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NOMINATION OF HON. JULIE L. MYERS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF HON. JULIE L. MYERS TO BE ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

SEPTEMBER 12, 2007

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WEDNESDAY, SEPTEMBER 12, 2007

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NOMINATION OF HON. JULIE L. MYERS

WEDNESDAY, SEPTEMBER 12, 2007

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:31 a.m., in room 342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, McCaskill, Tester, Collins, and Voinovich.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The hearing will come to order. I know Senator Collins is on her way. I thank everybody for their patience as the Senate concluded its votes.

Ms. Myers, welcome to this hearing on your nomination to continue as Assistant Secretary for U.S. Immigration and Customs Enforcement (ICE) at the Department of Homeland Security. As you have experienced firsthand, this Committee subjects nominees who come before it to rigorous scrutiny. During your nomination hearing in 2005, several Members of the Committee, including myself, raised concerns about whether you had sufficient experience and managerial ability to lead an agency such as ICE, a big, complicated, tough agency. I ultimately voted, respectfully, against your nomination in the Committee because of those concerns. As you know, the Senate never acted on the nomination, but the President did give you a recess appointment.

So you have now been Assistant Secretary at ICE for more than a year and a half. The relevant criterion then now becomes whether you have been doing a good enough job running this important agency to have overcome, speaking for myself, my earlier concerns. All things considered, based on your performance and, I will say, on more than 20 interviews conducted by members of my staff of people both inside and outside of ICE and the government who have worked with you, I believe that you have what it takes to get this job done and, therefore, will vote to confirm your nomination.

I have been impressed by your knowledge of the complicated issues facing ICE. You have provided thoughtful answers to our Committee's policy questions on a range of topics. Some of those staff interviews that I referred to were done with people who have worked within the system during your tenure at ICE and who are, therefore, close to you, including senior ICE managers, ICE field agents, advocacy groups from outside of the government, GAO offi-

cials, and representatives of the Department of Homeland Security Inspector General's Office.

The reviews of your work from these people who are closest to it have been positive. People we have spoken to have described you as a talented executive with a strong work ethic and very good management abilities. You have recruited, I note, and empowered experienced and talented senior managers. You have clearly improved ICE's financial situation, bringing on a permanent Chief Financial Officer, reaching out to ICE auditors, and helping engineer a dramatic financial turn-around.

So I want to assure you that when we greeted each other before the hearing and I said you looked so much older and wiser—— [Laughter.]

I only meant half of that. [Laughter.]

Still, ICE remains an agency with challenges and with troubles. As the Committee that originated the legislation to create the Department of Homeland Security, we have a stake in seeing ICE realize its full potential, and we want to work with you to make sure that happens and that it happens as soon as possible. So I want to take just a moment to focus on a few of the agency's ongoing challenges.

Created through an internal reorganization after DHS itself was established, ICE was forced to integrate the employees, missions, and cultures of core Customs programs at the Department of the Treasury and immigration programs at the INS. While various agreements have been drafted to delineate responsibilities between Customs and Border Protection (CBP) and ICE, additional work is needed, we conclude, to ensure proper communication and improved intelligence and information sharing between the two agencies.

Another problem is employee morale, which according to surveys we have seen remains low. The Partnership for Public Service and American University in a survey of the best places to work in the Federal Government unfortunately ranked ICE in the bottom 10 out of 222 Federal agencies and sub-agencies rated. ICE ranked 213th on strategic management and 218th on performance-based rewards and advancement. These ratings are based on candid employee surveys. I understand that they may reflect in part the dissonance associated with the merger of the component agencies and some of the unhappiness certainly predates yourself, but it remains a real concern to the Committee.

I am also troubled about the effect ICE's plan to restructure the Federal Protective Service and dramatically cut law enforcement positions will have on the security of Federal employees and buildings, and I would like to hear from you about that.

ICE's responsibility for apprehending, detaining, and deporting undocumented immigrants is a very important mission. With approximately 12 million undocumented immigrants in the country but only 27,500 detention beds, there is a real necessity to reserve those beds for those who pose the greatest risk to the broader American community. For many of the others who must await a hearing before an immigration judge, we have a problem, and I do believe that we have to figure out ways to use supervised release programs or other alternatives to detention so those 27,500 beds

are really being used for those who pose the greatest risk to the community and, of course, the greatest risk of whatever flight means in that case.

We have a responsibility, according to our national values, to treat those we detain humanely, and there are some concerns there based on the record. Three people recently died while in immigration custody within weeks of each other, bringing the total number of deaths at ICE custody facilities since 2004 to 65. This is a troubling record which raises questions, and I would like to hear more about your understanding of how that number occurred and what you are doing to improve it.

When you appeared before this Committee in 2005, I also expressed my concern about the treatment of asylum seekers, those coming here, not sneaking across the border but literally coming to the border saying that they have escaped prosecution or persecution of one kind or another and they are seeking asylum in the United States of America. The Commission on International Religious Freedom, concerned about the number of asylum seekers who are seeking entrance into the United States because they contend that they have been punished, abused because of their religious faith, has reported that they are held in harsh maximum-security facilities along with criminals and are sometimes subject to mistreatment or arbitrary punishments, including excessive use of solitary confinement. In February, the Commission reported that most of its recommendations had not been implemented yet, 2 years later, giving ICE an overall grade of "D" for its progress.

Because of my dissatisfaction on this matter, I introduced an amendment to the overall immigration reform bill which was considered by the Senate earlier in the year to improve the treatment of asylum seekers, a very unique category of people seeking to enter into the United States. After negotiating with the Department of Homeland Security, we did reach a compromise that was accepted by the full Senate by unanimous consent as an amendment to the comprehensive immigration reform bill. Unfortunately, the bill did not move forward in Congress.

But I have recently spoken with Secretary Chertoff about implementing the reforms we negotiated, and he did agree with me to work with the Committee to do so as much as possible administratively. I also indicated to him that I would consider legislation to implement reforms that cannot be addressed administratively.

Ms. Myers, many of the Commission's recommendations in this regard related to policy and programs under ICE's jurisdiction, and I am going to ask you to do all you can to support implementing the reforms that were embodied in the compromise that we negotiated with the Department.

ICE is a vitally important agency with a daunting combination of missions and problems. The problems clearly predate your tenure at ICE. They are not of your making, but of course, if confirmed now, you will have the ability to solve many of them. I appreciate the efforts that you have made in the time you have been in there to address some of those problems. I know that you agree that you and we have a lot more to do before we can have any sense of satisfaction that we are where we want to be.

I believe that given the limited time remaining in this Administration and given your demonstrated ability, commitment, and performance on the job, you have earned the right to continue leading this agency and hopefully to solve at least some of the problems that I have mentioned. I thank you for your service. I look forward to your testimony.

Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Yesterday's observance of the September 11, 2001, anniversary reminds us that one vital feature of homeland security is having borders that are closed to our enemies yet open to our friends. The United States has some 6,000 miles of international borders. Nearly 10 percent of those miles mark the frontier of my home State of Maine. As a border State Senator, I understand the vulnerability of those long borders, but also of the importance of striking the right balance.

As we saw in the Senate's recent debate on immigration reform, the American people emphatically consider border security and interior enforcement as critical issues. The vital work of coordinating interior enforcement with border security and forging effective partnerships with State and local law enforcement falls to the agency of Immigration and Customs Enforcement. Besides these important missions, ICE also combats drug trafficking, human smuggling, immigration benefit fraud, and international trade in child pornography, among other threats to our society. No wonder it is the largest investigative arm of DHS.

A few days from now will mark the second anniversary of the Committee's first nomination hearing for Assistant Secretary Myers. As the Chairman has noted, the failure of the full Senate to consider her confirmation was largely based on concerns about whether or not she had adequate managerial experience. Now, however, her work for more than a year and a half as a recess appointee gives this Committee an on-the-job performance record to examine that was not available to us last time. Based on the interviews that the Committee staff has conducted, I have concluded that concerns about Ms. Myers's managerial experience have largely evaporated.

Nevertheless, ICE faces huge challenges in conducting complex investigations of drug and alien smuggling networks, which can provide sources of revenue for terrorist organizations and avenues for terrorists to enter our country. Many smuggling organizations rely on fraudulent documents and attempts to fraudulently obtain immigration benefits.

Last year, the *Portland Press Herald* in my State uncovered examples of companies applying for H–1B visas for employees when these companies appeared to have no legitimate business operations in my State. Therefore, I am particularly interested in hearing how ICE has targeted its investigative efforts on unscrupulous employers who have sought to commit immigration fraud.

ICE has also been tasked with ensuring the detention and removal of an estimated 12 million illegal immigrants within our bor-

ders. Making this task even more daunting is doing so in a way that not only respects the law, but also is reasonable and fair.

Another issue worthy of our attention is the release from State and local correctional facilities of illegal aliens charged or convicted of crime, even violent crime, after they entered this country. The DHS Inspector General has called this "an unofficial mini-amnesty program for criminals and other high-risk aliens." I call it an outrageous failure of Homeland Security.

I applaud the Department's accomplishment in ending the flawed catch-and-release policy whereby illegal aliens were detained near the border only to be released with a summons to appear in court at a later date, where, of course, they almost never appeared. But the failure to remove these criminals after they have been caught by law enforcement and have actually been imprisoned must not continue. I look forward to hearing the Assistant Secretary's views on how we can correct this situation.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Collins.

Secretary Myers has filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had her financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made a part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

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

Do you swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. MYERS. I do.

Chairman LIEBERMAN. Thank you. Please be seated.

Ms. Myers, the Committee welcomes your opening statement at this time.

TESTIMONY OF HON. JULIE L. MYERS[1] TO BE ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. MYERS. Thank you very much and good morning, Chairman Lieberman, Senator Collins, and distinguished Members of the Committee. It is my privilege to appear before you today to continue serving as U.S. Immigration and Customs Enforcement's Assistant Secretary. It has been my distinct honor to lead ICE for nearly 2 years, and I am grateful for the confidence placed in me by the President and Secretary Chertoff and the kind words that you offered in the beginning, Chairman Lieberman.

As the largest investigative branch of the Department of Homeland Security and a relatively new agency, ICE has exceptional responsibilities for protecting the American people against terrorist attacks and criminal acts, broad law enforcement powers and authorities, an annual budget of nearly $5 billion, and over 16,500

[1] The prepared statement of Ms. Myers appears in the Appendix on page 32.

employees. The men and women of ICE are some of the most dedicated public servants this country has, and it has been a privilege to work with each of them.

When I appeared before you in September 2005, I committed to strategically strengthening the agency's operations, enhancing management and financial accountability, and to further integrating legacy components into one cohesive ICE culture. I am pleased to report that together with the management team I built and the dedication of all those who work with ICE, we have made substantial progress on each of these fronts.

On the operational side, we have set new enforcement records while fostering innovation in carrying out the agency's mission. With respect to immigration enforcement, we have implemented a comprehensive interior enforcement strategy that is beginning to show significant results. The strategy focuses on reducing the criminal alien population, targeting the magnet of illegal employment, and dismantling the infrastructure that supports illegal immigration.

To fulfill this strategy, we have expanded and prioritized within our Criminal Alien Program to cover all Federal detention facilities and completed a large risk assessment of all facilities in the entire country. We set new records for criminal forfeitures and fines against egregious employers, and we have established 17 document and benefit task forces to root out fraud and abuse.

Under my tenure, we have also reengineered the detention and removal processes to support this strategy. This has involved adopting new business practices and enhancing internal oversight and accountability of our facilities. We have effectively ended the practice of catch-and-release along the borders. We set new removal records, removing more than 197,000 illegal aliens from this country in fiscal year 2006, a 13 percent increase over fiscal year 2005. And throughout, we have developed new comprehensive oversight procedures to ensure that ICE detainees are treated humanely and fairly, including new Quality Assurance Specialists in our largest facilities and the new Detention Field Inspection Group, an independent review mechanism housed within ICE's internal affairs office, dedicated solely to monitoring and inspection of detention facilities and treatment of individuals in ICE custody.

ICE has made substantial progress in other investigative areas, as well. Keeping arms and strategic technology out of the hands of those who seek to do our country harm remains a top priority for us. During my tenure, the agency has set new records for arms and strategic technology investigations, and we project that fiscal year 2007 arrests and indictments in these cases to increase by over 70 percent.

Recognizing that international partnership is also really the key to combatting the transnational crime, we have expanded our trade transparency units to combat trade-based money laundering with additional countries and we have provided bulk cash smuggling training overseas to attack worldwide narcotics networks. And during the past year, ICE's Federal Protective Service has continued to protect more than 8,800 Federal buildings that receive nearly 1 million visitors and tenants daily.

Under my leadership, ICE has made swift and measurable progress, but credit is certainly due to the many groups that have collaborated with us, including our State and local partners and the private sector.

With respect to enhancing management and financial accountability, we have created new senior management positions within the ICE leadership team in order to systematically upgrade our management capabilities to really meet the enforcement needs. We aggressively implemented a financial action plan designed to address the eight material weaknesses identified in the fiscal year 2005 DHS audit. By putting the right people in the right positions and by aggressively implementing our financial action plan, in fiscal year 2006, we successfully remediated six of the eight material weaknesses, and I anticipate that our results in the fiscal year 2007 DHS audit will continue to show progress. Other managerial improvements also included implementing industry-identified best practices that strengthened our overall hiring and discipline practices, providing enhanced training in critical areas, centralizing contracting practices within the Federal Protective Service, and filling a number of key SES and other leadership positions.

These are but a few of the numerous ICE achievements. I believe that our successes are attributed in part to the growing integration of culture and unification of policies within the agency. Our international missions are now cohesive, making it more difficult for potential terrorists and transnational criminal groups to move themselves, their supporters, or their weapons across the Nation's borders. Our intelligence is becoming fully integrated both at headquarters and through the creation of new Field Intelligence Groups. We are starting to modernize our information technology, working to ensure that all legacy systems interface with one another appropriately. We still have much work to do in this regard and in all our goals, but we are making progress and we have come far.

I want to thank you, the Members of Congress, for your recognition of the needs of ICE and for your view of the potential that this agency has in order to protect our country and to carry out our mission. I valued your oversight of our growth and progress, and the recommendations that you have made to us have allowed us to identify areas of improvement and implement many needed solutions.

On a personal note, I would like to thank my husband and my son, my parents and my in-laws for their constant support as I have served as Assistant Secretary of ICE and express my deepest gratitude and thanks to the thousands of dedicated professionals at ICE with whom I have had the privilege to serve.

In conclusion, I want to thank this Committee for its consideration of my nomination. If confirmed, I look forward to working closely with you to keep America safer. Thank you. And I would ask that my full statement be included in the record.

Chairman LIEBERMAN. Without objection, so ordered. Thank you for an excellent opening statement.

I want to begin by asking the questions that are standard for all nominees. First, is there anything you are aware of in your back-

ground that might present a conflict of interest with the duties of the office for which you have been nominated?

Ms. MYERS. No.

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

Ms. MYERS. No, I do not, Senator.

Chairman LIEBERMAN. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Ms. MYERS. Yes, I do, Chairman.

Chairman LIEBERMAN. Thank you, and I will begin with the first round of questions of 6 minutes for each member.

Let me begin with the matter that I mentioned about asylum seekers and the report of the Commission on International Religious Freedom (CIRF). It is my understanding that Secretary Chertoff has asked Department officials to consider how the reforms that we had agreed to around the immigration bill can be implemented administratively. Do you know at this point what your role will be in that process?

Ms. MYERS. I understand that I will work with the Department, provide leadership on the areas where we are the lead, and provide ICE's view on areas where CIS may be the lead. I would mention that we thought there were many valuable things in the CIRF report. One thing that the progress report or report card failed to take into account were the steps that ICE had taken, and that was because at that time, ICE had not yet met with the members of the Commission. We did have the chance to then meet with them and talk about the steps that we were taking.

In particular, the agency expects to very shortly announce a nationwide parole policy for these asylum seekers. One thing that I thought was valuable and true in the CIRF report was their concern about parole rates being radically different throughout the country, and so we worked on something that would standardize that consistent with the Commission's recommendations.

Chairman LIEBERMAN. Take a minute for the record to describe what parole means in this case.

Ms. MYERS. Well, in this case, we are talking about individuals who have been granted credible fear by Citizenship and Immigration Services, but are still going through the asylum process, and so for those individuals, the agency then determines whether or not detention is appropriate or whether or not bond or some other form of release is appropriate.

Chairman LIEBERMAN. Right.

Ms. MYERS. One thing that the Commission's report had noted is that there were some pockets of the country where almost all of these asylum seekers were detained and some pockets of the country where almost all the asylum seekers were released. I thought that the Commission's report raised a valuable point about looking at why that is, and when we looked as an agency, we thought we could do a better job in really standardizing what the guidance would be to make sure that we apply our policies and procedures equally across the United States.

Chairman LIEBERMAN. That is great news. So you intend soon to implement those uniform standards administratively?

Ms. MYERS. That is right. We are going through a final review by the lawyers, and I anticipate that that will be out very shortly.

Chairman LIEBERMAN. And again, I want to stress what you said, that these are people who come to our borders, say that they have been persecuted for religious or political reasons, and some administrative process has determined that there is some credibility to their fear. They are still going through the process, so I presume the intention of the uniform standards is to allow most of those to not have to be incarcerated while they are awaiting judgment unless there is some good reason to do so.

Ms. MYERS. Chairman, the intention of the standards is to make sure that we closely identify the factors that make detention appropriate or not appropriate in a particular case. Of course, many of the individuals who are granted credible fear ultimately do not obtain asylum.

Chairman LIEBERMAN. Correct. Understood.

Ms. MYERS. But I do believe that this parole policy is something that is consistent with the Commission's recommendations and it will be something that you and your staff will find favorable.

Chairman LIEBERMAN. Excellent. Let me go to a very different subject, which is the studies of employee morale which generally at DHS have been low, and I mentioned the one that particularly was not good for ICE. I want to know, what is your reaction to those and what you intend to do to try to improve the employee morale.

Ms. MYERS. Chairman, we took very seriously the findings in that review and also in an internal review that we conducted on our own. We are a new agency and so developing a cohesive ICE culture has been a challenge. I believe we have made substantial progress. I believe that has been noted by the unions that represent most of the ICE employees as well as by many of the officials that you have talked to.

During my tenure, I have taken a number of steps to try to improve employee morale. The first has been to get a sense of what the needs are in the field. I formed an Assistant Secretary Advisory Group that looked to leaders all throughout the country and talked to them. What are the core concerns they have? What things do they think need to be improved and changed in order to make ICE an agency of excellence? If someone wants to come into law enforcement, we want them to come to ICE and stay at ICE throughout their career, and so I think hearing from the field and all our different disciplines has been a very helpful thing for that.

The other thing that came up time and time again is that the management side of ICE was not strong when it was formed and that agents and officers in the field really felt a lack from unified agency policies and, frankly, from cohesive leadership, not only in acquisitions, but in CFO, IT, and the like. So we really strengthened that side in order to give the agents a sense of unified policies and also to give them the management support that they need.

Chairman LIEBERMAN. I have got a little time left but I have got a big question, so you can give a short answer. I was troubled to read in the GAO's recent review of the Department's overall progress that among the areas that GAO listed as still unachieved

is the effort to implement effective visa security measures, and I wanted to ask you how do you respond to GAO's assessment that ICE has failed to successfully expand the Visa Security Program and is, therefore, not meeting its mission to enhance security of the visa issuance process?

Ms. MYERS. Mr. Chairman, I would tell you that the expansion of the Visa Security Units (VSU) has been a challenge of the agency since the beginning of its creation. In part, over the past 18 months, I think we have realized as an agency that we needed broader support within the inter agency and within the Administration in order to really get out to the highest-risk visa issuing posts.

Over the past year, we have worked with the Department of State, the White House, and others to really gain the support of expanding the Visa Security Program and getting the ambassadors to agree and see that they add value. And to be frank, in the beginning of the program, that has been a challenge. The ambassadors are very tight for space, and they did not see how adding these Visa Security Units would really add value to their embassies. I think we have been able to show them how having these units in place really helps us identify threats that we didn't know were threats and get ahead of the curve before these individuals come into our borders. But I think that is due in great part to the support of the Department, the Department of State, and now the White House.

VSU has issued a 5-year plan which, if we receive funding from Congress to do this, will allow us to cover 75 percent of the high-risk posts within 5 years. That is our goal. That is what we are seeking to do, and we are confident that when GAO comes and looks at this again, they will see substantial progress.

Chairman LIEBERMAN. What percent are we at now, would you say?

Ms. MYERS. I think we are at less than 25 percent. We are at eight countries at this point.

Chairman LIEBERMAN. We have got a ways to go. How much money is involved, do you know offhand, to support this expansion?

Ms. MYERS. This would be at least over $100 million. I can get you precise numbers.

Chairman LIEBERMAN. It is real important to do, an important investment in security. Thanks very much.

Ms. MYERS. Thank you.

Chairman LIEBERMAN. Senator Collins.

Senator COLLINS. Thank you.

Ms. Myers, I mentioned in my opening statement the removal of aliens who have committed crimes. This is an issue that the DHS IG has been quite critical of ICE for not doing more, for not focusing on State and local prisons as well as Federal prisons. Could you explain what steps ICE is taking under your leadership to ensure that criminal aliens in State and local facilities are identified and removed?

Ms. MYERS. Thank you, Senator Collins, and I share your concern about identifying criminal aliens while they are in our jails and prisons, before they get out into the streets in our communities. And under my leadership, a real transformation of the

Criminal Alien Program (CAP) has been a very high priority for me and it has been a high priority as we have sought funding in the President's budget to expand the program.

What we have done since I have been at ICE are several things. First, on the Federal side, and we are looking at risks. We looked at the Federal institutions first. And I discovered when I got to ICE, we only covered 30 of the 119 Bureau of Prisons institutions in the country, and I thought that needed to be changed right away. We set up a center called the DEPORT Center, which leverages technology to screen aliens in all 119 Bureau of Prisons to make sure that no Federal prisoner leaves a Federal institution without having encountered ICE and without having gone through the screening process, going through the removal process, as well.

Now, with respect to States, local, and county facilities, what I found when I arrived at the agency is that we did not have a full and complete understanding of where every single institution was in the country and, frankly, what the risk was at each of these institutions. What we have done is identify all the institutions in the country and then we have ranked them based on risk and the risk ranking looks at the number of aliens in the facility, if we know, otherwise, the total population, whether or not the facility is a State release site, whether or not it is close to another large city, and the like.

And based on that, we have ranked all facilities into four risk categories and now we are systematically going through and looking at where are our gaps? How can we get to full screening at all institutions in the United States?

I am pleased to say that this year, we have issued over 135,000 charging documents to individuals in Federal, State, and local institutions. That is up from over 65,000 documents the year before. We have more than doubled. I think we need to think about this in terms of leveraging technology, leveraging our resources, and making sure we are at high-risk facilities.

But, frankly, modernizing the CAP program and getting that to a place where we have full screening is one of the reasons I want to stay at ICE. I believe it is a very high priority for the agency, and I think we can make considerable and measurable steps.

Senator COLLINS. Thank you. During the debate on the immigration bill, many of us learned the figure that there are nearly 12 million people in this country who are here illegally, whether they overstayed their visas or entered illegally in the first place. Now, there are those who have advocated that we should somehow try to locate, detain, and deport all 12 million people. There are others who have said that is simply not practical and it would be enormously expensive. Could you give us some idea of what the cost of trying to locate, detain, and deport all of the 12 million people who are here illegally would be?

Ms. MYERS. Senator Collins, it is certainly difficult to give what I think would be a precise number with respect to the costs of locating, removing, and detaining individuals. In terms of very rough calculations, our agency has estimated that it would cost at least $94 billion to engage in locating, detaining, and removing all these individuals.

Now, this model is quite rough. It doesn't take into account, for example, if ICE were given really substantial resources so that the illegal alien population thought, in fact, ICE was actually going to enforce against every single person here, whether or not there would be some kind of deterrence created in that and whether or not, then, in fact, there would be incentives for individuals to leave the country on their own or to, once they have left the country, not come back in. The model also does not take into account all the things that the Border Patrol has done and the Secretary's Secure Border Initiative. So it is simply a very rough model, looking at our average costs of detention and our average costs based on length of stay.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Thanks, Senator Collins.

In order of arrival, Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. First, I want to recognize that you have great roots near Missouri. We claim the area over on the other side of the line in the Kansas City area as part of the greater Kansas City region, so I recognize that you are like someone from a part of the country that I care very deeply about. I also know that your husband is—you are struggling with a young child and the two of you having big jobs in different places, and I appreciate the sacrifices your family is making in that regard. Having been in your position, having young children with a very big job, I know that it is really hard and I know your family has to be there for you. So please tell them for me that I appreciate the sacrifice they are making in the name of public service.

Ms. MYERS. Thank you, Senator.

Senator MCCASKILL. I notice in your statement and I notice the rhetoric coming out of Homeland Security that you have targeted the magnet of illegal employment as an important part of your strategy. How many employers spent a day in jail for hiring illegal immigrants in the United States of America?

Ms. MYERS. Senator, I can't tell you that. Our statistics were tracked based on criminal and civil convictions, so we look at criminal convictions of all types from worksite enforcement and administrative convictions of all types. I will tell you that this year so far, we have had over $30 million in criminal fines and forfeitures. Compare that to the last full year of the INS, when it was only $600,000.

Senator MCCASKILL. Well, how many employers does that represent, the $30 million?

Ms. MYERS. Senator, I can't tell you that at this time. I would be happy to get back to you. I can tell you that in the last several weeks, almost every week, we have had an instance where we have indicted a manager or convicted a manager at one level or another.

But I sense from your question that you have frustration in this area, and I will tell you that I agree with you on targeting egregious employers, getting U.S. Attorneys to take those cases in order to really make a difference there. I believe we are starting to see a shift. Those cases, like many Federal criminal investigations, do

often take longer than the agents would like to bring them to conclusion and to then see a final disposition.

The bottom line is, though, we are looking to change behavior, and I think we are seeing some very positive things just by the way of examples of large companies changing their business behavior, changing their practices to stop employing illegal aliens.

Senator MCCASKILL. I have got to tell you, I have spent a lot of time as a prosecutor, and I don't buy it. It is, I think, outrageous that you would come to a confirmation hearing in front of the U.S. Senate and not know how many employers in this country have been criminally prosecuted. The idea that you are keeping statistics that are lumping together the immigrants that you are arresting in the workplace with the employers is masking the fact that this has not been a priority and continues not to be a priority.

I know, for example, that 537 people in Missouri were charged last year for kids using IDs in bars. Now, think about the similarity. I can imagine these employers are going to say, well, gosh, all kids look about the same age, and gosh, fake IDs are so good, and gosh, all these fake IDs, how do you expect us to be accountable for figuring out who has a fake ID and who doesn't? But yet 537 employers in Missouri were charged last year for fake IDs for people who were trying to have a drink, but yet we can't tell the American people how many employers have spent a day in jail?

It is, in fact, a major failure that anyone would think that the statistics of immigrants that are arrested in the workplace translate to actions against the employer. And I have read every word that you have said and written about this and everything is anecdotal. Is it possible for you to go to Justice? You were in charge of the Criminal Division at the Justice Department. You worked with all the U.S. Attorneys. Isn't it possible to pick up the phone and ask the U.S. Attorneys or send an e-mail to the U.S. Attorneys for them to forward every example of an employer that spent a day in jail for hiring illegal immigrants in the United States of America?

Ms. MYERS. Senator, I certainly understand your concern. I will tell you what is not anecdotal is the amount of criminal fines and forfeitures against employers, $30 million against those employers, and that we are taking steps each and every day to make good progress. I share your frustration with respect to individuals that spend a day in jail. Obviously, that does reside in the Justice Department, in the judges that make the determination of how long individuals will be sentenced.

With respect to our statistics, the way we track statistics is through the type of investigation, be it worksite, money laundering, drug cases, and the like, and the kind of charge that it is, if it is a criminal charge or if it is an administrative charge.

Senator MCCASKILL. But you understand there is a major difference between an illegal immigrant who is trying to get a job to feed his family and an employer who repeatedly and knowingly hires people with bad papers, and trust me, we make much more difficult cases in this country. The prosecutors in this country are up to this task. If they get direction from on top that this is a priority, trust me, the prosecutors can make these cases. They can prove that the employer knew that was a ridiculous Social Security

number, that they knew that the Social Security number had been used five times by various employees in their facility.

The employers of this country can be deterred. They are not being deterred now because I am not convinced, just by virtue of the way you keep statistics, that it is not a serious issue with this Department.

Ms. MYERS. Senator McCaskill, I certainly appreciate your concern. What I am telling you is that I think we have made substantial progress. There is no doubt that there are many more steps that we need to take. I think we are seeing changes. I will tell you that we separate administrative arrests, so when you talk about people who just are working in an institution and they are illegal, those are administrative arrests. Those arrests are kept separate than criminal arrests.

We do believe that it is a significant case. It is a problem when there are aliens who are working who are using the identities of real U.S. citizens and causing those U.S. citizens harm or when there are criminal aliens who are subject to 8 U.S.C. 1326 or other violations, that they are causing this country harm.

Senator MCCASKILL. Well, I am——

Ms. MYERS. One of the things that we often look to do—I am sorry, Senator.

Senator MCCASKILL. That is OK. I am out of time, but I am hopeful, can we do another round?

Chairman LIEBERMAN. Yes.

Senator MCCASKILL. Great. OK. I will be back. Thank you.

Chairman LIEBERMAN. Thank you. Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I want to add my welcome to Ms. Myers, and I want to convey my appreciation to you for all you have done thus far.

Mr. Chairman, I would ask that my statement be placed in the record.

Chairman LIEBERMAN. Without objection, it will be, Senator. Thank you.

[The prepared statement of Senator Akaka follows:]

PREPARED STATEMENT OF SENATOR AKAKA

Thank you, Mr. Chairman. I join you in welcoming Ms. Myers and her family and friends today.

Ms. Myers, as you know, when you first were nominated for this position in 2005, I had significant concerns that you lacked the extensive management experience required to lead such a large, complicated, and important agency as ICE. Because of these concerns, I voted against reporting your nomination out of this Committee in 2005.

My staff and I have looked closely at your performance at ICE, and I have concluded that you have performed adequately in your role. I appreciate your efforts to address the concerns that many of us on this Committee had during your previous nomination process, and I want to thank you for taking the time to meet with me earlier this month.

I am pleased that you have focused energy on tackling ICE's difficult management challenges and have made progress in some areas. In particular, at your nomination hearing in 2005, I highlighted my concerns with ICE's financial difficulties. Under your leadership, ICE's financial management has improved considerably, although there is still more to do.

In 16 months, DHS will undergo its first transition between presidential administrations. This transition will only complicate the considerable management chal-

lenges that ICE and DHS face. As the transition to the next presidential administration draws closer, continuity of leadership becomes increasingly important. I believe the American people will be best served if you are able to continue in your position to see this transition through, rather than having a new leader who would have to learn how to manage ICE at the same time as he or she prepares to hand over the reigns to the next administration.

I do continue to have some concerns about aspects of ICE operations, which I hope you will address at this hearing.

I am concerned by ICE's plans to continue downsizing the Federal Protective Service workforce. We cannot afford to put our Nation's federal buildings—and the thousands of federal workers and visitors inside them—at risk.

Additionally, a recent DHS Inspector General report highlights problems with ICE cooperation with the FBI in terrorist financing investigations. I hope that you will address what you are doing to correct this situation.

Finally, I am troubled by reports of harsh treatment of immigrants during immigration raids and reports that immigration detention standards are not uniformly enforced. Although I recognize the need for more aggressive enforcement of our immigration laws, every man, woman, and child taken into custody must be provided humane and dignified treatment. Our obligations to children are even greater because of their vulnerability. Alternatives to detention, such as electronic monitoring, can and should be used wherever possible to avoid separating families or taking immigrant children into custody.

These three problems point to the need to heighten oversight of ICE contractors and to provide better training for ICE employees. You have received strong support from leaders within DHS, but I am concerned that you need to do more to improve lines of communication with the boots on the ground. I hope that if confirmed, you will redouble your efforts in this area.

I look forward to this opportunity to hear from Ms. Myers. Thank you Mr. Chairman.

Senator AKAKA. I note that my statement shares some of the concerns of our Chairman having to do with the FPS downsizing and also immigration detention conditions. I would like to discuss those issues later. But to your husband, John, and your son, Connor, and your family, please convey our appreciation for what they do to help you do your job.

A July 2007 DHS Inspector General report stated that ICE agents in Miami and Los Angeles refused to assist the FBI in terrorism financing cases that were transferred from ICE to a Joint Terrorism Task Force led by the FBI. For me, this is a distressing report. I understand that these cases preceded you in the job. Ms. Myers, can you tell me why this happened and what you are doing to address this problem?

Ms. MYERS. Thank you, Senator Akaka. I certainly share your concern upon reading the Inspector General's report about nine incidents back in 2002 and 2003 where there were potential problems in sharing of information on terrorist financing cases. Immediately after receiving the final copy of the report, I did speak to leadership over at the FBI. My senior leadership did, as well. And I believe that we have a very good relationship with the FBI at this point in time on terrorist financing cases, that we share information. In fact, ICE is the second-largest participant in the JTTF, second only to the FBI, with 215 individuals that work on this on a day-by-day basis.

I can tell you that we were pleased that the IG said at least there was no evidence that any of the minor bickering back in 2002 and 2003 actually affected any national security investigations, and I would tell you that is not going to happen under our watch, under the leadership of Marcy Forman, John Clark, and others. I believe we have a great relationship with the FBI at this point in time.

Senator AKAKA. You have made my point here. I have heard this issue repeatedly—ICE headquarters may set reasonable standards, whether for cooperation in terrorist financing cases, conducting worksite immigration raids, or for immigrant detention conditions, but those standards are not always followed in the field. Hiring qualified people and providing them good training—I am glad you mentioned putting the right people in the right jobs in your units. That and training are two of the most important ingredients for getting field employees to follow the standards that you set at headquarters. What are you doing to improve recruitment and training for ICE employees?

Ms. MYERS. Senator Akaka, I think one of the things that I have done that has made the biggest difference in the recruitment and training of ICE employees is the hiring of Charlie DeVita, a very seasoned official with a lot of expertise in training, as our head of the Office of Training and Development in ICE. Under Charlie's leadership, we have really been able to centralize training within ICE—before, it was really decentralized—and bring together, I think, more of one ICE culture.

With respect to recruiting, unfortunately, in the early years of the agency, there wasn't a lot of money to do very active recruiting, but we have now taken a lot of steps to go out to conferences, to be out there to recruit, and just yesterday I signed an agreement with three historically black colleges and universities to develop a new mentorship program, where we are working with students in those universities that are criminal justice majors to try to get them internships and then encourage them to come to ICE and stay at ICE.

Senator AKAKA. ICE cooperation with other components of DHS, such as Customs and Border Patrol and U.S. Citizenship and Immigration Services, is critical to ICE and the success of ICE, as well. I have long believed that rotational programs can be a very effective way of improving communication and coordination between agencies that work together. Does ICE have a rotational program for employees or any plans to start one?

Ms. MYERS. We certainly, Senator, have employees detailed throughout the Department where they get a bird's-eye view of other components, issues that go on there. We are also a part of the Department's SES Management Development Program, and I know you probably heard the Secretary say we are encouraging our senior leaders to spend some time in a different part of the Department of Homeland Security in order to make sure that when they come back to their individual component, they can really understand the needs and concerns of the other parts of the Department. We encourage these programs. We value them.

Within ICE, we have our own Management Development Program, which for our young leaders has a rotation even within ICE, because the work of the Office of Intelligence is very different in many respects than the work of Detention and Removal, to give them a sense of the challenges and opportunities that these other folks face.

Senator AKAKA. Thank you for your responses.

Ms. MYERS. Thank you.

Chairman LIEBERMAN. Thank you, Senator Akaka. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. Thank you, Mr. Chairman.

Ms. Meyers, I want to say how pleased I am with the progress you have made during your tenure. I know I had some questions about your experience when you first appeared before this Committee. You convinced me that you could get the job done. You have done a terrific job. I am grateful for your service and that you are committed to continuing to serve the Department at a time when many are leaving the Administration.

I hope that you are thinking about the upcoming transition. I hope you have enough qualified SES personnel around that you can continue the progress you have made until the next administration selects your successor. That is why Senator Akaka and I have been working on legislation to establish a Chief Management Officer at DHS so that we can make sure progress continues. For the record, I would like you to provide me with metrics that you can use in the next administration to determine whether or not the Department is continuing to make the progress that you hope to see made because I know some of your goals for ICE will not happen until well in the future.

You have done a terrific job improving financial management at ICE. For the record, I would like to know how you have accomplished your financial goals and whether or not Under Secretary Schneider is privy to what you have done to see if DHS can use your work as a role model for other agencies within the Department to improve their financial management.

Senator McCaskill mentioned this whole issue of employer enforcement. Recently, I had a conversation with a man who bought a new company with about 300 employees. Because he believed that some of the employees were working illegally, he asked for verification of their work status. Approximately 125 of the employees failed to show up for work. Then he started working with the Social Security Administration (SSA) and found that some of the numbers for the employees that SSA had didn't match the individuals, and he informed Social Security of his intention to terminate their employment. In response, Social Security told him not to bank on their information because it may not be correct. Well, he got rid of them.

There is a great deal of uncertainty out there today among employers about enforcement policy and how they verify eligibility. I would like to know what ICE is doing to clarify the rules so employers and individual employees aren't in the dark.

Ms. MYERS. Certainly, Senator Voinovich, I think the agency has taken a number of steps over the past year to really start educating companies about what the best practices are, and I believe, just like the man in your example, I believe most employers want to do the right thing, but sometimes they feel like they don't have the information they need in order to figure out what it is they can legally and permissibly do.

We have put on our website ICE's list of best practices, and we are working with a small group of companies to identify further

best practices. We also believe that the proposed "no match" rule, which is currently the subject of litigation, is also something that will give employers clarity. Previously, they had said when they receive a "no match" letter, they don't know what steps to take. Under the "no match" regulation, it provides guidance to employers who, if they act as a reasonable employer as identified in the regulation, the agency will find that there is a safe harbor for them.

Senator VOINOVICH. Well, I would appreciate if you would increase your efforts to communicate with employers. The more information you can provide to them and through their various publications, the better off I think everyone is going to be.

The other thing I would like to raise is Visa waiver reform. During debate on the provision, one of the things that we discussed was the fact that we needed to do a better job keeping track of folks overstaying their visas. What are you doing to go after individuals who illegally stay here in this country and violate their visa requirements?

Ms. MYERS. We have a Compliance Enforcement Unit at ICE which focuses on visas overstays, including visa waiver violators, students, and others. We work very closely with US–VISIT, who provides data to us through their Data Integrity Group on information, particularly on entry, but also in some cases on exit data that they do have to look and target based on information we receive from law enforcement and the intelligence community about individuals that may be of highest risk. And, of course, day in and day out, when ICE employees are out enforcing the law, if we run into a visa violator, we then take action there, as well. But I would mention that last year, we arrested over 1,700 individuals for overstaying their visas, which I believe was over 60 percent more than the year before.

Senator VOINOVICH. Great, and you will probably have more results in this area because we are going to be keeping better track of overstays.

Ms. MYERS. That is what we hope, that we are keeping better track and so people will hopefully obey the law more and then we will be able to enforce, when necessary.

Senator VOINOVICH. I understand you have established a new Office of International Affairs to better coordinate with foreign partners. Could you just give us a thumbnail on that?

Ms. MYERS. Absolutely, Senator. One of my concerns when I came into the agency was that our International Affairs Office was underneath the Office of Investigations, and so there were some times when our attaches overseas needed to be involved in repatriation efforts or things that involved detention or removal. They didn't have that sort of information because the office was placed underneath the Office of Investigations.

What we have done is made the Office of International Affairs a stand-alone unit so it is responsive to all parts of ICE. If the lawyers need information in order to pursue a case against an individual who may have a wrongful claim, the attaches can help with that. This also means that there is one voice in the Department to work with the DHS Office of International Affairs.

Senator VOINOVICH. Thank you.

[The prepared statement of Senator Voinovich follows:]

PREPARED STATEMENT OF SENATOR VOINOVICH

Assistant Secretary Myers, thank you for being here today.

When you first came before the Committee, many, including myself, questioned whether you had the experience to get the job done. Since that time, I have had the opportunity to meet with you on multiple occasions, and I have been impressed with the strong leadership record you have established over the past year and a half as Assistant Secretary for Immigration and Customs Enforcement. You have demonstrated progress in both operational and management functions, and your achievements deserve recognition by the Committee.

I look forward to your confirmation by the full Senate so that you may continue your important work enforcing our nation's immigration and customs laws.

Ms. MYERS. Thank you.

Chairman LIEBERMAN. Thanks, Senator Voinovich. Senator Tester, good morning.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. I want to thank the Chairman. It is good to see you here, Ms. Myers, and I would ask the Chairman that my written remarks be put as a part of the record.

Chairman LIEBERMAN. Without objection. Thank you.

[The prepared statement of Senator Tester follows:]

PREPARED STATEMENT OF SENATOR TESTER

Mr. Chairman, thank you. I want to welcome Ms. Myers. Ms. Myers, it is good to see you again.

She and I had a chance to meet last week to discuss her nomination, and I told her that unless anything highly untoward comes up between now and the Committee's vote, I will be supporting her confirmation.

I would also add that since Ms. Myers has been on the job already for 19 months, and since the Department of Homeland Security has an untenably high rate of vacancies in top jobs, I do not believe that it makes any sense to delay or prevent this nomination from moving forward.

Furthermore, Immigration and Customs Enforcement has received relatively high marks on a number of criteria used by GAO, and the Senate Appropriations Committee has noted an improvement in ICE's budget management—much of which has occurred on Ms. Myers' watch.

That is not to say, however, that Ms. Meyers should be confirmed without addressing some difficult questions.

As the head of ICE, Ms. Myers is responsible for overseeing the enforcement of our immigration laws. While there have been a few isolated raids on employers in the last couple of years, these appear to have been relatively haphazard. They also distract us from the fact that, 6 years after 9/11, there still appears to be no systematic means for tracking down and repatriating those individuals who overstay their visas. It bears repeating that several of the 9/11 hijackers were in this country after overstaying their visas.

That is simply not acceptable, and I hope it will be a focus of Ms. Myers' remaining time at the Department.

I know that President Bush and others in the Administration—as well as some on this side of the aisle—have expressed a desire to focus the resources of ICE on those who would do harm to the United States, rather than on those who have come to this country to seek employment. But it is extremely difficult to make that determination when you are dealing with someone who drops off the grid when their visa expires.

On a second matter, Ms. Myers, can you address the impact of border staffing on ICE's operations?

I understand that you are not directly responsible for border staffing decisions. But ultimately, we all know that staffing shortages on the border create real problems for your investigators—insufficient staffing lets more illegal immigrants into the country, and more goods smuggled in.

For example, the GAO just found that ICE has not yet developed a good strategy for addressing smuggling of illegal aliens into this country. That's on ICE—even though CBP is directly responsible for stopping smuggling at the border.

How do you view ICE's role in encouraging and working with the rest of DHS to ensure that problems in other areas of DHS do not become your problem?

Senator TESTER. Ms. Myers, it is good to see you again. We had the opportunity to visit a little last week, and I told you then, unless something particularly comes up that I can't live with, I will be supporting your nomination. I think if you take into consideration the particularly high rate of positions that need to be filled in the Department of Homeland Security, I think there is really no reason to prevent your nomination from moving forward, and I think you have done a great job. I think there have been a lot of reports from the Legislative Branch that have pointed that out, and I applaud your efforts over the last 19 months.

A couple questions. One dovetails onto what Senator Voinovich was talking about with overstay of visas. As we talked last week, if my numbers are right, there are about 12 million illegal aliens. Four-and-a-half million of them overstayed their visas. It is a particular concern of mine. You said that you have a Compliance Division that monitors the overstays. My question is how effective is that monitoring and how effective do you hope it to be and what do you use to measure the effectiveness of your Compliance Division?

Ms. MYERS. Senator Tester, I believe that our Compliance Enforcement Division, which was created when the agency first started, but which has really grown and had considerable oversight over the several years ICE has been in existence, has become more and more successful, but there is room to grow.

One of the things that has been really critical in the last few years was the improvement of the data from US–VISIT that we get from their Data Integrity Group. We would often get leads from them. It used to be that a very high percentage of those leads were very bad leads. The individual had already left the country, the individual is not in violation of their status, or the like. They have radically improved the quality of leads they send to us, meaning the leads we are able to then work at headquarters and send to the field are much more effective.

We also spent a lot of time over this past year looking at our student program and looking at, frankly, the methods we use with the institutions, the tracking of them, and whether or not the institutions get the information that they need. I am pleased to say that we have seen that the institutions are doing a pretty good job with respect to their responsibilities under the Student Visa Program.

Senator TESTER. Well, I may have relayed this to you last week, but over the August recess, I met with several business people, in fact, a room full of them, that were in an area where the unemployment rate is about 2.5 percent, and 4 percent is full employment, so we have got 1.5 percent of the people that really don't want to be working that are. I guess that is what that means. And they cannot find help. One of the points they made to me was that there is no tracking, and it is very limited. I think that is critically important because I think it puts the whole legal immigration system at risk, much less our national security at risk. So I would appreciate anything you can do in that area, whether it is through your Department or another Department, to start tracking these folks after their visas run out because I think it is very important.

The second issue deals with border staffing, and I know you don't personally do the staffing on the border, but can you tell me how border staffing impacts you and if we are even close to being up to a reasonable number on either border, as far as that goes, as far as the job that you are able to do and be successful?

Ms. MYERS. Well, like any law enforcement agency, we always feel that we could use more resources with the generosity of Congress. Certainly on the northern border, I believe that Customs and Border Protection and ICE have put increased emphasis on the northern border to make sure that we are managing the responsibilities up on the northern border as well as we can. It is my understanding that Customs and Border Protection is significantly going to be increasing their resources on the northern border. That affects us because they are the interdictors. We do the investigation. So when they hand things off to us that they find either through inspection or through the work of the Border Patrol, we then take that to move on for investigations.

Senator TESTER. Do you ever advocate for more personnel, even though it is not in your Department, to be able to do your job better?

Ms. MYERS. I certainly work within the confines of the process of the Department. I work very closely with CBP and CIS and also advocating on behalf of the Justice Department. If there is nobody to prosecute our cases, it is hard for us to be successful. If there is nobody to interdict things, it is hard for us to do the investigations.

Senator TESTER. OK. Well, it is apparent to me that we need some more folks, to be honest.

There was a little discussion, I think it was by Senator Collins, about criminal alien versus illegal alien. Is there a difference?

Ms. MYERS. Well, when I was speaking with Senator Collins about our Criminal Alien Program, I was speaking in particular about aliens who are currently in jail as opposed to aliens who may have committed other crimes who are out on the street, or as opposed to aliens who may have committed a crime simply by their method of entry into the country.

Senator TESTER. Do you concern yourself with the ones who haven't committed a crime yet but are illegal aliens that—I will give you an example, not that this is accurate, but I will give you an example. Somebody might get picked up because they had a parking ticket or something along those lines, which brings a driver's license in, but it is a very minor offense. Do you concern yourself with those folks?

Ms. MYERS. I believe it is our responsibility to enforce the law all across the board. We obviously have limited resources, so we prioritize based on national security and public safety. But we do enforce all across a wide range of violations depending on our ability to then respond.

Senator TESTER. I am out of time. I just have a quick follow-up on that, Mr. Chairman. So your resources are probably pretty well tapped out with just the real bad guys, so does anybody deal with the folks who are illegal? If I am a county sheriff and I call up and say, you know what? I just stumbled across this dude. I can't hold

him because he hasn't really committed a crime or she hasn't committed a crime. Is there anybody that deals with that?

Ms. MYERS. Senator, in many instances, we are then able to respond whether or not the individual has a criminal record. It depends on our resources in the area and what the agents are doing. I will tell you, we believe we are making significant process. We are resource challenged. We have 16,500 employees. There are over 12 million illegal aliens. We have the responsibility of covering 3.5 million square miles and 780,000 State and local law enforcement officials. So we are resource challenged. We believe it is appropriate to prioritize based on national security and public safety. We have things like the Law Enforcement Support Center, which allows State and local officials to call and find out whether or not the individual has a background issue or a criminal offense, and we have the 287(g) program, which will be up to 32 agreements with localities by the end of this year.

Senator TESTER. OK, Ms. Myers. We will have another round. I am going to come back to this resource question when we come back.

Chairman LIEBERMAN. Thanks, Senator Tester.

That completes the first round. We will go to a second round. I want to say to you and Members of the Committee that I have questions, but I am going to submit them for the record because I have a plane to catch, as you probably know. The Jewish holiday begins tonight in which we begin a process of asking forgiveness from God for any of our shortcomings. If I don't get on that plane, I will have to ask forgiveness from my wife. [Laughter.]

So Senator Akaka will chair, and I thank you very much. We will attempt to move your nomination as quickly as we can.

The obvious thing to say is that you have impressed all of us over the time you have been in office. But the other obvious thing that you know and live with every day is that you are on top of an organization that is critically important to the people of this country. I mean, it is obviously critically important insofar as there are elements of law and justice here that we are all about, but you are touching both matters of fundamental national and personal security, but also on questions of immigration, very passionately felt concerns. Therefore, the devotion and the urgency with which you continue to do your work is really very important to our country, more than really most people, including some, frankly, who come before us for consideration for offices that some might consider more prominent or more important. You have awesome responsibilities, and I thank you for the good job you have done, and I look forward to working with you in the next year and a half.

Ms. MYERS. Thank you.

Chairman LIEBERMAN. Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman. I, too, want to ask for forgiveness, and if it appears that I am being hard on you, I apologize. I just am tremendously frustrated with the failure of this Administration to prioritize employer enforcement, and I don't sense, since no one is bothering to even keep the statistics, that it has changed much. Even though you can cite anecdotally some cases and you can cite a number—I believe the number is 716 arrests last year, total?

Ms. MYERS. That is 716 criminal arrests, 3,667 administrative arrests.

Senator MCCASKILL. I want to focus on the criminal arrests. The 716 criminal arrests includes people who have made fraudulent documents that you have charged with a crime——

Ms. MYERS. If they are encountered through the course of a worksite enforcement investigation, we conduct a lot of other kinds of fraudulent document investigations that would not be counted under the worksite enforcement code.

Senator MCCASKILL. But that also, the 716 includes all the illegal immigrants you arrested at George's Chicken in Missouri, correct? That would include that number?

Ms. MYERS. No, it would include——

Senator MCCASKILL. The five that pled guilty.

Ms. MYERS. The five that pled guilty—well, they would be included in the fiscal year 2007, but yes, the five that pled guilty would be included in that. The immigrants, the illegal aliens that were arrested on administrative charges only would not be included in the criminal count.

Senator MCCASKILL. OK. But if George's had occurred in the previous year, the five immigrants who pled guilty to being illegal would have been included in that 716 number?

Ms. MYERS. That is right, Senator.

Senator MCCASKILL. And nobody from George's, the company, has been charged?

Ms. MYERS. The investigation is continuing.

Senator MCCASKILL. And I keep seeing the word—in fact, I asked GAO about it when they were here, when we were talking about how well Homeland Security is doing, that you all go after egregious employers. But I will tell you, nobody can tell me what the definition of egregious is. GAO says your definition of egregious is it has to be an employer who has committed other criminal acts as well as hiring illegal immigrants. And then we get an answer from someone else at your Department that there is a different definition of egregious. Does anybody know what qualifies as egregious?

Ms. MYERS. Senator McCaskill, an egregious employer is an employer that has as their business model hiring illegal aliens. We often see with egregious employers that they commit other crimes, such as money laundering because they are paying everyone in cash to hide it, or tax evasion or other sorts of things. But the commission of other crimes is not necessary for it to be an egregious employer.

I will tell you that we meet at headquarters, our headquarters team led by Marcy Forman and Kevin Sibley and others, direct investigations, and we are targeting the employers. And so if there is no employer liability or rampant identity theft that harms U.S. citizens, that is not a case that is pursued, and I would just mention, one thing that is frustrating for us is the amount of time that sometimes it takes to then bring a case against the employer, and I will just give, with respect to the Swift and Company enforcement action as an example.

Although we charged a human resource manager in this case, that was actually 7 or 8 months after the initial part of the case

which had revealed that a number of individuals were stealing the identities of U.S. citizens.

Senator MCCASKILL. I want to make it clear, though, how quickly these cases go and whether or not they are prioritized is completely within the discretion of this Administration. That is the call of the Attorney General of the United States and the Justice Department in cooperation with Secretary Chertoff and your Department, and the idea that we have 716 total criminal cases in an entire year when we have 12 million illegal immigrants, most of which are going to work every day, is not success. That is just simply not success. And frankly, there is nothing in the law that says it has to be part of the business plan. You all just decided egregious means part of the business plan.

Let me use the example of Senator Voinovich, and this is a really good example he talked about. That employer did the right thing. That employer knew that something was fishy with those people whose Social Security numbers didn't match, and you are right. Most employers in the country are doing the right thing, and it is tremendously unfair to them that same person who bought that business and realized he didn't have papers for 125 thought to himself, I don't need to do anything, because you know what? I am never going to spend a day in jail. Maybe there will be some administrative hassle, maybe if they catch me, which by the way would be like winning the lottery. I mean, you understand that we are talking about if you add together shark attacks and deaths attributed to lightning and Power Ball winners, we are talking about the categories of actually facing serious criminal prosecution for hiring illegal immigrants.

I hope you do not take it personally, but if somebody can't tell me how many employers in this country have been criminally charged for looking the other way, just like those bar owners who look the other way with that obvious fake ID, if somebody can't tell me that number between now and the time we vote on this confirmation, I can't vote for it. I need to know that you all care enough to be able to keep the statistic of how many employers are being held accountable.

Ms. MYERS. Senator McCaskill, I certainly share your concern, and I really appreciate the support that you are bringing to us to charge employers and to hold them accountable and to hold them accountable on crimes that will actually result in jail sentences and so they will not end up with mere slaps on the wrist as was the previous practices. I believe that our methods of using criminal and civil is a rational basis, a rational way for the system to operate, but we certainly will work with you to provide you whatever information that we need, and I think your continued support, frankly, not only of this agency but of the Department of Justice to bring these cases and prioritize these cases—we do occasionally feel that these cases are not prioritized as much in other places as we would like and so——

Senator MCCASKILL. I will tell you, I think if you get them in front of juries, I think you are going to be shocked how they are prioritized. And I am willing to bet there hasn't been more than a handful of jury trials on this since you took this job with a recess appointment. Having done an awful lot of courtroom work in front

of juries, I will tell you, the American people want the playing field leveled and they want us to turn the corner on this problem, and we will never turn the corner with more people on the border, with more round-ups, with more detention facilities. The only way we are going to turn the corner on this problem is if employers in this country realize they are going to be held accountable for hiring illegal immigrants, and so far, they are not worried.

