reunification with family members or sponsors in the U.S. or until he/she is removed to his/her home country by ICE/DRO.

CBP has taken great strides to ensure that all UAC are adequately cared for while in CBP custody. However, CBP facilities are not designed for long-term custody nor are CBP agents trained to provide long-term care of UAC. It is in everyone's best interest to transfer UAC to ORR as quickly as possible because ORR is the agency most prepared and responsible for long-term care of UAC.

The U.S. Border Patrol treats all minors, including UAC with dignity, respect, and special concern for their particular vulnerabilities. Border Patrol policy, regarding processing, detaining, and caring for UAC in Border Patrol custody, is based upon guidelines that come from the *Flores v. Reno* Settlement Agreement and the Homeland Security Act of 2002.

Border Patrol policy provides that UAC are:

- Processed expeditiously giving them priority over all other aliens in custody.
- Separated from unrelated adults whenever possible and not detained in the same hold room. * If unavailable, UAC must be kept in a secure area (processing area, interview room, etc) under constant supervision.
- Provided access to showers (if available), basic hygiene items, towels, clean clothing, etc. if detained longer than 48 hours.
- Provided access to toilets and sinks, drinking water, meals regardless of time in custody (offered every six hours – 2 must be hot) and regular access to snacks, milk, juice, etc.
- Provided emergency medical service (if needed).
- Provided adequate temperature control and ventilation.
- Provided constant visual supervision.

Question#:	27
Topic:	alien children - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

CBP standards are enforced through a variety of ways. First, all new Border Patrol Agent interns receive training on the *Flores v. Reno* Settlement Agreement during their probationary training period. This training is required for all agents to complete each year.

Additionally, copies of Border Patrol policy on processing, detaining and caring for UAC in Border Patrol custody are posted in all processing areas for agents as reference material and as a constant reminder of the standards used to protect the health and well-being of children in Border Patrol facilities.

Last, these standards are enforced by the Chief of the Border Patrol through headquarters program oversight, site review, sector Chief Patrol Agents, station management, supervisory oversight during processing, periodic training, policy development and annual Self Inspection reviews, and through close collaboration between the Border Patrol and partner agencies (i.e. DHS/CRCL and CBP/IA).

Question#:	28
Topic:	JRFMU - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: DHS recently completed Family Detention Standards that provide for the strip-searching of children and the use of steel batons for disciplinary purposes.

Why does DHS believe it is necessary to strip-search children?

What standards are in place to ensure that strip searches are reasonable and conducted based on reasonable suspicion?

Why do the Family Detention Standards countenance the use of steel batons for disciplinary purposes, especially with respect to a family detention center?

Response: In order to maintain a safe environment, the Residential Standard for "Searches of Residents" provides that ICE may conduct searches on residents of various ages when deemed necessary. This Residential Standard states that a parent must be present in any instance where a child is required to be searched. This Residential Standard also states that a strip search may never be conducted on a child less than 14 years of age without the authorization of the Field Office Director and Chief, Juvenile and Family Residential Management Unit (JFRMU). No strip search may be authorized on any resident outside of this category without the express consent and concurrence of the ICE Officer in Charge.

Such searches would be limited to events where the safety of the minor, other residents, staff, visitors, or the facility is at risk. The Residential Standard itself is restrictive in that only ICE staff may conduct such a search, and only where it can be shown and documented that a life safety or public safety issue is clearly established. This is a very high threshold to overcome. A strip search may never be authorized or conducted by a contractor.

ICE has planned periodic reviews of the implemented Residential Standards to determine whether the Standards require modification or revision based on real operational data accumulated after initial implementation. The standards regarding searches of residents will receive additional review to determine if additional safeguards are needed within the existing standard.

Question: What standards are in place to ensure that strip searches are reasonable and conducted based on reasonable suspicion?

Response: Within the ICE Residential Standard for "Searches of Resident," when the intrusiveness of the search method increases, the level of supervisory oversight and

Question#:	28
Topic:	JRFMU - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

approval also increase. For example, the requirement for a pat-down search, which involves only the use of hands on a fully clothed person and is the least intrusive physical inspection of a person, is "reasonable and articulable suspicion." With strip searches, as previously indicated, ICE staff may conduct such a search only where it can be shown and documented that a life, safety or public safety issue is clearly established. This in and of itself requires a much higher burden of proof and also requires approval at management levels that is otherwise not required in law enforcement.

Question: Why do the Family Detention Standards countenance the use of steel batons for disciplinary purposes, especially with respect to a family detention center?

Response: ICE does not authorize the use of any force for disciplinary purposes under any circumstances. Additionally, in accordance with ICE practices, such defensive tools are not authorized for carry inside ICE residential facilities. Staff are required to securely store all defensive weapons prior to entry into any ICE detention or residential facility.

ICE in general requires its enforcement and contract security staff to be trained and certified in the proper carriage and use of intermediary defensive weapons such as the collapsible steel baton or any other device approved for use by ICE. Staff is trained to properly use all defensive weapons in a responsible manner and in accordance with existing laws, regulations, and policies governing their use. Within the Residential Standard on "Use of Force", ICE clearly delineates these requirements for training to include: Use of Force Continuum; Communication Techniques, Cultural Diversity, Dealing with the Mentally Ill; Confrontation Avoidance Techniques, Approved Methods of Self-Defense; Universal Precautions, and Application of Restraints. In accordance with this Residential Standard, any use of force must be only that which is necessary and the minimum needed force to gain control.

Question#:	29
Topic:	JRFMU - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: DHS recently created the Juvenile and Family Residential Management Unit (JFRMU) to oversee all unaccompanied children and family policies and programs. There are indications, however, that JFRMU staff lack necessary training and expertise in family and child welfare issues. Even the Director of the JFRMU, the person charged with overseeing all of the Unit's activities, is a former Border Patrol official with no training or experience with family and child welfare issues.

Why did DHS decide to staff the JFRMU with officials who had no or little experience or training in such issues?

Who was responsible for these staffing decisions?

Please describe and provide any written evaluations of the JFRMU, its staffing, policies and procedures.

Response: This question involves issues that are currently the subject of litigation. DHS may not comment on matters that may affect ongoing litigation.

Question#:	30
Topic:	JRFMU - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: We have heard reports that DHS and the JFRMU uses certain restricted facilities for housing children, including the Florence, Arizona Service Processing Center, which houses adults, and juvenile offender facilities where children are commingled with juvenile offenders in contravention to the Juvenile Justice and Delinquency Prevention Act.

What legal authority does DHS have for holding children at the Florence, Arizona Service Processing Center, an adult facility?

What legal authority does DHS have for holding children in juvenile offender detention facilities?

Response: Effective March 2003, HSA §462 transferred responsibility for the care and placement of unaccompanied aliens under the age of 18 to HHS/ORR. However, provisions of the Flores Settlement Agreement define those unaccompanied alien children under the age of 18 who have been emancipated or have been convicted of a criminal offense as adults, and therefore fall under ICE's jurisdiction and responsibility to detain. Beyond the parameters of this Agreement, a juvenile may sometimes claim to be an adult upon apprehension by an ICE or CBP officer, at which point the juvenile will be processed as an adult and possibly placed in an adult facility including the Florence Processing Center. Should it be discovered at a later time that the juvenile in question was in fact not an adult; ICE will immediately remove the minor for re-processing as a juvenile and place him/her into a separate safe and secure environment. An ICE Juvenile Coordinator will then immediately begin to either make reunification efforts with the child's family member, or contact ORR for suitable placement in suitable housing.

Under circumstances in which ICE must detain a juvenile outside of one of its family detention centers, ICE does not commingle known juveniles in any adult facility. That said, however, ICE's authority to detain aliens prior to their receipt of a final order of removal is pursuant to 8 C.F.R. 236.1, which reads: "(a) Arrest, Detention, and Release.- On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General- (1) may continue to detain the arrested alien; and (2) may release the alien on- (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole; but (3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate

Question#:	30
Topic:	JRFMU - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

Question: What legal authority does DHS have for holding children in juvenile offender detention facilities?

Response: HSA §462 transferred responsibility for the care and placement of unaccompanied aliens under the age of 18 to HHS/ORR beginning March 2003. However, provisions of the Flores Settlement Agreement define those unaccompanied alien children under the age of 18 who have been emancipated or have been convicted of a criminal offense as adults, and therefore the responsibility of ICE to detain.

When unaccompanied juveniles are initially apprehended, they may be housed temporarily in safe and secure settings until ORR accepts them for care and placement.

ICE does not detain delinquent minors in our family facilities. Therefore, accompanied juveniles with the following history may be detained by ICE in a suitable State or county juvenile facility, rather than at one of the Agency's family facilities -

- has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act;
- has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in ICE legal custody or while in the presence of an ICE officer;
- has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program;
- is an escape-risk; or must be held in a secure facility for the juvenile's own safety, such as when ICE has reason to believe that a smuggler would abduct or coerce the juvenile to secure payment of smuggling fees. Section V, para 13 of the Flores Settlement Agreement.

Question#:	31
Topic:	Contract detention - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: How many contracts has ICE entered into with the Corrections Corporation of America (CCA)? Which facilities?

Response: ICE has one direct contract with Corrections Corporation of America which is the Houston Contract Detention Facility in Houston, TX. While there are other CCA facilities where ICE detainees are held, these contracts are not directly with ICE, but with the Department of Justice, Office of Federal Detention Trustee or with local and county governments.

Question#:	32
Topic:	Contract detention - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What percentage of ICE detainees are held in facilities owned and operated by ICE versus contract facilities? What percentage of contract facilities are owned and operated by CCA versus other private correctional companies? What percentage are owned and operated by state and local governments?

Response: Approximately 13% of ICE detainees are held in facilities owned and operated by ICE. Approximately 18% of ICE detainees are held in seven contract facilities. The remaining ICE detainees are held in local facilities operated through IGSAs.

ICE utilizes seven (7) contract detention facilities, of which three, or approximately 43%, are owned and operated by CCA. Of these three, only one contract was issued by ICE directly to CCA, and the other two contracts were issued to CCA by the Department of Justice, Office of Federal Detention Trustee. The remaining four contract detention facilities, or approximately 57%, are owned and operated by other private correctional companies. Although none of these contract detention facilities are owned and operated by state and local governments, ICE has the following large Intergovernmental Service Agreements (IGSA) with state and local government entities that are operated by CCA: Stewart, GA; Eloy, AZ; Laredo, TX; T. Don Hutto, TX; Florence, AZ and Central Arizona Detention Center, AZ.

Question#:	33
Topic:	Contract detention - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What kind of oversight does ICE exercise over private facilities and those run by state and local governments? Does ICE inspect these facilities? How often?

Response: ICE's National Detention Standards (NDS) were implemented in 2001. The NDS were developed in coordination with subject matter experts from various components of the Department of Justice and the American Bar Association.

ICE utilizes over 350 detention facilities – including Service Processing Centers (SPCs), state and local facilities where we have Intergovernmental Service Agreements (IGSAs), and Contract Detention Facilities (CDFs) – to detain individuals in accordance with the Immigration and Nationality Act. All these facilities are reviewed on an annual basis to determine overall compliance with the current NDS.

ICE has an aggressive detention standards compliance program that measures whether detention facilities are in compliance with the NDS. Each annual review consists of a comprehensive 85-page, 643-point inspection, which takes two specially-trained officers two to three days to complete. All Facility Inspections/Reports undergo a multi-layer review process by the Detention Standards Compliance Unit, and Plans of Action (POAs) are required to correct all areas determined to be deficient (i.e., not in full compliance with the NDS).

In addition to annual inspections, each facility utilized by ICE is visited weekly as part of the staff detainee communication requirements. During these visits, officers are responsible for assessing conditions of confinement while evaluating the overall quality of life within the facility. Examples include checking for cleanliness, ensuring that all phones are in working order and responding to detainee grievances and requests.

ICE has also created a Detention Facilities Inspection Group (DFIG) within the Office of Professional Responsibility (OPR) in order to independently validate detention inspections by performing quality assurance over the review process, ensuring consistency in application of detention standards, and verifying corrective actions. This additional oversight complements the current Detention Standards Compliance Program and ensures ICE detention facilities remain safe and secure while providing appropriate conditions of confinement for ICE detainees.

Question#:	33
Topic:	Contract detention - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

In addition, in an effort to increase the levels of compliance and independent external oversight, ICE is improving its review process with the assistance of Creative Corrections Corporation and the Nakamoto Group, two companies that provide subject-matter expertise in the area of detention standards compliance and oversight. They conduct annual reviews and have placed subject-matter experts (SMEs) in selected facilities on a daily basis to monitor both the compliance with the detention standards and the detainees' quality of life. This effort provides an independent and objective layer of oversight to the Detention Review Process.

Question#:	34
Topic:	ICE protocol - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Pursuant to 8 CFR §287.2(b)(2), if an immigration officer has "a reasonable suspicion, based on specific articulable facts" that a person being questioned is in the U.S. illegally, then the officer "may briefly detain the person for questioning."

What constitutes a "brief" period of detention? Please provide examples.

When ICE raided Swift & Co. meatpacking plants in December 2006, it detained hundreds of workers, many of them U.S. citizens or lawful permanent residents, in the plant in Marshalltown, Iowa for eight hours. Does that constitute a "brief" period of detention?

Why were they denied food or water or contact with their families, union representatives, or lawyers during this time?

How does ICE define "reasonable suspicion, based on specific articulable facts?" Please provide examples.

On February 13, Mr. Michael Graves, a U.S. citizen who works at the Swift plant in Marshalltown, Iowa, testified before the Immigration Subcommittee regarding what happened to him and his co-workers during the ICE enforcement action in December 2006. Mr. Graves testified that ICE agents handcuffed him, searched his locker, and questioned him about how he would drive from Iowa to Mississippi. Based on your knowledge of ICE's policy interpreting 8 CFR §287.2(b)(2), what would you say was the "reasonable suspicion, based on specific articulable facts" that would justify ICE's treatment of Mr. Graves?

Does ICE have policies and written training materials readily available for officers to reference on these matters? If so, please provide them to this Committee.

Response: I believe the CFR citation to which you refer is §287.8(b)(2). In this regard, what constitutes a brief period of detention is a fact specific inquiry and will be determined on a case-by-case basis. The period of the detention must be reasonable and last only as long as necessary to verify or dispel the suspicion. United States v. Sokolow, 490 U.S. 1, 11, 109 S.Ct. 1581, 1587 (1989).

Generally speaking, upon arrival in the United States, all applicants for admission, including aliens and U.S. citizens, must present themselves for inspection or examination

Question#:	34
Topic:	ICE protocol - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

at a designated Port of Entry. At the Port of Entry, it is the arriving applicant who bears the burden of proving his or her U.S. citizenship. Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1357(b); 8 C.F.R. § 235.1(b). If an arriving applicant claims U.S. citizenship, he or she must present a valid U.S. passport upon entry (if a passport is required), and prove his or her claim to the Customs and Border Protection (CBP) officer's satisfaction. If an applicant for admission fails to satisfy the examining officer of his or her U.S. citizenship, he or she shall thereafter be inspected as an alien.

In the interior of the United States, an ICE officer may detain an individual upon reasonable suspicion that the individual is unlawfully present or unauthorized to work. INA § 287(a)(1), codified at 8 U.S.C. § 1357(a)(1); 8 C.F.R. § 287.8(b)(2). In addition, an ICE officer may engage in consensual encounters like any law enforcement officer. 8 C.F.R. § 287.8(b)(1); INS v. Delgado, 466 U.S. 210 (1984). If the individual gives an unsatisfactory response or admits that he or she is an alien, the individual may be asked to produce evidence that he or she is lawfully present in the United States. If a person refuses to speak to the officer, absent reasonable suspicion that the person is unlawfully present or unauthorized to work in the United States, the ICE officer has no authority to detain the individual.

Question: When ICE raided Swift & Co. meatpacking plants in December 2006, it detained hundreds of workers, many of them U.S. citizens or lawful permanent residents, in the plant in Marshalltown, Iowa for eight hours. Does that constitute a "brief" period of detention?

Response: This question presents issues that are the subject of current litigation. DHS may not comment on matters that are the subject of ongoing litigation.

Question: Why were they denied food or water or contact with their families, union representatives, or lawyers during this time?

Response: This question presents issues that are the subject of current litigation. DHS may not comment on matters that are the subject of ongoing litigation.

Question: How does ICE define "reasonable suspicion, based on specific articulable facts?" Please provide examples.

Response: In interpreting the meaning of "reasonable suspicion, based on articulable fact," ICE looks to case law for guidance. However, even the Supreme Court has found that "articulating precisely what reasonable suspicion and probable cause means is not possible." Ornelas v. U.S., 517 U.S. 690, 695, 116 S.Ct. 1657, 1661 (1996). The Court

Question#:	34
Topic:	ICE protocol - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

described "reasonable suspicion" as "a particularized and objective basis" for suspecting wrong doing. Id. In describing reasonable suspicion in an immigration context, the Supreme Court has said that "[e]xcept at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country". U.S. v. Brignoni-Ponce, 422 U.S. 873, 884, 95 S.Ct. 2574, 2582 (1975).

What will be considered "reasonable" is a fact specific inquiry and will be determined on a case-by-case basis. An individual being interviewed must voluntarily agree to remain during the questioning or the agent must be able to articulate the basis of the reasonable suspicion for believing that the person is unlawfully present or unauthorized to work in the United States. If the individual (alien or U.S. citizen) refuses to engage in conversation with the agent and there is nothing else that would lead the agent to believe that the individual is illegally present in the United States, the individual will not be detained and will be permitted to leave the premises.

Examples supporting reasonable suspicion or articulable facts may include, but are not limited to:

- observing an individual running and/or hiding, upon learning that ICE has entered the facility;
- providing inconsistent biographical information during the initial encounter; or
- presenting documents that do not appear authentic on their face.

Once again, an agent will not detain individuals who have produced what appear to be valid documents evidencing that the person is whom s/he claims to be and is lawfully present and authorized to work in the United States. However, once there is probable cause to believe that the individual is illegally present in the United States or that a crime has been committed, the person may be arrested and taken into custody.

During any worksite enforcement operation, immigration officers may question, without a warrant, any alien or person believed to be an alien as to his right to be, or to remain, in the United States. (INA § 287(a)(1), codified at 8 U.S.C. § 1357(a)(1); 8 C.F.R. § 287.8(b)(1)). Consensual questioning, alone, does not constitute a Fourth Amendment seizure. INS v. Delgado, 466 U.S. 210, 104 S.Ct. 1758 (1984). The person being interviewed, however, must voluntarily agree to remain during questioning. If the individual refuses to speak to the officer, absent reasonable suspicion that the individual is unlawfully present, the individual may not be detained.

Question#:	34
Topic:	ICE protocol - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

During questioning, if the individual gives a credible reply that he is a United States citizen, the questioning will end immediately, and the agent will move on to another individual. If the individual gives an unsatisfactory response or admits that s/he is an alien, the individual will be asked to produce evidence that s/he is lawfully present in the United States. If a person refuses to speak to the agent, absent reasonable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual will not be detained and must be permitted to terminate the consensual encounter. But, if reasonable suspicion can be articulated, a brief detention is justified while investigating identity and immigration status. INA § 287(a)(1), codified at 8 U.S.C. § 1357(a)(1); 8 C.F.R. § 287.8(b)(2); U.S. v. Cortez, 449 U.S. 411, 101 S.Ct. 690 (1981); see also U.S. v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574 (1975).

Question: On February 13, Mr. Michael Graves, a U.S. citizen who works at the Swift plant in Marshalltown, Iowa, testified before the Immigration Subcommittee regarding what happened to him and his co-workers during the ICE enforcement action in December 2006. Mr. Graves testified that ICE agents handcuffed him, searched his locker, and questioned him about how he would drive from Iowa to Mississippi. Based on your knowledge of ICE's policy interpreting 8 CFR §287.2(b)(2), what would you say was the "reasonable suspicion, based on specific articulable facts" that would justify ICE's treatment of Mr. Graves?

Response: This question presents issues that are the subject of current litigation. DHS may not comment on matters that are the subject of ongoing litigation.

Question: Does ICE have policies and written training materials readily available for officers to reference on these matters? If so, please provide them to this Committee.

Response: ICE extensively trains its investigative personnel in various law-enforcement related courses, to include, the Criminal Investigator Training Program and the ICE Special Agent Training Program conducted at the Federal Law Enforcement Training Center (FLETC) prior to any agent's deployment to a nationwide field office as an ICE Special Agent. ICE agents receive further extensive legal and immigration law training regarding their authority to question, detain, and arrest individuals for violation of the criminal and administrative laws enforced by ICE. ICE agents are trained to professionally conduct all law enforcement operations in a manner that is consistent with their mandate to enforce the nation's immigration and customs laws and in accordance with applicable U.S. law and regulation. Attached for your information are copies of the policies.

