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NEW BORDER WAR: CORRUPTION OF U.S. OFFICIALS BY DRUG CARTELS

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON STATE, LOCAL, AND PRIVATE SECTOR PREPAREDNESS AND INTEGRATION

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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THURSDAY, MARCH 11, 2010

U.S. SENATE,
AD HOC SUBCOMMITTEE ON STATE, LOCAL, AND
PRIVATE SECTOR PREPAREDNESS AND INTEGRATION,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:07 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Mark L. Pryor, Chairman of the Subcommittee, presiding.

Present: Senator Pryor.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. I will go ahead and call the Subcommittee to order. I want to thank all of our witnesses for coming to the Subcommittee on State, Local, and Private Sector Preparedness and Integration. We are meeting in the Homeland Security and Governmental Affairs Committee room. I want to thank all of you for being here and participating. What I would like to do is go ahead and give my opening statement—Senator Ensign is on his way, and maybe a couple of others; I am not quite sure—and then I will turn it over to the witnesses. Then we will ask questions.

Let me start just with a couple of facts. Fact No. 1 is that Mexico ships over 50 percent of the methamphetamine and marijuana into the U.S. market. Over 50 percent of it comes from Mexico. And 90 percent of the cocaine in the United States comes from Mexico. That is about a $25 billion industry in Mexico, drugs, and drug trade.

As a result of that, fact No. 2 would be that the U.S. border defenses have beefed up, and they have tried to squeeze these drug routes, which has been good, and to some extent that has been effective. But to gain an advantage, the cartels have begun to infiltrate U.S. law enforcement. I think that is very troubling for the Senate, and it is very troubling for most Americans, and it is troubling for those agencies.

Our review suggests that the cartels are broadly targeting Federal border law enforcement as well as State and local governments. We are not going to focus on State and local today, but we have to acknowledge that is a large concern as well, and we will be working with the Federal agencies and the State and local governments to try to get a better handle on this and work through good strategies on how we can prevent this from happening.

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The Border Patrol seems to be the biggest target and have the most corruption. A news report recently said that there has been a 40-percent increase in U.S. Customs and Border Protection (CBP) corruption arrests and there are dozens of open investigations. Other possible Federal targets would be the Immigration and Customs Enforcement (ICE), Federal Bureau of Investigation (FBI), Transportation Security Administration (TSA), Drug Enforcement Administration (DEA), and probably a few more. But they seem to be less vulnerable, and I am assuming that is because the CBP is on the front line and they are the face of our border; and it has doubled its size in 10 years with a lot of new people coming, new faces, and new personnel. I think we are starting to see some problems as a result of that.

Our review suggests that CBP may not be using all of the accepted tools to screen job applicants. I think they have a goal of polygraphing all job applicants, but today they are only doing about 10 percent. So we want to talk about that today. And this is not just drugs, but there are guns and money that are moving across the border; largely from north to south across the border. And there is always the possibility of terrorists coming into the country if we have a weakened border.

So these cartels in Mexico are very powerful. We should not underestimate their ability to try to corrupt U.S. law enforcement agencies. Right now we think that the Mexican drug cartels have drug operations in 230 U.S. cities. Three of those happen to be in my State: Fort Smith, Fayetteville, and Little Rock. And also in 2009, the statistics indicate that there were 6,500 drug war-related deaths in Mexico.

So this is a very serious problem. It is on our border. There is a war going on down around the border and in Mexico related to the drug cartels.

What I would like to do now is go ahead and give a brief introduction for each of our witnesses, and I appreciate you all for being here. And in a few moments, when Senator Ensign comes, if he wants to make an opening statement, that would be great.

What we are going to do is we are going to leave the record open for a week or 2 weeks for some of the Senators who could not be here today because of other committee hearings and what is going on on the floor, so we may have some written questions that we would ask you to follow up on.

Our first witness is Kevin Perkins, the Assistant Director of the Criminal Investigative Division at the FBI. He began his career as a special agent in 1986 and has served in operational and investigative positions focusing extensively on white-collar crime and public corruption. The FBI has established several interagency Border Corruption Task Forces designed to bring local, State, and Federal parties together as needed to coordinate efforts on border-related corruption, but I understand your real claim to fame is you are from Mountain Home, Arkansas?

Mr. PERKINS. Graduated in 1978.

Senator PRYOR. There you go. We can talk more about that in a few minutes, but thank you. That is great.

Mr. PERKINS. Yes, sir.

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Senator PRYOR. Our second witness will be Tom Frost. He is the Assistant Inspector General for Investigations of the Department of Homeland Security. Mr. Frost has been involved in and has served as a Federal law enforcement officer since 1976 in a variety of investigative, protective, and leadership roles.

And then our third witness today is James Tomsheck. He is the Assistant Commissioner of the Office of Internal Affairs at CBP. Mr. Tomsheck is a former Deputy Assistant Director of the Office of Investigations at the U.S. Secret Service as well as the former Deputy Assistant Director of the Office of Government and Public Affairs. The Office of Internal Affairs has developed and implemented a comprehensive integrity strategy designed to prevent, detect, and investigate all threats to the integrity of the CBP.

With that, what I would like to do is call on Mr. Perkins, and what we are going to do is if you could limit your remarks to 5 minutes, please understand that we will put your written statements in the record, so that will be part of the record. But if you could limit your statements to 5 minutes, that would be perfect.

Mr. Perkins.

TESTIMONY OF KEVIN L. PERKINS,[1] ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE

Mr. PERKINS. Good morning, Chairman Pryor. I am pleased to be here today to discuss the FBI's efforts to combat public corruption.

The FBI recognizes that fighting public corruption is vital to preserving our democracy, protecting our borders, and securing our communities. In fact, it is our top criminal priority following only the national security priorities of counterterrorism, counter-intelligence, and cyber crimes.

We are directing resources to root out public corruption all across the country, but we cannot, and fortunately do not have to, do it alone. We rely heavily on our partners at all levels of law enforcement.

Through our vigilance, we have achieved some notable successes. In the past 2 years alone, our efforts have helped convict 1,600 Federal, State, and local officials. We have approximately 2,500 pending corruption investigations ongoing today.

The Southwest border is a particular focus of our corruption-fighting efforts. Of the 700 agents leading our charge against corruption, approximately 120 of those are working along our U.S. Southwest border.

Our 12 Southwest Border Corruption Task Forces share information with the Southwest Intelligence Group, the El Paso Intelligence Center, and our Mexican legal attachés to both identify and disrupt Mexican drug-trafficking organizations from utilizing and soliciting U.S. public officials to commit criminal activities.

One particular case highlights the potential national security implications of public corruption along our Nation's borders. In that case, an individual gained employment as a border inspector for the specific purpose of trafficking in drugs. Through our collaborative efforts and a year-long investigation, this public official pled

[1] The prepared statement of Mr. Perkins appears in the Appendix on page 19.

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guilty to one count of conspiracy to import more than 1,000 kilograms of marijuana into the United States while at the same time receiving more than $5 million in bribe payments. This individual has since been sentenced to 20 years in Federal prison.

While the threat posed in the region is real, the Southwest border is not and should not remain the only focus of our efforts. Each day the Federal Government is charged with protecting over 7,000 miles of land bordering Canada and Mexico and over 300 ports of entry across the United States. Each of these entry points has the potential for criminal and/or terrorist organizations to exploit corrupt officials willing to misuse their official positions for financial or personal gain.

In fiscal year 2009 alone, FBI field offices along the Nation's Canadian border conducted nearly 300 public corruption investigations.

The FBI has recognized the very real threat public corruption poses at our Nation's borders and ports of entry. We are working lock-step with our law enforcement partners to address that threat. At FBI Headquarters, for example, we have established our National Border Corruption Task Force. Consisting of representatives of the FBI, U.S. Department of Homeland Security Office of the Inspector General, U.S. Customs and Border Protection-Internal Affairs, and the Transportation Security Administration, this task force ensures general guidance and oversight of border corruption programs ongoing across the country.

Through trend analysis, intelligence and information sharing, and the utilization of lessons learned and best practices, we are uniquely positioned to address the very real threat of border corruption and the risk it poses to our national security.

To that end, our National Border Corruption Task Force is coordinating with other impacted divisions at FBI Headquarters. These include the FBI's Directorate of Intelligence, the Counterintelligence Division, the Counterterrorism Division, and our Weapons of Mass Destruction Directorate. By working together, sharing information, and becoming more creative in our approach, we are making great strides.

I thank you for allowing me the opportunity to testify before you today and share some of the FBI's work in combating public corruption, and I will be able to answer your questions at the appropriate time. Thank you, Senator.

Senator PRYOR. Thank you. Mr. Frost.

TESTIMONY OF THOMAS M. FROST,[1] ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. FROST. Chairman Pryor, thank you for the opportunity to discuss the work of the Department of Homeland Security Office of Inspector General. As Assistant Inspector General for Investigations, my office is responsible for investigating all allegations of DHS employee criminal misconduct, including those related to the security of the Nation's borders.

[1] The prepared statement of Mr. Frost appears in the Appendix on page 23.

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Our mission, in part, is to strengthen the effectiveness and efficiency of DHS by conducting investigations and exercising oversight that will help protect the Nation from dangerous people and dangerous things. The OIG reports both to the Secretary and the Congress, and our position provides necessary objectivity to inspire the public trust and the confidence of the DHS workforce. We have a staff of highly trained and experienced criminal investigators deployed in 25 offices in the United States and complemented by a staff of audit and inspection professionals.