Ms. MYERS. Well, Senator McCaskill, I would say that I do believe that we are seeing a difference with our three-part strategy of focusing on critical infrastructure, targeting egregious employers, and encouraging compliance, that we are doing things. We realize we will never have enough agents to conduct an I–9 inspection in every business in this country, and that is why the Administration has done things such as the promulgation of a "no match" rule to give employers the guidance that we believe they need in order to figure out what they should do when they receive a "no match" letter. We have to create a culture of compliance within companies. I think our limitive actions have started to take that. I think you are going to continue to see some good results, some record fines, and hopefully some record prison sentences, as well.

Senator MCCASKILL. OK. I will be obnoxiously attentive to it.

Ms. MYERS. Great. Thank you, Senator.

Senator AKAKA [presiding]. Thank you, Senator McCaskill.

Because of budget shortfalls in the Federal Protective Service, ICE has been reducing the number of FPS officers and increasingly relying on contract security guards. A recent DHS Inspector General report found that ICE is not consistently using qualified guards and also not supervising them effectively. Because of that, I am troubled that we might be leaving ourselves vulnerable to attacks on Federal Government buildings. I want you to know that I cosponsored an amendment because of this concern in the Senate DHS appropriations bill that would require that at least 1,200 FPS employees would protect our Nation's buildings. The provision directs OMB and DHS to adjust security fees to fund these positions. Given that this amendment addresses the funding issue, do you support it? Do you know about that and what do you think about it?

Ms. MYERS. Thank you, Senator Akaka. I do support the Administration's view on making sure that FPS is managed in a proper way. I would say that FPS has been an area of substantial concern. As you note, it is a fully fee-funded entity, and although we proposed a historic increase for FPS, that still would not allow the agency to cover the 1,200 individuals who are there.

With respect to the contract guards, the contract guards have and will continue to be really the front line of defense at Federal buildings. But what you note is that we need to make sure we have appropriate oversight in the hiring and the maintenance of the guards, and so no matter how many individuals are Federal employees at FPS, I think it is important that we move toward an inspector-based workforce, and that would be individuals who are better able to manage the contract guard population and to provide sufficient oversight of the contract guard population to make sure that they are doing the right thing.

The inspectors are individuals that have all the same police authorities. They carry a gun. But they also have the additional sophisticated training that would allow them to work more closely with the building security committees and with others to make sure that we have the appropriate oversight of Federal buildings.

I really appreciate the Senate's interest and concern in really correcting the problem, the legacy problem of FPS. When it came to DHS, it was not funded properly. It has had a significant funding problem all the years, and I would welcome any sort of change that provides FPS with the necessary funding it needs to get the job done.

Senator AKAKA. One of my concerns about contract security guards, as you mentioned here, generally, has been that they are not sworn law enforcement officers. Am I correct?

Ms. MYERS. They are not sworn law enforcement officers in the same way that the Federal FTEs are, that is right.

Senator AKAKA. You train them, train them well, but they are not sworn law enforcement officers.

Ms. MYERS. They are not Federal law enforcement officers, yes.

Senator AKAKA. They have only citizen arrest powers, I understand, the same as you and me. Police officers can arrest suspects with probable cause but a citizen arrest requires actually seeing a crime committed. Do contract guards have to call 911 and wait for a response if they believe that someone is about to commit a crime?

Ms. MYERS. Senator, it would depend on the particular circumstances. Certainly contract guards every day do tremendous things in protecting our Federal buildings. I happen to believe the Federal FTEs, the men and women of FPS, the police officers and inspectors are some of the finest this country has and they do a terrific job. Obviously, if they are at a building, they are able to respond and help. But even in today's circumstance, there are many buildings where there is no permanent Federal FTE, and we are reliant primarily on the contract guards working in close coordination with State and local law enforcement.

Senator AKAKA. You have indicated that improving conditions for immigration detainees is one of your top priorities. These detainees include asylum seekers and others who have committed no crime. I understand that you oppose issuing regulations governing treatment of immigration detainees. Why is that?

Ms. MYERS. Senator, it has been one of my highest priorities to make sure that the ICE National Detention Standards are adhered to and followed, and to that end, I have created over the past year a number of new oversight mechanisms, including the Detention Field Inspection Group, including our new Quality Assurance Specialists who are going to be at our 40 largest facilities, who day in and day out are responsible for making sure that the detention standards are followed. We are also currently in the process of updating and improving our detention standards to make them more performance-based. That is something that is much easier to do since our standards are not in regulation. We are obviously going to work with the ABA and NGOs and others to make sure we do not dilute any of the standards but only strengthen them.

The final thing that we have done to enhance oversight on the standards is we have created, for our IGSA contracts, a new

boilerplate that really emphasizes the responsibilities that these contract facilities have in making sure we live up to the standards of ICE.

Senator AKAKA. Before I call on Senator Tester, let me ask this final question. In some worksite enforcement raids, ICE agents detain large numbers of people, sometimes hundreds of workers in a single action. During a raid, how do ICE agents determine which workers should be questioned about their immigration status or possible criminal violations?

Ms. MYERS. When we conduct an enforcement action at a worksite, everyone is questioned with regard to their immigration status. We also use self-identify. If individuals indicate that they are U.S. citizens, they are not questioned in the same sort of way. We follow the procedures set out in the Supreme Court's decision in *Delgado* to make sure that we handle everything appropriately, and I have implemented the policy for our large worksite enforcement operations of always having an ICE lawyer on site to make sure that we are following everything correctly, if there is a legal issue or concern that comes up, that it is handled. And, of course, we work ahead of time with the Department of Justice on the Blackie's warrants or Rule 41 warrants to make sure that we execute them appropriately.

Senator AKAKA. On that, if a worker informs ICE agents that he is a U.S. citizen or legal immigrant but did not happen to bring proof with him to work the day of the raid, what happens? Does ICE assume unlawful status unless a person can prove otherwise?

Ms. MYERS. No, we do not assume unlawful status unless a person can prove otherwise.

Senator AKAKA. Thank you so much for your responses.

Ms. MYERS. Thank you.

Senator AKAKA. Senator Tester.

Senator TESTER. Thank you, Chairman Akaka. It is interesting, after every person asks a question it brings up about 10 more that I want to ask, but we will hold off.

I am just curious. How many people are in the audience that work for DHS or ICE? Raise your hand.

[Show of hands.]

Senator TESTER. We could use you on the northern border. [Laughter.]

I do want to touch a little bit on resources and contract guards. You are pretty good with the finances, as people have pointed out. How much money do you save with contract guards over FTEs?

Ms. MYERS. For FPS, we are not saving money through the contract guards versus FTEs. They are apple and oranges. The fees for the contract guards are paid directly by the buildings out of different sorts of funds. The FTEs are paid through the building basic security fees, so that is not——

Senator TESTER. So it is done because of the appropriation methods that we use? We put it in a certain account that you can't use it for FTEs but you can use it for contract guards?

Ms. MYERS. FPS has no appropriated funds, so it is a fee-based agency. And so we set a basic security fee that is then paid by the participating buildings. That fee is presented in the President's budget and then Congress approves it through the appropriations

process. With respect to the contract guards, the buildings themselves are able to determine through their building security committee what sort of level of protection they would want.

Senator TESTER. Are there things we can do to give you more flexibility? The impression I have, and correct me if I am wrong, is you are really dealing with the really bad folks. I mean, for the most part, you are going to put your focus on the bad people, and it would seem to me that if you are dealing with the really bad people, you would want people who are not folks who can make citizens' arrests, but folks who can really do the job that you have to do when you are dealing with folks who are criminals.

Ms. MYERS. I think your question goes to two different things. With respect to the protection of the Federal buildings, which is where FPS is involved, I think, fortunately, although this year they kept 780,000 prohibited items from coming into Federal buildings——

Senator TESTER. But if it is important enough to have a guard at that building, isn't it important to have a person who is absolutely, unequivocally the best at what they can do?

Ms. MYERS. I think that the contract guards do a terrific job, and I think there are some great examples of their doing a terrific job. On a personal basis, speaking solely for myself and not as a representative of the agency——

Senator TESTER. I hear you.

Ms. MYERS. Speaking solely for myself, I think it would make sense to look long-term about FPS's financial needs and whether or not some small appropriated base to make up for the deficit left by the move from GSA would make sense.

Senator TESTER. OK.

Ms. MYERS. That would not transform the agency into having all Federal FTEs do the work of contract guards. I think that is a broader decision that Congress and the Department will have to look at.

Senator TESTER. OK. The issue about interagency agreements that we talked about last week a little bit, and that is do you have agreements with cities, counties, highway patrols, those kind of folks? Do you look to them to help make your resources go further?

Ms. MYERS. Absolutely. We have a number of different kinds of agreements with State and local and our other Federal partners.

Senator TESTER. Then do you just deal with the ones that are high-risk or do you have agreements with most of the counties that run along the northern tier and the southern tier?

Ms. MYERS. We have different kinds of working relationships in every place we have a presence. With respect to the 287(g) program, which provides for delegation of immigration authority, we do not have any agreements like that to date along the northern border, but we work with our northern border partners and the RCMP, for example, on the IBETs and hopefully in the coming year on our Border Enforcement Security Task Force.

Senator TESTER. OK. Well, the bureaucracy is huge, and it is very difficult for a farm boy from North Central Montana to get my arms around everybody who has control. I mean, you have Customs and Border Protection, you have got you guys, you have a ton of folks that are dealing with illegal aliens and legal aliens. It would

just seem to me, I think that there is opportunity, let us just put it that way, to help your dollars go further and be as effective as you can, since your resources are limited, as you stated, to really develop at least the communication channels at a very minimum and ultimately down the line. They can help supplement your ability to be effective.

Ms. MYERS. Senator, I think you are absolutely right. I just created a new Senior Executive Service position in my front office. It is the Office of State and Local Coordination. And that individual is going to help draw together all the ways we work with State and locals and make sure that we are forming as many partnerships as we can. We also have the ACCESS Program, which has a range of services we can provide to state and locals. Where is their concern? Is their concern with transnational gang members? We might be able to work with them on Operation Community Shield and the like. So I am in full agreement with your point.

Senator TESTER. Well, I appreciate your leadership within the Department, and I appreciate your putting up with all these questions. Thank you very much.

Ms. MYERS. Thank you.

Senator AKAKA. Thank you very much, Senator Tester.

I would like to conclude the hearing by asking two very brief questions, Ms. Myers. One is are the ICE agents who conduct worksite raids trained not to engage in racial profiling?

Ms. MYERS. Yes, they are. Every agent is trained pursuant to DOJ's racial profiling guidance both at the academy and then prior to a worksite operation, we go through an operational plan and they are reminded again of their responsibilities and obligations.

Senator AKAKA. Also, if a request is made by one of the immigrants to speak to a lawyer before answering questions, do the agents let them do so?

Ms. MYERS. Yes, they do.

Senator AKAKA. Well, I want to thank you so much for your responses. It will be very helpful to this Committee as we decide your confirmation. I would tell you that, generally, this Committee has felt that you have done well——

Ms. MYERS. Thank you.

Senator AKAKA [continuing]. In your work and certainly look forward to your work here for our government.

So I would like to thank you very much for appearing before this Committee. Without objection, the record will be kept open until 12 noon tomorrow for the submission of any written questions or statements for the record.

Ms. MYERS. Thank you.

Senator AKAKA. This hearing is adjourned.

[Whereupon, at 12:02 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR DOMENICI

Mr. Chairman, I would like to make a brief statement in support of the nomination of Julie L. Myers to be Assistant Secretary, U.S. Department of Homeland Security.

Ms. Myers was very helpful to my home state of New Mexico this year when violence in Palomas, Mexico, threatened to spill over into Columbus, New Mexico. She was one of the most responsive Federal officials I dealt with during this crisis and quickly sent more Immigration and Customs Enforcement personnel to New Mexico to address this situation.

I am thankful for her efforts in New Mexico and across America, and I am pleased to voice my support for her nomination.

PREPARED STATEMENT OF SENATOR PAT ROBERTS, A U.S. SENATOR FROM THE STATE OF KANSAS

Mr. Chairman, I am honored to submit a statement on behalf of a fellow Kansan whom the President has nominated to be the Assistant Secretary of Homeland security for Immigration and Customs Enforcement.

I believe Julie Myers' previous Administration positions strongly underscore her experience during difficult times in our Nation's history.

Currently, Julie serves as the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement. As Assistant Secretary, she increased and expanded worksite enforcement efforts. Julie also assisted in ending the practice of "catch and release."

Julie also served as the Assistant Secretary for Export Enforcement at the Department of Commerce. As Assistant Secretary, she developed and coordinated the Department's efforts to prevent and sanction violations of U.S. dual-use export control laws and the antiboycott provision of the Export Administration Act. She managed special agents throughout the country and oversaw the international attache program.

Julie served as the Chief of Staff of the Criminal Division for Assistant Attorney General Michael Chertoff at the Department of Justice and as the Deputy Assistant Secretary for Money Laundering and Financial Crimes at the Department of Treasury. There she fought against financiers of terrorism and implemented a national strategy to combat money laundering.

Julie also served as an Assistant U.S. Attorney in the Eastern District of New York, where she prosecuted financial criminals, and as a deputy to Independent Counsel Kenneth Starr.

The President, the Secretary of Homeland Security, and many of our colleagues and I believe in her abilities to carry out this position.

Mr. Chairman, I am certain that Julie Myers, armed with her knowledge and passion for our judicial system, will enforce our immigration and custom laws and policies with a firm and fair hand.

U.S. Immigration and Customs Enforcement

STATEMENT OF

JULIE L. MYERS

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

BEFORE

SENATE COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

Wednesday, September 12, 2007
10 a.m.
Washington, DC

Good morning, Chairman Lieberman, Senator Collins and distinguished Members of the committee. It is my privilege to appear before you today as the President's nominee to continue serving U.S. Immigration and Customs Enforcement (ICE) as the agency's Assistant Secretary. It has been my distinct honor to lead ICE for nearly two years, and I am grateful for the confidence placed in me by the President and Secretary Chertoff.

As the largest investigative branch of the Department of Homeland Security (DHS) and a relatively new agency, ICE has exceptional responsibilities for protecting the American people against terrorist attacks and criminal acts, broad law enforcement powers and authorities, an annual budget of nearly $5 billion, and over 16,500 employees. The men and women of ICE are some of the most dedicated public servants this country has, and it is a privilege to work with them.

When I appeared before you in September 2005, I committed to strategically strengthening the agency's operations, enhancing management and financial accountability, and to further integrating legacy components into a cohesive ICE culture. I am pleased to report that, together with the management team I built and the dedication of all of those who work for ICE, we have made substantial progress on each of these fronts.

On the operational side, we have set new enforcement records while fostering innovation in carrying out our agency's mission. With respect to immigration enforcement, we have implemented a comprehensive interior enforcement strategy that is beginning to show significant results. The strategy focuses on reducing the criminal alien population, targeting the magnet of illegal employment and dismantling the infrastructure that supports illegal immigration.

In terms of criminal aliens, we have dramatically increased the number of charging documents issued to criminal aliens. We have also leveraged technology through the creation of the Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) Center, and now cover all federal detention facilities to ensure that criminal aliens are removed after serving federal sentences, instead of being returned to U.S. communities. Thanks to DEPORT, more than 13,400 charging documents have been issued since June of last year, and ICE now covers all 114 federal detention facilities, compared with just 30 facilities previously. These individuals in these facilities have among them the most serious criminal histories of the aliens we encounter. We have arrested over 10,000 individuals through Operation Predator, including about 8,000 aliens, and we have arrested over 5,000 gang members and associates through Operation Community Shield. We now have 70 fugitive operations teams which locate, apprehend, and remove aliens – many of them criminals. This is more than four times the number of fugitive operations teams deployed nationwide in January 2006. The work of these teams is strengthened by enhanced leads provided by our new Fugitive Operation Support Center. Together, their work has led to an actual decrease in the fugitive alien population for the first time.

With respect to the magnet of illegal employment, worksite enforcement arrests reached a level in Fiscal Year (FY) 2006 that was more than seven times greater than in FY 2002, the last full year of operations of the U.S. Immigration and Naturalization Service. ICE worksite investigations against employers have already led to more than $30 million in criminal fines and forfeitures in FY 2007, compared to only approximately $600,000 in FY 2002. By holding employers accountable through the prospect of criminal charges, we created incentives for companies to ensure compliance with the immigration laws, and reduced risks presented by undocumented workers to places of employment – including critical infrastructure sites. And, in terms of dismantling the infrastructure that supports illegal immigration, we have formed Document and Benefit Fraud Task Forces in seventeen cities throughout the country. Since their inception in April 2006 through May 2007, these task forces have initiated 749 cases resulting in 657 criminal arrests, 492 indictments and 396 convictions. In addition to addressing the magnet of illegal immigration, our focus on this type of fraud, particularly the fraudulent use of real identities, helps to protect American citizens from the potentially devastating impacts of identity theft.

Under my tenure, we have re-engineered the detention and removal processes to support this enforcement strategy. This has involved adopting more effective business practices and enhancing internal oversight and accountability of our facilities. We have supported the Secretary's Secure Border Initiative and effectively ended the practice of "catch-and-release" along the borders. We set new removal records – more than 197,000 illegal aliens ordered removed were removed by ICE from this country in FY 2006 – a 13 percent increase over FY 2005. And throughout, we have developed new comprehensive oversight procedures to ensure that ICE detainees are treated fairly and humanely, including new Quality Assurance Specialists in our largest facilities and the Detention Field Inspection Group (DFIG), an independent review mechanism housed within ICE's Office of Professional Responsibility, our "internal affairs" office, dedicated solely to monitoring and inspection of detention facilities and treatment of individuals in ICE custody.

ICE has made substantial progress in other investigative areas as well. Keeping arms and strategic technology out of the hands of those who seek to do our country harm remains a top priority. During my tenure, the agency set records for arms and strategic technology investigations, and we project FY 2007 arrests and indictments in these cases to increase by about 70% over FY 2005. This growth has been driven by enhanced training, enhanced resources, and our new National Export Enforcement Coordination Group (NEECG), which integrates homeland security, law enforcement, intelligence and foreign officials into coordinated operations designed to target, investigate, interdict and share information regarding threats associated with the illegal export of munitions and critical technology.

Recognizing that international partnership is the key to combating transnational crime, we have expanded our trade transparency units to combat trade-based money laundering with additional countries and provided bulk cash smuggling training overseas to attack worldwide narcotics networks. This partnership extends to our intellectual property rights cases, where we have worked with our foreign counterparts to uncover

large criminal organizations engaging in customs fraud. In FY 2006 alone, our work in intellectual property cases resulted in 219 arrests, 134 indictments, and 170 convictions. Our strong partnership with the Federal Bureau of Investigation, including our participation in Joint Terrorist Task Forces, has proven to be extremely beneficial in criminal and terrorism cases. And, during the past year, ICE's Federal Protective Service (FPS) has continued to protect more than 8,800 federal buildings that receive nearly one million visitors and tenants daily.

Under my leadership, ICE has made swift and measurable progress, but credit for these accomplishments must be shared with the many groups that have collaborated with us, including our state and local partners, and the private sector. For example, through the Border Enforcement Security Task Force, or BEST program, we have worked cooperatively with domestic and foreign law enforcement counterparts to develop a comprehensive approach to identify, disrupt and dismantle criminal organizations that pose significant threats to our border security. With respect to immigration enforcement, we have also provided training and education to our partners in the business community and formed new relationships through the 287(g) program. We are also seeking to share additional closed case information through new state-federal partnerships, such as the LinX program. We are seeking to further leverage these relationships, through new programs such as ICE ACCESS, IMAGE, and our new Office of State and Local Coordination.

With respect to enhancing management and financial accountability, we created new senior management positions on the ICE executive leadership team in order to systemically upgrade our management capabilities to meet our enforcement needs. We aggressively implemented a financial action plan to address the eight material weaknesses identified in the FY 2005 DHS audit. By putting the right people in the right positions, and aggressively implementing our plan, in FY 2006, we successfully remediated six of the eight material weaknesses. I anticipate that our results in the FY 2007 DHS audit will continue to show progress. Other managerial improvements also included implementing industry identified best practices that strengthened our overall hiring practices, issuing key agency policies, providing enhanced training in critical areas, centralizing contracting practices within the Federal Protective Service, and filling several key SES and other leadership positions to provide organizational stability and a much higher degree of fiscal discipline than previously existed within ICE.

These are but a few of the numerous ICE achievements. I believe that our successes are attributed, in part, to the integration of cultures within this agency. We have developed unified policies. Our combined customs and immigration authorities have proven to be a powerful force, allowing ICE investigators to pursue both criminal and administrative aspects of cases, thereby increasing the likelihood of successful prosecutions. Our international missions are unified, making it more difficult for potential terrorists and transnational criminal groups to move themselves, their supporters, or their weapons across the Nation's borders. Our intelligence is becoming fully integrated both at headquarters and through the creation of new Field Intelligence Groups. We have modernized information technology, working to ensure that all legacy systems interface with one another appropriately. We still have work to do in this regard,

but we've come far in these efforts. Our employees are expanding their disciplines, and correspondingly, their professional skills and accomplishments.

I wish to thank you, as members of Congress, for your recognition of the needs of ICE and the potential that this agency can and will attain. I have valued your oversight of our growth and progress, and the recommendations that have allowed me to identify areas of improvement and implement needed solutions. I am grateful for the funding Congress has generously extended to allow us to create a first-class law enforcement agency – the type of immigration and customs enforcement agency that the American people have long deserved.

I wish to express my deepest gratitude and thanks to the thousands of dedicated professionals at ICE with whom I've had the privilege to serve; and, on a personal note, thank my husband and son, my parents and my parents-in-law for their constant support as I've served as Assistant Secretary of ICE.

In conclusion, I thank this Committee for its consideration of my nomination. If confirmed, I look forward to working closely with you to continue to ensure the security of the American people through effective enforcement of our nation's immigration and customs laws.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

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

   Julie Lyn Myers
   (Julie Myers Wood - use socially)

   REDACTED

2. **Position to which nominated:**

   Assistant Secretary of Homeland Security (U.S. Immigration and Customs Enforcement)

3. **Date of nomination:**

   January 9, 2007

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

   Home:

   Office: U.S. Immigration and Customs Enforcement
   425 I Street, NW
   Suite 7100
   Washington, DC 20536

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

   July 12, 1969. St. Louis, Missouri.

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

   Married – John Wood.

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

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

   Shawnee Mission North High School 1984-1987, graduated May 1987.

Johnson County Community College, received credits for courses taken at my high school (did not physically attend class at JCCC), 1985-1987.
Baylor University, 1987-1991, B.A. May 1991.
Cornell Law School, 1991-1994, J.D. May 1994.

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

1) 6/1991 – 8/1991, Waitress; TGIF Friday's, Milwaukee, WI.

2) 6/1992-8/1992 and 1/1993-5/1993, Teaching Assistant for Professor Kevin M. Clermont; Cornell Law School; Ithaca, NY.

3) 6/1992-8/1992, Summer Clerk for Cornell University Counsel's Office; Ithaca, NY.

4) 8/1993-11/1993, Teaching Assistant for Professor Stuart Schwab; Cornell Law School; Ithaca, NY.

5) 1/1994-5/1994, Teaching Assistant for Professors Kevin M. Clermont and John Siliciano; Cornell Law School; Ithaca, NY.

6) 6/1993-8/1993 and 6/1994-8/1994, Summer Associate; Mayer, Brown & Platt; Chicago, IL.

7) 8/1994-8/1995, Law Clerk; Chambers of the Honorable C. Arlen Beam; U.S. Court of Appeals for the Eighth Circuit; Lincoln, NE.

8) 10/1995-12/1997, Associate; Mayer, Brown & Platt; Chicago, IL.

9) 1/1998-10/1999, Associate Independent Counsel; Office of the Independent Counsel (Kenneth W. Starr); Little Rock, AR, and Washington, DC.

10) 10/1999-10/2001, Assistant United States Attorney; United States Attorney's Office for the Eastern District of New York; Brooklyn, NY.

11) 10/2001-10/2002, Deputy Assistant Secretary (Money Laundering and Financial Crimes); Department of the Treasury; Washington, DC.

12) 11/2002-9/2003, Chief of Staff for the Criminal Division; Department of Justice; Washington, DC (Deputy Chief of Staff 11/2002-12/2002).

13) 10/2003-11/2004, Assistant Secretary of Commerce (Export Enforcement); Department of Commerce; Washington, DC.

14) 11/2004-12/2005, Special Assistant to the President for Presidential Personnel; Executive Office of the President; Washington, DC.

15) 1/2006-present, Assistant Secretary of Homeland Security (Immigration and Customs Enforcement); Department of Homeland Security; Washington, DC.

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

None.

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

2/2004-4/2005, Member of the Board of Directors, Myers Brothers of Kansas City, Inc., an automotive industrial firm owned by members of my family; (uncompensated).

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

American Bar Association
Chicago Bar Association
Lincoln Inn of Court
Women in International Trade
DOJ Liaison to ABA Task Force on Ethical Standards for Prosecutorial Investigations
Cornell Christian Legal Group, Co-Chair 1993-1994
Federalist Society, student member
Kansas State Society
First Baptist Church of Shawnee, Kansas
Baylor Alumni Association
Kappa Alpha Theta

Court Admissions:
Illinois Bar – Admitted, 1994
United States Court of Appeals for the Eighth Circuit – Admitted, 1995
United States Court of Appeals for the Seventh Circuit – Admitted, 1996 (approx.)
United States District Court for the Northern District of Illinois – Admitted, 1996 (approx.)

13. **Political affiliations and activities:**

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

None.

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

None, except that I volunteered for one day on the Robert L. Erlich for Governor campaign in 2002.

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

$1000 – Bush-Cheney '04, Inc.
Approximately $250 – Republican National Committee, 2004
$200 – Michael Wiggins for Georgia Supreme Court, 2006
$1000 – Talent for Senate Committee, 2006

Note: I am only including gifts made by my spouse after the date of our marriage, September 17, 2005.

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

Omicron Delta Kappa
Golden Key National Honor Society
Baylor University President's Award for Excellence in Student Involvement
American Jurisprudence Award for the Highest Grade in Constitutional Law
Winner, Two Cornell Law School Moot Court Competitions
Cum Laude graduate of Cornell Law School
Editor, Cornell Law Review
Various awards related to government service, including from the Department of Justice and Department of Treasury.

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

In 1995, I was co-author for one brief article for a newsletter at Mayer Brown & Platt on employment law and the requirements of the Americans with Disabilities Act. I do not have a copy of this article and have not been able to find a copy of this article.

I have included copies of the following:

- Opinion Editorial "Expect More Arrests," *USA Today,* April 25, 2006.
- Opinion Editorial "Cracking Down on Borders and Bosses," the *Washington Post*, July 8, 2006.
- Letter to the Editor of the *Houston Chronicle*, January 5, 2007.

16. **Speeches:**

(a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

I have included copies of my previous testimony. I have also included copies of formal speeches to the extent that I have a copy of a written speech. Often, I spoke from notes or talking points and I no longer have those notes.

(b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

As a Deputy Assistant Secretary for Money Laundering and Financial Crimes at Treasury, I spoke frequently, in speeches and on panels, about international money laundering, focusing on Title III of the USA Patriot Act (particularly the new Treasury regulations) and the Financial Action Task Force (FATF). I do not have a record of all such appearances, but they included the following and all occurred between November 2001 and October 2002:

- 20th Annual OCDETF Conference – Narcotics and Money Laundering
- Case Western Reserve Law School – Money Laundering
- Women in International Trade Brown Bag Lunch – FATF; Money Laundering

- IRS-CI Suspicious Activity Reporting Conference – SAR Review Teams
- International Regulators Conference – Title III of the Patriot Act; Anti-Money Laundering Regulations
- Practicing Law Institute Forum on the Patriot Act – Title III of the Patriot Act
- NY HIFCA Bank Secrecy Act Conference – Money Laundering
- Swiss Bankers Association – Money Laundering; Anti-Money Laundering Regulations
- National Defense University – FATF
- American Institute Association
- American Bankers Association
- National Conference of Mayors break-out sessions on homeland security

As Assistant Secretary for Commerce (Export Enforcement), I spoke at the following events on export enforcement, national security and nonproliferation issues:

- January 14, 2004 – Presentation at the Industry Coalition on Technology Transfers Meeting
- January 22, 2004 – Export Enforcement Update with Trade Associations (SEMI, American Electronic Association and Women in International Trade Association) in San Jose, CA
- March 23, 2004 – International Electronics Manufacturers and Consumers of American Speech on Export Enforcement Activities and Update
- March 31, 2004 – Chicago Bar Association Brown Bag Lunch Seminar Speech
- April 16, 2004 – Industry Roundtable with Customs Brokers and Forwarders Association (CBFA) in Miami, Florida
- April 22, 2004 – Export Controls and Global Trade Compliance Conference Keynote Address
- April 27, 2004 – ABA Brown Bag Lunch Talk to International Trade Group
- June 1, 2004 – Washington International Business Club Speech on China and Export Controls
- August 11, 2004 – FLETC Graduation Speech
- September 22, 2004 – Business Executives Enforcement Team Speech – Boston, Massachusetts
- October 13, 2004 – Boeing International Compliance Seminar Speech – Top 5 Problems That Lead to Civil Liability
- October 19, 2004 – Speech at the Customs and International Trade Bar Association Dinner – Trends in Export Enforcement

As Assistant Secretary for ICE, I spoke informally at the following events:

- August 23, 2006 – The Homeland Security Roundtable, topic – immigration enforcement
- February 2, 2007 – National Sheriffs' Association Annual Winter Conference, topic – partnership with local law enforcement and immigration enforcement
- March 3, 2007 – Kappa Alpha Theta Founder's Day Luncheon, topic – experiences in government service, human trafficking
- March 28, 2007 – Department of Justice Women's History Month Panel, topic – experiences in government service

17. **Selection:**

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

I believe that the President nominated me for this position based on my track record as Assistant Secretary over the past year, as well as my accomplishments as a Special Assistant to the President, Assistant Secretary of Commerce (Export Enforcement), Chief of Staff for the Criminal Division at the Department of Justice, Deputy Assistant Secretary at the Department of Treasury, and Assistant United States Attorney in the Eastern District of New York.

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

Work as Assistant Secretary for Immigration and Customs Enforcement (ICE). I have served as the ICE Assistant Secretary since January 2006. In this role, I have managed over 15,000 employees and a budget of almost $5 billion.

Under my leadership, ICE has set new records for enforcement activity, ended the long-standing practice of "catch-and-release" along the nation's borders, transformed its detention and removal process, made significant strides in financial management and taken substantial steps in improving agency infrastructure.

The agency's significant accomplishments during my tenure affirmatively qualify me for continued service at the agency. A few of the most notable accomplishments include:

- Setting New Enforcement Records. During FY 2006, the agency succeeded in setting several new enforcement records. For example, the total number of worksite arrests reached a level that was more than seven times greater than in 2002, the last full year of operations for U.S. Immigration and Naturalization Service. ICE also implemented a new

approach to worksite enforcement. Our strategy has become one of deterrence. By holding employers accountable through the prospect of criminal charges, I believe we're beginning to see significant efforts by companies to take steps to ensure compliance.

ICE also set a record in 2006 for arms and strategic technology investigations by expanding training, and doubling the number of personnel assigned to these investigations. Indictments in these cases increased by 66 percent over the prior year, while arrests rose 41 percent .

In FY 2006, ICE also initiated several new law enforcement programs targeting vulnerabilities. For example, in conjunction with the Department of Justice, we launched 16 Document and Benefit Fraud Taskforces in major U.S. cities. To date, these taskforces resulted in 235 investigations, 189 arrests and 80 convictions.

- Transforming Detention and Removal. During my tenure, the agency also broke new ground by ending "catch and release" along our borders. More specifically, by successfully re-engineering our detention and removal process, we were able to drastically improve detention rates, from a meager 29 percent of non-Mexican aliens detained in 2005 to essentially detaining all non-Mexicans apprehended along the borders.

  Our re-engineering efforts were assisted by an increase in detention bed space by 6,300 during FY 2006, bringing the current number of funded beds to 27,500. As a result, ICE removed nearly 195,000 illegal aliens from the country in FY 2006. This was a record for the agency and more than a thirteen percent increase over the number of removals during the prior fiscal year.

  Additionally, during FY 2006, ICE nearly tripled the number of fugitive operations teams deployed nationwide from 18 to 49. These additional teams maximize the efficiency of ICE immigration enforcement efforts to locate, apprehend and remove primarily criminal aliens.

  ICE also created a national center that reviews aliens at all 114 federal detention facilities (as opposed to only 30 federal facilities in 2005), to ensure that criminal aliens are deported rather than released into society upon the completion of their sentences.

  Given the increased aliens in ICE custody, ICE has developed additional oversight procedures to ensure that all individuals in ICE custody are treated fairly and humanely. In particular, we developed an independent oversight team, the Detention Field Inspection Group (DFIG), within ICE's Office of Professional Responsibility, to conduct inspections to

ensure that ICE facilities are in compliance with the Detention Standards. In addition, ICE is in the process of revising the ICE Detention Standards to make them more performance-based. This will allow the agency to hold facilities more readily accountable for performance under the standards.

- Ensuring Financial Integrity. Since last year, we have taken substantial steps to ensure ICE's financial integrity. Immediately upon joining ICE, I appointed the first permanent Chief Financial Officer (CFO) to stabilize the agency's financial management. I also created two new Senior Executive Service positions with financial management responsibilities, a Deputy Assistant Secretary for Management and a Deputy Chief Financial Officer. I instituted a weekly meeting to discuss progress on financial matters and ensure high level attention to any financial issues.

  In the FY 2005 audit, ICE was cited with eight material weaknesses. To resolve audit issues, ICE initiated a multi-year Corrective Action Plan to fully reconcile ICE funds with the Department of Treasury, clear suspense accounts and establish improved processes and controls for the agency and its components. Through effective development of the CAP, and aggressive implementation of its action plans, ICE was able to remove six of the eight material weaknesses by the time of the FY 2006 financial audit. In particular, the DHS audit concluded that of the agencies cited for having numerous serious internal control weaknesses in FY 2005, only ICE was able to make substantial progress during the year.

Work as the Assistant Secretary for Export Enforcement. As Assistant Secretary for Export Enforcement, I was responsible for managing the Commerce Department agents who investigate violations of dual use export control laws. As such, I led the Commerce Department's efforts to prevent and prosecute violations of U.S. dual-use export control laws and directed overall investigative and litigation strategy for the Export Enforcement cases. I managed nine field offices with Special Agents, supervising approximately 170 FTEs and a budget of $25 million.

On a macro level, I concluded early on that the agency was not properly prioritizing its investigations. Not all export investigations are alike, and I believed that not all investigations warranted the same level of investigative resources. After obtaining consensus from my Deputy Assistant Secretary and leadership in the field, I created the Export Case Emphasis List (X-CEL). The X-CEL list was a case privatization and tracking system. The X-CEL allowed Export Enforcement to ensure that it was focusing its efforts and limited budget on cases of the highest priority: cases involving items with potential use in

chemical, biological, and/or nuclear weapons and cases involving violations where the end-users were from nations or organizations of greatest concern.

These efforts paid off. During my tenure, Export Enforcement achieved substantial results in a significant number of national security cases, such as the conviction of Dr. Thomas Butler for illegally exporting Yesinia Pestis (Bubonic Plague), the arrest of Asher Karni for conspiring to export so-called "nuclear triggers," and the first criminal convictions in a deemed export case. My personal involvement in these and other national security cases included reviewing and evaluating the evidence, directing and approving investigative techniques, prepping a witness for trial, and determining investigative strategy.

In addition to the significant criminal cases, Export Enforcement agents also pursued a large number of civil violations. We increased enforcement efforts to ensure corporate compliance with the export control rules. As a result, during my tenure, the number of administrative case completions nearly doubled, from 34 in Fiscal Year 2003 to 63 in Fiscal Year 2004. Over the same period, civil penalties increased from $4.1 million to $6.2 million. My personal involvement in the civil cases included directing and approving investigative techniques, guiding temporary denial orders, and reviewing settlement parameters and agreements.

In addition, much of my legal work at the Department of Commerce directly intersected with immigration issues. For example, Export Enforcement agents were on the forefront of investigations into foreign nationals who have visas but also have improper access to sensitive technology (so called "deemed exports"). It is important to have thorough understanding of the visa process as well as the export licensing process in order to pursue these cases successfully. During my tenure, Export Enforcement obtained the first criminal conviction in a deemed export case and obtained civil settlements in several other deemed export cases. For example, during my tenure, Export Enforcement obtained a $560,000 civil penalty from Lattice Semiconductor for their failure to obtain export licenses for five Chinese nationals who, during the course of their employment with Lattice, were brought to the United States for technical training on licensable goods.

In addition to my litigation work at Commerce, I also participated in the rulemaking process. We worked to develop regulations that increased the transparency of the civil penalty process and thereby offered additional guidance to industry on how to comply with the law.

Work as Chief of Staff for the Criminal Division. As Chief of Staff for the Criminal Division, I assisted the Assistant Attorney General in leading and managing the Criminal Division, a component with nearly 500 prosecutors and an annual budget of more than $129 million. During that time, I provided leadership direction for all substantive and administrative aspects of the Criminal Division's mission.

Assistant Attorney General Chertoff delegated me the authority to handle many sensitive legal matters in the Division. Relevant to the ICE position, I worked closely with the new Department of Homeland Security, representing the Division in discussions regarding information sharing and other matters. I also worked closely with the Department of Treasury on terrorist financing issues. In addition, I represented the Criminal Division in planning and meetings regarding the interagency anti-smuggling center. I worked particularly closely supervising matters, people and legal issues in the following divisions: Narcotics and Dangerous Drugs; Organized Crime; Counterespionage; Asset Forfeiture and Money Laundering; Computer Crimes and Intellectual Property; and Public Integrity.

Work as Deputy Assistant Secretary for Money Laundering and Financial Crimes. As Deputy Assistant Secretary for Money Laundering and Financial Crimes in the Office of Enforcement at the Department of Treasury immediately after 9/11, I directly supervised two sections of the Office of Enforcement: the Counternarcotics Section and the International Money Laundering Section.

I worked extensively on the Department's implementation of Title III of the Patriot Act relating to money laundering, including the regulatory changes required by the Act. In addition, I worked closely with the United States Customs Service (USCS) and other federal law enforcement agencies on the implementation and development of the National Money Laundering Strategy. Moreover, I supervised the Treasury Department's work on the Financial Action Task Force.

Work as an Assistant United States Attorney. As an Assistant United States Attorney (AUSA), I worked extensively with agents from the former United States Customs Service. This work ranged from simple drug and other import fraud cases to more complex smuggling investigations. For example, I worked extensively with several United States Customs Service agents on a multi-layer smuggling investigation. This investigation started with a simple stolen car ring. We then discovered that the initial target, the owner of the import/export company where the cars were being shipped, was connected to several other criminals and criminal organizations, including an international smuggling organization. With the agent from USCS, I traveled to London to pursue investigative and financial leads on this case and worked closely with Her Majesty's Revenue and Customs (HMRC), and other foreign authorities to obtain additional evidence. After I left the U.S. Attorney's Office, the smuggling case was indicted and successfully prosecuted.

As an AUSA, I also worked on immigration cases at various stages and times. While working in the General Crimes Section of the U.S. Attorney's Office, I worked with agents from the Immigration and Naturalization Service to prosecute

a number of aggravated felony removal cases, pursuant to 8 U.S.C. § 1326. For these cases, I would present the case to the grand jury and then represent the United States through the sentencing period. I do not recall how many of these cases I presented, but I think a conservative estimate would be at least five prosecutions. All of my defendants pleaded guilty before trial. I also worked on a couple of more complicated immigration cases, including one case involving some Russians running a small immigration fraud ring in Brooklyn. All the defendants pleaded guilty in this case.

Furthermore, all AUSAs in the Eastern District were required to be "the duty assistant" for certain periods. For those times, I drafted arrest warrants on simple cases and presented those cases for arraignment before a duty magistrate judge. As a duty assistant, I drafted a number of arrest warrants for aggravated felony removals, as well as a few passport fraud cases.

Finally, in my capacity as an AUSA in the Business and Securities Fraud Section, I worked on a number of large investigations and prosecutions in highly complicated cases involving white-collar crimes. The experience sharpened my skills in keeping track of complex investigations, assessing the evidentiary strength of cases, and developing the strongest possible indictments.

Work as an Associate Independent Counsel. At the Independent Counsel's Office, I worked on the Little Rock and Washington, DC, investigations. My principal work included drafting briefs and other documents, questioning a few witnesses in the grand jury, and writing memos analyzing legal questions.

Work as an Associate Mayer, Brown & Platt. At Mayer, Brown & Platt, I worked on a number of large matters. My experience included writing briefs, handling all aspects of discovery, and taking and defending depositions. I also was a key associate on two injunction hearings.

Work as a Law Clerk. As a law clerk to the Honorable C. Arlen Beam, I assisted the Judge in preparing for oral argument and drafting opinions on a wide range of cases.

B. EMPLOYMENT RELATIONSHIPS

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

   I am presently employed by the Department of Homeland Security.

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

   No.

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

   No.

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

   No.

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

   If confirmed, I will continue to serve at the pleasure of the President.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

   No.

C. POTENTIAL CONFLICTS OF INTEREST

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

   None.

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

   None.

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

   Yes.

D. LEGAL MATTERS

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

   I have never been disciplined or cited for a breach of ethics for unprofessional conduct. I have never been the subject of a complaint to any court, except for lawsuits against ICE and me relating to my employment at ICE (fully referenced and discussed in paragraph 3 below).

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

   No.

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

   I have not personally been involved as a party in interest in any administrative agency proceeding or civil litigation. In terms of my business interests, Myers Brothers of Kansas City, Inc., was not involved as party of interest in any administrative agency proceeding or civil litigation while I was a member of the Board of Directors. I do not know whether it has otherwise ever been involved as a party of interest in any administrative agency proceeding or civil litigation.

During my tenure as Assistant Secretary, ICE has been a defendant or litigant in numerous cases before the Executive Office for Immigration Review, the Board of Immigration Appeals, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and other administrative fora. ICE has also received and processed numerous administrative claims for damages, such as those arising from auto accidents involving ICE employees. To the best of my knowledge and that of my legal staff, none of this litigation alleges a basis in any action that I personally took in my individual or official capacity, and I do not expect to be a witness in any of these cases. Therefore, I did not list those actions here.

ICE has also been sued in federal courts numerous times during my tenure. It is common for plaintiffs to name the head of the defendant agency as an individual defendant, and I was a named defendant in a number of those suits. I have listed each such suit of which I am aware here. The majority of these are *habeas* suits for release from immigration detention. Others are common law tort suits for money damages, or suits that challenge ICE's exercise of its enforcement authorities. Some of this litigation alleges actions by me in my official or individual capacity, as I further describe below; however, a fair reading of each such claim is that it names me solely because of my position as head of this agency, or because of actions I allegedly took in the course of my official duties.

To the best of my knowledge, this list includes each pending federal case in which I am listed as a party, and each federal court decision that is available electronically and which alleges some basis in an act or omission by me as head of this agency. Although it is not possible to search all pending cases that may allege a wrongful action or inaction by me *without* naming me as a party, I have conferred with my legal staff, and they are aware of no such litigation.

Non-habeas cases

United Food & Commercial Workers International Union Local 540 v. ICE, et al., No. 06-0350 (N.D. Tex.): This is a suit for injunctive relief (initially, a *habeas* action) and damages in which the union claims to be suing on behalf of a class of Swift & Co. employees whom ICE detained during a nationwide work site enforcement operation. The suit claims that ICE, the Secretary, and I violated the Due Process and other rights of the Plaintiffs through our direction of this operation. *Bivens* claims against me were previously dismissed on the plaintiff's own motion; the plaintiff is now seeking to re-add those claims. All of my actions as Assistant Secretary during the course of this operation were done in good faith to enforce the laws pursuant to ICE's statutory mission.

Swift & Company v. ICE, et al., No. 06-0314 (N.D. Tex.): This is a suit by the employer for declaratory and injunctive relief, filed before the arrests described above. The plaintiff asked the court to prohibit ICE from conducting mass interviews of employees to determine if they are illegal aliens. The suit was dismissed on December 14, 2006.

Kiniti et al. v. Myers et al., No. 3:05-cv-01013-DMS-PCL (S.D. Cal.): This suit alleges Due Process violations for overcrowding in ICE contract detention facilities and seeks injunctive relief preventing continued detentions under similar conditions. In February 2007, Plaintiffs amended the suit to name me in my official capacity. ICE has looked into the allegations in the proposed amended complaint and disputes many of them, and has taken corrective action where appropriate, such as reducing the detainee population. ICE is constantly seeking different alternatives to assure that conditions in its detention facilities are as comfortable as possible.

Gonzalez v. Chertoff, et al., No. 07-0129 (N.D. Tex.): This is a tort suit in which the plaintiff claims he is a United States citizen and that ICE improperly detained him. ICE disputes the plaintiff's allegations and has moved to dismiss the suit for lack of jurisdiction.

Ordonez-Garay v. Chertoff, No. 06-1835 (E.D. Cal.): This is a mandamus suit, in which the plaintiff is asking the court to compel the government to adjudicate his visa petition and respond to his FOIA request (ICE does not adjudicate visa petitions and I probably should not have been named as a defendant). The government has moved to dismiss the complaint as moot because the petition has since been granted.

Rahman, et al. v. Chertoff, et al., No. 05-3761 (N.D. Ill.): Plaintiffs claim they are U.S. citizens who repeatedly have been detained at ports of entry when they attempt to re-enter the country after traveling abroad. ICE, Customs & Border Protection, and the FBI all vigorously contest this suit's allegations. Due to the extreme sensitivity of the some of the government's evidence in this case, the Court has issued a protective order.

Salazar-Velasquez v. United States, et al., No. 05-8561 (C.D. Cal.): This is a mandamus suit in which the detained plaintiff asked the court to compel the government to adjudicate his application for naturalization – a function that does not fall within ICE's purview -- and to release him on bail. The case was dismissed on October 20, 2006.

Turnbull v. United States, et al., No. 06-0858 (N.D. Ohio): This is a *Bivens*/FTCA suit in which the plaintiff claims ICE removed him to Jamaica in contravention of a court-issued stay of removal. The government has moved to dismiss, claiming lack of jurisdiction.

Sultan v. Caterisano, et al., No. 06-1785 (D. Md.): This is a mandamus suit in which the plaintiff asks the court to compel the government to adjudicate his visa petition, a function that does not fall within ICE's purview. The government has moved to dismiss this case.

Mancha, et al. v. ICE, et al., No. 06-2650 (N.D. Ga.): The plaintiffs claim ICE agents conducted a series of improper and unconstitutional enforcement activities in southeastern Georgia. They are seeking money damages and declaratory relief. I am sued in my official capacity only. ICE anticipates filing an Answer that will dispute the factual allegations in the complaint.

Florida Language Center, Inc. v. DHS, et al., No. 06-61336 (S.D. Fla.): Plaintiff sued over the loss of its accreditation to enroll non-immigrant foreign students. This case was dismissed, pursuant to a joint motion by both parties, on November 20, 2006.

National Council of La Raza, et al. v. Gonzales, et al., No. 03-CV-6324 (E.D.N.Y.): This suit, dismissed on January 5, 2007 for lack of standing, moved a court to enjoin practice of entering and disseminating civil immigration information to state and local enforcement officials through National Crime Information Center database.

Cuevas-Hernandez v. United States et al., No. 07-0214 (D. Or.): Plaintiff sues for the right to have counsel present at a deferred inspection interview. I am named in my official capacity. The Justice Department is preparing its response to the complaint.

Save Our Heritage Org. v. Gonzales et al., No. 07-0038 (D.D.C.): Plaintiffs sue ICE, among numerous federal agencies, to block construction of additional border fencing in the San Diego area, claiming violations of the several environmental laws and the Administrative Procedure Act, despite Congress having provided specific exemptions from those laws. Although this suit primarily concerns other agencies, ICE is working with the Justice Department to respond.

Belbachir v. County of McHenry, No. 06-1392 (N.D. Ill.): The plaintiff's estate sues over the tragic suicide of a detainee in a contract detention facility, a county jail, before my tenure as Assistant Secretary. The county medical staff joined ICE as third-party defendant. Although the plaintiff also purports to make *Bivens* allegations against me in my personal capacity, the allegations really appear to allege that my predecessor and other ICE officials, acting in their official capacities, failed to adequately supervise the county jail staff, notify Ms. Belbachir's consulate when she was detained, and share her medical information with the jail's medical staff. Although ICE was not joined in this litigation until March 2007, we have already begun investigating what, if anything, ICE could have done to prevent this, or to prevent another such event in the future.

Salami et al. v. Chertoff et al., No. 07- 00819 (E.D. Pa.): Plaintiff claims that he was removed from the United States without notice and an opportunity to be heard in Immigration Court. The United States agreed to grant the plaintiff parole to return to the United States for a removal hearing.

Arias, et al. v. U.S. Immigration and Customs Enforcement, et al., Case No. 07-cv-1959, Twenty-five named plaintiffs brought suit against ICE, seeking declaratory and injunctive relief, as well as damages, arising out of alleged violations of the named plaintiffs' constitutional rights during the April 10 to April 13, 2007, "Operation Crosscheck" in Willmar, Minnesota.

Habeas cases

Sandoval v. ICE, No. 07-10471 (D. Mass.): Illegal immigrants detained in a March 6, 2007 ICE raid in New Bedford, Massachusetts sue for *habeas corpus*, to enjoin ICE from transferring them out of Massachusetts, to block their removal from the United States, and to allege violations of their Due Process rights. ICE has worked with the detainees' counsel and their families, with the court's approval, to insure that detainees are permitted as much meaningful contact with their family members as possible, consistent with our mission. ICE has also moved to dismiss the suit for lack of jurisdiction, because ICE believes that its actions were a proper exercise of the duties and authorities with which Congress has charged us.

Hutto Litigation, No. 07-0165 (W.D. Tex.): On March 6, 2007, several minors and their parents, with the support of the ACLU, filed complaints and moved for temporary restraining orders against ICE. The complaints allege that the detention of family members at the T. Don Hutto Residential Facility violates the settlement agreement reached in *Reno v. Flores*, a class action suit initiated to enjoin the blanket detention of immigrant minors at INS detention facilities. The Plaintiffs alleged that the *Flores* settlement agreement remains binding on ICE and covers accompanied and unaccompanied minors. On April 9, 2007, the District Court denied in part and granted in part the ACLU's motion for a preliminary injunction. In doing so, the Court refused to order the release of three minor plaintiffs and their parents, but it granted the ACLU access to the facility and to plaintiffs' records. As of April 12, 2007, all of the original plaintiffs had been released from the Hutto facility.

Yarrito et al. v. ICE, No. 06-02494 (D. Colo.): As a part of the recent Swift raid litigation, Plaintiffs arrested at a Swift plant in Greeley, Colorado moved for a writ of *habeas corpus* for release from detention that they alleged was unlawful. The court terminated the motion on January 22, 2007, which effectively ended this litigation.

Guzman v. Bureau of Immigration and Customs Enforcement, et al., No. 06-0023 (S.D. Tex.): Dismissed August 30, 2006.

Sheth v. Gonzales, et al., No. 07-0036 (D.N.J.): Dismissed February 27, 2007.

Garcia-Villeda v. Gonzales, et al., No. 07-0087 (S.D.N.Y.): Plaintiff moved for voluntary dismissal, January 24, 2007.

Hajbeh v. Loiselle et al., No. 07-0053 (E.D. Va.). This suit was filed on February 1, 2007

Ford v. Meyers, et al., No. 06-0101 (D.N.J.) (Note: "Meyers" is not a misspelling of my name. The first named plaintiff is Charles Meyers): Dismissed May 19, 2006.

Gonzales v. Chertoff et al., No. 07-0129 (N.D. Tex.): The suit was filed on January 22, 2007 and the government has not yet had an opportunity to respond.

Hanley v. Campos, et al., No. 06-0374 (W.D. Tex.): The suit was dismissed on February 22, 2007.

Dominique v. Chertoff, et al., No. 07-0645 (E.D. Pa.) The suit was filed February 15, 2007 and is pending.

Brown v. Gonzales et al., No. 07-20377 (S.D. Fla.) This suit was filed on February 12, 2007, and is pending.

Shaukat v. Gonzalez et al., No. 07-00375 (S.D. Tex.): This suit was filed January 27, 2007 and is still pending.

Simonenkov v. Webber et al., No. 07-00568 (D.N.J.): Dismissed February 9, 2007.

Mattete v. Jerry, et al., No. 06-0652 (E.D. Va.): The suit is pending.

Anjum v. Hodge, et al., 06-0694 (E.D. Va.): Dismissed January 17, 2007.

Kim v. Barlow, et al., No. 06-0695 (E.D. Va.): Dismissed September 7, 2006.

Sesay v. Barlow, et al., No. 06-0696 (E.D. Va.): Dismissed November 21, 2006.

Olajide v. Barlow, et al., No. 06-0743 (E.D. Va.): The suit is pending.

Ababi v. Cherry, et al., No. 06-0744 (E.D. Va.): Dismissed November 20, 2006.

Al-Salahi v. Barlow, et al., No. 06-0843 (E.D. Va.): Dismissed January 30, 2007.

Putumbaka v. Cherry, et al., No. 06-0875 (E.D. Va.): Dismissed October 2, 2006.

Saho v. Baker, et al., No. 06-0939 (S.D. Ohio): Dismissed December 6, 2006.

Mironyuk v. Gooch, et al., No. 06-1046 (E.D. Va.): Dismissed February 6, 2007.

Singh v. Cherry, et al., No. 06-1067 (E.D. Va.): Dismissed December 11, 2006.

Joseph v. Chertoff, et al., No. 06-1096 (D. Conn.): Dismissed September 7, 2006.

Amin v. Loiselle, et al., 06-1146 (E.D. Va.): The suit is pending.

Mohammed v. Barlow, et al., No. 06-1187 (E.D. Va.): The suit is pending.

Fall v. Cherry, et al., No. 06-1188 (E.D. Va.): Dismissed February 23, 2007.

Nguyen v. Barlow, et al., No. 06-1244 (E.D. Va.): Dismissed January 22, 2007.

Diongue v. Barlow, et al., No. 06-1245 (E.D. Va.): Dismissed January 25, 2007.

Rexhaj v. Chertoff, et al., No. 06-1320 (S.D. Cal.): The suit is pending.

Sadhvani v. Chertoff, et al., No. 06-1454 (D.D.C.): Dismissed November 6, 2006.

Roc v. Chertoff, et al., No. 06-1465 (D. Conn.): Dismissed November 28, 2006.

Bazile v. Gonzales, et al., No. 06-2278 (D.N.J.): Dismissed May 19, 2006.