Question#:	35
Topic:	ICE protocol - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: In a Washington Post article, Pat Reilly, an ICE spokeswoman who attended a hearing as an observer of the National Commission on ICE Misconduct and Violations of the 4th Amendment Rights focused on ICE enforcement actions, said that ICE's procedures for questioning workers during raids at businesses are fair and humane and have been routinely upheld by courts.

Is it fair and humane to tie plastic handcuffs around the wrists of workers who reveal immediately that they are U.S. citizens?

Is it fair and humane to detain U.S. citizens for eight hours in an ICE enforcement action, several hours without food or contact with family, attorneys, or union representation?

Is it fair and humane to detain and transfer a lawful permanent resident miles away from his home and work, then release him without any money or way to get home?

Is it humane to prohibit pregnant mothers from using the restroom?

Is it fair and humane to have a blanket policy to put ankle bracelets on all persons who are explicitly released on humanitarian grounds, regardless of whether they are flight risks or threats to the community?

Response:
ICE is unaware of any instances where individuals encountered during worksite enforcement actions who gave a credible response of being a United States citizen were handcuffed. If the committee has information regarding any such instances, please provide that information so that it may be investigated.

During any worksite enforcement operation, an agent or immigration officer may question, without a warrant, any alien or person believed to be an alien as to his right to be, or to remain, in the United States. INA § 287(a)(1); 8 U.S.C. § 1357(a)(1)). Consensual questioning, alone, does not constitute a Fourth Amendment seizure. See INS v. Delgado, 466 U.S. 210, 104 S.Ct. 1758 (1984). The person being interviewed, however, must voluntarily agree to remain during questioning. If the individual refuses to speak to the agent or officer, absent reasonable suspicion that the individual is unlawfully present, the individual may not be detained.

Question#:	35
Topic:	ICE protocol - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Aliens unlawfully present in the United States often falsely claim to be United States citizens in order to avoid arrest during worksite enforcement operations. During questioning, if the individual gives a credible reply that he or she is a United States citizen, the questioning will end immediately. If, on the other hand the individual gives an unsatisfactory response or admits that he or she is an alien, the individual will then be asked to produce evidence that s/he is lawfully present and authorized to work in the United States. If a person refuses to speak to the agent, absent reasonable articulable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual will not be detained and must be permitted to terminate the consensual encounter. But, if the ICE agent develops reasonable suspicion that the employee is falsely representing her/himself to be United States citizen, an additional period of brief detention is justified while investigating identity and immigration status of the individual. See U.S. v. Cortez, 449 U.S. 411, 101 S.Ct. 690 (1981); see also, U.S. v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574 (1971) If that investigation further develops probable cause to believe that a violation of law has occurred, that individual may then be arrested.

Question: Is it fair and humane to detain U.S. citizens for eight hours in an ICE enforcement action, several hours without food or contact with family, attorneys, or union representation?

Response: As stated earlier, once an ICE agent determines that an individual is a United States citizen, absent any other evidence of a criminal violation of law, the questioning of that individual must end and s/he is permitted to leave the premises. ICE is unaware of any instances where United States citizens were detained for eight hours during a worksite enforcement operation. If the committee has information regarding any such instances, please provide that information so that it may be investigated.

Question: Is it fair and humane to detain and transfer a lawful permanent resident miles away from his home and work, then release him without any money or way to get home?

Response: ICE is unaware of an instance where a lawful permanent resident was detained miles away from his home and work, then released without any money or way to get home. If the committee has specific information regarding such occurrences, please provide that information so that it may be investigated.

Question: Is it humane to prohibit pregnant mothers from using the restroom?

Response: It is ICE's policy when conducting worksite enforcement actions to treat all persons humanely to include providing adequate food, water, and access to restrooms in

Question#:	35
Topic:	ICE protocol - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

accordance with existing enforcement procedures. ICE is unaware of any instances where pregnant mothers were denied access to restrooms during any enforcement actions. If the committee has specific information regarding such occurrences, please provide that information so that it may be investigated.

Question: Is it fair and humane to have a blanket policy to put ankle bracelets on all persons who are explicitly released on humanitarian grounds, regardless of whether they are flight risks or threats to the community?

Response: ICE does not have a blanket policy of placing electronic monitoring devices on all individuals arrested during enforcement actions and subsequently released for humanitarian concerns. ICE looks at a myriad of factors in order to employ the best humanitarian solutions possible while accomplishing an enforcement operation. ICE reviews each individual's circumstances and makes custody determinations based on that individual's flight risk and danger to the community. It may be appropriate to release an individual on bond, on an order of recognizance or supervision, or under a method of alternative detention such as an electronic monitoring device or telephonic reporting. Each individual circumstance is different and is carefully evaluated to ensure that the most appropriate form of release and monitoring is employed.

Question#:	36
Topic:	ICE protocol - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: In a workplace enforcement action, if workers who have already been questioned and verified to be U.S. citizens are restricted to a small room and prohibited from leaving that room until given permission by an ICE agent, are those workers being detained? If not, what is your concept of detention? Please give us an example.

Response: Once an individual is determined to be a United States citizen, absent any other evidence of a criminal violation of law, that individual is permitted to leave the premises. In past operations, employers have directed employees legally present and authorized to work (as an example U.S. citizens and lawful permanent residents) to congregate in a specific area of the facility so that they will be available to resume work immediately upon ICE vacating the premises. However, if the employer fails to provide the U.S. citizen workers with guidance those individuals are escorted off the premises and are not detained. If the committee has information regarding any instances where United States citizens were detained in such a manner, please provide that information so that it may be investigated.

Question#:	37
Topic:	ICE protocol - 4
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: When ICE detains people who are later confirmed to be U.S. citizens, does ICE compensate these citizens for their time if they miss work? Are U.S. citizens reimbursed for travel if ICE transports them away from their home and work, and then finds them to be U.S. citizens? If a U.S. citizen has endured such practices, what do you think should be the proper compensation? Is a formal DHS apology by appropriate in such circumstances?

Response: It is important to understand that ICE officers frequently deal with aliens who are not lawfully present in the United States yet falsely claim to be citizens. It is not always a simple matter to determine who is a citizen, for example, when an alien claims to have derived citizenship through a U.S. citizen parent. Because of the complexities in immigration law, the litigation of citizenship issues, including appeals, can be a protracted process. Therefore, the fact that ICE officers detain a person who is later confirmed as a U.S. citizen does not necessarily mean the officers acted improperly, as long as the officers had sufficient evidence to justify the detention and acted diligently to verify the detained person's claims.

In a hypothetical situation in which a person believed that ICE had violated his or her civil rights, Department policies and federal law provide a number of avenues of redress. These include the right to complain to the Department's Office of Inspector General, the Office for Civil Rights and Civil Liberties, or the ICE Office of Professional Responsibility. Immigration detainees are also afforded a grievance procedure. A person seeking damages may file an administrative claim under the Federal Tort Claims Act, 28 U.S.C. §§ 1346 (b), 2671-2680. Subject to certain exceptions and limitations, the Federal Tort Claims Act permits recovery of damages for torts committed by federal employees acting within the scope of employment under circumstances where a private person would be liable under the applicable state law.

While it would not be appropriate to comment on any particular case – particularly a matter that may be in litigation at this time – the law may permit compensation for any losses or damage attributable to the agency's conduct. The appropriateness of any specific remedy or response must depend on the particular facts of each case.

Question#:	38
Topic:	ICE protocol - 5
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What intake process does ICE utilize to ascertain if an individual is a U.S. citizen or a legal immigrant before detaining a person? Does ICE keep track of how often errors in citizenship determination occur? If not, does DHS have plans to begin tracking such errors?

Response: The same constitutional principles that govern encounters between law enforcement and citizens encountered in public places apply to immigration enforcement operations, including those conducted at the worksite.

A "nonimmigrant" (legally present in the United States) must provide full and truthful information regarding his or her immigration status when requested to do so by a law enforcement officer, and failure to do so shall constitute a failure to maintain his or her nonimmigrant status under INA § 237(a)(1)(C)(i), 8 U.S.C § 1227 (a)(1)(C)(i); see also 8 C.F.R.§ 214.1(f).

ICE agents or officers use a variety of methods to assess whether an individual is legally present in the country. Furthermore, the use of the different methods of ascertaining one's status reflects varying operational necessities. These methods include, but are not limited to:

i. Questioning;
ii. Inspection of documents produced as evidence of legal status;
iii. Consulting the Alien File (A-File) of the alien (or U.S. citizen) if one exists;
iv. Performing DHS law enforcement and benefits database checks;
v. Performing National Crimes Information Center (NCIC) checks (including pursuing any biometric information from other agency arrests), and;
vi. Performing commercial database checks to further identify the subject and what their current address may be in order to minimize making unnecessary contact at previous addresses.

Where evidence produced is insufficient to establish legal status, individuals are generally taken into custody. Where new evidence is adduced, ICE revisits the initial determination, as for example, in the case of an immigrant who fails to produce any evidence of his/her legal status, which s/he is required to keep in his/her possession, but whose claims are later validated through use of DHS databases mentioned. Determinations otherwise found to be erroneous are expeditiously addressed. Operations

Question#:	38
Topic:	ICE protocol - 5
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

are continually reviewed with a view towards improving their efficacy, to include the interactions, documentary proof, and facts specific to each custody determination.

ICE does not keep track, nor are there any plans for ICE to track, this data.

Question#:	39
Topic:	ICE protocol - 6
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: If ICE has a protocol regarding the following situations, please confirm whether it is in writing and whether it has been disseminated to ICE field agents. In addition, please identify the mechanisms in place to hold ICE officers accountable when such protocols are violated.

Use of force or humiliation in executing warrants and related interrogations.

ICE display and use of weapons during interrogations and arrests.

ICE cooperation and coordination with state and local law enforcement during large-scale operations.

Whether ICE officers are required to identify themselves when entering a location for enforcement purposes.

Whether confined individuals are provided access to a telephone.

Whether confined individuals are notified of their rights in a language they can understand.

ICE methodology for notifying agents about humanitarian standards regarding enforcement actions and holding them accountable when such standards are violated.

Response: Detailed information about the specific situations you raise appears below. In all cases, ICE has a written policy that addresses misconduct, which is applicable to all ICE Special Agents. All allegations made against employees are investigated promptly, thoroughly and impartially. If it is determined that ICE personnel have violated policy, immediate corrective action is taken.

ICE takes pride in being first and foremost a federal law enforcement agency with a mandate to protect national security and public safety by enforcing the nation's immigration and customs laws. ICE accomplishes this in a manner that is lawful, professional, humane, and by taking extraordinary steps to identify, document, and act on humanitarian concerns.

Question#:	39
Topic:	ICE protocol - 6
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Use of force or humiliation in executing warrants and related interrogations.

Response: ICE has a protocol regarding the use of force. This written policy is part of the Criminal Investigator Training Program at the Federal Law Enforcement Training Center (FLETC) where ICE thoroughly trains its investigative personnel prior to deployment to a field office as ICE Special Agents.

Question: ICE display and use of weapons during interrogations and arrests.

Response: Use or display of weapons in any context would fall under ICE's use of force policy, which is part of the Criminal Investigator Training Program at FLETC.

Question: ICE cooperation and coordination with state and local law enforcement during large-scale operations.

Response: When conducting worksite enforcement operations, ICE considers the safety and well-being of everyone involved to be of paramount importance. This includes ensuring the safety of all ICE personnel, the targets of the operations, as well as the public at large.

Prior to conducting large worksite enforcement operations, ICE will review all aspects of the proposed operation to ensure the safety and security of the operation. In order to ensure the safety and security of operations, notifications will generally be made to state law enforcement agencies and the state and local administrations of any impacted jurisdictions; however, such notifications are not mandatory and may not be appropriate in certain circumstances. When advanced notification is given, it is with sufficient notice to allow affected entities time to assess and prepare for any anticipated impact on their community. In addition, in some instances ICE may provide advance notification of an operation directly to a social service agency.

Question: Whether ICE officers are required to identify themselves when entering a location for enforcement purposes.

Response: When executing a federal search warrant during an enforcement operation, ICE Special Agents are required to identify themselves. Also, ICE Special Agents are required by policy to wear law enforcement insignia or identification, unless operational circumstances dictate otherwise, when conducting worksite enforcement operations. In all cases, the display of the agent's badge from the jacket or shirt pocket or belt area is recommended if ready identification is operationally advisable.

Question#:	39
Topic:	ICE protocol - 6
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Whether confined individuals are provided access to a telephone.

Response: In accordance with existing law and procedure, ICE grants arrestees an opportunity to meet or speak by phone with legal counsel and consular officers. As soon as practicable after processing, ICE facilitates all such communication, as well as communication with family members, by providing free and reasonable telephone service. All facilities housing ICE detainees must provide reasonable and equitable access to telephone service as provided for in the ICE National Detention Standards.

Question: Whether confined individuals are notified of their rights in a language they can understand.

Response: In accordance with existing law and procedure, during processing ICE provides arrestees with oral notice, and written notice where practical, in their first language of their right to legal counsel and communication with consular officers, along with a list of pro bono legal services in the area.

Question: ICE methodology for notifying agents about humanitarian standards regarding enforcement actions and holding them accountable when such standards are violated.

Response: ICE has distributed the humanitarian guidelines to all field offices. These guidelines have been in practice for a year. Additionally, these guidelines are a component of ICE's Worksite Enforcement course curriculum. The guidelines are not mandatory. They detail factors for field agents and officers to consider when planning an enforcement operation. The field managers must ensure that the operation is planned in accordance with ICE policy and law. Field managers and HQ components address alleged violations through investigation and reporting as appropriate. ICE invites the Committee to provide facts and circumstances of any known instances of violations.

Question#:	40
Topic:	ICE protocol - 7
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: We understand that ICE has issued guidelines involving the conduct of enforcement raids around the country. Could you explain the parameters of the guidance that was issued?

We commend the installation of toll free hotlines for family members to locate their loved ones swept by an enforcement action, but it only pertains to enforcement actions involving 150 or more persons. Why has DHS not employed this policy with actions involving a smaller number of persons?

What provisions have been made to ensure that there is access to legal service providers, particularly within the community?

What plans have been made to involve community actors, such as local NGOs, in assisting with appropriate services, such as legal advice, family reunification, and public outreach?

Response: ICE Special Agents and officers conduct law enforcement operations in accordance with our agency's statutory mandate to enforce this nation's immigration and customs laws. ICE strives to carry out this law enforcement mission in a manner that is safe and respectful of human rights, consistent with U.S. law and ICE policy. ICE has developed operational guidelines to assist field agents and officers in preparing for operations. The guidelines provide field agents and officers with a standard list of factors that are common to these operations as well as other considerations that may be applicable. After each enforcement operation, ICE conducts an assessment to determine if additional procedures or processes need to be addressed to improve the implementation of subsequent operations. In addition to these guidelines, in the case of large operations, ICE has created an unprecedented toll-free hotline so that families may easily obtain information about an alien's location or status.

Question: We commend the installation of toll free hotlines for family members to locate their loved ones swept by an enforcement action, but it only pertains to enforcement actions involving 150 or more persons. Why has DHS not employed this policy with actions involving a smaller number of persons?

Response: As a matter of practice, ICE utilizes most if not all of these guidelines in all worksite enforcement operations. However, ICE reserves the right at its discretion to apply those portions of the guidelines operationally necessary for the successful

Question#:	40
Topic:	ICE protocol - 7
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

implementation of an enforcement action. For example, it is unnecessary to implement the toll-free hotline in small scale worksite enforcement operations where detained aliens are unlikely to be removed from the immediate area or are unlikely to be housed in multiple detention facilities. In these circumstances, the local ICE field office is able to provide concerned relatives and friends information regarding the location of their family members.

Question: What provisions have been made to ensure that there is access to legal service providers, particularly within the community?

Response: In accordance with existing law and procedure, during processing ICE provides arrestees with oral notice, and written where practical, in their native language of their right to legal counsel and communication with consular officers, along with a list of pro bono legal services in the area.

Question: What plans have been made to involve community actors, such as local NGOs, in assisting with appropriate services, such as legal advice, family reunification, and public outreach?

Response: In addition to coordination with the Division of Immigration Health Services and the relevant state or local social service agency), ICE provides notification to key area nongovernmental organizations during worksite operations. ICE provides the NGOs with the name and contact information of an ICE representative knowledgeable of a relevant worksite operation. This notification enlists NGOs assistance in identifying any humanitarian issues that are not brought to the attention of ICE.

Question#:	41
Topic:	ICE protocol - 8
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What protections are in place to ensure that U.S. citizens who are mentally disabled are not caught up in administrative removal, expedited removal, or are asked to sign stipulated removal orders?

Response: Prior to being transferred to an ICE detention center, individuals are screened by the Public Health Service. ICE officers complete a medical screening form for incoming detainees that evaluates both physical and mental health. In addition, detainees often come into ICE custody directly from state prisons and county jails, after having been convicted of criminal offenses, in which case they may have already been found mentally competent by the criminal court.

Care is taken to ensure that any claims by an ICE detainee of U.S. citizenship, from a mentally disabled person or not, are properly reviewed and handled. Should they suspect the presence of a mental disability during the course of an interview, detention in-processing or other removal-related procedure, ICE employees are instructed to raise the situation to their supervisors who will address each situation individually. Once in custody, ICE relies upon extensive written procedures governing the care and attention of aliens with mental disabilities. Furthermore, prior to their repatriation, proper medical authorities review the medical history of all aliens being removed from the United States, and confirm whether each individual is medically able to travel.

If an individual is determined by ICE to be a U.S. citizen, they are immediately released from custody. If citizenship cannot be immediately determined, ICE actively researches a claim to U.S. citizenship and, upon locating confirming evidence of U.S. citizenship, ICE releases the detainee.

Question#:	42
Topic:	ICE protocol - 9
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What specific steps do ICE officers take to ensure that mentally ill individuals who are not capable of exercising a voluntary, knowing and intelligent waiver of their rights at the time of deportation are not mistakenly deported?

Response: Prior to being transferred to an ICE detention center, individuals are screened by the Public Health Service. ICE officers complete a medical screening form for incoming detainees that evaluates both physical and mental health. In addition, detainees often come into ICE custody directly from state prisons and county jails, after having been convicted of criminal offenses, in which case they may have already been found mentally competent by the criminal court.

Additionally when the individual is being interviewed during processing into ICE custody, ICE officers have the opportunity to observe the individual for any signs of a mental disability. At the conclusion of any explanation of rights, the individual is asked if he or she understands those rights. If they do not appear to understand they are not forced to sign the document. If the individual is already in expedited removal proceedings they are placed into administrative proceedings under section 240 of the INA. These individuals are treated just like anyone else who does not appear to understand the process or appears unable to comprehend the waiver of rights.

If ICE becomes aware of a mental deficiency through the course of the interview, detention in-processing, or other removal related procedures, the situation is addressed on a case by case basis.

Question#:	43
Topic:	ICE protocol - 10
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: What written policies or guidelines has ICE issued regarding steps to be undertaken by ICE personnel during the voluntary departure or removal process to ensure that mentally disabled U.S. citizens are not deported from the United States? Please share any such materials with the Committee.

Response: Prior to being transferred to an ICE detention center, individuals are screened by the Public Health Service. ICE officers complete a medical screening form for incoming detainees using DIHS Form 794, which instructs agents to inquire about physical and mental health. In addition, detainees often come into ICE custody directly from state prisons and county jails, after having been convicted of criminal offenses, in which case they may have already been found mentally competent by the criminal courts.

ICE removal procedures are designed to identify, arrest, process and remove from the United States only aliens who have violated U.S. immigration law. ICE has no specific policy, except the fundamental legal doctrine taught in all ICE training programs that only non-citizens may be removed from the United States for immigration violations.

ICE officers are extensively trained to question and identify persons as to their nationality and citizenship. Because the Government has the burden of proof to establish alienage and deportability in removal proceedings, ICE officers ensure that sufficient evidence, often including affidavits provided by the person in custody, substantiates the charges brought. In addition to these statements, however, ICE trains its officers to collect physical evidence when available, including passports and other identifying documentation such as driver's licenses, to supplement and support the Government's case. When ICE undertakes to obtain travel documents for an alien ordered removed from the United States, the alien's identity and nationality is once again screened by government officials of the country to which he is being removed.

Question#:	44
Topic:	legal - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: We understand that DHS has issued, and inherited from INS prosecutorial discretion, guidance regarding the enforcement of immigration laws against noncitizens. Both the October 2005 memorandum by William Howard and the November 2000 memorandum for former INS Commissioner Doris Meissner identify a series of humanitarian factors that should be considered (medical conditions, availability of an immigration benefit, etc.) before an ICE officer determines whether to arrest a noncitizen, place him or her in removal proceedings or terminate proceedings. Likewise, ICE has issued humanitarian protocol for use during a large worksite operation. However, many cases of noncitizens being arrested, detained and removed following an ICE action, it appears that ICE is not following prosecutorial discretion guidelines.