Border-related corruption is not limited to one DHS component. It can touch employees and contractors across DHS as well as employees of State and local governments.

In fiscal year 2009, we opened over 839 criminal cases involving DHS employees and programs. Our investigations resulted in 313 arrests, 293 indictments, 281 convictions, and 59 administrative actions.

One of our strategies is to leverage existing resources and share intelligence through our working partnerships with the DEA, ICE, FBI, and others, and by participating on various task forces including the FBI's Border Corruption Task Force Initiative.

Law enforcement has recognized that the smuggling of people and things across the border is large-scale business dominated by organized criminal enterprises. As we disrupt traditional smuggling routes and networks, organizations resort to alternative tactics, including bribing DHS employees, infiltrating our ranks, and engaging in fraudulent schemes to acquire immigration benefits. We have found the tactics used by the drug-trafficking organizations as they attempt to compromise our employees are similar to tactics used by foreign intelligence services to recruit spies.

CBP staffing and funding levels have increased dramatically since 2003, creating the largest uniformed law enforcement agency in the country, an agency that, along with ICE, occupies the front line in securing our physical border.

Since 2003, we have made arrests of 129 CBP officers and Border Patrol agents. For example, we recently arrested a CBP officer for alien and narcotic smuggling in a joint FBI investigation in Brownsville, Texas. The officer was sentenced to 135 months in Federal prison.

As already noted, we are confronted with corruption in other layers of border security. Law enforcement officers from ICE and CBP have been corrupted for their access to sensitive law enforcement information. Drug-trafficking organizations have purchased information to vet their members, to track investigative activity, and to identify cooperating individuals.

At international airports, or even on interstate highways, for that matter, you can have border corruption because these organizations need to move their product and proceeds further inland or out of the country. We have arrested TSA and other DHS employees as they smuggled narcotics and weapons onto aircrafts and even for selling TSA-screened baggage tags.

As an example, we conducted an investigation with DEA of an ICE immigration enforcement agent who used his government credentials to bypass TSA security. We arrested him when he tried to

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smuggle 10 pounds of marijuana through the checkpoint in his carry-on luggage.

Citizenship and Immigration Services employees are targeted because drug-trafficking organizations need to have personnel operating inside the United States to facilitate their business, and criminal organizations use corruption and fraud to obtain immigration benefits to place conspirators in position to assist their criminal enterprises.

We have worked joint investigations along the Northern border with Royal Canadian Mounted Police. We have worked a case with the FBI where we arrested a Mexican chief of police who attempted to bribe a Border Patrol agent offering him $25,000 per load of marijuana. The police chief received a 90-month prison sentence.

For all our successes, we recognize the need for continued improvement. We suggest increased suitability screening for prospective DHS employees, increased monitoring efforts on backgrounds of current employees, increased employee training through integrity briefings, enforcing administrative regulation, workplace rules, ensuring all relevant allegations are promptly and efficiently referred.

Acts of corruption within the Department of Homeland Security represent a threat to our Nation and undermine the honest and hard-working employees of the Department.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions. Thank you.

Senator PRYOR. Thank you. Mr. Tomsheck.

TESTIMONY OF JAMES F. TOMSHECK,[1] ASSISTANT COMMISSIONER, OFFICE OF INTERNAL AFFAIRS, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. TOMSHECK. Mr. Chairman, thank you for the opportunity to be here this morning and answer your questions.

U.S. Customs and Border Protection is responsible for securing our Nation's borders while at the same time facilitating the movement of legitimate travel and trade, both key components to our Nation's economy. Our purview spans more than 5,000 miles of border with Canada and 1,900 miles of border with Mexico. CBP is actually the largest law enforcement organization in the United States, comprised of 20,000 Border Patrol agents deployed between the ports of entry and over 20,000 CBP officers actually stationed at the various land, air, and sea ports of entry throughout our country. They are joined by an 1,000-agent force of air and marine interdiction agents, whose job it is to implement the air and maritime responsibilities of CBP. There are an additional 2,300 agricultural specialists and other professionals that bring the sum total of CBP staffing, as is reflected in the chart,[2] to over 58,000 individuals.

A snapshot of what it is CBP is able to accomplish with that large workforce. In fiscal year 2009 alone, CBP processed more than 360 million pedestrians and passengers, 109 million convey-

[1] The prepared statement of Mr. Tomsheck appears in the Appendix on page 30.
[2] The chart submitted by Senator Pryor appears in the Appendix on page 32.

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ances, apprehended over 556,000 illegal aliens between our ports of entry, and encountered over 224,000 inadmissible aliens at our ports of entry. We also seized more than 5.2 million pounds of illegal drugs. Every day, CBP processes over 1 million travelers seeking to enter the United States by land, air, or sea.

Unfortunately, we are encountering integrity challenges for any one of a number of reasons. We are the largest law enforcement agency in the country. For a large number of reasons, we are the most vulnerable to integrity threats. We deploy that very vulnerable workforce to the highest threat environment for integrity threats—our Southwest border that we share with the country of Mexico—and all of this is occurring at a point in time that transnational criminal organizations are doing all that they can to infiltrate CBP through our hiring initiatives and at the same time compromise our existing workforce through recruitment.

The overwhelming majority of CBP employees routinely demonstrate the highest levels of integrity. Acts of corruption, unfortunately, do occur. Since October 1, 2004, 103 of our agents or officers have been arrested for corruption. These charges include drug smuggling, alien smuggling, money laundering, and conspiracy.

Corruption is an issue that CBP takes extremely seriously, and we are deeply concerned about our current state. CBP must ensure its employees adhere to a culture of integrity. Although the percentage of prosecutions for corruption is very small, no incident of corruption is tolerated.

Please remember once again the overwhelming majority of CBP agents and officers perform their duties with honor and distinction. Those that do not put our country and our fellow agents and officers at risk.

CBP's Office of Internal Affairs is fully committed to working in a cooperative and collaborative relationship with the FBI, DHS Office of Inspector General, Immigration and Customs Enforcement's Office of Professional Responsibility, and others to address all integrity-related issues within CBP. This layered approach we believe is the appropriate response to a multidimensional attack by those wishing to compromise our workforce.

Placing the investigative resources of those agencies and our other key partners in the environment of the FBI-led Border Corruption Task Force (BCTF) facilitates the effective and efficient sharing of information and resources. The BCTFs also serve to deconflict investigations and enhance agent and officer safety issues and also assure that those cases presented for prosecution include all available evidence.

Today CBP Office of Internal Affairs manages a wide array of integrity- and security-related functions or programs that combine to form, again, what you referred to as our comprehensive integrity strategy. This includes the three pillars of prevention, detection, and investigation—three initiatives that we believe are inextricably intertwined.

Prevention, which is the prevention of bad people from entering CBP, we hope to accomplish through a combination of background investigations and the strategic application of the standard Federal law enforcement pre-employment polygraph examination, detection of bad people who have found their way into our workforce through

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a combination of research and all available information within the organization, and a careful analysis of our employees' behavior that may very well suggest integrity problems. Also, the use of periodic reinvestigations is a vital tool in the detection of corruption. Investigation of those bad people that have found their way into our workforce is accomplished in a partnership with the persons sitting here at the table with me and others not at this table but in this room.

Our Investigative Operations Division is comprised of 214 agents deployed to 22 locations currently there investigating in excess of 900 cases.

Again, I very much appreciate the opportunity to be here this morning and look forward to answering your questions.

Senator PRYOR. Thank you very much. Let me follow up, if I can, Mr. Tomsheck, with you. I see this Customs and Border Protection chart we have here, and you can see the numbers have grown on this chart.[1] I know there are a lot of good reasons why those numbers have grown, but my understanding is that the CBP policy is to do a polygraph on all the applicants.

Mr. TOMSHECK. That is our goal, sir.

Senator PRYOR. And my understanding is you are only doing about 10 percent right now. Is that right?

Mr. TOMSHECK. That is accurate. At this point we concluded calendar year 2009 testing closer to 15 percent of the applicant pool. That occurred because near the end of the year there was a dramatic decline in the size of the applicant pool. We are unable to deploy any additional polygraph examiners or agent polygraph examiners, but there were substantially fewer applicants to be tested in the final weeks of calendar year 2009.

Senator PRYOR. And is the polygraphing a resource issue for you?

Mr. TOMSHECK. It is, sir.

Senator PRYOR. And of those who are polygraphed, what percentage are found unsuitable for service?

Mr. TOMSHECK. Approximately 60 percent.

Senator PRYOR. Sixty percent. Can we extrapolate from that, if there is 90 or even 85 percent of the folks that are on this chart that have not been polygraphed, maybe 60 percent of them might not pass the polygraph if they took the test?

Mr. TOMSHECK. We and others have done that analysis, Senator, and reached the same conclusion, that many of those persons hired during CBP's hiring initiatives who did not take a standard Federal law enforcement pre-employment polygraph exam may very well have entered into our workforce despite the fact that they were unsuitable.

Senator PRYOR. What can we do to address that with those employees now?

Mr. TOMSHECK. Again, it is our goal to reach that point that we are doing 100 percent polygraph screening of all of our applicant pool as soon as possible.

Senator PRYOR. How long will it take you to get to that goal?

Mr. TOMSHECK. At this point we are unable to expand our polygraph program beyond where it currently is staffed with 31 agent

[1] The chart referred to submitted by Senator Pryor appears in the Appendix on page 32.

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examiners. It would require substantially more examiners to be certain that we would have adequate resources to screen just for that hiring that may occur by virtue of attrition within our workforce.

Senator PRYOR. Do you know how many more examiners you would need?