Talledo-Costa v. Gonzales, et al., No. 06-2362 (D.N.J.): The suit is pending.

Ali v. Gonzales, et al., No. 06-2722 (D.N.J.): The suit is pending.

O'Cealleagh v. Gonzales, et al., No. 06-5876 (C.D. Cal.): Dismissed October 11, 2006.

Youkhana v. Chertoff, et al., No. 06-7191 (N.D. Cal.): Dismissed December 8, 2006.

Mendez, et al. v. Chertoff, et al., No. 06-14441 (E.D. Mich.): Dismissed October 30, 2006.

Cohen v. Rozos, et al., No. 06-21798 (S.D. Fla.): Dismissed July 28, 2006.

Lepesh, et al. v. B.I. Incorporated, et al., No. 04-1815 (D. Or.): Dismissed April 12, 2006.

Mussa v. Gonzales, et al., No. 06-2749 (C.D. Cal.): Dismissed October 17, 2006.

Momeni v. Chertoff, et al., No. 06-5675 (C.D. Cal.): Dismissed December 15, 2006.

Rasheed v. Gonzales, et al., No. 06-7449 (C.D. Cal.): The suit is pending.

Soeoth v. Gonzales, et al., No. 06-7451 (C.D. Cal.): The suit is pending.

Diouf v. Gonzales, et al., No. 06-7452 (C.D. Cal.): The suit is pending.

Martinez v. Gonzales, et al., 06-7609 (C.D. Cal.): The suit is pending.

Savadogo v. Gonzales, et al., No. 07-50006 (N.D. Ill.): The suit is pending.

Posada-Carriles v. Campos, et al., No. 06-0130 (W.D. Tex.): Dismissed February 21, 2007.

Siddique v. Gonzales, et al., No. 05-0463 (W.D. Tex.): Dismissed May 2, 2006.

Kinfe v. Gonzales, et al., No. 06-0506 (W.D. Tex.): Dismissed August 15, 2006.

Mansariya v. Chertoff, et al., No. 06-0553 (W.D.N.Y.): Dismissed September 22, 2006.

Darwich v. Mason, et al., No. 06-0579 (S.D. Ala.): The suit is pending.

Chen v. Chertoff, et al., 06-0686 (D.D.C.): Dismissed June 13, 2006.

Kinfe v. Gonzales, et al., No. 06-0689 (W.D. Tex.): Dismissed August 29, 2006.

Janneh v. Gonzales, et al., No. 06-1895 (D.N.J.): Dismissed May 24, 2006.

Kim v. Chertoff, et al., No. 06-3422 (D.N.J.): Dismissed August 7, 2006.

Singh v. Chertoff, et al., No. 06-4748, (D.N.J.): Dismissed December 28, 2006.

Kassa v. Chertoff, et al., No. 06-5345 (D.N.J.): Dismissed November 15, 2006.

Kassa v. Chertoff, et al., No. 06-5534 (D.N.J.): The suit is pending.

Francois v. Gonzales, et al., No. 06-5879 (D.N.J.): Dismissed January 25, 2007.

Mykel v. Chertoff, et al., No. 06-8303 (S.D.N.Y.): The suit is pending.

Uljic v. ICE, et al., No. 06-13106 (E.D. Mich.): Dismissed September 28, 2006.

Ilias-Andeson v. Baker, et al., No. 06-13377 (E.D. Mich.): Dismissed July 27, 2006.

Gjidoda v. Baker, et al., No. 06-13654 (E.D. Mich.): The suit is pending.

Muka v. Baker, et al., No. 06-15619 (E.D. Mich.): The suit is pending.

Alrefae v. Chertoff, 471 F.3d 353 (2d Cir. 2006) (granting petition to review removal order). This case is pending remand.

Zhang v. Gonzales, 452 F.3d 167 (2d Cir. 2006) (partially granting petition to review removal order). This case is pending remand.

E. FINANCIAL DATA

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

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

Julie Myers

Subscribed and sworn before me this 3RD day of May, 20 07

Lisa C. Frank

Notary Public

Lisa C. Frank
Notary Public, District of Columbia
My Commission Expires 8-14-2010

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Julie Myers to be
Assistant Secretary, Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Assistant Secretary of the Department of Homeland Security (DHS)?

I believe that the President nominated me for this position based on my track record as Assistant Secretary over the past year, as well as my accomplishments as a Special Assistant to the President, Assistant Secretary of Commerce (Export Enforcement), Chief of Staff for the Criminal Division at the Department of Justice, Deputy Assistant Secretary at the Department of Treasury and Assistant United States Attorney in the Eastern District of New York.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain. *No.*

3. What specific background and experience affirmatively qualifies you to be Assistant Secretary of DHS?

Work as Assistant Secretary for Immigration and Customs Enforcement (ICE). I have served as the ICE Assistant Secretary since January 2006. In this role, I have supervised over 16,500 employees and managed a budget of almost $5 billion.

Under my leadership, ICE has set new records for enforcement activity, ended the long-standing practice of "catch-and-release" along the nation's borders, transformed its detention and removal process, made significant strides in financial management and taken substantial steps in improving agency infrastructure.

The agency's significant accomplishments during my tenure affirmatively qualify me for continued service at the agency. A few of the most notable accomplishments include:

- *Setting New Enforcement Records. During FY 2006, the agency succeeded in setting several new enforcement records. Specifically, the total number of worksite arrests reached a level that was more than seven times greater than in 2002, the last full year of operations for the U.S. Immigration and Naturalization Service. ICE also implemented a new approach to worksite enforcement. Our strategy has become one of deterrence. By holding employers accountable through the prospect of criminal charges, I believe we're beginning to see significant efforts by companies to take steps to ensure compliance.*

ICE also set a record in FY 2006 for arms and strategic technology investigations by expanding training and doubling the number of personnel assigned to these investigations. In FY 2007, ICE projects indictments in these cases to increase by 44% over FY 2005, while arrests and convictions are on pace to increase by 60% and 86%, respectively.

Since the beginning of FY 2006, ICE also initiated several new law enforcement programs targeting vulnerabilities. For example, in conjunction with the Department of Justice, ICE launched 17 Document and Benefit Fraud Taskforces in major U.S. cities. These task forces have already completed a significant number of investigations, and in FY 2007, they are projected to more than triple the number of arrests and convictions made in FY 2006.

- *Transforming Detention and Removal. During my tenure, the agency also broke new ground by ending "catch and release" along our borders. By successfully re-engineering our detention and removal process, we were able to drastically improve detention rates, from a meager 29 percent of non-Mexican aliens who are subject to detention pending removal and otherwise ineligible for release from custody under U.S. Immigration law apprehended along the borders. Our re-engineering efforts were assisted by an increase in detention bed space by 6,300 during FY 2006, bringing the current number of funded beds to 27,500. As a result, ICE removed over 197,000 illegal aliens from the country in FY 2006. This was a record for the agency and more than a thirteen percent increase over the number of removals during the prior fiscal year.*

  Additionally, during FY 2006, ICE nearly tripled the number of fugitive operations teams deployed nationwide from 18 to 49. Today we have 65 teams. These additional teams maximize the efficiency of ICE immigration enforcement efforts to locate, apprehend and remove primarily criminal aliens. Moreover, the work of the fugitive operations teams, in combination with our Fugitive Operations Support Center (FOSC), is, for the first time, starting to reduce the total number of immigration fugitives in this country.

  Ensuring that criminal aliens are removed from our society and not released into our community is a high priority for me. We are working to increase our coverage of facilities and have made some significant steps. For example, we also created a national center that reviews alien records at all 114 federal detention facilities (as opposed to our coverage of only 30 federal facilities in 2005), to ensure that criminal aliens are deported rather than released into society upon the completion of their sentences. To date, this center has issued over 11,000 charging documents, screened approximately 20,000 incarcerated aliens, and located nearly 100 alien absconders.

  Given the increased number of aliens in ICE custody, I have developed additional oversight procedures to ensure that all individuals in ICE custody are treated fairly and humanely. In particular, we developed an independent oversight team, the Detention Field Inspection Group (DFIG), within ICE's Office of Professional

Responsibility, to conduct inspections to ensure that ICE facilities are in compliance with the detention standards. In addition, ICE is in the process of revising the ICE Detention Standards to make them more performance-based. This will allow the agency to hold facilities more readily accountable for performance under the standards.

- *Ensuring Financial Integrity. In addition, since last year, we have taken substantial steps to ensure ICE's financial integrity. Immediately upon joining ICE, I appointed the first permanent Chief Financial Officer (CFO) to stabilize the agency's financial management. I also created two new Senior Executive Service positions with financial management responsibilities, a Deputy Assistant Secretary for Management and a Deputy Chief Financial Officer. I instituted a weekly meeting to discuss progress on financial matters and ensure high-level attention to any financial issues.*

  In the FY 2005 audit, ICE was cited with eight material weaknesses. To resolve audit issues, ICE initiated a multi-year Corrective Action Plan (CAP) to fully reconcile ICE funds with the Department of Treasury, Clear Suspense Accounts and establish improved processes and controls for the agency and its components. Through effective development of the CAP, and aggressive implementation of its action plans, ICE was able to remove six of the eight material weaknesses by the time of the FY 2006 financial audit. In particular, the DHS audit concluded that of the agencies cited for having numerous serious internal control weaknesses in FY 2005, only ICE was able to make substantial progress during the year.

Work as the Assistant Secretary for Export Enforcement. As Assistant Secretary for Export Enforcement, I was responsible for supervising the Commerce Department agents who investigate violations of dual-use export control laws. As such, I led the Commerce Department's efforts to prevent and prosecute violations of U.S. dual-use export control laws and directed overall investigative and litigation strategy for Export Enforcement cases. I managed nine field offices with special agents, supervising approximately 170 FTEs and a budget of $25 million.

On a macro level, I concluded early on that the agency needed to prioritize its investigations. Not all export investigations are alike, and I believed that not all investigations warranted the same level of investigative resources. After obtaining consensus from my Deputy Assistant Secretary and leadership in the field, I created the Export Case Emphasis List (X-CEL). The X-CEL list was a case prioritization and tracking system. The X-CEL allowed Export Enforcement to ensure that it was focusing its efforts and limited budget on cases of the highest priority: cases involving items with potential use in chemical, biological, and/or nuclear weapons and cases involving violations where the end-users were from nations or organizations of greatest concern.

These efforts paid off. During my tenure, Export Enforcement achieved substantial results in a significant number of national security cases, such as the conviction of Dr. Thomas Butler for illegally exporting Yesinia Pestis (Bubonic Plague), the arrest of Asher Karni for conspiring to export so-called "nuclear triggers," and the first criminal

convictions in a deemed export case. My personal involvement in these and other national security cases included reviewing and evaluating the evidence, directing and approving investigative techniques, prepping a witness for trial, and determining investigative strategy.

In addition to the significant criminal cases, Export Enforcement agents also pursued a large number of civil violations. We increased enforcement efforts to ensure corporate compliance with the export control rules. As a result, during my tenure, the number of administrative case completions nearly doubled, from 34 in FY 2003 to 63 in FY 2004. Over the same period, civil penalties increased from $4.1 million to $6.2 million. My personal involvement in the civil cases included directing and approving investigative techniques, guiding temporary denial orders, and reviewing settlement parameters and agreements.

Much of my legal work at the Department of Commerce directly intersected with immigration issues. For example, Export Enforcement agents were on the forefront of investigations into foreign nationals who have visas but also have improper access to sensitive technology (so called "deemed exports"). It is important to have a thorough understanding of the visa process as well as the export licensing process in order to pursue these cases successfully. During my tenure, Export Enforcement obtained the first criminal conviction in a deemed export case and obtained civil settlements in several other deemed export cases. For example, during my tenure, Export Enforcement obtained a $560,000 civil penalty from Lattice Semiconductor for their failure to obtain export licenses for five Chinese nationals who, during the course of their employment with Lattice, were brought to the United States for technical training on licensable goods.

In addition to my litigation work at Commerce, I also participated in the rulemaking process. We worked to develop regulations that increased the transparency of the civil penalty process and thereby offered additional guidance to industry on how to comply with the law.

Work as Chief of Staff for the Criminal Division. As Chief of Staff for the Criminal Division at the Department of Justice, I assisted the Assistant Attorney General in leading and managing the Criminal Division, a component with nearly 500 prosecutors and an annual budget of more than $129 million. During that time, I provided leadership direction for all substantive and administrative aspects of the Criminal Division's mission.

Assistant Attorney General Chertoff delegated to me the authority to handle many sensitive legal matters in the division. Relevant to the ICE position, I worked closely with the new Department of Homeland Security, representing the division in discussions regarding information sharing and other matters. I also worked closely with the Department of Treasury on terrorist financing issues. In addition, I represented the Criminal Division in planning and meetings regarding the interagency anti-smuggling center. I worked particularly closely supervising matters, people and legal issues in the following divisions: Narcotics and Dangerous Drugs; Organized Crime;

Counterespionage; Asset Forfeiture and Money Laundering; Computer Crimes and Intellectual Property; and Public Integrity.

Work as Deputy Assistant Secretary for Money Laundering and Financial Crimes. As Deputy Assistant Secretary for Money Laundering and Financial Crimes in the Office of Enforcement at the Department of Treasury immediately after 9/11, I directly supervised two sections of the Office of Enforcement: the Counternarcotics Section and the International Money Laundering Section.

I worked extensively on the department's implementation of Title III of the Patriot Act relating to money laundering, including the regulatory changes required by the Act. In addition, I worked closely with the United States Customs Service (USCS) and other federal law enforcement agencies on the implementation and development of the National Money Laundering Strategy. Moreover, I supervised the Treasury Department's work on the Financial Action Task Force.

Work as an Assistant United States Attorney. As an Assistant United States Attorney (AUSA), I worked extensively with agents from the former United States Customs Service (USCS). This work ranged from simple drug and other import fraud cases to more complex smuggling investigations. For example, I worked extensively with several USCS agents on a multi-layer smuggling investigation. This investigation started with a simple stolen car ring. We then discovered that the initial target, the owner of the import/export company where the cars were being shipped, was connected to several other criminals and criminal organizations, including an international smuggling organization. With the agent from USCS, I traveled to London to pursue investigative and financial leads on this case and worked closely with Her Majesty's Revenue and Customs (HMRC), and other foreign authorities to obtain additional evidence. After I left the U.S. Attorney's Office, the smuggling case was indicted and successfully prosecuted.

As an AUSA, I also worked on immigration cases at various stages and times. While working in the General Crimes Section of the U.S. Attorney's Office, I worked with agents from the Immigration and Naturalization Service to prosecute a number of aggravated felony removal cases, pursuant to 8 U.S.C. § 1326. For these cases, I would present the case to the grand jury and then represent the United States through the sentencing period. I do not recall how many of these cases I presented, but I think a conservative estimate would be at least five prosecutions. All of my defendants pleaded guilty before trial. I also worked on a couple of more complicated immigration cases, including one case involving some Russians running a small immigration fraud ring in Brooklyn. All the defendants pleaded guilty in this case.

Furthermore, all AUSAs in the Eastern District were required to act as "duty assistant" for certain periods. For those times, I drafted arrest warrants on simple cases and presented those cases for arraignment before a duty magistrate judge. As a duty assistant, I drafted a number of arrest warrants for aggravated felony removals, as well as a few passport fraud cases.

Finally, in my capacity as an AUSA in the Business and Securities Fraud Section, I worked on a number of large investigations and prosecutions in highly complicated cases involving white-collar crimes. The experience sharpened my skills in keeping track of complex investigations, assessing the evidentiary strength of cases, and developing the strongest possible indictments.

Work as an Associate Independent Counsel. At the Independent Counsel's Office, I worked on the Little Rock and Washington, DC, investigations. My principal work included drafting briefs and other documents, questioning a few witnesses in the grand jury, and writing memos analyzing legal questions.

Work as an Associate Mayer, Brown & Platt. At Mayer, Brown & Platt, I worked on a number of large matters. My experience included writing briefs, handling all aspects of discovery, and taking and defending depositions. I also was a key associate on two injunction hearings.

Work as a Law Clerk. As a law clerk to the Honorable C. Arlen Beam, I assisted the judge in preparing for oral arguments and drafting opinions on a wide range of cases.

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

Other than commitments made to the Secretary of Homeland Security in the ongoing course of agency business, the only other commitments I have made with respect to the policies and principles to be implemented as Assistant Secretary of ICE were those made to the United States Congress in the course of my nomination in 2005. Those commitments are reflected in my 2005 hearing questionnaires and corresponding testimony, already part of the record.

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

I will continue to work with the Department's Office of General Counsel and our Agency's Ethics Advisor to ensure that that I comply with all ethics rules and follow all appropriate procedures regarding conflicts of interest or the appearance of a conflict of interest, particularly with respect to my financial holdings, detailed on my 278 form submitted to this Committee.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

II. Background of the Nominee

7. What is your view of the role of Assistant Secretary of Homeland Security?

I view the role of the Assistant Secretary of Homeland Security, U.S. Immigration and Customs Enforcement, as ultimately responsible for fulfilling the agency's mission. The Assistant Secretary leads the agency, which is the largest investigative component of the Department of Homeland Security and the second largest investigative agency in the federal government, with more than 16,500 employees and an annual budget of nearly $5 billion.

ICE's mission is to protect America and uphold public safety. We fulfill this mission by identifying criminal activities and eliminating vulnerabilities that pose a threat to our nation's borders, as well as enforcing economic, transportation and infrastructure security. By protecting our national and border security, ICE seeks to eliminate the potential threat of terrorist acts against the United States.

8. In your view, what are the major internal and external challenges facing DHS and Immigration and Customs Enforcement (ICE)? What have you done to address these challenges? Are there any current or future plans to address these challenges?

Many of the challenges that face the department, and ICE specifically, are directly related to how long they have been in existence, compared to many of the agencies we coordinate with on a daily basis. Aside from growing pains, ICE, as the largest investigative branch within DHS, faces multiple challenges dealing with the alarming number of illegal goods and aliens that cross our borders every day. With finite resources, this agency's reach is limited in terms of dealing with immigration and customs enforcement. Effectively allocating resources to the areas within an agency that can make the largest impact has and always will be a challenge to any agency. Yet ICE has responded to these challenges with increased efficiency. In FY 2006 business models were applied to all ICE operations, which resulted in such things as a full executive leadership staff, a detailed metrics plan for the Office of Principal Legal Advisor and other components, and the Detention and Removal Operations accomplishments in reinventing the process for the removal of aliens. In addition, ICE has taken advantage of the merger of two formerly separate enforcement agencies and their unique authorities, incorporating customs investigations into immigration cases and immigration authorities into customs investigations.

In addition to these challenges, the Department of Homeland Security, as well as other departments and agencies tasked with protecting the people of this nation and the freedoms they enjoy, have an extraordinary responsibility to adapt to the changing conditions of today's world. With events and issues such as Hurricane Katrina, 9/11 and the uncertain future of a comprehensive immigration reform, ICE must rely on its partnerships with local, state and other federal law enforcement entities to fulfill its mission. In order to respond to events such as these, and prepare ourselves for the future, ICE must strengthen such relationships and develop more. Work and coordination with non-governmental organizations and the private sector will prove to be invaluable, whether in terms of developing employers-government relations to ensure the hiring of documented workers or

aiding organizations that focus on immigrants to make sure they are given proper tools and information.

9. How do you communicate to ICE staff on efforts to address relevant issues?

In an effort to communicate clearly and openly with all ICE employees, I use a variety of available tools and methods. Among these are e-mail, in the way of both regular weekly ICE Info messages that are sent to all employees, as well as special Broadcast Messages that are created and distributed as needed to announce critical agency-wide news and information that either cannot wait for the next weekly ICE Info message, or are of such significance to require their own distribution.

In addition to regular e-mail correspondence, we have started preparing a bi-monthly, large format eight-page newsletter called ICE Update. This newsletter is designed to highlight significant office or program accomplishments, and is made available to all employees in hard copy. Each issue also features an "Assistant Secretary's Message" column, in which I have the opportunity to share some thoughts with ICE staff regarding how we're doing, what we're doing, where we're going or how I think we should get there.

And although I feel each of these tools is a valuable and necessary piece of an overall communications strategy, they can seldom be as effective as face-to-face communication. In an effort to facilitate this kind of critical two-way communication, I hold Town Hall meetings with individual component offices at our Washington, DC Headquarters as well as at many of our field offices around the country. Over the past year, I have had the opportunity to visit many of our offices to share our priorities and hear the concerns and issues of ICE employees. These visits have been invaluable and allowed me to quickly address some pending local issues.

In my view, it is critical to receive appropriate input and views from the field. To address this, in January 2007 I established the Assistant Secretary's Advisory Group, or ASAG, to provide support to and make recommendations to me and to other ICE senior management in cross-program areas. The ASAG plays a critical role in improving collaboration among ICE programs in an effort to realize a unified agency culture. The group is composed of 15 representatives from various ICE programs who serve on a rotational basis.

Finally, our agency needed to be more effective with communications with employees in real time over the Web. To address this, we developed the newly designed and recently launched ICE Intranet portal. In an effort to provide more accurate, more complete and timelier information to all of our employees, we made the decision to build and support a robust, stand-alone intranet site that will serve as a one-stop shop for all employees.

All editions of ICE Update and a complete archive of Broadcast Messages are available, and every ICE office has the opportunity, through this new site, to provide critical information to the entire agency. This site was built to conform to all DHS branding requirements and the principal guideline throughout this initial phase of construction was to create a customer-

centric, easy to use site; a place where all necessary information could be found quickly and easily.

10. What are your significant accomplishments and successes in the time you have served as Assistant Secretary?

Under my leadership, ICE has set new records for enforcement activity, ended the long-standing practice of "catch-and-release" along the nation's borders, transformed its detention and removal process, made significant strides in financial management and taken substantial steps in improving agency infrastructure.

A few of the most notable accomplishments of the agency include:

- *Vigorous Immigration Enforcement in line with our Interior Enforcement Strategy.*
    - *Targeting Criminal Alien for Removal.*
        - *Ensuring that criminal aliens are removed from our society and not released into our community is a high priority for me. We are working to increase our coverage of facilities and have made some significant steps. For example, we created a national center that reviews aliens at all 114 federal detention facilities (as opposed to our coverage of only 30 federal facilities in 2005), to ensure that criminal aliens are deported rather than released into society upon the completion of their sentences. To date, this center has issued over 11,000 charging documents and located nearly 100 aliens absconders.*
        - *As of May 2007, ICE's gang initiative, Operation Community Shield, had arrested 4,882 gang members and associates, and seized 219 guns.*
        - *As of May 2007, ICE had successfully arrested more than 10,000 child predators. Of these, more than 8,536 of the arrestees have been non-U.S. citizens, and of those, more than 5,247 have been deported from the United States.*
        - *During FY 2006, ICE nearly tripled the number of fugitive operations teams deployed nationwide from 18 to 49. With additional teams created since the beginning of FY 2007, the number currently stands at 65. Moreover, the work of the fugitive operations teams, in combination with our Fugitive Operations Support Center (FOSC), is, for the first time, starting to reduce the total number of immigration fugitives in this country.*
        - *As of June 2007, 416 local law enforcement officers have been trained and 21 MOU's with various jurisdictions have been established under ICE's 287(g) program. Participation in the program has increased dramatically since 2005, when only 83*

local law enforcement officers had been trained and only three MOU's with local jurisdictions had been established.

- *Since June 2003, ICE field offices have completed more than 17,000 compliance enforcement investigations resulting in nearly 4,000 arrests. In FY 2006 alone ICE field offices completed approximately 6,000 cases resulting in 1,710 arrests, an annual increase of 75% over FY 2005.*

- *Reducing the Magnet of Illegal Employment.*

  - *During FY 2006, the total number of worksite arrests reached a level that was more than seven times greater than in 2002, the last full year of operations for U.S. Immigration and Naturalization Service. ICE also implemented a new deterrent approach to worksite enforcement, by holding employers accountable through the prospect of criminal charges.*
  - *In July of 2006, ICE partnered with private sector entities to initiate the ICE Mutual Agreement between Government and Employers (IMAGE) program to build cooperative relationships that strengthen overall hiring practices.*

- *Dismantling the Infrastructure that Supports Illegal Immigration.*

  - *ICE and the DOJ Criminal Division launched the Extraterritorial Criminal Travel (ECT) Strike Force in June 2006, to leverage extraterritorial investigative and prosecutorial expertise to attack foreign-based Criminal travel networks engaged in the movement of special interest aliens, in Dominican Republic, Ecuador, El Salvador and Guatemala.*
  - *Traditional immigration cases, like investigations of human smuggling organizations, were advanced through the use of traditional customs investigative techniques like targeting the financial proceeds of these criminal organizations. As a result, the total amount of assets seized through immigration-related cases increased from virtually nothing before ICE was created in March 2003, to approximately $20 million in FY 2004 to almost $42 million in FY 2006.*
  - *Since the beginning of FY 2006, ICE also initiated several new law enforcement programs targeting vulnerabilities. For example, in conjunction with the Department of Justice, ICE launched 17 Document and Benefit Fraud Taskforces in major U.S. cities. These task forces have already completed a significant number of investigations, and in FY 2007, these taskforces are projected to more than triple the number of arrests and convictions made in FY 2006.*

- *Improvements in Arms and Strategic Technology Cases.*
    - *ICE also set a record in 2006 for arms and strategic technology investigations by expanding training and doubling the number of personnel assigned to these investigations. In FY 2007, ICE projects indictments in these cases to increase by 44 percent over FY 2005, while arrests and convictions are on pace to increase by 60 percent and 86 percent, respectively.*
- *Expanding the Scope of Our International Financial Cases.*
    - *As part of the effort to increase financial investigations, in FY 2006 ICE created new trade transparency units (TTUs). ICE currently has teams in Argentina, Brazil, Colombia and Paraguay to combat trade-based money laundering and other financial crimes. A Mexican unit is anticipated in the near future.*
- *To address the threat of terrorist and other criminal organizations exploiting the non-traditional financial services industry, we launched the Unlicensed Money Service Business/Informal Value Transfer System (MSB/IVTS) initiative in January of 2006.*
    - *This initiative is designed to identify unlicensed money service business operating in violation with 18 USC 1960 (Prohibition of Unlicensed Money Transmitting Businesses), bring serious violators to justice and, through outreach efforts based on the Cornerstone model, bring minor violators into compliance with the law.*
    - *Since its inception, the MSB/IVTS initiative has resulted in the identification of over 420 unlicensed MSBs. These identification efforts have led to the initiation of nearly 320 criminal investigations.*

- *In a continuing effort to combat the threat of international bulk cash smuggling (BCS) and money laundering by terrorist and other criminal organizations, we have developed a bulk cash training initiative. This initiative will be a key component of the U.S. Government's USG strategy to attack financial crime both domestically and abroad in a synchronized fashion by multiple nations.*
    - *BCS training targets criminal organizations that use cash couriers to finance their activities or launder their illicit funds.*
    - *This training initiative will build upon established relationships; employ advanced BCS and cash courier (CC) classroom and*

operational interdiction training, and real time intelligence and information sharing modules, delivered in multiple phases.

- *Building upon past and ongoing international BCS / CC initiatives conducted by ICE and CBP, (i.e. Operation Firewall, Operation Manila ICE), this initiative will join the interdiction efforts of multiple nations to occur simultaneously in several nations. These multi-national operations will synchronize interdiction efforts through the use of real time intelligence sharing from source country to destination country.*
- *ICE will exploit its investigative assets, dependent upon the region, phases or emphasis during this initiative. To date, ICE and CBP have conducted core classroom BCS training in 11 countries. ICE has also conducted regional training involving to 19 countries.*

- *Transforming Detention and Removal.*

  - *During my tenure, the agency also broke new ground by ending "catch and release" along our borders. By successfully re-engineering our detention and removal process, we were able to drastically improve detention rates, from a meager 29 percent of non-Mexican aliens who are subject to detention pending removal and otherwise ineligible for release from custody under U.S. Immigration law apprehended along the borders. Our re-engineering efforts were assisted by an increase in detention bed space by 6,300 during FY 2006, bringing the current number of funded beds to 27,500. As a result, ICE removed over 197,000 illegal aliens from the country in FY 2006. This was a record for the agency and more than a thirteen percent increase over the number of removals during the prior fiscal year.*
  - *ICE improved its prisoner transportation program significantly with the acquisition of two additional aircraft, increasing the fleet to six aircraft total, and increasing the anticipated alien and prisoner movement by 55,000 in FY 2007.*
  - *Given the increased aliens in ICE custody, I have developed additional oversight procedures to ensure that all individuals in ICE custody are treated fairly and humanely. In particular, we developed an independent oversight team, the Detention Field Inspection Group (DFIG), within ICE's Office of Professional Responsibility, to conduct inspections to ensure that ICE facilities are in compliance with the Detention Standards.*
  - *In addition, ICE is in the process of revising the ICE Detention Standards to make them more performance-based. This will allow the agency to hold facilities more readily accountable for performance under the standards.*

- *Ensuring Financial Integrity*

- *In addition, since last year, we have taken substantial steps to ensure ICE's financial integrity. Immediately upon joining ICE, I appointed the first permanent Chief Financial Officer (CFO) to stabilize the agency's financial management. I also created two new Senior Executive Service positions with financial management responsibilities, a Deputy Assistant Secretary for Management and a Deputy Chief Financial Officer. I instituted a weekly meeting to discuss progress on financial matters and ensure high-level attention to any financial issues.*
- *In the FY 2005 audit, ICE was cited with eight material weaknesses. To resolve audit issues, ICE initiated a multi-year Corrective Action Plan to fully reconcile ICE funds with the Department of Treasury, Clear Suspense Accounts and establish improved processes and controls for the agency and its components. Through effective development of the CAP, and aggressive implementation of its action plans, ICE was able to remove six of the eight material weaknesses by the time of the FY 2006 financial audit. In particular, the DHS audit concluded that of the agencies cited for having numerous serious internal control weaknesses in FY 2005, only ICE was able to make substantial progress during the year.*

- *Creating a "One ICE" Culture.*

  - *In FY 2007, we created a separate Office of International Affairs, originally a division within the Office of Investigations, in order to focus more clearly on immigration and customs enforcement abroad.*
  - *In FY 2006, we conducted a full assessment of its intelligence programs and field intelligence units. Based on this assessment, we just completed a full reorganization of its intelligence component, and is currently in the process of shifting away from removed intelligence units, and more towards co-locating intelligence groups in the field.*
  - *I also created the Assistant Secretary's Advisory Group (ASAG) to ensure I was getting appropriate and active input from field leaders on core agency priorities.*

11. In what areas have you failed to accomplish your goals? Are there are any examples of mistakes you made that had a negative effect on the agency?

Although ICE has made substantial progress over the past eighteen months, I am still working on accomplishing several of my goals to build a stronger agency. In particular, I am seeking to further strengthen our comprehensive immigration enforcement strategy. We must expand our Criminal Alien and National Fugitive Operations Programs in order to locate and remove a greater number of criminal aliens, expand our Compliance Enforcement Units (CEU) to address the increasing number of visa violators, enhance our worksite enforcement operations to focus on places of employment with the most egregious violations and create additional Document and Benefit Fraud Task Forces (DBFTFs) to combat the

growing document and benefit fraud problem. At all times, our Detention and Removal Operations must leverage any and all efficiencies in order to ensure that we are using the taxpayer's money in the most responsible manner. ICE has made great strides in these areas, but we need to accomplish more in order to successfully deal with the growing illegal alien population in this country.

In addition, a top priority of mine has been to enhance oversight and internal controls throughout the agency. Here again, much has been accomplished, but there is still much more to be done in terms of developing and institutionalizing the programs to ensure vigorous internal controls throughout the agency.

III. Role and Responsibilities of the Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security

12. Why do you wish to continue serving as Assistant Secretary for DHS?

It has been a tremendous privilege to serve as the Assistant Secretary for Immigration and Customs Enforcement for the past eighteen months. ICE was formed in the urgency after the terrorist attacks of September 11, 2001, and carries out a critical mission to which I am wholeheartedly committed: to protect America and uphold public safety by targeting the people, money and materials that support terrorist and criminal activities.

There is not just one reason that motivates me to seek continued service, there are really 16,500. I have been honored to lead 16,500 very dedicated and inspiring ICE employees, many of whom have devoted their entire careers to ensuring the national security and public safety through enforcement of criminal, immigration and customs laws. Their devotion, knowledge and experience have enabled the Secretary and me to help them move the agency forward and chart new enforcement territory for the benefit and protection of the American people.

Together we have reengineered the detention and removal process and adopted a business model approach for efficiently removing aliens and dangerous criminals from the United States. We created a new paradigm for enforcing the nation's immigration laws, incorporating a wide array of investigations and crimes in worksite enforcement and critical infrastructure protection efforts, including bringing felony charges instead of only traditional administrative sanctions. We have partnered with our fellow law enforcement officials, federal, state and local to provide a unified offensive against criminal activity. We engaged the private sector to learn how to best identify and resolve systemic vulnerabilities. We continued to protect thousands of federal facilities and their occupants around the country and we started the process of reviewing our coverage of facilities based on risk. We made substantial progress towards bringing an end to the illegal activities of those who would do our nation's citizens harm: international criminal organizations, human smugglers, child predators, arms and strategic technology traffickers, and terrorists.

ICE has emerged as a cutting-edge law enforcement agency at a time when technology, terrorism and globalization are having worldwide effects and in the midst of rigorous domestic immigration policy discourse. I have been unspeakably proud to serve my country by leading this agency, at this time, and if confirmed I will continue to provide the strong leadership that ICE needs and deserves.

13. What do you see as the principal mission(s) of ICE?

The principal mission of ICE is to protect America and uphold public safety by targeting the people, money and materials that support terrorist and criminal activities. ICE fulfills this mission by identifying criminal activities and eliminating vulnerabilities that pose a threat to our nation's borders, as well as enforcing economic, transportation and infrastructure security.

14. What do you see as the ICE's principal strengths and weaknesses in its ability to accomplish those mission(s)?

The principal strengths of the agency are the people who serve the American people every day with honor and distinction. I have had the ability to observe, firsthand, the enthusiasm, dedication and intelligence of my colleagues who have worked tirelessly to protect our country and uphold public safety. They have faced numerous challenges with resource and strength.

A continuing weakness of the agency is ICE's management infrastructure. We have made substantial progress over the past eighteen months to strengthen this infrastructure, but there is more work to be done. As just one example, ICE's information technology infrastructure must continue to be improved. This agency had a number of problems in the IT arena. First, for several years after the agency was formed, there was not a permanent or strong CIO. For this reason, some of the programs did not rely on the agency CIO office and sought to duplicate those missions internally (within Investigations, etc.). This has changed under the leadership of Luke McCormack, who has restored credibility to the agency's CIO shop. In addition, many of the IT systems ICE relies on involve extremely antiquated technology, and this makes it more difficult for ICE to effectively serve the American people. With a stronger CIO shop in place, we are now able to make the sustained funding requests to change this and also produce the results in terms of product that are expected by the agency, department, and Congress. ICE also has spent much less on IT than similar agencies, compounding the difficulties of antiquated systems and a weak CIO shop. This is all changing, but these things take sustained effort, energy and funding.

15. If confirmed, what would be your top priorities? What do you hope to have accomplished at the end of your tenure?

My top priorities will remain the same. On the investigative side, I will focus on immigration enforcement, financial and strategic investigations, and narcotics investigations. At the end

of my tenure, I will leave a stronger and more mature agency in place to meet the challenges of immigration and customs enforcement. For example, I will seek to further refine our domestic footprint for our investigative offices and seek to build a stronger relationship with our state and local counterparts that goes well beyond the 287(g) program.

More specifically, one of my top priorities is to establish ICE as a leader in sharing of law enforcement information with our federal partners, as well as state and local authorities. Working closely with the Department of Justice, I will help institutionalize DHS as a leader in the sharing of relevant law enforcement information with our federal, state and local counterparts. To that end, ICE has been active in several pilot projects to provide state and local information sharing in Seattle, Los Angeles, and at the Southwest Border. I believe we are now at a position where we can expand that cooperation beyond the pilots and offer enhanced communication between ICE and state and locals to include more entities. We also will continue to work closely with U.S. Customs and Border Protection to ensure seamless communication between officers and agents on the border and ICE's agents in the field.

For the Office of Detention and Removal, with proper funding, I plan to continue our efforts to expand the Criminal Alien Program and National Fugitive Operations Program, ensure detention facilities meet national standards, and expand bed space capacity to put facilities in a position where they can accommodate the number of aliens the agency will need to detain. I also want to ensure that we have developed a sufficient number of oversight mechanisms with DRO and be sure that they are working well.

For the Offices of Intelligence and International Affairs, I will seek to leave fully developed independent offices that service all of ICE's needs and respond to departmental requirements, both in terms of our domestic and international information gathering. These teams will also help to foster better relationships with both the Intelligence Community and our international law enforcement partners, which both play important roles in an effective enforcement strategy.

For the Office of the Principal Legal Advisor, I would like to build institutionalized interdependency within all of ICE, including the lawyers, so, for example, that the lawyers are providing advice throughout the life cycle of investigations and that the investigators are providing information to support administrative proceedings in a strategic way (i.e., targeting systemic benefits fraud with specific investigative resources to really make a dent.) We have taken a number of steps to really build this sort of process, but I believe there is additional work to be done in this area.

For the Federal Protective Service (FPS), I will continue to refine its infrastructure, risk-based vision and staffing needs from both an operational and financial perspective. Resources in the appropriate job series will be deployed consistent with risk as FPS moves towards a greater involvement with its customers, establishing strong security standards through the Inter-Agency Security Committee (ISC) and taking a leadership role as the Sector lead for government facilities. Additionally, I would like to see FPS become more

involved in working with all levels of our local, state and federal security partners to assist them and us to ensure that our critical governmental facilities are properly protected.

IV. Policy Questions

General

16. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 12), you stated that you would "ensure that [ICE] communication with Customs and Border Patrol (CBP) and Citizenship and Immigration Service (USCIS) continues to remain open and is strengthened in areas where improvements are necessary."

    An April 2007 report by the DHS Office of Inspector General (IG) (OIG 07-38) concluded that CBP and ICE have made progress on coordination, but still need to: (1) improve communication between ICE and CBP headquarters elements and all levels of field personnel; (2) improve intelligence and information sharing; (3) strengthen performance measures; and (4) address ongoing relational issues among some elements of the two components.

    Specifically, the report stated that communication and cross-component understanding of roles and responsibilities do not appear to have reached all levels of CBP and ICE. Further, differences in how senior management officials in the field interpret some joint directives issued by CBP and ICE headquarters appear to have contributed to different implementation of those directives.

    What actions have you taken, or will you take, to ensure increased communication with CBP and USCIS, as well as internally, to foster a better understanding of roles and responsibilities for employees and clarified interpretation of directives at the operational level? What additional actions are you taking address the IG's recommendations in the report?

I have taken a number of steps to improve the relationships between ICE and CBP and USCIS. I, and my senior leadership, regularly meet and talk with our colleagues at both agencies in an effort to continue to improve relations and resolve small problems before they become big ones. With respect to CBP, our agencies have taken a number of steps to address the concerns identified in the IG's report, and to ensure that the two new agencies are successful in meeting their mandates and protecting the American people.

For example, the Coordination Council affords ICE and CBP senior executives the opportunity to openly discuss each respective agency's roles and responsibilities. Through the Coordination Council, ICE and CBP were able to jointly develop an addendum to the November 16, 2004 joint memorandum between ICE/OI and CBP/OBP. This document highlights efforts to promote occupational awareness and orientation among field elements of ICE and CBP personnel. These efforts will include the respective ICE/OI and CBP/OBP

entities providing orientation to each other's personnel on operational priorities, programmatic areas of concern, evidence handling and other related matters. The addendum specifically addresses the co-location of ICE OI and CBP OBP Sector Intelligence Units. Where building space limitations can be overcome, SAC offices will co-locate at least one Intelligence Research Specialist at the designated sites. These sites are:

1. *San Diego SAC ⇒ San Diego OBP*
2. *San Diego SAC ⇒ El Centro OBP*
3. *Phoenix SAC ⇒ Tucson OBP*
4. *El Paso SAC ⇒ El Paso OBP*
5. *El Paso SAC ⇒ Marfa OBP*
6. *San Antonio SAC ⇒ Laredo OBP*
7. *San Antonio SAC ⇒ Del Rio OBP*
8. *Boston SAC ⇒ Houlton OBP*
9. *Buffalo SAC ⇒ Swanton OBP*
10. *Buffalo SAC ⇒ Buffalo OBP*
11. *Seattle SAC ⇒ Blaine OBP*

Additionally, on November 20, 2006, ICE and CBP issued a memorandum entitled, "Re-Energizing the CBP and ICE Trade Fraud Program," which emphasized the commitment of both agencies to energize trade fraud enforcement efforts. The memorandum cites examples of trade enforcement successes achieved through effective communication between CBP and ICE.

In furtherance of the goal of closer collaboration and sharing of law enforcement intelligence, CBP and ICE Intel also recently agreed to produce a coordinated "Border Snap Shot Summary" to meet the analytical needs of both agencies. The summary will be a joint ICE and CBP Office of Intelligence analytical product detailing border activity of mutual interest to both agencies. The focus of the summary will be on analyzing regional and national smuggling trends, methods and seizures and combining it with all-source intelligence to provide trend analysis that directly relates to ICE and CBP operations in the air, land and sea environments of interest to both ICE and CBP field level personnel as well as managers at both agency headquarters.

Additionally, DRO collaborated with CBP and ICE OI and ICE Intel to develop a training module called "ICE Human Intelligence Training" (ICEHIT) to further the collection of human intelligence. The training module includes debriefing techniques to ensure that those officers engaged in the interview of detainees, regardless of the program to which they are assigned, receive consistent, standardized training on the interview techniques associated with interviewing detainees.

I would also note that since the first OIG report was issued in November 2005, cooperation between the two agencies has vastly improved due in part to joint training. For instance, ICE and CBP participated in joint training for the Textile Production Verification Teams

(TPVT), which in 2006 resulted in the training of 20 ICE special agents and nine CBP personnel. I believe that these cooperative partnerships will continue to yield successes.

With respect to USCIS, ICE has worked closely with USCIS to develop mutually agreed upon policies and procedures to increase and enhance communication. Per a February 14, 2006, Memorandum of Agreement (MOA), ICE will accept or decline an investigation referral from USCIS within 60 days. If the case is accepted for criminal investigation, ICE is required to provide a status report if an investigation approaches one year. The MOA requires ICE to provide USCIS with a case closure report upon completion of the investigation. USCIS is in the process of developing an ICE section in the Fraud Detection and National Security Data System, which ICE plans to use to share certain information regarding pending referrals and investigations.

ICE's Benefit Fraud Units (ICE-BFUs) were established to identify and target at the earliest possible point, the most significant and egregious immigration benefit fraud violators, such as organizations and facilitators engaged in large-scale schemes involving multiple applications or individuals who pose a threat to national security or public safety. The ICE-BFUs receive referrals directly from USCIS' Fraud Detection and National Security Units. The ICE-BFUs add value to and expand the scope of the leads and if appropriate, provide the information to ICE SAC offices and/or ICE Headquarters. The four ICE-BFUs are located at or near USCIS Service Centers.

ICE has established regular meetings with its USCIS Headquarters counterparts to discuss areas of mutual concern, upcoming policy initiatives and operational coordination. Through increased coordination and communication, ICE is effectively utilizing expertise and resources being shared by USCIS. In many instances, investigations are developed and coordinated between the headquarters elements of USCIS and ICE, and then conducted at local field offices. Roles and responsibilities of USCIS and ICE are better understood with each new initiative and joint investigation conducted together.

More broadly, in the area of performance measures, DHS and its components contribute to multiple reports that detail the progress of border security efforts. The reports include the Congressional "Bi-Monthly Status Report on the Department of Homeland Security's Border Security Performance and Resources," which provides key performance indicators for SBI; the Bi-Weekly War Room Report that is completed for senior departmental officials and which provides the status of the end of so-called "catch and release" and other activities at the border. The department coordinates these reports on behalf of the component agencies – CBP, ICE and USCIS – that contribute data and other information that comprise the gist of the finished reports. CBP, ICE and USCIS all collaborate to ensure that the data and information is accurate and reliable.

17. In 2005, DHS created the ICE-CBP Coordination Council with several working groups. One of these groups, the CBP Border Patrol/ICE Investigations Working Group drafted an addendum to the 2004 Border Patrol/Investigations Memorandum of Understanding to clarify additional issues between Border Patrol and

Investigations. Have you approved this addendum? If not, why not? What impact has the Coordination Council had on ICE-CBP relations?

Yes, the Addendum to the November 2004 ICE/Office of Investigations - CBP/Office of Border Patrol Memorandum of Understanding was signed on February 2, 2007.

The ICE-CBP Coordination Council was created in December 2005 to provide a forum for ICE and CBP to proactively coordinate and address issues related to border security and interior enforcement.

Since the time of its creation, the Coordination Council has positively impacted the relationship between ICE and CBP. The council has enabled ICE and CBP to discuss their roles and responsibilities, understand each other's operational needs, and resolve any outstanding issues.

Some of the successes that have resulted from the creation of the Coordination Council include:

- *The finalization of the ICE/Office of Investigations - CBP/Office of Border Patrol Memorandum of Understanding.*
- *ICE/DRO and CBP successfully negotiated an MOU for the return of Immigration Enforcement Agents to DRO.*
- *The development of joint processes and procedures to improve information sharing and intelligence.*

18. In 2005, DHS concurred with GAO's recommendation that CBP and ICE could benefit from a system tracking the results of referrals from CBP to ICE. Does ICE currently have such a system in place? If not, what is ICE doing to create one?

ICE has identified and understands the need for a tracking tool for referrals from external agencies. We are working on several concepts to encapsulate this business process. Once the business process is defined in a method that limits the impact to initial process we will implement into enforcement activities.

19. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 7), you stated that you planned to help formulate ICE's role in comprehensive immigration reform. Describe specifically what role you took in formulating the comprehensive immigration reform proposals before Congress this year.

I worked closely with the department, both last year and this year, on proposals for comprehensive and effective immigration reform. I believe that effective immigration enforcement is a critical part of any reform, and as the head of an enforcement agency, my role principally was to provide comments and feedback about how particular parts of any

proposal would impact enforcement equities or allow enforcement to be more effective. For example, I believe that the current administrative fine structure for worksite enforcement violations is cumbersome and does not provide an incentive for egregious businesses to change their illegal behavior. I worked closely with the department on the formulation of ideas of ways to strengthen the administrative fine process in any bill for reform. As another example, I also believe that ICE's efforts to target illegal activity are limited by our inability to fully access no-match data. I worked closely with the department in providing input into why we need this data and how we would use it.

More generally, under my leadership and supervision, ICE played a significant supportive role in formulating the comprehensive immigration reform proposal before Congress this year. ICE was well represented on the Secretary's "Immigration Task Force" which was charged with formulating the administration's proposal for immigration reform. In particular, ICE provided subject-matter experts from the Office of the Principal Legal Advisor and from operational components to provide technical expertise and advice. For example, ICE assisted the Secretary in formulating and drafting the administration's proposed changes to the law regarding worksite enforcement. As the Senate bill was negotiated, ICE assisted in redrafting of the enforcement related provisions. ICE subject-matter experts provided briefings and technical assistance to Senate staff regarding the administration's proposal and the Senate bill. Additionally, they provided invaluable input on the enforcement related provisions in the bill and proposed amendments to ensure that effective immigration enforcement was a central part of any reform.

I am proud of the role ICE played in the immigration debate and proud of the ICE employees who worked so hard to lend needed technical assistance.

20. Please discuss what you see as the likely effect on ICE if comprehensive immigration reform is enacted during your tenure? For example:

    a. How would granting legal status to undocumented immigrants affect ICE's workforce needs?

Granting legal status to all current undocumented immigrants who are or will be eligible for benefits under comprehensive immigration reform will significantly impact ICE workforce needs. Comprehensive immigration reform will require that ICE have sufficient workforce to identify and locate all undocumented immigrants who do not apply for the new benefits, those who are determined to be ineligible, especially on criminal or national security grounds, those who seek to obtain these benefits through fraud and those who continue to enter the United States unlawfully (estimated at 500,000 annually). In addition, ICE will have new resource demands created by the proposed requirements related to worksite enforcement, employee verification, section 287(g) requirements and the overall expanded responsibility for interior enforcement.

    b. What effect would a new 200,000 to 400,000 temporary worker program have on ICE resource needs?

I believe that to be effective, any temporary worker program must be enforced. Prior experience indicates that fraud will be a significant problem for a new temporary worker program. As such, I believe that ICE will need to have significant resources to enhance the existing workforce dedicated to maintaining the integrity of such new classifications.

c. What effect would enhanced border enforcement have on alien smuggling operations, and how would this affect ICE resource needs?

I predict that enhanced border enforcement will raise the stakes for alien smuggling operations who will use increased border enforcement to justify higher prices to smuggle aliens across the border and into the interior. The enhanced risk of interception at the border created by strong border enforcement requires that ICE establish a strong parallel interior enforcement capacity as a deterrent to aliens who seek simply to get past the border because they believe that once they are in the interior the will have a lower risk of detection and capture. More specifically, this interior enforcement capacity must focus in large part on targeting overstays and fraudulent use of visas.

d. Overall, how many ICE agents would be needed to maintain a credible immigration reform structure (e.g., worksite enforcement, criminal alien removal, identifying visa overstays)?

It completely depends on the immigration reform structure enacted. Working with the department, ICE has developed various scenarios regarding the workforce it would require to maintain a credible immigration reform structure that takes into account variables such as the rate at which employees can be hired, screened for security issues and trained; the issues facing ICE with regard to those who do not apply for immigration reform benefits, are found to be ineligible (are criminals or national security threats) or continue to enter the country illegally; and its need to provide increased assistance to state and local authorities, etc.

21. An October 2006 GAO report, GAO-07-85, highlighted that additional efforts are needed to help ensure alien files (A-files) are located when needed. Missing A-files can cause delays in awarding immigration benefits, hinder USCIS's ability to uncover immigration fraud, and limit DHS's ability to take enforcement actions.

    In the report, ICE officials commented that they believe some of the National File Tracking System (NFTS) file transfer procedures are cumbersome, resulting in some ICE staff circumventing them and not recording the file movement in NFTS. GAO recommended USCIS work with other DHS users of A-files, such as ICE, to determine the extent to which staff may not be complying with NFTS procedures and why and to correct any deficiencies in file-tracking procedures. Has USCIS been in contact with you about this matter? If so, can you explain what progress, if any, has been made in implementing this recommendation?

We have worked with USCIS on this matter and made good progress. More specifically, OPLA and OI representatives participate in weekly USCIS A-file digitization meetings. The

USCIS transformation team has incorporated most of ICE's requirements in their development of the digital A-file. Release 3.0 in which the digital A-file system will be linked to GEMS is expected to be piloted in March 2008.

22. The ICE Office of Investigations (OI) has many programs it executes through its field offices. These programs address the broad range of Customs and Immigration violations ICE enforces. Among these are Project Shield America, which focuses on the illegal export of weapons and technology, the financial investigation program Cornerstone, and the anti-gang program Operation Community Shield.

    a. What specific role do these programs play in the ICE mission to prevent terrorist attacks?

The ICE programs of Project Shield America, Cornerstone, and Operation Community Shield help support our mission to protect America and uphold public safety. The Cornerstone initiative is designed to safeguard the integrity of the nation's financial, trade, and transportation systems by building active partnerships between law enforcement and the private sector. ICE builds partnerships by sharing law enforcement typologies and methods with businesses and industries that manage the very systems that terrorists and criminal organizations seek to exploit. Cornerstone program managers and special agents in the field share the typologies and methods in presentations to industry that focus on ICE investigations developed from the filing of a Bank Secrecy Act report, current ICE initiatives such as those on bulk currency smuggling and money service businesses, and current money laundering trends. In these presentations, ICE describes the investigative results; the scheme and red flag indicators as a means for our industry partners to learn about the various ways criminal and terrorist organizations exploit the financial systems.

Project Shield America is an integral part of the strategy utilized by the ICE Arms and Strategic Technology Investigations (ASTI) Unit. Its goal is to prevent illegal exporters, targeted foreign countries, terrorist groups, and international criminal organizations from trafficking in weapons of mass destruction (WMD) and related components. Additionally, Project Shield America seeks to disrupt the illegal procurement of licensable dual-use commodities, military technologies and small arms. Project Shield America is an industry outreach program, the intent of which is to obtain the assistance and cooperation of those companies involved in the development, manufacture, sale and export of U.S. origin strategic technology and munitions items.

Project Shield America utilizes established relationships with the intelligence community to identify U.S. technology and munitions items most desired by our enemies, and the methods used by foreign and domestic individuals and groups to illegally obtain them. ICE ASTI utilizes undercover investigations to identify, eliminate and prosecute members of procurement networks that have been established for the purpose of illegally exporting U.S. technology. In seeking to both gather and provide information, Project Shield America was established to increase public awareness of the importance of export controls and to seek the cooperation of the technology manufacturing and handling community. Project Shield America liaisons are established between ICE ASTI special agents and manufacturers,

exporters and freight handlers. In this cooperative effort, private industry can improve its export control measures while avoiding issues that might affect legitimate business. Through established contacts, private industry is encouraged to report all suspicious export inquiries to ICE. Cooperation will protect U.S. national security, secure the reputation of private industry and protect research and development costs lost to illegal procurement. During the period of FY 2002 to date, ICE has completed in excess of 14,300 Project Shield America presentations to industry.

Operation Community Shield addresses the threat posed by transnational street gangs. Working with federal, state and local law enforcement agencies, Operation Community Shield combines resources and jurisdictional authorities among participating law enforcement agencies to effectively combat violent transnational street gangs. Since its inception, Operation Community Shield has resulted in the arrests of almost 5,000 gang members and associates through May 2007. More than 40% of the gang members apprehended have violent criminal histories with arrests and convictions for crimes such as robbery, assault, rape and murder. In addition, since February 2005, ICE has seized more than 230 firearms from those gang members and associates arrested.

As part of Operation Community Shield, ICE:

- *Partners with law enforcement on operational/gang intelligence matters among other federal, local and state agencies;*
- *Deters, disrupts and dismantles gang operations by tracing and seizing cash, weapons and other assets derived from criminal activity;*
- *Seeks prosecution and/or removal of gang members from the United States;*
- *Works with foreign law enforcement counterparts in gathering intelligence and conducting coordinated enforcement operations; and,*
- *Conducts outreach efforts to increase public awareness about violent street gangs.*

Under the auspices of Operation Community Shield, ICE fosters strong partnerships and cooperation with existing federal, state, and local anti-gang efforts by either leading or participating in anti-gang taskforces. Some of the cities with anti-gang task forces include Chicago, New York, Atlanta, San Francisco, Dallas and Baltimore. ICE uses intelligence on gang organizations and leadership provided by state and local authorities. This information is then used whenever possible to arrest, prosecute, and/or remove individual gang members. ICE also works through its 54 Attaché offices overseas to cooperate with foreign governments that are also experiencing gang problems.