For example, in a recent arrest of the family of an Immigration Subcommittee witness, we were told by ICE Congressional Liaison staff that the arrest was the result of wholesale action upon a list of outstanding removal orders. It is our understanding that there was no attention paid to the specific circumstances of that family's case, nor of any others with outstanding orders of removal. If there was such attention paid, the circumstances of the Congressional witness' family's case would have revealed that the family could not be returned to Vietnam based upon a judicial order, nor to Germany where records show Germany would not accept them. Furthermore, if ICE had paid attention to the individual circumstances of that case, they would have known that the family has diligently reported to CIS, a division of DHS like ICE, on an annual basis to obtain employment authorization.

Please describe any metric the DHS has to ensure that the October 2005 and November 2000 guidance is being followed.

Please describe how and if field staff are educated and informed about such guidance.

Question: Please describe any metric the DHS has to ensure that the October 2005 and November 2000 guidance is being followed.

Response: As described more fully below, prosecutorial discretion is one of many tools that ICE officers may utilize to ensure that enforcement of the law is conducted with national concerns and the interests of justice in mind. Field guidance directs ICE officers on the use of prosecutorial discretion but does not require a fixed result or

Question#:	44
Topic:	legal - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

commit them to employ any particular consideration in all cases; determinations are made on a case by case basis. Accordingly, as application of prosecutorial discretion is not mandatory, ICE does not employ metrics to determine its application in the field.

Question: Please describe how and if field staff are educated and informed about such guidance.

Response: To adequately prepare ICE personnel to deal with the myriad of discretionary decisions they face, guidance has been issued to the field on how and when to apply prosecutorial discretion. Office of Investigation (OI) and Detention and Removal Operations (DRO) officers rely on field operational manuals, guidance provided by supervisors, and training to assist them in their decision making. Guidance is designed to ensure that officers and attorneys are able to make the best decisions possible consistent with the agency mission.

In addition to the guidance provided in memoranda and training, ICE officers and attorneys are also subject to substantial supervisory oversight to ensure that discretion is exercised appropriately. By utilizing on-the-job training and regular review of discretionary decisions by supervisors, ICE is better able to manage the complexity inherent in the oversight of discretionary decisions. To that end, we have also recently instituted an inspection program for OI field offices to help provide assurance that operations are in line with our operational objectives. We are currently in the process of developing a similar program for DRO offices.

Question#:	45
Topic:	legal - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Many individuals who are in removal proceedings are eligible for permanent residence or other forms of relief from deportation. For many, that relief may be granted by an Immigration Judge from the Executive Office for Immigration Review in an individualized, time-consuming, and costly process, including, among other things, the active participation of ICE prosecutors, who could be devoting their attention to cases involving individuals who pose true threats to public safety or national security. That same relief may be granted by an adjudications officer of the USCIS in a non-court proceeding, which involves a much-reduced expenditure of resources, and which frees up ICE attorneys and officers so they can devote their attention to the prosecution and removal of others. Unfortunately, in many immigration courts throughout the nation, cases which could be referred to USCIS for resolution remain before Immigration Judges because ICE attorneys will not relinquish authority back to the USCIS, thus tying up the courts, the ICE attorneys, and other vital enforcement resources.

What steps are taken to assure that ICE leadership communicates to its attorneys and officers in the field the importance of properly shepherding and utilizing resources so that they are not expended in ways detrimental to the key public safety and security missions of the DHS?

Response: In 2005, the Office of the Principal Legal Advisor (OPLA) for ICE directed all field legal offices to consider utilizing prosecutorial discretion in certain cases before immigration courts. Specifically, where it appears to the OPLA attorney that relief in the form of adjustment of status is clearly approvable based on an approved I-130 or I-140 and appropriate for adjudication by USCIS, the OPLA attorney is directed to consider moving to dismiss without prejudice immigration proceedings before EOIR to allow adjudication by USCIS of the application for relief.

Also, in 2007, ICE Assistant Secretary Julie Myers reminded all ICE field officers that not only were they authorized by law to exercise discretion, they were expected to do so in a judicious manner in all stages of the enforcement process. This discretion is necessarily subject to chain of command instructions and particular responsibilities and authorities of the field officer's position. Such judicious exercise of discretion can include whether to issue a Notice to Appear, or to defer enforcement of a final order of removal.

Question#:	46
Topic:	legal - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Does DHS use its discretionary authority to avoid the deportation of an individual who is a sole or primary caregiver for a child? Is there written guidance on use of discretion for these situations? How often has such discretionary authority been used? Please provide examples.

Response: DHS is committed to carrying out immigration law enforcement responsibilities in a safe, humane, and effective manner. The Department has discretionary authority in virtually any action taken that is not mandated or forbidden by law, regulation, or policy. For example, the Department has discretion whether or not to initiate removal proceedings, place aliens into custody, or appeal the decision of the immigration judge.

As a general matter, DHS employees are encouraged to exercise good judgment and discretion in determining such things as whether or not to initiate removal proceedings or place an alien in custody. Decisions regarding the exercise of discretion are fact specific and are made on a case-by-case basis. Factors considered in decisions to exercise prosecutorial discretion include criminal history, immigration history, eligibility for relief from removal, and humanitarian concerns.

Generally, our policy disfavors the detention of sole-caregivers unless the law mandates such detention. And DHS may use discretion to allow an individual to remain out of custody while a case proceeds through the immigration courts. In general, however, DHS does not use its discretionary authority to avoid deportation of an individual solely because that individual is a sole caregiver. The reason for this basic rule is that Congress has not provided a remedy for this discrete class of person. We recognize that there are instances in which an alien is deported, sometimes leaving a spouse and children behind. It is true that those individuals who violate our federal immigration laws place their family members, including children, in unfortunate situations. Notwithstanding these unfortunate circumstances, individuals are not entitled to an immigration benefit simply because they are sole-caregivers under our laws. If aliens qualify for lasting relief under our laws, immigration judges are to consider all factors relevant in a given case, including length of time in the United States, family ties, employment history, contributions to society, and other positive factors.

The former INS Commissioner's memo from 2000 provides guidance to operational components about the exercise of prosecutorial discretion. The ICE Principal Legal

Question#:	46
Topic:	legal - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Advisor, likewise, has issued guidance regarding the exercise of prosecutorial discretion by ICE attorneys.

As stated above, in general, DHS does not use its discretionary authority to avoid deportation of an individual solely because that individual is a sole caregiver. We therefore do not keep statistics on such instances. Numerous recent actions, however, demonstrate our use of discretion to allow an individual to remain out of custody while a case proceeds through the immigration courts. Most recently, during an operation in Postville, Iowa, ICE agents arrested 389 individuals on administrative charges and 302 of them were subsequently charged criminally. As part of the action, ICE identified 62 individuals who were sole caregivers or had other humanitarian concerns; they were released for humanitarian reasons.

Question#:	47
Topic:	charging documents - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Pursuant to 8 CFR Section 287.3(b), when ICE arrests an individual, it must either grant voluntary departure or determine whether the person will remain in custody and/or be placed in removal proceedings within 48 hours of arrest, "except in the event of an emergency or extraordinary circumstance."

How many times has ICE failed to make this determination within 48 hours?

How many times has that happened due to "emergency or extraordinary circumstances?"

What is considered an "emergency or extraordinary circumstance?" Please provide examples.

Question: How many times has ICE failed to make this determination within 48 hours?

Response: ICE, does not have any statistics regarding this question. If the committee is aware of any cases where ICE has failed to make the determination within 48 hours as required, we welcome your information and will investigate this information in accordance with established procedures.

Question: How many times has that happened due to "emergency or extraordinary circumstances?"

Response: ICE does not collect or maintain statistical information on this matter.

Question: What is considered an "emergency or extraordinary circumstance?" Please provide examples.

Response: "Emergency or other extraordinary circumstance" as used in 8 CFR § 287.3(d) is construed to mean

- A significant infrastructure or logistical disruption including, but not limited to, disruption caused by an act of terrorism, weather, natural catastrophe, power outage, serious transportation emergency or serious civil disturbance,
- Whenever there is a compelling law enforcement need including, but not limited to, an immigration emergency resulting in the influx of large numbers of detained

Question#:	47
Topic:	charging documents - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

aliens that overwhelms agency resources and makes it unable logistically meet the general servicing requirements, or

- Individual facts or circumstances unique to the alien including, but not limited to, the need for medical care or a particularized law enforcement need.

Question#:	48
Topic:	charging documents - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: The regulations state that noncitizens should be charged within 48 hours or longer if there is an "emergency" or "extraordinary circumstance." But neither the statute nor the regulations require that the Notice to Appear be served on a noncitizen detainee or immigration court within a specified timeframe. DHS guidance from 2004 requires that noncitizens be served an NTA within 72 hours of their arrest. However, it still allows for prolonged delay of charges and service of notice in the event of an "extraordinary circumstance" or "emergency." Furthermore, the DHS guidance does not specify when NTAs should be filed with the immigration court.

Should immigration detainees receive notice in a timely manner?

Should immigration detainees have access to an immigration court in a timely manner?

What policies do USCIS and ICE have in place in order to ensure that NTAs are issued timely and filed timely with the immigration courts?

How many individuals have been held in immigration detention pursuant to the "emergency or "extraordinary circumstance" exception?

Question: Should immigration detainees receive notice in a timely manner?

Response: Yes. However when an emergency or extraordinary circumstance exists which delays the serving of the NTA, every effort is made to serve the NTA as soon as practicable.

Question: Should immigration detainees have access to an immigration court in a timely manner?

Response: Yes, it is past and current practice to file the NTA with the immigration court as soon as practicable. Further, detainees have a right to request a bond hearing before an immigration judge at <u>any</u> time.

Question: What policies do USCIS and ICE have in place in order to ensure that NTAs are issued timely and filed timely with the immigration courts?

Question#:	48
Topic:	charging documents - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Response: Unless an emergency or extraordinary circumstance exists, ICE policy requires a custody determination and charging determination to be made within 48 hours of the alien's arrest unless logistical or infrastructure considerations exist, and subject to specified law enforcement considerations. Neither the INA nor regulations require the NTA to be served upon the alien or filed with EOIR during specified times, although it is past and current policy to serve detained aliens with NTAs within 72 hours of arrest. The NTA is to be filed with the court as soon as practicable.

Question: How many individuals have been held in immigration detention pursuant to the "emergency or "extraordinary circumstance" exception?

Response: ICE does not collect or maintain statistical information on this matter.

Question#:	49
Topic:	burden of proof
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Section 240(c)(3)(A) of the Immigration and Nationality Act states that ICE has "the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable." Furthermore, the U.S. Supreme Court has held in INS v. Woodby that "it is incumbent upon the Government in such proceedings to establish the facts supporting deportability by clear, unequivocal, and convincing evidence." 385 U.S. 276 (1966).

How does ICE define "clear and convincing evidence?" Please provide examples.

Are training materials on this provision in written form? If so, please provide them to the Committee.

In the case of a U.S. citizen, who has the burden of proof in citizenship – the U.S. citizen or ICE?

In a January 24, 2008 McClatchy newspaper article, ICE spokeswoman, Virginia Kice, stated that "[t]he burden of proof is on the individual to show they're legally entitled to be in the United States." How do you reconcile this statement with §240(c)(3)(A) of the INA and the U.S. Supreme Court's ruling in Woodby v. INS, 385 U.S. 276 (1966)?

Question: How does ICE define "clear and convincing evidence?" Please provide examples.

Response: The statutory phrase "clear and convincing evidence" is not defined except through the emergence of case law. As noted above, Woodby holds that deportability must be established by "clear, unequivocal, and convincing evidence." Thirty years later, the Congress amended the INA to provide that deportability must be established in removal proceedings by "clear and convincing" evidence. INA § 240(c)(3)(A). Whether the government has met its burden of proof in this regard, is a question of law and fact that is determined by an immigration judge, subject to review by the Board of Immigration Appeals and possibly a federal court.

In establishing that an alien is deportable under INA § 237, the government may submit to an immigration judge evidence including, but not limited to, statements from the alien that he or she was born in another country, foreign birth certificates, an alien's

Question#:	49
Topic:	burden of proof
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

admissions regarding foreign birth before the immigration judge when pleadings are taken in the case, and certified conviction records showing the alien was convicted of a crime that would render him or her removable under INA §§ 212 and 237.

Question: Are training materials on this provision in written form? If so, please provide them to the Committee.

Response: ICE officers and agents are told that "clear and convincing evidence" is the applicable burden of proof to establish deportation. There are no written training materials defining that term provided to officers and agents. However, just as in the criminal context vis-à-vis "proof beyond a reasonable doubt," officers and agents review case law and seek guidance from ICE attorneys.

ICE attorneys receive training on the applicable burdens of proof in immigration proceedings, including the burden to prove an alien deportable by "clear and convincing evidence." This training includes written training material and reflects the collective experience of agency attorneys on how to approach certain issues that are repeatedly encountered during litigation. The training was put together in anticipation that those issues would continue to arise in future litigation. This material was intended to provide guidance to agency attorneys on the approach to take upon encountering such issues in the course of litigation. Disclosure of the agency's litigation strategy would place the agency at an unfair disadvantage in the adversarial process. Accordingly, the material is subject to the attorney work product privilege. Therefore, DHS declines to disclose those materials as part of this response.

Question: In the case of a U.S. citizen, who has the burden of proof in citizenship – the U.S. citizen or ICE?

Response: Upon arrival in the United States, all applicants for admission, including aliens and U.S. citizens, must present themselves for inspection or examination at a designated Port of Entry. At the Port of Entry, it is the arriving applicant who bears the burden of proving his or her U.S. citizenship. 8 U.S.C. § 1357(b); 8 C.F.R. § 235.1(b). If an arriving applicant claims U.S. citizenship, he or she must present a valid U.S. passport upon entry (if a passport is required), and prove his or her claim to the Customs and Border Protection (CBP) officer's satisfaction. If an applicant for admission fails to satisfy the examining officer of his or her U.S. citizenship, he or she shall thereafter be inspected as an alien.

In the interior of the United States, ICE bears the burden to prove that an individual is an alien. See 8 C.F.R. § 1240.8(c). If the government cannot prove the individual is an

Question#:	49
Topic:	burden of proof
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

alien, the individual may not be detained and removal proceedings may not be initiated. ICE agents may engage in consensual encounters like any law enforcement officers. Once an individual being questioned provides a credible response that he or she is a U.S. citizen, questioning regarding alienage must stop. See, e.g., Immigration and Naturalization Service v. Delgado, 466 U.S. 210, 217, 219-220 (1984). If the individual gives an unsatisfactory response or admits that he or she is an alien, the individual may be asked to produce evidence that he or she is lawfully present in the United States. In instances in which the person claims U.S. citizenship, but the officer has reasonable suspicion to the contrary, the officer may still continue to question the person. If a person refuses to speak to the officer, absent reasonable suspicion that the person was unlawfully present or unauthorized to work in the United States, the individual is not detained and is permitted to leave.

Question: In a January 24, 2008 McClatchy newspaper article, ICE spokeswoman, Virginia Kice, stated that "[t]he burden of proof is on the individual to show they're legally entitled to be in the United States." How do you reconcile this statement with § 240(c)(3)(A) of the INA and the U.S. Supreme Court's ruling in Woodby v. INS, 385 U.S. 276 (1966)?

Response: It is the alien's burden of proof to establish by clear and convincing evidence that s/he is lawfully in the United States pursuant to a prior admission. INA § 240(c)(2)(B), see also INA § 291 (8 U.S.C. § 1361)).

INA § 240(c)(3)(A) (8 U.S.C. § 1229a(c)(3)(A) and Woodby v. INS provide that the government bears the burden of establishing that an alien who has been admitted to the United States is deportable. The allocation of the burden of proof depends on whether the alien has been admitted to the United States or is seeking admission. An alien who is applying for admission has the burden of proving that he or she is clearly and beyond doubt entitled to be admitted, and is not inadmissible [INA § 212 (8 U.S.C. § 1182)]. INA § 240(c)(2)(A) (8 U.S.C. § 1229a(c)(2)(A)).

Question#:	50
Topic:	NSEERS - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: After September 11th, the Department of Justice created the national security entry and exit registration system (NSEERS or "special registration"), a tracking scheme that required visitors from certain countries—and others whom an immigration inspector decides meet certain secret criteria—to be fingerprinted, photographed, and interrogated by immigration officers. The most controversial part of this program "called" men from 25 predominantly Muslim and Arab countries to immigration offices around the country for fingerprints, photographs and lengthy questioning by officers. This "call-in" registration program resulted in hundreds of detentions and disarray at understaffed local immigration offices. More than 13,000 men who complied with call-in registration were placed in removal proceedings.

The NSEERS program was transferred from DOJ to DHS in 2003. In December 2003, DHS announced by interim rule that it would suspend the 30-day and annual interview requirements related to NSEERS. Since this time, there have been several exchanges by advocates and Members of Congress regarding the residual effects of NSEERS. Impacted persons include individuals who: 1) are in removal proceedings as a result of violating a requirement under NSEERS; 2) did not register; 3) registered improperly; among others. Many individuals impacted by NSEERS have strong equities such as U.S. citizen family members, long employment histories in the United States, no criminal history, pending immigration applications at US Citizenship and Immigration Service (USCIS), and/or potential eligibility for a legalization program.

Do you believe the agency should terminate the NSEERS program? If not, why not?

What is the number of suspected terrorists apprehended and convicted through the NSEERS program (call-in and at ports of entry) by the Department of Justice (DOJ)?

Will you advise ICE to exercise prosecutorial discretion favorably towards those individuals who did not comply with a portion of the NSEERS program, who have strong equities (i.e., deciding not to issue a Notice to Appear, termination of removal proceedings, etc.), and do not pose a risk to security?

Please provide information about how DHS is currently using information obtained during call-in registration and how information has been collected during the NSEERS program (broken down by region; type of interview; etc.).

Please provide information about the 14,000 men placed in removal proceedings by ICE

Question#:	50
Topic:	NSEERS - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

through the NSEERS program, including how many have been deported and for what types of immigration violations.

What is the relationship between NSEERS and US-VISIT programs?

Response: NSEERS was the first part of DHS's efforts to deploy a comprehensive entry-exit system; it was also an effort to close critical security gaps at the time. Since the establishment of NSEERS, DHS has implemented a number of programs to fill many of those gaps in a more permanent and complete manner, such as the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program and Advance Passenger Information System. As we work towards implementing a comprehensive biometric entry/exit system, NSEERS continues to play an important role in protecting the Homeland by to mitigating risks and threats posed by those who seek to exploit the U.S. immigration system.

Response: The Attorney General's Office has looked into the cases of certain individuals apprehended or detected as a result of the NSEERS program. The Attorney General's Office has identified 11 of these individuals as having strong terrorist connections. None of these 11 individuals were convicted on a criminal charge; however, at least 8 have been removed from the United States or were allowed to voluntarily depart.

Response: Agents take many factors into account prior to arresting an alien for an immigration violation. ICE has at times exercised its discretion and chosen not to place aliens with pending applications in removal proceedings, but this does not mean that they cannot be placed into proceedings. Each case requires an evaluation of the pertinent facts, and a blanket decision for such a broad category is not advisable. "Prosecutorial discretion" does not mean that an alien who has violated immigration law will automatically be exempt from any consequences. Indeed, illegal aliens do not have a right to remain unlawfully in this country.

Response: Currently, ICE is not using the information collected during the NSEERS domestic "call-in" registration for any specific purpose. However, this archived information may be used in support of future ICE investigations in addition to other information available in any other DHS database. ICE does use NSEERS information collected at the port of entry to help identify nonimmigrant aliens who may have overstayed their authorized term of admission.

Question#:	50
Topic:	NSEERS - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

The information collected during the NSEERS domestic "call-in" registration is not broken down by the geographic region in which it was collected.

Response: At this time, DHS cannot verify the statistic provided by the committee. We are in the process of developing a data program to determine whether this information may be extracted from our existing data files. ICE will update the committee when this has been completed.

Response: The relationship between NSEERS and US-VISIT is that NSEERS was an initial attempt to begin the development of a comprehensive entry-exit system. Biometric data collected during NSEERS registration is now maintained in the US-VISIT IDENT database.

Question#:	51
Topic:	NSEERS - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Please provide information about whether information collected during NSEERS is duplicative of information collected through other databases, including USVISIT.

Would an expanded USVISIT program, incorporating data on all visitors to the United States, be a suitable alternative to the NSEERS program?

Please provide information about the past and existing costs of the NSEERS program, including on local immigration offices and the costs and operations associated with ICE's Compliance Enforcement Unit (CEU). Please provide information about the relationship between the CEU and the NSEERS database.