Mr. TOMSHECK. Approximately 50.

Senator PRYOR. And would those have to be full-time, or could you do them on a contract basis to get rid of the backlog?

Mr. TOMSHECK. We would have to utilize full-time employees to accomplish those polygraph exams. There are fairly rigid requirements associated with not allowing contractors to test full-time government employees or law enforcement applicants.

Senator PRYOR. OK. That 60-percent number is alarming to me.

Mr. TOMSHECK. It is to me as well, sir.

Senator PRYOR. Mr. Perkins, let me ask you, what Federal agencies have been targeted for infiltration? You all have covered this, but I just want to hear it again. My understanding is maybe the FBI, DEA, TSA, ICE, as well as CBP. Are there others that have been targeted for infiltration?

Mr. PERKINS. I cannot speak directly to which other agencies may have been infiltrated. I know speaking from the FBI's perspective, we are constantly on the lookout for outside on this—whether it is foreign government or a drug-trafficking organization or anything along those lines trying to infiltrate our ranks. We have fairly robust procedures in place involving polygraphs and the like. All of our special agents are required to maintain a top secret security clearance, which requires 5-year reinvestigations and the like, which includes a national security polygraph exam.

While we are constantly on the lookout for that, I do not have the exact numbers of times attempts have been made to the Bureau, but I do know that has occurred.

Senator PRYOR. I know that we see some of these charts with how many arrests have been made in these agencies. But one thing that I think the Subcommittee is trying to get a handle on is how pervasive is this problem. Whether it be a percentage or a number, do you have a sense of how pervasive this problem is?

Mr. PERKINS. I can give an example that I think may get to the answer we need here. It is without a specific number, but if you look at the actual cases where we have had interdiction, the Crispin case, in fact, I mentioned in my opening statement. This individual was paid over $5 million in bribes. So when you back into that amount, you quickly figure out from a business standpoint exactly how valuable it is to the drug-trafficking organizations to get their loads and other things across the border that they are willing to pay an individual $5 million. I can extrapolate from that to say it is significantly pervasive.

Senator PRYOR. And in the Crispin case, I guess that is a Mr. Crispin.

Mr. PERKINS. Miss.

Senator CRISPIN. Miss Crispin.

Mr. PERKINS. Margarita Crispin.

Senator PRYOR. What was her job title? What did she do?

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Mr. PERKINS. She was a CBP officer, and essentially what she was able to do was clear vehicles coming through her checkpoint without inspection, knowing ahead of time which vehicles they were, which ones to wave through, and these vehicles were able to get into the country with no inspection at all.

Senator PRYOR. And do you know how long that went on before she was caught?

Mr. FROST. Senator, that went on for many years. Prior to 2003, she was suspected of being involved in smuggling operations. Additionally, Martha Garnica was an El Paso police officer we believe was also recruited to further the smuggling scheme by becoming a customs officer.

Senator PRYOR. Well, Mr. Tomsheck, on this chart,[1] I think you mentioned that you have had 102 or 103 arrests, and I think that chart reflects that at CBP. Does a chart like this tell the whole story? I know you have some investigations, you have some arrests, but does it—can we look at that chart and say that this problem is getting worse and that this is something that if we do not get on top of—we already have a major problem, but it is about to get out of control?

Mr. TOMSHECK. Senator, I believe that excellent chart, which I think was created by the ICE Office of Professional Responsibility, is a good insight as to what our current state actually is. It reflects the number of those persons who have actually been arrested by DHS-OIG, FBI, and other agencies participating in a collaborative way to accomplish that. But those are the persons that have been arrested. Those are the ones that we came to be aware of.

Our grave concerns are how many other persons are in our workforce, how many other persons have gained access to our workforce through the hiring initiatives that are not recorded by that chart. But the chart would be a good indicator of how many might be in our workforce.

Senator PRYOR. Let me ask about your impression of this—I know there is no empirical data on this, but is your impression that there is a bigger problem with the new hires, that people may be intentionally trying to infiltrate and go in and try to do this on behalf of the cartels? Or is it the existing workforce, people out in the field right now that just over time get corrupted?

Mr. TOMSHECK. I think both of those scenarios are true, Chairman Pryor. The reality of it is we know from our analysis of those persons that have been arrested, at the beginning of my assignment at CBP, which began in June 2006, the vast majority of those persons arrested had nearly 10 years of service. Those numbers began to change significantly as CBP's hiring initiatives came about. We see a bimodal universe of the data at this point where there are two groups of persons being charged with corruption. They include both the more senior person who had been recruited, but they also include persons who clearly came to CBP solely for the purpose of being corrupt and taking advantage of the authorities they have as a CBP employee, a CBP law enforcement officer to further their pre-existing involvement in a criminal organization.

[1] The chart referenced by Senator Pryor appears in the Appendix on page 34.

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The polygraph program, also, and the careful review of the information we obtain through the interviews following the exam has given us an insight to the number of persons who may have seized on our hiring initiatives to gain access to CBP.

Senator PRYOR. Mr. Perkins mentioned the Crispin case, and he mentioned a figure of $5 million. What is typical? How much money does it take to corrupt a Border Patrol officer?

Mr. TOMSHECK. Well, I am afraid, be it Border Patrol agents or CBP officers, we find that some are willing to compromise their authorities and sell out their allegiance to those that would harm our country in any way they can and harm our fellow agents in any way they can for remarkably small amounts of money.

At the same time, some of the employees are determined to be corrupt, appear to have done so only after having been asked—or offered vast sums of money similar to what Ms. Crispin was determined to have taken.

There is a wide array of what makes somebody decide to become corrupt.

Senator PRYOR. And we have talked about the polygraphs, but also, as I understand it, CBP and all Federal law enforcement agencies do a periodic reinvestigation background check on their current employees as well. I think it depends on the agency and the status of the employee. But how are there in terms of your checking the workforce you have in place right now?

Mr. TOMSHECK. To be honest, Chairman Pryor, we are challenged to keep up with the pace of the periodic reinvestigations that are required once every 5 years for a person in a sensitive position, as our CBP law enforcement officers. We have a backlog of periodic reinvestigations at this point, are doing everything we can to both improve the quality of those investigations while at the same time keep pace with the numbers that come due every year.

Senator PRYOR. OK. The two words you mentioned are "challenged" and "backlogged." Give me a sense of how far behind you are, whether that is a percentage or a number or amount of years. How far behind are you on the periodic background checks?

Mr. TOMSHECK. Today over 10,000 of our employees are overdue to have their periodic reinvestigation concluded. By the end of this calendar year, there will be an additional 9,000 of our law enforcement officers who are due to have their periodic reinvestigations updated, conducted. And it is an excellent tool to detect corruption in the workforce.

Senator PRYOR. And how many do you think you will be able to get done this year?

Mr. TOMSHECK. At this point our current budget situation does not allow for us to hopefully reach that 19,000 number. The goal is to accomplish as many as we can. If we are able to accomplish half, that may be what our budget situation currently allows for this calendar year.

Senator PRYOR. Half of the 19,000.

Mr. TOMSHECK. Yes. Some of that answer resides in how many persons are hired by CBP for the remainder of this calendar year.

Senator PRYOR. Right.

Mr. TOMSHECK. The same personnel security resources that do background investigations for new employees conduct those peri-

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odic reinvestigations. If we do hire substantially in this calendar year for attrition, we will have to divert some of those resources from periodic reinvestigations to do new applicant or new employee background investigations.

Senator PRYOR. Do you have a sense of what your oldest backlog is? In other words, if you have 19,000, are you 2, 3, 4 years behind on some people? Or do you know?

Mr. TOMSHECK. That was the case at the beginning of this fiscal year because the hiring of CBP employees decreased drastically. In the last 3 months of calendar 2009, we were able to address some of those oldest periodic reinvestigations, and those were investigations that were a year or 18 months overdue.

Senator PRYOR. And I will ask a similar question as I did with the polygraph. How many employees do you get that do not pass one of these periodic background checks?

Mr. TOMSHECK. A small number of the periodic reinvestigations, actually less than 1 percent of the period reinvestigations, as they are conducted today, detect significant integrity issues.

Senator PRYOR. And you said "as they are conducted today" because you indicated that you might also need to improve the quality and the thoroughness of the background checks?

Mr. TOMSHECK. We would like to see the periodic reinvestigations evolve into a continuous monitoring scenario, the never-ending background investigation, if you will. We would like to have the resources to continuously monitor our workforce, increasing and decreasing the intensity of that personnel security investigation, depending on what that employee is doing, what their assignment is, whether they are assigned to a high-risk environment, whether there is any information received that might indicate there is an integrity issue.

Senator PRYOR. OK. Do you have a sense of how many new personnel you would have to have in order to get to the level that you need to be?

Mr. TOMSHECK. Right now the vast majority of our background investigations and periodic reinvestigations are conducted by contractors. We recently had to reduce the staffing of rehired annuitants that were dedicated to personnel or to periodic reinvestigations. To maintain our own investigative source and to eliminate the use of contractors would require several hundred individuals dedicated to doing periodic reinvestigations.

Unfortunately, we just had to furlough or relieve of their duties 99 of our persons that were rehired annuitants, retired former FBI agents, DEA agents, Secret Service agents, ICE, customs agents who were re-employed dedicated to doing periodic reinvestigations. Unfortunately, last pay period we had to release 99 of them—temporarily, hopefully.

Senator PRYOR. And that is because of budget issues?

Mr. TOMSHECK. It is, sir.