Since membership in transnational gangs includes substantial numbers of foreign-born persons, many with prior criminal convictions and/or involved with crimes having a border nexus, ICE's broad authorities are useful to investigate, help prosecute and/or remove these persons.

In addition to Operation Community Shield, ICE participates in the following programs as part of its effort to combat criminal alien gangs in the United States and cross-border criminal activity:

- *National Gang Targeting, Enforcement, and Coordination Center (GangTECC)*

In August 2006, the Departments of Justice (DOJ), and Homeland Security (DHS), established a multi-agency national anti-gang enforcement, de-confliction, coordination and targeting center, known as the National Gang Targeting, Enforcement, and Coordination Center (GangTECC). GangTECC is led by an experienced prosecutor in the DOJ Criminal Division (CRM), with participation from ICE, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Bureau of Prisons (BOP), CRM, the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the US Marshals Service, (USMS). State and local law enforcement also participate in the program. The mission of GangTECC is to serve as a critical catalyst in a unified, federal effort to disrupt and dismantle the most violent gangs in the United States as they relate to national security, border protection, and public safety.

- *National Security Council Policy Coordination Committee on International Organized Crime*

ICE participates in regular policy coordination meetings at the National Security Council (NSC) concerning International Organized Crime. As one of the Committee's targeted missions, ICE works with the Committee to develop the USG strategy to combat transnational gangs as they relate to the U.S., Mexico, and Central America. ICE is a member of the working group for the International Anti-Gang Task Force. As a member of this group, ICE is co-authoring a soon to be announced Central American transnational gang strategy in order to develop a comprehensive, multi-agency, international law enforcement strategy to combat the transnational gang problem in the U.S., Mexico and Central America.

b. How is the effectiveness of each of these programs measured?

These programs are evaluated by the metrics each program produces. For example, with respect to the Cornerstone program, there are more than 100 Special Agents in the field that are designated as Cornerstone Liaisons. The Cornerstone Liaisons are responsible for making contact and conducting outreaches for the people and businesses in the financial and trade industry. Since 2003, the Cornerstone Liaisons in the field have conducted a total of 4,135 outreaches to 59,261 persons. Since 2003, the Cornerstone/Financial Programs Unit at ICE Headquarters has conducted a total of 184 outreaches to over 23,996 persons. ICE-wide, a total of 4,319 outreaches have been provided to over 83,527 industry professionals.

The Operation Cornerstone/Financial Programs Unit of ICE Headquarters has erected and staffed the ICE-Cornerstone booth at major financial industry events since 2003. For example, in FY 2007, the Cornerstone/Financial Programs Unit will have a Cornerstone booth at four private industry events, with anticipated attendance at all events to be over 13,000 attendees. In addition, the Cornerstone/Financial Programs Unit is a regular presenter at such industry events hosted by the American Bankers Association, the

International Association of Financial Crime Investigators and the Securities Industry and Financial Markets Association.

The Cornerstone/Financial Programs Unit is once again coordinating a multi-agency conference (Mid-Atlantic Anti-Money Laundering Conference) scheduled for September 12-13 in Washington D.C. Over 300 attendees from the financial sector are expected to attend the two-day conference that will highlight money laundering trends and successful case studies. Last year's Mid-Atlantic Anti-Money Laundering Conference was a huge success with over 300 attendees from many banks and credit unions.

Since 2003, the Cornerstone outreach program has generated over 272 investigations with over $3.4 million dollars in seizures of currency and monetary instruments, 203 arrests and 149 convictions.

c. What have you done as Assistant Secretary to improve the effectiveness of each of these programs?

I have worked to prioritize our efforts (1) in financial investigations, including our work in Cornerstone and enhanced training on red flag principles and bulk cash smuggling to our partners overseas; (2) in gang outreach, including our new partnership with DOJ on GangTech; (3) and in Project Shield America, including our new training for agents on export cases and developing an enhanced partnership with the intelligence community on items of interest.

d. What accomplishments have the programs achieved during your tenure, and what difficulties have they encountered?

The ICE programs of Project Shield America, Cornerstone, and Operation Community Shield help support our mission to protect America and uphold public safety. The Cornerstone initiative is designed to safeguard the integrity of the nation's financial, trade, and transportation systems by building active partnerships between law enforcement and the private sector. ICE builds partnerships by sharing law enforcement typologies and methods with businesses and industries that manage the very systems that terrorists and criminal organizations seek to exploit. Cornerstone program managers and special agents in the field share the typologies and methods in presentations to industry that focus on ICE investigations developed from the filing of a Bank Secrecy Act report, current ICE initiatives such as those on bulk currency smuggling and money service businesses, and current money laundering trends. In these presentations, ICE describes the investigative results; the scheme and red flag indicators as a means for our industry partners to learn about the various ways criminal and terrorist organizations exploit the financial systems.

Project Shield America is an integral part of the strategy utilized by the ICE Arms and Strategic Technology Investigations (ASTI) Unit. Its goal is to prevent illegal exporters, targeted foreign countries, terrorist groups, and international criminal organizations from trafficking in weapons of mass destruction (WMD) and related components. Additionally, Project Shield America seeks to disrupt the illegal procurement of licensable dual-use commodities, military technologies and small arms. Project Shield America is an industry

outreach program, the intent of which is to obtain the assistance and cooperation of those companies involved in the development, manufacture, sale and export of U.S. origin strategic technology and munitions items.

Project Shield America utilizes established relationships with the intelligence community to identify U.S. technology and munitions items most desired by our enemies, and the methods used by foreign and domestic individuals and groups to illegally obtain them. ICE ASTI utilizes undercover investigations to identify, eliminate and prosecute members of procurement networks that have been established for the purpose of illegally exporting U.S. technology. In seeking to both gather and provide information, Project Shield America was established to increase public awareness of the importance of export controls and to seek the cooperation of the technology manufacturing and handling community. Project Shield America liaisons are established between ICE ASTI special agents and manufacturers, exporters and freight handlers. In this cooperative effort, private industry can improve its export control measures while avoiding issues that might affect legitimate business. Through established contacts, private industry is encouraged to report all suspicious export inquiries to ICE. Cooperation will protect U.S. national security, secure the reputation of private industry and protect research and development costs lost to illegal procurement. During the period of FY 2002 to date, ICE has completed in excess of 14,300 Project Shield America presentations to industry.

Operation Community Shield addresses the threat posed by transnational street gangs. Working with federal, state and local law enforcement agencies, Operation Community Shield combines resources and jurisdictional authorities among participating law enforcement agencies to effectively combat violent transnational street gangs. Since its inception, Operation Community Shield has resulted in the arrests of almost 5,000 gang members and associates through May 2007. More than 40% of the gang members apprehended have violent criminal histories with arrests and convictions for crimes such as robbery, assault, rape and murder. In addition, since February 2005, ICE has seized more than 230 firearms from those gang members and associates arrested.

As part of Operation Community Shield, ICE:

- *Partners with law enforcement on operational/gang intelligence matters among other federal, local and state agencies;*
- *Deters, disrupts and dismantles gang operations by tracing and seizing cash, weapons and other assets derived from criminal activity;*
- *Seeks prosecution and/or removal of gang members from the United States;*
- *Works with foreign law enforcement counterparts in gathering intelligence and conducting coordinated enforcement operations; and,*
- *Conducts outreach efforts to increase public awareness about violent street gangs.*

Under the auspices of Operation Community Shield, ICE fosters strong partnerships and cooperation with existing federal, state and local anti-gang efforts by either leading or participating in anti-gang task forces. Some of the cities with anti-gang task forces include Chicago, New York, Atlanta, San Francisco, Dallas and Baltimore. ICE uses intelligence on

gang organizations and leadership provided by state and local authorities. This information is then used whenever possible to arrest, prosecute and/or remove individual gang members. ICE also works through its 54 Attaché offices overseas to cooperate with foreign governments that are also experiencing gang problems.

Since membership in transnational gangs includes substantial numbers of foreign-born persons, many with prior criminal convictions and/or involved with crimes having a border nexus, ICE's broad authorities are useful to investigate, help prosecute and/or remove these persons.

In addition to Operation Community Shield, ICE participates in the following programs as part of its effort to combat criminal alien gangs in the United States and cross-border criminal activity:

- *National Gang Targeting, Enforcement, and Coordination Center (GangTECC)*

In August 2006, the Departments of Justice (DOJ), and Homeland Security (DHS), established a multi-agency national anti-gang enforcement, de-confliction, coordination and targeting center, known as GangTECC. It is led by an experienced prosecutor in the DOJ Criminal Division (CRM), with participation from ICE, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Bureau of Prisons (BOP), CRM, the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the US Marshals Service, (USMS). State and local law enforcement also participate in the program. The mission of GangTECC is to serve as a critical catalyst in a unified, federal effort to disrupt and dismantle the most violent gangs in the United States as they relate to national security, border protection and public safety.

- *National Security Council Policy Coordination Committee on International Organized Crime*

ICE participates in regular policy coordination meetings at the National Security Council (NSC) concerning International Organized Crime. As one of the Committee's targeted missions, ICE works with the committee to develop the U. S. government strategy to combat transnational gangs as they relate to the U.S., Mexico, and Central America. ICE is a member of the working group for the International Anti-Gang Task Force. As a member of this group, ICE is co-authoring a soon to be announced Central American transnational gang strategy in order to develop a comprehensive, multi-agency, international law enforcement strategy to combat the transnational gang problem in the U.S., Mexico and Central America.

e. How is the effectiveness of each of these programs measured?

These programs are evaluated by the metrics each program produces. For example, with respect to the Cornerstone program, there are more than 100 special agents in the field that are designated as Cornerstone Liaisons. The Cornerstone Liaisons are responsible for

making contact and conducting outreach for people and businesses in the financial and trade industry. Since 2003, Cornerstone Liaisons in the field have conducted a total of 4,135 outreaches to 59,261 persons. Since 2003, the Cornerstone/Financial Programs Unit at ICE Headquarters has conducted a total of 184 outreaches to over 23,996 persons. ICE-wide, a total of 4,319 outreaches have been provided to over 83,527 industry professionals.

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f. What have you done as Assistant Secretary to improve the effectiveness of each of these programs?

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g. What accomplishments have the programs achieved during your tenure, and what difficulties have they encountered?

The programs have achieved the successes highlighted in subparts (a) through (c). In addition, during my tenure, ICE has generated numerous successful investigations from the Cornerstone outreaches. For example, in the Los Angeles office, a special agent received a call from a financial institution two weeks after conducting a Cornerstone outreach. Based on the information provided by the financial institution, which was facing a potential loss of over one million dollars, the special agent was able to trace the money to a different financial institution and seize over $200,000 before the money was transferred overseas. In addition, three luxury vehicles were seized and two subjects (who are currently fugitives)

were indicted before a grand jury on 11 counts of bank fraud and 18 counts of money laundering.

In Boston, a special agent received a call from a courier service who had detained a package containing U.S. currency. The courier service contacted the special agent because of a Cornerstone outreach. Subsequent investigation of the sender of the package led to the identification of a $17 million investment fraud scheme. One subject is expected to plead guilty to an information for 18 counts of mail and wire fraud. The other subject is currently out on supervised release awaiting trial.

In Miami, a special agent received a call from a brokerage firm about a customer that was indicted in Trinidad and Tobago for money laundering. Investigation and financial analysis revealed that, not only were the conspirators defrauding Trinidad and Tobago and laundering these proceeds back to the U.S., but they were also defrauding at least ten U. S. banks in a complex line of credit scheme. This investigation led to the initial indictment of eight individuals and two corporations in a 78 count indictment charging wire fraud, money laundering and conspiracy in the Southern District of Florida. This indictment is directly connected to the fraud committed against the government of Trinidad and Tobago during the construction of the Piarco International Airport. A superseding 84-count indictment was later returned adding additional counts of bank fraud and money laundering connected to the defrauding of $23 million from ten U.S. banks in the South Florida area.

In terms of the difficulties encountered, I am not aware of any out-of-the-ordinary challenges for these ICE programs. On occasion, competing ASTI priorities have prevented ICE field offices from conducting as many Shield America industry outreach programs as might be projected. And, as always, seeking identifiable funding targeted to these programs remains a challenge.

23. It can be a challenging task to enforce homeland security policies and laws while also strengthening relations with various communities. Critical to managing that challenge is educating both the community members as well as Department personnel responsible for securing our homeland. Component agencies like CBP and ICE often times are the "face" for individuals interacting with the U.S. government. The Committee is aware of the efforts that DHS's Office of Civil Rights and Civil Liberties are taking to provide education and training to DHS personnel to increase cultural awareness—particularly of the Muslim, Arab, Sikh and South Asian American communities. How will you ensure that such education and training will not only continue, but that it will reach all such front-line staff and translate into more effective and equitable application of security procedures and other homeland policies?

I strongly support the work done by the Department's Office of Civil Rights and Civil Liberties (CRCL) to provide education and training and CRCL has been a great partner in our work to enhance our efforts. Every ICE employee, including all of our agents and investigators in the field are required to successfully complete a variety of training modules that are designed to foster and promote a workplace free from all forms of discrimination. This training is ongoing and required to be completed by both new and existing employees

on a regular basis. By working to instill these values and expectations in our employees, we believe our efforts will carry forward and be reflected by their subsequent behavior when confronted with a potentially problematic situation within the communities where they work on day-to-day basis.

In addition, we have a dedicated Community Outreach Coordinator within the Office of Policy and Planning. The Community Outreach Coordinator serves as the agency's primary point-of-contact for civic leaders to connect with ICE, whether it is to elevate potential areas of concern within their specific communities, or to work with ICE to establish stronger neighborhood ties through jointly sponsored community events.

24. An important part of our war on terrorism is to explain to the American Muslim Community why extensive security measures are in place. The President and Members of Congress have identified this community as key to countering the rise of violent extremism in the U.S. It is critical that the rationale for our policies and procedures are clearly explained to the community. Furthermore, it is important to give the community access to government officials as a way to address any concerns. The Committee is concerned that the relationship with the American Muslim Community is not as robust as it should be. What will you do to ensure this issue is addressed by ICE?

Regarding ICE's relationship with the American Muslim community, I appreciate the committee's concern and I share your belief that our effort to engage and include Muslim-Americans in our Homeland Security initiatives is critical. Our Community Outreach Coordinator plays a key role in the this effort, and provides support to our goals of building constructive relationships with community stakeholders and fostering community awareness and support of what we do. It is important that this outreach take place in the field as well. Accordingly, our senior managers are meeting regularly with Arab, Muslim, and South Asian American communities in cities like Boston, Los Angeles, Chicago, Detroit and Washington, D. C. to address whatever issues they may have and to report on the progress made with respect to any previously stated concerns.

ICE is working in conjunction with the CRCL to finalize a course to educate officers on the basics of asylum law and policy. When that training course is released, ICE will ensure that all DRO officers will complete the course in a timely manner. Independent of these efforts, ICE has a course on its Virtual University entitled "Understanding Cultural Differences."

It is very important to me that ICE continually emphasize to individuals in Arab and Muslim-American communities around the country that immigrants are not targets based on their race, religion or nationality. We want them to know that the real targets of our investigations are the people and criminal organizations that threaten, abuse and exploit immigrants. At the same time, we want every community in America, regardless of their concentration of cultural minorities, to realize that they play a vital role in combating terrorist acts and that the men and women of ICE stand ready and willing to work with them to preserve their way

of life, protect their cultural heritage and ensure the safety and security of their community for future generations.

Strategic Planning

25. The ICE OI enforces trade and immigration laws through the investigation of activities, persons, and incidents that may pose a threat to U.S. safety and security. These include the illegal trafficking in weapons, narcotics and contraband smuggling, human smuggling and trafficking, violations of the immigration system, money laundering and other financial crimes, fraudulent trade practices, child pornography, and child sex tourism. Its key missions are strengthening national security, combating smuggling and promoting public safety, and securing the nation's economic system from terrorist and criminal exploitation.

    a. Given the broad array of investigative areas within OI's purview, how have you determined which investigations address its national security, economic security, and public safety missions best?

My investigative priorities are immigration, financial (including customs fraud and transnational child pornography cases), arms and strategic technology, and narcotics investigations. I believe that these areas contribute most directly to our mission of protecting America and upholding public safety. In each of these mission areas, I have worked with OI's leadership to develop additional refined plans and programs to ensure that agents have the incentives and resources needed to pursue these investigations. For example, with respect to immigration, we have developed a comprehensive interior enforcement strategy that prioritizes investigations that target criminal aliens, reduce the magnet of illegal immigration (worksite) and seek to dismantle the infrastructure that supports illegal immigration.

    b. What has been your decision-making process for allocating investigative resources among the possible investigative areas, and throughout its field locations, to best pursue these missions?

On a macro level, I gathered input from my colleagues throughout the agency and government-wide to develop investigative priorities listed above in subpart (a). I have then worked with OI to direct attention and emphasis on these investigative priorities. I have used these priorities and I have consulted with my colleagues in OI and worked to ensure that our core priority areas receive funding and attention. I am also conducting a review of all Special Agent in Charge Offices, the "State of the Investigative Office," that is providing comprehensive information about how our offices are currently functioning, and is providing detail for future allocations.

More broadly, I am committed to the strategic and performance management goals outlined in the Government Performance and Results Act (GPRA), the President's Management Agenda, the Department of Homeland Security's Strategic Plan, and various national strategies and initiatives. To further inform its strategic management capabilities, ICE is

working to apply a risk management approach that provides information in three areas—(1) threat—what strategic intelligence and experience suggest how customs, immigration and other systems under the purview of ICE might be exploited; (2) vulnerabilities—the ways that these systems are open to exploitation and the kinds of protections that are built into these systems; and (3) consequence—the potential results of exploitation of these systems, including the most dire prospects.

The General Accounting Office (GAO) has produced numerous reports on risk management. A recent report (GAO-07-386T, Homeland Security: Applying Risk Management Principles to Guide Federal Investments) provides a chronology of GAO reports on risk and how it can be applied within DHS. More specifically, in the area of immigration and customs enforcement, GAO reported that ICE needed to conduct a comprehensive risk assessment of the customs and immigration systems to determine the greatest risks for exploitation, to analyze relevant data, to inform the evaluation of alternatives, and allow officials to make risk-based resource allocation decisions (GAO-06-462T, Homeland Security: Better Management Practices Could Enhance DHS's Ability to Allocate Investigative Resources).

We have begun to incorporate elements of risk management into resource allocation decision-making. We have several ongoing initiatives that are designed to identify and mitigate risks. However, ICE desires a risk approach that is transparent, quantifiable, comprehensive and uniform. This will enable ICE to better ensure that its resources are effectively and efficiently applied to national security and other missions by giving it a foundation for determining how resources might be best distributed within and across mission types, for example, (1) how to best allocate resources to address undesirable events (e.g., drug smuggling, financial crimes, worksite violations, etc.); and (2) how to determine the appropriate level of investment to program offices. To this end, ICE has taken steps to implement a more robust risk management methodology.

26. Secretary Chertoff has stated that the most effective way to manage risk at the homeland security level is to develop plans and allocate funds in ways that balance security and freedom, specifically by looking through a prism of threat, vulnerability, and consequence. In a December 2005 report, GAO noted that ICE was allocating investigative resources based largely on legacy missions and staff experience, and recommended that ICE use risk management principles to drive its policies and operations.

    a. What progress has ICE made in implementing a risk-based approach to mission planning and funding allocation based upon threat, vulnerability and consequence within its enforcement and detention operations?

I agree that risk management is a valuable tool to establish priorities in a multiple threat environment. To implement this risk-based approach, we developed a Risk Management Workgroup which developed a draft ICE Strategic Risk Methodology. The Risk Management Workgroup is comprised of representatives from each ICE program office. The ICE Risk Methodology is currently being tested to determine its viability.

In addition, we have sought out support services to provide risk management expertise. Prior to seeking support, ICE conducted market research to determine which types of risk tools were most conducive to analyzing strategic risk for a law enforcement agency. ICE subsequently built a Request for Quotes and will place a firm-fixed price task order with a Federal Supply Schedule General Services Administration vendor to provide Risk Management Support Services. ICE will conduct a streamlined evaluation of the submissions in response to this Request for Quotes. Quotes were submitted on July 19, 2007 and ICE anticipates having a contract potentially in place in the coming weeks.

The scope of this effort includes providing technical advice, training, assistance and facilitation services to develop and implement an organizational doctrine, methodology and tools for managing risk. Tasks will include conducting comprehensive threat, vulnerability and consequence assessments of the immigration and customs systems (as well as other systems under the purview of ICE, e.g., protection of federal buildings) to identify the types of violations with the highest probability of occurrence and most significant consequences in order to help guide ICE resource allocation and inform ICE's strategic planning efforts. This shall include establishing and/or revising relevant tools, processes, policies, and procedures to manage risk and educate/inform the decision-maker.

b. During your tenure have resources and staffing been allocated toward a particular mission within OI? If so, please describe which mission and how resources were allocated.

During my tenure, Congress has increased funding for immigration related enforcement, but not provided equal increases, above-base, for customs related enforcement. For example, Congress allocated 125 agents and analysts to worksite enforcement investigations in the FY 2007 budget. We are seeking customs enhancements in the FY 2008 budget, but the Congress has not yet acted.

Each of the SAC offices is aware of my investigative priorities, and we have discussed their progress in each of these areas at the State of the Investigative Office Reviews. In some instances, I have requested that a SAC develop a plan to address a particular weakness in a core investigative area.

27. DHS's most recent strategic plan calls for the enforcement of trade and immigration laws, promising facilitation of free commerce and the flow of lawful immigration and travel into the United States. However, achieving security while facilitating free commerce, lawful immigration, and travel requires difficult policy and operational choices. What do you see as the top three new initiatives you have put in place that would accomplish each of these goals? What difficulties or challenges have you encountered?

As a law enforcement agency, ICE's primary investigative objective is to enforce immigration and customs laws. By enforcing immigration and customs laws, we contribute to the facilitation of commerce and flow of lawful immigration. The facilitation of commerce and flow of lawful immigration are primarily objectives of CBP and USCIS. In regards to

enforcing immigration and customs laws, key initiatives we have developed under my tenure include the development and execution of a comprehensive interior enforcement strategy, the development of a robust customs fraud and strategic technology strategy and transformation of DRO to ensure the adoption of a business-practice approach.

ICE Organizational Structure

28. A major challenge since DHS was established has been ICE's ability to form a single, cohesive corps of ICE investigators. Successfully integrating legacy INS and legacy Customs investigators into ICE has been hindered by the fact that they came to DHS from different organizational cultures, operated under different policies and procedures, and had used different automated systems for administrative support. GAO reported in October 2004 that these posed ongoing problems to integrating the two types of investigators.

    What actions have you taken and intend to take to ensure that:

    a. Ongoing divisions between legacy INS and Customs agents are resolved?

During my tenure, I have taken a number of steps to continue to integrate the cultures within this agency and to make "One ICE." With respect to the different organizational cultures, policies and procedures, I have appointed a new head of the ICE Office of Policy, and made as one of her top priorities the development of integrated ICE policies in various mission areas. To date, we have made substantial progress in publishing a number of these procedures. With respect to different automated systems, all employees are now trained on the ICE systems, and we are reviewing and providing updated training as appropriate. In addition, ICE information technology modernization is an overall priority to ensure that all the legacy systems interface with one another appropriately. Moreover, I believe that many agents are beginning to recognize the benefits of the combined authorities ICE possesses.

Indeed, the merger of these federal authorities has made ICE one of the most diverse law enforcement agencies within the entire federal government. As stated in the DHS/Office of Inspector General (OIG) Final Report entitled: An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement (December 2005), page 39: "The merging of customs and immigration functions into one investigative body created a potentially powerful enforcement mechanism. ICE investigators have authority under Title 19, United States Code (USC), which permits them to pursue complex banking and financial misconduct cases, conduct searches without first obtaining a warrant and seize assets of criminal enterprises engaged in customs violations. In addition, ICE investigators have Title 8 authority to make arrests without warrant for immigration violations. The melding of these customs and immigration law authorities allows ICE investigators to pursue both avenues with unique efficiency and thoroughness, making cases stronger and more likely to be accepted for prosecution with more significant penalties."

Working overseas, along the Nation's borders, and throughout the Nation's interior, ICE agents and officers are demonstrating that our unified customs and immigration authorities

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

b. Investigative offices have appropriate national guidance to follow, rather than having to resort to making up local policies or simply using policies that existed under legacy Customs or INS?

At my request, the ICE Office of Policy is currently engaged in the process of reviewing legacy policies and, as necessary and appropriate, revising and issuing them as ICE directives.

c. ICE personnel have integrated and effective administrative computer systems for travel, budget, and payroll?

The agency is being supported by single applications for travel and payroll functions. Both the travel and payroll applications are external applications that are primarily maintained by the vendor organizations. The Office of the Chief Information Officer (OCIO) is charged with supporting these applications in terms of resolving infrastructure issues that adversely impact efficiency and performance. The DHS is spearheading an effort to integrate and standardize administrative and financial applications that are common to all agencies. Thus far, the National Finance Center (NFC) has been chosen to support ICE and other DHS agencies in payroll functions. The NFC is the official personnel and payroll system for ICE. The DHS effort is also leading to the replacement of the current travel system by an enterprise eTravel solution; tentatively targeted for implementation in the second quarter of FY 2008. In addition, DHS is championing the replacement of the current agency financial system with an enterprise solution that will contain a budget module. The replacement financial system is tentatively scheduled for implementation in FY 2009.

Detention and Removal

29. According to DHS's *2005 Yearbook of Immigration Statistics*, the population of unauthorized aliens in the United States will continue to grow at an average annual rate of about 400,000 aliens per year.[1] Increased enforcement efforts, such as the DHS initiative to end "catch-and-release" of non-Mexican nationals, have added to the numbers of aliens apprehended and processed for removal.

a. Do you believe the numbers of aliens that need to be detained will increase and how do you plan to accommodate such demands on detention facilities?

[1]Office of Immigration Statistics, U.S. Department of Homeland Security, *2005 Yearbook of Immigration Statistics.*

Yes, ICE anticipates that the number of aliens requiring detention will increase during the remaining months of FY 2007 and throughout FY 2008.

As part of the ICE bed space forecasting model, ICE staff work with apprehending entities to obtain monthly apprehension forecasts. These entities include the Office of Border Patrol, the Office of Field Operations, the Criminal Alien Program, the Fugitive Operations Program, the Office of Investigations, and the 287(g) Program. Forecasts are compared to actual apprehensions and adjusted according to changing enforcement initiatives. Using historical data reflecting the percentage of case types resulting from each apprehending entity, and a specified length of detention by case type, the model calculates the number of beds required to meet the monthly apprehension forecast. According to recent projections, ICE forecasts a FY 2007 ICE-funded year-end average daily population (ADP) of 28,829, with a year-end total population figure of 33,986. Of course, we will manage the bed population to whatever amount set.

ICE continues to work with all apprehending entities and ICE field offices to ensure that detention bed space is properly managed. During my tenure, we have developed a number of initiatives to do just that. For example, DRO utilizes the Detention Operations Coordination Center (DOCC) to promote optimum utilization of detention capacity by monitoring detained dockets across the country and shifting detainees from field offices with limited detention space to those with available detention space. DRO continues to add detention capacity in response to increases in the detained population.

The use of a combined procurement strategy allows ICE to respond rapidly to policy changes as they occur and to address the need for new detention capacity as it arises. By relying on Inter-governmental Service Agreements (IGSA) and Contract Detention Facilities (CDF) to house the majority of its detainees, ICE avoids committing itself to the extensive capital investment that would be required to house all of its detained population. Instead, externally owned and operated facilities can be brought on-line or taken off-line quickly. These approaches eliminate the extended lead-time required to acquire new facilities through the conventional capital construction process whereby Congressional appropriations are requested and allocated over multi-year durations.

b. Are there other alternatives ICE is considering in addition to increasing the numbers of available detention beds?

Yes. ICE prioritizes detention of those aliens who pose a threat to community safety or national security, as well as those required to be detained under the nation's immigration laws. In order to address those priorities and support the enforcement of our nation's immigration laws, while managing finite detention space, we utilize alternatives to detention. Those alternatives include programs based on intensive supervision and electronic monitoring, and are discussed in detail below.

Intensive Supervision Appearance Program (ISAP)

Implemented in June 2004, the Intensive Supervision Appearance Program (ISAP) is a supervised program for illegal aliens released from ICE custody into a managed geographical service area. Under ISAP, aliens awaiting immigration court hearings or removal either wear a monitoring ankle bracelet or report in-person or by telephone to a case manager. Contract case managers provide community-based case supervision programs similar to traditional probation services. These case managers work to assist participants as they are processed through their immigration proceedings. Case managers also have the ability to assure compliance with Orders of Supervision (OS) and final orders of removal through their close monitoring and supervision programs.

The program was piloted and continues in eight cities: Baltimore, Maryland; Denver, Colorado; Kansas City, Missouri; Miami, Florida; Philadelphia, Pennsylvania; Portland, Oregon; San Francisco, California; and St. Paul, Minnesota. A private contractor, BI, Inc., provides basic case management services and electronic monitoring in coordination with ICE Office of Detention and Removal Operations (DRO) case officers. Originally slotted for only 1,600 participants, ISAP was approved for augmentation within the Miami Field Office in FY 2006, and increased to a nationwide maximum of 1,800 participants.

The ISAP population is a carefully selected population based on ICE's determination that these individuals are likely to appear for their court proceedings. The ISAP population does have increased departure rates (as compared to the general non-detained population), increased court appearance rates, and requires fewer DRO hours dedicated to case management, but it is still much less effective than detention in ensuring removal. For instance, the immigration court appearance rate for ISAP traditional non-detained cases is 82 percent, versus 61 percent for the general non-detained population. More notably, in one analysis, 47 percent of ISAP-enrolled aliens who received final orders of removal were confirmed to have departed from the United States, while only 13 percent of aliens in the non-detained general population are believed to have complied with their removal orders. However, according to a 2003 OIG report, over 90% of detained aliens are removed.

Electronic Monitoring Program

The Electronic Monitoring Program (EMP) is a reporting and case management tool for aliens released from custody that utilizes telephonic reporting and electronic devices (radio frequency and Global Positioning System (GPS) technology) to assist DRO officers in streamlining the non-detained docket case management activities. EMP provides means to identify a non-detained alien's location and ensure the alien's appearance at all scheduled hearings and, ultimately, at the alien's scheduled removal.

Since its inception in 2003, the EMP has been used for over 11,100 aliens, the vast majority of whom (97 percent) were monitored under the telephonic report variant of the program. Currently, the program is in use for approximately 6,600 aliens, and virtually no limit exists on the total number of aliens who can be monitored under the EMP. The capacity is limited

not by the contract but by sufficient number of DRO personnel available to provide case management of the participants.

Despite the promise which ISAP and EMP hold for ensuring compliance with our immigration laws, the number of aliens who have participated in these Alternatives to Detention (ATD) programs is smaller than I would like. We are working to increase both the profile and efficiency of ATD programs in a number of ways. First, we are using enhanced funding from Congress -- appropriations to the ATD program increased from $28.5 million in FY 2006 to $43.6 million in FY 2007, reflecting more than a 50 percent increase in funding. Second, ICE is looking into opportunities to optimize ATD costs and increase program efficiency through improved contracting and contract renegotiation with ATD service providers. Finally, in addition to additional funding and improved provision of contract services, other initiatives to improve ICE's ATD programs are underway. Such initiatives include improving national program management by redefining the ISAP supervision model to allow increased flexibility in precise intensity of supervision (e.g., intense, intermediate, regular); exploring additional supervision technologies, such as GPS ankle bracelets; developing a memorandum of understanding with the Executive Office for Immigration Review (EOIR) to fast-track ATD participants through the EOIR immigration hearing process; and reevaluating the geographical locations of certain ATD programs.

30. One of ICE's top priorities is the identification and removal of criminal aliens. According to ICE, it covers about 1,700 of the approximate 4,800 federal, state and local correctional facilities nationwide. The Committee understands that ICE staff generally visit these facilities to identify these criminal aliens, although ICE recently established the National Detection Enforcement and Processing Offenders by Remote Technology Center in Chicago that is helping screen, interview, and remove aliens in federal prisons.

    a. Would you please briefly explain how this center operates and what have been the results to date?

The Detention Enforcement and Processing Offenders by Remote Technology (DEPORT) center was established in Chicago in June 2006. This center was designed to help address the problem ICE was having with respect to aliens in Bureau of Prison facilities who were not being screened by ICE. Before the creation of the DEPORT Center, ICE screened aliens at only thirty of the 114 BOP facilities. With the DEPORT Center, ICE is able to screen and interview aliens in all BOP facilities (removal is handled by the local Detention Field Office). Since its inception, DEPORT has screened over 19,000 cases, has issued over 11,000 charging documents to begin removal proceedings against criminal aliens, located nearly 100 alien absconders and has lodged approximately 6,000 detainers.

    b. Has ICE considered expanding this center or opening other centers to screen those in state prisons and local jails?

Improving the Criminal Alien Program is a top priority for me. We are currently conducting a risk-assessment of all state prisons and jails to assess our coverage of these facilities, and

then determine what options, such as opening additional DEPORT Centers or providing those facilities with specific technology, will be most useful to increase our screening at these facilities. In this risk assessment, we complied a list of 4,035 facilities nationwide and assessed weighted scores on each facility based on six risk factors: the foreign born population in a facility, the jail population (when foreign born population is unknown), number of releases to ICE, the population density surrounding the facility, whether a facility is a state release site, and security level of a facility.

c. What impact would expanding the use of technology, such as video conferencing, to state prisons and local jails have on ICE's ability to identify and detain criminal aliens?

The use of technology will be very useful to support our ability to identify criminal aliens. We are working on a Video Teleconference (VTC) Deployment Plan that will nationally deploy VTC systems in support of the Criminal Alien Program (CAP) within Detention and Removal Operations (DRO). DRO is accomplishing this by providing cooperating federal, state, and local jail and prison facilities with VTC systems to identify criminal aliens and expedite their removal from the United States. The introduction of VTC equipment is an excellent tool towards achieving these goals. The implementation of this plan will permit the more efficient processing of criminal aliens detained in federal, state and local jails and prisons nationwide. Furthermore, it will allow DRO officers to encounter a greater population of criminal aliens in custody on criminal charges. A long term goal of this program is to reduce the overall cost and burden to the federal government by minimizing the time aliens spend in ICE detention upon expiration of their sentence, but more importantly it serves to provide for the public safety. Often, however, we are not able to process individuals through immigration proceedings (when appropriate) while they are in criminal custody. As such, the use of VTC, like all our efforts for criminal aliens, ultimately has a significant impact on our bed space and numbers of aliens in immigration custody.

d. What impact would using technology have on ICE staffing needs for its criminal alien program? For example, if ICE staff at a central location, such as the facility in Chicago, was to interview aliens in state and local correctional facilities via video conferencing would this reduce the need for ICE staff to visit such facilities thereby reducing costs?

The use of additional technology would increase ICE staffing needs within the criminal alien program. While it could reduce the time ICE officers spend in travel to and from correctional facilities, particularly for aliens who are subject to administrative removal or reinstatements, there would be an added need for staff to complete the processing of these criminal aliens. (In addition, for aliens who are eligible for immigration proceedings, we might not always be able to utilize the VTC for the immigration court proceedings). Specifically, where more criminal aliens are encountered and processed through the use of increased and additional technology, ICE requires additional staff as well as other DRO components including detention management, which are directly affected by CAP apprehensions.

31. In 2000, the former Commissioner of the Immigration and Naturalization Service issued a memo on prosecutorial discretion outlining instances in which officers can decide not to initiate removal proceedings against removable aliens for humanitarian reasons, such as an alien's medical condition, age or length of residence in the United States. In 2005, ICE's Principal Legal Advisor, issued a memo on prosecutorial discretion outlining similar humanitarian factors that attorneys should consider in deciding whether to postpone removal action for removable aliens who present humanitarian issues.

    a. What is ICE's current position regarding prosecutorial discretion with regard to initiating removal proceedings?

As a general matter, I encourage all ICE employees to exercise good judgment and discretion in initiating or declining to initiate removal proceedings, rather than reserving that good judgment and discretion for a point in time after a ruling by an immigration judge.

Decisions on whether or not to place an alien in removal proceedings are made on a case-by-case basis balancing enforcement priorities with humanitarian concerns, among other factors. The former Commissioner's memo provides guidance to the operational components on issues such as instituting removal proceedings. Among the factors to be considered are criminal history, immigration history, eligibility for relief, and humanitarian concerns. I believe prosecutorial discretion is an important tool in enforcement operations.

    b. To what extent do ICE officers in the field consider humanitarian factors in determining how to process removable aliens and whether to apprehend and detain them?

As we move forward with our aggressive immigration enforcement program, we are constantly evaluating our procedures and policies to ensure we conduct every enforcement action in the most appropriate manner. With increased detention capacity and efficiencies, during the past year ICE was able to detain all undocumented aliens we encounter who pose a risk of flight unless a humanitarian issue is present for consideration. As a result, the balance of enforcing the U.S. immigration laws and providing a humane and reasonable process of services that respect the rights of those detained during the execution of major enforcement operations has become an increasingly evident challenge. While every enforcement operation presents unique circumstances, ICE officers apply our detention policy and strike an accord to consider mitigating factors such as health and child-care issues.

The increase in worksite enforcement has caused the agency to develop standardized protocols in large worksite enforcement cases. As in Operation United Front in New Bedford, Massachusetts, ICE took extraordinary care to determine if any of the arrestees were sole caregivers. This included direct questioning of all arrestees on the day of the enforcement operation. These interviews were conducted at the enforcement site specifically to determine the needs and status of any children impacted by the operation. Through this

comprehensive communications effort, 60 of those detained were conditionally released for humanitarian purposes, including many who were released very soon after the completion of the operation. Detainees were given numerous opportunities to advise ICE officials of unattended dependents or any other family concerns. Detainees were given local Department of Social Services (DSS) phone numbers and contact information in both English and Spanish for the purpose of notifying family members of their whereabouts and resolving any other family concerns. Where credible humanitarian concerns were determined to exist, ICE conditionally released these individuals. To date, DSS has not provided ICE with information of a single child that has been placed in foster care as a result of the Massachusetts operation. Humanitarian factors are taken into consideration with all enforcement actions undertaken by ICE officers in the field. ICE agents are concerned with humanitarian factors and will decide on the most fair and humane avenue to take in processing removable aliens.

c. To what extent are ICE officers provided written policies and guidance outlining the exercise of prosecutorial discretion for aliens who are not the primary targets of ICE investigations?

ICE officers conduct targeted enforcement operations, and officers are provided policies and routine guidance from headquarters. At the same time, the agency cannot turn a blind eye to other violations that the agents encounter when conducting the targeted enforcement operations. ICE has a mandate to enforce the current law, and until the law changes, ICE will continue to do so, using good judgment and discretion.

d. Does ICE have written guidelines for ICE officers to identify humanitarian concerns among administrative arrestees during worksite enforcement operations or fugitive operations? If so, when was it developed and how are ICE field offices trained on the guidelines?

There are numerous internal guidelines that agents follow while conducting both investigative and enforcement actions, pursuant to a written operational plan for all specific operations. For example, as discussed above, in large worksite enforcement operations, ICE takes extraordinary care to determine if any of the arrestees are sole caregivers or have any other humanitarian issues. This includes direct questioning of all arrestees on the day of the enforcement operation by both ICE agents and non law enforcement entities such as the Department of Immigration Health Services or local social service agencies. When possible, these interviews are conducted at the enforcement site specifically to determine the needs and status of any children impacted by the operation or any other humanitarian factors. Through this comprehensive communications effort, those detained found to be sole caregivers or with health problems are typically released on a conditional basis for humanitarian purposes on some form of alternative to detention. Among other things, in large worksite enforcement cases, ICE has established a toll-free line for individuals to call if they are concerned that a relative has been arrested. As law enforcement, ICE officers are trained to abide by terms of the written operational plan, and they do so.

Additionally, in our basic ICE Academy training, officers and agents are instructed in humanitarian methods for processing and detaining arrestees during the Detention

Standards training. I am proud to state that ICE recently developed a Violence Against Women's Act (VAWA) training module, which we have made available to all ICE employees through our Virtual University. Since release of that training module, we have had over 7,000 completions, and average 35 more completions on a daily basis.

e. To what extent is the 2005 memo issued by the ICE Principal Legal Advisor used by DRO and OI officers as guidance in deciding whether to exercise prosecutorial discretion with regard to which aliens should or should not be placed in removal proceedings?

Decisions on whether or not to place an alien in removal proceedings are made on a case-by-case basis balancing enforcement priorities with humanitarian concerns. The former INS Commissioner's memo provides guidance to the operational components on such issues as instituting removal proceedings. The Principal Legal Advisor has issued guidance to the ICE Offices of Chief Counsel regarding the handling of matters within their purview, such as aliens in removal proceedings. I have made it a priority to ensure that the components' efforts are in sync and that they work cooperatively in fulfilling the ICE mission.

f. To what extent does ICE headquarters track and monitor officers' decision-making with respect to prosecutorial discretion, including decisions about aliens who present humanitarian issues, such as medical concerns and child welfare issues, to ensure that decisions are in keeping with ICE policies and procedures?

The term "prosecutorial discretion" covers virtually any agency action taken but not mandated or forbidden by law, regulation, or policy. For instance, whether to oppose a continuance of an asylum hearing or to excuse an alien's request to postpone his reporting date is an exercise of prosecutorial discretion. While the factors involved in making prosecutorial discretion decisions are consistent, the exercise of prosecutorial discretion is necessarily very fact-specific and decisions are made on a case-by-case basis.

32. A February 2007 DHS Inspector General Report (OIG-07-28) reviewed ICE's compliance with detention limits for aliens with a final order of removal from the United States. This report found that some aliens were suspended from the review process without adequately documented evidence that the alien is failing to comply with efforts to secure removal. Additionally, the report found that cases were not prioritized to ensure that aliens who are dangerous or whose departure is in the best interest of the national are removed, or that their release within the United States is adequately supervised. Finally, the report found that ICE has not provided sufficient guidance on applying the Supreme Court's "reasonably foreseeable future" standard, and does not systematically track removal rates – information that is necessary for negotiating returns and for determining whether detention space is used effectively.

a. Since the release of this report, what program or guidelines have been put into place at ICE to identify and prioritize cases involving aliens who represent a threat to the public or are national security or national interest cases?

In my view, it is critical that we identify and prioritize cases involving aliens who represent a threat to the public or who are national security or national interest cases. I have instituted several programs to ensure we are appropriately tracking these cases to protect the American people. For example, regarding the prioritization of aliens in ICE custody, I conduct monthly briefings with several components of ICE on terrorism-related and other national interest cases to ensure that these cases are handled as highest priority. ICE has developed a regularly-updated report of these high-priority cases that is utilized by the Office of the Principal Legal Advisor, the Office of Investigations and the Office of Detention and Removal to ensure expedient processing.

During my tenure, we also proposed to the Secretary a working group with the Department of State and the Department of Justice created specifically to address these cases. ICE works together with these other agencies to effect the removal of these aliens. This group has been helpful in focusing high-level attention on significant matters.

b. What steps has ICE taken to improve oversight of aliens who have been in detention longer than 180 days after a final order of removal?

While the OIG report noted a 93% success rate in our adherence to ICE procedures for POCR cases, we have continued to improve processes wherever possible. For example, we have developed and implemented a quarterly report, as suggested by the OIG, which provides a detailed analysis of post-order aliens in ICE detention from every Field Office nationwide. I review this report, along with other ICE leadership, to ensure continued compliance with regulations. ICE/DRO has also expanded the existing "Field Oversight Program" developed for this population. Representatives from ICE/DRO HQ visit every Field Office to review post-order custody operations and to ensure that all ICE officers have the tools they need to correctly process post-order aliens in ICE detention. Each visit is followed by a comprehensive report detailing the effectiveness of the program in place with specific recommendations to ensure compliance with regulation and policy.

c. The OIG report states that "ICE is not well positioned to oversee the growing detention caseload that will be generated by DHS' planned enhancements to secure the border." Please explain how ICE is preparing itself for the growing detention caseload?

I have taken a number of steps to ensure that our oversight mechanisms keep pace with our growing detention caseload. These steps include standardization of our IGSA contracts to increase oversight and contractor compliance, additional contract support for our DRO program, the Detention Field Investigation Group (DFIG)s that conduct additional inspections and spot compliance, and the recent implementation of our Quality Assurance Specialists in our 40 largest facilities.

Moreover, I note that ICE removes approximately 80 percent of aliens within the 90-day removal period. As part of the Secure Border Initiative, ICE seeks to continue to increase efficiencies in the removal process and to decrease lengths of stay in detention. We have a

functional staffing model that has been used successfully to increase staffing levels. This model is based on the projected caseload, which includes increases in apprehensions and removals.

33. A March 2007 DHS Inspector General Report (OIG-07-34) reports little progress in decreasing the fugitive alien backlog. Factors outlined in the report as limiting the effectiveness of Fugitive Operations Teams include the inaccuracy and functionability of the Office of Detention and Removal Operations' immigration database, unavailability of adequate bed space to detain fugitive alien apprehensions, and inadequate working space for additional staff hired to serve on the teams. The backlog of fugitive alien cases has increased each fiscal year since the National Fugitive Operations Program was established in February 2002 and the fugitive alien population is growing at a rate that exceeds the Fugitive Operations Teams' ability to apprehend them.

    a. What specific steps have you taken to help eliminate the fugitive alien backlog? Do you believe they have been effective?

Last month, I announced for the first time that ICE was able to report that the fugitive alien backlog was going down. Between September 2003 and September 2006, the fugitive alien population grew by an average of 5,682 fugitives per month or 68,184 new cases per year. By streamlining business practices, tripling the number of fugitive operations teams, improving intelligence and analysis, increasing available detention space and ending the practice of catch and release at the border, ICE has seen that growth level off for the last eight months and drop by more than 5,000 fugitives in the last two months – for the first time in U.S. history.

As such, I believe the specific steps, articulated below, have been effective and are starting to make a difference in the fugitive alien population.

First, at the time of the OIG assessment and audit of the National Fugitive Operations Program (NFOP), neither the ICE Detention Operations Coordination Center (DOCC) or the Fugitive Operations Support Center (FOSC) were fully operational. The DOCC coordinates the movement and placement of detained aliens throughout the United States in order to effectively allocate detention space and accommodate the numerous enforcement actions that ICE conducts on a daily basis. The DOCC also serves as a clearinghouse by providing information in a timely manner to the field and headquarters so that space is managed effectively. I am pleased to report that since the creation of the DOCC, no fugitive alien has been released due to a lack of detention bed space.

The mission of the FOSC is to ensure data integrity in ICE database systems and develop and distribute priority leads to ICE Field Offices. Since October, the FOSC has closed over 35,400 fugitive cases related to aliens who have left the country, obtained an immigration benefit or have been located in the custody of other law enforcement agencies.

Other steps that have led to an increase in removal efficiencies and reduction in backlog include:

- *The acquisition of two (2) additional aircraft thereby increasing the Justice Prisoner Alien Transportation System (JPATS) fleet to six (6) medium-sized aircraft dedicated to facilitating the movement and removal of criminal and illegal aliens.*
- *Increased utilization of "electronic Travel Documents System" (eTD). eTD is an internet-based system that replaces a paper based travel document request process. With the eTD system, data and documents relating to an alien's removal from the United States are transferred electronically. ICE officials are able to prepare electronic packages of information and transfer them to the alien's respective Consulate for review. If approved, foreign consular officials can issue electronic travel documents. Once issued, the travel document can be printed from any ICE field office.*
- *Increased usage of Video Teleconferencing (VTC). VTC enables consular officials to communicate with their nationals and to conduct the most effective interviews from a remote location.*

Finally, thanks to increases in funding, during the past year, we were able to detain those who posed a flight risk, thus reducing potential fugitives at the start.

b. What additional resources, if any, do you believe the Office of Detention and Removal Operations needs to locate, detain, process, and remove fugitive aliens apprehended by the Fugitive Operations Teams?

The number of arrests from all law enforcement activities determines the number of beds that will be required, the number of detention management staff needed to manage the detained population and the number of removals that are necessary. Currently, the National Fugitive Operations Program is funded for 75 teams through FY 2007, with expectations that each team will arrest 1,000 aliens per year. With each additional team added to the Fugitive Operations Division, bed space, detention management staff and removal resources are required.

34. According to the President's 2008 budget justification, as of October 2006, there were 632,726 fugitive aliens in the U.S. Yet in just over three years, ICE has removed only 32,106 fugitive aliens from the U.S.

a. What amount of resources would it take to locate and deport all fugitive aliens in the U.S.?

b. What would the total cost be?

With appropriated funds, ICE has ended "Catch and Release" at the borders, thus minimizing potential fugitive alien cases in that 95% of detained aliens are ultimately removed. ICE was provided the resources needed by the Office of Detention and Removal

Operations (DRO), to detain, process, and remove the removable fugitive aliens arrested to date.

In addition, DRO is engaged in an ongoing effort to develop a cohesive comprehensive infrastructure that improves coordinated removal efforts and the management of detention space through immediate information sharing. For example, ICE created a reporting system that enables DRO to better track Fugitive Operations activity. In April 2005, ICE/DRO initiated the planning and development of the Fugitive Case Management System (FCMS). In August 2006 the system was made available to all field offices for Fugitive Operations Team activity reporting. FCMS allows DRO to clearly distinguish and prospectively report the different types of activity conducted by Fugitive Operations Team members.

ICE has established the Fugitive Operation Support Center (FOSC) in Burlington, VT. The mission of the FOSC is to ensure data integrity in ICE database systems and develop and distribute priority leads to ICE Field Offices. Since October, the FOSC has closed over 35,400 fugitive cases related to aliens who have left the country, obtained an immigration benefit or have been located in the custody of other law enforcement agencies.

ICE/DRO has negotiated a number of information-sharing agreements with federal state, and local agencies that provide access to information pertaining to fugitive aliens. ICE serves on task forces with the U.S. Marshals, participates with the FBI Joint Terrorism Task Force and utilizes 287(g) to enhance its information gathering.

With Fiscal Year (FY) 2007 appropriated funds, ICE added 23 additional Fugitive Operations Teams to the National Fugitive Operations Program (NFOP), increasing the number of funded teams to 75. The appropriated funds also aided in the establishment of the Fugitive Operations Support Center (FOSC). As a result of the increase in the number of operational teams and the added support of the FOSC, the number of enforcement activities conducted between FYs 2005, 2006 and 2007 has grown dramatically. Between FY 2005 and FY 2006, the number of enforcement activities increased by 104%; between FY 2006 and the mid-point of FY 2007, there was a 54% increase in activities, resulting in a noticeable decrease to the fugitive population.

Historically, the number of fugitive aliens increased at an average rate of more than 40,000 new cases each year. This year, for the first time, there has been a decrease in fugitive growth. According to the ICE DRO Deportable Alien Control System (DACS) there were 627,210 fugitive aliens in the United States on July 1, 2007, or 5,516 less fugitives than the population of 632,726 recorded on October 1, 2006.

ICE/DRO currently has 65 teams are operational with an additional 10 teams to be deployed by the end of the fiscal year. In addition, ICE/DRO is in the process of adding additional staff to the FOSC, thus increasing productivity. As a result of this unprecedented massive growth, FY 2008 will be the first full Fiscal Year in which all teams are operational. ICE will evaluate the success of the teams during FY 2008 to determine the impact on the fugitive case backlog.

35. With an estimated 12 million illegal aliens in the U.S. and 850,000 entering the U.S. illegally each year, what amount of resources would be necessary to locate and remove all illegal aliens and how much would this cost?

After running an estimated number of 12 million illegal aliens through the bed space model, the cost is estimated to be $94 billion, based on a one-year removal model with the following assumptions:

- *$97 per day for bed space*
- *33 day length of stay*
- *$1,000 for transportation costs associated with removal*
- *Appropriate personnel to support the detention and removal for 12 million removable aliens*
- *53 positions per team*
- *5 HQ staff positions per every 2 teams*

This model is quite rough. For example, this model assumes no deterrence based on enhanced enforcement. If ICE were funded at a level to comprehensively address the illegal alien population, I believe enhanced deterrence would occur as some individuals would be deterred by ICE's actions. The percentage of deterrence, of course, is difficult to estimate, but I believe deterrence would increase as enforcement increased.

In addition, this model does not take into account the reduced number of aliens that will be entering the country based on the Department's comprehensive Secure Border Initiative and the continued increased staffing of Customs and Border Protection.

36. In a July 2007 report (GAO-07-875), GAO found systemic telephone systems problems in 16 of 17 facilities that use the pro bono telephone system. ICE officials told GAO that they were unaware of the nature and the extent of the problems prior to the review. Can you explain what measures ICE has taken since becoming aware of this problem to ensure that detainees can make telephone calls to access legal services, report complaints, and obtain assistance for their respective consulates, as specified in the ICE National Detention Standards?

I place great value on the data and feedback that ICE receives from the GAO, as they serve as valuable guideposts in the quest for continued improvement in the ICE mission.

I am encouraged by the findings in the GAO's most recent report on detention standards at ICE facilities which demonstrate that ICE detention facilities generally comply with ICE's National Detention Standards. Given that the population of ICE detainees tripled between 2001 and 2006 as a result of vigorous and more effective enforcement, we are pleased with the positive findings in this report and look forward to working with GAO to assess ICE's continued progress in providing a safe, secure and humane environment for those alien detainees in our custody.

However, the report suggests that ICE should take steps to improve pro bono telephone access for detainees. While we generally agree that improvements can be made to simplify

the pro bono telephone system and that increased contract oversight is necessary, we note that the GAO's analysis incorrectly characterizes the scope of the problem. The GAO did not consider the underlying data provided to it with regard to pro bono phone service and incorrectly faults ICE for various factors beyond the agency's control. In fact, in the 94.8% (132,100 of 139,288) of the "incomplete" calls cited by the GAO, the reasons the call did not go through involved detainee hang-ups, answering machines, busy signals, or the called party's refusal to accept the call.