Please provide the number of people referred by CEU to investigations for an NSEERS violation.

Please provide information about whether past ICE memos regarding prosecutorial discretion are currently being followed by ICE officials when making determinations about whether to enforce immigration laws against people identified through the NSEERS program.

Please provide information about the adequacy of government's dissemination of accurate information about the NSEERS program and results of the dissemination of incorrect information.

Response: NSEERS does contain biographic information that may be found in other databases, and also contains biometric information that is housed by the US-VISIT fingerprint repository known as IDENT. However, no other single database contains all the information that is currently available in NSEERS.

Response: US-VISIT is a multi-layered program that is continuously improving the entry-exit system in the United States, while facilitating legitimate trade and travel. Once the US-VISIT program is fully implemented to include the exit requirement, it will provide the crucial information necessary on visitors to the United States for border security and facilitation purposes. Any remaining elements of NSEERS, such as port of entry arrival registration, will become part of the US-VISIT system.

Question#:	51
Topic:	NSEERS - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Response: ICE incurs costs for contract research analysts to review potential nonimmigrant overstays identified through NSEERS. In Fiscal Year 2006, contract research analysts assigned to the CEU reviewed over 35,000 leads received from NSEERS on potential overstays at a cost of $962,800. In Fiscal Year 2006, ICE field agents completed 1,477 leads on potential NSEERS violators, resulting in 648 administrative arrests. ICE field agents expended approximately 50,200 case hours in order to successfully complete the 1,477 leads, which equates to almost 30 FTEs at a cost of approximately $6.344 million. U.S. Customs and Border Protection estimates that its personnel costs for NSEERS processing in FY 2006 was $11,924,360.

Response: Since June 2003, the CEU has referred over 6,000 leads for investigations on nonimmigrant aliens that were identified through NSEERS as having overstayed their authorized term of admission.

Response: ICE offices are required to follow ICE operational and policy guidance.

Response: DHS believes that adequate efforts were made to inform the public on the NSEERS program, including publications in the Federal Register and official press releases. In addition, DHS continues to make every effort to provide updated information through its website and agency component websites.

Question#:	52
Topic:	NSEERS - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Is information that was collected through NSEERS included in the National Crime Information Center database? Is information collected through NSEERS used by the FBI?

Please provide information about whether NSEERS information was used to question, detain and arrest Arab and Muslim individuals in what was termed, "The October Plan," shortly before the national elections in 2004.

Please provide information about whether NSEERS was improperly used in implementing "The October Plan."

Please provide information about whether NSEERS data has been used by the National Security Agency in the warrantless wiretapping program.

Response: In 2003, a small sample of records containing approximately 58 NSEERS violators was included in the Immigration Violator File - a file within the National Crime Information Center database. All of the NSEERS violators have been removed from NCIC.

DHS is unable to provide any comments on behalf of the Federal Bureau of Investigation. **BEGIN LAW ENFORCEMENT SENSITIVE** However, DHS notes that as part of the NSEERS process, ICE regularly electronically transmits an extract of all biographic data related to NSEERS registrants to the FBI's Foreign Terrorist Tracking Task Force (FTTTF). **END LAW ENFORCEMENT SENSITIVE**

Response: ICE participated in a government-wide Interagency Security Plan that began shortly before the 2004 national election and remained in effect through the 2005 Presidential Inauguration. ICE's stepped-up enforcement actions involved the re-prioritization of existing leads on suspected immigration status violators according to national security criteria without regard to race, ethnicity or religion.

Response: ICE's use of NSEERS data to identify status violators and enforce our nation's immigration laws is unquestionably within its legal authorities and aligned with congressional mandates.

Question#:	52
Topic:	NSEERS - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

ICE oversees the generation and assignment of status violator leads derived from NSEERS. ICE conducts a thorough review of each lead to determine the validity of the lead. The leads are prioritized using a threat-based targeted approach to focus ICE resources on persons considered to be a higher potential threat to national security or public safety. These investigative leads are then assigned to ICE field offices nationwide for further investigation and enforcement action.

Response: DHS is unable to provide any comments on behalf of the National Security Agency.

Question#:	53
Topic:	state and local - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Under Section 287(g) of the Immigration and Nationality Act, DHS may enter into a written agreement with a city, county, or State to have designated State or local employees perform certain immigration functions at State or local expense. Section 287(g)(2) also clearly states that such State or local employees "shall have knowledge of, and adhere to" Federal immigration law. Furthermore, all 287(g) agreements must "contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws."

Please explain how state and local employees who enforce immigration laws pursuant to 287(g) agreements are trained in compliance with 287(g)(2). Please provide a copy of the training materials to this Committee.

Response: The 287(g) training program is based on the same training that ICE agents receive. It is conducted by certified instructors from FLETC. These state and local officers are held to the same standards established for federal officers enforcing immigration laws. After successful completion of the training program, each officer receives a graduation certificate. Records are maintained by FLETC, including officers' records and training materials.

Question#:	54
Topic:	state and local - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: On January 25, 2005, ICE and the Los Angeles County Sheriff's Department (LASD) entered into a memorandum of understanding under section 287(g) of the Immigration and Nationality Act, whereby which certain LASD employees may carry out certain immigration functions. On May 11, 2007, ICE, in cooperation with LASD, deported Pedro Guzman to Tijuana, Mexico.

Mr. Guzman is a U.S. citizen, born and raised in California. He is cognitively impaired and is unable to read at more than a second grade level. He knew no one in Mexico, and had no money with which he could purchase food or shelter. Mr. Guzman spent nearly three months wandering on foot in Mexico between Tijuana and Calexico before being found trying to cross the border outside a port of entry.

Were the LASD employees involved in Mr. Guzman's deportation trained in immigration law, as required by the MOU and 287(g)?

What are the procedures and protocols by which ICE ensures that State and local employees enforcing immigration laws pursuant to 287(g) agreements are acting in accordance with immigration laws and regulations? Please provide any such written protocols or procedure to this Committee.

Question: Were the LASD employees involved in Mr. Guzman's deportation trained in immigration law, as required by the MOU and 287(g)?

Response: Because this question relates to a matter that is currently in litigation, I must respectfully decline to comment on Mr. Guzman's specific allegations.

Question: What are the procedures and protocols by which ICE ensures that State and local employees enforcing immigration laws pursuant to 287(g) agreements are acting in accordance with immigration laws and regulations? Please provide any such written protocols or procedure to this Committee.

Response: ICE has statutory authority to enter into a Memorandum of Agreement (MOA) with states or their political subdivisions under section 287(g) of the Immigration and Nationality Act (287(g)). MOAs include a requirement that a "Steering Committee" be established to monitor implementation of the agreement. The Steering Committee is required to periodically meet, review and assess the immigration enforcement activities

Question#:	54
Topic:	state and local - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

conducted by the participating law enforcement agency (LEA) and ensure compliance with the terms of the MOA. Steering Committee participants are provided specific information on case reviews, individual participants, complaints filed, media coverage and, to the extent practicable, statistical information on increased enforcement activity in the geographic area. In most cases the committee initially convenes no later than nine months after the initial class of 287(g) LEA officers graduate. The Steering Committee generally includes field leadership from ICE and the LEA.

In addition, immigration enforcement activities by state and local law enforcement personnel are supervised and directed by ICE supervisory agents and officers, or a designated team leader, who reviews enforcement activities on an ongoing basis to ensure the agency's and individual officer's compliance with the MOA and its accompanying procedures and to assess the need for individual additional training or guidance. Participating LEA personnel are not authorized to perform immigration officer functions, except when working under the supervision of an ICE officer, or when acting pursuant to the guidance provided by an ICE agent. Participating LEA personnel are required to give timely notice to the ICE supervisory officer within 24 hours of any detainer issued under the authorities set forth in the Memorandum of Agreement.
Further, the ICE Office of State and Local Coordination (OSLC) was established on December 3, 2007, and oversight of the 287(g) program was assigned to OSLC in February 2008. OLSC is currently in the process of establishing protocols and scheduling audits of all agencies participating in the 287(g) program prior to January 1, 2008.

ICE has additional material that it would be happy to provide the Committee in a briefing.

Question#:	55
Topic:	namecheck - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: FBI conducts name checks for U.S. Citizenship and Immigration Services (USCIS), which uses the results, in addition to other criminal, immigration and national security checks, to complete adjudication of certain applications for immigration benefits, including naturalization and adjustment of status. We have been told informally that there are over 300,000 USCIS requests for name checks pending with the FBI. Of those, over 130,000 have been pending for more than six months, 46,000 have been pending for two years, and 25,000 have been pending for more than 25,000. Because of the delays in processing name checks, approximately 4,500 law suits, including at least eight class actions, have been filed seeking mandamus relief. U.S. Attorneys and the Office of Immigration Litigation (OIL) are called on to defend these actions.

How many USCIS-requested name checks are currently pending with the FBI? How many have been pending for more than six months? For over one year? For over two years? For over three years? For over four years?

Response: According to USCIS automated records, as of May 20, 2008, there were 238,995 name checks pending at the FBI. Of those, 169,645 were older than 6 months; 63,434 were older than 1 year; 13,788 were older than 2 years, 1,304 were older than 3 years and 25 pending name checks were older than 4 years. A reconciliation project is underway between USCIS systems data and FBI name check response data to ensure that all name check requests have been identified. The FBI National Name Check Program was confident that it had eliminated all name checks pending over four years as of March 31, 2008. Confirmation of this fact will be possible once the reconciliation project is complete.

Question: In both raw number and percentage terms, what is the incidence of "hits" the FBI finds in connection with USCIS name check requests? What are the most common reasons for these "hits"?

Response: USCIS received 2,075,741 FBI Name Check responses in fiscal year 2007. Of those, 3,370 or 0.16% were Positive Responses. A "hit" is a possible match with a name in an FBI record. The FBI records consist of administrative, applicant, criminal, personnel and other files compiled for law enforcement purposes.

Question: What steps is DHS taking to reduce the backlog of FBI name checks?

Response: USCIS is working aggressively with the FBI to address the name check

Question#:	55
Topic:	namecheck - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

backlog through both process improvements and substantially increased capacity at the FBI dedicated to USCIS workload.

Through both higher USCIS fees and special appropriations from the Congress, DHS identified and has allocated more than $34.5 million to meet the goal of eliminating the FBI name check backlog. These funds have been used substantially to support the hiring of additional staff and contractors by the FBI's National Name Check Program (NNCP) to address the name check backlog. USCIS has finalized a spend plan that extends and expands the contractor and permanent workforce at the NNCP through most of FY 2009. More than 252 contractors and 50 FBI staff are now on-board. That number, which will grow further in the coming few months, is up from a small number of NNCP contractors and employees last year at this time.

USCIS and FBI have jointly agreed to process improvements which refine the focus to concentrate on information within FBI files which is critical to adjudication decisions and security needs. For those persons with pending adjustment of status applications, such applications will be approved if the individual is otherwise eligible and no actionable derogatory or adverse information has been returned by the FBI within 180 days. Any applications that are approved under this policy will be closely monitored and should any actionable adverse information be returned from the FBI, DHS can initiate removal proceedings.

Initial results of these efforts are positive. But this is just the beginning. We are confident that over the next several months we will see dramatic progress in reducing FBI's pending name check request backlog. Our joint goal with the FBI will be to completely eliminate this backlog by the summer of 2009.

Question: In terms of man hours and cost, what resources is DHS devoting to defending law suits relating to FBI name check delays?

Response: At least 50 attorneys handle litigation issues for the Office of Chief Counsel, and those attorneys devote approximately 70 percent of their time to FBI name check litigation. That means that, on a weekly basis, approximately 1400 attorney hours from the USCIS' legal program are devoted to FBI name check litigation. USCIS does not at this time have an accurate methodology to determine actual costs to DHS to defend lawsuits challenging FBI name check delays.

Question#:	56
Topic:	namecheck - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: It is our understanding that a memorandum of agreement was signed between DHS and the FBI last year to address background check issues. We have also been informally told that DHS had hoped that the new procedures would lead to as much as a 40% drop in the backlog. We understand the new process hasn't worked out to that degree.

What are the next steps DHS is taking to resolve the name check backlog now that the 2007 MOU has failed to yield the results that were projected?

Response: A joint plan has been developed between USCIS and the FBI that will result in the elimination of the FBI name check backlog by the spring of 2009, and achievement of a sustainable processing timeline of 30 days for 98% of name check requests and 90 days for the remaining 2%. The end state goal is set for June 2009. This plan was transmitted to the House Judiciary Committee on April 8, 2008.

Question#:	57
Topic:	namecheck - 3
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: How many lawsuits have been brought against the USCIS because of name check delays in the last 5 years? How many of those lawsuits are still pending? What percentage of the total lawsuits filed against DHS regarding immigration benefits are related to name check delays? How much does it cost DHS to defend these name check lawsuits? What is the disposition of the lawsuits that are no longer pending?

Response: USCIS has reliable data from the beginning of Fiscal Year 2005 (October 2004) to the present time relating to name check related litigation. Counting from October 2004, the number of suits brought against USCIS relating to delays because of name checks total approximately 8,000 to date.

The number of lawsuits pending is always changing as old suits are concluded and new suits are filed, but there are approximately 2,800 suits still pending due to delays related to name checks. Based on the historical data, approximately 70% of the immigration benefits litigation filed against USCIS from FY 2005 until the present has been related to name check delays.

USCIS does not at this time have an accurate methodology to determine actual costs to DHS to defend lawsuits challenging FBI name check delays.

USCIS has not developed detailed statistics of the results at this time. Anecdotally, the vast majority of the cases are concluded by voluntary dismissal or dismissal due to mootness. Some cases have been dismissed on jurisdictional grounds. Other cases result in orders of remand or orders of mandamus specifying a time limit to conclude adjudication. In a handful of cases, courts have taken jurisdiction in naturalization cases and ordered naturalization of the plaintiff after a hearing.

Question#:	58
Topic:	Backlog - 1
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: The inability of the USCIS to adequately address the volume of naturalization applications received in the last fourteen months highlights a deeply-rooted problem: the inability of the USCIS to anticipate events and to develop and implement plans to address those events. In the case of the naturalization applications, the agency was well aware for a considerable period of time that there would be a rapid rise in the volume of applications. Nevertheless, it was only in the last few months that the agency took any steps to address the volume of applications.

What is being done to ensure that senior managers are equipped to anticipate events and to develop and implement programs to respond to changes in conditions that may rapidly occur in the future, in an effort to avoid another avoidable backlog in immigration applications?

Response: Please note that the answer to this question is contained in the response to QFR 59.

Question#:	59
Topic:	Backlog - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Based upon a very quick assessment by the Congressional Research Service and staff on the Judiciary Committee, it seems very clear that proposed fee increases invariably lead to spikes in application receipts.

For example, on February 3, 2004, DHS published a proposed rule that would have increased naturalization application fees from $260 to $320. In the 12 months prior to the proposed rule, naturalization application receipts averaged approximately 43,800 per month. In February 2004, when the proposed rule announced, receipts immediately rose to 51,411. In March, receipts rose even further to 75,657, almost a 100% increase from the pre-rule average.

Before that, on August 8, 2001, the former INS published a proposed rule that would have increased naturalization application fees from $225 to $260, a tiny increase compared to the one DHS just implemented. Yet despite the small increase, there was a significant rise in applications. In the 12 months prior to the proposed rule, naturalization application receipts averaged approximately 39,100 per month. In August 2001, when the proposed rule was announced, receipts immediately rose to 50,638. And receipts continued to rise over the next several months: 64,488 in September; 56,632 in October; 88,414 in November and so on.

There is a spike in 1998, even after giant spikes in applications from immigrants seeking to naturalize in the wake of the discussions surrounding the 1996 immigration act (IIRIRA). The INS published a proposed rule on January 12, 1998, in which the INS sought to increase naturalization application fees from $95 to $225. The proposed rule led to a small spike in applications, from 63,069 in January to 85,692 in February and 103,225 in March.

How did DHS fail to anticipate the latest increase in receipts given the history on the relation between increases in receipts and fees?

Given the history described above regarding the level of increase in naturalization applications just before a fee increase, how could the agency have estimated, when it proposed the fee increase, that the naturalization workload would increase by only 4,000 cases for FY 2008 and FY 2009?

Although CIS has officially stated that they could not have anticipated the high level of increase that occurred with the 2007 fee increase, it appears no plans were made to

Question#:	59
Topic:	Backlog - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

address any level of increase in receipts until well after the fee was proposed. When were plans developed to address an inevitable increase in receipts? What are those plans? When were they fully implemented?

Response: Many things can affect demand for immigration benefits. That is particularly true for naturalization since many things, individually or in combination, can cause an individual to decide they want to commit to becoming an American citizen. The attached two charts (March 5 QFRs Attachment A and March 5 QFRs Attachment B) illustrate this by showing the trend in monthly receipts since 1991 and overlaying some relevant events.

As the charts show, the announcement of a fee increase often leads to a temporary increase in demand before the increase takes effect. It is certainly natural that a customer thinking of filing may decide to file earlier to take advantage of an opportunity to file before prices go up. Sometimes that increase has occurred after a proposed rule is announced; other times when a final rule is announced. Since an announcement of a fee change usually encourages prospective immigrants thinking about filing to act earlier than they otherwise might have, the surge is often followed by a dip in demand. In some instances, the surge occurred once a final rule was published, potential applicants reacted because the fee increase was now a certainty, and then demand dropped. At other times, there was a surge based on a proposed rule, followed by an actual drop in filings in the months before the fee change took effect. For example, the Congressional Research Service pointed to what was almost a 50% increase in demand in January and February 1999 compared with December after we published a proposed rule announcing what continues to be the largest percentage increase in naturalization fees. The fact that January and February receipts are typically higher than December accounts for a portion of this difference. But after that surge, we saw a 34% dip in receipts in the 2 months before the price changes took effect compared to the same months the prior year.

In FY 2006 we received almost 731,000 naturalization applications. On February 1, 2007 USCIS published a proposed rule alerting customers to the possibility of a fee increase. The final rule, effective July 31, 2007, was implemented with 60 days advance notice. One of the reasons for that advance notification was specifically to give potential applicants an opportunity to submit their application before the fee increase.

In fiscal year 2007, we saw an increase in naturalization filings over the course of the year. We were aware of citizenship drives, and of the fact that some organizations had a goal of a million naturalization applications being filed during the year, and were using the immigration debate, upcoming elections the prospect of a fee increase, and other events to convince people to apply.

Question#:	59
Topic:	Backlog - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

During the first four months of FY2007, before we published the proposed fee increase, we received almost 288,000 naturalization applications. That was up 48% over the same period the prior year. We saw an additional increase once we published the proposed rule. Overall from October through May, naturalization receipts were about 55% above the prior year. USCIS initiated 2 reprogramming actions in the summer of FY 2007 in part designed to increase the amount of overtime we could commit to processing the additional volume of applications. Over the year we also made changes that resulted in an increase in naturalization completions in the latter months of the year.

During the 60 day period between when we announced the effective date of the new fees and those new fees actually took effect, we did see a surge of applications. For most products the average increase was about 17%, followed by a dip in receipts in the first few months after the new fees took effect. The two exceptions were those products affected by the opening of a unique opportunity for persons to apply for permanent residence created by the Department of State's July visa bulletin, and naturalization.

The issue here isn't whether it was reasonable to anticipate a surge of naturalization applications. The issue is the scale of the surge. In June and July we received over 612,000 applications, with 460,000 received in July alone. As you can see from the earlier naturalization receipt chart, the surge in July not only dwarfs any prior surge, it dwarfs what we received in any month over the past 26 years.

Even if someone were to accept the premise that an individual's decision to choose to become an American would be made based solely on price, several things clearly signal that the dramatic increase in filings was not simply generated by the fee rule. As mentioned, when we see a fee stimulated surge it is often followed by a dip in filings. That lessens the long term impact of the surge. Filings indeed dropped in August and September following the surge, and were about 86,000 lower than same months the prior year. That decline kept the total volume of cases filed during the year to almost 1.4 million, close to double what was filed the prior year.

In the early months of FY 2008 naturalization filings continued to be somewhat below normal, leading USCIS to drop its projection of naturalization filings this year by about 100,000. In the wake of the surge of about 650,000 in FY 2007, a relatively modest drop of only 100,000 for FY 2008 suggests other factors generated much of the additional filings we experienced last year.

To manage the initial processing of this extraordinary workload of incoming applications, USCIS promptly expanded work hours, added shifts, and detailed 84 staff to our Service

Question#:	59
Topic:	Backlog - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Centers. We also hired additional contract staff. As early as June of 2007, USCIS was able to inform the public on receipting progress; and thanks to a committed corps of Service Center employees and contractors, we were able to maintain our commitment to process employment authorization cards for individuals within the 90-day regulatory requirement.