Senator PRYOR. OK. Mr. Perkins, we talked about these task forces or multiagency meetings that you have. Could you tell the Subcommittee a little bit more about that, please?

Mr. PERKINS. Certainly. Yes, Senator. Presently we have 12 Border Corruption Task Forces established. What these are, these are operational entities that involve agents from the agencies sitting

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here at the table as well as the Transportation Security Administration. They work up and down the Southwest border—and not only there, but they are also on the Northern border of the country. They work specifically cases involving corruption along the border, particularly the Southwest border, obviously involving drug trafficking, but, really, whatever else might come along, whether it is State, Federal, local law enforcement individuals, members of CBP, or the like. These turned out to be very—we are trying to stay ahead of the curve as much as we can. We enjoy probably—in all the task force operations the Bureau is in that I oversee on the criminal side, these are among the best as far as cooperative efforts, sharing of information, and people working together along the border. We are looking to expand those to other points of entry around the United States, but right now we are focusing on the Southwest border.

Senator PRYOR. How often do they meet face to face? Or is this more of just a conference call meeting?

Mr. PERKINS. No. These are actually collocated physical space investigators.

Senator PRYOR. OK. Good. And is it your experience that by them sharing information and being around each other and spending a lot of time with each other that they actually—the Federal side is helping the State side and the county is helping the Federal side?

Mr. PERKINS. Without a doubt. It is vital to have those types of relationships to leverage the resources each one of us can bring to the table, the various expertise each one of us can bring to the table, and the information sharing that comes there also. Without a doubt, that is vital.

Senator PRYOR. I know this isn't the focus of this hearing, but in those task forces, are you seeing evidence of State and local corruption as well?

Mr. PERKINS. Yes, sir, that is the case. And, in fact, one of the things we are trying to do with everybody's budgets—we have to work and live within them. Recently in the 2010 appropriation we were able to receive additional bodies to fight gang violence across the United States. So instead of parsing these out across the United States in little pieces, we decided to go where we thought we could make a major impact, and we went to the Southwest border, and we queried our SACs, our agents in charge, to provide proposals to us so that we could place, for instance, an entire squad—eight agents, an intelligence analyst, staffing, and the like—into a field office to address a particular issue.

What we wanted them to do was, one, have something to do with gang violence; two, have some tie into public corruption along those lines; three, have something to do with money laundering. So it was kind of a joint, across-the-stovepipes effort.

We have identified two of the three offices where we are going to select those squads right now and go forward. So we are trying to use that type of information that not only addresses gang violence in these areas but addresses State and local corruption along the border also.

Senator PRYOR. This next question might be a little bit sensitive, and if you cannot answer it, I understand. But one of the concerns

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when you hear a story about this, about corruption on the border and some problems with drugs, guns, money, etc., coming in and out, would be terrorism. Are you seeing any evidence of terrorists tapping into this and coming into the country?

Mr. PERKINS. I think what we are trying to identify, you step back and you look at individuals, if they are willing to wave a carload of marijuana or cocaine or illegal aliens through, why wouldn't they be willing to wave through a known terrorist or even perhaps some components to an improvised explosive device of some type? It is all the same to us. That is why we are trying to focus on this as seriously as we are to address these issues.

If you recall back, I mean, history shows—it was on the Northern border when components attempted to smuggle in back during the millennium, back in 2000, an explosive device into the country. At that point that was successfully interdicted.

So while I am not saying that—we are prepared for that. We suspect that is possible, and we are trying to do what we can with this effort to interdict those potentialities.

Senator PRYOR. Thank you very much.

Mr. Frost, let me do a little follow-up with you. We have talked about Customs and Border Protection. Can you give us a sense, though, of ICE and TSA and other agencies in terms of the frequency of corruption or the scope and nature of it?

Mr. FROST. Well, the numbers for ICE and CBP are quite different, but also their mission is different and their numbers of employees are different. Probably the—they are right about half, if you look at arrests and case openings and case investigations. But ICE also includes the element of ICE that deals with detainees, alien detainees, and transport of those individuals.

Citizenship and Immigration Services (CIS) is probably, from a homeland security investigation standpoint, our area of most concern. Immigration benefits are such a valuable commodity to enemies of the United States, whether they are drug-trafficking organizations or other persons that would do us harm. And the ability of lower-level employees to make decisions on immigration benefits is disproportionate, similar, I would say, to CBP's authorities at the border where you have your average employee who is making decisions about whether someone could come in the country. Certainly with immigration benefits, the impact is even more lasting and profound.

Senator PRYOR. Do you have a sense of how these agents in the various agencies, are being penetrated and corrupted? How do they go from Point A to Point B in terms of being corrupted?

Mr. FROST. Well, we have looked at kind of comparing it to the espionage-related corruption techniques where organized criminal groups actually look for vulnerable employees, and it may be someone that they already have a social relationship with. People down on the Southwest border like to say that to them the river is just a river. There is a lot of commerce, family, and other interaction between people on both sides of the border. And the same is true on the Canadian border where DHS employees often go to have meals or entertainment or just for tourism.

So recruiters try and target people that are vulnerable or people that they know, people who are willing to talk about their work.

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And then they assess those people, and they look for those who have obvious vulnerabilities, who may be prone to infidelity or alcohol abuse. And then they target them and begin a relationship, a further relationship that starts with small favors and expands until they are committed to these levels of corruption that we believe are in some cases traitorous.

Senator PRYOR. There again, that is very concerning. So besides polygraphs and background checks that are supposed to happen every 5 years, what do you do to try to monitor your workforce in all your various agencies?

Mr. FROST. Well, within the Department there are internal affairs components, both with CBP, ICE/OPR, Secret Service, TSA, Coast Guard, and we work closely with those internal affairs components to monitor those administrative-type cases.

Senator from, I think, all of our perspectives, administrative-type cases are important tells, if you will, of employee misconduct. You know, a leaking faucet starts with a drip, and the first sign of corruption is not generally when someone is knee deep and already involved with an organization.

Senator PRYOR. Which, really also raises another question that we have not talked about, and that is, Mexico's commitment to thwarting the efforts of these cartels. This is really just for the panel at large, anyone who wants to answer. But what is your sense of Mexico's commitment, Mexico's level of determination to get these cartels under control and break them up, however they do that under Mexican law? What is your sense of their commitment level?

Mr. PERKINS. Speaking from the Bureau's perspective, we have a very good relationship with our colleagues on the Mexican side through our legal attaché in the embassy and through other agents who are actually stationed and work in Mexico. Really, for the Department of Justice (DOJ), the Drug Enforcement Administration has the lead in working those matters, but we do receive a great deal of cooperation from the Mexican Government.

Obviously, of late, a number of leaders of various drug-trafficking organizations have either been captured or killed within the last 6 months, which has caused somewhat of a destabilization in the area down there. That is kind of sorting itself out right now, and I know the Mexican Government is attempting to push harder and try to further destabilize these organizations and break them into components that can be dealt with directly.

But from the Bureau's standpoint, we enjoy a very good relationship with the Mexican Government in the sharing of information.

Senator PRYOR. Great.

Mr. FROST. Mr. Perkins is, I think, very correct that the level of violence, our understanding from our DEA law enforcement partners and ICE, who all have human intelligence assets wherever they can get them down there, the level of violence down there is very bad, and it causes the local government closest to the border to make some very difficult decisions about at what level and how they can cooperate with us in trying to stem this smuggling.

Senator PRYOR. Well, and I assume that a pretty healthy amount of drugs are smuggled in via air. Is that right as well? Or do they all come in vehicles over the road?

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Mr. PERKINS. I think it is a combination of all—land, sea, and air—on that. The exact percentages I do not have with me.

Senator PRYOR. One of the questions I have—and this is more of an internal question—is I know you have IGs and you have Internal Affairs and you have different agencies that may have different structures and different personalities and missions and turf. How are the agencies doing in your view, Mr. Frost? How are the agencies doing internally in terms of making sure that these cases are being handled properly within the agency and if they need to work with another agency, that is being done and there is cooperation? How is that going internally?

Mr. FROST. Well, I think we are making great strides there. You know, we have to recall that the Department of Homeland Security is pretty new still, relatively. And we are continuing to define our roles within the Department.

The good news, the best news of this is that we all want the same thing. We are all dedicated to stopping this and to locking up the bad guys, and I am very confident that minor issues between agencies are things that will always occur and that we will always be able to work it out as long as we have that same goal.

Senator PRYOR. Mr. Tomsheck, do you have any comment on that?

Mr. TOMSHECK. I would, Senator. I think we need to continue to work really hard at working better together at each and every level. Previously, I mentioned the FBI-led Border Corruption Task Forces. I think having all of the agencies involved, working well in that environment, is the right response. I think working in genuine full partnerships in an atmosphere where you know there is redundant verification that information is being shared, that all available resources are being brought to bear in a coordinated way, is the only way forward.

I believe all of us sitting at the table and ICE/OPR and other agencies need to bring to bear all of our resources working in a highly collaborative way. I have concerns that at the end of the day, resources being what they are in all of those agencies, if we are working in a perfectly harmonious way, we still may be short of what is needed.

Senator PRYOR. OK. So still work to be done there, then.

Mr. TOMSHECK. I believe it is something we need to continually work at.

Senator PRYOR. Now, I think almost everybody has mentioned here that you may need more resources, especially you, Mr. Tomsheck. You talked about at CBP you need more resources in terms of polygraph, etc.

Aside from resources, can you all think of any changes in the law, any changes in legislation that would help this? Or do you see this as pretty much just a resource issue?