Regardless, ICE recognizes the importance of a user-friendly system for pro bono telephone calls, which is why the agency has taken numerous steps to improve this service. Examples of these improvements include:

- *ICE dramatically increased staffing in our Office of Acquisitions to provide increased contract oversight of the service provider. As of May 2007, the ICE Office of Acquisitions staff has grown from 40 employees to 117, with additional hires planned for the near future. This improvement in staffing and management in Office of Acquisitions will ensure a higher level of oversight and accountability on all contracts, which includes pro bono telephone services at detention facilities. As a first step, ICE is now requiring the pro-bono telephone contractor to develop an action plan to address the problems ICE identified and report weekly on the progress in addressing them.*
- *ICE established a weekly review process to ensure serviceability of all detainee telephones.*
- *ICE established a Detention Facilities Inspection Group within the Office of Professional Responsibility (Internal Affairs) to independently validate detention inspections by performing quality assurance over the review process, ensuring consistency in application of detention standards, and verifying corrective action. The Detention Facilities Inspection Group is an independent review body to ensure quality assurance and oversight of the detention standards review process.*
- *ICE scheduled additional training for personnel on telephone software, and has assigned 42 Agency Technical Representatives to help identify and track telephone issues in the field. Training will take place in July and August.*

Detention of Families

37. Congress has articulated ongoing concern over the separation of immigrant parents from their children, some as young as nursing infants, while in DHS detention. In 2005, the House report accompanying the 2006 DHS appropriations bill stated, "The committee expects DHS to release families or use alternatives to detention such as the Intensive Supervised Appearance Program (ISAP) whenever possible. When detention of family units is necessary, the Committee directs DHS to use appropriate detention space to house them together.[2]"

[2] House Committee on Appropriations. H. Rep. 109-79: Committee Report to Accompany H.R. 2360, Department of Homeland Security Appropriations Bill. May 13, 2005.

In May 2006, ICE opened its second family detention center, the T. Don Hutto Family Residential Center, which was converted from a medium-security prison and is operated by the Corrections Corporation of America. The new 512-bed facility increased ICE's family detention capacity seven-fold from the previous 84-bed Berks County Shelter Care Facility. In June, 2006, the Senate Committee on Appropriations directed ICE to submit a report assessing the impact of the T. Don Hutto Family Center on families required to be separated.

a. Please explain in detail why a large expansion of ICE's family detention center was necessary in light of Congress' directive to parole families or use alternatives to detention whenever possible.

The Hutto facility was opened as part of the Secure Border Initiative. Prior to Hutto, the few options for families included release, use of a limited number of family detention beds at ICE's Berks facility, and separating families. This facility was created due to the ever-present danger of alien smugglers using children as a conduit, the very low rate of appearances for removal proceedings before immigration judges and the low compliance rate with final orders of removal. The facility was originally opened as a family residential center to house families arrested near the border and to end the practice of "catch and release" on the border.

b. What have you done, or what do you intend to do, to ensure that ICE is fairly applying parole standards and releasing families that are eligible for parole or alternatives to detention?

Standards in use for the adjudication of a parole requests are the same for all aliens and experienced field managers apply these standards on a case-by-case basis.. For example, at the T. Don Hutto facility, factors reviewed in all cases for consideration of parole include a review of the medical history of the requesting alien or his or her family, and the availability of care if needed at the facility. Further, many of the aliens detained at TDH are eligible for bond redetermination hearings before an immigration judge. If they can pay the bond, they may be released. Other aliens are released from TDH after they establish parole eligibility.

c. Did ICE consult with Berks County, Pennsylvania (operating another family facility) in designing this facility? If so, what were the recommendations of Berks County, Pennsylvania, and were these recommendations considered when planning this facility?

ICE consulted with key Berks County staff in the development and implementation phases of the Hutto project. This included a visit by the Berks OIC on two occasions who toured the facility and provided recommendations of which the majority have been implemented. The same detention standards and programs used by Berks County served as a template for the Hutto facility. Based on the input from the Berks County staff, a number of recommendations for the facility itself were presented to ICE and incorporated into the design for the Hutto facility. The recommendations for Hutto included such items as: removing all razor wire, removing or covering bars and/or other jail like features, perimeter doors unlocked, and

allowing a greater freedom of movement for detainees. As with the opening of every new facility the TDH continues to develop better business practices to ensure the safety and welfare of all residents and for the appropriate care of the children that reside there.

d. What is the status of the DHS/ICE report to the Senate due February 8, 2007? If the report is delayed, please explain the reason for the delay, and when the report is expected to be complete.

The Separation of Families Congressional Report (109-273) was delivered to Congress on April 11, 2007 after review and approval by the Immigration and Customs Enforcement, the Department of Homeland Security and the Office of Management and Budget. The delay in delivering the report to Congress resulted from a thorough analysis of data that was collected to provide Congress with a comprehensive response.

e. How many families have been considered and released under ISAP?

Currently, ICE does not track the number of families considered and released under ISAP or initially considered for bond. ICE does track the number of family members that have been released from family detention on other detention alternatives (e.g., bond, own recognizance, order of supervision, etc. For the Hutto facility's population (YTD): 1,188 or 55% of the facility's population has been released. For the Berks facility (YTD): another 120 or 36% of the facility population has been released.

f. Why did ICE decide to retrofit a Corrections Corporation of America (CCA) private prison, designed to house convicted criminals and operating for profit, to care for families, given underlying Congressional intent that ICE use "appropriate" facilities to care for family groups together?

In early 2006, DHS identified an urgent need to end the practice of smuggled children as quickly as possible and put an end to family "catch and release" at the border. Since the T. Don Hutto facility was in the development stages of use as an adult detention facility, it was able to be retrofitted specifically to meet the needs of family residential care in an advantageous location.

g. Did ICE consult with Berks County, Pennsylvania (which operates another family facility) in designing this facility? If so, for what duration, and were the recommendations of Berks County, Pennsylvania considered and/or implemented? Why or why not?

Yes, ICE incorporated key Berks County staff in the development and implementation phases of the Hutto project. Berks County staff was actively engaged throughout the entire planning process of approximately eight weeks. The same detention standards and programs used by Berks County were applied to the Hutto facility. Based on their input, a number of recommendation for the facility itself were presented to ICE and incorporated into the design for the Berks facility.

38. A February 2007 report[3] by Lutheran Immigration and Refugee Service (LIRS) detailing conditions in the T. Don Hutto Family Residential Center contained many disturbing findings, including that children were provided only one hour of education daily; medical care was inadequate; children were threatened with separation from their parents for misbehavior; some families were provided only 10-15 minutes to eat meals; detainees complained that the food was inadequate and many children were losing weight; families slept in converted cells and were confined to locked "pods" or cell blocks most of the rest of the day; some children were required to sleep in separate cells from their parents; and toilets in cells were not separated from living space. The report also mentioned that small infants were also detained since there is no minimum age for detainees.

a. What is your response to these findings?

We reviewed this report very closely as we are charged with ensuring the safety of all individuals in ICE custody, including those housed at T. Don Hutto. Upon investigation of the specific information contained in that report, however, it was determined that many of the assertions were not supported by fact, including but not limited to loss of weight by residents and claims that residents had been locked inside of pods. However, review of all of the information contained in that report, whether or not in dispute, did contribute to the review of policy and practices at the T. Don Hutto facility (TDH). Educational instruction for children at TDH meets or exceeds Texas state educational standards and all teachers are certified by the State of Texas. Beginning in January 2007, and continuing to this day, children attend school for seven hours each weekday, year round, excluding holidays. Children are not separated from their parents for misbehavior. Regular counseling occurs. Medical care exceeds community clinical standards and is provided by the Public Health Service (PHS), while specialized care is provided through community resources. Vaccinations are provided as required by law. Emergency dental care including orthodontics is provided if the person arrive with braces, and a physical examination is also performed upon admission. Medical, mental and emergency dental care continues throughout the family's stay at TDH. The meal schedule has been expanded to include hamburgers, hot dogs, and a salad bar as requested by the residents in addition to menus already certified by a dietician. Residents are polled monthly on the food quality and selection at TDH, and appropriate modifications are made if necessary. Former "cells" have been converted to rooms and are never locked, nor have children or other residents been required to remain in their rooms for most or even a majority of the time. There are motion detectors in use at night for the safety of all residents, including children. However, they are not used to restrict the movement of the residents. Young children, including infants, are housed with a parent, of the same sex, if possible. Teenage children are generally housed in a room next to a parent with other teenage children of the same sex. All bathroom facilities within rooms have a privacy curtain.

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[3] *Locking Up Family Values: The Detention of Immigrant Families.* Women's Commission for Refugee Women and Children, Lutheran Immigration and Refugee Services. February 2007. Available at: http://www.womenscommission.org/pdf/famdeten.pdf.

I would also note that, given the sensitivity of family detention, in reviewing Hutto, I believed that it might be appropriate to have additional headquarters oversight over our family centers. For this reason, on April 1, 2007, we created the Juvenile and Family Residential Management Unit (JFRMU).

- *JFRMU absorbed the duties and responsibilities of the National Juvenile Coordination Management Unit (NJCMU), overseeing all unaccompanied juvenile and family detention issues.*

- *The mission of the JFRMU is to optimize DRO's ability to appropriately manage ICE's immigration policy as it pertains to Unaccompanied Alien Children (UAC) and families while protecting their safety and dignity.*

- *JFRMU Operational Functions and Responsibilities as applied to Family Residential Facilities includes monitoring the conditions of confinement at TDH and Berks, ensuring that applicable requirements are met while providing safe, humane residential care.*

b. The Report recommended that ICE discontinue housing children in prison-like institutions and detain families only in less restrictive, homelike facilities. Do you support this recommendation? If so, please explain what you have done or will do to ensure that detained families are housed in appropriate facilities? If not, why not?

The JFRMU, described in subpart (a), ensures the provision of services to families and their minor children while adhering to any applicable state licensing requirements, detained minors and their parent or guardian are provided care and placement within a family-friendly residential environment that does not pose a safety risk to family members, particularly children, or staff and adjacent neighborhoods. The residential structure of our program is progressing towards promotion of a home-like atmosphere of care.

The facility at TDH is no longer "prison-like" since its conversion by DRO. It is not a "secure facility" and is not operated as a prison, although it does provide for the security of the residents. Movement is unrestricted throughout the facility during waking hours. Residents can walk outside, utilize the gym, and visit the library. Visiting hours include most weekday hours when residents are awake. Children can color and play with toys in their rooms, or watch television. However, in our continuing efforts to provide the best facilities possible, a Request For Information (RFI) was recently published in the Federal Register on June 11, 2007 with response due July 27, 2007. The RFI solicits proposals to provide a model family detention facility, explained more fully in subpart (c) to this question.

c. What steps have been taken to ensure that ICE houses families in non-penal, homelike environments when detention is necessary? If no steps have been taken, please clarify why not, and when such steps will be taken.

We endeavor to continually improve its family housing facilities. As mentioned in subpart (b), a Request For Information (RFI) was published in the Federal Register on June 11, 2007. The purpose of this RFI is to solicit comments and questions relating to the development of a Statement of Work for Family and Juvenile Detention Services that incorporate best practices for residential management and service provision of children, youth, and families in minimally security, less than secure, and/or non-secure facility.

JFRMU sets juvenile and family detention policy and manages juvenile and family detention resources for individuals detained by ICE for administrative reasons. The RFI will serve to assist ICE in providing children, as well as members of their family, with a safe and secure environment while in ICE custody. When an adult with one or more minor children is detained, they may be placed in an ICE family residential facility. This enables families to stay together to the greatest extent possible rather than separating children from their parents. The goal of ICE family residential facilities is to maximize other available detention space and contain costs associated with the detention of non-criminal aliens including family units who are awaiting adjudication and/or removal from the United States. ICE has determined that maintenance of a family unit in a least limiting setting is necessary to enforce specified provisions of immigration law.

d. The Report states that ICE is preparing to issue standards governing family detention. Have those standards been issued? If not, explain where the standards are in the development process and provide a timeline for issuing them.

An additional function of the JFRMU within ICE/DRO is to review family detention operations and determine how best to regulate these operations through relative policies and procedures that provides safe, secure, and humane services. These policies are now in development, and we will be working with the NGO community on the development of these standards. ICE is taking great care to ensure that the new standards will fully address the needs of detained families and we aim for their completion by year's end.

e. Why did ICE recently deny Dr. Jorge Bustamante, the United Nations Special Rapporteur on the Human Rights of Migrants and other federal government agencies, such as officials with the Executive Office for Immigration Review (EOIR) and the Office of Refugee Resettlement (ORR) permission to visit the T. Don Hutto Family Residential Center?

We were unable to accommodate Mr. Bustamante's request to visit the T. Don Hutto Facility due to pending litigation, but he was offered an opportunity to visit the Berks facility, our other family facility, located within the Philadelphia Field Office, which he declined. However, Mr. Bustamante was granted and accepted a tour to the Florence Service Processing Center located within the Phoenix Detention and Removal Field Office. Mr. Bustamante toured the Florence facility in May 2007.

f. Please identify which specific ICE Detention Standards apply to detainees at the T. Don Hutto Family Residential Center.

We continue to evaluate the applicability of adult and juvenile detention standards in a residential family facility setting consistent with the least limiting environment available. Some standards clearly have relevance within a family residential setting, for example, the standards governing access to legal materials, group presentations on legal rights, access to telephones, medical care, suicide prevention and intervention, staff and detainee communication, emergency plans, and religious practices. Generally, these standards and other relevant standards are critical to ensuring services are available to detainees in family residential facilities.

g. Is the Hutto facility licensed by the State of Texas as other detention facilities are licensed? If not, why? How many ICE detention facilities have state licenses and how many do not?

TDH is not licensed by the State of Texas because at the time it was opened, the State of Texas determined that it was not a facility that required a license. Rather, the State of Texas provided a written exemption from the licensing requirement for TDH following their determination that the facility fell within no category of facility licensed by the state of Texas. Currently, however, although the State of Texas maintains that it lacks authority to regulate family detention facilities and therefore a license is not needed, a license application is nearing completion and will be submitted to the State of Texas for review by Corrections Corporation of America, which operates the facility, at the request of ICE. The other ICE family detention facility operated by Berks County has a license created especially by the State of Pennsylvania because no appropriate licensing category existed under Pennsylvania law. Pennsylvania and Texas law have similar licensing statutes.

h. Are mental health professionals and teachers at Hutto licensed for their professions by the State of Texas?

All professional staff employed at TDH are required to obtain the appropriate credentials prior to selection for employment at TDH. All teachers are properly screened and have obtained the necessary credentials or licensure by the State of Texas Education Department. All teachers are certified by the State of Texas.

Our medical program operates under the supervision of the United States Public Health Service, Division of Immigration Health Services. We operate a robust health program that provides on-demand health service. All medical staff members have the correct and appropriate licensure and credentials for their health related field to include medical, mental, and dental health programs.

i. In response to the LIRS report's criticisms of conditions at the Hutto facility, an ICE spokesman was quoted in news reports saying "[o]ur standards of detention exceed those set by the American Correctional Association." Do you believe that

standards set by the American Correctional Association for the incarceration of convicted criminals are an appropriate yardstick to use for a facility that houses families with small children?

The JFRMU has conducted a complete and thorough evaluation of its programs, including existing policies and procedures that were previously in place. We are reviewing family detention operations to determine appropriate standards that allow for the least restrictive environment under safeguards that protects children, their parents, and staff.

j. Please clarify what steps were taken when T. Don Hutto Family Residential Center was established to ensure that it complied with all provisions in *Flores v. Meese,* No 8504544 (C.D. Cal. 1997) that children be housed in "the least restrictive setting" appropriate for their age?

When the T. Don Hutto facility opened, all attempts were made to make the facility Flores compliant, keeping in mind that parents were going to be accompanying their children and that the Flores settlement agreement was only intended to apply to unaccompanied minors. ICE conducts compliance reviews, and on May 25, 2007, one such review determined that the T. Don Hutto was Flores compliant to the extent the Flores settlement agreement applies to children with parents present.

Detention Standards

39. On February 8, 2005, the U.S. Commission on International Religious Freedom released a Congressionally-authorized report on how expedited removal procedures were affecting asylum seekers. The Commission reported that asylum seekers are detained in harsh, maximum-security facilities under detention standards written with criminal aliens – not asylum seekers – in mind. The Commission reported that many of the detainees, who often had been tortured in their home countries, were traumatized further by the conditions of confinement. In February 2007, the Commission issued a two-year "Report Card" on the response to the report. The Report Card states that most of the Commission's recommendations have not yet been implemented, and the Commission gave ICE an overall grade of "D" for their progress.

a. According to the Report Card, ICE has not provided any response for most or all of the Commission's recommendations. Is ICE preparing a response to the Commission's recommendations? If so, when will it be available? If not, explain in detail why not.

Although a final, consolidated response has not been issued on behalf of DHS and all relevant components, ICE has established a dialogue with the Commission to address these issues. After the Report Card came out, I instructed the Policy Office at ICE to reach out to the Commission independently to provide an unofficial update to the Commission about the steps that ICE had taken since the report. Subsequently, ICE officials met with Commission staff and I met with members of the Commission to update them on the steps we had taken

and were in the process of taking, including training and the development of a more standardized parole policy.

b. Having the opportunity to study the issue, do you believe that conditions of confinement should be improved for non-criminal asylum seekers? If so, what actions are you taking or do you plan to take to improve conditions of confinement for asylum seekers?

I do not believe that there should be multiple levels of conditions of confinement for various kinds of non-criminal aliens. ICE is committed to providing humane conditions to all aliens, criminal and non-criminal. DHS is studying options, such as giving USCIS the ability to grant asylum at the credible fear stage. I am concerned about false incentives to claim credible fear for individuals who are unlikely to obtain asylum from an immigration judge, and I believe that creating additional standards for different kinds of non-criminal aliens in confinement is not a productive exercise.

The ICE National Detention Standards, designed to meet the needs of all alien detainees, were carefully crafted with the assistance of Non Governmental Organizations to ensure that detention facilities provide humane conditions for all detainees. For example, the Access to Legal Material Standard ensures all detainees have access to a Law Library with legal materials and document copying privileges for the preparation of legal documents. The Telephone Access Standard ensures all detainees have reasonable and equitable access to telephones. The Religious Practices Standard ensures all detainees are provided reasonable and equitable opportunities to participate in the practices of their respective faiths. The Classification Standard ensures all detainees are classified into appropriate categories and physically separated from other categories. These are just a few examples of how the ICE National Detention Standards are meeting the needs of all detainees. We are currently enhancing oversight of the Detention Standards and also working to transform the Standards into performance based standards. I remain committed to the full implementation and oversight on these comprehensive standards.

c. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 33-3), you stated that you would study the Commission's recommendation that non-criminal asylum seekers should be subject to alternatives to detention or held in secure facilities. Having had the opportunity to study the issue, do you agree with this recommendation? If so, what steps are you taking or do you plan to take to develop better alternatives to prison-like facilities?

In order to determine whether asylum seekers and other non-criminal aliens should be subject to being released on their own recognizance, on alternatives to detention, or where available, in less-secure facilities, ICE will look at the facts on a case-by-case basis. All potential participants for the ATD program are screened to assess whether the individual is either a flight risk or a threat to the public, whether their identity has been established, whether the potential participant has an established residence, and whether the potential participant has a known history of crime or violence. Under current operating procedures,

based on individual case assessments, the Field Office Directors make the final decisions as to whether an individual is enrolled into an ATD program.

In order to ensure that our parole procedures are as uniformly applied as possible, we are drafting a policy that will provide guidance to ICE field officers on how to assess parole requests for arriving aliens in expedited removal who are found to have a credible fear of persecution or torture. We are also revising our Record of Determination/Parole Determination Worksheet which is to be completed in any case where an arriving alien in expedited removal who is found to have a credible fear of persecution or torture requests parole from ICE custody. Distribution of both the policy and worksheet to our DRO field office personnel will ensure that there is consistency in how these custody determinations are made.

40. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 18), you stated that you planned to "carefully review" ICE immigration detention standards and make improvements where necessary. Additionally, you stated that you would review whether ICE should issue detention standards as binding regulations, rather than as agency guidelines, as is currently the case.

    A December 2006 OIG report (OIG-07-01) addressed the compliance with ICE's Detention Standards at five detention facilities. The audit performed by OIG found several instances of non-compliance with ICE Detention Standards at the five facilities including instances regarding timely initial and responsive medical care, environmental health and safety concerns, disciplinary policy, classifying detainees, and housing together detainees classified at different security levels.

    You responded to the OIG's draft report by memo in September 2006 by writing that changes would be made where necessary, but also that the findings of the report "do not indicate any systemic failure, but instead identify exceptions that occurred within each of the five facilities selected for review."[4]

    a. In light of the problems reported by the DHS IG, how do you plan to ensure appropriate detention standards are in place and enforced in all ICE detention facilities?

I appreciate the work of the DHS IG and GAO to review our oversight of our detention standards, and, over the past eighteen months I have taken substantial steps to ensure that our detention standards are enforced fully. Of course, on any given day, U.S. Immigration and Customs Enforcement (ICE) is budgeted to house an average of 27,500 immigration detainees in more than 325 facilities nationwide. With respect to the DHS IG report, the Inspector General staff based their report on visits to five of these facilities and, according to the report, did not use statistical sampling in selecting the subjects for their interviews. The authors stressed in their report that the results of their testing should not be projected to the

[4] *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities, Appendix C: Management Response to Draft*, Department of Homeland Security Office of Inspector General, report number OIG-07-01, December 2006.

detainee population or other facilities. ICE's practice of conducting annual reviews and weekly site visits to its detention facilities significantly exceeds the industry standards set by American Correctional Association, National Commission for Correctional Health Care, and Joint Commission on Accreditation of Healthcare Organizations, which call for inspections at three-year intervals.

ICE's National Detention Standards (NDS) were implemented in 2001. The NDS were developed in coordination with subject matter experts from within various components of the Department of Justice and non-governmental entities, such as the American Bar Association. ICE DRO is currently engaged in a major initiative to improve the delivery of care to detainees by converting the standards into a performance-based format, consistent with the approach used by the American Correctional Association. The revised standards, practices, and outcome measures will enable ICE to not only monitor activities but also to measure outcomes over time.

I believed that these steps, while substantial, were not enough to ensure we continue to exercise rigorous national oversight of our detention facilities. In furtherance of this effort, ICE created the Detention Facilities Inspection Group (DFIG) within its Office of Professional Responsibility (OPR). The DFIG performs quality assurance reviews of the Office of Detention and Removal Operations (DRO) detention facility review process, ensures consistent application of the National Detention Standards, and verifies corrective actions. This additional oversight will complement the current DRO Detention Standards Compliance Program and ensure ICE detention facilities remain safe and secure while providing appropriate conditions for detainees.

Additionally, we are creating a professionally staffed inspection program for all DRO detention facilities. There will be a contractor team at the DRO Headquarters to receive and analyze the inspection reports, conduct trend analysis and assist with scheduling. An initial pilot program will be two quality assurance reviews a week for the first 60 days.

We are also placing professional on-site compliance personnel in each DRO Service Processing Center, Contract Detention Facility and Dedicated Inter-Governmental Support Agreement Facility. On-site compliance for the Small Inter-Governmental Support Agreement facilities will be on a regional basis. As with the inspection program, a contractor team will be assigned to DRO Headquarters to support analytical processes. This program will also support contractual compliance review for contract detention facilities that utilize a performance based contract that use the ICE National Detention Standards.

We remain committed to ensuring that all Service Processing Centers (SPCs) and Contract Detention Facilities (CDFs) that house ICE detainees fully comply with the NDS, and that Intergovernmental Service Agreement (IGSA) facilities managed by other law enforcement agencies meet the intent of those standards.

b. Please describe how facilities are monitored for compliance with the Detention Standards, with what frequency, the personnel involved and their training in the Detention Standards, and their qualifications.

As mentioned in subpart (a), each facility is reviewed on an annual basis. This includes SPC, IGSA's, and CDF's. Additionally, each facility is visited on a weekly basis under the staff detainee communication visits. During these visits the officers are tasked with assessing conditions of confinement. Some examples of these would be checking for cleanliness of the facility, checking that all phones are in working order and responding to detainee grievances and requests. All field staff is required to complete detention standards training online annually. This training includes an in depth review of the national detention standards and ICE's obligations to ensure compliance to these standards.

c. How will ICE guarantee that detention facilities will properly segregate high-risk, category three detainees from low-risk category one and two detainees?

Non-criminal detainees are housed in the same facility with criminals, however, they are properly classified and housed accordingly. ICE classifies all detainees upon arrival, before being admitted into any general housing populations. Furthermore, ICE's Objective Classification system ensures that each detained alien is placed in the appropriate category and physically separated from detainees in other categories. ICE uses the most reliable, objective information from the detainee's A-file or work-folder during the classification process.

The use of "objective" information refers to facts, e.g., current offense, past offenses, escapes, institutional disciplinary history, violent episodes/incidents, etc. Opinion, even informed opinion (based on profiling, familiarity, personal experience, etc.) is different from fact, and therefore irrelevant to the ICE detainee classification system. ICE classifies detainees into three categories which is based on their prior criminal history, prior institutional history, escapes and violent episodes or incidents. These categories are weighted and determine at what classification and housing unit this alien will be placed to ensure the safety and welfare of all aliens.

d. What steps is ICE taking to minimize the movement of detainees between detention centers and away from their family or attorney?

The Immigration and Nationality Act (Act) provides broad discretion for ICE to detain aliens at detention sites around the United States which meet ICE's national detention standards. The Act contains no language limiting ICE's ability to move detainees around the U.S. so ICE may use its bedpsace efficiently.[5] *Detainees may be transferred to other facilities for various reasons, ensuring that the local Field Offices have sufficient bedspace or to meet special detainee needs, etc. ICE will make all necessary notifications when a detainee(s) is transferred. If the detainee(s) is being transported by Justice Prisoner Alien Transportation System (JPATS), ICE will adhere to JPATS protocols. In deciding whether to transfer a detainee, ICE will take into consideration whether the detainee is represented before the immigration court. In such cases, Field Office Directors will consider the detainee's stage within the removal process, whether the attorney of record is located within reasonable*

[5] Sasso v. Milhollan, 735 F.Supp 1045 (S.D. Fla. 1990)(holding that the former INS had broad discretion to chose the detention site).

driving distance of the detention facility and where immigration court proceedings are taking place.

Notification procedures include notifying the detainee's representative of record. It is the responsibility of the attorney of record or the detainee to notify any family members, if so desired.

e. What actions have you taken to improve the inspections process and ensure that all non-compliance deficiencies are identified and corrected?

ICE has created a Detention Facilities Inspection Group (DFIG) within the Office of Professional Responsibility (OPR). The purpose of the DFIG is to independently validate detention inspections conducted. The DFIG will be responsible for quality assurance over the review process, insuring consistency in application of detention standards, and verifying corrective actions.

f. Please clarify the specific reforms you noted would be undertaken in light of the OIG report and the time-frame for those reforms.

The OIG made twelve recommendations within its report. ICE concurred with some, in whole or in part, and did not concur with others. For example, one of the recommendations was for "ICE to ensure adequate separation of duties and other internal control procedures are implemented at detention facilities for detainee funds and personal property to reduce the risk of property being inadequately accounted for and to safeguard against theft." ICE concurred with that recommendation and we have modified the current review worksheets for Funds and Personal Property utilized in our annual review process to include a specific line item for Inter-Governmental Service Agreement (IGSA) facilities that do not have automated detainee funds systems. The specific line item addresses the requirement that two officers must be present during the processing of a detainee's funds and valuables.

Another recommendation was for "ICE to ensure periodic oversight and inspection procedures are in place to address compliance with the Detention Standards in the following areas during its annual inspection process. Staff-detainee communication, Documentation of detention files, Disciplinary policy, Special Management Units (Disciplinary and Administrative), Access to legal material, correspondence, and other mail, Detainee grievance procedures, Issuance and exchange of clothing, Outdoor recreation, Telephone access and privacy, and Visitation." ICE concurred in part with this recommendation. ICE has issued a memorandum to all Field Office Directors, Detainee Telephone Services, dated April 4, 2007. The directive requires all phones in detention facilities utilized to house ICE detainees be checked for serviceability weekly. These serviceability checks verify that phones are working, can connect to the "pro-bono" platform, and to verify connectivity to a selection of consulates and pro-bono services.

ICE will address the other issues above via proposed Performance Based Standards (PBS). ICE expects to complete all actions related to the PBS by September 30, 2007.

41. The December 2006 OIG report also notes that the ICE National Detention Standard (NDS) on Detainee Grievance Procedures does not provide a process for detainees to report abuse or civil rights violations. In addition, corrections officers were not aware of specific ICE standards on grievance procedures for immigration detainees.

    a. Has ICE modified the NDS for Detainee Grievances and the Detainee Handbook to include specific instructions regarding how to report allegations of staff misconduct, abuse, or civil rights violations?

ICE is currently revising the Detainee Handbook, and instructions on how to report allegations of abuse or misconduct have been included the forthcoming revised edition. Additionally, the new edition will contain a section addressing sexual abuse and assault prevention. ICE's facility inspection checklist has been modified to include a line item to confirm that the telephone number of the DHS Office of the Inspector General is included in each facilities telephone platform to enable detainees to report allegations of abuse. The revised checklist was distributed to ICE field offices on July 9, 2007.

    b. What steps has ICE taken to ensure that detention facilities provide appropriate training and guidance to correctional officers regarding the rights of detainees regarding the reporting of allegations of abuse and civil rights violations?

ICE created the Detention Facilities Inspection Group (DFIG) within its Office of Professional Responsibility (OPR). The DFIG performs quality assurance reviews of the Office of Detention and Removal Operations (DRO) detention facility review process, ensures consistent application of the National Detention Standards, and verifies corrective actions. This additional oversight was established to complement the current DRO Detention Standards Compliance Program and ensure ICE detention facilities remain safe and secure while providing appropriate conditions for detainees.

Additionally, CRCL and DRO created a training program for detention facility staff that addresses proper procedure for reporting allegations and civil rights violations and for ensuring detainee access to legal, phone and medical services. The program, which is in CD-ROM format, was distributed to ICE field offices and IGSA facilities in May 2007.

42. In January 2007, a coalition of organizations petitioned DHS to initiate a rulemaking proceeding to promulgate regulations governing detention standards for immigration detainees. Please explain the reason for the decision not to promulgate the Detention Standards as binding regulations.

DHS has not yet made a decision as to whether to promulgate regulations governing detention standards. However, it must be noted that the quality of detainee care is not contingent on the promulgation of regulation. I have taken substantial steps over the past year to increase oversight, training and compliance; steps I believe would have been more difficult to take with regulations in place. In addition, we are currently undertaking a broad

initiative to update the Standards into performance-based standards. This would be much more difficult, if not impossible, if regulations were in place. In my view, the current structure of the ICE National Detention Standards (NDS) allows ICE the necessary flexibility to enforce standards that ensure appropriate conditions of confinement. The NDS employed by ICE are also consistent with industry standards, such as those established and promoted by the American Correctional Association (ACA), among other groups specializing in detainee care and treatment. In addition, the facilities are also governed by existing federal, state and local regulations and policies applicable to the particular jurisdiction's correctional/detention programs.

ICE has engaged in negotiations with local service providers, conducted regular meetings with various NGOs, and maintains its own inspection requirements in order to ensure compliance with these standards. The NGO coalition petition is lengthy and detailed, and raises a number of important matters requiring policy, operational, and legal consideration. DHS continues to consider this request and remains mindful of the flexibility needed to provide the highest quality of care to immigration detainees.

43. A June 26, 2007 *New York Times* article[6] reported that 62 immigration detainees have died in administrative custody since 2004. Complaints focus on a lack of independent oversight and failures to enforce standards for medical care, suicide prevention, and access to legal help. According to the article, one prison warden wrote in a court affidavit last year, "The Department of Homeland Security has made it difficult, if not impossible, to meet the constitutional requirements of providing adequate health care to inmates that have a serious need for that care."

    a. What, if any, quality assurance measures are in place to ensure the medical staff at detention facilities consistently follow all detention standards regarding: (1) the initial medical screening and subsequent physical examinations for new arrivals; (2) timeliness of responding to non-emergency sick call requests, (3) monitoring of detainees on hunger strikes, and (4) monitoring of detainees identified as suicide risks.

All Division of Immigration Health Services(DIHS)-staffed facilities conduct internal ongoing quality assurance programs to ensure compliance to the ICE National Detention Standards (NDS), the American Correctional Association (ACA), National Commission on Correctional Health Care (NCCHC) and the Joint Commission on Accreditation of Health Care Organizations (JCAHO) standards. These standards cover all areas of access to health care and the provision of the delivery of health care services. ACA, NCCHC, JCAHO and the ICE NDS Compliance Review Unit review the DIHS-staffed facilities. Non-DIHS staffed facilities are to maintain compliance to the ICE standards and annual reviews are conducted to confirm compliance. Intergovernmental service agreement (IGSA) facilities, whether housing ICE detainees or U. S. citizens, are required to comply with local, county and state health and correctional standards. The healthcare providers who care for detainees are licensed and credentialed under the same guidelines as those serving the U. S. Bureau of Prisons and in other federal or community facilities.

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[6] Nina Bernstein. "New Scrutiny as Immigrants Die in Custody." *New York Times*. June 26, 2007.

It is important to note that detainee deaths have markedly declined even as ICE's detained population has grown significantly. In Fiscal Year 2004, there were 29 deaths. Thus far, in Fiscal Year 2007, there have been only three.

ICE National Detention Standards (NDS) have been in effect since September 2000. These standards have been developed to insure safe and humane detention for illegal aliens. It is important to constantly review and update policy and procedure to reflect agency practice and industry standards. Stemming from the results from the OIG and GAO audits, ICE has pushed extensively to revise the detention standards into a performance based format, and these standards are currently under legal review.

ICE recognizes the need to modernize the current standards, and is considering recommendations from OIG, GAO, the public, NGO's and other government oversight entities. The use of performance based standards improves the delivery of care to detainees and affords ICE the opportunity to measure outcomes over time. They encourage service providers to find optimal ways to meet performance criteria, resulting in more efficient operations while still ensuring safety, security and appropriate conditions of confinement for the detained population. Unlike "policy and procedures" that focus solely on what is to be done, performance-based policy starts with a focus on the results or outcomes the required procedures are expected to accomplish. We aim to roll out these modernized standards before the end of FY 2007.

Furthermore, in accordance with my decision to provide additional oversight to detention facilities, ICE is in the process of implementing a finalizing our three-part expanded detention compliance program. Two contractors will provide the program support with experience in conducting independent quality assurance reviews for the Office of the Federal Detention Trustee and the Bureau of Prisons. It is anticipated that the contracts will be let no later than August 1, 2007 and an initial capability will be available within two weeks for each of the programs.

The first part will be additional staffing to our new Detention Facilities Inspection Group (DFIG). The purpose of the DFIG is to independently validate detention inspections conducted by DRO by performing quality assurance over the review process, insuring consistency in application of detention standards, and verifying corrective actions. This new layer of OPR oversight complements the current ICE DRO Detention Standards Compliance Program and ensures detention facilities are safe, secure and providing appropriate conditions of confinement.

The second part will be a professionally staffed inspection program for all DRO detention facilities. There will be a contractor team at the DRO Headquarters to receive and analyze the inspection reports, conduct trend analysis and assist with scheduling. An initial pilot program will be two quality assurance reviews a week for the first 60 days.

The third part will be professional on-site compliance personnel located in each DRO Service Processing Center, Contract Detention Facility and Dedicated Inter-Governmental Support Agreement Facility. On-site compliance for the Small Inter-Governmental Support Agreement facilities will be on a regional basis. As with the inspection program, a contractor

team will be assigned to DRO Headquarters to support analytical processes. This program will also support contractual compliance review for contract detention facilities that utilize a performance based contract that use the ICE National Detention Standards.

b. Please explain what steps, if any, ICE is taking to improve access to medical care for immigration detainees at facilities operated or under contract with DHS.

We have worked with DHS to have DIHS formally detailed to DHS to support ICE's medical mission. This detail will allow us to provide even greater oversight of the DIHS work. I would also take this opportunity to highlight that many DIHS-staffed facilities are triple-accredited by ACA, NCCHC and JCAHO.

c. What mental health care services, if any, are provided to immigration detainees at detention facilities? How are those services evaluated?

DIHS provides a utilization review program for mental health admissions and employs a National Mental Health Regional Coordinator to facilitate the appropriate placement of detainees with significant and complex mental health conditions. DIHS also employs clinical social workers, psychologists and psychiatrists and has access to a network of community mental health facilities throughout the country. DIHS has also started implementation of tele-psychiatry services which incorporates video-teleconferencing and increases detainee access to psychiatric services.

I would also like to note that the mental health services provided at each of ICE's detention and contract facilities are reviewed by ICE NDS Compliance Unit, NCCHC, ACA and JCAHO.

d. Are there mental health screening procedures in place in detention facilities? What is the availability of mental health services for asylum seekers and/or torture survivors in immigration detention?

Screening for medical, dental and mental health needs are conducted within 24 hours of arrival to an ICE detention facility on all detainees regardless of the legal disposition of the detainee's case. This screening includes evaluation of the individual's medical, dental and mental health status. A health history is taken in the individual's first language by healthcare workers, through an interpreter if needed. ICE detention facilities afford access to qualified and trained mental health professionals to all detainees.

e. What types of trainings are given or made available in ICE and contract facilities to train facility staff on mental health conditions and on working with individuals who may be suffering from Post Traumatic Stress Disorder (PTSD) or other post-trauma ailments? If any training is being used, who is the audience and what is contained in those trainings? How often and how broadly are they used?

Ongoing annual mandatory training in suicide prevention and intervention are conducted for all ICE and contract detention personnel. Signs and symptoms of detainees that are displaying behavior that place them at risk for suicide have been printed in easy to read and carry identification cards and informational posters are displayed throughout the facility. All new employees also receive this training upon entry of employment at the ICE detention facility.

Alternatives to Detention

44. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 17), you stated that you planned to study Alternative to Detention programs and initiatives and "adopt measures that strive to ensure aliens released from ICE custody appear at their immigration hearings."

    a. Please describe any measures you have adopted since your appointment.

Unfortunately, the best measure to ensure aliens appear at immigration hearings remains to detain all aliens who pose a risk of flight.

However, since my appointment, we been working to improve its alternative-to-detention programs by, for example, exploring additional supervision technologies and partnering with the Executive Office for Immigration Review to fast-track alternative to detention participants through the immigration hearing process. We are evaluating pockets of success in the alternatives program to see whether there are things that can be adopted regionally, or even nationwide. Where appropriate, I have also encouraged use of this program in a broader way than previously done, for example, shipping a number of bracelets to a certain location to support a large worksite enforcement operation.

I have also sought additional funding and staffing for the alternatives-to-detention programs, and both have increased over the past two years. In FY 2007, Congress appropriated $43.6M, and FY 2006 Supplemental funding carried forward to FY 2007 in the amount of $10M. Currently, the alternatives-to-detention program funds allow ICE to maintain 147empolyees to serve this program throughout DRO.

    b. How have you ensured that alternatives to detention programs are administered by trained and experienced staff?

Both the Electronic Monitoring Program (EMP), and the Intensive Appearance Supervision Program (ISAP) are administered by trained and experienced staff, both within DRO and the contractors who perform many of the attendant services. The contracts governing work performed by non-ICE employees contain detailed terms relating to the education, training, and licensing of program staff. DRO case managers receive specialized training concerning ATD programs, to include ICE's established, written program policies.

Additionally, the current scope of the program and expansion plans underscore ICE's commitment to professionally executing this mission goal.

Preparations to announce a new solicitation for a supervision contract (the current EMP contract expires November 2007) are in progress, which will allow for greater usage and efficiency of the program. The new contract (expected performance as reported by Office of Acquisition Management is November 2007) will provide installation/enrollment services of electronic monitoring technologies; contractor conducted home visits; office visits for aliens; and contractor assistance in obtaining travel documents.

The ISAP is currently available in nine US cities: Philadelphia, PA, Baltimore, MD, Miami, FL, Delray Beach, FL, St. Paul, MN, Portland, OR, San Francisco, CA, Denver, CO, and Kansas City, MO. The ISAP currently has over 1,700 participants enrolled in the program with a capacity of 1,800 participants at any given time. Preparations are underway between the ATD program office and the ICE Office of Acquisition Management to expand the ISAP to three additional US cities: New York, NY, Los Angeles, CA, and Orlando, FL (expected performance as reported by Office of Acquisition Management is beginning of FY 2008. The New York and Los Angeles ISAP offices will have the capacity to supervise up to 1,000 participants at any given time at each office and the Orlando ISAP office will have the capacity to supervise up to 200 participants at any given time. This is an increase of 2,200 participants total or an increase of 55%.

Considering current program capacities and costs, DRO is providing alternatives to secure detention to approximately 8,200 aliens at any given time. When the new supervision contract is in place and the ISAP expansion is complete, DRO will have the capacity to provide an alternative to secure detention to approximately ten thousand five hundred 10,500 aliens at any given time. DRO is expanding the ATD program to encompass a larger portion of the non-detained docket, as current funding levels allow.

Significantly, these efforts show markedly increased effectiveness in improving compliance rates compared to regularly-supervised non-detained aliens. Not only is DRO providing an alternative to secure detention for aliens who may otherwise be held in custody until removed and assisting to manage the limited number of detention beds available, the ISAP has also proven to improve appearance and compliance rates among their participants. Currently, the ISAP reports a 98% total appearance rate at immigration hearings, a 94% appearance rate at final removal hearings, and an overall confirmed removal rate of 47%. (ICE recognizes, however, that the 92% removal rate of the detained docketed aliens as reported by the Office of Inspector General in 2003 suggests that detention is a more effective method of obtaining compliance with immigration orders.)

We will continue to expand the ATD program in cooperation with the ICE Office of Acquisition Management in conjunction with the appropriated funding level. The ATD program office will continue to seek other cost effective alternatives in addition to managing the programs currently in place.

45. The Committee understands that ICE has undertaken a number of pilot projects, such as the Intensive Supervised Appearance Program (ISAP) and Electronic Monitoring Program intended to allow ICE to release individuals from detention that do not pose a threat to the community yet ensure that they show up for immigration hearings.

    a. What have been the results of these pilot projects? What plans if any does ICE have to expand these pilots or make them permanent programs?

As discussed in response 44(b), ICE's alternatives-to-detention efforts show markedly increased effectiveness in improving compliance rates compared to regularly-supervised non-detained aliens. Not only is DRO providing an alternative to secure detention for aliens who may otherwise be held in custody until removed and assisting to manage the limited number of detention beds available, the ISAP has also proven to improve appearance and compliance rates among their participants. Currently, the ISAP reports a 98% total appearance rate at immigration hearings, a 94% appearance rate at final removal hearings, and an overall confirmed removal rate of 47%. Unfortunately, this removal rate is still much lower than the removal rate for aliens in detention, which is over 90%. DRO will continue to expand the ATD programs in cooperation with the ICE Office of Acquisition Management in conjunction with the appropriated funding level.

    b. To what extent has ICE explored other alternatives to detention that could ensure non-detained aliens appear for their immigration proceedings?

We are exploring additional alternatives that could ensure non-detained aliens appear for their hearings. We are also working to improve the bond process.

    c. What percentage of noncriminal aliens are provided secure alternatives to detention? Does ICE use clear guidance and definitions for who is eligible for secure alternatives to detention?

As a percentage, this number is difficult to discern because of the fluidity of aliens entering and exiting the removal proceedings process. The current enrollment in EMP is approximately 6,600 aliens, and the current enrollment in ISAP is approximately 1,700 aliens. Although these are relatively small numbers in terms of the total numbers of noncriminal aliens in removal proceedings at any given time, the expense of the programs necessarily limits the number of participating aliens. As funding is made available, ICE will seek to expand the formal EMP and ISAP programs. The criteria for participation are clearly set forth in written agency policy guidance.

I would also note that a significant alternative to detention is the bond process, and a large number of non-criminal aliens are given the option of securing their appearance with a monetary bond set by an immigration judge.

Asylum Claims

46. The U.S. Commission on International Religious Freedom's 2005 report found wide variations in releasing asylum seekers from detention prior to their asylum hearing, ranging from more than 90 percent detained in some locations to less than 10 percent detained in other locations. The Commission recommended that DHS issue regulations to promote consistency and to ensure that asylum applicants who meet the parole criteria are not detained unnecessarily. Asylum seekers may be detained pending decisions on their applications for protection, but are eligible for release from detention if they demonstrate a credible fear of persecution, community ties, and that they do not pose a security or flight risk[7]. The 2007 Report Card states that the Commission has received no response from DHS on this recommendation.

    Do you agree with this recommendation? If you agree, what steps are you taking or do you plan to take to implement it?

As previously indicated in my answer to Question 39(a), although a final, consolidated response has not been issued on behalf of DHS and all relevant components, ICE has established a dialogue with the Commission to address these issues. ICE has met with the staff of the U.S. Commission on International Religious Freedom regarding this issue. I have personally also met with members of the Commission to discuss ICE's progress.

Furthermore, ICE has met with other interested Non-Governmental Organizations (NGOs) regarding this issue and discussed possible alternatives. ICE is presently reviewing and considering suggestions from the NGOs and is also conducting our own internal review of the present procedures. After reviewing the Commission's report, I did have some concerns about the consistency of our parole process nationwide. Accordingly, ICE is also in the process of drafting a policy to address parole of arriving aliens found to have a credible fear of persecution in order to ensure a consistent approach to assessing parole requests among our Detention and Removal Operations Field Office personnel.

47. What is ICE doing to ensure that asylum seekers in detention are identified and considered for parole when they can demonstrate sufficient community ties and that they do not present a danger to the community?

In conjunction with the DHS Office of Civil Rights and Civil Liberties (CRCL), a training course to educate officers on the basics of asylum law and policy is being finalized. When that training course is released, ICE will ensure that all DRO officers will complete the course within a timely manner. Independent of these efforts, ICE has a course on its Virtual University training entitled "Understanding Cultural Differences."

48. In facilities where Legal Orientation Programs are not available to asylum seekers, how are they informed of their rights and responsibilities? How are they educated about finding legal assistance, community support, and navigating the asylum process? How are such services provided to those who do not speak English?

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[7] *See* INA Sec. 235(b)(1)(B)(iii)(IV), INA Sec. 236(a).

The ICE National Detention Standards govern numerous services provided to detainees relating to legal programs, rights, and responsibilities. The Access to Legal Material Standard requires that detainees have access to a law library, ensures facilities provide legal materials, equipment and document copying privileges, as well as opportunities and appropriate space to prepare legal documents.

To further assist detainees, ICE accommodates Group Legal Rights Presentations and permits authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law and procedures. ICE encourages such presentations, which instruct detainees about the immigration system and their rights and options within it. ICE requires that all facilities fully cooperate with authorized persons seeking to make such presentations.

ICE is working collaboratively along with the Department of Justice Executive Office of Immigration Review's Legal Orientation Program to facilitate these presentations.

Presentations may include: Group orientations; Individual orientations; Self-help workshops; Dissemination of legal orientation materials; and Programs to promote and facilitate pro bono representation for detained aliens who seek legal assistance through the legal orientation program. Presentations are given by on-site presenters, who must either be a licensed attorney, a Board of Immigration Appeals Accredited Representative or legal assistant/paralegal, a law student, a law school graduate, or a trained volunteer working under the direct supervision of such licensed attorneys or Accredited Representatives. If the detainee does not speak English, ICE has established arrangements with the DHS Interpreter Pool to provide interpreter services to all facilities that house ICE detainees.

49. What is ICE doing to ensure that people denied asylum but unable to be returned to their countries of last residence are being released consistent with regulations and with the Supreme Court's decision in *Zadvydas v. Davis.*

All post-final order aliens in ICE detention, including those denied asylum, are subject to a periodic custody review process. In determining custody status, ICE considers any potential threat to the community or risk of flight that the alien may pose as well as the likelihood of removal. In cases where an alien is unlikely to be removed within the reasonably foreseeable future, that alien is released under conditions appropriate to protect the public, pursuant to the Supreme Court's decision in Zadvydas v. Davis. Current ICE oversight programs, such as the recently implemented "Quarterly Review of Post-Order Aliens in ICE Detention" ensure that all aliens are processed according to regulations and policy.

50. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 33(2)), you stated that you would review the Detention Management and Control Plan (DMCP) to ensure that all immigration detainees are provided a safe and human environment. What was the result of your review? Did you find that the plan required some changes?

ICE continually strives to enhance our National Detention Standards Program and as represented, I have reviewed the Detention Management and Control Plan (DCMP), and taken a number of steps to ensure we continue to provide all immigration detainees with a safe and human environment.

Among other things, ICE is currently pursuing and developing the following initiatives to improve and support the DCMP program:

- *Ensuring independent internal management controls through the Detention Facilities Inspection Group (DFIG) within the ICE Office of Professional Responsibility (OPR). The purpose of the DFIG is to independently validate detention inspections conducted by DRO by performing quality assurance over the review process, insuring consistency in application of the detention standards, and verifying corrective action.*

- *Converting the ICE National Detention Standards (NDS) into a performance-based format, consistent with the new approach used by the America Correctional Association. The revised standards, practices, and outcome measures will enable ICE to not only monitor activities but also to measure outcomes over time.*

- *Striving to maintain a positive relationship with NGOs interested in immigration enforcement issues. ICE will utilize these existing relationships to specifically engage interested NGO representatives on the Detention Standards Compliance Program. Through a series of structured meetings, ICE will seek their constructive ideas for program improvement and transparency.*

- *Developing a system of management indicators to assist in oversight of ICE's rapidly expanding detention program. The Detention Management Indicator System (DMIS) will require Field Offices to track and report key detention information (e.g., overcrowding, triple bunking, assaults, suicides). The information will be collected at a national level via an automated system. The DMIS will provide ICE management with an improved level of "situational awareness" of the detention program and the ability to proactively identify and resolve potential operational problems.*

- *Reviewing ICE's secure and non-secure juvenile standards and developing family detention standards. As ICE's detention population grows, it also increases in demographic complexity. Certain populations (e.g., juveniles, families) within ICE custody require unique standards in order to meet their special needs. ICE is determined to ensure the special education, recreation, nutrition, health care, family relationship, and custody issues associated with these special populations are appropriately addressed.*

- *Increasing the transparency of the Detention Management Control Program by developing a semi-annual report on reviews conducted during the previous period. The report will identify facilities reviewed, deficiencies identified, corrective action taken, and general trends in service provider performance and the detained population.*

51. ICE employs victim witness coordinators/experts at both the headquarters and in field offices.

    a. Please explain the purpose and duties of these victim witness employees with respect to survivors of domestic abuse and survivors of human trafficking?

ICE employs a Victim Assistance Coordinator at ICE Headquarters and is in the process of recruiting additional coordinators. These staff members will oversee and manage the ICE Victim Assistance Program. ICE does not presently have full-time Victim Assistance Coordinators in field offices. Rather, ICE utilizes over 200 collateral duty special agents and officers to provide the statutorily mandated rights and services to victims in ICE investigations. ICE investigations include human trafficking, child sex tourism, child exploitation, child pornography, telemarketing, pharmaceutical fraud, identity theft, human rights abuse and genocide, and crimes occurring in 8,800 federal buildings.

The ICE Victim-Witness Assistance Program (VAP) is mandated by federal statute to enhance and protect the role of crime victims and witnesses in the federal criminal justice process and ensure that the Federal Government does all that is possible to assist victims of crime. The ICE VAP seeks to ensure compliance of all ICE entities/employees with laws concerning victims' rights and to facilitate victims' access to information and appropriate assistance. Victims' rights are codified at 18 USC § 3771 and the mandated services are codified at 42 USC §10607.

All crime victims involved in ICE investigations receive the standard statutory rights and services. In addition, victims of human trafficking are eligible for additional services such as immigration relief. ICE provides Continued Presence status for all trafficking victims sponsored by various federal agencies and ICE Victim-Witness Coordinators (VWCs) assist case agents with this process. (Continued presence is a form of short term immigration relief provided by the Trafficking Victims Protection Act of 2000.) VWCs also refer victims to social services agencies for direct services.

Domestic violence is seldom a federal violation and victims of those crimes are traditionally provided services by the local law enforcement agency investigating the violation or victim assistance staff from a District Attorneys' or State Attorneys' Office.

    b. Does ICE act on tips furnished by family members?

The Violence Against Women and Department of Justice Reauthorization Act of 2005(VAWA 2005) expanded protections for aliens seeking immigration benefits as crime victims. As a result, ICE operational units are required to follow new procedures when taking actions in cases involving aliens eligible to apply for VAWA benefits. ICE employees are prohibited from making adverse determinations of admissibility or deportability of an alien using information furnished solely by a victimizer, or a person living in the same household as the alien victim. The VAWA also prevents all federal agencies from disclosing information about

a victim unless certain circumstances are present. This section of the law is known as the VAWA confidentiality provision. Information provided solely by prohibited sources (e.g., the batterer, the perpetrator of substantial physical or mental abuse, or a human trafficker) must be independently corroborated.

VAWA 2005 requires the completion of a certificate of compliance where an enforcement action leading to a removal proceeding was taken against an alien at (1) a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization, or (2) a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is a T or U Visa victim.

ICE officers/agents who make arrests at any of the above sensitive locations based upon leads from possible victimizers must certify that they have independently verified the inadmissibility or deportability of the alien. ICE officers/agents must issue a "certificate of compliance" if an alien was encountered at a sensitive location and was issued a Notice to Appear. The certificate of compliance must be completed by the arresting officer/agent and may state: "I certify that I have complied with § 384 of the Illegal Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. § 1367)." Failure to complete a certificate of compliance may subject the officer and ICE to liability for violating the confidentiality provisions. In practical terms, prior to any enforcement action at any of the sensitive locations, ICE officers/agents have been trained to check with their Office of Chief Counsel (OCC) about the various legal ramifications of such actions.

ICE issued guidance to all field agents and all ICE attorneys regarding the new provisions for domestic violence victims.

c. Upon coming into contact with a victim of abuse or trafficking, does ICE detain the victim? If so, in what kind of facility? Does ICE issue a Notice to Appear?

When ICE agents and officers have knowledge that an alien is a victim of abuse or human trafficking, the victim is not usually detained. ICE takes into account the facts and circumstances of each individual situation. ICE reserves the right to initiate removal proceedings, where necessary and appropriate, including cases of serious crimes and national security. A Notice to Appear (NTA) is routinely issued to aliens when they are encountered, arrested, or processed by ICE agents. It is part of the standard processing procedure. However, in human trafficking cases, agents do not file the NTA with the Immigration Court. Instead, they process the victim for Continued Presence. Victims who receive Continued Presence are provided with employment authorization and parole or deferred action. If they are also cooperating with law enforcement agencies, they may also receive additional immigration benefits.

Alien Smuggling

52. Globally, alien smuggling generates illicit revenues totaling billions of dollars annually and is recognized as a significant and growing problem that can pose a serious threat to the security of the United States, a primary destination country. The formation of ICE has provided an opportunity to use financial investigative techniques to follow the money trail from smuggling fees as an effective means of dismantling alien smuggling organizations. In this regard, ICE reported total seizures of $7.3 million from alien smuggling fees in fiscal year 2004 and $7.8 million after the first 6 months in fiscal year 2005. By any measure, the amount of ICE seizures is minimal compared to the estimated illicit revenues.

What are you doing to increase ICE's effectiveness in seizing alien smuggling fees and related monetary assets of alien smugglers to dismantle their organizations?