A critical component of the strategy to address the workload is to quickly grow our workforce. New resources from the 2007 fee rule will support the hiring of 1,500 new employees, and the revenue from fees associated with applications filed this summer is funding an additional 1,800 Federal and contract employees. USCIS is in the midst of an aggressive adjudicator hiring campaign, which began in October 2007. Two recent adjudicator job announcements provided a combined pool of more than 31,000 applications for base, fee rule and surge positions. We have hired 442 permanent full-time adjudicators since the beginning of this fiscal year. All told, we are planning to hire at least 720 adjudicators as part of our fee rule initiative and more than 570 adjudicators based on surge funding. As of March 1, 2008, there are 869 Adjudication Officers in the selection process. Of the 869 selections, 361 are scheduled to enter on duty in the near future. In an example of our actively exploring all options to fill these positions as quickly as possible, we have proactively contacted USCIS employees who have retired in the past five years. Through this effort, we have garnered interest from numerous former employees whose interest in becoming re-employed annuitants is being coupled with appropriate positions in various locations. Selecting officials are now working with the interested individuals to complete the process. Senior agency leadership holds weekly meetings to closely monitor all hiring and training initiatives.

USCIS has enhanced its training program and has significantly increased training capacity to meet the demands of a fast-growing workforce to ensure the availability of a productive and well-equipped workforce to deliver high-quality immigration services. Basic training has transitioned out of the traditional Federal Law Enforcement Training Center venue and into commercial facilities that can more easily accommodate changing capacity needs. Last year, USCIS trained five classes of 24 adjudicators. This year, we will train well over 1,000 adjudicators by running six classes of 48 students concurrently throughout the fiscal year.

While increasing the workforce will increase production capacity, the hiring and training process takes some time and will result in the majority of that increased production taking place later in the year. To increase production in advance of the new hires coming on board, USCIS increased four-fold the funding provided for overtime in the first quarter of FY 2008. This increased overtime lead to production levels that exceeded our original projections and contributed to a reduction in the projected processing times for

Question#:	59
Topic:	Backlog - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

naturalization cases filed in the summer of 2007. We have reduced processing times for such applications from 16-18 months to 13-15 months. We anticipate further improvements in these processing times as we progress through the year.

We are working on other initiatives to increase the output of our adjudication process while maintaining the quality and integrity of each adjudication; and we are increasing efficiencies through the use of improved information technology. We are also modifying appropriate administrative procedures. For example, the intake of naturalization applications is being centralized at a Lockbox, and the pre-processing of these applications will be moved to the National Benefits Center. This will improve the consistency of service throughout the country by standardizing intake processing. USCIS is also reviewing the naturalization examination process to determine whether any process improvements can be achieved, including the possibility of expanding the number of USCIS officers that can administer the civics and history test. By making such process adjustments, more adjudicator time would be available to adjudicate cases, thus enhancing their ability to make sound decisions and to detect possible fraud. Throughout this process, we are committed to ensuring that we never sacrifice integrity or sound decision-making in favor of increased productivity. Our decision-making process today is more robust and thorough than it has ever been.

Looking forward, USCIS will be evaluating the need for a larger surge capacity and will carefully weigh the opportunity costs of acquiring the additional capacity against the effect on application and petition fees. As a fee funded agency, USCIS shoulders the unique responsibility of having to manage its operations similar to a business. USCIS requests its spending authority annually through the federal appropriations process like all other federal agencies; however, its resource requests are predicated upon projected application and petition receipts within a given fiscal year. Throughout the fiscal year USCIS is actively monitoring its application and petition receipt levels to ensure that agency spending is in line with available fee revenue. When application and petition receipt volumes fluctuate, USCIS must be able to timely respond by curtailing spending or ramping up to meet demand. USCIS continues to work towards strengthening its application and petition receipt projection process, and to that end relies upon the insightful statistical analysis provided by the DHS Office of Immigration Statistics.

Question: Did DHS engage in any study on the impact of fee increases on the public before raising the fees and the effect that might have the number of receipts? If so, please share the study and report with the Committee.

Response: No, USCIS did not undertake a specific study to identify the impact of the fee increases on the public. However, USCIS did conduct a Small Entity Analysis in

Question#:	59
Topic:	Backlog - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

accordance with the Regulatory Flexibility Act and found that the fee increase would not have a significant impact or create an undue burden to small business entities.

Question: When will DHS get the naturalization backlog back down to six months or less?

Response: This surge will have a serious impact on application processing times for the next couple of years. As a result, based on our response plan, most customers will wait longer to have their applications completed. We initially projected that the average processing time for naturalization applications would increase from seven months or less to approximately 16 to 18 months. Subsequent progress consistent with our plan has allowed us to revise that projection downward twice, and we now project an average wait time due to the surge of 13 to15 months. Our two-year response plan will help us reach our goal of 5-month average processing by the third quarter of Fiscal Year 2010.

Question: What needs to happen to ensure people who applied for naturalization in 2007 (or before) get naturalized, if eligible, in 2008?

Response: Elimination of the naturalization application backlog is primarily a logistical operational matter in terms of bringing the additional capacity on-board, not a cost issue. Attempting to complete this workload in such a condensed timeframe would require the agency to substantially divert existing adjudicator capacity from other application types in favor of naturalization applications.

Overall, USCIS estimates that it will spend $468 million on the surge response from FY 2008 - FY 2010. Some of the core elements of our plan include:

- Hiring an additional 1,800 temporary federal and contract staff, including more than 570 adjudicators in addition to our fee rule increases. By actively exploring all options to fill these positions as quickly as possible, we have also garnered interest from more than 200 retirees interested in becoming reemployed annuitants.
- Enhancing our training program and significantly increasing training capacity to meet the demands of a fast-growing workforce thereby ensuring that it is productive and well-equipped to deliver high-quality immigration services. Last year, USCIS trained four classes of 24 adjudicators. This fiscal year, we will train over 1,000 new adjudicators by running six classes of 48 students concurrently throughout the year.
- Increasing the output of our adjudication process while maintaining the quality and integrity of each adjudication; and
- Increasing efficiencies through the use of improved information technology such as expanding systems qualified adjudications to applications where this process if

Question#:	59
Topic:	Backlog - 2
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

feasible, freeing up more adjudicator time for naturalization and other petitions and applications.

Question#:	60
Topic:	H1-B
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: On April 1, 2008, the USCIS will receive a volume of H-1B petitions that could easily exceed the nearly 135,000 H-1B petitions filed on April 2, 2007. That blizzard of petitions seriously strained the capacity of the USCIS offices. In the year since, the USCIS has not made significant changes in the way it processes H-1B petitions. One that has been made on filing location for a discrete subset of H-1B petitions will not affect a large percentage of users and was launched without adequate internal processing controls, leading to the rejection of a notable percentage of the petitions in the early stages post-launch. Another change, which is reported to be a ban on multiple identical filings, will also only address a subset of filing problems.

Why has the USCIS been unable to re-engineer the processing of H-1B petitions in order to be able to better and more efficiently receive and process the high volume of filings that the USCIS knows well it will be receiving?

Response: On August 10, 2007, Department of Homeland Security (DHS) Secretary Michael Chertoff and Department of Commerce Secretary Carlos Gutierrez, announced a series of administrative initiatives to improve border security and address immigration challenges within the boundaries of existing law. As part of this 26-point initiative, DHS is actively considering various administrative and regulatory reforms to employment-based, nonimmigrant visa programs for skilled workers. These reforms would seek to provide employers with an orderly and timely flow of legal workers, while protecting the rights of laborers. U.S. Citizenship and Immigration Services (USCIS) has convened working groups to identify and work on reforms that may be adopted by rulemaking or policy.

The Department is keenly aware of the difficulties currently faced by U.S. employers seeking to employ skilled, foreign workers through existing employment-based visa programs. We recognize the critical importance of highly-skilled labor to U.S. global competitiveness and to the future success and growth of our economy, in addition to the important role that immigrants and temporary workers from abroad generally play in the U.S. economy.

In response to your specific questions, USCIS is actively working on improving the current system used to manage the H-1B cap. As you stated, we have improved the process for U.S. educational institutions by centralizing the filing of their petitions at the California Service Center. In addition to prohibiting duplicate filings, the new regulation published on March 24, 2008 provides that USCIS will consider petitions filed on all of

Question#:	60
Topic:	H1-B
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

the first five business days on which petitions are accepted if the cap is reached on any one of those first five business days. This will ease the burden on petitioners. While not affecting all H-1B petitioners, these initiatives do improve customer service, one of our priorities.

The two service centers involved in the adjudication of I-129 petitions, California Service Center and Vermont Service Center, have plans in place that include increased flexibility in space and work assignments. They have had extensive contact with the mail service providers to prepare for the expected volume of petitions. Despite the fact that we are dealing with a paper process, we have prepared to the extent possible for the multitude of anticipated filings for employment start dates in fiscal year 2009.

Question#:	61
Topic:	studies
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Has CIS ever conducted any time/motion or other studies to determine a reasonable length of time for the necessary review of the different applications for benefits that are handled by USCIS? If so, please share such studies with the committee. Without such data, there is really no way of knowing whether the process is overloaded or not.

Response: Yes, in FY1997 the legacy INS Budget Office conducted a time/motion study as part of the first comprehensive Activity Based Cost (ABC) study undertaken to establish a fee schedule for the Immigration Examinations Fee Account that appropriately recovered the full cost of providing immigration services. In support of the FY2008/2009 Biennial Fee Review that led to the publication of the new USCIS Fee Schedule in July 2007, USCIS opted not to repeat the time and motion studies conducted in FY1997, but rather elected to use a statistically valid mathematical formula that divides the number of hours spent on a certain application or petition by the number of cases completed to yield a Hours Per Case (HPC) rate. The HPC has been determined to be a superior indicator of the mean amount of time any form type requires to be worked to completion. Applying the HPC rates to the performance of individuals enables us to identify outstanding performers, who are ideal candidates to share best practices. Conversely, it allows for the identification of under-performers who possibly require extended training. In order to prevent any false or manipulated data from distorting the results, a number of data sets have been established to ensure data integrity. One data set measures the HPC, a second data set reflects employee utilization or time reported, and a third data set measuring capacity or available hours based upon on-board staff. When these three data sets are juxtaposed within a graphical representation, any attempt to falsely report the number of cases completed, or the amount of time spent working the cases, will be revealed. This method of measuring reported production is accurate, timely, and incorporates any adjudication changes that frequently occur due to procedural modifications without the cost or time spent on a new time/motion study.

There is important information obtained by knowing the HPC for each form type, the primary piece being the number of adjudication hours required to complete each type of case pending. The number of adjudication hours needed for any pending form type easily converts to the number of Full Time Equivalent (FTE) employees needed to complete those cases, including the time frame for the work to be completed. The HPC is also used to manage FTE utilization, allowing adjudicators to be moved from one form type to another as needed.

Question#:	62
Topic:	transformation
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: It is generally agreed upon that the USCIS needs to end its reliance on paper-based adjudications and duplicative processing requirements. Yet, USCIS' (and DHS', generally) track record on transformation and IT modernization has not been very strong. The GAO recently found problems in the DHS transformation program. It recommended four areas in which the agency can act to improve its transformation strategy. Those areas are:

Document specific performance measures and targets for the pilots, increments, and the transformed organization that are outcome-oriented, objective, reliable, balanced, limited to the vital-few, measurable, and aligned with organizational goals;

Increase USCIS' focus on strategic human capital management for the transformation;

Complete a comprehensive communication strategy that involves communicating early and often to build trust, ensuring consistency of message, and encouraging two-way communication; and

Continue to develop an enterprise architecture that sufficiently guides and constrains the transformation plans, as DHS works to address limitations in its own enterprise architecture and alignment processes.

How does USCIS define what "success" means for its transformation program?

Response: Success in the transformation program will not be defined through the deployment of a new monolithic system. The transformation program's successes will be incremental and achieved through the delivery of discreet services that provide new opportunities and flexibilities to enable USCIS operations to perform their work in an increasingly efficient manner. Delivery of services will not in itself define transformation successes; successes will be dependent on how the services are used to transform USCIS business processes to improve overall security, efficiency, and customer service.

Question: How will the agency specifically measure success as transformation progresses? How will the agency ensure that it is "outcome-oriented, objective, reliable, balanced, limited to the vital-few, measurable, and aligned with organizational goals"?

Response: Enterprise architecture (EA) is a continual process of evaluation that seeks to

Question#:	62
Topic:	transformation
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

drive efficiency into the acquisition, deployment and utilization of technology in order to create a clear line-of-sight between the business goals and missions of an organization and the technical competency that supports those goals. The primary purpose of EA is to ensure business and IT alignment, enable operational agility, reduce risks for organizations and organizational investments, and allow traceability from the organization's vision and strategic goals down to the implementing technology. This traceability (line-of-sight) is made possible by a well-developed performance architecture.

As the performance architecture matures from the as-is baseline and as transformational capability is developed, the transformation program will engage with the affected IT and operations organizations to assess the impact of transformation on performance and will establish revised target performance measures to update the performance architecture.

In concert with the focus of the President's Management Agenda and the OMB requirement to align business processes to performance measures, USCIS employs EA and the USCIS Capital Planning and Investment Control (CPIC) processes as integral steps of its IT Life Cycle Management (ITLM).

The Exhibit 300 is an important component of the USCIS total performance budget justification. OMB uses the Exhibit 300 to make both "Quantitative" decisions about budgetary resources consistent with the Administration's program priorities, and "Qualitative" assessments about whether the agency's programming processes are consistent with OMB policy and guidance.

EA is the guide to USCIS' future. We are moving from a state of uncertainty that is characterized by business processes that are still evolving and IT efforts that are pulled in multiple directions by competing resources. Also, for technology standards, DHS shared security standards and DHS shared services architecture, along with agency responsibilities, are still evolving.

Question: Where is the agency in its development of its enterprise architecture for transformation? How close is the agency to having this vital component identified and ready to implement?

Response: The CPIC process incorporates OMB capital planning guidance that EA review precede investment by requiring project managers to vet all proposals with the Office of Information Technology (OIT) EA Division in the Pre-Select Planning phase of that process. Currently, the USCIS has developed and documented the baseline enterprise architecture, which communicates a clear line of sight between the

Question#:	62
Topic:	transformation
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

performance, business, data, services, and technology EA layers. This achievement was assessed using the OMB EA Assessment Framework (EAAF) 2.2 Level 2 on 29 February 2008. The Agency is well underway in defining its Target Architecture, populating the EA Repository, and achievement of EAAF Level 3 by 30 April 2008.

Question: GAO has reported that DHS is lacking in terms of integrating technology for immigration services and systems, as well as human capital considerations. What steps is DHS taking to ensure that all new systems, including transformation and related effects on human capital, will work together and be fully integrated?

Response: The USCIS strategy is directly aligned to the DHS strategy. Specifically, our strategy is grounded in a DHS Enterprise Architecture that provides for integration across all components. The USCIS has fully embraced the DHS service oriented architecture. This approach provides a blueprint for how autonomous systems will interoperate. A specific example of demonstrated success is the enumeration service initiative.

USCIS is developing, for implementation in fiscal year 2008 and beyond, a comprehensive and integrated series of strategic human capital management initiatives that will ensure the needs generated from the transformation program are identified and addressed, and as importantly, will position USCIS as an employer of choice. These efforts are categorized in five action areas: Recruiting and Hiring, Workforce Development and Succession Management, Training and Continuous Learning, Performance Management, and Human Capital Service Delivery. Together, the initiatives build the foundation for the future of the USCIS workforce and are especially critical given transformation activities. Attention to these areas will position USCIS to effectively address the human capital requirements associated with implementation of transformed business processes.

Question: CIS is working on a whole new system, or expanding on a relatively new one, for its Fraud Detection National Security (FDNS) unit. What is DHS doing to interoperability issues, particularly as it relates to biometric storage and capture?

Response: USCIS' strategy is a component of DHS strategy. The entire DHS and USCIS Enterprise Architecture surrounding identity management is being re-examined for opportunities to increase diligence, discipline and efficiency of identity management business processes and the technology systems that support them. USCIS has recently formed an Information Technology (IT) Program Executive Office in the National Security and Records Verification (NSRV) directorate to provide a focus of effort on identity systems and the composite collection of business processes that support them. In the USCIS surge response IT initiatives, a specific focus (Identity Management Mid-

Question#:	62
Topic:	transformation
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Range Optimization) is being made on near term resolution of some persistent and previously unyielding identity management business processes and the accompanying technology solutions.

NSRV is also re-engineering its Fraud Detention and National Security Data System (FDNS-DS), in line with recommendations received from a recent engineering study by OIT of the IT system. A key step in this reengineering effort is to publish FDNS-DS (or components of FDNS-DS) as a service on the USCIS Enterprise Service, thereby making it available to share data with other USCIS IT systems, including the soon-to-be deployed Biometrics Storage Service (BSS) which will be the central repository for all biometrics captured and stored by USCIS.

Question#:	63
Topic:	technology
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: In previous testimony before the Immigration Subcommittee, Dr. Gonzalez mentioned that USCIS intends to increase "efficiencies through the use of improved information technology." However, no one has really specified what technologies, how those will be used, or what immediate effect those uses of technology will have. Please explain what information technology improvements have been made and exactly how they are intended to bring down the backlog in the next few months?

Response: USCIS is working on information technology initiatives to increase the output of our adjudication process while maintaining the quality and integrity of each adjudication; and we are increasing efficiencies through the use of improved information technology. USCIS plans to expand the Systems Qualified Adjudication process, an automated process for certain applications where individuals are already qualified and in the USCIS database. The expansion will include, for example, the processes for replacement permanent resident cards and temporary employment authorization. Systems Qualified Adjudication has been very successful in completing the processing of Temporary Protected Status renewal applications, and we want to expand this success.

Question#:	64
Topic:	morale
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: USCIS scored 147th out of 222nd in the 'Best Places to Work In the Federal Government" survey, scoring particularly low in areas such as Teamwork (187), Effective Leadership (186) and Training and Development (193). Employees have raised the issue that it is the push for quantity over quality that has lowered morale and effectively driven down the agency's score on this survey. Acknowledging that there is and will continue to be pressure to speed up the assembly line for approval of CIS immigration applications, how does the agency plan to find a balance, rather than a trade-off, between securing the nation and benefit decisions?

Response: Fortunately, because of the fee rule, we have been working on significantly expanding our workforce by about 1,500 and investing in information technology, facilities, training and other areas to improve service. We continue those efforts and, where possible, will accelerate them to better meet current demands for services. In this effort, we will not take shortcuts in the process to the detriment of the agency's integrity or to the national security. Our surge response addresses this situation by enhancing our information systems, realigning our internal processes and expanding our workforce capabilities.

Although the survey results for USCIS were low, particularly in the area of Teamwork, Effective Leadership and Training and Development, the Agency has made great strides to improve these ratings. Please note that the survey was conducted between October and December 2007, before the Agency's revenue stream began to be fully realized, and that the increased funding has allowed us to concentrate on providing opportunities to develop effective leadership, enhancing training opportunities for all employees and ensuring our leaders had the requisite experiences and training to be good leaders. Please be assured that quality has never suffered because of the increased quantity. There are strict Quality Assurance measures in place to ensure that the right benefit is granted to the right person.

Question#:	65
Topic:	mission
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: Many customers of the USCIS express dismay at agency processes, procedures and processing times, and an agency culture that is not welcoming, but rather, one of suspicion and hostility toward those applying for benefits under the immigration laws. Often, the USCIS will ask an applicant or petitioner for information or documentation that has been submitted previously for the same application. Correspondence to an applicant or petitioner from the USCIS with respect to documentation in support of an application or petition will be couched in terms that have a tone of aggression or hostility. Some top-notch scientists, researchers, educators and artists simply give up and stay home or go elsewhere. These episodes and others like them related to us by our own casework staff and constituents, give rise to a concern that the USCIS has lost sight of its mission to adjudicate petitions and applications for benefits under the immigration laws.

What steps have you taken and will you continue to take to bring USCIS into alignment with the mission Congress directed?

Response: Our mission in administering the immigration and naturalization laws of the United States is to ensure that each decision is correct. We are as cognizant of our customer service and related responsibilities as we are of our national security responsibilities. We do have process quality procedures and decisional quality review programs. We anticipate incrementally expanding our quality decision review program to include actions in addition to the final decision to ensure that those interim actions and communications reflect a level of quality consistent with our final decisions.

Question#:	66
Topic:	fees
Hearing:	Immigration Oversight
Primary:	The Honorable John Conyers Jr.
Committee:	JUDICIARY (HOUSE)

Question: USCIS relies almost exclusively on naturalization as its primary source of funding. As a result, immigrants applying for naturalization have seen heavy increases in their application fees. In addition, the percentage of low-income immigrants who have applied for naturalization has decreased.

What is the Administration's view of the wisdom of USCIS' almost exclusive reliance on naturalization fees?