Mr. TOMSHECK. Senator, I believe having the authority to require polygraph examinations as part of the periodic reinvestigation process would be helpful. I do not know that we would necessarily administer periodic polygraph examinations to everyone in the CBP workforce, but do it on a strategic basis when we deem it is appropriate and necessary based on the degree of risk this employee may pose, based on their assignment, the nature of their duties, and

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other information that the periodic reinvestigation may have developed. We do not have that authority, and I think that is something that would be enormously beneficial.

Senator PRYOR. Good. Thank you. Anybody else on that?

Mr. PERKINS. I would just say at this point we are confident that we have the tools to move forward, but I will leave it also in the fact that I meet regularly, if not multiple times a week, with the Assistant Attorney General for Criminal Division, Lanny Breuer, at the Department of Justice, and these matters are always on the table and always being discussed, and I would defer to the Department on those matters. But for the time being, I believe we have the tools in place.

Senator PRYOR. OK. Well, that is encouraging, but please check back with us if you find something else, and the same for the other two witnesses.

We are going to keep the record open for 15 days, and there will be some other questions from other Subcommittee Members who got caught up at hearings or down on the floor, because we have a busy floor schedule this week.

I guess I would be remiss if I did not mention before we leave here that the vast majority of your agents and employees do a great job and they are not corrupt and they are out there putting their lives on the line every day to try to keep America secure. And we cannot forget them, and we cannot paint everybody with too broad of a brush here. But I do think that we have a very serious problem here that we need to address, and I think it is largely a resource issue. There may be a few changes in the law that we can make here or there to make this better.

But I really want to thank all of you for coming today and being part of this hearing. I think you have helped us as a Subcommittee to understand the scope and nature of the problem. I think you have helped us identify some practical approaches to solve this and gave us a snapshot of where we are, and I think that is very helpful.

But I will say this: I do think that this is something that is critically important that we address and address very quickly and thoroughly and do it in the right way. So I think I can speak for the whole Subcommittee and the whole Committee and probably the whole Senate in saying that we need to prioritize this and help you all solve this, because we are on very dangerous ground here with corruption within our Federal law enforcement agencies.

So we will continue to work with you on this, and we would really appreciate your ideas, your suggestions, your recommendations, other people that we can talk to help us get a better feel for how we can address this, because it is a very serious need.

But with that, what I will do is we will leave the record open for 15 days, and if other Senators have questions, which I know some will, we would love to get those back from you within the next 15 days.

Unless there is something else, I will go ahead and close, but thank you very much for all your participation, your preparation, and your presence here today. Thank you.

[Whereupon, at 12:06 p.m., the Subcommittee was adjourned.]

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APPENDIX

Department of Justice

STATEMENT OF

KEVIN L. PERKINS
ASSISTANT DIRECTOR
CRIMINAL INVESTIGATIVE DIVISION
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

AD HOC SUBCOMMITTEE ON STATE, LOCAL, AND PRIVATE SECTOR PREPAREDNESS AND INTEGRATION
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ENTITLED

"NEW BORDER WAR: CORRUPTION OF U.S. OFFICIALS BY DRUG CARTELS"

PRESENTED

MARCH 11, 2010

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Statement of Kevin L. Perkins
Assistant Director, Criminal Investigative Division
Federal Bureau of Investigation
Before the Senate Homeland Security and Governmental Affairs Ad Hoc Subcommittee on State, Local, and Private Sector Preparedness and Integration
March 11, 2010

Good morning Chairman Pryor, Ranking Member Ensign, and Members of the Subcommittee. I am pleased to be here today to discuss the FBI's efforts to combat public corruption.

The FBI recognizes that fighting public corruption is vital to preserving our democracy, protecting our borders, and securing our communities. In fact, it is one of our top investigative priorities, along with counter-terrorism, counter-intelligence, and cyber crimes. Whether in the back of a squad car, at a border crossing, in a courtroom, or within the halls of Congress, our public officials must carry out their duties in a just and legal manner.

We are directing resources to root out public corruption across the country, but we cannot and, fortunately, do not, do it alone. We rely heavily on our partners at all levels of law enforcement. To address this particular threat, the FBI continues to focus on areas where our involvement will have a substantial and lasting impact and where the FBI has a specific skill or expertise that will contribute to the success of the operation or investigation. Often times we bring our expertise to bear on joint investigations with our partners in federal, state and local law enforcement. We stand shoulder to shoulder to combat corrupt officials, both operationally, and through the sharing of vital intelligence.

Through our vigilance, we have achieved some notable successes. In the past two years alone, our efforts have helped convict 1,600 federal, state, and local officials. We have another 3,200 public corruption cases pending, approximately 2,500 of which involve corruption of public officials. But more remains to be done. Because the interests at stake are so important and the magnitude of the problem so great, we have deployed approximately 700 agents to fight corruption around the country.

The Southwest border is a particular focus of our corruption-fighting efforts. Of the 700 agents leading our charge against public corruption, approximately 120 are working along the Southwest border. We coordinate our investigative efforts along the borders with the Department of Homeland Security Office of Inspector General (DHS OIG), Customs and Border Protection Internal Affairs (CBP-IA), Transportation Security Administration (TSA), the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the U.S. Immigration and Customs Enforcement, Office of Professional Responsibility. The result is over 400 public corruption cases originating from that region. In fiscal year (FY) 2009, there were over 100 arrests and over 130 state and federal cases prosecuted.

Our twelve border corruption task forces along the Southwest border share information with the Southwest Intelligence Group (SWIG), the El Paso Intelligence Center (EPIC), and

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Mexican Legal Attaches to both identify and disrupt Mexican Drug Trafficking Organizations (DTOs) from utilizing and soliciting United States public officials to commit criminal activities.

Stronger cooperation with the governments of Mexico and countries in Central America is an interagency goal of the United States government and one that we are working hard to realize. Most recently, the FBI's McAllen office hosted 30 Mexican police officers from all levels of law enforcement — local, state and federal — for a week of training and information sharing. The Mexican American Liaison and Law Enforcement Training, or MALLET, is a week-long program, featuring modules in ethics, firearms and various investigative techniques to build law enforcement contacts with the Mexican government and foster international cooperation generally.

One particular case highlights the potential national security implications of public corruption along our nation's borders. In that case, an individual gained employment as a border inspector for the specific purpose of trafficking in drugs. Through our collaborative efforts and a year-long investigation, this former public official pled guilty to one count of conspiracy to import more than 1000 kilograms of marijuana into the United States and received more than $5 Million in bribe payments. This individual has since been sentenced to 22 years in prison.

In another extensive undercover investigation, the FBI and its partners netted corrupt officials from 12 different federal, state, and local government agencies who allegedly used their positions to traffic in drugs. To date, 84 of those subjects have pled guilty to related charges.

While the threat posed in the region is real, the Southwest border is not and should not remain the only focus of our efforts. As with other criminal priorities, the FBI utilizes a threat-based intelligence-driven proactive approach to combating all criminal enterprise. Through information sharing, collaboration, and coordination, we are able to identify and address threats early on.

The FBI recognizes the very real threat public corruption at our nation's borders and all other ports of entry pose. We are working lock-step with our law enforcement partners to address that threat. At FBI Headquarters, for example, we have established the National Border Corruption Task Force. Consisting of representatives from the FBI, DHS OIG, U.S. Customs and Border Protection- Internal Affairs, and TSA, this task force ensures general guidance and oversight of border corruption programs across the country.

Each day, the federal government is charged with protecting over 7,000 miles of land bordering Canada and Mexico, 95,000 miles of U.S. shoreline and over 300 ports of entry across the United States. Each of these entry points has the potential for criminal and/or terrorist organizations to exploit corrupt officials willing to misuse their official positions for financial and/or personal gain.

In July 2008, for example, the FBI and DEA supported Canadian law enforcement in the arrest of eight people, including a customs agent, suspected of smuggling cocaine and marijuana, contraband cigarettes and illegal immigrants over the Quebec-New York border. This underground network reportedly ferried hundreds of kilograms of cocaine from Colombia into

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Canada via the Saint-Bernard-de-Lacolle border crossing. This is one of many investigations along our northern border.

In fact, in FY 2009 alone, FBI field offices along the nation's Canadian border conducted nearly 300 public corruption investigations. A corrupt border official might think that a bribe is sufficient payment for allowing a carload of drugs through the nation's borders. The ultimate cost, however, might be significantly higher if that carload includes members of a terrorist cell or ingredients for a weapon of mass destruction.

Through trend analysis, intelligence and information sharing, and the utilization of lessons learned and best practices, we are uniquely positioned to address the very real threat of border corruption and the risk it poses to our national security head-on.

To that end, our National Border Corruption Task Force is coordinating with other impacted divisions at FBI Headquarters. These include the FBI's Directorate of Intelligence (DI), Counterintelligence Division (CD), Counterterrorism Division (CTD), and Weapons of Mass Destruction Directorate (WMDD). By working together, sharing information, and becoming more nimble in our approach, we are making great strides.

Thank you for allowing me the opportunity to testify before you today and share the FBI's work in combating public corruption. I am now happy to answer any questions.

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STATEMENT OF THOMAS M. FROST

ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

AD HOC SUBCOMMITTEE ON STATE, LOCAL AND PRIVATE SECTOR PREPAREDNESS AND INTEGRATION

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

U.S. SENATE

MARCH 11, 2010

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Chairman Pryor, Ranking Member Ensign, distinguished Senators, thank you for the opportunity to discuss the work of the Department of Homeland Security (DHS) Office of Inspector General (OIG) regarding our investigative efforts. As Assistant Inspector General for Investigations, my office is responsible for investigating all allegations of DHS employee criminal misconduct.