Asset Forfeiture and Financial Investigations (AFFI) training is made available to agents in an effort to instruct how to locate and seize funds as part of any ICE investigation. Upon request, Cornerstone/Financial Programs provides investigative support to alien smuggling cases in order to exploit any financial elements of an investigation and promotes awareness of the potential for money laundering charges to be incorporated into these cases during domestic and international training.

In addition, we have formed the Extraterritorial Criminal Task Forces with the Department of Justice's Criminal Division to ensure that we are targeting the key alien smuggling organizations and bringing all appropriate charges, including financial charges, against these organizations.

53. ICE officials have said that much of the U.S.– related smuggling revenues may not be paid in this country or, if paid here, may be transported or transmitted abroad quickly. As such, federal efforts to combat alien smuggling by following the money trail frequently may present investigators and prosecutors with challenges related to identifying and seizing funds or assets not located in the United States. For example, none of the reported ICE seizures in fiscal years 2004 and 2005 were made overseas. What mechanisms are in place or could be in place to seize U.S.-related alien smuggling fees that are located or transferred abroad?

ICE regularly uses the Mutual Legal Assistance Treaty (MLAT) process or letters of rogatory in our law enforcement efforts that require overseas assistance. Were that process to prove inadequate in a particular case, the USA PATRIOT Act has enhanced ICE's ability to seize alien smuggling fees that are located or transferred abroad. Section 317, Long-Arm Jurisdiction over Foreign Money Launderers- gives the U.S. District Court jurisdiction over foreign persons, including a foreign bank that commits a money laundering offence in the United States or converts laundered funds that have been forfeited to the government. Section 319, Subpoena and Summons Authority Over Corresponding Accounts, provides that if money subject to forfeiture under U.S. law is deposited into a foreign bank and the foreign bank has a correspondent U.S. bank account, the government may seize and bring a civil

forfeiture action against the funds in the correspondent account. When considering the use of any of these international tools, we work closely with the Department of Justice to ensure that our efforts are coordinated and most effective.

Relationships with States and Localities

54. Section 287(g) of the Immigration and Nationality Act allows the Secretary of Homeland Security to enter into an agreement with a state or local government that would allow certain officers or employees of the state or local government to perform certain specified functions of an immigration officer in relation to the investigation, apprehension, detention, and transportation of aliens in the United States. The committee understands that only a few such agreements are in place.

    a. What is your view on authorizing state or local officials to perform the functions of an immigration officer?

I strongly support the 287(g) program and believe it is a valuable resource. The 287(g) program acts as a force multiplier for ICE and allows us to identify and remove criminal aliens that could previously have remained in the U.S. undetected. I believe that ICE needs to develop fuller law enforcement partnerships with state and locals, and that in many instances a partnership with ICE using programs other than 287(g) may also be most effective and best meet the particular needs of a state or local entity.

    b. How many agreements has ICE entered into? And how much funding is used to carry out these agreements?

As of July 20, 2007, ICE has entered into 21 Memorandum of Agreements (MOA). The 21 MOAs were funded with the 287(g) FY 2006, FY 2006/2007, and FY 2007 budget. We entered into four agreements in 2006 and 14 thus far in 2007. We are in the final stages of negotiations with 11 additional localities.

In FY 2006, the 287(g) program received 5 million dollars. To date, the 287(g) program has used $4,999,564 of the $5,000,000 budget received.

In FY 2006/FY2007, the 287(g) program received a 50 million dollar supplemental. To date, the 287(g) program has used almost $49,000,000 of the $50,000,000 supplemental budget received. ICE expects to spend all $50,000,000 before the end of the FY.

In FY 2007, the 287(g) program received 5.4 million dollars. To date, the 287(g) program has used $5,340,000 of the $5,400,000 budget received.

Recent analysis shows that it costs on average $17,556,282 to fully implement an MOA. This figure is based on 20 active officers averaging 240 arrests per officer per year. This includes startup and first year maintenance costs consisting of such items as detention, removal and bed space management, IT infrastructure and maintenance, OI/DRO personnel and support positions, training, transportation, and other elements.

c. What criteria, if any, does ICE require of a state or locality in order to enter into an MOU?

In terms of technical criteria, ICE requires the law enforcement agency to enter MOA, and an Inter Governmental Service Agreement (IGSA). The MOA defines the scope and limitations of the authority to be designated. It also establishes the supervisory structure for the officers working under the cross-designation and prescribes the agreed upon complaint process governing officer conduct during the life of the MOA. Under the statute, ICE will supervise all cross-designated officers when they exercise their immigration authorities. Once the scope of limitations of the MOA has been reached, I, as Assistant Secretary for ICE, and the governor, a senior political entity, or the head of the local agency may sign the MOA, requesting the cross-designation.

Each officer must be a U.S. citizen, have a current background investigation, a minimum two years experience in current position, have no disciplinary actions pending, and is required to complete and pass the ICE certified 287(g) course curriculum.

In addition, in terms of selecting a particular state or locality to participate in the program, ICE considers what 287(g) resources it has available to utilize, what ICE resources are in the area to support the program, and whether the needs of the state or locality can be met more effectively by an alternative program. Given the cost of the 287(g) program to implement and the limited number of ICE resources on the interior of the country, we are unable to have a full 287(g) program in every locality that requests this program.

d. What training does ICE provide to state and local law enforcement charged with immigration duties?

ICE requires a Jail Enforcement Officer to complete four-week training course and a Task Force Officer to complete a five-week training course.

e. Under what circumstances should state or local officials be allowed to perform immigration officer functions?

A 287(g) state and local officer is allowed to perform the functions authorized by the MOA. The MOA dictates when and how the officer will be authorized to enforce immigration law. All enforcement actions must be conducted under the direct supervision of ICE.

f. What functions should they be allowed to perform?

287(g) officers will be allowed to perform immigration law enforcement functions pursuant to the MOA, and all functions are conducted under the direct supervision of ICE officers. Generally, ICE is entering into two types of MOAs: jail agreements and task force agreements. The jail agreements provide for the use of 287(g) authority in jails, and the task force agreements provide for the use of this authority in an ICE-led task force environment.

g. How has the implementation of these agreements helped ICE with regard to enforcing the immigration laws of the United States?

The implementation of 287(g) programs has improved ICE's relationships and builds stronger partnerships with state and local entities while identifying and apprehending a larger portion of the criminal alien population.

h. Which cities and states are currently participating in the 287 (g) program?

While we are in the final stages of negotiating an additional 11 MOAs, ICE currently has 21 signed MOA's with the below-listed participating law enforcement organizations. ICE has trained 416 state/local law enforcement officers through the 287(g) program.

AL	*Alabama State Police*
AZ	*Arizona Department of Corrections*
AZ	*Arizona Department of Public Safety*
AZ	*Maricopa County Sheriff's Office*
CA	*Orange County Sheriff's Office*
CA	*Los Angeles County Sheriff's Department*
CA	*Riverside County Sheriff's Office*
CA	*San Bernardino County Sheriff's Office*
CO	*Colorado Department of Public Safety*
CO	*El Paso County Sheriff's Office*
FL	*Florida Department of Law Enforcement*
GA	*Cobb County Sheriff's Office*
MA	*Department of Corrections*
NC	*Alamance County Sheriff's Office*
NC	*Gaston County Sheriff's Office*
NC	*Mecklenburg County Sheriff's Office*
NH	*Hudson City Police Department*
TN	*Davidson County Sheriff's Office*
VA	*Herndon Police Department*
VA	*Rockingham County Sheriff's Office*
VA	*Shenandoah County Sheriff's Office*

55. There have been ongoing debates as to whether local law enforcement officials should take a more active role in enforcing civil immigration law within our borders. One major component of the debate is whether enforcing civil law would be detrimental to community-based policing. Another is whether ICE has the capabilities and resources to detain those arrested or held by local law enforcement for possible civil immigration violations.

a. What is your view on the appropriate role of local law enforcement in policing violations of civil immigration law?

In 2002 the Department of Justice, Office of Legal Counsel found that federal immigration law does not prohibit state and local police from enforcing the civil provisions of the Immigration and Nationality Act. However, a state or locality can restrict such enforcement. Certainly, I am in favor of law enforcement working together to enforce both civil and criminal laws in furtherance of the integrity of our system of justice. It is my hope that where state and local law enforcement officials become aware of persons or entities who are committing violations that fall within ICE's enforcement jurisdiction, they will so inform us so that we can consider appropriate action. I believe that the partnerships we continue to forge with state and local law enforcement will continue to strengthen overall law enforcement for the benefit of the American people.

b. How have you addressed this issue during your tenure as Assistant Secretary?

I have tried to work productively with state and local law enforcement and address the needs they face, knowing that ICE is not funded to be able to respond to every inquiry by local law enforcement.

Child Trafficking Victims

56. Section of 107(b) of the Trafficking Victims Protection Act (TVPA) explicitly exempts child trafficking victims from being required to cooperate with law enforcement for purposes of receiving Department of Health and Human Services (HHS) benefits and services. The rationale is that such a requirement would inhibit child trafficking victims from coming forward.

    ICE is reportedly requiring child trafficking victims seeking emergency services from HHS, such as housing and psychological care, to consent to cooperate with law enforcement. This requirement would contravene with the existing statute. Is ICE requiring this consent to cooperate from child trafficking victims? If so, do you believe it is in contravention of the TVPA? If not, please explain.

Contrary to these reports, ICE does not require children younger than 18 years of age to cooperate in order to obtain HHS benefits. Cooperation with law enforcement agencies is only required for adult victims to receive HHS public benefits and services. It should also be noted, adult victims are not required to cooperate in order to receive Continued Presence. All ICE officers and agents receive training materials that clearly articulate this policy.

To date, 9,427 ICE employees completed training via the ICE Virtual University on all aspects of TVPA, including child trafficking victim policy. Officers and agents within the OI and DRO offices are required to receive TVPA training online. In addition to agents and officers that must train in TVPA, the program is available to other ICE employees, including personnel in the Victims Witness Program and in OPLA.

ICE OI also offers a training Power Point on the OI Proprietary Website (CTF-CPTU) that clearly states that child victims do not have to cooperate to recieve services.

Violence Against Women Act (VAWA)

57. In response to accounts of undocumented survivors of domestic abuse being arrested, detained, and/or deported by ICE or CBP, you instructed the Office of Principal Legal Advisor (OPLA) to issue field guidance on VAWA confidentiality laws. In late 2006/early 2007 ICE Headquarters distributed that guidance to ICE employees including chief counsels, victim witness coordinators, and others.

    a. Will this guidance be applicable to CBP employees? If not, what is ICE doing to ensure that CBP receives this guidance?

ICE OPLA's field guidance primarily focuses on changes to the Immigration and Nationality Act through the passage of VAWA 2005. The new changes in the bill affected primarily the work of ICE, specifically the handling of aliens in removal proceedings. CBP employees handle primarily expedited removal cases. Those cases within CBP's jurisdiction which are not subjected to expedited removal are transferred into ICE's jurisdiction.

DRO and OI field guidance, "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005," specifically relates to the expansion of confidentiality protections of the VAWA 2005 and the legislation requirement that ICE issues a certificate of compliance in certain circumstance for aliens subjected to removal proceedings.

ICE is not opposed to CBP receiving such guidance; however, it will not be as applicable to CBP employees.

    b. What training, if any, is ICE Headquarters conducting to train ICE employees on this new guidance?

OI and OPLA conducted training in February 2007 directly relating to the guidance. OPLA's training focused specifically on the intricacies and operations of VAWA's new amendments upon our Offices of Chief Counsel. OI has also trained several Victim-Witness Coordinators through its Victim-Witness program.

Additionally, OI and OPLA published VAWA materials in May 2007 which are being used for training ICE employees through the Office of Training and Development. These materials are currently available on ICE's Virtual University for ICE employees to access online.

58. Since 2000 the Immigration and Nationality Act has permitted persons eligible for VAWA relief (self-petitioning or cancellation of removal) to file one VAWA motion to reopen their removal/deportation proceedings. The filing of a VAWA motion to reopen triggers a stay of removal provided that the person is a "qualified alien." Immigration practitioners have reported that their VAWA clients are being arrested and some deported, even after a VAWA motion to reopen has been filed.

a. What is ICE's detention and removal policy with respect to people who have a pending VAWA motion to reopen? With respect to people who are preparing to file a VAWA motion to reopen?

ICE is following guidance issued in January of this year entitled "VAWA 2005 Changes to the Immigration and Nationality Act." This guidance reflects that the new INA § 240(c)(7)(C)(iv) imposes an automatic stay from the date of the filing of a motion to reopen that demonstrates prima facie eligibility until the Board of Immigration Appeals has adjudicated a motion to reopen based on the VAWA. Thus, ICE attorneys who handle a VAWA case involving an alien subject to final order of removal in which a motion to reopen has been filed are required to immediately contact the local DRO office to advise that a stay is in place and the alien cannot be removed.

b. Does ICE treat VAWA-eligible persons any differently than persons with final removal orders?

ICE officers have also been advised to use discretion in handling all sensitive cases, including those of aliens with final orders or who may ultimately benefit from VAWA. Specifically, ICE officers have been advised to apply principles of prosecutorial discretion in cases of aliens encountered at sensitive locations. ICE officers have been trained in the specific conditions, restrictions, procedures and types of adjustment of status applications and to understand the limitations of and eligibility for these particular benefits. ICE officers use such information to determine if removal proceedings should be either commenced or deferred to allow the alien to pursue any benefit for which they may be eligible. In addition, such information is used by ICE officers to determine whether to detain or release aliens.

c. What guidance has ICE Headquarters developed to instruct ICE employees on VAWA motions to reopen and relevant detention, removal, and enforcement policies and procedures?

In January 2007, ICE OPLA published "VAWA 2005 Changes to the Immigration and Nationality Act" and ICE DRO and OI published "Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005." Both of these memoranda are used to instruct ICE employees on VAWA motions to reopen and relevant detention, removal, and enforcement policies and procedures.

In addition, OPLA and OI published training materials online for ICE employees on VAWA related issues. While this training is not currently required, over 7,000 OI agents and DRO officers have taken the course thus far. These training materials were introduced in May 2007 and are available to ICE employees via Virtual University. The training is also available to ICE Office of Principal Legal Advisor attorneys, whose numbers are not reflected in the 7,000 above.

Employment Verification and Worksite Enforcement

59. It has been estimated that at least 12 million undocumented aliens may live in the U.S. It is well recognized that the vast majority of undocumented aliens come to the U.S. for employment purposes. It is also well recognized that the employment verification process established by the 1986 immigration law to prevent employers from hiring undocumented aliens has had limited effect primarily due to undocumented aliens' widespread use of fraudulent documents to bypass the process, the number of documents that are acceptable proofs of identity, as well as, an employer's lack of effective verification mechanisms.

    a. What in your opinion should be done to enhance the employment verification process and/or the employer sanctions provisions of the law in order to prevent employers from hiring undocumented aliens?

Although we have made some strides in strengthening employer sanctions, there is much more to be done. The Electronic Eligibility Verification System (EEVS) provides a sound mechanism for verifying identity and work authorization and eliminating exploitation of the hiring process by unauthorized workers and unscrupulous employers. A nationwide mandatory EEVS for all employers would help employers ensure that they are hiring work authorized employees. The current civil sanctions regime is bulky and unworkable. A streamlined, expanded civil enforcement system with meaningful fines would allow ICE to utilize this mechanism. Finally, SSA has told ICE it can not legally share information in no-match letters. In my opinion, this should be changed in order to effectively verify work authorization and identification documents.

    b. Do you believe that increasing fines for employers who knowingly hire unauthorized workers, especially repeat offenders, is a step in the right direction towards solving the problem of illegal employment?

After evaluation of the past worksite enforcement practice of issuing an administrative fine, which many employers considered little more than the cost of doing business, ICE now focuses on criminal cases, and seeks to seize and forfeit the illicit proceeds gained from those employers who knowingly hire, transport and harbor illegal aliens in violation of the law. I believe that the serious nature of these forfeitures on culpable individuals will be a significant deterrent to those who may not share our goal of employer compliance. During current worksite enforcement investigations, ICE conducts parallel financial investigations to seek criminal and/or civil forfeiture against businesses and/or individual assets belonging to violators, thus removing the incentive to profit from an unlawful workforce. This approach is far more effective than previous administrative efforts and serves as an effective deterrent for employers who may be in violation of the employment eligibility verification statutes. I believe that this approach has a greater deterrent effect than the issuance of currently available administrative fines.

However, I am also convinced that a robust civil fine structure which carries sufficiently discouraging penalties would be an ideal compliment to criminal enforcement.

c. Do you feel that it is necessary to limit the number of identity documents used to prove employment eligibility, and have you worked with DHS to address this issue?

Yes. However, the quality of the underlying document issued is more important than the number of documents accepted. I am more concerned that the document presented was obtained with valid documents or issued providently.

d. Please describe how the Employment Eligibility Verification Program (EEVS), formerly the Basic Pilot, has impacted ICE operations, and whether you feel expansion of the program would benefit interior enforcement operations.

EEVS is the next generation of Basic Pilot which is currently being developed by USCIS and overseen by DHS. ICE field activities have not yet been impacted by EEVS, however ICE personnel are part of a working group meeting weekly to identify facts that will inform policy decisions and frame policy decisions for DHS leadership.

i. Should participation be mandatory for all employers? If so, how would ICE ensure the effectiveness of the system?

Participation should be mandatory. USCIS would be responsible for the effectiveness of the system, but ICE will play a critical role by investigating referrals from USCIS. In addition, ICE criminal investigations into document fraud and evading EEVS will be useful in assessing the effectiveness of the system, and determining whether additional modifications are necessary.

ii. How would implementation of a mandatory system affect ICE operations, and how many additional ICE agents would be needed to make the system work?

Presuming there are 7.5 million employers and USCIS scrutinizes 10% or 750,000, USCIS believes that 1% or 7,500 cases would be referred to ICE for investigation. USCIS cautions that they would only process one million employers a year, therefore applying the same formula, 10% would equal 100,000 and a 1% referral rate would produce 1,000 case referrals to ICE. Assuming that an agent can complete six worksite enforcement cases a year, over 1,500 new ICE agents would be required to comprehensively address the referrals.

60. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 22), you stated that you would "carefully review the merits of this [Basic Pilot Program] program." What have been the findings of your review of the Basic Pilot Program and did you make any recommendations for its improvement?

I believe EEVS is the best government-provided means available for employers to electronically verify the employment eligibility of their newly hired employees. EEVS removes the guesswork from document review during the Form I-9 process, virtually

eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers, and helps U.S employers maintain a legal workforce. Generally, EEVS is a voluntary program and is currently free to employers and is available in all 50 states. However, criminal investigations have revealed that it is relatively easy to subvert the Basic Pilot Program. We are increasingly seeing criminals design fraud to deliberately evade the Basic Pilot Program. As a result, we have worked with the Basic Pilot Program and industry to address this. The Basic Pilot Program is making a number of innovations for industry, and we are providing Best Practices for preventing id-theft at the workplace.

Additionally, USCIS and ICE are working collaboratively on worksite enforcement and all employers enrolled in the ICE Mutual Agreement between Government and Employers (IMAGE) are required to participate in EEVS. IMAGE is a joint government and private sector voluntary initiative designed to build cooperative relationships that strengthen overall hiring practices.

USCIS received $114 million in FY 2007 for the expansion and improvement of EEVS to better support an increasing amount of employers who are choosing to electronically verify the employment eligibility of workers. . EEVS is the next generation of Basic Pilot which is currently being developed by USCIS and overseen by DHS. ICE field activities have not yet been impacted by EEVS, however ICE HQ personnel are part of a working group meeting weekly to identify facts that will inform policy decisions and frame policy decisions for DHS leadership.

61. In December 2006, ICE undertook its largest-ever worksite enforcement action by conducting a 6-state raid of the meatpacking plants of the Swift Company and arresting over 1,000 workers. Clearly, this operation sent a signal to employers and undocumented employees that ICE is enhancing its interior enforcement operations. The negative aspects of this operation were also extensively covered in the media. For example, families were separated with some workers being flown to other states for detention, and some children were stranded for some time. In addition, local, state, and federal law enforcement branches of government complained that there had been no coordination between them and ICE.

    a. What steps has ICE taken to minimize separation of families and inhumane treatment of detainees?

While planning any enforcement operation, ICE gives considerable attention to conducting the operation as safely, efficiently and as humanely as possible, while being vigilant in our responsibility to enforce the law. Our operational planning includes contingencies for encountering individuals who may have minor children at home, special needs, and other medical or humanitarian concerns. During enforcement operations (from initial contact to the actual processing), agents inquire several times throughout the process if the detainee is the sole caregiver of a minor child or an elderly person. The respective questioning allows the individual being detained several opportunities to notify the agents of a particular humanitarian concern. In addition, ICE works in conjunction with the Department of Health

and Human Services, Division of Immigration Health Services to provide on-site, non law enforcement personnel who do both medical and humanitarian screening.

I would like to reassure you all that ICE fully investigates allegations of agent misconduct toward detainees.

b. What, if any, action has ICE undertaken with regard to the care and placement of children who were separated from their parents? Has ICE taken measures to reunify these children with their parents? Please describe any measures ICE has undertaken and if not, please explain why.

ICE takes extraordinary steps to address the issues of sole caregivers encountered in worksite enforcement operations. ICE always asks aliens whether or not they are sole caregivers, and if they are, absent statutory limitations, ICE works to provide a way for them to be held on an alternative to detention pending their immigration proceedings. In addition, for large worksite enforcement operations, ICE now works with non law enforcement agencies to have both health and social service screening done that may result in the segregation of children and parents. In many cases, the local ICE offices notify the local Child Protective Services in their area and work with the Department of Health and Human Services, Division of Immigration Health Services to provide this necessary support. ICE takes great care in ensuring the safety of everyone involved in enforcement operations, include those who, while not directly involved, are affected by the operations. In recent operations, ICE has provided a toll-free hotline to help families of those apprehended to locate their loved ones.

It is important to note that while the welfare of children is of great concern, ICE is charged with enforcing the law. In some cases, ICE may be statutorily mandated to hold a parent in custody pending removal. In these cases, ICE works with detainees to find a responsible family member or other adult to care for the child. Only in very rare instances is ICE compelled to refer children to State Social Service agencies for foster care. Upon removal from the United States, ICE ensures that any aliens are afforded the opportunity to have their minor children travel with them to their country of origin.

c. Have you conducted a "lessons learned" analysis of this operation? What do you think was done well, and what would be done better the next time?

ICE conducted a thorough "lessons learned" analysis of the Swift worksite enforcement operation. I reviewed the analysis and was pleased to learn that the operation was well planned and organized. ICE Headquarters and ICE Special Agents in Charge (SACs) had drafted an operational plan that included input from local authorities, and those cooperative efforts clearly contributed to the operation's success.

Additionally, a training video, processing guidelines and quick reference guides were provided to ICE agents points to expedite the processing of aliens. Specifically, the training video prepared the agents for the meat processing environment that they faced, as well as

potential safety issues that could arise while they were on-site. This enabled the agents to make appropriate preparations to maintain the safety of the staff and detainees.

Furthermore, humanitarian exception processing was well executed at all sites. The Arrest Site Leaders facilitated the efficient processing of the 98 persons with humanitarian concerns identified on-site. Additionally, the introduction of the toll-free hotline, which permitted families to locate loved ones apprehended during the operation, proved a successful measure in facilitating family communication.

After Swift, we continued to strive to make improvements in our worksite enforcement processing. ICE has established a playbook to be used for future worksite enforcement operations which provides officers with general guidelines and best practices, as well as specific check-list items that need to be addressed prior to the executive of an enforcement operation. Some of these items include internal coordination with the Office of the Chief Information Officer to ensure that the operation has sufficient processing resources in place to quickly process alien. Other items include coordination with local officials and social service agencies and preparing a comprehensive humanitarian plan. For example, in Operation United Front in New Bedford, Massachusetts, we built on each of the successful practices established in Swift and provided apprehended detainees with cellular telephones and dual-language instructions for contacting the Department of Health and Human Services to request assistance with humanitarian concerns. During Operation Set Sail in Baltimore, Maryland, we arranged for Department of Health and Human Services representatives to be at the processing sites so that detainees could bring any humanitarian concerns to their attention immediately and directly. Each operation teaches us how to build on our operational practices in ways that minimize the worry and disruption to the aliens and their families, while continuing to safely but diligently enforce the laws against those who would break them. We will continue to strive for excellence in both law enforcement and the care of those encountered.

d. Given the millions of illegal workers in the U.S. today, what criteria does ICE use to select the handful of establishments that are the subjects of such raids?

ICE pursues leads of criminal wrongdoing in worksite enforcement investigations, as well in other programmatic areas. In determining which cases will be prosecuted, ICE pursues those cases that will be the most likely to result in criminal prosecutions, seizure of assets and overall deterrent effect that will result from the investigation.

In the Swift operation, it is important to note that the majority of the 1,274 aliens arrested were using identification of real U.S. citizens.

e. Does ICE plan to continue the use of large-scale raids on suspected worksites?

Yes. ICE will continue to enforce the law and utilize all available tools and resources available to do so. ICE continues to investigate and conduct enforcement operations in criminal worksite investigations on companies with small, medium, and large workforces.

62. On June 6, 2007, ICE launched a fugitive immigration enforcement operation in New Haven. The Committee was informed that several homes were raided and 31 individuals were apprehended. Troubling reports surfaced about the manner in which this enforcement operation was conducted. ICE informed the Committee that after an initial review of this enforcement action it did not find any problems with the manner in which it was conducted but that a more thorough investigation was underway. Has this more thorough investigation been completed? What were ICE's findings?

The Special Investigation Unit (SIU) of the ICE Office of Professional Responsibility conducted an investigation into the complaints made regarding the fugitive operation in New Haven Connecticut. The SIU assessment found that there were no instances of employee misconduct involved in the operation. The SIU also found that the DRO employees acted in a professional and courteous manner and that the operation was well orchestrated.

63. In the past year, ICE has assigned a higher priority to enforcing the prohibition against knowingly employing aliens unauthorized to work in this country.

a. What portion of worksite enforcement activities are high risk critical infrastructure sites?

ICE considers the access to critical infrastructure sites by unauthorized workers a significant national security and public safety vulnerability. As such, ICE aggressively pursues critical infrastructure leads. As part of its critical infrastructure protection efforts, ICE has undertaken enforcement actions to remove unauthorized workers from critical infrastructure sites, as those unauthorized workers may pose a threat to sensitive facilities.

ICE investigations of critical infrastructure sites account for approximately 38% of ICE's worksite enforcement investigations. With the ultimate goal of removing unauthorized workers from critical sites, ICE considers the access to critical infrastructure sites by unauthorized workers a significant national security and public safety vulnerability and as such aggressively pursues all critical infrastructure leads.

Critical infrastructure investigations have been a significant part of the overall increase in worksite enforcement that has resulted in increases in both administrative and criminal arrests over the last three years. Administrative arrests for FY 2005, FY 2005, and FY 2007 through June 30, 2007 are 1,116; 3,667 and 3,586 respectively. The numbers of criminal arrests are 176, 716, and 701, respectively.

b. Do you believe the current level of fines imposed on employers for knowingly hiring unauthorized workers should be increased? Please explain your answer.

Yes. While the current statutory level of fines is insignificant, the actual amount typically imposed on employers is often significantly lower. Historically, fines were mitigated to pennies on the dollar. This resulted in administrative fines amounting to nothing more than another business expense. As a part of the proposed immigration bill we looked at

administrative fines and worked on reinvigorating the process to make it less cumbersome on ICE personnel and easier to collect the fines levied. I have reviewed the penalties and believe that criminal forfeiture is a much stronger deterrent and results in a far greater penalty than administrative fines alone.

Weapons of Mass Destruction

64. In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 43), you stated that you would "assess ICE roles and responsibilities (in cooperation with CBP) in providing border enforcement and ensuring that weapons of mass destruction do not enter the United States." What are the findings of your assessment?

In my view, our role is to work with CBP and other agencies to ensure weapons of mass destruction (WMD) and other dangerous items do not enter the country, as well as ensure component parts do not leave the country and get into the hands of those that seek to harm us.

For over 25 years, ICE, through one of its legacy agencies, has led the U.S. Government's effort to investigate criminal violations of U.S. export control laws. ICE Arms & Strategic Technology Investigations Division (ASTI) develops investigations through its broad authority in enforcing U.S. export control laws and regulations. ASTI's priority initiatives address the illegal procurement and movement of weapons of mass destruction (WMD) materials and components, including the smuggling of nuclear, chemical, and biological materials into and out of the U.S. Further, ASTI initiatives include investigations involving the illegal export of controlled dual-use commodities regulated by the Department of Commerce and arms, munitions and military equipment regulated by the Department of State. ASTI initiatives also include enforcement of Department of Treasury sanction violations involving transactions with proscribed or embargoed countries and groups. In addition to export authorities, ASTI utilizes its warrantless border search authority, money laundering statutes, undercover operations, immigration authorities and 56 foreign attaché offices in pursuing the most thorough enforcement of U.S. export laws.

In addition, ICE has participated in other intelligence mechanisms to prevent WMD and other items from coming in to the U.S. For example, during 2005, Laredo, Texas, and neighboring Nuevo Laredo, Mexico, experienced a significant increase in murders and kidnappings. These violent crimes were often associated with underlying criminal activities, primarily drug smuggling, human smuggling, arms trafficking, and bulk cash smuggling. In response to the increased violence, ICE, in partnership with state, federal and local law enforcement officials, initiated a multi-agency operation called the Border Enforcement and Security Task Force (BEST).

In 2006, Department of Homeland Security (DHS) Secretary Chertoff adopted the BEST initiative to leverage federal, state, local and foreign law enforcement resources in an effort to identify, disrupt, and dismantle organizations that seek to exploit vulnerabilities in the border and threaten the overall safety and security of the American public. The concept of the BEST is that ICE, Customs and Border Protection (CBP) and DHS Intelligence and Analysis (DHS I&A) personnel work cooperatively with other law enforcement entities to take a comprehensive approach towards combating criminal organizations. In January 2006, the BEST concept was implemented in Laredo, Texas, and, subsequently, BEST task

forces were established in Arizona (3/16/06), El Paso (10/11/06), San Diego (11/03/06) and the Rio Grande Valley, Texas (3/07/07).

The BEST task forces are comprised of the following agencies: ICE Office of Investigations (OI), ICE Intelligence, ICE Detention and Removal, CBP Office of Border Patrol (OBP), CBP Office of Field Operations (OFO), the Drug Enforcement Administration, the Alcohol Tobacco Firearms and Explosives (ATF&E), the Federal Bureau of Investigations, and state and local law enforcement agencies. The Policia Federal Preventiva, Mexico's national law enforcement agency, also participates in the BEST task forces.

Identifying, disrupting and dismantling criminal organizations attempting to smuggle weapons of mass destruction is a primary focus of all BEST task forces. From inception through July 16, 2007, BEST task forces have been responsible for the seizure of 309 weapons, 4 silencers, 12 explosive devices and approximately 123,212 rounds of ammunition. Due to the success of the BEST task forces along the Southwest Border, the program will be expanded and replicated along the Northern Border.

In addition, a new initiative enhancing current efforts of ICE, CBP, ATF&E and Mexican law enforcement targeting the illegal movement of weapons and ammunition across the Southwest Border is being initiated.

Immigration Fraud

65. Concern that ICE is investigating too few immigration benefit fraud cases is a long standing issue. The Government Accountability Office found that in 2005, for example, that USCIS referred 2,289 immigration benefit fraud cases to ICE, but ICE accepted only 26% of those cases for ICE investigations. Recognizing that ICE's investigative resources are limited, the failure to investigate cases of suspected immigration benefit fraud referred to it by USCIS may allow an alien who has criminal or terrorist ties to be erroneously granted a work permit, permanent residency, or U.S. citizenship.

    a. What criteria does ICE use to determine which cases to investigate?

Document and benefit fraud crimes are perpetrated by a variety of criminals, such as gangs, attorneys, corporations, and multi-million dollar criminal enterprises. ICE's goal is to disrupt and dismantle the large organizations that facilitate fraud. SAC offices are encouraged to dedicate resources to cases that will result in significant prosecutions and/or seizures. That being said, there are no restrictions that prevent ICE SAC offices from investigating smaller cases, which can provide valuable intelligence and evidence of larger organizations and conspiracies.

    b. Please comment on your priority to investigate benefit fraud cases, and on any changes you have made to improve communication and coordination with USCIS in investigating these cases.

Benefit fraud cases are a high priority for ICE OI and as such, I have worked to ensure that ICE has improved both its communication and coordination with USCIS in various ways. Two notable efforts described below are the Memorandum of Agreement between ICE and USCIS regarding benefit fraud and the establishment of the Document and Benefit Fraud Task Forces.

In February 2006, ICE entered into a Memorandum of Agreement (MOA) with USCIS regarding the investigation of immigration benefit fraud. This agreement emphasizes the commitment of both agencies to work together to combat benefit fraud. The MOA clarifies each agency's respective roles and responsibilities and provides procedures for how benefit fraud information should be referred. The guidance provided in this MOA has made it easier for both ICE and USCIS personnel to perform their jobs efficiently and effectively.

In April 2006, ICE announced the establishment of 11 ICE-led Document and Benefit Fraud Task Forces (DBFTFs). These task forces build upon existing partnerships to bring personnel together from a variety of agencies with expertise in different aspects of document, identity and benefit fraud. One of the goals of the DBFTFs is to target, seize illicit proceeds of, and dismantle the criminal organizations that threaten national security and public safety and address the vulnerabilities that currently exist in the immigration process. In April 2007, ICE expanded the DBFTFs to six additional cities. USCIS is one of ICE's primary task force partners. I believe that the DBFTFs have fostered an environment in which ICE and USCIS personnel can gain a better respect and understanding for each other's responsibilities and work together to combat immigration benefit fraud.

c. In terms of investigative priorities and use of investigative resources, how have you ranked immigration benefit fraud during your tenure?

Document and benefit fraud are epidemic, international in scope, and are present in nearly all immigration and customs criminal-related activity. Fraud facilitates the entry into and continued presence in the United States of terrorists, human rights violators and other criminals. It underlies human trafficking and alien smuggling, enables the improper access of individuals to critical infrastructure worksites and the U.S. financial system, and shields status violators from detection. On October 18, 2005, as part of my Executive Nomination process, I stated that "I will seek to . . . strengthen ICE investigative efforts to attack the organizations that perpetuate and profit from illegal immigration." I have done this through initiatives such as the Document and Benefit Fraud Task Forces and the core part that DBF plays in ICE's interior enforcement strategy. I remain committed to this goal and believe that one of the ways that ICE works to attain it is through its enforcement efforts against document and benefit fraud. Since June 2003, ICE has initiated 17,000 compliance enforcement investigations, resulting in 400 arrests. In 2006, ICE completed 6,000 cases resulting in 1,710 arrests, an annual increase of 75% over 2005.

d. Does ICE need additional resources in order to conduct more investigations of USCIS fraud referrals?

Yes, with additional resources, ICE could increase the number of document and benefit fraud and identity theft investigations.

In addition to receiving referrals from USCIS, ICE receives information from the general public and other law enforcement agencies. Additionally, ICE develops its own fraud leads. As previously stated, ICE investigates not only immigration benefit fraud, but document fraud and identity theft as well, through the DBFTFs. The DBFTFs have proven to be an effective platform from which to launch anti-fraud initiatives using existing manpower and authorities. By leveraging the assets and experience of other participating agencies the DBFTFs represent a force multiplier for investigations. Interest in prevention of identity fraud and enforcement of immigration laws is strong throughout many law enforcement communities in the U.S. The DBFTFs provide an opportunity to build upon these mutual interests by building coalitions and partnerships.

ICE Benefit Fraud Units (ICE-BFUs) coordinate directly with USCIS Fraud Detection and National Security Units (USCIS-FDUs). The ICE-BFUs were established to identify and target at the earliest possible point, the most significant and egregious immigration benefit fraud violators, such as organizations and facilitators engaged in large-scale schemes involving multiple applications or individuals who pose a threat to national security or public safety. The ICE-BFUs provide ICE SAC offices and ICE Headquarters with leads and information relating to national security and immigration benefit fraud. Considering that these leads represent an unplanned workload that essentially competes for priority within an office's target-rich/resource-poor environment, it is essential that the information is well-organized and developed.

66. ICE's Forensic Document Laboratory (FDL) is the only federal forensic crime laboratory dedicated almost exclusively to document fraud detection. Each year DHS and other federal, state, and local law and non-law enforcement officials send thousands of documents suspected of being fraudulent to FDL for examination. Staff in DHS components such as U.S. Citizenship and Immigration Services (USCIS) and U.S. Customs and Border Protection (CBP), and staff in the Department of Justice's the Executive Office for Immigration Review (EOIR) reach out to FDL for assistance in determining whether certain documents presented by aliens are authentic because they are concerned about erroneously granting immigration benefits to aliens.

While the Forensic Document Laboratory is an invaluable resource in combating document fraud and protecting our national security, it is a small organization that does not have the staff and resources to meet the volume of demand for its services. Often, FDL cannot respond to requests that could help adjudicators decide cases, such as petitions for asylum. In addition, some believe that FDL should be moved organizationally out of ICE and into either the office of the Secretary of Homeland Security or to CBP. In part, this is because FDL's operational section is staffed by skilled CBP officers who have no opportunity for advancement at ICE.

a. The capability of FDL reportedly has been declining, as experienced intelligence officers who had gained familiarity with thousands of fraudulent documents in their previous positions as CBP inspectors at ports of entry have left FDL because there has been no opportunity for them to advance at FDL. What do you think needs to be done to increase the capacity of FDL?

The capability of the FDL has not been declining; however, it may seem that way since the focus of the FDL Operations Section has shifted. Due to changes outside of FDL control, more specifically, to the creation of the CBP Fraudulent Document Analysis Unit (FDAU), many documents previously sent to the FDL are now being sent to the FDAU. Similarly, the number of intelligence inquiries traditionally handled by the FDL has decreased due to CBP field locations calling the FDAU rather than the FDL.

FDL Numbers by Comparison

	FY 2005	FY 2006	FY 2007 (First 3Qs)
Intelligence Inquiries Completed:	5,435	5,232	3,268
Document Intelligence Alerts:	86	40	20
Students Trained:	1,984	3,144	2,686

The FDL has seen a dramatic increase in requests for training, however, in fraudulent document recognition, domestically and internationally. As the numbers show above, the FDL has been providing training to a significantly increased number of students in 2007.

Regarding the ability for employees to advance, FDL has opportunities for growth, especially for its intelligence officer positions. FDL Intelligence Officers can enter a journeyman track where they can advance to grade GS-14, or Senior Intelligence Officer. The grade level is based on the duties and responsibilities of the specific position, as is the case with most FDL positions.

Like all higher grade positions, the numbers of promotion opportunities decreases as employees reach more senior level positions. Currently at the FDL, there are three GS-15 positions within the Operations Section. These include the Section Chief and two group supervisor positions. Two of these positions have been filled within the last two years. Both positions were filled with internal candidates. Additionally, the number of intelligence officers at the FDL has remained fairly stable with most of the turnover due to retirement.

FDL Officer Positions

	FY 2004	FY 2005	FY 2006	FY 2007 (First 3Qs)
Senior Intelligence Officers:	14	13	9 (4 Vacancies)	10 (3 Vacancies)
Supervisory Intelligence Officers:	3	1	3	3

b. What is ICE's position on moving FDL out of ICE and into either CBP or the office of the Secretary of Homeland Security? Why?

I believe that the FDL should remain within ICE. The primary mission of the FDL is to provide forensic examinations of seized travel and identity documents to determine their authenticity and legitimacy. These examinations are completed by highly trained professional forensic examiners within the Forensic Section of FDL, while strictly observing all applicable rules of evidence. The examiners also routinely provide valuable expert testimony about their examination findings in criminal and administrative proceedings.

The two largest customers overall of the FDL are the ICE Office of Investigations (OI) for criminal cases and the ICE Office of Principal Legal Advisor (OPLA) for administrative cases. This is the primary reason the FDL should stay within ICE and specifically within the Office of Investigations. In addition to ICE OI and OPLA being customers, the FDL also provides a variety of services for numerous other federal, state and local investigative agencies. The Forensic and Operations Sections provide trainers and subject matter experts for both Department of State and Department of Justice programs. Publications produced at the FDL are distributed to over 800 law enforcement and border control agencies around the world. However, FDL, like most crime laboratories, is primarily an investigative service.

The FDL is comprised of two sections, the Forensic Section and the Operations Section. The Forensic Section, which is the larger of the two, conducts examinations on all material submitted to the laboratory. The Operations Section distributes information, provides training on fraudulent document recognition and distributes publications on fraudulent documents.

US-VISIT

67. Each year, millions of visitors, foreign students, and immigrants enter the United States on a legal temporary basis. Although the majority of visitors depart on time, significant numbers of visitors overstay their authorized periods of admission. US-VISIT is a multi-billion dollar, multi-year program intended to contribute to the integrity of the U.S. immigration system by, among other things, identifying foreign nationals who have overstayed their visas.

    In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 26), you stated that you had not had the opportunity to study the issue of addressing overstays until US-VISIT is operational.

    a. Having had the opportunity to study the issue what are your plans to work with other DHS components to successfully implement US-VISIT so that DHS can accurately count the number of overstays, identify foreign nationals who overstay or violate the terms of their visit, and enforce relevant laws and regulations?

I plan to continue to work with other DHS components on these matters. In fact, ICE currently works with the US-VISIT Data Integrity Group (DIG) through the Compliance Enforcement Unit (CEU) to obtain the most accurate reports regarding overstays. The CEU provides programmatic and operational (enforcement) support to the DHS nationwide enforcement effort of the US-VISIT Programs. Additionally, ICE maintains liaisons with US-VISIT to ensure that US-VISIT considers ICE enforcement goals when developing policy.

b. What are your plans to develop and implement a nationwide enforcement strategy for addressing overstay issues using the current entry and exit data available from US-VISIT?

In partnership with US-VISIT, ICE has implemented a nationwide enforcement program that addresses nonimmigrant visa overstays identified from entry and exit data collected from US-VISIT. The US-VISIT Data Integrity Group (DIG) provides the ICE Compliance Enforcement Unit (CEU) with information generated from the US-VISIT Unconfirmed Overstay Report. Due to the thousands of new unconfirmed violators reported each week, the CEU has provided the DIG its national security risk based criteria to identify overstays that potentially pose the greatest risk to national security. Overstay information received from the DIG is reviewed, and if determined to be viable, referred to an ICE field office for investigation.

Additionally, ICE recently completed plans and has begun to implement a comprehensive strategy to address nonimmigrant status violators who entered the United States pursuant to the Visa Waiver Program (VWP). Recent terror events, such as the London terror plots discovered in 2005, 2006, and this summer in 2007 amplify the need to identify potentially high-risk individuals from non-traditional terror producing countries. Under the VWP, more than 10 million entries into the United States are made each year. The VWP allows for citizens from participating countries, such as England, Italy, Germany, and France, to enter the United States with only a passport. Unlike non-participating countries, there is no initial screening process prior to entering the United States. In an effort to identify the potentially high-risk individuals from the more than 10 million VWP visitors, the CEU intends to partner with US-VISIT's DIG to incorporate VWP violations into the current nationwide enforcement program.

- *By the end of FY 2007 there will be 340 positions in the compliance enforcement program, which includes 54 appropriated in FY 2007.*

- *The CEU, in coordination with the FBI, CBP the Department of State (DOS) have taken steps to close potential vulnerabilities to national security by ensuring proper investigative actions are taken when DOS revokes a visa based on national security concerns. To date, visa revocation leads have resulted in 34 administrative arrests.*

- *Fingerprints of wanted foreign nationals, both domestic and international, are loaded into the US-VISIT biometric lookout database for border screening purposes. During the loading process, the fingerprints are run through all DHS Automated Biometric Identification System (IDENT) databases for prior DHS encounters. To date, biometric watchlist leads have resulted in 37 arrests.*

- *The CEU initiated the Interpol Initiative partnering with the ICE Office of International Affairs, the U.S. National Central Bureau of INTERPOL, and U.S. VISIT Mission Operations to obtain fingerprints of international fugitives for*

inclusion into the lookout database. To date, the CEU has assigned 64 Interpol leads to ICE field offices, resulting in 14 arrests to include murders and rapists.

c. What assessments have you conducted of the Compliance Enforcement Unit established to investigate immigration status violators? Have ICE staffing needs to address overstay issues been addressed by the creation of this Unit?

Since I have been at ICE, we have conducted two recent assessments of enforcement operations involving nonimmigrant overstays, foreign students, and SEVIS certified institutions. In addition, in November 2006, we completed an in depth review of its operations targeting visa overstays and visa waiver violators. Targeting visa violations more effectively has been an increased area of focus for me. With respect to staffing needs, ICE appreciates the additional resources we have been given in FY 2007.

Federal Protective Service

68. The Federal Air Marshals Service (FAMS) recently was transferred from ICE to the Transportation Security Administration (TSA). In response to the Committee's 2005 Pre-Hearing Questionnaire (Q. 42), you stated that this would not impact ICE's operations because the FAMS' duties have little connection to immigration or customs enforcement. The same could be said of the Federal Protective Service (FPS), which protects federal buildings. Should FPS remain part of ICE, or should it be transferred to elsewhere in DHS?

The DHS Secretary's Second Stage Review determined that FPS should reside within DHS' operational law enforcement agency within the DHS structure. There are three fundamental elements of an organization; administration, operations support, and operations. FPS, as an operational organization, should reside in the DHS component agency suited to provide administrative and operations support functions. ICE is the best agency to provide those functions for FPS. As such, the protection of federal property, employees, and interior security of the country is part of ICE's mission.

It is important to note that the source of funding for FPS limits its ability to provide assistance or service to ICE without full reimbursement of costs. However, FPS's role within DHS, and within ICE, provides the opportunity not only to cross-train personnel, but also to provide assistance in the development and implementation of the National Infrastructure Protection Plan as a sector lead for government facilities.

69. An audit of FPS' contract guard program in the National Capital Region (NCR) conducted by the DHS Inspector General (OIG 07-05) concluded that FPS was not consistently deploying qualified and certified contract guards, security contractors were not performing their security services according to the terms and conditions of their contracts, and FPS personnel were monitoring the contract guard system effectively. The DHS IG warned that these lapses could result in placing FPS-protected facilities, employees, and visitors at risk. What action has ICE taken, and what further action is needed, to address these serious concerns?

ICE has taken a number of specific actions to address concerns with FPS contract guard oversight and monitoring.

First, we established an Office of the Chief Financial Officer (OCFO) "Tiger Team" to assist FPS in addressing financial and acquisition management challenges and to recommend process improvements. The Tiger Team consisted of OCFO budget, financial management, and acquisition personnel.

The team focused on financial and acquisition management problems that had encumbered FPS and also identified other management and mission concerns. The work of the Tiger Team resulted in significant progress in financial and acquisition management over the past year. These changes have improved financial and acquisition management by boosting compliance with the Prompt Payment Act and applying increased training and resources to the contracting function.

ICE believes that its implementation of acquisition and financial management business process improvements has put FPS on firmer ground. However, we also understand that addressing management-related concerns is the basis for ensuring the successful implementation of FPS' mission to protect Federal facilities. To capitalize upon the first team's efforts, a second Tiger Team was formed in May 2006 to review FPS operations and structure. The six-member team was personally led by the Deputy Assistant Secretary for Management and included two other senior staff members of the Office of the Assistant Secretary and three senior staff members selected by the FPS Director. Tiger Team II's goal was three-fold: 1) clearly define the mission of the FPS, 2) focus its resources toward that mission to ensure a stable working environment; and 3) fully align FPS with ICE and DHS.

The efforts of both Tiger Teams I and II resulted in recommendations that became the foundation for the FPS Comprehensive Action Plan (Action Plan) that is now underway. The Action Plan focuses on internal controls and data integrity assessment activities, business process stabilization and improvement activities, as well as organizational refinement activities and change management.

Additionally, we have promulgated new polices and procedures that help our contact guard program managers. And, one year ago, there were no DHS certified Contracting Officer's Technical Representatives; today there are 162.

It is important to note that the source of funding for FPS limits its ability to provide assistance or service to ICE without full reimbursement of costs. However, FPS's role within DHS, and within ICE, provides the opportunity not only to cross-train personnel, but also to provide assistance in the development and implementation of the National Infrastructure Protection Plan as a sector lead for government facilities.

70. President Bush's fiscal year 2008 budget proposal would reduce the number of FPS officers and increase reliance on contract guards, reducing FPS personnel from about 1200 to 950 FPS positions, with approximately 15,000 contract guards, protecting

more than 8800 total properties. Contract guards are not law enforcement officers, and they have only citizen arrest powers.

a. Is the decision to reduce FPS officers a financial decision, or an operational decision based on risk assessment

i. If it was a financial decision, how will ICE ensure that downsizing FPS' workforce will not place the federal employees and visitors in federal buildings at risk?

The staffing proposal outlined in the President's budget was based on the proposed increase, and was developed to strike a balance between fiscal responsibility and operational resources needed to mitigate risk to an acceptable level. Over the last three years, FPS has been subjected to a shortage of funds. That shortage caused reductions and/or elimination of training, travel, etc. Congress has made the Department very aware that FPS must live within the fees collected and DHS has developed a plan to do this, while maintaining appropriate levels of security. The shift to an Inspector based workforce is not a DHS generated concept, but one which originated with GSA. In a 1998 study entitled "The New FPS," GSA sought to transform its police officer workforce into a hybrid position, known as the Law Enforcement and Security Officer (LESO), which could provide the full realm of physical security services and police services. The LESO position implemented by GSA is the same position as our current Inspector position. Accordingly, the move to an Inspector based workforce is an evolutionary movement.

ii. If it was an operational decision, please explain in detail how the smaller FPS force will provide the same or better security for federal buildings.

FPS's long term goal is to ensure that its workforce is operationally and geographically aligned to support mitigation of risk at Federal facilities. To accomplish this, FPS will expand its Inspector-based workforce and develop risk assessment and management tools that provide enhanced capabilities to manage the broad range of threats to Federal facilities.

b. Law enforcement officers can make arrests with probable cause, but a citizen arrest requires the individual to see the crime committed. Will a contract guard have to call 911 and wait for a response if he or she believes that someone has committed or is about to commit a crime on federal property, but has not seen any crime? If so, will that compromise the safety of federal buildings?

Contract Guards have the authority and capability to provide an immediate response to crimes in progress. While guards do not possess arrest authority, they have authority to detain individuals and protect themselves and others.

71. Increasing reliance on contract guards without arrest powers will place an additional burden on state and local police.

a. Has ICE assessed the additional costs that are and will be imposed on state and local police forces as most federal buildings do not have any officers with arrest powers on site?

With the exception of a limited number of exclusive jurisdiction locations, FPS has traditionally shared jurisdiction with local law enforcement, otherwise known as concurrent jurisdiction. Concurrent jurisdiction has been and continues to be a vital tool. Use of concurrent jurisdiction has also fostered positive relationships with all local and Federal law enforcement agencies over the past years. It should be noted that in most locations FPS has not had an employee onsite with arrest authority. Thus FPS is maintaining the status quo in the majority of locations nationwide. However, FPS will conduct focused reviews in those few locations where there may be an impact to ensure that appropriate response capabilities are verified prior to the final approval of the FPS staffing allocation.

b. Are ICE and FPS coordinating with state and local police departments to ensure that they are prepared and to minimize this burden?

FPS has been and continues to facilitate and coordinate law enforcement and response at all GSA-owned and -leased facilities. Local law enforcement agencies are aware of FPS' capabilities and regional staffs work concurrently with local law enforcement on a daily basis.

Intelligence

72. Having good intelligence information is key to ensuring our national security. ICE's Office of Intelligence covers a wide range of law enforcement areas, including (according to ICE's web site): human smuggling and trafficking; money laundering and financial crime; drug smuggling; terrorism; criminal aliens; air and marine smuggling; cyber crimes; identity fraud and document fraud; arms trafficking and technology transfers; commercial fraud; mass migration and conditions affecting immigration; security at federal facilities and other critical infrastructure sites; and airspace security.

a. What have you done to improve the ability of ICE to gather, analyze, and disseminate high quality, timely, and useful intelligence information to address these law enforcement areas?

I recently reorganized the ICE Office of Intelligence in order to improve the ability of this agency to provide the right intelligence to the right people at the right time. As a part of this reorganization, all programs within Intelligence were evaluated for mission relevance. Those programs that no longer served the ICE mission were either transferred to the appropriate DHS component or eliminated completely. In addition, the table of organization within Intelligence was improved to better support the full range of ICE responsibilities – the Office of Investigations, Detention and Removal Operations, the Federal Protective Service, as well as the Office of Principal Legal Advisor.

The Office of Intelligence is now structured in the following key intelligence programmatic core mission areas: arms and strategic technology; human smuggling and public safety; illicit finance, trade/contraband fraud (includes narcotics); and international affairs.

Also, a new division of Collection Management and Requirements has been created, which coordinates, manages and tracks intelligence requirements and requests for information throughout the ICE enterprise. In addition, the division evaluates requests to ensure that they are in accordance with the ICE mission and then tasks them to the appropriate ICE asset(s) and/or the Intelligence Community for processing.

The Office of Intelligence has also created the National Initiatives Support Branch to provide specialized technological services such as document exploitation to collect and exploit raw intelligence concerning Special Interest Alien trafficking. It also has available geospatial tools and the ability to provide visual analytics and to identify emerging information technologies that can enhance the intelligence and law enforcement capabilities of ICE.

Outside of Headquarters, Field Intelligence Groups (FIGs), reporting through the Intelligence chain of command, are now being formed and co-located with Special Agent in Charge (SAC) offices in the field. The function of each FIG will be to support the SACs with strategic intelligence. Under this plan, SACs and FIGs will work collegially in a more focused manner. The resources to form the new FIGs come from the six previous Field Intelligence Units. Ultimately, over the next several years, each of our 26 SACs will have a co-located FIG.

b. What challenges does ICE face in having an intelligence mission that overlaps with that of other agencies, particularly the FBI? How have you addressed these challenges?

The Office of Intelligence works closely with its DHS counterparts under the aegis of the DHS Office of Intelligence and Analysis's Homeland Security Intelligence Council (HSIC). Through the HSIC, Intelligence components throughout DHS work out overlap issues including issues involving outside entities such as the FBI.

73. In April 2007, the DHS IG observed that ICE and CBP could benefit from more collaborative intelligence activities, including joint intelligence products that give a more comprehensive assessment of border security. What mechanisms do ICE and CBP have in place to develop joint intelligence projects? To what extent are ICE and CBP intelligence personnel co-located? How many sites have co-located ICE and CBP personnel?

In February 2007, both CBP Commissioner Basham and I amended the existing "Joint Memorandum with the Border Patrol," recognizing that ICE and CBP need to "build" a structure and a process to share information that limits subjectivity and fosters the ability to manage information...OBP and OI intelligence personnel, as resources allow, will facilitate a joint intelligence effort that will comprehensively analyze available information and intelligence."