Response: The Department of Homeland Security supports the current fee-based financing of USCIS and believes it is the most effective method to secure resources for operational needs.

Question: Does the Administration intend to ask Congress to appropriate greater funding for USCIS?

Response: Appropriated programs received sufficient funding under the FY 2009 budget request. The Department of Homeland Security is not requesting appropriations for fee-based programs. USCIS has sufficient revenue to fund fee-based activities.

Question: What is the Administration's view of the heavy burden that potential citizens bear to fund USCIS?

Response: The Department does not believe that current fees are overly burdensome on applicants.

Question: Would the Administration support alternatives to USCIS' funding structure, such as Congressional funding allocated to reduce the backlog of naturalization applications and improve technology such as online processing?

Response: USCIS now has adequate fee revenue to address all of its operational and technology modernization needs, including resources needed to address the current naturalization backlog. Alternative financing methods are not necessary.

Question#:	67
Topic:	E-Verify - 2
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: In your testimony before the House Judiciary Committee, you stated that E-Verify is working. Yet a 2006 study commissioned by the Department of Homeland Security concluded that the program incorrectly rejected 10.9% of legal workers – an error rate that the study deemed "unacceptably high."

Given this "unacceptably high error rate, do you think the recent proposals to expand the program are a good idea? Why or why not?

Response: USCIS has contracted with Westat, an independent survey research firm to conduct several evaluations of its electronic verification programs. The most recently completed evaluation of the Web Basic Pilot (now called E-Verify) resulted in an interim report completed in December 2006, and a final report was published in September 2007. Both of these reports were released to Congress and can be found on the USCIS website (www.uscis.gov).

As noted in these reports, calculating an "error rate" for the program is not a simple process. However, the study found that 99.5 percent of all work-authorized employees verified through E-Verify were verified without receiving a tentative non-confirmation or having to take any type of corrective action. In other words, the rate of false negatives in E-Verify is just a fraction of 1 percent.

A number that is sometimes described, incorrectly, as an "error rate" is the percentage of tentative non-confirmations from E-Verify. The reason this is not the same as an "error rate" is that one of the main goals of the system is to detect and deter unauthorized workers. Thus, some queries run through the system should find a mismatch between the information supplied by an unauthorized employee and either Social Security records or DHS databases. The Westat evaluation found that 94.2% of queries run through the system from October 2006 through March 2007 were instantly found to be work-authorized through the process of matching employer-input data against SSA and DHS data; in other words, the tentative non-confirmation rate was about 5.8%. Only 1 percent of all new hires run through the E-Verify system even contested the initial finding of a mismatch; thus, many of the tentative non-confirmations reflect the system functioning as it was intended.

The 10.9 percent "error rate" referenced in Rep. Sanchez's question appears to be a reference to the table and statement at pages IV-13-14 of Westat's December 2006 report describing the stage in the verification process at which U.S.-born and foreign-born U.S.

Question#:	67
Topic:	E-Verify - 2
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

citizens were found to be work-authorized. The report found that 89.1 percent of foreign-born citizens were verified without receiving any tentative nonconfirmation, and 10.9 percent after receiving one. This is a significantly higher rate of tentative nonconfirmations for foreign-born than U.S.-born citizens (of whom 99.9 percent were instantly verified). We agree with Westat that this highlights a concern that must be (and is being) addressed, but it is important to emphasize up front that both the 89.1 percent and 10.9 percent figures are subtotals of the total number of foreign-born U.S. citizens who were successfully verified through E-Verify operating as designed, with a two-step process to ensure accuracy. In other words, the 10.9 percent is not an error rate in the sense of erroneous final responses denying work opportunities, but rather, the percentage of one set of cases in which the successful verification occurred at the second rather than the first step of the process. While we are working as described below to increase the ability of E-Verify to verify a significantly higher number of foreign-born U.S. citizens at the initial step in order to make the system more efficient and convenient for users and employees, the system has two steps precisely so that data issues such as this will NOT result in erroneous final results, and the secondary process works effectively to do this. Furthermore, in the 10.9 percent of foreign-born cases resulting in secondary verification, the secondary process with the Social Security Administration (SSA) resulted in (1) an update of SSA records to actually reflect U.S. citizenship, a useful outcome for both SSA and the citizen; and (2) an update that will result in an automatic verification of citizenship upon future queries by E-Verify.

The main reason why foreign-born U.S. are not as likely to be instantly verified is because SSA often does not have updated citizenship information for those citizens who have recently naturalized. Most foreign-born citizens receive their Social Security numbers before becoming citizens and do not later update their records at SSA. USCIS has already implemented process changes to reduce these initial mismatches and reduce the erroneous tentative non-confirmation rate for naturalized citizens. As of May 5th, E-Verify will now check DHS naturalization records before issuing a tentative nonconfirmation due to a citizenship mismatch with SSA records. We have already seen a decrease in the mismatch rate for foreign born citizens resulting from this new process change. DHS is working on a proposed data share initiative with SSA that would update naturalized citizens' records directly from USCIS naturalization data.

E-verify also recently added IBIS Real Time Arrival Data to the E-Verify system , which we foresee reducing the amount of mismatches for non-immigrants who have recently arrived in the United States and sought work, but may not have been entered into the DHS databases that E-Verify had previously solely checked. The E-Verify program continues to search out new data sources that will foster our goal of increasing the amount of authorized workers who are instantly verified.

Question#:	68
Topic:	Van Nuys
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: In February 2008, ICE raided a company in Van Nuys, California, resulting in the arrest of over 100 workers. After the raid ICE summoned all the workers to the ICE field offices for interviews. Most of the workers had retained counsel, who had filed forms notifying the immigration court and the ICE trial attorneys of their representation. Yet when counsel appeared at the ICE field offices, they were not allowed to accompany their clients into the ICE interrogations. This repeated denial of access to counsel is well documented, and ICE has been sued for denying these workers' rights to legal representation.

Why were the workers arrested in Van Nuys denied access to counsel? Is this the policy and practice of ICE field agents around the country?

Response: For humanitarian reasons, ICE elected not to detain many of the undocumented workers encountered during the Van Nuys worksite operation. ICE maintains that our agents acted appropriately during this worksite operation and that those detained during the worksite operation were not denied access to counsel. The allegations mentioned above were raised in a lawsuit that was recently settled.

It is neither the policy nor practice of ICE field agents around the country to deny access to counsel to undocumented workers detained during any enforcement operation.

Question: Do you believe that DHS has violated these workers' rights to legal representation? If so, what do you believe is the proper remedy?

Response: ICE does not believe that DHS violated those workers' rights to legal representation. As you know, ICE settled the lawsuit mentioned in the allegations above. While the terms of the settlement agreement are confidential, ICE is pleased with the outcome. It should be emphasized that ICE conducts worksite enforcement operations lawfully, professionally and with great consideration of humanitarian concerns. Consistent with the law and principles of due process, ICE advises detainees of their right to legal counsel and their right to communication with consular officers. ICE is committed to upholding the law and respecting access to counsel rights as required by the law.

Question#:	69
Topic:	consent
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: It has been reported throughout the country that ICE has been raiding people's homes in pre-dawn hours as people are sleeping. Armed ICE agents have banged on people's doors and windows, sometimes identifying themselves as "police." ICE agents have entered people's bedrooms and arrested parents in front of their children. However, ICE Assistant Secretary Myers has stated that immigration administrative warrants cannot be used to enter and search people's homes and that ICE agents can only enter with the residents' consent.

What standards are you using to define "consent"?

Are ICE agents making sure that residents' are asked for their consent in a language they understand?

Question: What standards are you using to define "consent"?

Response: ICE uses the ordinary standards of consent applicable under the Fourth Amendment to determine whether voluntary consent to enter and search residential premises has been given.

Question: Are ICE agents making sure that residents' are asked for their consent in a language they understand?

Response: Officers and agents are encouraged to have someone speak the language of the individual opening the door. If no one is available who speaks that particular language, the officers are instructed to make every effort to communicate with the individuals in such a way that they fully understand what is taking place. If the individual does not understand, then the officers are instructed not to conduct any search and wait for another opportunity.

Question#:	70
Topic:	collateral arrests
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: ICE has stated that the home raids are meant to target criminal fugitives. Yet around the country there have been reports of other inhabitants of the home, including U.S. citizens, being arrested and hauled down to ICE field offices. ICE has referred to these arrests as "collateral."

What is ICE's policy regarding "collateral" arrests?

Are ICE agents given target goals for the number of people arrested/apprehended?

Do "collateral" arrests count towards these target goals?

Question: What is ICE's policy regarding "collateral" arrests?

Response: During the course of targeted operations, Fugitive Operations Teams (FOTs) often encounter other people while attempting to arrest an ICE fugitive. Pursuant to Section 287(a)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(a)(1), as amended, an officer has the authority, without a warrant, to question any alien or person the officer reasonably suspects to be an alien as to his or her right to be or remain in the United States.

Section 287(a)(2) of the INA provides that if, after questioning a subject regarding legal status, the officer/agent has probable cause to believe the person is in the United States in violation of the immigration laws, and is likely to escape before an arrest warrant can be obtained, the officer/agent has the authority to make an arrest.

In order to detain an individual for further questioning, the officer must have reasonable suspicion that the individual (1) committed a crime; (2) is an alien who is unlawfully present; (3) is an alien with status who is either inadmissible to or removable from the United States; or (4) is a non-immigrant who is required to provide truthful information to U.S. Department of Homeland Security (DHS) personnel upon demand. (See 8 C.F.R. § 214.1(f)).

8 U.S.C. § 1304(e) requires aliens 18 years of age and older to carry proof of alien registration at all times. Failure to carry such proof is a misdemeanor punishable by up to 30 days imprisonment and a fine of $100.

Question#:	70
Topic:	collateral arrests
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

With regard to the policy behind collateral arrests, the Standard Operating Procedure for Fugitive Operations Teams (FOTs) is to identify other people encountered while attempting to arrest an ICE fugitive. Many times, this results in identifying other fugitives that were not necessarily the target(s) of the particular operation. While ICE agents and officers have a responsibility to enforce the provisions of the INA, this does not diminish the responsibility of agents and officers to use prosecutorial discretion in identifying and responding to cases that may merit discretion.

Question: Are ICE agents given target goals for the number of people arrested/apprehended?

Response: Yes. The current fugitive alien population is 575,654, and each Field Office FOTs seeks to achieve a Field Office Area of Operational Responsibility (AOR) goal of 1,000 arrests per FOT per annum.

Question: Do "collateral" arrests count towards these target goals?

Response: Non-fugitive arrests may be included in the total only where these arrests are made as part of a DRO Headquarters-approved operation. HQ-approved operations require special circumstances and include operations where (1) targeted enforcement actions extend beyond a Field Office's AOR; (2) a target list is expected to draw significant media or departmental attention, such as operations concerning sensitive targets, a public official, a political candidate, or a religious or political organization, or requests made by foreign governments; or (3) HQ generates and distributes target lists to FOTs and plans a large-scale operational surge. The current average number of HQ-approved operations is one to two per month.

Each Field Office must prioritize fugitive arrest activity under the standards set forth below:

I. Fugitives who pose a threat to national security
II. Fugitives who pose a threat to the community
III. Fugitives convicted of violent crimes
IV. Fugitives with criminal records
V. Fugitives who are non-criminals

Question#:	71
Topic:	MOU
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: Assistant Secretary Julie Myers signed a memorandum of understanding (MOU) with Vietnam on January 22, 2008. This MOU would allow the U.S. to deport Vietnamese nationals back to Vietnam.

Do you know what the breakdown of individuals who will be impacted due to visa overstays, criminal convictions, etc.?

How many are currently in detention?

Of the 1,500 who will affected, how many were admitted to the U.S. as refugees, asylum seekers, and other humanitarian immigrants?

What is DHS's policy on returning refugees to a country they have fled due to well-founded fear of persecution?

In what manner will impacted individuals be contacted regarding their pending deportation?

What will be the process for their removal (time between notification and removal)?

Question: Do you know what the breakdown of individuals who will be impacted due to visa overstays, criminal convictions, etc.?

Response: No. The database used by ICE, the Deportable Alien Control System (DACS) is unable to definitively conduct a specific breakdown as requested. DACS only captures one INA charge, even if the alien was charged both as an overstay and with a criminal conviction. Therefore, the data below was generated by identifying the cases as either criminally or non-criminally charged in removal proceedings under the INA.

As of January 24, 2008, 724 aliens were criminally charged and 831 were non-criminally charged.

Question: How many are currently in detention?

Response: As of January 24, 2008, a total of 45 were in detention.

Question#:	71
Topic:	MOU
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Question: Of the 1,500 who will be affected, how many were admitted to the U.S. as refugees, asylum seekers, and other humanitarian immigrants?

Response: ICE's data systems are not configured to perform the requested correlation between individuals affected by the MOU and the manner in which they were admitted to or entered the United States. It is important to recognize that this MOU applies only to aliens who arrived in the United States on or after July 12, 1995. For Vietnamese nationals who entered the United States in some lawful status, they will only be affected by this MOU if they ultimately lose their prior status, become removable, and are not subsequently able to reestablish eligibility for some form of relief or protection in removal proceedings before an immigration judge (IJ). As is the case for all aliens, Vietnamese nationals in removal proceedings may apply for a variety of forms of immigration relief and protection, including cancellation of removal, asylum, withholding of removal, and protection under the Convention Against Torture, to name but a few. Aliens denied relief or protection by an IJ have the right to appeal that denial to the Board of Immigration Appeals, and decisions by the Board may, in turn, be appealed to the federal Circuit Courts of Appeals. This adjudicatory and appeals process is quite deliberate and careful, and is governed by strict procedural rules to ensure fairness. Aliens who qualify for relief or protection under this robust process are not subject to removal under the MOU; rather, only those who fail to qualify will be removed thereunder.

Question: What is DHS's policy on returning refugees to a country they have fled due to well-founded fear of persecution?

Response: ICE does not return refugees unless they have forfeited that immigration status, in which case they still have the opportunity to litigate applications for relief from removal before the immigration court. However, ICE as a law enforcement agency is responsible for enforcing the Immigration and Nationality Act (INA), including placing those who have violated the INA into removal proceedings and executing final orders of removal.

Persons in removal proceedings have every right to pursue avenues of relief, including requesting asylum, withholding of removal, protection under the statute and regulations implementing the Convention Against Torture, voluntary departure, adjustment of status and other such relief. In addition, those in removal proceedings also have a right to appeal any decision rendered by an immigration judge.

Question#:	71
Topic:	MOU
Hearing:	Immigration Oversight
Primary:	The Honorable Linda T. Sanchez
Committee:	JUDICIARY (HOUSE)

Individuals under orders of removal also have the right to file appropriate motions contesting their removal, including motions to reopen and requests for stays of removal.

Question: In what manner will impacted individuals be contacted regarding their pending deportation?

Response: Individuals who are subject to the MOU and have a final order of removal will be notified as they are encountered by ICE. At that time, the process for their removal as set forth in the MOU will commence.

Question: What will be the process for their removal (time between notification and removal)?

Response: Once an individual who has a final order of removal has been notified that he is subject to the terms of the MOU, he will be required to submit biographic information on forms provided by the Government of Vietnam (GOV). As specified in the MOU, the completed form will be submitted to the GOV with a copy of the final order of removal, summary of the criminal history, if any, conviction records, if any, copies of any official Vietnamese identity documents and an official diplomatic request that the individual be accepted for return. The GOV has agreed to respond promptly to the request. If the GOV agrees to accept the individual, a travel document will be issued and forwarded to the U.S. Embassy in Hanoi. Once ICE receives the travel document, arrangements for the removal will commence. Pursuant to the MOU, ICE must give the GOV at least fifteen days notice of the flight and travel arrangements by which the individual will be returned to Vietnam.

Question#:	72
Topic:	criminality
Hearing:	Immigration Oversight
Primary:	The Honorable Brad Sherman
Committee:	JUDICIARY (HOUSE)

Question: Secretary Chertoff, at a press briefing on comprehensive immigration reform on May 17, 2007, you stated that under the Comprehensive Immigration Reform Act (S. 1639), as proposed at the time, 15 to 20 percent of illegal immigrants would be ineligible to obtain legal status "based on problems with criminality . . ." (Transcript attached.) Recently, Department of Homeland Security Legislative Affairs staff informed my staff that you based this estimate on the fact that the United States Bureau of Citizen and Immigration Services annually rejects about 10 percent of applications for legal residency due to criminality. Do you still believe your estimate concerning the Comprehensive Immigration Reform Act and criminality to be accurate? If not, what is your current estimate?

How many foreign nationals denied legal residency by the United States Bureau of Citizen and Immigration Services due to criminality do you estimate currently reside in the United States? Please provide a breakdown of what types of crimes those individuals currently residing in the United States have committed. Does the Department of Homeland Security consider any of these foreign nationals residing in the United States to be a threat to the public safety of the United States? If so, what steps is the Department of Homeland Security taking to respond to this threat to public safety, especially considering these individuals have submitted applications to the Department with their contact information

Response: The 15-20% number cited by the Secretary in May 2007 was intended only as a very rough approximation. USCIS is not able to know in advance of receiving the actual applications, what percentage of illegal aliens with significant criminal histories would ultimately have chosen to apply for relief under the comprehensive immigration reform program in the hopes that their criminal activity would not have been detected during the adjudication process.

With regard to the pool of FY07 applicants for permanent residency who were fingerprinted, cited in your question, between 8%-9% of those fingerprint checks result in a hit against a database that must be resolved. It must be noted that not all hits involve convictions nor does all criminal activity result in a finding of ineligibility for lawful permanent resident status. Consequently, we estimate that the percentage of hits involving criminal activity that would make the alien ultimately ineligible for lawful permanent resident status is lower than the overall 8%-9% hit rate.

Question#:	72
Topic:	criminality
Hearing:	Immigration Oversight
Primary:	The Honorable Brad Sherman
Committee:	JUDICIARY (HOUSE)

Finally, USCIS does not keep statistics on the number of denials based on criminal acts for lawful permanent resident status. The overall denial rate (i.e. based on ***any*** ground of ineligibility, not just criminal activity) for applications for lawful permanent resident status, however, has decreased during the past 2 years; in FY08, it stands below 10%.

Question#:	73
Topic:	CAP
Hearing:	Immigration Oversight
Primary:	The Honorable Rick Boucher
Committee:	JUDICIARY (HOUSE)

Question: In your written testimony before the House Judiciary Committee, you mentioned the recent expansion of ICE's Criminal Alien Program (CAP). According to your testimony, ICE has already initiated more than 55,000 removal proceedings against criminal aliens in the first quarter of Fiscal Year 2008. You also state that ICE is developing a comprehensive strategic plan to better implement CAP. What priority does your Department place on CAP and how will the various and diverse needs of different jurisdictions be accounted for in the forthcoming comprehensive plan?

Response: ICE accords the Criminal Alien Program (CAP) high priority as an effective tool in furthering DHS' goal of "Protecting our Nation from Dangerous People," and the three strategic goals: Awareness, Prevention and Protection. Each of these three goals is a cornerstone of DHS. The effectiveness of CAP can be measured in the identification and removal of dangerous criminal aliens who pose a potential threat to the general community. Last year, the CAP initiated removal proceedings against over 164,000 criminal aliens. For the fiscal year 2008, CAP is on track to initiate removal proceedings against 200,000 criminal aliens.

As part of our CAP efforts, ICE compiled a Risk Assessment that analyzed 4,492 prisons and jails throughout the United States. This Risk Assessment addressed the nature of the alien inmate population, including factors such as the types of crimes for which the alien population was incarcerated, the total foreign-born population of that facility, and whether or not the facility was a state release site. Each facility was assigned one of four risk thresholds designed to assist ICE in ensuring that the facilities which housed the most serious offenders were properly prioritized for attention by ICE. The risk rankings are reviewed monthly to reflect changes in the inmate populations and serve as a road-map for future CAP resource allocations.

Building on this assessment, ICE has developed, with the support of the House and Senate Appropriations Committees, a new multi-year plan to revolutionize the process of identifying, processing, detaining and returning removable criminal aliens in the custody of federal, state and local authorities. To implement "Secure Communities: Comprehensive Plan to Identify and Remove Criminal Aliens," ICE and our law enforcement partners will use new technology and strengthen relationships with state and local law enforcement agencies to achieve this goal. Congress, in its 2008 Appropriations Bill, provided $200 million to begin this transformation.

Question#:	73
Topic:	CAP
Hearing:	Immigration Oversight
Primary:	The Honorable Rick Boucher
Committee:	JUDICIARY (HOUSE)

Additionally, a program called ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) provides local law enforcement agencies the opportunity to team with ICE to combat specific challenges in their communities. ICE ACCESS consists of various ICE services and programs including: the presence of a *CAP* team in local detention facility to identify criminal aliens; the creation of local task forces targeting specific challenges like gangs or document fraud; the 287(g) program, which cross-designates local officers to enforce immigration laws as authorized through section 287(g) of the Immigration and Nationality Act; Operation Community Shield, a national program aimed at dismantling violent transnational gangs that threaten the public; and, where authorized by state law, the Rapid REPAT program, which provides early conditional release on parole of eligible non-violent state prison inmates to ICE custody for deportation.