Our mission is to strengthen the effectiveness and efficiency of DHS by conducting investigations and exercising oversight that will help to:

- Secure and Protect the Nation from Dangerous People and Dangerous Things;
- Protect the Civil Rights and Liberties of the Citizens, Immigrants, and Non-immigrants in the United States; and
- Protect and Enhance Departmental Programs.

As intended by federal legislators and the stewards of good government, the OIG is an independent and objective investigator of criminal and other serious misconduct. We report both to the Secretary and the Congress and our position provides the necessary objectivity to inspire the public trust and the confidence of the DHS workforce, especially when dealing with matters of corruption. The DHS OIG has statutory authority and responsibility to conduct criminal investigations into allegations of employee misconduct within the DHS. We investigate 100% of all allegations of serious criminal misconduct involving DHS employees. We investigate all allegations of corruption of DHS employees related to the security of the nation's borders including the smuggling of drugs, weapons, and people. We have a staff of highly trained and experienced criminal investigators deployed in 25 offices throughout the U.S., complimented by a staff of audit and inspection professionals.

Border related corruption is not limited to one DHS component, but, unfortunately, could involve employees and contractors from across DHS, from Customs and Border Protection (CBP) to the Transportation Security Administration (TSA), Citizenship and Immigration Services (CIS) and others.

In Fiscal Year (FY) 2009, the Office of Inspector General (OIG) received about 12,458 allegations of fraud and initiated over 1,085 investigations. Our investigations resulted in 313 arrests, 293 indictments, 281 convictions and 59 administrative actions. Additionally, we reported over $85.7 million in fines, restitutions and administrative cost savings and recoveries.

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Specific to employee corruption on the border, since 2003, we have made 129 arrests of corrupt Customs and Border Protection Officers and Border Patrol Agents. In FY 2009, we opened 839 allegations involving DHS employees:

- 576 CBP;
- 64 CIS;
- 35 TSA, and
- 164 ICE

Without discounting the excellent work of our own agents, much of our success is due to our collaboration with law enforcement partners. A key component of our investigative strategy is to leverage our limited resources and share intelligence. Our participation on various federal, state, and local task forces, such as the Federal Bureau of Investigations (FBI) Border Corruption taskforces, allows us to achieve greater economy and efficiency. We recognize that streamlining of operations is essential in any government program today. We embrace this logic and use well established relationships with the Drug Enforcement Agency (DEA), Immigration and Customs Enforcement (ICE), the FBI and others to achieve success.

Scope of Border Corruption Issues

Border corruption is a complex investigative matter. In recent years, federal, state and local law enforcement agencies on the border have increased personnel and redeployed resources in an effort to assert more effective controls. CBP staff and funding levels have increased dramatically since 2003, creating the largest uniformed federal law enforcement agency in the country, an agency that, along with ICE, occupies the front line in the prevention of smuggling and illegal border crossings.

Law enforcement has long recognized that the smuggling of people and things across the nation's borders is a large scale business venture dominated by organized criminal enterprises. In part, the structured nature of these drug trafficking organizations is a necessary response to the success of our Departmental strategy. As the Department becomes more efficient and successful in deploying techniques, technologies and manpower to disrupt traditional smuggling routes and networks, the smuggling organizations have redoubled their efforts to evade our efforts by using alternative tactics, including bribing DHS employees and engaging in fraudulent schemes to acquire immigration benefits. We have found the tactics used by the drug trafficking organizations in their corruption activities are similar to the processes or tactics used by foreign intelligence services as they attempt to recruit or otherwise compromise our officers and agents.

The corruption activities of drug trafficking organizations are not limited to those employees such as customs inspectors and border patrol officers whose duties are posting and patrolling the physical border, but encompass almost every layer of the DHS border security strategy. We have had investigations involving DHS employees who were posted away from the border but who were targeted for corruption because of their value

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in providing access to sensitive law enforcement information or their ability to convey immigration benefits or otherwise assist drug trafficking organizations in evading our enforcement efforts.

ICE employees, including sworn law enforcement officers, have been targeted and recruited, as have other federal, state and local law enforcement officers, because of their access to sensitive law enforcement intelligence or operations. Drug trafficking organizations have purchased intelligence information, and have utilized their access to our government law enforcement databases to vet drug trafficking organization members, track investigative activity, and identify individuals cooperating with the government.

TSA employees have been a corruption target as well, because organized criminal enterprises need to securely move their bulk product further inland away from the border areas or move cash proceeds or weapons out of the U.S. If you have an international airport in your District, or an interstate highway for that matter, you can have border corruption. We have arrested TSA employees for their participation in moving narcotics and weapons through security screening and even for the sale of baggage screening tags.

CIS employees have been corruption targets because drug trafficking organizations need to have personnel operating inside the U.S. to facilitate their business ventures or infiltrate U.S. government agencies. Drug trafficking organizations or even foreign governments, use immigration fraud to obtain U.S. citizenship or other immigration benefits to place conspirators in position to assist their criminal enterprise - even as government employees or contractors. We have investigated and arrested CIS employees for their role in such schemes.

DHS OIG Corruption Investigations with Law Enforcement Partners

Some examples of our investigative work and partnership with other law enforcement agencies include:

1) The DHS OIG field office in McAllen, TX, initiated an investigation into two U.S. Customs and Border Protection Officers (CBPOs) in Brownsville, TX, who were assisting an illegal alien and narcotic smuggling organization. In partnership with the FBI and ICE, we began a surveillance of the Brownsville Port of Entry to monitor the CBPOs' interaction with each other and with suspected members of a smuggling organization. Our undercover operations resulted in the arrest of illegal aliens and seizure of narcotics that were moving through the port.

After DHS OIG agents and agents from our law enforcement partners arrested one of the CBPOs for alien smuggling and narcotic smuggling, we searched his residence and found $85,250. When questioned, the officer admitted to smuggling. He was indicted and pleaded guilty to alien smuggling and narcotics smuggling. He forfeited the $85,250 and was sentenced to 135 months federal confinement and 60 months supervised release.

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2) Agents of the DHS OIG and other federal law enforcement agencies developed information that indicated that a CBPO in Detroit, MI, was conspiring to smuggle aliens into the U.S. from Canada with a Lebanese national who was a U.S. permanent resident. We obtained a court- ordered wiretap on the permanent resident's cellular telephone and evidence was developed that indicated that the CBPO, the permanent resident, and other suspects were actively planning several smuggling operations at the Detroit/Windsor Tunnel Port of Entry (POE.)

Agents and officers of the DHS OIG, FBI, Royal Canadian Mounted Police and Detroit Police Department conducted surveillance at the Detroit/Windsor Tunnel and interceded in the smuggling of an inadmissible Lebanese national. Subsequent to the apprehension, numerous conversations between the permanent resident and the CBPO were recorded.

When interviewed, the CBPO, who confessed to smuggling and resigned. He was indicted along with the permanent resident, and the resident's father and another person for conspiracy, alien smuggling, and improper entry by an alien. The father and third person pleaded guilty to and were sentenced to 6 months incarceration. The former CBPO pleaded guilty and was sentenced to 24 months incarceration, 24 months probation and was fined $4,000.

3) The DHS OIG was contacted by a U.S. Border Patrol Agent who served as a Sector Lead Intelligence Officer in Arizona. The Border Patrol Agent reported that the Chief of Police of a small Mexican border town attempted to bribe him to assist in the importation of narcotics from Mexico into the United States through a remote border area on an Indian reservation in southern Arizona.

In an undercover capacity, the Agent assisted the DHS OIG and we were able to monitor phone calls. We recorded several meetings between the Agent and the Chief. At those meetings, the Chief offered the Agent $25,000 per load of marijuana that was smuggled and gave him a deposit of $100,000 up front for the first four vehicles. At the final undercover meeting, the Chief gave the Agent a bag containing $80,020 as a down payment. During the meetings the Chief was accompanied by one of his subordinate police officers.

After his arrest by agents from DHS OIG, FBI and ICE, the Mexican Police Chief pleaded guilty to bribery of a public official. He was sentenced to 90 months imprisonment, to be followed by removal from the United States. The Mexican Police Officer who assisted the Chief, pleaded guilty to Misprision of a Felony, and was sentenced to time served (approximately one year.) He was ordered removed from the United States.

4) A CIS District Adjudication Officer (DAO) was paid $100,000 to allow a foreign couple into this country based on fraudulent work visas. The DAO was found guilty by a federal jury of bribery and conspiracy to encourage and induce aliens to come and reside in the United States. The DAO was sentenced to 40 months in prison.

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5) Our investigation revealed that an ICE Supervisory Special Agent who was assigned overseas as an ICE Attaché and later became a Headquarters official, solicited bribes to steer an armored vehicle contract to a foreign vendor. He also improperly vouched for foreign nationals who were seeking U.S. immigration visas. He was sentenced to 90 months of confinement after pleading guilty to bribery, money laundering, wire fraud, and honest services fraud.

6) We investigated an ICE Supervisory Immigration Enforcement Agent who was arrested at an airport after ten pounds of marijuana was discovered in his carry-on luggage. When interviewed, he admitted using his government credentials to bypass security for marijuana smuggling on five previous occasions. Following a guilty plea to conspiracy to distribute a controlled substance, he was sentenced to 25 months in prison followed by 24 months of supervised release. We were assisted in this investigation by the DEA.