To foster the joint intelligence effort, ICE and CBP have identified eleven Border Patrol Sector sites where intelligence assets can be co-located. Of those eleven, seven are already functioning and two have plans to accommodate joint intelligence staff in the near future. Where it is not feasible or practical to enlarge current facilities or procure larger space, the Border Patrol participates in multi-agency intelligence units or operations.

Additionally, ICE participates in the Maritime Intelligence Center (MIC), in Miami. The MIC in turn is part of the Intelligence Fusion Center that is responsible for total maritime daily operations. The Miami Sector Intelligence Unit and ICE Intel are also members of the Joint Interagency Partner Group of the United States Southern Command. Also, the Tampa Border Patrol Station has ICE Special Agents assigned to its office and the New Orleans Sector plans to send an Intelligence Research Specialist to the ICE Field Intelligence Unit in New Orleans.

In addition to the specific shared intelligence assets listed above, DHS components have collaborated elsewhere to form multi-agency teams that optimize resources and achieve maximum effectiveness and efficiency. The South Texas High-Intensity Drug Trafficking Areas (HIDTA), the Integrated Border Enforcement Team (IBET), and the CBIG represent examples of these collaborative teams.

The ICE OI National Targeting Center (NTC) Special Agents coordinate and facilitate the exchange of information between CBP and ICE Joint Terrorism Task Force (JTTF) regarding terrorist threats to the U.S. interests domestically and abroad. In January 2007, the ICE Office of Investigations (OI) increased the permanent staffing of the NTC to three agents to provide coverage for the entire week. In support of law enforcement border security actions, ICE also has a permanent liaison assigned to the NTC Field Analysis Specialist to develop leads for referral and support for ICE investigations.

Also, the ICE Liaison Section provides the critical bridge between the ICE Office of Intelligence (ICE Intel) and CBP for documents and information collected by CBP during port encounters. Under this coordinated approach, all documents and information collected by CBP during port encounters are sent to the NTC.

CBP and ICE are partnering to format the NTC database for purposes of processing more efficiently and track investigative leads to the field. This process will allow ICE to track national security encounters, exchange and analyze information, provide statistical analysis of encounters and record investigative leads sent to the field.

The ICE OI National Security Integration Center (NSIC) consists of ICE OI Special Agents and Intelligence Analysts with representatives from other DHS components who conduct "operational" intelligence and threat reporting for ICE field offices. The NSIC currently includes full-time representatives from the Federal Air Marshal Service, USCIS, and the Department of State Diplomatic Security Service. ICE has reserved space for CBP to co-locate personnel within the NSIC at ICE Headquarters.

Efforts are underway to deploy the ICE Pattern Analysis Information Collection Tool (ICEPIC) to CBP, which will occur once system authorization requests receive approval from DHS. Information sharing is still occurring through the Treasury Enforcement Communications System and through the Intel Fusion Web site, as well.

Also in furtherance of closer collaboration and sharing of law enforcement intelligence, CBP and ICE Intel recently agreed to produce a coordinated "Border Snap Shot Summary" to meet the needs of both agencies. The summary will be a joint ICE and CBP Office of Intelligence analytical product detailing border activity of mutual interest, such as the analysis of regional and national smuggling trends, methods, and seizures.

ICE, CBP, and DHS Headquarters are discussing the development of an exchange policy between and among the component intelligence offices and DHS I&A. In June 2007, ICE detailed the Assistant Director of the ICE Office of Intelligence to DHS I&A for a 30-day rotation to develop a closer working relationship between ICE Intel and DHS I&A.

In February 2007, DHS I&A branch produced a report titled "Secure Border Initiative (SBI), Business Process Measurement Initiative (BPMI)," which analyzed current procedures for obtaining and utilizing intelligence from immigration detainees. The SBI/BPMI report recommended that ICE Detention and Removal Operations (DRO) increase its intelligence collection efforts at detention facilities and increase its current intelligence staffing levels from approximately 51 personnel in the field to 282 dedicated positions nationwide.

Additionally, DRO's intelligence office collaborated with CBP and ICE OI and ICE Intel to develop a training module called "ICE Human Intelligence Training (ICEHIT)" to further the collection of human intelligence. The training module includes debriefing techniques to ensure that those officers engaged in the interview of detainees receive consistent, standardized training on the interview techniques.

General Management

74. What is your approach to managing staff, and how has it developed in your previous management experiences?

My ability to gain the support of key career employees and to identify and recruit strong candidates for upper management positions has been critical to achieving results in current and past positions. At the Treasury Department, for example, I quickly recognized that some of the most knowledgeable subject matter experts in the office were routinely excluded from key decisions, which demoralized them and risked flawed decision-making. I sought to change this immediately. Bringing these experts into the decision process helped us achieve demonstrable results in the government's counter-narcotics and anti-money laundering efforts. I nurtured the same mutual trust and respect among career staff at the Departments of Commerce and Justice.

I have worked hard to do the same at ICE. On becoming the ICE Assistant Secretary, I made it a priority to develop a strong management team. I have recruited exceptionally qualified

career individuals for key positions within ICE, including the Deputy Assistant Secretary for Management, the Chief Financial Officer, the Office of Intelligence, Office of Policy, Principal Legal Advisor, and the Director of Detention and Removal Operations. These positions were either nonexistent or long vacant when I became ICE's Assistant Secretary, and these and other key staff management decisions have allowed the agency to make tremendous strides in not only financial and personnel management, but in fulfilling the operational mission of the agency. I have also sought to increase the Senior Leadership ranks as well, so that ICE has more senior managers handling our important tasks.

I think it is imperative to ensure that everyone in ICE understands the agency's mission and what is required of managers and employees alike to make the agency successful. To achieve this, I engage agency management and subject-matter experts on a daily basis, and foster regular communication with agency staff (see response to QFR #9). I believe I have created an environment in which the agency management and employees can make the greatest contribution of their talents and abilities to the greatest of federal agency missions: the effective protection of the nation.

Finally, I work to find agreed-upon metrics to measure performance and drive activity to show results.

75. Past GAO evaluations have highlighted significant management challenges relating to immigration and customs enforcement. For example, ICE has had problems in issuing uniform policies and procedures for some ICE operations, providing for effective information technology systems and information sharing, and developing and implementing shared administrative support services. What short-term and long-term steps are you taking to address these long-standing management challenges?

At my request, the ICE Office of Policy and Planning is currently engaged in the process of reviewing legacy policies and, as necessary and appropriate, revising them and issuing them as ICE directives. ICE has added an SES-level Director for this office and more than doubled its staffing to eleven full-time employees in less than a year, with three more joining in the coming months. We are actively recruiting more employees and plan to expand the office to a total of 25 personnel.

In addition, I have directed the Office of the Chief Information Officer to identify policies and procedures that streamline ICE operations. Below are some of the short and long term actions already taken or in the process of being implemented by our Information Officer in order to address past GAO concerns.

Short Term:

ICE is creating a new Web service called LInX that will expose information from its ICE Pattern Analysis and Collection System (ICEPIC) system. The LInX application will be modified to call this service in response to end user queries.

Many important features of the information sharing technical architecture will be included i this system, which include:

- *exposure of data using Web services*
- *specification of interfaces using LEXS/NIEM-compliant XML schema and WSDL*
- *secure and reliable transfers of messages between services and consumers*
- *enforcement of restrictions on access to data specified by MOU*
- *authentication, authorization and auditing of all requests and responses*
- *satisfaction of service level agreements for reliability and scalability*

Long Term:

In support of long term information sharing for the Department of Homeland Security, the target architecture will leverage technology that facilitates decoupling of service providers from service consumers, such as XML appliance technology and Enterprise Service Bus (ESB). Mediation and transformation technology can also make it substantially easier for service providers to expose data and will therefore be leveraged in order to accelerate service development and ultimately increase the breadth of information exposed for DHS reuse.

ICE expects to fully leverage the infrastructure and capability acquired through the ATLAS/ICE Mission Information (IMI) infrastructure program. The functionality and capability envisioned for DHS information sharing are very well aligned with the current ATLAS/IMI vision and planning. Once ICE has successfully integrated with regional law enforcement agencies and ESB infrastructure is in place, CBP and other components will begin to expose data using web services and likewise consume data from other agencies.

The objective of the Department of Homeland Security (DHS) Law Enforcement Information Sharing Strategy (LEISS) is to coordinate the array of law enforcement components that comprise the DHS Law Enforcement Shared Mission Community (LE-SMC), in order to leverage and enhance information sharing within DHS and among Federal, state, local and tribal (SLT), private sector and international partners. ICE is currently chairing the LEISS in order to better facilitate the information sharing environment amongst these entities.

DHS will also share information by establishing a common, unified approach for exposing information for reuse. This approach, and the technology established to implement the approach, will meet the needs established in the Intelligence Reform and Terrorism Prevention Act (IRTPA).

Additionally, DHS is embarking on a Regional Sharing Service (RSS) initiative that will deploy the required information sharing technologies and operating policies in compliance with the ISE's architecture framework. RSS is a follow-on effort to Increment 1 of the Mercury/Seattle Pilot. The purpose of RSS is to share information from ICEPIC with local law enforcement agencies in Seattle, WA, Laredo, TX, and Los Angeles, CA. ICEPIC provides matching and confirmation of integrated information from structured data sources in DHS databases.

76. In April 2007, GAO testified that it was having difficulties and delays in obtaining records from DHS in connection with its work to assist the Congress in its oversight responsibilities. Several of the examples cited in the GAO testimony involved difficulties and delays in obtaining records from ICE.

    a. Given the recent GAO testimony, what actions are you taking to improve GAO's ability to obtain records from your agency in a timely manner?

    b. Why has GAO experienced these delays under your leader? What will you do to improve these delays if confirmed?

Prior to my tenure, the process under which information requests by Government Accountability Office (GAO) and DHS Office of Inspector General (OIG) auditors were fulfilled reflected a programmatic area that was disjointed and required significant attention. I first recognized this upon assuming leadership of ICE and in January 2006, I began taking the steps needed to ensure the agency would be more responsive to external auditing entities such as GAO and the DHS OIG.

These initial steps included a detailed review and analysis by my executive staff, of all official responses to the OIG and GAO. Furthermore, I ensured that I reviewed/and or signed all official agency responses. Additionally, I conducted an assessment of the function's business processes, and an inventory of the entire audit portfolio. These efforts were underway when, in the April 2007 GAO testimony, instances were cited to Congress in which both GAO's auditors and ICE employees were responsible for the delays. Specifically, GAO sought inspectional reports that had not yet undergone full management review; they had not yet been published. Furthermore, due to litigation, the reports requested required legal review. In the instance regarding a redacted telephone contract, the redaction was done so in error and immediately corrected once discovered. It is important to note also that ICE was involved in an average of 40 Government Accountability Office audits involving the fulfillment of hundreds of requests by auditors for information, briefings, and interviews.

To ensure GAO as well as the OIG obtains the information it needs, I have chosen to realign the audit liaison function to the ICE Office of the Assistant Secretary in an effort to enable ICE senior leadership to be more fully engaged in the audit process and enhance visibility within the agency. The realignment was completed June 15, 2007 and on July 2, 2007, formal notification was sent to the Comptroller General and the DHS Inspector General to notify them of realignment, to reiterate my desire to facilitate access to ICE information and personnel, and to provide them with a direct contact for all audit concerns.

To further pursue my intent to improve transparency at ICE, on July 11, 2007, I signed an agency directive that established an Audit Liaison Office that will serve as a "one stop" resource for GAO and OIG auditors and inspectors. This policy reinforces the law and also the DHS management directives regarding GAO and the DHS Office of Inspector General. Further, the directive clarifies individual employee responsibilities for responding to auditor requests for information and establishes accountability across this important program.

I am certain that this new office and its improved business processes will improve access to the agency by auditors. As Assistant Secretary, I will continue my effort to ensure that a climate exists within ICE that ensures full compliance with the law and the need for Congress to receive information that is timely and relevant.

Personnel Management

77. What actions in your past executive experiences demonstrate your style and approach in the area of labor-management relations?

During the past 18 months, I have enacted a number of policies directly related to the enhancement of labor management relations. Some of these policies address concerns of consistent application of administrative actions within this agency. This includes the table of offenses and penalties that was negotiated with the union and is now applicable to all of ICE's bargaining and non-bargaining unit employees. I have also approved and implemented ICE's discipline and adverse action procedures that are specifically designed to ensure fair and equitable treatment of employees in administrative action matters. This policy has been implemented with the agency's non-bargaining unit employees and is currently being negotiated with the union so it applies to bargaining unit employees as well. To the greatest extent possible, I address new labor management relations policies as soon as practicable while at the same time giving the union full opportunity to negotiate procedures and appropriate arrangements for the implementation of such policies on bargaining unit employees.

I support an active labor-management relations program to enhance and ensure collective bargaining obligations are met and that ICE bargaining unit employees and unions are provided their respective rights under the statute. I have ensured collective bargaining with ICE's largest union, the American Federation of Government Employees (AFGE), National Council 118, and directed that a new labor agreement be negotiated. Insofar as the agency is operating on a legacy INS labor agreement, ICE and the union are in the process of defining the terms for a brand new Agreement relevant to the mission of a brand new agency. It is anticipated that negotiations be completed by end of FY 07. In fact, ICE is the first DHS entity to begin negotiations for a new agreement among DHS' respective components.

I personally met with AFGE's national president to discuss issues of importance to ICE employees and the union. I met with Mr. Gage in January 2007 prior to the anticipated release of proposed FY 08 budget that had a significant impact on FPS. I also encourage the appropriate offices within ICE to communicate with the respective union representatives to maintain a relationship and keep both parties informed of any changes.

I have also been conducting town hall meetings specifically aimed at informing employees of the current state of the agency and affording them the opportunity to ask questions directly. This gives me an opportunity to address employee concerns that impact groups of agency employees in ICE organizational elements, ICE employees as a whole, and individual concerns as well.

78. In a January article in *The Nation*, you were reported as saying at a University of Chicago Legal Forum in October 2006 that "we need to look at" unions' violations of the boundary between "charitable assistance and the unlawful employment of aliens.[8]" Is this article correct? What did you mean by this statement?

I was honored to address the University of Chicago's Immigration Law and Policy Symposium last October. I spoke about a variety of topics I felt would be of academic interest to the attendees at the symposium, including an overview of the laws ICE is charged with enforcing, the nuts and bolts of immigration – local control, local input and local involvement, the use of all applicable tools in immigration enforcement, and labor and employment issues, such as human trafficking and worksite enforcement, in immigration law.

I mentioned that I felt care needed to be taken by ICE during investigations of businesses where unions represent employees. In some instances, we had received reports of union officials selling fraudulent documents to illegal aliens and telling them how to hide the fraudulent documents if ICE came to the workplace. To be clear, as I stated at the Legal Forum, ICE recognizes that unions can play a useful role in helping to expose poor working conditions or other inappropriate conditions and we have no concerns with legitimate union activities to represent employees.

79. A 2006 Office of Personnel Management Survey of DHS employees that was reported in the Washington Post several months ago indicated that low morale is a problem at DHS. In most categories surveyed, DHS employees' attitudes were more negative than those expressed by their counterparts across the government. Many employees felt that promotions were not based on merit, creativity and innovation were not rewarded, they didn't have sufficient resources to get their job done, policies and practices of senior leaders were not satisfactory, and disputes and grievances were not resolved fairly.

a. How serious do you think these findings are for ICE?

I believe the findings of the Office of Personnel Management (OPM) Survey are very important to the morale and development of a new agency like ICE. Immediate actions have been taken by my office to identify the root causes behind some of these findings. We are focused on drilling down to the real reasons for some of these negative responses. Once we can identify which feedback was given by ICE personnel and the causes behind it, we can begin to address the shortcomings highlighted in the report.

b. What actions do you think should be taken to address the root causes of these problems and to improve employee morale at ICE?

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[8] Rick Perlstein. "Heck-of-a-job Myers?" *The Nation*. January 3, 2007. http://www.thenation.com/doc/20070108/perlstein

I have taken a number of actions to address the root causes of there problems. For example, I formed the Assistant Secretary's Advisory Group (ASAG), which is comprised of headquarters (HQ) personnel and field managers. In addition to other duties, the group was charged with examining these specific survey results and identifying solutions. The group is presently involved in that process in conjunction with candidates from the 2007 Management Development Program. The group also hosted breakout sessions at the recent ICE Leadership Conference. Approximately 150 Field and HQ managers participated in these brainstorming sessions, the results of which will be used by the ASAG in formulating a proposed action plan.

We also launched a recruitment initiative and Management Improvement Project. The Management Improvement Project has five significant initiatives including a policy task force and an ICE human resources process. These efforts directly address many of the issues identified in survey.

Lastly, one issue I believe many actions and policies that were in development at the time of the survey, and the absence of which impacted employees' lives on a regular basis, have been instituted. Examples include issuance of policies regarding, Awards, Retention, Recruitment, Relocation, Discipline and Adverse Action, and activities such as conversion of pass / fail performance works plans (PWPs) for non-bargaining unit members to performance based, multi-tiered PWPs.

80. The Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation used data from the Office of Personnel Management's Federal Human Capital Survey to publish rankings of the *Best Places to Work* in the Federal Government. The rankings drew on responses from more than 221,000 civil servants. Departments and agencies were ranked on employee engagement and workplace environment categories such as effective leadership, employee skills and work/life balance. ICE was among the 10 lowest ranked federal agencies in the survey of 222 agencies and agency subcomponents, and its score had dropped by six percent between 2005 and 2007.

    a. On "effective leadership" the agency ranked 208th out of 222 agencies, and on "strategic management" it ranked 213th. What is your explanation for these results? What actions have you taken to improve leadership and strategic management at ICE and to improve employee perceptions in those areas?

I believe that many of the actions ICE has taken in response to the Office of Personnel Management Survey will help to rectify the The Partnership for Public Service and American University's Institute for the Study of Public Policy Implementation concerns, as well.

With the creation of the Assistant Secretary's Advisory Group (ASAG), I have instructed ICE personnel to focus on survey results from both of these reports. The group will also work with candidates from the 2007 Management Development Program to create policies and procedures that will improve ICE's leadership and strategic management.

ICE also launched a recruitment initiative and Management Improvement Project. The Management Improvement Project has five significant initiatives including a policy task force and an ICE human resources process. These efforts directly address many of the issues identified in survey.

I have also led ICE to establish the Supervisory Leadership Training Program and issued policy mandating completion of the training. ICE established the Discipline and Adverse Action Panel which adds continuity and integrity to the discipline process.

b. On "performance based rewards and advancement" ICE ranked 218th. What is your explanation for this result? What actions have you taken to improve performance based rewards and advancement at ICE and to improve employee perceptions in that area?

Since the OPM survey, ICE has issued policies regarding Awards, Retention, Recruitment and Relocation. I believe these will help to improve employee perceptions in the "performance based rewards and advancement" areas. Additionally, ICE also hosts an annual ICE Awards ceremony, which I believe helps acknowledge employees for their hard work and boosts morale.

c. Have you developed a comprehensive strategy to address the weaknesses at ICE highlighted by this survey?

I believe that the programs mentioned both above and in my answer to Question 79 display the significant effort ICE has put forth to identify and lift the way employees of this agency see their workplace. I see this as an ongoing project on behalf of ICE to improve not only the way the American public sees the Department and this agency, but how we see it ourselves.

d. What would you attribute as the cause for decline in overall ranking for ICE from 2005 to 2007?

I personally do not believe there has been a decline from 2005 to 2007. The 2007 survey has not, as of yet, been issued and tabulated. As for the responses cited in the 2006 survey, I believe they reflected the difficulties faced by ICE in establishing its own identity. Many of the issues from 2005 and 2006 are no longer applicable. Problems such as the hiring freeze and lack of permanency in key management positions have been resolved. At that time, there were still lingering questions about the agency's ability to continue to exist as an agency. Although there is much work to do, I look forward to receiving the results of the 2007 survey. I believe that the survey will positively reflect the efforts taken and those underway by ICE management.

V. Relations with Congress

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

I agree, without reservation.

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

I agree, without reservation.

VI. Assistance

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

Yes, these answers are my own. I have consulted with DHS and with employees within U.S. Immigration and Customs Enforcement.

AFFIDAVIT

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

Julie Myers

Subscribed and sworn before me this 26th day of July, 2007.

Tracy Hyman
Notary Public

Notary Public - State of Nevada
County of Clark
TRACY HYMAN
My Appointment Expires
May 19, 2010
No: 86-1763-1

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

June 5, 2007

The Honorable Joseph I. Lieberman
Chairman
Committee on the Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Julie L. Myers, who has been nominated by President Bush for the position of Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated May 24, 2007, from Ms. Myers to the agency's ethics official, outlining the steps Ms. Myers will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of her confirmation date with any action she agreed to take in her ethics agreement.

Based thereon, we believe that Ms. Myers is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Robert I. Cusick
Director

Enclosures

Senator Joseph I. Lieberman
Additional Questions for the Record
Nomination Hearing of Julie Myers
September 12, 2007

1. Recently, news reports have surfaced about the practice of forcibly administering anti-psychotic drugs to immigration detainees in order to facilitate their deportation. ICE has reported to the Committee that psychotropic drugs are used to sedate individuals before they are placed on airplanes and deported. This practice has raised some concern about the appropriateness of using mind altering anti-psychotic medication on individuals who may not have a history of mental illness and who are refusing the medication, simply to sedate and deport them. It also raises a question about whether the practice conforms to existing ICE detention standards, which state: "medication shall not be used to subdue an uncooperative detainee for staff convenience. Medication must be prescribed and administered by licensed medical personnel, for Medical purposes only."

   a. How many medical escorts have been conducted since 2003 (please provide a breakdown per year)?

      The breakdown for medical escorts since FY03 is as follows:

      2003: 171
      2004: 239
      2005: 213
      2006: 254
      2007: 196 (as of 08/29/07)

   b. Of the medical escorts conducted how many detainees received psychotropic medications?

      According to the Department of Health and Human Services, Division of Immigration Health Services (DIHS), which maintains this data, from October 1, 2006 through April 30, 2007, 56 detainees received psychotropic medications during the removal process. Information prior to October 1, 2006, is not readily available at this time.

   c. Of the individuals who received the psychotropic medications: how many carried a pre-existing psychiatric diagnosis; how many requested voluntary medication administration; how many were forcibly medicated due to a history of, or actual demonstration of behavior problems; how many fit into another category?

      From October 1, 2006 through April 30, 2007, a total of 64 psychiatric and behavioral escorts were performed. Of these 64 detainees, 17 detainees were subject to a pre-existing psychiatric diagnosis. Of the remaining 47 detainees, eight detainees required no medications, and six detainees requested voluntary medication administration. The remaining 33 detainees received medication because of combative behavior, with the imminent risk of danger to others and/or self.

d. Do you believe that this practice abides by the current ICE detention standards? If so, why?

First, I am aware of, and deeply concerned about reports that past practices may not have conformed to ICE detention standards. This issue is now in litigation and under review within ICE. Medical escort duties are performed and medications are administered by the DIHS. However, any report or suggestion that the treatment of detainees in my care may not have met ICE standards is of great concern to me. Shortly after these reports emerged, ICE immediately reaffirmed that detainees should never be medicated solely to facilitate their deportation, and that except in emergency situations – those that present an imminent threat to the safety to the detainee or others – no detainee should be involuntarily medicated without a court order.

In an emergency setting, involuntary administration of medication for combative behavior is standard medical practice and in accordance with ICE policy. Medical escorts are requested by the ICE officers based on ICE standards. Medical escorts must be familiar with the alien's case in which they are involved and must have discussed the case with a physician and/or psychiatrist prescribing any medications. Each escort must receive specialized instructions in de-escalation procedures and appropriate administering of medications. The use of medications is a last resort reserved for combative behavior.

In cases where involuntary sedation is administered in a "non-emergent" situation, i.e., prior to arrival at the airport, the DIHS medical escort policy provides that sedation must only be administered when the escort personnel determine that the alien poses a safety threat to himself or others based on his prior combative behavior, whether by word or action. The current ICE policy further requires obtaining a judicial court order prior to involuntary administration of sedation.

e. Have you considered asking the Department of Immigration Health Services (DIHS), which will soon become part of ICE, to cease this practice until a full review of its compliance with ICE Detention Standards is undertaken?

As noted above, in non-emergency situations, current ICE policy prohibits sedation without a court order, thereby affording the detainee the protections of due process. In emergency situations, both the DIHS and ICE policies require that medical escorts only use sedation as a matter of last resort for combative behavior for the protection of the individual and those around him.

f. Does the prescribing physician examine each of the detainees immediately prior to the administration of the psychotropic medication?

In non-emergency situations, the prescribing psychiatrist or physician will review the alien's medical record prior to prescribing any medications. In some instances, the alien may also receive a physical examination. The medical escort does not routinely conduct a physical examination but does have access to the alien's medical record.

g. Is there a prior determination by a physician that the involuntary administration of a psychotropic is medically appropriate?

See response to paragraphs d and f, above.

h. Is it ICE or DIHS policy that a court order be obtained before a detainee may be forcibly drugged? If so, has that occurred in each case? How many times? In what court?

Yes, for non-emergency circumstances, the current ICE policy requires that a court order be obtained prior to administering involuntary medication. Since the issuance of the current ICE policy for non-emergency circumstances requiring a court order, there have been no cases filed in which court authorization has been requested.

i. Are the detainees given advance notice and afforded a hearing before the court? If not, why not?

There are no procedures for advance notice or a hearing before a court in emergency situations; however, prior to any administration of medication, the DIHS medical escort protocol is to discuss the situation with the alien to determine whether the administration of sedation is appropriate. Further, the alien is given the opportunity to request or consent to sedation prior to removal.

Before ICE seeks a court order authorizing medication, the detainee will be notified of ICE's decision, given a list of pro-bono counsel, and given the opportunity to contact and consult with an attorney.

j. If the detainees are thought to be dangerous to themselves or to others, why are they placed on commercial flights? Is the airline notified that a dangerous individual is being placed on the flight?

Commercial flights are often the only viable alternative for ICE. Special charter flights are prohibitively expensive and are only rarely utilized. The Federal JPATS system, which services the Department of Justice and the Department of Homeland Security, only provides regular air transportation to Central American and Caribbean countries.

Before ICE removes a detainee, the detainee must be cleared for travel by a medical professional. It is ICE policy not to place detainees on commercial flights unless they are calm and safe to travel. As a precaution, ICE may request a medical escort from the DIHS to ensure that a detainee does not become a danger to himself and others.

Before the approximate time of removal, an ICE officer verbally notifies the detainee that he or she is being removed. This notification occurs regardless of whether the removal is with an escort.

Prior to departure, as part of the ticketing process, the airline is notified of every removal by commercial air, regardless of whether an alien is being escorted or traveling unaccompanied. Prior to boarding, the airline captain or purser would be notified by the

escorting officers of any exigent circumstances. The captain of the aircraft makes the final decision as to whether the detainee will be permitted to board or remain on the aircraft, but ICE policy is not to place aggressive, combative, or violent individuals on commercial flights.

k. Why is a psychotropic drug used to sedate an individual with no pre-existing psychiatric diagnosis?

Except in emergency situations, psychotropic drugs are only administered as prescribed by a physician – in most cases, a psychiatrist.

Psychotropic drugs are used to treat agitation. Agitation may be a symptom of a pre-existing psychiatric disorder. Agitation also occurs with a variety of other conditions, which could be considered medical, psychological, emotional, and/or situational. Psychotropic drugs are commonly used by emergency rooms to control agitation when there is an immediate need to control the agitation.

l. Before an individual is drugged, does ICE or DIHS determine that other means of restraint would be insufficient to deport the individual?

Yes, administering medications is a last resort. Initially, a "talk down" approach is used, followed by the use of restraints, as appropriate. Most commercial airlines, however, prohibit the use of physical restraints (handcuffs/leg chains).

2. A GAO report released in August 2005 (GA0-05-813) found that after the attacks of September 11th, ICE appeared to focus its investigative resources primarily on national security cases such as targeting worksite activities at high risk critical infrastructure sites. ICE headquarters went so far as to issue a memo requiring field offices to request approval from ICE headquarters prior to opening any worksite enforcement investigation not related to the protection of critical infrastructure in order to ensure proper focus by its field agents. The report found that ICE's focus may have had a positive outcome. According to the report, between October 2004 and the beginning of May 2005, about 77 percent of the worksite enforcement cases opened by ICE were related to critical infrastructure protection.

According to recent statistics ICE provided to the Committee, its investigations of critical infrastructure currently account for only 38% of worksite enforcement investigations --nearly a 40% drop from 2005. How do you explain this decline in critical infrastructure investigations? What has now become a primary focus of ICE worksite investigations and why?

In accordance with ICE's homeland security mission, ICE agents prioritize worksite enforcement efforts by focusing on sites related to critical infrastructure and national security, as well as egregious criminal violators and identity thieves. While unauthorized workers employed at sensitive facilities such as nuclear power plants, chemical plants, military bases, defense facilities, airports and seaports pose serious homeland security threats, ICE also considers egregious employers who have as part of their business model hiring illegal aliens, a significant vulnerability to the nation's immigration system.

The protection of critical infrastructure facilities remains a high priority for ICE. The statistics for critical infrastructure protection cited in the GAO report may be misleading. For example, the cited 77% in the GAO report represented 261 critical infrastructure cases initiated for that time period (October 1 – May 31). For the same time period in FY'07, ICE initiated 250 Critical Infrastructure protection investigations. While the percentage is lower, the overall number of investigations is essentially unchanged. However, where appropriate, ICE is now pursuing criminal charges on those critical infrastructure employers and criminal aliens, greatly enhancing our overall deterrent effect. For fiscal year 2007 through September 17, 2007, ICE has recorded 180 criminal arrests, 152 administrative arrests and initiated 315 cases related to critical infrastructure protection.

The primary focus of ICE worksite enforcement is to protect the American public through aggressive enforcement of U.S. laws and to reduce the magnet of illegal employment.

3. A separate report issued by the GAO in August 2007 (GAO-07-1065) found that ICE has been incapable of prioritizing its worksite enforcement strategy. The report finds that two years after its initial recommendation to ICE that it develop outcome goals and measures for its worksite enforcement program ICE has failed to provide GAO with evidence that it followed this recommendation. As a result, GAO warns that it is unable to asses the extent to which ICE's worksite enforcement efforts have been effective, efficient, or had a desired impact.

ICE has provided the Committee information about the number of worksite related arrests and investigations, but without having outcome goals and measures as the GAO recommends how can ICE or Congress properly gauge the performance of ICE's efforts?

ICE values the review provided by GAO, but disagrees with its assessment that ICE has not prioritized its worksite enforcement strategy. As an initial matter, ICE disagrees with GAO's assessment methodology and reliance on old, outdated data to grade our comprehensive interior enforcement strategy. For example, GAO's review relied primarily on its pre-existing reports and data, including the fact that ICE worksite enforcement hours decreased from fiscal year 1999 to 2003, and GAO's 2005 reports on this issue, which discussed a decline in the civil "notice of intent to fine" process. ICE believes that the civil process has not produced measurable results, which is why ICE changed its worksite enforcement strategy to focus on critical infrastructure, egregious employers subject to criminal charges, identity thieves, and creating a culture of compliance within the business community. ICE notes that GAO assumes that ICE was not successful in implementation of its strategy because there are still many employers that are not subject to ICE's enforcement of the laws. This evaluation represents a misunderstanding of ICE's efforts and end game in changing the business culture. ICE will never have enough resources to make every employer in the country subject to ICE's enforcement actions. What we seek to do, like the IRS, is to drive a change in behavior by creating incentives, providing education and conducting targeted enforcement actions. These include things like the "No-Match" regulation, which ICE believes provides reasonable employers with information on how to respond to a "No-Match" letter.

ICE is starting to see concrete evidence of the effectiveness in the area of worksite enforcement in increased compliance by employers. For example, two large prominent U.S. employers in particular, which had been the subject of previous worksite enforcement efforts, have changed their business practices to ensure they remain in compliance with the law. The actions they took were made with no additional prompting from the government and impact not only their companies, but

in one case tens of thousands of subcontractors. These kinds of proactive efforts by business are a sure sign that our current worksite enforcement strategy is providing a real deterrent.

Moreover, the measurable increase in the numbers of cases initiated, criminal arrests and convictions, criminal fines and forfeitures, over those of the former INS are representative of an established and aggressive worksite enforcement program.

4. An August 2006 DHS Inspector General report (OIG-06-57) on disciplinary procedures at ICE found that misconduct cases languish unresolved at ICE for months or years leading to an existing backlog of cases. The 2008 DHS Budget requests 32 additional Special Agents to conduct criminal and serious misconduct investigations for a total of 128 agents. Given the ramp up in hiring of thousands of new Border Patrol Agents in the past two years and the increase in fugitive operations and worksite enforcement raids, do you believe the increase in personnel at Office of Professional Responsibility, which is responsible for investigating allegations of misconduct involving employees of ICE and CBP, will be able to fully and effectively investigate a likely increase these types of cases and address the current backlogs?

   The DHS Inspector General Report (OIG-06-57) focused on a backlog of completed employee misconduct investigations, conducted by both the DHS OIG and ICE OPR, which were waiting for review and appropriate disciplinary action to be taken by ICE management officials.

   In response to the DHS OIG report, ICE formed the Discipline and Adverse Action Panel (DAAP). The DAAP serves as the centralized clearinghouse for all completed DHS OIG and ICE OPR investigations, as well as issues handled directly my ICE Management Officials, to ensure that swift corrective action is taken on all misconduct matters involving ICE employees. The 2008 DHS Budget request for 32 additional Special Agents to conduct criminal and serious misconduct investigations will ensure that ICE OPR is able to continue to timely address allegations of misconduct involving employees of ICE and forward their investigative results to the DAAP for action.

   Currently, ICE OPR handles all criminal allegations of employee misconduct involving ICE and CBP employees declined for investigation by the DHS OIG. CBP's Office of Internal Affairs handles all administrative issues involving misconduct of CBP employees. This partnership between ICE with CBP has allowed for misconduct cases to be appropriately assigned and timely addressed.

   Since assuming my position as Assistant Secretary in January 2006, I have committed extensive resources to OPR. The current staffing level allows OPR to effectively and efficiently address all allegations of criminal misconduct involving ICE and CBP employees declined for investigation by the DHS OIG. However, in order for both ICE OPR and CBP Internal Affairs to remain effective, ICE OPR, as well as CBP Internal Affairs must grow in size commensurate with growth by each of the agencies, particularly growth in the Border Patrol and ICE DRO. The additional 32 ICE OPR Special Agents referenced above will address ICE's need in this area. ICE will continue to seek funding as necessary to ensure we properly address the caseload.

5. A February 2007 report[4] by Lutheran Immigration and Refugee Service (LIRS) detailing conditions in the Don T. Hutto Family Residential Center contained many disturbing findings, including that children were provided only one hour of education daily, medical care was inadequate and children were threatened with separation from their parents for misbehavior. Dr. Jorge Bustamante, the United Nations Special Rapporteur on the Human Rights of Migrants was denied permission by ICE to visit the Don T. Hutto Family Residential Center in order to inspect the conditions. In your written response to pre-hearing questions on this topic, you report that Mr. Bustamante was denied due to pending litigation. In your staff interview with the Committee, you further stated that he was denied access to tour Hutto because he was a relative of one of the attorneys for the American Civil Liberties Union (ACLU) which had filed a lawsuit against Hutto. Please confirm for the record, how Mr. Bustamante is related to the ACLU attorney?

   ICE received unverified information that Mr. Bustamante was related to an individual who worked for the ACLU. This information was not the basis of ICE's decision to decline his facility visit to Hutto.

   While I did mention this information as part of our discussion, it was not my intention to imply this was the reason for ICE's decision to decline the visit. Mr. Bustamante's visit request was declined due to pending litigation, as were a number of other visit requests both before and after Mr. Bustamante's request, all due to pending litigation. The only visits that took place during the litigation were visits by Members of Congress and/or their staffs and visits directly related to the litigation. It is important to note that Mr. Bustamante was offered the opportunity to visit other ICE facilities, an offer he ultimately declined.

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[4] *Locking Up Family Values: The Detention of Immigrant Families.* Women's Commission for Refugee Women and Children, Lutheran Immigration and Refugee Services. February 2007. Available at: http://www.womenscommission.org/pdf/famdeten.pdf.

Senator Carl Levin
Additional Questions for the Record
Nomination Hearing of Julie Myers
September 12, 2007

1. U.S. Citizen and Immigration Services (USCIS) recently established its own anti-fraud unit, allegedly partly in response to the unwillingness or inability of ICE to investigate referred cases. Please discuss the respective roles of ICE and USCIS in investigating document and immigration benefit fraud. What has been the issue between ICE and USCIS? Why isn't ICE able to handle these cases? Is there duplicity of effort or are USCIS and ICE investigating different types of cases?

   I value ICE's relationship with USCIS, and I believe that the relationship between the two agencies has grown stronger over the past two years. The two agencies work together on many levels from headquarters to the field, and the two agencies have related, yet distinctly different roles in combating fraud.

   In particular, ICE's Office of Investigations (OI) investigates criminal fraud cases and pursues select administrative remedies to rectify fraud, while USCIS pursues only administrative remedies. This division of duties is articulated in a Memorandum of Agreement (MOA) between USCIS and ICE, which became effective on February 14, 2006.

   USCIS is charged with adjudicating applications and petitions for immigration benefits. USCIS does not conduct criminal investigations. During the course of this adjudication, USCIS may uncover potential fraud. Pursuant to the February 14, 2006, MOA, USCIS, through its Office of Fraud Detection and National Security (FDNS), refers articulated suspicions of fraud to ICE OI's Benefit Fraud Units (ICE-BFUs).

   The ICE-BFUs assess, develop and, when appropriate, forward to ICE-led Document and Benefit Fraud Task Forces (DBFTFs) and Identity and Benefit Fraud Units (IBFUs) in the field leads identified during the benefit application process. Any leads not forwarded to the field are returned to USCIS for appropriate administrative action.

   Through ICE investigations, the DBFTFs and IBFUs detect the criminal infrastructure of the organization, including finances, additional co-conspirators, alien beneficiaries and related fraud schemes. The DBFTFs and IBFUs pursue criminal convictions of the fraud facilitators and seizure of the illegal proceeds. The DBFTFs and IBFUs refer alien beneficiaries to USCIS for appropriate administrative action.

   Over the past several years, USCIS has expanded its FDNS. This expansion has allowed USCIS to better detect fraud, resulting in an increase in referrals sent to ICE. As a result of these increased referrals, ICE has increased immigration benefit fraud investigations and benefit fraud investigative hours since FY04. To improve the operational efficiency and leverage the knowledge and assets of the field offices, the ICE-BFUs were recently realigned from ICE Headquarters to field office management control. Additionally, ICE is in the process of expanding the ICE-BFUs to better respond to the increase in referrals from USCIS. ICE Is planning to increase personnel at two locations and establish an additional ICE-BFU location.

Senator Daniel K. Akaka
Additional Questions for the Record
Nomination Hearing of Julie Myers
September 12, 2007

1. You testified that during worksite raids, ICE agents have the authority to question everyone in the building. You further stated that ICE agents do not detain people who inform agents that they are U.S. citizens or legal immigrants who did not happen to bring proof of lawful status to work that day, and that ICE agents are trained not to engage in racial profiling.

   There are reports that U.S. citizens, lawful permanent residents, and other non-citizens legally authorized to work in the United States have been arrested in worksite raids.

   a. When ICE agents encounter workers who do not have documentation of legal status with them at work during a worksite raid, please describe in detail (1) the process for determining whether that person will be detained, and (2) what factors ICE agents consider in making that determination.

   LAW ENFORCEMENT SENSITIVE

   ICE agents work closely with ICE attorneys and the Department of Justice during law enforcement operations. ICE attorneys provide guidance on the law, and, during large worksite enforcement operations, are often present on site to provide legal guidance if warranted.

   During a 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. (Immigration and Nationality Act ("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 officer, absent reasonable suspicion that the individual is unlawfully present, the individual may not be detained.

   During questioning, if the individual gives a credible reply that he is a United States citizen, the questioning will end, and the agent will move on to another individual. If the individual gives an unsatisfactory response or admits that he is an alien, the individual will be asked to produce evidence that 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 may 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. 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).

   What will be considered "reasonable" is a fact specific inquiry and will be determined on a case-by-case basis. The 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 might include:

- 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.

An agent will not detain individuals who have produced what appear to be valid documents evidencing that the person is whom he/she 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 individually is illegally present in the United States or that a crime has been committed, the person may be arrested and taken into custody.

END LAW ENFORCEMENT SENSITIVE

b. Do ICE agents receive training regarding Fourth Amendment constitutional protection against unreasonable searches and seizures, Fifth Amendment constitutional protection against self incrimination, and the Fourteenth Amendment guarantee of equal protection of the laws?

The ICE Special Agent initial training curriculum at the Federal Law Enforcement Training Center (FLETC), provides instruction on the basics of U.S. Constitutional Law, including the Fourth, Fifth, and Fourteenth Amendments and, more specifically, Miranda v. Arizona, 384 U.S. 436, (1966). Additionally, many Special Agents have completed a two-week training program at FLETC focusing on worksite enforcement, which again includes a review of Constitutional protections. In addition, prior to major worksite operations, ICE attorneys participate in the pre-operation briefing, again emphasizing issues involving search and seizure, custody, protection against self-incrimination and right to counsel.

c. How many of the people arrested during the Swift raids were later released after proving that they were either citizens or non-citizens legally authorized to work in the United States?

As set forth above, if there is reasonable suspicion that an individual is unlawfully present or unauthorized to work in the United States, a brief detention is justified while the officer investigates identity and immigration status. Once there is probable cause to believe that the individual is illegally present in the United States or that a crime has been committed, then the individual may be arrested and taken into custody. Upon information and belief, during the Swift operation, no one was arrested who was later found to be a citizen or in lawful status.

2. You testified that workers who request to speak to an attorney before answering questions during worksite raids are permitted to do so. However, in a Houston Chronicle article published on September 11, 2007,[1] ICE spokesman Tim Count stated that although "at some of the plants [raided], attorneys tried to get into the plan to talk to workers .... We do not allow client shopping by attorneys during a law enforcement action."

   a. Are attorneys permitted on the premises of a worksite raid when requested by a worker being questioned?

      No. During ongoing law enforcement operations, and consistent with protocols throughout law enforcement for the execution of a search warrant or Blackie's Warrant, permitting any outsiders to enter the facility and have access at workers could create a safety risk to the attorney, employees, and law enforcement personnel.

   b. If not, are workers who request the presence of an attorney before answering questions permitted to answer questions at a later time with an attorney present?

      ICE facilitates attorney/client access during administrative processing. Every apprehended individual charged with an administrative violation of the INA is given a form advising them of their rights. The form includes a statement advising of the right to be represented by a lawyer and the right to a hearing before an Immigration Judge. A list of free legal services for that jurisdiction is also attached. This list of free legal services is provided by the Executive Office for Immigration Review within the U.S. Department of Justice. For individuals who do not speak English, ICE provides the information on the form through a native speaker or a translation service.

      The form does not include the Fifth Amendment protection against compulsory self-incrimination (Miranda warnings), as this right does not attach to civil immigration proceedings. Following a criminal arrest, ICE agents provide Miranda warnings. In criminal cases where an individual in custody does not understand English, ICE agents are required to give the warnings in a language understood by the alien.

   c. If workers request an attorney, are they detained until they are able to be questioned in the presence of their attorney?

      If the individual suspected of an administrative violation of the INA refuses to speak to law enforcement personnel, absent reasonable suspicion that the individual is unlawfully present, the individual will not be detained. If there is reasonable suspicion to believe that the worker is an unauthorized alien, the individual will be detained, however, questioning will not resume until his/her attorney is present.

      In the case of a criminal arrest, ICE agents provide Miranda warnings prior to the questioning of a suspect. If an individual subject to a criminal arrest declares an intention to exercise the

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[1] Oskar Garcia, *Union to file suit against ICE, seeking to stop immigration raids*, Houston Chronicle, September 11, 2007, *available at* http://www.chron.com/disp/story.mpl/ap/tx/5127316.html (emphasis added).

right against self-incrimination or the right to counsel, the individual is detained pending the filing of criminal charges but is not questioned.

d. If ICE neither permits immigration attorneys on the premises of a worksite raid nor permits workers to delay questioning, please describe in detail how ICE fulfills its responsibility to allow workers to speak to attorneys when requested.

All individuals apprehended at a worksite location are taken to an offsite location for processing. During this initial processing, as discussed in section b above, all apprehended are advised of their right to a hearing before an immigration judge and to be represented by legal counsel. They are also provided with a list of free local legal service providers. The individuals are given access to telephones to enable them to contact an attorney, family members or their consulates. ICE makes every effort to facilitate attorney/client access at processing sites and provides attorney/client interview rooms for confidential discussions. In addition, ICE notifies the consular representatives of each country whose nationals were arrested as a result of this enforcement action.

3. On September 6, 2007, the Boston Globe ran a story on local immigrant rights groups providing immigrants with training on their legal rights when questioned by immigration authorities.[2] ICE press secretary Kelly Nantel was quoted as stating, "It troubles us tremendously. We would encourage organizations that are engaging in that kind of information distribution to stop."

a. Does ICE oppose educating immigrants about their right to remain silent and request a lawyer before questioning and to view a search warrant before a search? If so, what is the basis of ICE's opposition?

No.

b. If not, please clarify the meaning of Ms. Nantel's statement.

Ms. Nantel was asked by the Boston Globe reporter to give ICE's position about the growing trend of organizations that inform illegal immigrants of ways to evade ICE detection and arrest for immigration law violations. Ms. Nantel informed the reporter that ICE enforcement operations are intelligence-driven, targeted operations focused on locating, arresting and removing dangerous criminal illegal aliens and fugitives from the country. Ms. Nantel further explained that while she understood that organizations may want to focus their message on only those who are not criminally involved, the reality is that they cannot ensure dangerous criminal illegal aliens are not a part of their audience. She said that this trend troubles ICE and because of the public safety implications, ICE would encourage organizations to stop the aspects of education that tacitly or overtly encourage illegal activity. Ms. Nantel said that ICE does not conduct random "raids" at homes or work places, as some suggest, and reiterated that all ICE operations are targeted to further national security and public safety. She further discussed how so-called "sanctuary policies" have the effect of creating safe havens for dangerous criminals which represents a real public safety concern. Finally, Ms. Nantel talked about ICE's responsibility as a law enforcement agency to uphold the nation's immigration laws and to

[2] Maria Sacchetti, *Customs raids spur training on rights: Advocacy groups teach immigrants to protect selves*, Boston Globe, September 6, 2007, *available at* http://www.boston.com/news/nation/articles/2007/09/06/customs_raids_spur_training_on_rights.

ensure the integrity of the nation's immigration system. She said that as generous as our nation's immigrations laws are, they should not be undermined by individuals who disagree with them.

4. You testified that you are working with non-governmental organization (NGOs) on developing performance-based detention standards. Please describe in detail your coordination with NGOs, including the names of the NGOs that you are consulting and the dates on which you or your staff have met with representatives of those NGOs.

ICE recognizes the need to modernize the detention standards inherited from legacy INS by updating them to reflect a performance-based approach. The move towards performance-based standards within the correctional community is based on recommendations and changes implemented by the American Correctional Association (ACA) approximately two years ago. We are currently working within the agency to develop a solid draft that is ready for distribution. Once the agency has a refined draft ready for review, ICE plans to disseminate the standards to the NGOs for comment prior to implementation of the standards.

Although we have not yet circulated the standards themselves, we have made interested parties aware that this process is underway and that we would be working with them as this process moves along. On June 14, 2007, I spoke to the annual conference of the American Immigration Lawyers Association about this and indicated that we would be working with them and other NGOs as we developed a draft of the standards. In addition, I met with the following NGOs on May 7, 2007: Open Society Institute, U.S. Conference of Catholic Bishops, Detention Watch Network, ACLU of Massachusetts, Massachusetts Immigrant and Refugee Advocacy Coalition, Women's Commission for Refugee Women and Children, National Immigration Forum, Chicago Bar Foundation, Hebrew Immigrant Aid Society, Human Rights First, National Immigration Justice Center, American Bar Association, Legal Momentum's Immigrant Women Program, Interfaith Worker Justice, Lutheran Immigration and Refugee Services, American Immigrant Lawyer's Association. The creation of performance-based detention standards was an item of discussion at that meeting as well, and I assured these groups that we would be working with them on these standards. The topic of detention standards was also addressed with NGOs at a meeting I attended on July 13, 2006, and in a meeting with ICE staff on November 28, 2006.

5. A July 2007 Government Accountability Office (GAO) Report on Alien Detention Standards (GAO-07-875) reported that officials at some ICE detention facilities "cited difficulties in obtaining approval for outside medical and mental health care as also presenting problems in caring for detainees."

   a. Please describe in detail the process for obtaining approval for outside medical and mental health care for detainees.

   The ICE medical standard is to provide appropriate and necessary medical care for detainees. When a detainee needs medical care that cannot be provided at a facility, ICE allows access to care at external facilities and by medical providers from the surrounding community. The process to access outside care is as follows: The health care authority from the requesting facility submits a request for external care to the ICE Managed Care Coordinators (MCC). The MCC determines if the request for care is appropriate and necessary and returns a response

within one business day. For emergency care, no prior authorization is required. For non-emergent care, prior authorization from the MCC is necessary for payment.

On-site medical providers assess detainee health upon the detainee's entry into the processing facility and determine whether the individual requires medical care beyond the scope of what is available on-site. If medical professionals determine the need for additional care, the medical provider creates a request for off-site treatment and submits it to the ICE Managed Care Coordinators, designated Coordinators, or specialized consultants, who are then responsible for processing the request. Emergent/urgent medical or mental health care requests do not require prior authorization. Non-emergent/elective medical or mental health care requests need prior authorization.

b. Did any of the detainees who have died in ICE custody since 2004 request outside health care that was denied?

ICE is not aware of any detainee death that is related to the denial of a treatment. The Department of Health and Human Service's Division of Immigration Health Services (DIHS), performs root-cause analyses of deaths that occur at Service Processing Centers and Contract Detention Facilities. DIHS has informed ICE that none of the denied services caused the detainees' deaths.

Since June of 2004, approximately 180,000 treatment authorization requests have been submitted by facilities requesting outside treatment for detainees. These authorization requests are reviewed and recommendations are provided by DIHS professionals. ICE employees do not make substantive decisions on the treatment authorization requests. Roughly 90% of all submitted requests for outside care were approved. 78 requests for outside care were submitted for detainees who later died; all but two were approved. Two of those were requested by one detainee, who later died.

c. What steps, if any, is ICE taking to improve the outside health care authorization process to ensure that detainees receive prompt and medically appropriate responses to their medical needs?

ICE is committed to providing a safe and humane detention environment to all individuals in our custody, and the agency spends more than $98 million a year to provide appropriate medical care to detainees. ICE receives approximately 60,000 requests annually for medical care outside of its detention facilities. The average turnaround time is 1.4 business days with a current approval rate of 90% (approximately 54,000 are granted). In addition, ICE has improved its authorization process by creating web-based submission forms and developing staff outreach programs to improve understanding of the request and appeals processes, and enhanced overall problem solving. Of those that are not granted, most are initially denied for incomplete information. Once they are re-submitted, they are re-considered. Effective October 1, 2007, the Division of Immigration Health Services will be detailed to DHS/ICE/DRO. This will create a clearer chain of command through DHS alone instead of through DHS and HHS.

6. You testified that ICE will issue a national parole policy intended to standardize grants of parole to immigrants in removal proceedings.

   a. When do you expect this policy to be issued?

      ICE's new national policy directive titled "Parole of Arriving Aliens Found to Have a "Credible Fear" of Persecution and Torture" is currently going through final review at the Departmental level. ICE is committed to continuing to push for clearance on this policy, as we believe that this policy will enhance consistency in our review process and ensure standardized treatment across the country for these arriving aliens. I expect that the policy will be issued within the next months, absent unforeseen objections at the Departmental level.

   b. Did you seek input from the NGO community in developing the policy? If so, please describe in detail your coordination with NGOs, including the names of the NGOs that you consulted and the dates on which you or your staff met with representatives of those NGOs.

      When developing this policy, we reviewed the findings and recommendations of the United States Commission on International Religious Freedom (USCIRF) regarding their Expedited Removal Study of May 2005. On February 21, 2007, ICE met with two representatives of the USCIRF to discuss their findings and concerns about the parole process and detention of aliens seeking asylum in the U.S. On February 22, 2007, ICE held a meeting with representatives from several NGOs and USCIRF to further discuss concerns about the ICE parole process. The representatives that attended the February 22, 2007 meeting were from the following NGOs: the National Immigration Forum, the National Immigrant Justice Center, the CAIR Coalition, Human Rights First, the Women's Coalition for Refugee Woman and Children, and the Hebrew Immigrant Aid Society.

      Once this policy directive is approved by DHS and has been in place for at least twelve months, we intend to review our statistical data for quality assurance purposes and solicit additional input from NGOs to determine whether the policy needs adjustment.

   c. In what form will the policy be issued, and how will ICE ensure its consistent enforcement?

      This policy will be issued as an agency-wide policy directive. The intent of this ICE policy directive is to promote consistent and high-quality parole decision making by Detention and Removal Operations (DRO) officers while preserving our agency's need to make these discretionary custody decisions on a case-by-case basis. This directive also will require DRO program managers to establish a centralized tracking system and a quality assurance review process to ensure accountability and compliance with new policy and procedures.

      DRO officers will be required to complete a Record of Determination/Parole Worksheet to document and track all parole decisions. If parole is to be denied, DRO will provide the alien with a written notice that explains the basis for the denial in a timely manner. DRO field office directors will then have to establish a local supervisory review process for these parole decisions and also maintain an official log of all parole decisions made within their areas of responsibility. Using information compiled from the Record of Determination/Parole Worksheets and the log, DRO Field Offices will provide DRO Headquarters (HQ) with monthly statistical reports on all parole requests and decisions for arriving aliens found to have

a "credible fear". DRO HQ staff will then compile and analyze biannually the monthly statistical reports submitted by the field offices to ensure that all decisions remain consistent and compliant with the new policy and procedures.

7. The movement of immigration detainees between detention centers may make it more difficult for detainees to remain in contact with family members, post bond, consult an attorney, gather evidence to present a legal case, and secure witnesses for immigration hearings.

   a. Does ICE track how many detainees are transferred between detention facilities and the distances that they are transferred from the original site of their detention? If so, please provide that data.