ICE agents and officers will meet with the agencies requesting ICE assistance to assess local needs of that jurisdiction. Based upon these assessments, ICE and local agencies will determine which type of partnership is most beneficial and sustainable before entering into an official agreement.

Question#:	74
Topic:	medications
Hearing:	Immigration Oversight
Primary:	The Honorable Rick Boucher
Committee:	JUDICIARY (HOUSE)

Question: According to testimony at several congressional oversight hearings, persons who are on life-saving medications are regularly prevented from continuing on their medication regimens upon detention by ICE. What is being done to ensure that persons on life-saving medications are allowed to receive uninterrupted therapy, including moving such individuals into Alternatives to Detention programs?

Response: In accordance with requirements of ICE's National Detention Standards (NDS), all immigration detainees receive an intake screening during their initial processing into an ICE detention facility. This process is specifically designed to identify several factors, including whether or not the detainee has any conditions that require medical attention and/or the prescription of medications, so that such conditions can be treated at the earliest possible opportunity by the appropriate medical personnel.

The Division of Immigrant Health Services (DIHS) provides specific parameters as to how immigration officers and medical staff should handle detainees who present medications to them over the course of their processing into a detention facility that is staffed with DIHS personnel. More specifically, medical professionals inspect all medications brought to detention facilities by detainees, whether they are transfers from another ICE facility or new admissions to an ICE detention facility, as a necessary part of the admission process. The medical professional documents the medication in the detainee health record and determines if they are still medically necessary. More specifically, all medications that are brought into DIHS detention facilities by detainees, whether or not they are transfers from another ICE facility or were initially brought to the facility as a new ICE detainee, must be turned over to the medical provider during the intake medical screening. The medical provider then examines the medications, documents them in the detainee health record, and determines if they are still medically necessary and appropriate for the detainee to take. The medications will then be placed into the detainee's property, and medication stocked by the in-house clinic/pharmacy will be issued in its place, assuming there is still a valid need for this particular therapy. Moreover, if the detainee arrives at a time when the pharmacy is closed, and the DIHS medical provider feels the detainee nevertheless requires the medication, the medication shall be placed on the "pill line" and administered on a dose-by-dose basis until the pharmacist can process the new prescription, again, assuming the need for this therapy has continued.

DHS does not permit detainees to bring in medications from uncertified sources, as they could be a source of contraband. Thus, only medications that are properly labeled and

Question#:	74
Topic:	medications
Hearing:	Immigration Oversight
Primary:	The Honorable Rick Boucher
Committee:	JUDICIARY (HOUSE)

bear clear markings on the tablet/capsule to indicate a legitimate manufacturer will be used. However, if: (i) the particular medication required is not stocked by the clinic pharmacy, and (ii) the provider feels that a comparable substitute is not available – assuming the medication is appropriately labeled -- the detainee may be permitted to use the medication that s/he had on his/her person. If additional non-formulary medication is needed, the Non-Formulary Medication Request Form should be filled out and forwarded to the DIHS Pharmacy Consultant. Despite these policies, if the detainee is determined to have asthma or some of emergent medical condition, detainees are allowed to keep inhalers and nitroglycerin that are in their possession with them while they are detained.

The ATD program remains a viable enforcement option for aliens who meet eligibility criteria, regardless of whether or not they have pre-existing medical conditions. Among other factors, a detainee's medical issues, if any, are taken into account when deciding whether or not to release an alien under one of the ATD programs. However, other factors such as flight risk and threat to public safety are also weighed.

Question#:	75
Topic:	training requirements
Hearing:	Immigration Oversight
Primary:	The Honorable Rick Boucher
Committee:	JUDICIARY (HOUSE)

Question: What is DHS doing to ensure that the appropriate personnel are well-trained in identifying trafficking victims and referring them to appropriate care? Specifically, what programs are in place to train Border Patrol officers and other adjudicators, such as the asylum corps officers, in identifying victims? And if there are no such programs in place, what do you propose for the future?

Response:

CBP basic training covers the classifications that reference individuals who may fall into the T-1 through U-3 categories. These categories refer to the non-immigrant classifications for "Victims of Severe Form of Trafficking in Persons" ("T") to "Victims of Criminal Activity" ("U"). The "Victims of Trafficking Act" is not addressed in CBP's basic training curriculum except where it references the classifications T-1 through U-3.

The Border Patrol curriculum that covers the above noted classifications includes; identifying who merits the classification, definitions of "Victims of Severe Forms of Trafficking in Persons" and the "Victims of Trafficking" as identified in the Victims of Trafficking and Violence Act of 2000(VTVPA) Section 103.

Question#:	76
Topic:	border patrol
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: The catalysts for the dramatic increase in Border Patrol strength over the last decade were the congressional mandates contained in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Intelligence Reform and Terrorism Prevention Act of 2004. I am concerned, however, that the Administration has not made the best use of these new agents. The Congressional Research Service has documented that the number of border apprehensions has fallen dramatically from about 450 per agent work year in 1997 to about 150 in 2005, a drop of two-thirds.

What is the cause of this dramatic drop?

If the drop is due to either a drop in people trying to enter the country illegally or the existence of more agents to handle what is essentially the same amount of illegal traffic across the border, how are these new agents being utilized?

Response:

Apprehensions have, indeed, decreased and the Border Patrol has grown significantly in recent years. We now utilize a threat-based approach to incrementally deploy our resources based upon risk and vulnerability. The Border Patrol National strategic plan requires the most effective deployment of personnel in relation to the appropriate combination of infrastructure and technology. They are utilized in the most efficient manner possible based on the expertise of our experienced field commanders. This deployment has increased effectiveness and deterrence. In addition, we continue to explore innovative ways in which to increase the consequences of illegally entering the country, which has further increased deterrence. The combination of these factors has resulted in an increased level of border security and a decreased level of apprehensions.

Question#:	77
Topic:	catch and release
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: You have indicated that DHS has ended the practice of catch and release at the border. Should the Administration's 2009 budget for the Department be enacted by Congress, would the Department receive resources sufficient to ensure that the practice not be resumed?

Response: Yes, the FY 2009 request is sufficient to maintain the end of catch and release at our nation's borders. Referrals from CBP's Office of Border Patrol to ICE have dropped from over 165,000 in FY 2005 to less than 70,000 in FY 2007. This demonstrates the substantial deterrent value of our efforts not only at the border, but also in the interior of the United States.

Question#:	78
Topic:	worksite enforcement
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: I am concerned that there continues to be a lack of priority given to enforcing the law against employing illegal immigrants. For example, the total number of hours worked by investigators on employer sanction cases fell from almost 714,000 in 1997 to 135,000 in 2004, an incredible drop of 81%.

Since 2004, has the time the Department devotes to these cases recovered to anywhere near the earlier levels?

Why does the Administration's 2009 budget contain no increase in the number of ICE agents dedicated to worksite enforcement?

Question: Since 2004, has the time the Department devotes to these cases recovered to anywhere near the earlier levels?

Response: DHS is unable to validate the case-hour statistics that the committee provided for 1997 and 2004. The statistics provided appear to be derived from a legacy system no longer utilized to capture this data.

In fact, ICE has shown a marked increase in the number of work hours dedicated to worksite enforcement investigations. In FY 2006 and FY 2007, ICE agents dedicated 216,315 hours (127 investigative full time employees) and 568,955 hours (335 investigative full time employees) respectively to worksite enforcement investigations. That is a dramatic 263% increase in total number of hours worked by investigators on employer sanction cases. This increase reflects the agency's aggressive efforts and continued dedication to increasing its worksite enforcement investigations as part of its broader mandate of protecting the nation's safety and security and targeting egregious employers who violate the law by employing an illegal labor force.

Moreover, it is important to recognize that ICE is now focused primarily on criminal prosecution in worksite enforcement operations. The former INS devoted its worksite enforcement resources to bringing administrative sanctions, not criminal charges, against egregious employers of illegal aliens. Because the administrative fine process often proved to hold little deterrence for violators and given that many employers came to view these fines as simply the "cost of doing business," ICE developed a new *comprehensive* strategy aimed at dramatically enhancing efforts to combat the unlawful employment of illegal aliens in the United States. Under this new strategy, ICE now aggressively targets

Question#:	78
Topic:	worksite enforcement
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

unscrupulous employers of illegal aliens with criminal prosecutions and asset forfeitures. These criminal prosecutions send a clearer message to egregious employers that habitually violate the law.

To illustrate this difference in strategy, the former INS, in its last full year, made only twenty-five criminal arrests in worksite investigations cases. In contrast, our worksite investigations in FY 2006 resulted in 716 criminal arrests, 3,667 administrative arrests, the seizure of property and assets valued at approximately $1.7 million, and approximately $233,044 in judicially ordered criminal fines, forfeitures, and payments in lieu of forfeiture. ICE's worksite investigations in FY 2007 resulted in 863 criminal arrests, 4,077 administrative arrests and over $30 million in fines, forfeitures and payments in lieu of forfeiture. The Department's current strategy, enforcement tools and techniques go much further in deterring businesses and changing their behavior than the old administrative approach.

Question: Why does the Administration's 2009 budget contain no increase in the number of ICE agents dedicated to worksite enforcement?

Response: A funding request for additional ICE personnel dedicated to worksite enforcement is included within the National Security – Critical Infrastructure enhancement request for fiscal year 2009.

Question#:	79
Topic:	287(g)
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: The Office of Legal Counsel of the Justice Department issued an opinion in 2002 affirming the inherent authority of state and local law enforcement to assist in the enforcement of federal immigration laws – both civil and criminal. It concludes: "1) States have inherent power, subject to federal preemption, to make arrests for violation of federal law. 2) Because it is ordinarily unreasonable to assume that Congress intended to deprive the federal government of whatever assistance states may provide in identifying and detaining those who have violated federal law, federal statutes should be presumed not to preempt this arrest authority." The opinion also states, "[F]ederal statutory law pos[es] no obstacle to the authority of state police to arrest aliens on the basis of civil deportability."

Given this statement of authority, why then, is it the position of the Department of Homeland Security that "police can only use 287(g) authority [to assist in the enforcement of federal immigration law] when people are taken into custody as a result of violating state criminal law"?

Response: The enforcement of immigration law is a complicated enterprise that should be undertaken by state and local law enforcement only with the proper training and understanding of the liability issues. Without the proper training, it is very difficult to determine who is an alien and whether an individual is subject to removal from the United States. Delegated authority under 287(g) is the only mechanism where local law enforcement officers receive the privileges and immunities of federal immigration officers. Section 287(g) provides the state and local officer with all authorities that an immigration officer possesses. Once state and local officers are "deputized," they can, subject to DHS supervision, interrogate aliens, serve warrants of arrest for immigration violations, administer oaths, prepare charging documents, issue immigration detainers, process aliens for removal proceedings, transport arrested aliens, and other authorities as DHS deems appropriate to grant them. The most effective way for state and local officers to exercise this authority is when they encounter individuals in the normal course of their duties.

Further, ICE implements 287(g) in two models. The Jail Enforcement model consists of officers who work in an institutional environment. These law enforcement officers interview and process aliens who have been arrested for various state and local charges. The Taskforce Officer model was implemented in three variations: ICE Led Taskforce in which the officers work closely and often along side ICE Officers; Patrol Enforcement Models in which officers in the normal course of their duties can conduct immigration

Question#:	79
Topic:	287(g)
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

duties when necessary – ICE supervisors must be notified when the duties are performed; and a Department of Motor Vehicle variant currently being utilized in the State of Alabama in conjunction with drivers license issuance procedures.

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: A recent GAO report found that immigration adjudicators interviewed "reported that communication from management did not clearly communicate to them the importance of fraud control; rather, it emphasized meeting production goals, designed to reduce the backlog of applications, almost exclusively." Just last October, DHS's Office of the Inspector General cited a lack of incentives for USCIS personnel to combat fraud (as opposed to simply rubber-stamping applications).

Have you implemented all the recommendations made by the GAO and the Inspector General to improve DHS's ability to combat benefit fraud?

Response: The USCIS Office of Fraud Detection and National Security (FDNS) has either implemented or is actively implementing all of the recommendations regarding DHS' ability to combat immigration benefit fraud made by both GAO and the OIG.

The following is an update on USCIS' progress with finalizing implementation of the four remaining GAO recommendations:

GAO-06-259 UPDATE: March 2008

Recommendation: Enhance risk management approach by (1) expanding fraud assessmeut program to cover more immigration application types; (2) fully incorporating threat and consequence assessment into fraud assessment activities; and (3) using risk analysis to evaluate management alternatives to mitigating identified vulnerabilities.

In previous correspondence we noted that the Benefit Fraud and Compliance Assessments (BFCA) for the Form I-589, Application for Asylum; the Form I-130, Petition for an Alien Relative, Yemini National Family Based; and the Form I-130, Marriage Based, BFCAs were "pending completion." At present, the Marriage BFCA has been completed, drafted and is under internal review. Final Reports for the Asylum and Yemeni National Family Based BFCAs are currently being reviewed by NSRV management and affected component programs.

The I-129 Petition for a Nonimmigrant Worker H1B Classification BFCA has been finalized by USCIS and was submitted to DHS HQ for review.

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

The quality review process USCIS said would be developed is under development. Regional management units are being installed in our regional offices to oversee FDNS field operations to assist them with their work and to perform quality assurance functions.

Recommendation: Implement a mechanism to help USCIS ensure that information about fraud vulnerabilities uncovered duriug the course of normal operations-by USCIS and related agencies-feeds back into and contributes to changes in policies and procedures when needed to ensure that identified vulnerabilities result in appropriate corrective actions.

USCIS has a number of processes in place to ensure that identified vulnerabilities result in corrective actions. Since April 2006, FDNS has been an active member in the ICE-led interagency Document and Benefit Fraud Task Forces. USCIS holds regular working group meetings with ICE and the Departments of State and Labor to discuss cross cutting fraud issues and has implemented procedural changes and published proposed regulatory changes based on vulnerabilities identified through its Benefit Fraud and Compliance Assessment program. For example, USCIS issued a policy memorandum requiring site visits for religious workers based on vulnerabilities uncovered through the Religious Worker BFA. USCIS components have also reached internal agreement regarding recommended policy and procedural changes to be made based on the H-1B BFCA, which is awaiting final agency release.

Recommendation: Provide USCIS staff with access to relevant internal and external information that bears on their ability to detect fraud, make correct eligibility determinations, and support the new fraud referral process-particularly the status of fraud referrals to ICE and ongoing updates regarding fraud trends and other information related to fraud detection.

USCIS provided training on H and L fraud trends to FDNS staff in May and June of 2006, to California Service Center adjudicators during the summer of 2006 and to Vermont Service Center adjudicators in the fall of 2006. Access to the State Department's Consolidated Consular Database was provided via a Memorandum of Agreement between USCIS and State, signed in May of 2006. As part of its Basic Training Course for all USCIS immigration officers, USCIS also includes a five-hour Benefit Fraud and Material Misrepresentation session.

Recommeudation: Establish output and outcome based performance goals - along with associated measures and targets - to assess the effectiveness of fraud control efforts and provide more complete performance information to guide management

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

decisions about the need for any corrective action to improve the ability to detect fraud.

Metrics for the performance goals are currently being developed and are expected to be finished by the end of 3rd quarter FY 2008. USCIS is collaboratively developing metrics with field management along with Headquarters Office of Fraud Detection and National Security (HQFDNS) as a joint initiative. NSRV's goal is to have the metrics span all antifraud, national security, and public safety mission components and be easily trackable and measurable while also helping to substantiate the need for requested FDNS staffing levels in the out years.

In addition, in February 2008, FDNS provided the following update to the Inspector General on the Agency's progress with implementing the OIG's recommendations.

OIG 08-09 UPDATE: February 2008

Recommendation 1: Replace the USCIS and ICE 100% Referral Memorandum of Agreement with a policy that limits and prioritizes USCIS adjudicator referrals to FDNS, and FDNS referrals to ICE.

The revised Memorandum of Agreement (MOA) between USCIS and ICE has been drafted and is in USCIS' formal, internal circulation process. Upon completion, it will be returned to ICE for further review and signature. USCIS anticipates having this MOA signed within the next 90 days.

Target date for completion: June 15, 2008.

Recommendation 2: Establish performance measures for fraud detection in the USCIS immigration benefit caseload.

Various components within USCIS are collaborating to ensure adjudicator performance work plans contain appropriate measures. USCIS is committed to performance-based management and intends to incorporate measurable FDNS duties in the national performance work plan's quality assurance job element.

Target date for completion: September 30, 2008. (*Note: since this update was provided to the OIG, the target date for completion has been moved forward from September 30, 2008 to June 30, 2008.*)

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Recommendation 3: Require the National Security and Records Verification Directorate to develop a quarterly report on fraud goals and accomplishments for the USCIS Director.

USCIS' Fraud Detection and National Security Unit (FDNS) has established a reporting and analysis group (R&AG) staffed by government and contractor personnel to focus on providing management reports for numerous FDNS activities. R&AG is currently in the process of developing draft quarterly management reports for the first quarter of FY08. These draft reports were provided to the FDNS Chief at the end of January 2008, and serve as the basis for establishing a set of standard future reports for the USCIS Director, thereafter.

Target date for completion: March 31, 2008. *(Note: since this update was provided to the OIG, the first set of reports has been developed and will be issued in April 2008 based on March 2008 data.)*

Recommendation 4: Require adjudicators to ideutify petitions with articulable fraud in an electronic system accessible to FDNS, to begin establishing fraud patterns and trends.

USCIS adjudicators are required to refer petitions and applications with potential articulable fraud to FDNS for review and resolution. FDNS then has this data available for establishing fraud patterns and trends to be shared with adjudicators. In addition, such data will eventually be used to include potential fraud indicators as a screening tool during the up-front processing of applications. To allow for more access to Fraud Detection and National Security Data System (FDNS-DS), as part of an upcoming review of the software and the development of a Concept of Operations, as discussed below, USCIS will address how adjudicators should be involved in using FDNS-DS or, if applicable, an alternate electronic system.

Target date for completion: September 30, 2008.

Recommeudation 5: Establish a quarterly reporting requirement from USCIS Adjudications to the USCIS Director on adjudicator participation in identifying articulable fraud.

The National Security and Records Verification Directorate, Domestic Operations Directorate and the Refugee, Asylum, and International Operations Directorate will collaborate in an effort to identify a means of providing this information. Our processes

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

and systems do not currently have this capability to begin tracking which adjudicators are submitting referrals, but we will explore such in the future.

Target date for completion: September 30, 2008.

Recommendation 6: Develop a process for proactive data analysis across a wide range of immigration data to identify potential fraud patterns and leads, to both generate leads for FDNS and inform proper adjudications.

Recommendation 7: Restructure FDNS-DS to improve case tracking and management reports. Case tracking should be streamlined, aud FDNS program measures should be developed to be incorporated into the database structure, along with an interface to extract management reports at both the headquarters and field level.

Recommendation 8: Review the valne of FDNS-DS as a tool to research referrals as compared to alternate approaches currently used. Labor-intensive data entry should be reduced by eliminating rednndant and marginal data fields, automating data entry, and streamlining the data entry interface.

Recommendation 9: Develop shared management reports on the status of referred petitions, and procedures for raising quality and timeliness concerns.

As in USCIS' response to the draft report, Recommendations 6, 7, 8, and 9 are addressed together as follows:

In the OIG's evaluation of USCIS' response to the draft report, they noted that the four recommendations above "are resolved and remain open pending receipt of the FY 2008 study, the FY 2008 governance plan, a copy of guidance and training materials provided to officers who use FDNS-DS, and confirmation that ICE system requirements will be incorporated in the database."

The USCIS Office of Information Technology (OIT) completed the FDNS-DS engineering study at the end of January 2008. A briefing will be given to FDNS, the National Security and Records Verification (NSRV) Directorate, and OIT management in February 2008. This study will serve as a roadmap to address many of the issues identified in the OIG review, including a very high level review of ICE's systems needs.

NSRV and OIT have completed several drafts of the new governance plan, which is now

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

referred to as the NSRV-OIT Operational Level Agreement (OLA) for the NSRV IT Program Executive Office. The updated draft will be provided for management's review the week of February 11, 2008.