7) We investigated a Transportation Security Officer (TSO) at an international airport who was illegally selling TSA security stickers. The stickers are used to mark passenger baggage that has already undergone screening. The stolen stickers were then used to facilitate the transportation of narcotics. Using an undercover agent, we purchased a reel of 399 TSA stickers from the TSO for $200 in order to transport what the TSO believed to be a shipment of cocaine from Miami to New York City. The TSO was arrested and pleaded guilty to theft of government property. He was terminated from TSA and was sentenced to 36 months probation and 150 hours of community service.

8) We investigated a Supervisory TSO who participated in the smuggling of narcotics through a checkpoint at a U.S. international airport. Our investigation determined that the Supervisory TSO conspired with a conspirator who was not employed by DHS, and who was the main organizer of an international smuggling operation. The Supervisory TSO was indicted and pleaded guilty to one count of attempt to distribute and posses a controlled substance and was sentenced to 135 months imprisonment. The organizer was sentenced to 262 months imprisonment.

9) We investigated a U.S. Coast Guard Petty Officer (First Class) who portrayed himself as an immigration official and said he could help an illegal alien avoid capture and deportation from the United States. The family of the illegal alien paid the Petty Officer more than $30,000 in bribe money. Substantial evidence was obtained through numerous undercover operations, recorded telephone conversations, and a search warrant. The Petty Officer pleaded guilty to extortion and received 24 months incarceration, 12 months probation, and a $2,500 fine.

Areas for Continued Improvement

We have identified the following issues as areas where continued improvement could help the department address employee corruption: (1) Employee Suitability; (2)

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Monitoring and Oversight; (3) Ongoing Employee Training (4) Enforcing Administrative Action; (5) Hotline Allegations; and (6) Improved Information and Intelligence Sharing.

Employee Suitability - In the area of employee suitability, the Department has a number of component based internal affairs offices, which compliments our collective mission to help ensure the integrity of the DHS workforce by conducting administrative investigations, enforcing departmental and agency procedures and policies, and screening prospective employees. Additional tools DHS components can use are improved background and suitability testing using tools such as the polygraph, and drug testing.

Monitoring and Oversight - As employees come onboard the importance of monitoring and oversight is critical. For example, DHS should monitor their workforce for erratic behavior or questionable performance and develop and deploy integrity training and periodic financial screening mechanisms. This ongoing monitoring should detect the tell-tale signs of corruption such as living beyond one's means or other unusual or erratic behavior. We intend to continue to oversee the departmental internal affairs agencies to ensure efficiency and effectiveness.

Ongoing Employee Training - We rely on DHS internal affairs components to compliment the OIG's criminal enforcement mandate by carrying out its mission to help ensure the integrity of the DHS' workforce. We recently embarked on a joint initiative with ICE to provide integrity briefings and training for DHS employees. Similarly, in 2008, we helped CIS produce a high quality employee integrity video, which highlighted our investigation and successful prosecution of a CIS employee.

Enforcing Administrative Action – In addition to the deterrent effect, the Department must take enforcement action against employee misconduct. Once a decision has been made concerning misconduct DHS components must take swift and appropriate administrative action against employees to demonstrate its commitment to continued professional excellence.

Hotline Allegations – In accordance with the Inspector General Act, all DHS components must ensure that all allegations are promptly and efficiently referred to the OIG hotline for review.

Improved Information and Intelligence Sharing - We must all cooperate and continue to share information and intelligence concerning corruption information to maximize our resources by avoiding duplication of effort. Every leaking faucet starts as a drip. Prevention, detection, deterrence, and early interdiction are key to stopping employee corruption.

We appreciate the attention and focus on this effort. We will continue to work in partnership within the Federal, State and Local law enforcement community to aggressively attack the corrupt and greed-driven criminal schemes that threaten our border security.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you or the Members may have.

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TESTIMONY OF

JAMES F. TOMSHECK

**ASSISTANT COMMISSIONER
OFFICE OF INTERNAL AFFAIRS
U.S. CUSTOMS AND BORDER PROTECTION
U.S. DEPARTMENT OF HOMELAND SECURITY**

BEFORE

**SENATE HOMELAND SECURITY AND
GOVERNMENTAL AFFFAIRS COMMITTEE**

**AD HOC SUBCOMMITTEE ON STATE, LOCAL, AND PRIVATE SECTOR
PREPAREDNESS AND INTEGRATION**

MARCH 11, 2010

Chairman Pryor, Senator Ensign, and distinguished Senators of the Committee, it is a pleasure to appear before you today to discuss integrity issues. My name is James F. Tomsheck and I am the Assistant Commissioner of Internal Affairs at U.S. Customs and Border Protection (CBP). Prior to joining CBP, I served as the Deputy Assistant Director of the Office of Investigations at the U.S. Secret Service. I appreciate the opportunity to discuss my experiences and thoughts on ensuring the integrity of CBP.

CBP is responsible for securing our nation's borders while facilitating the movement of legitimate travel and trade vital to our economy. Our purview spans more than 5,000 miles of border with Canada and 1,900 miles of border with Mexico. CBP is the largest uniformed federal law enforcement agency in the country, with over 20,000 Border Patrol Agents operating between the ports of entry and more than 20,000 CBP officers stationed at air, land, and sea ports nationwide. These forces are supplemented with more than 1,100 Air and Marine agents and 2,300 agricultural specialists and other professionals. In FY 2009 alone, CBP processed more than 360 million pedestrians and passengers, 109 million conveyances, apprehended over 556,000 illegal aliens between our ports of entry, encountered over 224,000 inadmissible aliens at the ports of entry, and seized more than 5.2 million pounds of illegal drugs. Every day, CBP processes over one million travelers seeking to enter the United States by land, air or sea.

In order to counter the threat of terrorism and secure our borders, CBP relies on a balanced mix of professional law enforcement personnel, advanced technologies and fully modernized facilities and infrastructure both at and between the ports of entry. We deploy a cadre of highly trained agents and officers who utilize state of the art technologies to quickly detect, analyze and respond to illegal breaches across the borders. These personnel rely upon a solid backbone of tactical infrastructure to facilitate their access to border areas while impeding illegal entry by persons or vehicles into the United States. CBP Officers utilize advanced

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targeting, screening and inspection technologies to quickly identify persons or cargo that warrant additional scrutiny without unduly impeding the traveling public or commerce.

The CBP Office of Internal Affairs (IA) is charged with maintaining the integrity of the CBP workforce. CBP IA conducts investigations of alleged serious non-criminal misconduct of CBP employees and assists the DHS Office of Inspector General, the U.S. Immigration and Customs Enforcement Office of Professional Responsibility (ICE/OPR), the Federal Bureau of Investigation and numerous other federal, state and local law enforcement authorities in criminal misconduct investigations. This collaboration among federal agencies is critical to the mission of professional integrity.

While the overwhelming majority of CBP agents and officers demonstrate the highest levels of integrity and perform their duties with honor and distinction every day, isolated acts of corruption do occur. Corruption by these individuals tarnishes the CBP badge and reputation, brings dishonor to our service and, most importantly, jeopardizes our border security.

There is a concerted effort on the part of transnational criminal organizations to infiltrate CBP through hiring initiatives and compromise our existing agents and officers. Since Oct. 1, 2004, 103 CBP law enforcement officers have been arrested or indicted on mission-critical corruption charges, including drug smuggling, alien smuggling, money laundering and conspiracy.

To counter this very real threat, CBP IA's operational strategy includes: background investigations and clearances; employee misconduct investigations; physical, informational, industrial, internal and operational security; and management inspections. IA has implemented a comprehensive integrity strategy that integrates prevention, detection and investigation capabilities to deter and respond to corruption and misconduct in the CBP workforce.

CBP requires a vigorous screening process for new applicants including an exhaustive background investigation upon hiring and continuous background investigations every five years throughout their careers. CBP also employs polygraph examinations of certain law enforcement candidates, application of behavioral and analytical research tools to identify indicators of corruption, and an intelligence-driven investigative response to integrity events.

Once a new hire is on board, CBP applies proactive training measures, rules geared to ensure workplace integrity, and oversight and management of frontline officers and agents by CBP leadership at every level to ensure the integrity of the CBP workplace and drive personal accountability to integrity. These efforts continue throughout the entire career of all employees.

CBP takes corruption extremely seriously, and we are heavily invested in addressing this issue. Since 2006, CBP has added additional resources, including investigators, from 5 in 2006 to 214 in 2010, to IA in order to identify and prevent corruption. No incident of corruption is tolerated.

Thank you for this opportunity to discuss the integrity of the CBP workforce. I would be happy to answer any questions you might have.