      On July 17, 2006, ICE established the Detention Operations Coordination Center (DOCC). The DOCC was specifically established to ensure that all Field Offices have adequate detention space for routine apprehensions, coordinate special operations requiring large numbers of detention beds, and bed space management on a national scale. Detainees from Field Office jurisdictions with detention capacity shortages are moved to Field Office jurisdictions with surplus capacity. Thus, the DOCC ensures that no alien amenable to removal proceedings is released from Detention and Removal Operations (DRO) custody due to a lack of detention space. When large-scale operations are expected to exceed a field office's local detention capacity, or at the request of the field office, the DOCC proactively locates detention space in other jurisdictions and arranges required transportation. The DOCC tracks these movements using a scorecard. In FY07, as of September 9, 2007, the DOCC has coordinated 18,744 movements.

      Currently, the DOCC only tracks movements from sending Field Office to Receiving Field Office. Mileage or distance is not currently tracked.

   b. Does ICE track how many detainees who are represented by attorneys in their removal proceedings are transferred between detention facilities? If so, please provide that data.

      Currently, the information that the DOCC gathers and tracks does not include which detainees are represented by counsel. However, ICE prefers to avoid transferring cases where an alien is represented by counsel. Accordingly, the DOCC historically moves new cases, where venue is not yet established, or Final Order (FO) cases. Due to operational needs, however, on some occasions, it may become necessary to transfer an alien who is represented by counsel. In instances in which a represented alien is transferred, counsel is notified prior to the transfer.

   c. Does ICE notify counsel of record before transferring detainees?

      Yes. ICE prefers not to transfer detainees who are represented by counsel. In emergent circumstances, ICE may transfer detainees who are represented by counsel. However, prior to transferring an alien to another Area of Responsibility (AOR), the transferring office must conduct records checks, to include determining if the alien is represented, and ensure that all transfers are in compliance with the National Detention Standards. In accordance with these standards, ICE determines if the alien is represented and notifies the attorney of record prior to any transfer.

8. Justice Department data show that during May 2007, new child pornography prosecutions were down 12.5 percent over the previous month and down 41.6 percent compared to the same period in the previous year.[3] DHS is the lead investigative agency in nearly half of these cases.

Please provide the number of new child pornoraphy prosecutions and convictions stemming from ICE investigations for each month since January 2005.

ICE is proud of its contribution to keeping children safe through our Operation Predator and our participation in the Justice Department's Project Safe Childhood. ICE works with the Department of Justice to bring federal cases with state and local authorities on cases as appropriate.

It is worth noting that child pornography investigations are just one aspect of Operation Predator. Operation Predator is a program designed to identify, investigate, and, as appropriate, administratively deport child predators through the efforts of three principal entities of ICE: the Office of Investigations, the Office of Detention and Removal Operations and the Federal Protective Service. Officially launched by ICE on July 9, 2003, Operation Predator combines the prior immigration investigative and administrative initiatives that targeted foreign nationals, undocumented aliens, and previously deported criminal aliens involved in child exploitation crimes with prior customs efforts to investigate the importation and exportation of images of child abuse.

Between July 9, 2003, and September 5, 2007, ICE has effected more than 10,428 arrests. Of these, 3,117 were criminal arrests and 7,311 were administrative arrests. 5,655 of those individuals charged administratively have already been deported.

The following are ICE's criminal arrests, indictments and convictions for FY05, FY06 and FY07 in our child pornography case category. Note that these arrests are a subset of the Operation Predator criminal arrest statistics cited above.

FISCAL YEAR	MONTH	ARRESTS	INDICTMENTS	CONVICTIONS
2005	OCTOBER	77	47	43
	NOVEMBER	45	56	44
	DECEMBER	53	46	37
	JANUARY	32	31	47
	FEBRUARY	60	45	47
	MARCH	50	58	72
	APRIL	55	52	42
	MAY	53	44	42
	JUNE	42	44	55
	JULY	57	50	33
	AUGUST	62	40	51
	SEPTEMBER	52	39	53
		638	**552**	**566**
2006	OCTOBER	42	50	40

[3] *See* Pornography-Child Prosecutions for May 2007, Transactional Records Access Clearinghouse, *at* http://trac.syr.edu/tracreports/bulletins/porn/monthlymay07/fil.

	NOVEMBER	41	51	25
	DECEMBER	39	35	36
	JANUARY	50	50	55
	FEBRUARY	48	48	42
	MARCH	70	57	58
	APRIL	96	49	45
	MAY	55	48	56
	JUNE	48	47	61
	JULY	51	39	42
	AUGUST	85	40	38
	SEPTEMBER	54	53	59
		679	**567**	**557**
2007	OCTOBER	164	74	53
	NOVEMBER	60	61	46
	DECEMBER	50	32	42
	JANUARY	49	51	56
	FEBRUARY	68	39	42
	MARCH	90	63	62
	APRIL	84	31	58
	MAY	67	54	53
	JUNE	68	46	48
	JULY	83	38	49
	AUGUST	69	34	43
	SEPTEMBER	24	16	14
		876	**539**	**566**

Senator Claire McCaskill
Additional Questions for the Record
Nomination Hearing of Julie Myers
September 12, 2007

1. Your testimony noted that 716 persons were charged criminally in FY 07 as a result of workplace enforcement actions. Please break that statistic down and provide to the committee the number of employers who were charged criminally as a result of workplace enforcement actions in FY 2007.

   Most of the investigations that led to these serious criminal charges began as investigations into employers to discover whether there was criminal activity related to the employment of illegal aliens warranting a criminal charge. In many instances, ICE obtains search warrants authorizing searches of company property to investigate allegations of criminal activity. At the time that the search warrant is executed to obtain corporate documents and other materials that may show knowledge on behalf of the employer, ICE takes actions to ensure that the illegal aliens are arrested (criminally or administratively). Based on the time necessary to develop a federal criminal case and review the search warrant documents, often it is not until many months later that ICE and DOJ execute criminal arrests against any managers. ICE believes that criminal investigations, and ultimately, criminal prosecutions of egregious employers and identity thieves, are effective in reducing the magnet of illegal employment by promoting compliance, and we believe our efforts are starting to change corporate behavior.

   The 716 figure I cited in my testimony related to FY06. To date in FY07, ICE opened 1,036 criminal investigations into possible egregious employers and made more than 840 criminal arrests associated with worksite enforcement investigations. These criminal arrests include individuals involved in the entire employment chain -- companies, managers, fraudulent document purveyors, and other associates charged criminally with various violations of the law. A substantial number of these cases involve aliens who have stolen identities of United States citizens, causing them harm. In addition, ICE has made more than 3,900 administrative arrests of aliens associated with worksite enforcement investigations in FY '07.

   With respect to the data you seek, currently the various data systems used by ICE to capture information on arrested/apprehended subjects do not automatically capture where in the employment chain a particular arrestee falls. Instead, ICE's databases separately track criminal and administrative violations for each type of investigation and criminal charge. In the case of worksite investigations, the same kinds of criminal charges (e.g., 18 USC 1028) are often used to prosecute both aliens and managers. In order to process your request, we will need to review each arrest made during the course of our worksite enforcement investigations by means of a manual case file search by our Special Agents. This manual search will require substantial agent hours to conduct a thorough hand-count of the data for FY07, but we will work with your staff to provide this data in a reasonable time.

   Although the data you requested is not currently immediately accessible, I took immediate action following the hearing to determine whether I could direct appropriate reprogramming of the data systems, including U.S. Customs and Border Protection's Treasury Enforcement Communications System (TECS-II), and/or Seized Asset and Case Tracking System (SEACATS), and/or ICE's

Deportable Alien Control System (DACS), and/or General Counsel Electronic Management (GEMS), and/or ENFORCE to capture this data prospectively. I am pleased to report that for worksite enforcement investigations, beginning with data for October 1, 2007 (FY08), we will instruct the Chief Information Officer and Office of Investigations Executive Information branch to program these databases to allow us to separate the criminal statistics associated with alien workers arrested as part of a criminal worksite investigation whose crimes solely involve identity theft, social security fraud, illegal re-entry or other similar crimes from those individuals and companies whose crimes involve the employment or furtherance of the employment of illegal aliens. As always, aliens arrested solely on administrative immigration charges are separately tracked.

It is important to note that we anticipate that this reprogramming effort involving all identified/required systems will take approximately 120 days to complete; however, ICE will commit to ensuring that all the relevant data will be available by electronic search for all of FY08.

2. Your testimony cited the fact that employers were subject to $30 million dollars in criminal fines and forfeitures in FY 2007. Please provide to the committee the number of employers represented by that $30 million.

Fifty entities, either companies themselves or individuals acting on the part of a company (primarily owners or corporate executives) were defendants that paid a fine or were the subject of a forfeiture. These fifty entities are comprised of 35 separate individuals and 15 separate companies. In total, the fifty entities are associated with 22 companies. For example, an individual associated with a company that was not directly charged may have been individually charged and may have paid a fine based on his association with the company. Alternatively, in addition to a company paying a fine or forfeiture, the company's owner and chief operating officer may have also paid separate fines and forfeitures.

It is also important to note that this new strategy of targeting criminal violations reflects a fundamental change in the way we approach worksite enforcement. Years ago, the debate was focused on notices of intent to fine -- an administrative fine -- as opposed to criminal cases and criminal fines and forfeitures. The administrative fines, however, were an ineffective deterrent and enforcement tool. Indeed, companies considered them nothing more than a "slap on the wrist," the cost of doing business. Companies were successful in mitigating fines during the litigation process.

During FY06, worksite enforcement criminal investigations resulted in the seizure of property and assets valued at approximately $1,700,000. The judicially ordered criminal fines, forfeitures, and payments in lieu of forfeiture are estimated to have yielded approximately $233,044. To date, FY07 fines, forfeitures and payments in lieu of forfeiture are in excess of $30,000,000. Today's enforcement tools and techniques go much further in serving as a deterrent to businesses and an inducement to following the law than the old approach.

Senator Susan M. Collins
Additional Questions for the Record
Nomination Hearing of Julie Myers
September 12, 2007

1. The Portland Press Herald uncovered several companies in Maine that had applied for H-1B visas for employees, but those companies did not appear to have legitimate business operations in the Maine. They likely were applying for these foreign workers in Maine in order to receive a Department of Labor certification to pay them a lower prevailing wage than the prevailing wage in large urban areas, and then probably had these individuals work in a higher wage market outside of Maine. The current penalty for making a false statement in an H-1B visa application is a maximum of $5,000. Some companies would consider this part of the cost of doing business. Do you support an increase in administrative monetary penalties?

   To the extent that this question refers to employers who materially misrepresent where the H-1B workers will work when they apply for a "labor certification," such an employer is subject to fines in the amounts up to $5,000. These particular fines are specific to applications for H-1B visas and fall under the purview of the Secretary of the Department of Labor. I personally support an increase in this civil monetary penalty for willful misrepresentations by employers. Penalties should have a deterrent effect, not merely to be absorbed as a "cost of doing business."

   Additionally there are also civil fines assessed under the Immigration and Nationality Act ("INA"), for civil document fraud. These fines, as well as fines for employing unauthorized aliens, are subject to substantial legal challenges, and have not been effective.

   During my tenure, I have found that ICE's use of criminal and asset forfeiture authorities are a much more effective deterrent against unlawful activity. However, I believe that an increase in the civil monetary fines would be complimentary to our criminal enforcement tools. ICE strives to comprehensively use all available law enforcement authorities to combat illegal immigration and those who employ unauthorized aliens.

   Currently, DHS and DOJ are drafting a rule that would raise civil fines under INA §§ 274A, 274B and 274C (8 U.S.C. §§1324a, 1324b and 1324c). These fines will be adjusted for increases in the cost of living and are among the initiatives that Secretary Chertoff announced earlier this year.

Senator George V. Voinovich
Additional Questions for the Record
Nomination Hearing of Julie Myers
September 12, 2007

1. ICE plays an important role in investigating the production, importation and distribution of counterfeit products. Among other things, ICE agents participate in and work with the National Intellectual Property Rights Coordination Center (IPR Center) and investigate criminal organizations responsible for inserting counterfeit products into the U.S. stream of commerce. Often, these products are counterfeits of legitimate U.S. products that face significant losses as a result of these illicit and illegal activities.

   a. How is ICE working with sister agencies such as CBP and the FBI to coordinate and attack the efforts of these criminals?

      ICE, as the investigative arm of the Department of Homeland Security (DHS) is the lead investigative agency tasked with targeting and dismantling the criminal networks that traffic in counterfeit products. ICE partners with its sister DHS agency, Customs and Border Protection (CBP) to stop trade in pirated and counterfeit goods at America's borders and extend those enforcement efforts through the efforts of more than 50 ICE Attaché offices to prosecute the transnational counterfeiting organizations to the very point of production. In addition, the National Intellectual Property Rights Coordination Center was created in 2000 through the joint efforts of the U.S. Customs Service and the FBI, as the unified U.S. government response, targeting IPR crimes. The ICE-led IPR Center now stands as the U.S. government's central point of contact in the fight against violations of IPR laws and the flow of counterfeit goods into U.S. commerce.

   b. What is the impact of these efforts to reduce the level of trade in counterfeit goods?

      We are seeing that these criminals are changing their methods as a direct result of our enforcement efforts, and we are aggressively targeting these new methods. This continues to be a major challenge, but we are working closely with our domestic and international law enforcement partners to attack it.

      Historically, ICE has successfully concentrated its investigative efforts on all types of counterfeit merchandise, whether domestic or smuggled internationally. ICE has conducted joint investigations with the FBI, state and local law enforcement officials. ICE has recently conducted joint IPR investigations with Chinese law enforcement officials. ICE IPR continues to foster and develop this relationship with Chinese law enforcement officials as well as seeking out law enforcement officials from like-minded victim nations willing to assist in trans-national IPR investigations. ICE investigations have resulted in the dismantling of large-scale transnational counterfeiting organizations. In FY06, ICE and CBP affected over 14,675 IPR seizures with an estimated domestic value in excess of $155 million. During that same period, ICE agents were responsible for 219 arrests, 134 indictments and 170 convictions involving IPR investigations. Through the first two quarters of FY07, ICE and CBP have made over 7,245 seizures with an estimated domestic value of over $110 million. ICE, FY07 through July, has arrested 165 individuals, indicted 90 individuals and convicted 81 individuals.

IPR enforcement successes are closely tied to the outreach and partnership process that builds the relationships between industry and government. Intellectual Property (IP) industry outreach and partnership adds to the resources needed to identify counterfeit merchandise within the marketplace, providing much needed critical assistance to law enforcement. Outreach and training within the law enforcement community promotes cooperation and facilitates the sharing of investigative intelligence and cooperation, both at state and federal levels. International outreach aids in supporting other victim nations and, most importantly, the enforcement efforts in source countries for counterfeit production.

c. What metrics ICE will use to assist Congress in measuring the success of such efforts? How will Congress know that ICE and its sister agencies are succeeding?

ICE will continue to expand the number of outreach sessions with private industry and law enforcement. IPR enforcement successes are closely tied to the outreach and partnership process that builds the relationships between industry and government. IP industry outreach and partnership adds to the resources needed to identify counterfeit merchandise within the marketplace, providing much needed critical assistance to law enforcement. Outreach and training within the law enforcement community promotes cooperation and facilitates the sharing of investigative intelligence and cooperation, both at state and federal levels. International outreach aids in supporting other victim nations and, most importantly, the enforcement efforts in source countries for counterfeit production.

Successful investigations are a strong deterrent to IPR crime. ICE will measure its efforts by the number of outreaches conducted and showing the increase requests from industry and law enforcement for training in IPR crime. We will also review our enforcement statistics to determine where our labors have born fruit and where we can improve.

2. As you know, in October 2004, the President announced the Strategy Targeting Organized Piracy (STOP!) initiative, which is designed to implement a more comprehensive, integrated national strategy to protect and enforce U.S. intellectual property rights both in the United States and abroad. As one of the many agencies with responsibility for IP enforcement, how has ICE been part of this strategy?

The White House led Strategic Targeting of Organized Piracy (STOP!) underscores the Administration's commitment to level the playing field for American businesses and workers. ICE, as the investigative arm of DHS, continues its legacy Customs mission focusing on IPR violations and their threat to our national security and both public and economic safety. Recent close partnership with the Department of Justice Computer Crimes and Intellectual Property Section has placed particular emphasis on protecting public health and safety, investigating major criminal organizations engaged in transnational IP crime, and pursuing the illegal proceeds derived from sales of counterfeit merchandise.

3. The proposed reorganization of the Federal Protective Service (FPS) has been controversial. You have referenced that the current reorganization is based on a 1998 study conducted by the General Services Administration. However, since 1998, FPS has gone through significant changes. What follow-up assessments, including soliciting employee input, did DHS/ICE conduct before initiating this reorganization?

FPS's reorganization plan does follow the recommendations of the General Services Administration study, "The New FPS" (1998) which outlined an Inspector based force that recognized the flexibility necessary for the FPS to fulfill its mission of securing Federal facilities and protecting their occupants. However, it is important to note that the current plan for FPS did involve much further review and analysis that began when I first joined ICE and was informed of the significant financial and business challenges facing the agency. Along with that GSA study mentioned above, a review of Title 40 USC 1315; the guidance issued through the 1995 DOJ Vulnerability Assessment; the January 2003 GAO Report Designating Federal Real Property as a High-Risk and Major Challenges faced by Agencies; and FPS's role as the Sector Special Agency for Government Facilities under the National Infrastructure Protection Plan formed the basis of the realignment for FPS. I will also highlight below some of the extensive assessments that were conducted and included the opportunity for some or all employee involvement (the efforts listed below involved over 700 employees):

- Prior to my arrival at ICE, the former Acting Assistant Secretary had directed the formation of a Tiger Team to address very serious concerns with unpaid bills for contract security guards. That team developed findings delivered to me when I arrived at ICE.

- Upon my appointment of a Deputy Assistant Secretary for Management, the first action I asked that she undertake was a comprehensive review of the organization and structure within FPS. A team was formed that included two senior FPS managers. That team did the following:
    - Reviewed and built upon the Phase I Team findings
    - Visited 4 regional officers and 1 Mega Center
    - Interviewed FPS officials and employees in each region
    - Met with 1-2 key stakeholders in each region
    - Met with key DHS stakeholders
    - Reviewed all external reports prepared by the GAO and the OIG concerning FPS.
    - Reviewed all previous studies commissioned by GSA
    - Reviewed all internal FPS program reviews and
    - Reviewed all available FPS performance metrics
    - Reviewed the role of FPS within DHS
    - Briefed the DHS OIG.

  That team's recommendations were presented to FPS leadership that formed the basis of the final recommendations related to the realignment within FPS.

  Additionally, under separate but linked efforts, the following has occurred:

  - 319 police officers and physical security specialists participated in an ICE competency survey.
  - Over a three month effort led by the ICE Director of Acquisition Management and working with a team of consultants, visits were held at eight regional FPS offices where

over 60 staff members were interviewed and they performed a comprehensive assessment of the FPS acquisition function.

- ICE conducted ongoing integrated ICE CIO and FPS review of all information technology with a goal toward leveraging and improving technology for FPS.
- ICE conducted Business Process Stabilization through the development of a multi-year FPS action plan lead by FPS and involving FPS project leads and employees.
- Two Regional Director conferences that ensured interaction with senior field leaders of the organization (the second including key mission support staff) were held.
- Meeting with union leadership focusing on ongoing communication between the new Director of FPS and the union were held.

I remain committed to the success of FPS as an important and critical component of ICE that has a very important mission in Homeland Security.

4. One of the fundamental rationales behind creating the Department of Homeland Security was to encourage greater synergy among a variety of homeland security, anti-terrorism, and law enforcement functions. Within ICE, your duties enforcing immigration and customs laws require substantial cooperation with a variety of other component agencies within DHS, including Customs and Border Patrol (CBP), Citizenship and Immigration Services, Transportation Security Administration (TSA), and others.

   a. Can you please discuss the ways in which you coordinate with other DHS agencies to more effectively carry out your responsibilities?

      ICE cooperates closely with other agencies within the Department of Homeland Security on a regular basis. Coordination takes place at all levels of the agency. Personally, I meet with and talk with my counterpart agency heads regularly to discuss issues of mutual interest. This coordination extends to my leadership team, and down to the Special Agents in Charge in the field, who also coordinate locally with counterparts.

      One primary example of these strong working relationships in action are ICE's Document and Benefit Fraud Task Forces (DBFTFs), established in April 2006, to detect, deter and combat immigration fraud through aggressive and comprehensive investigations and prosecutions by leveraging the resources of other DHS components, such as Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), U.S. Secret Service (USSS), as well as other federal, state and local law enforcement and the U.S. Attorney's Office.

      The DBFTF is one of the primary methods being used to eliminate vulnerabilities within the immigration process and dismantle the infrastructures that threaten our national security and public safety. The task forces are a force multiplier that combines a variety of law enforcement tools and authorities to achieve focused high impact criminal prosecutions and financial seizures.

      To date, these DBFTFs have been initiated in 17 SAC Offices which include: Atlanta, Boston, Dallas, Denver, Detroit, Los Angeles, Newark, New York, Philadelphia, St. Paul and Washington, D.C., Baltimore, Chicago, Miami, Phoenix, San Francisco, and Tampa.

b. Can you discuss any progress you have seen with the Department as a whole coming together in a more unified way?

I believe that under the leadership of the Secretary and Deputy Secretary the Department is moving to a more mature stage and is coming together in a unified way. The Department – as a whole – has cultivated a more unified culture since I have been at ICE. These efforts are taking place at all levels of the department. At the senior level, I and my counterparts from the seven DHS agencies meet weekly. This close coordination fosters an environment of cooperation and collaboration from the top down. The Department is also encouraging this type of collaboration among other leadership ranks.

In the management area, where the key lines of business are providing critical mission support functions to our front line law enforcement mission, the Department has been aggressive and proactive under the Under Secretary for Management. The Deputy Assistant Secretary for Management within ICE meets with her colleagues and the Under Secretary on a bi-weekly basis. These meetings focus our management agenda throughout the Department and that focus is evident under all of the key functional areas to include:

- Human Capital: The Chief Human Capital Officer for the Department has published a Human Capital Operational Plan with input from all of the components and commitment with specific goals that are carried out in ICE through our Human Capital, Equal Employment and Training staffs. These goals focusing on hiring and retaining a diverse workforce; creating a DHS-wide culture of performance; creating high quality learning and development programs for our employees; strategic and integrated leadership systems and service excellence. Also, key in our long term success is working together to develop our Succession Planning.

- Information Technology: The Chief Information Officer at DHS meets regularly with the Chief Information Officer of ICE and the other key operational components to ensure we are addressing our information technology investments in a cohesive way whether it is standing up the new data center; ensuring we are meeting our FISMA scores in information technology security; giving ICE the lead in Information Sharing on behalf of the Department as it relates to law enforcement sharing; or, by rolling out the comprehensive information technology strategic contracts for the Department.

- Acquisitions: The Department's Chief Acquisition Officer also leads a coordinated approach that allows ICE to support our Acquisitions Program. They have been aggressive in leveraging our recruitment, development, and training programs and ensuring we work together in building strong Program Management Officers.

- Financial and Budget: The Department's Chief Financial Officer has also focused on talent development and training, offering orientation programs for all new budget and financial personnel across the Department; setting forward very specific goals that address the Secretary's Mission Action Plans in Financial Management.

These are just a few examples of the way the Department has strengthened the management leadership team at headquarters and how ICE's own strong management team is working

closely to stay on track with the larger Department goals in management, and ensuring our own goals are met as well.

Operationally, the Department's lines of business have become clearer, and we continue to make progress. For instance, the Department has long-term strategy for developing a unified immigration and border management enterprise, and the promotion of information sharing and integration are critical to that strategy. With respect to information sharing, the Department has implemented a Law Enforcement Information Sharing Strategy (LEISS) to coordinate the array of law enforcement components that comprise the DHS Law Enforcement Shared Mission Community (LE-SMC). Because ICE currently chairs the LEISS, I have seen first hand the implementation of this strategy and the improved information sharing environment within the Department. With respect to information integration, the Department has, for example, expanded access to US-VISIT – a risk assessment program based upon the screening of visitors' entry into and exit out of the United States – to ICE, USCIS, the U.S. Coast Guard, and other DHS components. The Department's expansion of US-VISIT's identity management services fosters stronger and better integrated national approaches among key strategic homeland security activities within the Department.

c. Your position also requires cooperation with the Department of Justice, as well as state and local law enforcement entities. Can you describe your efforts to facilitate such cooperation in order to maximize your agency's effectiveness in achieving law enforcement objectives?

I believe that a close relationship with the Department of Justice, as well as state and local law enforcement entities is critical to our agency's success. I have worked throughout the last twenty months to increase and enhance this coordination in order to ensure the success of our common goal to protect this country.

With respect to the Department of Justice, I regularly meet with leadership at the Department of Justice and the United States Attorneys to enhance coordination in our efforts. During my tenure, we have found many additional areas for cooperation and coordination.

The above-referenced DBFTFs are a prime example of both cooperation and continuous coordination with the Department of Justice, as well as other federal, state and local law enforcement agencies toward ICE's efforts to achieve our law enforcement objectives, and to do it more efficiently and effectively. The DBFTFs are modeled after an existing task force in Washington DC/Northern Virginia area. ICE Washington, DC/Northern Virginia Office of Investigation was working in close coordination with the U.S. Attorney's Office for the Eastern District of Virginia and other federal, state and local partners to successfully prosecute organizations and individuals who were exploiting vulnerabilities in the immigration process and seizing there assets to ultimately dismantle the entire criminal organizations. ICE coordinated efforts to expand on this model with Main Justice and directed all prospective DBFTF areas to obtain concurrence and cooperation from their respective U.S. Attorney's Office for each particular city, prior to establishing a task force. The initial eleven DBFTFs were very productive and demonstrated so much success during the first year of operations that we expanded to an additional six location in April of 2007.

In addition, during my tenure ICE has participated in the Department of Justice's Project Safe Childhood, GangTech, Export Enforcement Initiatives and other DOJ projects. We have

formed new partnerships with the Criminal Division, including a new Extraterrorital Criminal Travel Task Force to attack global smuggling rings.

With respect to state and local law enforcement, I believed that ICE could do more to partner with these colleagues. I created a new position of Director of the Office of State and Local Coordination, a career Senior Executive Service position, and I expect to appoint our first Director, a very experienced local leader, within the next month. We also formed a new program to try to better address the needs of state and local law enforcement. This new program, ICE ACCESS, provides local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities. ICE developed the ACCESS program in response to the widespread interest from local law enforcement agencies that have requested ICE partnerships through the 287(g) program, which cross-designates local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act. In the past two years, the 287(g) program has identified more than 22,000 illegal aliens for possible deportation. More than 60 municipal, county, and state agencies nationwide have requested 287(g) MOAs with ICE and more than 400 local and state officers have been trained under the program.

The 287(g) program is only one component under the ICE ACCESS umbrella of services and programs offered for assistance to local law enforcement officers. Other ICE ACCESS enforcement options include the creation of local task forces targeting specific challenges like gangs or document fraud, the presence of a Criminal Alien Program (CAP) team in local detention facilities to identify criminal aliens, or training to utilize the ICE Law Enforcement Support Center (LESC) which provides officers the ability to inquire about a person's immigration and criminal history. One especially successful joint initiative is Operation Community Shield, a national program aimed at dismantling violent transnational gangs that threaten the public.

ICE agents and officers will meet with agencies requesting ICE ACCESS assistance to assess local needs. 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.

Under my leadership, we have expanded the sharing of law enforcement information by working with the Department of Justice to formulate a strategy for the federal government to share closed case data with our state and local partners. I believe that ICE should be at the forefront of this data sharing opportunity, and that it will pay substantial dividends in our effects to, together, combat criminal threats.

5. One of my chief concerns has been finding constructive ways to combat domestic radicalization and to prevent Muslim Americans from feeling alienated from society. How is ICE working with the Muslim and Arab community to avoid the perception that immigration laws are enforced with prejudice and to respond to concerns?

   ICE has and will continue to reach out to the Muslim and Arab community. At the national level, ICE has participated with the DHS Civil Rights and Civil Liberties Office in the development of sensitivity training instruction for ICE employees. ICE participates in bimonthly meetings organized by the Department of Justice for the Muslim and Arab communities and attends DHS' Radicalization Task Force meetings.

At the national level, ICE is actively involved in bimonthly meetings organized by the Department of Justice for the Muslim and Arab communities. The groups that fully participate in this dialogue are the following: Sikh American Legal Defense and Education Foundation; Muslim Advocates; American-Arab Anti-Discrimination Committee; South Asian American Leaders of Tomorrow; North American South Asian Bar Association; Muslim Public Affairs Council; and the Sikh Coalition. ICE has found that this has been the most useful forum for communicating with these groups at the national level.

At the local level, our Special Agents in Charge in those areas that serve significant numbers of Muslim and Arabs frequently meet with these groups, participate in roundtable discussions with other law enforcement agencies, and organize town halls to hear the concerns of these communities. ICE has invited speakers from other government agencies to conduct presentations for Muslim and Arab communities. For example, recently in Detroit, a representative from the Department of Treasury, at ICE's invitation, addressed the communities, covering issues such as terrorism and charitable giving. In another instance, ICE engaged Department of State representatives to speak to a group concerning the visa process. ICE representatives have spoken in mosques and worked with universities to educate their foreign students about immigration requirements for such students. ICE has made presentations to consulate corps of Arab and Muslim countries about the role of ICE. Finally, ICE representatives have appeared on radio and TV, providing information about immigration processes and ICE's mission.

Additional Post-Hearing Questions for the Record
Submitted to Julie Myers, nominee for Assistant Secretary for U.S. Immigration and Customs Enforcement, Department of Homeland Security
From Senator Daniel K. Akaka

October 4, 2007

1. Part of your response to Question 1(c) of my post-hearing questions states, "Upon information and belief, during the Swift operation, no one was arrested who was later found to be a citizen or in lawful status."

   Sergio Rodriguez, a named plaintiff in a complaint filed on September 12, 2007, by the United Food & Commercial Worker's Union (UFCW Complaint), alleges that he is a lawful permanent resident of the United States, but was arrested during the Swift raids and later released. Similarly, a Denver Post article on the raids describes a U.S. citizen whose wife was arrested and released after he presented proof of her legal residency at a Denver detention center.[1]

   Given that some of the workers in the Swift plants allegedly engaged in identity theft and that nearly 1300 people were arrested in a single day, it seems remarkable that not a single person arrested was able to later prove lawful immigration status.

   Please clarify whether Mr. Rodriguez, the person described in the Denver Post article, or any other person was arrested during the Swift operation and later found to be a U.S. citizen or in lawful immigration status.

   Upon information and belief, we were unable to find a record of the two individuals you note above. That said, I recognize that there may be instances in which an individual who is a United States Citizen or Lawful Permanent Resident may be arrested and temporarily detained as part of a worksite enforcement investigation. This issue is a subject of pending litigation. Whether there are ultimately persons who were found to be United States Citizens or Lawful Permanent Residents who were arrested and the circumstances surrounding such arrest is most appropriately determined in the course of the litigation. I would be happy to provide updates regarding this question to you as soon as possible.

2. In response to Question 2 of my post-hearing questions, you state that attorneys are not permitted on the premises of a worksite raid when requested by a worker being questioned, but that ICE makes every effort to facilitate attorney/client access at processing sites where those apprehended individuals are taken.

   In response to an earlier complaint brought on behalf of the workers in one of the Swift plants, ICE asserted that during the raid "no counsel came to meet any individual clients

[1] *See* Bruce Finley, *Raid leaves families fractured: "Unblinking reality" dizzying for spouses, kids of detainees*, Denver Post (Dec. 14, 2006), *available at* www.denverpost.com/ci_4835267.

because no employee requested counsel."[2] The recent UFCW Complaint and other sources allege difficulty with access to counsel during and after worksite raids.[3] Please provide more detail on access to counsel during and after worksite raids, including: 1) whether attorneys are permitted to represent suspects of administrative immigration violations during questioning by ICE officials (as distinct from representation during administrative hearings and for preparing applications for relief) and 2) the process and requirements for attorneys to gain access to individuals apprehended during immigration raids.

Initially, I note that the Department of Homeland Security prevailed in the matter you reference. Although the sentence in the filing, as drafted, is less than clear on the issue, ICE procedures do not allow for non-government attorneys to be present in the worksite during an operation. ICE does facilitate non-government attorney access when the alien is being processed at the processing site. I regret any confusion created by that sentence as drafted.

Under ICE procedures, after arriving at the processing center, an alien who is apprehended at a work-site is provided a Form I-263-C advising them of their rights to counsel. If an apprehended alien requests an attorney, the questioning of the alien ceases. ICE procedures permit access by attorneys to their clients by requesting access and providing evidence of representation, e.g. Form G-28 (Notice of Entry of Appearance as Attorney or Representative) or through confirmation by the apprehended alien. If an attorney seeks to represent an apprehended alien and the alien agrees to or confirms the representation, questioning of the alien ceases and ICE facilitates a private meeting. ICE does not facilitate access for attorneys who claim attorney-client relationships but who are unable to identify those they claim as clients.

3. Your response to Question 5 of my post-hearing questions states that 90 percent of requests for off-site medical care for immigration detainees are approved. Please provide more detail about that statistic, including any process that occurs before a request for off-site medical care can be submitted.

The requests referenced in my response are requests that are entered into DIHS' Treatment Authorization Request database. The medical point-of-contact enters the request into the system after seeing the patient and making an initial determination that an outside treatment authorization is an appropriate next course of action.

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[2] Respondent's Memorandum of Law in Response to the Order to Show Cause, *Yarrito v. Myers* (D. Colo. 2006), 06-CV-2494, *available at* http://www.ailf.org/lac/clearinghouse_122106_Dresponse.pdf.

[3] *See e.g.*, Press release by the American Immigration Lawyers Association, stating that "Recent raids have been conducted without providing for the care of children or access to counsel," *available at* http://www.aila.org/content/default.aspx?docid=21963; *Legal community reacts swiftly to Worthington ICE raid*, Minnesota Lawyer (Jan. 2007), *available at* http://www.immigrantlawcentermn.org/english/worthington_raid/ML_ICE_Raids_Worthington_010107.pdf; CLINIC/Boston College Immigration and Asylum Project, *available at* http://www.cliniclegal.org/Legalization/resources/ImmigrationRaidsJune2007.ppt#258,3,New Bedford Raids.

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Representing Members Of
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OIG
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Bureau of Alcohol, Tobacco, Firearms & Explosives
Drug Enforcement Administration
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OIG
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LABOR - OIG & Racketeering
NATIONAL AERONAUTICS & SPACE ADMIN. - OIG
NUCLEAR REGULATORY COMMISSION - OIG
POSTAL SERVICE - OIG & Inspection
RAILROAD RETIREMENT BOARD - OIG
SECURITIES & EXCHANGE COMMISSION - OIG
SMALL BUSINESS ADMINISTRATION - OIG
SOCIAL SECURITY ADMINISTRATION - OIG
STATE DEPARTMENT
Bureau of Diplomatic Security & OIG
TRANSPORTATION OIG
TREASURY
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Legislative Counsel
JAMES K. BROSMAN
EDGAR N. JAMES
MARK CHIMRA

September 5, 2007

Honorable Joseph Lieberman, Chairman
Senate Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C.

Dear Chairman Lieberman:

On behalf of the 26,000 members of the Federal Law Enforcement Officers Association (FLEOA), I wish to offer my support for the nomination of Julie L. Myers for the position of Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement (ICE).

Since January of 2006, Ms. Myers has served in that position, leading ICE, the largest investigative agency within DHS and the second largest investigative agency within the Federal government. Ms. Myers has successfully overseen the daily operations of ICE, an agency of almost 17,000 employees with an annual budget of $5 billion, for the past 20 months.

Over 3,500 ICE special agents are FLEOA members and they tell me she has earned their respect and their support. These are the men and women of ICE, who put their lives on the line every day and have placed their trust in their leader, Julie Myers.

Since Ms. Myers was appointed to lead ICE, she has improved morale, created a better employee career track for ICE Special Agents, resolved numerous budget issues, significantly increased and improved many ICE law enforcement initiatives, increased financial and trade investigations, and enhanced intelligence operations in ICE with regards to protecting the homeland.

Ms Myers now has a proven track record as an effective law enforcement leader, not only within DHS, but also within the entire law enforcement community.

Ms. Myers has traveled across the country meeting with ICE employees, and specifically ICE Special Agents, to determine what they need from a Headquarters perspective, what kinds of law enforcement operations are being conducted and what can be done to make their jobs easier and safer.

In talking to members of your staff recently, I learned that one of the main concerns the Committee had at the last nomination hearing for Ms. Myers, was the fact that she lacked the requisite management experience to oversee an agency the size of ICE with almost 17,000 employees and a $5 billion annual budget. I believe, now that Ms. Myers has a proven track record as the leader of ICE for about the past 20 months, the Committee will no longer have these concerns.

In addition to her current experience as the head of ICE, Ms. Myers was a Federal trial attorney, she also served in various leadership roles as the Assistant Secretary for Export Enforcement at the Department of Commerce, Chief of Staff of the Criminal Division at the Department of Justice and Deputy Assistant Secretary for Money Laundering and Financial Crimes at the Department of Treasury.

Effective and competent law enforcement leaders are critical to the survival of our Federal law enforcement officers. I believe that ICE Special Agents need the continued support and leadership of Julie L Myers, a proven law enforcement leader.

In all of my dealings, as the President of FLEOA with Julie Myers over the past 18 months, I found her to be an effective, honest and sincere leader with a genuine concern for the men and women of ICE, and a genuine desire to make ICE the best law enforcement agency in the Federal government. She is a dedicated professional who deserves your support and recognition.

I ask that you and members of the Committee show your support for Federal law enforcement and the men and women of ICE, by voting to confirm Julie L. Myers as the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement.

If there are any questions, please feel free to call me at 443-463-5912.

Sincerely,

Art Gordon
National President

FEDERAL LAW ENFORCMENT OFFICERS ASSOCIATION

U.S. Department of Homeland Security
Washington, DC 20528

September 5, 2007

The Honorable Joseph Lieberman
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20015

Dear Chairman Lieberman:

We write to you today in our capacity as the lead officials of six of the operational agencies under the Department of Homeland Security. We write this letter of support in hopes that the United States Senate will give speedy and favorable consideration to the nomination of our colleague, Assistant Secretary Julie Myers, so that she can continue to lead the Department's seventh operational agency, U.S. Immigration and Customs Enforcement (ICE).

We are a mix of Senate confirmed political appointees and career officials, representing very different agencies, and with decades of Federal law enforcement, immigration, management, and homeland security experience among us. We hope you find our views and perspective insightful to you, in that we have been uniquely positioned the last two years to work directly with and observe Ms. Myers as a fellow agency head on a frequent basis.

Assistant Secretary Myers inherited a newly formed agency with significant management challenges. Under her determined leadership, ICE has made great strides in stabilizing its finances, achieving operational successes on Department priorities, and working more closely with our agencies – all during a time of intense debate on and scrutiny of our Nations' immigration laws and challenges. We can all say without hesitation that ICE is better off today in meeting its challenging mission because of Ms. Myers' stewardship over the last 18 months.

One of Assistant Secretary Myers' signature accomplishments was pushing ICE to build up detention capacity rapidly in order to end the demoralizing practice of "catch and release" for "Other than Mexican" aliens along our Southwest border. ICE worksite and interior immigration enforcement successes and activities have also increased markedly during her tenure. She has also aggressively moved ICE into criminal investigative areas ranging from cross border child pornography to fraudulent documents to trade violations. Much of the credit for these initiatives belongs to Ms. Myers.

The complaints heard two years ago regarding Ms. Myers' qualifications ring hollow now given her proven track record at the helm of the agency. We know from experience that there is no substitute for the intimate knowledge of ICE's mission, policies, and people that she has gained by already leading the agency. She also clearly enjoys the trust and confidence of the Secretary

and has established working relationships with Department leadership and our agencies. In short, from our close interaction with Ms. Myers and her work, there is no better candidate to lead ICE with the same mix of hands on experience and ability to make immediate impact. A change of leadership now could also be particularly disruptive to ICE and to our agencies when we should be building upon progress already made with a trusted team of capable people.

It is our sincere hope that you and the Senate will judge general concerns about the nomination process separately, and consider the nomination of Julie Myers individually on its merits, focusing above all else on what would be best for ICE and its important mission. We hope that you will give Ms. Myers a full, fair, and speedy hearing and vote.

We believe, based on the working relationships we have forged, that Ms. Myers has demonstrated determined leadership and management of this critical agency and that she ought to be given the opportunity to continue that leadership. The Department and the Nation will be best served by her confirmation and continued service.

Sincerely,

Thad Allen
Commandant
United States Coast Guard

W. Ralph Basham
Commissioner
U.S. Customs and Border Protection

Emilio T. Gonzalez
Director
U.S. Citizenship and Immigration Services

Kip Hawley
Assistant Secretary
Transportation Security Administration

R. David Paulison
Administrator
Federal Emergency Management Agency

Mark Sullivan
Director
United States Secret Service

AMERICAN FEDERATION OF GOVERNEMENT EMPLOYEES, AFL-CIO
AFGE LOCAL 918 FEDERAL PROTECTIVE SERVICE

David L. Wright
President

September 7, 2007

Senator Joseph Lieberman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Susan Collins
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Senator Lieberman and Senator Collins,

I am writing to you in your respective capacities as Chairman and Ranking Member of the United States Senate Homeland Security and Governmental Affairs Committee – for your consideration at the upcoming Confirmation Hearing for Homeland Security Assistant Secretary Julie Myers.

The American Federation of Government Employees (AFGE) Local 918 is the exclusive representative of all bargaining unit eligible Federal Protective Service (FPS) employees. As such, we have a direct interest FPS' need to fully integrate into the Department of Homeland Security (DHS) with our mission of protecting Federal properties intact. On behalf of members of AFGE Local 918, I would like to take this opportunity to address issues that we feel are directly related to Assistant Secretary Julie Myer's leadership and management style, her Staff and the continued failure of Department of Homeland Security/Immigration and Customs Enforcement (DHS/ICE) to embrace the FPS mission.

I would first like to address the state of Labor Relations within ICE. From my perspective as representative of Labor (and former Federal Manager) and since the August 2006 DHS/OIG Report Number OIG-06-57 which revealed numerous backlogged cases of misconduct allegations against ICE employees, little appears to have improved. Very recent cases show that misconduct interviews are presently being conducted on incidents from 2005. Numerous cases show the absolute slow progress of disciplinary process. This has resulted in a lowering of morale that I have never before witnessed in my 21 years of government service. I believe that this slow laborious process can only be attributed to a lack of resources and what I observe as petty overzealousness on the part of authorities in ICE Management, Employee/Labor Relations (E&LR) and Office of Professional Responsibility (OPR) Staff.

Also on the Labor front is the continued denial by ICE of the DHS/ICE/FPS Plan to restructure and realign FPS – and thereby a refusal to bargain in good faith with the Federal Labor Relations Authority (FLRA) certified bargaining unit.

2109 Larkspur Ave., Excelsior Springs, MO. 64024

FPS entered DHS in March, 2003 with approximately 1450 employees. As a unit, we were proud to be a part of the largest government reorganization in U.S. history – with a focus on securing the Homeland against further terrorist attack. Since then, FPS has responded and provided law enforcement and security support to many critical incidents of national significance to include major sporting events, political conventions, various world organization and the G8 Summit meetings. FPS law enforcement response and participation on the Gulf Coast was one of the few success stories of the Federal government after Hurricane Katrina. That FPS response capability is now severely hindered.

The struggle to fully merge FPS along with its support services with the limited and archaic method of appropriations has proved to be a formidable challenge. The federal law enforcement officers and agents in the field have witnessed a decimation of Agency resources and thereby a degradation of the FPS capabilities to accomplish the Mission. Your federal law enforcement officers – the "boots on the ground" in the fight against terrorism on our own soil - have felt the sting of pay cuts and continued disrespect by ICE - our "parent" Agency. Attrition of fully trained law enforcement officers started from the moment that discontinuation of Retention Pay was announced in late November 2006. At that point, FPS employed approximately 1225 support personnel and law enforcement officers. Today we are at about 1100 personnel.

ICE officials have been mandated several times to fix the antiquated funding measures carried forward from GSA in the past. These mandates have been ignored until it was too late. As of today FPS is slated to be reduced to 950 full time employees as a result of ICE's failure to take the FPS Mission seriously. 24 hour per day/7 day per week law enforcement coverage by Federal Protective Service has ceased in most major American cities. Washington D.C., New York City, Los Angeles, Seattle and Chicago – arguably the most significant targets in the U.S. - now have such reduced FPS staffing that true protection of Federal facilities is impossible. FPS participation in Federal Bureau of Investigation Joint Terrorism Task Forces (FBI/JTTF) – established as result of the Oklahoma City Bombing - has dwindled. Contract Security oversight has floundered resulting in millions of dollars of interest paid to Contract Agencies for security guards that have little to no jurisdiction or authority.

It is AFGE Local 918's contention that DHS Assistant Secretary Julie Myers and her Headquarters Staff have had their opportunity to remedy FPS financial problems and thereby maintain and increase security of 8800 federal properties, 1.1 million federal employees and the public that visits. Under Ms. Myers' leadership, they have squandered that opportunity. They have ignored Congressional mandate.

Julie Myers and her ICE Headquarters Management Staff insist that the current reorganization is not budget –driven, that it is a "realignment" of resources. They insist that zero Federal Police Officers on full time law enforcement patrol and zero Special Agents engaged in intelligence gathering/dissemination and prosecutions in the protection of Federal properties is progressive thinking.

We believe they are wrong. With much regret, I hereby state that AFGE Local 918 cannot endorse the management and leadership style that ICE Assistant Secretary Julie Myers and her ICE HQ Management team has provided.

Thank you for your consideration,

David L. Wright

September 7, 2007

Joseph I. Lieberman, Chair
Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Lieberman:

Clearly, both immigration and customs matters are critical issues to all Americans. They are certainly of paramount importance to us here in San Diego County. We believe it is essential to have representation at the Department of Homeland Security from professionals who are accessible and willing to work with businesses and private citizens to address issues of concern.

We want to take this opportunity to advise you of our support of the confirmation of Julie L. Meyers as Assistant Secretary for ICE, with hopes you will convey that support to the other members of the Senate Committee on Homeland Security and Governmental Affairs.

While there certainly will never be complete ideological agreement on all of the policies that ICE (or any other agency) faces, we appreciate the fact that Ms. Meyers has met with the leadership of the western chambers of commerce twice in the last year, and was here in our offices last month for an interesting and informative dialogue directly with three dozen of San Diego's business leaders.

That kind of accessibility at the "front line" of an issue is an important part of representative government. That is why the San Diego Regional Chamber of Commerce, representing nearly 3,000 member companies and the over 400,000 working San Diegans who are their employees, urges you to support the confirmation of Julie L. Meyers as the Assistant Secretary for ICE.

Sincerely,

Scott D. Alevy
Vice President
Public Policy & Communications

JAMES W. JOHNSON
Chief of Police

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"INTEGRITY...FAIRNESS...SERVICE"

September 10, 2007

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Lieberman:

I write to express support for the confirmation of Julie L. Myers as Assistant Secretary of Immigration and Customs Enforcement. In my capacity as Chief of Police, I have seen the direct impact Assistant Secretary Myers' leadership has had on the men and women of ICE who I work with each day. My counterparts at ICE express high praise for Myers' dedication to the agency, leadership qualities and management abilities.

One of the most important aspects of Myers' leadership has been her focus on responsiveness to state and local law enforcement partners. With 775,000 state and local law enforcement officers, compared to ICE's roughly 6,000 agents, Assistant Secretary Myers has done a tremendous job of prioritizing a spirit of cooperation and responsiveness. She recently created a brand new Senior Executive position within her office to serve as a state and local liaison. Though the name of the new hire has yet to be announced, I am confident that the new position will be filled by a former local law enforcement officer who will understand our local needs. Moreover, the 287g delegation of authority program has grown from a handful two years ago to 26 today; and the agency has created a new partnership, ICE ACCESS, to work even more closely with state and locals regardless of whether or not we participate in the formal 287g agreements. This spirit of cooperation is critical if we are going to continue to keep our communities safe from crime and potential terrorist threats.

The Baltimore County Police Department continues to work with ICE as a part of their Seaport Initiative investigating potential threats at the Port of Baltimore, as well as participating in investigations of undocumented aliens working in Baltimore County.

I believe Ms. Myers has amply demonstrated her qualifications for continued agency leadership, so I strongly support her nomination. I have sent identical letters of support to the other members of the Senate Committee on Homeland Security and Governmental Affairs.

Sincerely,

James W. Johnson
Chief of Police

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NumbersUSA
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FROM: Roy Beck, President, NumbersUSA
DATE: 10SEP07
RE: Confirmation of Julie Myers at ICE

We are among the majority of Americans who have long sought a sincere effort at implementation of our nation's immigration laws. Nearly 500,000 of those Americans are among our activist members, and more than 1.5 million of them have signed up for our email list.

We at NumbersUSA have been pleased with the leadership of Julie Myers at ICE.

I am supportive of her confirmation as Assistant Secretary for ICE.

Ms. Myers has overseen a large expansion in personnel and facilities. This provides hope for an expansion in actual deterrence and in an eventual reduction of the total illegal population in the United States, under a vigorous Attrition Through Enforcement policy that substantially avoids mass roundups, mass raids and mass deportations.

By creating a reliable and predictable system of enforcement, both American businesses and foreign nationals will be far more likely to voluntarily obey our immigration laws rather than face the costs of violating them.

Ms. Meyers' management has set ICE on a trajectory of creating a credible system of enforcement that will deter most people from risking their lives – and tragically even the lives of their children – while illegally entering the country. Without the likelihood of an "over-the-table" job, most foreign nationals will not take foolish physical risks of entry.

Adding personnel and spending more money, however, are not the goals of the American people. What they want to see are actual results. Thankfully, under Ms. Myers' management we are beginning to see some real results, such as the first-time-ever decrease in the total fugitive population of illegal aliens who have absconded after being ordered to leave the country.

Another positive result has been the decrease of processing time from apprehension to removal from an average of three months to only one month. It is essential that illegal aliens see that when they are caught, they will be forced to leave the country quickly. This is unsettling to the existing illegal population and to foreign nationals in their home countries who are weighing the cost/benefit balance of becoming an illegal alien.

And disincentives for businesses considering illegal hiring have also risen rapidly under Ms. Myers, although still at a very low level. Especially impressive is the $30 million of fines and restitutions levied against outlaw businesses during FY 2007.

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American Federation of Government Employees (AFL-CIO)
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September 11, 2007

Honorable Joseph Lieberman, Chairman
Honorable Susan Collins, Ranking Member
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Lieberman, Senator Susan Collins, and distinguished members of the Committee:

On behalf of the American Federation of Government Employees (AFL-CIO), National Council 118 – Immigration and Customs Enforcement (ICE), please accept this endorsement for the nomination of Honorable Julie L. Myers to be the Assistant Secretary, U.S. Department of Homeland Security, Immigration and Customs Enforcement.

The Council represents approximately 7,000 bargaining unit Immigration and Customs Enforcement employees throughout the United States and its territories, and is comprised of Detention and Removal Operations (DRO), the Federal Protective Service (FPS), the Office of Financial Management (OFM), and the Office of Professional Legal Advisor (OPLA).

Over the past two years, ICE has experienced tremendous growth and an unprecedented amount of enforcement activity. As a fairly new Agency, and a new bargaining unit (FLRA certified in December, 2005), both labor and management have faced new and unexpected challenges and changes over the past 2 years, and have not always reached agreement on national issues. However, when looking at the overall successes of the Agency, the sustained growth, and the continued increase in negotiated policies and procedures, there has been a clear and marked improvement of ICE operations under the leadership of Assistant Secretary Myers.

On behalf of DRO employees, there has been a sustained increase in funding, hiring, and training, resulting in substantial gains of highly skilled employees and opportunity for

advancement. The employees fully support the initiatives the Assistant Secretary has undertaken to enforce Immigration laws, and the continued success in the areas of Worksite Enforcement, Fugitive Operations, the Criminal Alien Program, the increase in detention beds to stop "catch and release", and 287(g) training. Assistant Secretary Myers has consistently demonstrated a keen knowledge of Immigration law and its application, and has utilized both DRO and Office of Investigations (OI) resources with great success.

There are only two items of contention in which the Council remains at odds with ICE, those being the downsizing of the Federal Protective Service and the Office of Employee and Labor Relations. After speaking with Assistant Secretary Julie Myers and her staff, the Council feels that there is improved communication and potential for enhancement in both areas, and that with the exception of FPS (which will be addressed by their Local President Dave Wright), this should not be an impediment to the Assistant Secretary's nomination.

Thank you for your time and consideration.

Sincerely,

Cynthia R. Kohlmeier-Parker
AFGE National Council 118 – ICE
President
DRO – Deportation Officer

WOMEN IN FEDERAL LAW ENFORCEMENT FOUNDATION

Honorable Senator Joseph I. Lieberman
Chair, Committee on Homeland Security and Governmental Affairs
349 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Lieberman:

Women in Federal Law Enforcement (WIFLE) a not-for-profit organization that seeks to improve gender equity in law enforcement fully endorses Ms. Julie Myers as Assistant Secretary for Immigration and Customs Enforcement. We implore you to focus on Ms. Myers contributions to law enforcement and to the communities served as evidence of her hard work and dedication to this nation.

Ms. Myers has been a leader in the newly formed Immigration and Customs Enforcement agency. In the relatively short period of time she has taken on a role that embodies direction and mission to the men and women serving in ICE. She has been successful under circumstances that were not fully supportive of her and this speaks to her perseverance and resolve.

WIFLE's areas of advocacy are the recruitment, retention and promotion of women in federal law enforcement to achieve gender equity. We believe that women's contributions are vital to the efficacy of law enforcement operations. We also believe and research supports that women use a style of leadership that is more communicative and one that emphasizes partnerships and collaborations to achieve maximum results. Examples of what ICE accomplished under A/Assistant Secretary Myer's leadership are attached. These accomplishments speak well of the tremendous results achieved under her effective leadership.

On a personal level it should be known to the Committee that A/Assistant Secretary Myers is a strong supporter of women in federal law enforcement. The agency diversity has improved while under her direction. Of the senior leadership positions 50% are women, of the Senior Executive Staff 20% are women; 15% of the agent population are women and to date 27% of the newly hired agents are women. The results outlined could not have been achieved without sound leadership and commitment.

In addition, many of the members of WIFLE are ICE employees. I have heard members speak about how morale has improved; management has been more effective in accomplishing the mission and A/Assistant Secretary Myers has gained the enhanced visibility and respect for the agency under her tenure. This indeed has instilled a heightened sense of pride within ICE.

Having achieved all of the aforementioned it appears that sustaining the stability and the continuation of achievements is not only prudent but well deserved for ICE and for the people of this nation.

We humbly reiterate our support for confirmation of Ms. Julie Myers as Assistant Secretary for Immigration and Customs Enforcement.

Sincerely,

Margaret Moore
Director

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