FDNS has established a new training unit to produce and deliver all FDNS related training, including training on FDNS-DS. Recruitment for these new positions will be completed by early February 2008. In the interim, three current FDNS employees have been detailed to produce the initial training plan and materials. FDNS-DS training is being addressed in four parts:

(1) Enhanced FDNS-DS training as part of the basic training course, with materials currently being developed;

(2) Inclusion of FDNS-DS training in the new FDNS journeyman course that will be designed and implemented this year;

(3) Inclusion of FDNS-DS training in the new FDNS supervisor training that will be designed and implemented this year; and,

(4) Development of a formal refresher training course for both super users[1] and other users of FDNS-DS, which is expected to be completed by the end of March 2008.

Target dates for completion/implementation:

FDNS-DS Engineering study release date:	February 29, 2008
Governance plan release date:	March 31, 2008

(Note: since this update was provided to the OIG, the FDNS-DS engineering study was provided to NSRV management, and the OLA (formerly called the Governance Plan) was signed on February 14, 2008.)

FDNS training materials release dates:

Basic training course	March 31, 2008
Super users/other users' refresher	March 31, 2008

[1] Super users are subject matter experts who have a more in-depth knowledge of the system. Super users may also perform certain systems administrative functions.

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Journeyman training course	September 30, 2008
Supervisor training course	September 30, 2008

(Note: since this update was provided, the first class of the redesigned FDNS Officer Basic Training course has been scheduled to begin on April 29, 2008. The FDNS-DS training materials are being updated in concert with the materials for the FDNS Officer Basic Training Course. These materials will be used to train new officers and provide refresher training to super users or other officers. In addition, FDNS is in the process of creating FDNS-DS desk-side training materials that will be used in concert with the FDNS-DS modules to provide refresher training to FDNS officers. These supplemental or refresher training materials are expected to be finalized within 90 days.)

Concurrent with the steps outlined above, the USCIS Transformation Program Office continues to progress toward full implementation of a centralized and consolidated electronic alien files environment that is person-centric and account-based. As this information is centralized, USCIS will be able to imbed robust data analysis capabilities to link the results of that analysis to rules-based risk management tools. This will greatly enhance USCIS' ability to identify and flag probable fraud cases. Also concurrently, the Office of Information Technology is developing enhanced query capabilities that will provide an additional resource for identifying benefit fraud.

Recommendation 10: Develop standards for site visit reports that document USCIS and ICE workload, safety, and law enforcement coordination measures.

Currently, FDNS officers are required to document in the FDNS-DS when officer safety concerns are identified. HQFDNS queried the FDNS-DS and only identified a small number of cases where officer safety concerns were raised. The majority of the incidents contained in FDNS-DS pertained to issues such as a barking dog, a shirtless male answering the door, and the lack of a viable escape route, because the site being visited was on a dirt road. It should be noted that if a safety concern rises to the level of being a reportable incident such as a threat to person or property as described in Section 2 of the current Significant Incident Report (SIR) template, a SIR must be completed and submitted though appropriate channels. As of January 15, 2008, FDNS has not received any SIRs based on officer safety concerns. Additionally, expanded information regarding identifying and reporting officer safety concerns will be provided as part of the revised FDNS basic training course. The FDNS training curriculum is currently being designed so that officer safety will be re-emphasized throughout the journeyman and supervisor level courses as well.

Question#:	80
Topic:	fraud
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

FDNS has also had discussions with ICE regarding the development of FDNS-DS capabilities (data fields) that will capture additional officer safety information, including workload and law enforcement coordination efforts. It is important to note that because this will require further development of the FDNS-DS, it will not happen in the near future. Any and all discussions regarding the addition of new business requirements have been suspended until completion of the aforementioned FDNS-DS Engineering Study. This study will serve as a roadmap to address many of the issues identified in the OIG review.

Target dates for completion/implementation: Cannot be provided at this time.

(Note: Since that update was provided, FDNS has worked with its ICE counterparts and agreed to form an interagency workgroup to pursue the development of the additional FDNS-DS capabilities (data fields), including capturing additional officer safety information.)

Question: If not, what is your projected time-frame for doing so?

Response: See response above.

Question#:	81
Topic:	citizenship USA
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: Citizenship USA was a project implemented during the Clinton Administration. Through it the naturalization of hundreds of thousands of aliens was rushed through in time for them to vote in the 1996 elections. However, as a result of its focus on naturalizing a large amount of citizens in anticipation of the election approximately 180,000 aliens were naturalized without having undergone FBI criminal history records checks. This includes an unknown number who had potentially disqualifying criminal records. It has been brought to my attention that one of the officials who USCIS is heavily relying on to remedy the current naturalization backlog was himself found to have contributed to the deficiencies cited in Citizenship USA. Michael Aytes, currently USCIS's Associate Director of the Domestic Operations Directorate, was at the time of Citizenship USA, the Assistant Commissioner for INS's Immigration Services Division. The Department of Justice's Office of the Inspector General issued a report on Citizenship USA in 2000. Of Mr. Aytes's performance the IG stated:

He said that INS should have investigated the matter of FBI processing times, but neither he nor anyone on his staff raised the issue at the time. As Aytes told the [Inspector General], INS Headquarters' and the Field's primary concern with regard to [85,000 cases in which it was unclear whether FBI criminal history checks had been completed] was getting them scheduled for interviews, not waiting for confirmation on a fingerprint check. Because of this focus on production, Aytes never reconsidered his decision to move forward with the adjudication of the 85,000 cases despite the findings that all of the fingerprint checks had not been completed.

I am very concerned about a backlog reduction approach that focuses on production at the expense of criminal history record checks.

How does the Department, and USCIS in particular, intend to ensure that these mistakes of Citizenship USA – particularly the failure to provide appropriate emphasis on criminal background checks – do not repeat themselves?

Given that the judgment and leadership exercised by Mr. Aytes's during Citizenship USA was found to be substantially lacking, does the Department plan to remove from him any responsibility for current backlog reduction issues? If not, what has occurred since 1996 and the subsequent IG report issued in 2000 that leads Department officials to believe that he is now better able to appropriately manage backlog reduction efforts?"

Question#:	81
Topic:	citizenship USA
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Response: DHS takes your concerns about Citizenship USA. Since the time of the report by the Inspector General, we feel certain that the process and systems changes that have taken place provide a much stronger foundation for processing the volume of applications USCIS now faces. Senior managers at USCIS, some of whom were here during Citizenship USA, many of whom were here for the rebuilding that followed Citizenship USA, are adamant about not sacrificing quality or integrity in the name of productivity. Those rebuilding efforts included: developing rigorous Naturalization Quality Procedures (NQP); requiring definitive responses on FBI fingerprints name checks before final adjudication; establishing Application Support Centers to centralize and modernize the fingerprinting process; and ending the outside testing program.

USCIS has further strengthened that foundation in many ways. USCIS established a Fraud Detection and National Security (FDNS) Division to identify security threats and combat benefit fraud; identify and remove systemic vulnerabilities that compromise the integrity of the legal immigration system; and collaborate with law enforcement, as well as other agencies. FDNS has over 600 Fraud Officers deployed to every USCIS Regional Office, District Office, Asylum Office, Service Center, and National Benefit Center, as well as expanding to some of the overseas offices. Additionally, a special unit at USCIS headquarters is dedicated to managing and resolving national security hits on active applications.

USCIS has made other organizational changes to support long-term institutionalization of quality and integrity, including creating a division dedicated to evaluating the quality of the adjudications process and production management. The Growth Management Oversight Group (GMOG) was established last year to ensure that implementation of the fee rule initiatives stayed on track. The group is made up of top headquarters leadership who monitor the progress on the additional hiring, infrastructure enhancements, and other improvements to be financed by the extra revenues from the increased fees. Finally, USCIS has redesigned the basic training course for its officers and developed a comprehensive Adjudicator's Field Manual.

Question#:	82
Topic:	documentary requirements
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: The 9-11 Commission taught us that "At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists." The Department has not yet issued regulations setting forth documents acceptable for boarding airplanes, as the Intelligence Reform and Terrorism Prevention Act required you to do by July 2005.

Why have they not yet been issued?

When will the regulations be issued?

Response:
Section 7220 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Intel Bill), Public Law No. 108-458, directs the Department of Homeland Security (DHS) to propose minimum standards for identification documents required of domestic commercial airline passengers.

The Transportation Security Administration (TSA) does have a policy that addresses this. TSA requests all individuals to show government-issued photo identification (ID) when they come to the security checkpoint. Individuals who show suspicious documents or do not have ID are subject to secondary screening. TSA is also addressing this vulnerability in two ways:

- Promoting secure identification is a top DHS priority, seen in REAL ID and the Western Hemisphere Travel Initiative (WHTI). DHS is taking a measured approach to incrementally- enhance document standards. TSA has supported implementation of REAL ID.
- TSA has a layered approach to security in general.

DHS issued the REAL ID Final Rule on January 11, 2008. This new regulation establishes minimum standards for State-issued driver's licenses and ID cards in accordance with the REAL ID Act of 2005. We are confident that the minimum Federal security standards for driver's licenses, referenced in this final rule, will go a long way in helping achieve better proof of identity and fraud prevention for identification purposes including boarding a commercial aircraft. TSA has been a full participant in the efforts of DHS to develop standards for State-issued driver's licenses and ID cards that will assist with ID verification at our Nation's airports. Additionally, DHS has taken steps to

Question#:	82
Topic:	documentary requirements
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

enhance international-travel documents through e-passports and US-VISIT. We can now expect to see proof of identity and citizenship at our land and sea ports of entry upon implementation of WHTI.

Furthermore, TSA has implemented a series of measures, also referred to as layers of security, which work together to reduce the risk of a terrorist being able to carry out a terrorist act. TSA continues to build upon those layers, for example, by taking over the travel-document checking function from air carriers. TSA travel document checkers routinely find false identification and refer the holders to law enforcement authorities. The Travel-Document Checker function is an important, additional layer to our existing security program in airports. The Travel-Document Checker will:

- Interact with passengers to observe behavioral characteristics that would warrant additional screening, interviewing, etc.
- Have access to TSA security briefings, which can be leveraged to focus on updated threat information.
- Incorporate enhanced technology and best practices to better identify fraudulent documents.

As of January 2008, TSA assumed the Travel-Document Checker function at 90 percent of the federalized airports. TSA Transportation Security Officers (TSOs) performing this function are currently sensitizing the Travel Documents for 87 percent of airline passengers. TSA Travel-Document Checkers are trained in behavioral recognition, and have been provided with tools to assist them in identifying fraudulent documents. This expanded role of TSOs, combined with new training and technology, will increase TSA's ability to identify potential terrorists.

Every passenger who boards an aircraft is subjected to screening, and measures are in place to ensure that individuals who are on the No Fly list do not board an aircraft. Every person on the Selectee list is subjected to secondary screening before boarding an aircraft. The exact details of how this works are considered Sensitive Security Information. TSA would be happy to provide a briefing on this particular issue in an appropriate environment.

Additionally, TSOs at our Nation's passenger-screening checkpoints have implemented Unpredictable Screening Procedures to increase the likelihood of subjecting a potential terrorist to enhanced screening. TSOs can subject a passenger to enhanced screening and/or ask for law enforcement support if the TSO feels there is something suspicious about the individual.

Question#:	82
Topic:	documentary requirements
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

The above systems and procedures constitute a layered strategy to significantly reduce the ability of a potential terrorist to get through the screening process. TSA's process does not rely on the documents a traveler presents and, therefore, mitigates—for now—the threat of a terrorist using insecure or fraudulent ID to board a commercial aircraft.

DHS continues to review TSA's policies with respect to ID requirements to consider the appropriate balance and meet security needs.

Question#:	83
Topic:	return of Nationals
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: DHS cannot deport over 100,000 deportable aliens, many of them criminals, because their countries refuse to take them back. The Department's Inspector General believes this has created "a mini-amnesty program" and reports that "thousands of criminal aliens with final orders are released because of the unwillingness of some countries to [accept back their nationals]". The Immigration and Nationality Act requires the Secretary of State to stop issuing visas to all nationals of countries you determine have refused or delayed the return of their deported nationals.

Why has the Department never exercised this authority?

Response: DHS takes very seriously any delays by foreign government officials in issuing travel documents to nationals who have been ordered removed. On September 7, 2001, the U.S. Government successfully utilized visa sanctions under INA § 243(d). On October 10, 2001, the Department of State discontinued granting nonimmigrant visas to employees of the government of Guyana, their spouses, and their children. Within 2 months, the government of Guyana issued travel documents to 112 of the 113 Guyanese aliens who had been ordered removed from the United States under our laws. Many of these aliens had been convicted of aggravated felonies. On December 14, 2001, the Department of State lifted the visa sanctions against Guyana. Obviously, in this case, sanctions had a dramatic effect and served our purposes.

In fact, the mere threat of visa sanctions has had positive results against Ethiopia, Eritrea and Jamaica, resulting in travel documents being issued more timely. ICE and Department of State representatives met with the Ambassadors of these countries to discuss the obstacles hindering the repatriation of their citizens. In the case of Ethiopia, the Ambassador agreed to a list of requirements made by ICE regarding the issuance of travel documents. The Embassy has since abided by the informal agreement. In all three cases, the mere suggestion that these obstacles could result in the implementation of visa sanctions against these countries resulted in a dramatic increase in cooperation in the removal process.

Haiti, Cambodia and Vietnam are further examples of countries where DHS has successfully negotiated formal and informal repatriation agreements. Traditionally, these countries refused to issue travel documents or accept their nationals or citizens. As a result of negotiations with Haiti, ICE currently has an informal arrangement to conduct repatriation flights every two weeks to Port-Au-Prince. In 2002, ICE and the *Department* of State successfully negotiated a formal agreement with Cambodia under which ICE

Question#:	83
Topic:	return of Nationals
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

routinely returns Cambodian citizens and nationals after they have been removed from the United States. With regard to Vietnam, years of negotiations have resulted in a formalized process for the return of Vietnamese citizens or nationals that have been lawfully ordered removed under our laws.

These examples make clear that we tailor our approach to fit each particular set of circumstances presented by recalcitrant countries. DHS is committed to using all tools at its disposal, including 243(d) visa sanctions, to convince these countries to accept their citizens and nationals.

I remain committed to appropriately using visa sanctions, which is a tool that is currently available to DHS, as a means to improve our immigration system.

Question#:	84
Topic:	2010 Census
Hearing:	Immigration Oversight
Primary:	The Honorable Lamar Smith
Committee:	JUDICIARY (HOUSE)

Question: It has been reported that the Census Bureau has asked the Department to suspend enforcement of the immigration laws in 2010 during the taking of the census. Does the Department have any plans to stop enforcing the immigration laws in 2010?

Response: No.

Question#:	85
Topic:	PAA
Hearing:	Immigration Oversight
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: How effective were your law enforcement efforts prior to enactment of the Protect America Act. How did the tools provided by the PAA assist your Department in the war on terror? How have your Department's efforts been impacted since February 16, 2008. In your opinion, is America as safe now as it was on February 15th? How would passage of the Senate amendments to H.R. 3773 assist the law enforcement and intelligence communities?

Response:

The Federal Government has no higher responsibility than protecting our citizens from foreign terrorist threats, and the Intelligence Community, including the Department of Homeland Security, plays a central role in detecting and preventing terrorist attacks. As the President has stated, it is essential for the men and women who protect us to have the ability to monitor terrorist communications quickly and effectively. Last summer Congress took an important step toward modernizing the Foreign Intelligence Surveillance Act of 1978 (FISA) by enacting the Protect America Act of 2007 (PAA). The PAA has allowed the Government to temporarily close an intelligence gap by enabling our intelligence professionals to collect, without a court order, focusing intelligence on targets located overseas. However, these temporary authorities must be made permanent. Congress must act quickly to permanently modernize FISA and provide retroactive liability protection for companies alleged to have assisted the Government in the aftermath of the September 11 terrorist attacks on the United States. The Federal Office of the Director of National Intelligence is the best Federal entity to respond to questions on the PAA.

Question#:	86
Topic:	border security
Hearing:	Immigration Oversight
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: Many of us in Congress have stated that the first step to stopping illegal immigration is to strengthen border security, enforce immigration laws in the workplace, and end failed policies such as catch and release. In the 109th Congress, we authorized the construction of more than 700 miles of fencing along the Southwest border. How much of the fence has been constructed? How is our security affected without it? What about the virtual fence? A recent Washington Post article reveals that little to nothing has been done with this? What additional resources does the Department need to finish construction? What additional efforts are being undertaken to enforce laws in the workplace? To end policies such as catch and release?

Response:

Gaining effective control of the border relies on an appropriate mix of personnel, technology and tactical infrastructure. The Border Patrol utilizes a threat based approach to the deployment of its resources. Due to terrain features and the type of environment (urban, rural or remote) adjacent to the border, the mix of personnel, technology and tactical infrastructure will be different to meet the threat in each location. Some areas of the border require the use of fence to provide a physical deterrent that allows agents time to respond to illegal activity; in other areas, technology and personnel are sufficient to secure the border. In cases when a critical component of the proper mix is absent, it requires a corresponding increase in one or more of the remaining components to ensure border security.

As of April 11, 2008, 173.6 miles of pedestrian fence (PF) and 142.9 miles of vehicle fence (VF) have been completed along the southern border. By the end of Calendar Year 2008, DHS plans to have 370 miles of PF and 300 miles of VF as well as additional technology deployed along the southwest border.

Regarding technology, current plans are to deploy the SBInet integrated technology solution to two locations in Arizona by the end of CY 2009, barring any major shifts in the cross-border threat. CBP has completed technology requirement assessments of the Yuma and Tucson Sectors and will look to fill those needs first as they are presently the highest threat areas. But expanding the integrated tower-based system is not all CBP is doing in the interim for technology between our ports of entry. For example, CBP currently has 4 Mobile Surveillance Systems (MSS) in operation and plans to deploy an additional 36 MSS this year to the southwest border to serve as primary detection platforms. While some MSS will eventually be replaced by a more cost-effective,

Question#:	86
Topic:	border security
Hearing:	Immigration Oversight
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

integrated radar/camera tower under SBInet the highly mobile MSS units can be used to "fill gaps" of surveillance coverage, temporarily replace a sensor tower down for maintenance, or rapidly deploy to a "hot" area needing extra coverage. By October, 2,500 new unattended ground sensors will replace and add to our existing numbers, for a total of nearly 8,500 sensors deployed across our southwest and northern borders.

The Department will continue to review SBInet program progress and risks with respect to the evolving operational (mission) risks presented by the security situation along the border, and will submit formal resource requests to the Congress that mitigate and balance these risks. At this time, SBInet is fully funded to execute our near-term development, construction, and implementation goals.

DHS is enforcing additional efforts to investigate and penalize employers who systematically employ or exploit aliens unauthorized to work, and increase the capability to detect, deter, and eliminate the abuse of the immigration process. DHS will identify, apprehend, and expeditiously remove the criminal alien and fugitive population as well as provide tools to foster compliance with immigration and customs laws.

Because the Administration has been able to increase detention space and increase the efficiency of the removal process, the Administration announced in August 2006 the end of "catch and release." What this means is that 100 percent of other than Mexican (OTM) aliens apprehended along the southwest and northern borders who were subject to detention pending removal and were otherwise ineligible for release from custody under U.S. immigration law were detained. Previously, aliens were issued a notice to appear in court and were released into society.

Question#:	87
Topic:	Delta Queen
Hearing:	Immigration Oversight
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: I would be remiss if I didn't ask a question impacting my district relating to the Coast Guard. One critical piece of legislation that was enacted in 1966 was the Safety at Sea Act, which mandated that "deep-draft cruise vessels" comply with certain safety requirements because of the dangers and stresses that such vessels face on the high seas. The Coast Guard enforces these safety mandates.

Vessels that operate within our inland waterways, such as the Delta Queen, have operated under a congressional exemption from the safety requirements since 1968. In reauthorizing the exemption, Congress has noted the differences between vessels that operate hundreds of miles from shore and those that operate a few feet from shore. Notwithstanding its exemption, the Delta Queen has implemented safety measures approved by the Coast Guard. The crew is trained in fire safety in accordance with Coast Guard requirements. The vessel is inspected by the Coast Guard both during announced and unannounced visits at least six times a year.

What have been the results of these inspections. Would the Coast Guard allow the vessel to operate if it was unsafe or did not pass an inspection?

The reason for my question is this - the Delta Queen is a national treasure and its operating exemption expires in November of this year. Without this exemption, the vessel will be forced to shut down. Opponents of continuing the exemption cite safety as the primary reason for allowing the exemption to expire. Yet, the records maintained by the vessel's owners indicate that with the exception of one minor incident in 2003, the Delta Queen has never had a serious or significant safety incident. Would you comment.

Response: The previous inspections for certification and reinspections found the DELTA QUEEN to be in satisfactory condition within the limitation of the exemption. If the Coast Guard finds any unsafe conditions or if the vessel does not pass inspection, the Coast Guard will work closely with the vessel representatives to ensure safety of the vessel and passengers, and remedy unsafe conditions before permitting the vessel to sail.

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