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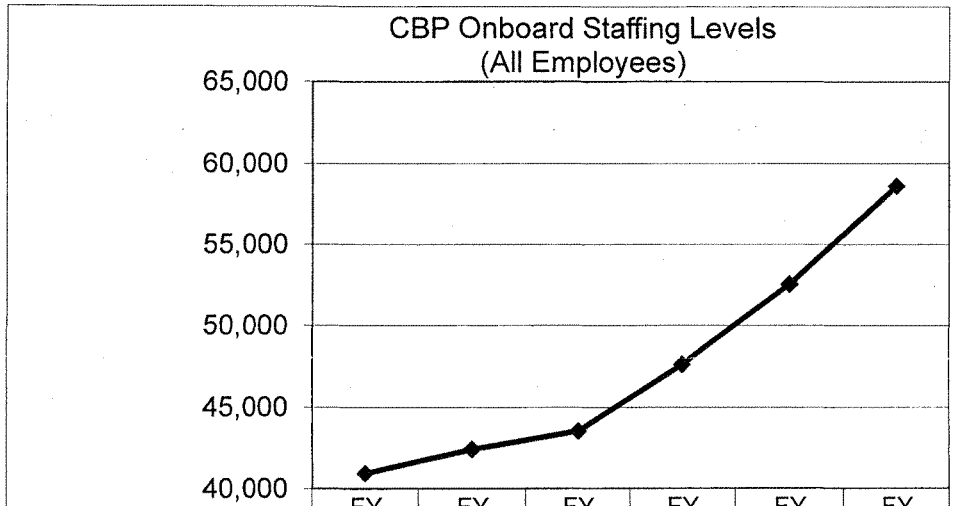
CBP Growth: Staffing Levels FY 2004 – FY 2009

U.S. Customs and Border Protection



	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
CBP Onboard Staffing Levels	40,934	42,409	43,545	47,606	52,543	58,600

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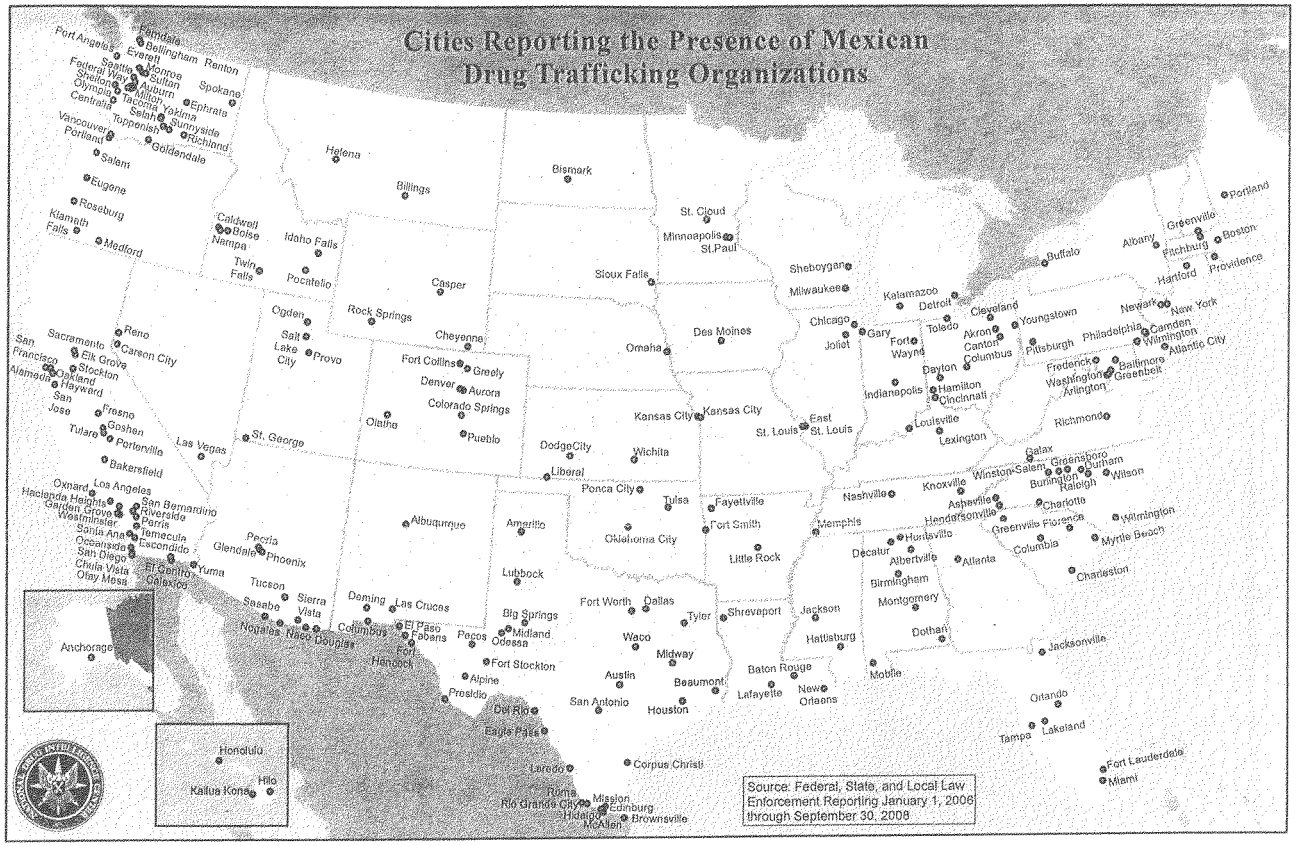

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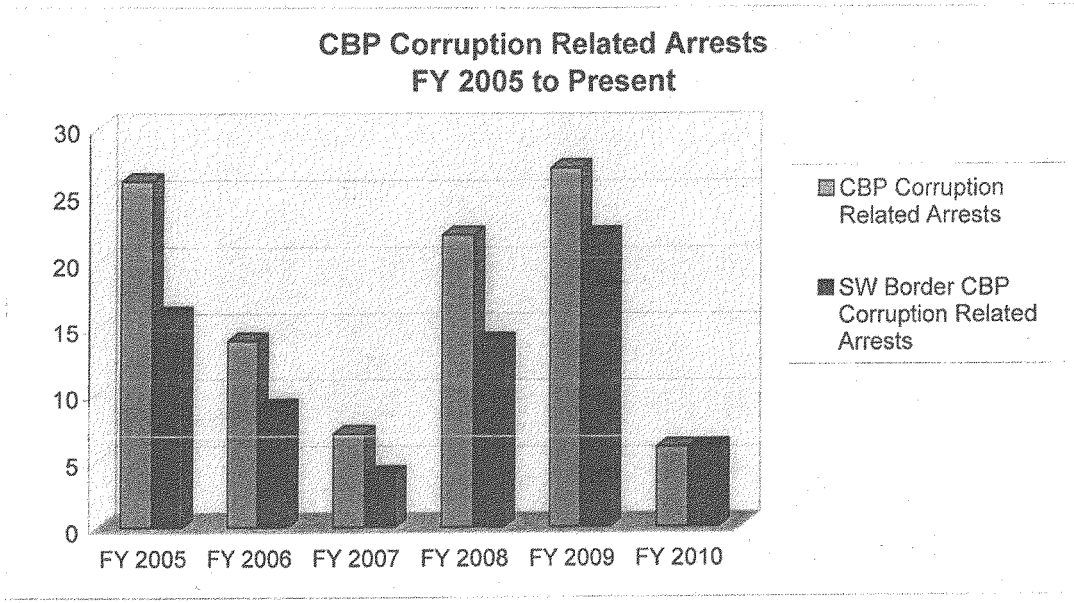

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	TOTAL
CBP Corruption Related Arrests	26	14	7	22	27	6	102
SW Border CBP Corruption Related Arrests	16	9	4	14	22	6	71

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Responses of the Federal Bureau of Investigation to Questions for the Record Arising from the March 11, 2010, Hearing Before the Senate Committee on Homeland Security and Governmental Affairs Regarding "New Border War: Corrupting of U.S. Officials by Drug Cartels"

Question Posed by Senator Ensign

I understand that as of December, the F.B.I. was planning to add three multiagency corruption squads to the 10 already on the Southwest border. Can you provide me with a status of this plan, and what successes you have seen in the past few months?

Response:

The FBI operates the National Border Corruption Task Force (NBCTF) at FBI Headquarters. This border initiative results from a request by the Department of Homeland Security (DHS), Customs and Border Protection - Internal Affairs (CBP-IA) for FBI assistance in addressing corruption within CBP along the southwest border.

The NBCTF is comprised of personnel from the FBI, CBP-IA, U.S. Immigration and Customs Enforcement Office of Professional Responsibility, Transportation Security Administration, and DHS Office of the Inspector General (OIG). The NBCTF coordinates the efforts of 13 Border Corruption Task Forces (BCTFs) nationwide. These task forces include the following ten BCTFs along the Southwest Border: San Diego, CA; El Centro, CA; Yuma, AZ; Tucson, AZ; Sierra Vista, AZ; Las Cruces, NM; El Paso, TX; Laredo, TX; McAllen, TX; and Brownsville, TX. There are also BCTFs in Miami, FL; Seattle, WA; and Detroit, MI.

In addition to the established BCTFs, the following three FBI field offices have established Border Corruption Working Groups (BCWGs): Los Angeles, CA; Houston, TX; and San Antonio, TX (the Del Rio Resident Agency). These BCWGs are in the process of establishing Memoranda of Understanding with their Federal, state, and local law enforcement partners. It is anticipated that these BCWGs will become formalized BCTFs. The FBI is currently working approximately 140 border corruption investigations throughout the U.S., 120 of which are focused on the Southwest Border.

The following three investigations are representative of the FBI's successes during the past few months.

- **Yamilkar Fierros** (worked jointly with CBP-IA): A CBP Officer was

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arrested for selling a list of Border Patrol sensors that provided the locations of approximately 150 to 200 CBP sensors in southern Arizona in exchange for a $4,000 bribe. Fierros was indicted on several counts alleging bribery and is awaiting trial.

- **Henry Gauani** (worked jointly with DHS-OIG and CBP-IA): A CBP Field Operations Officer in Yuma, AZ, was arrested during an undercover operation for accepting bribes to allow what he believed to be large shipments of Ecstasy into the U.S. through his inspection lane. Gauani was convicted of bribery and Federal narcotics offenses and was sentenced to 37 months' incarceration.

- **Jorge Leija** (worked jointly with DHS-OIG and the Texas Department of Public Safety): A CBP Field Operations Officer in Eagle Pass, TX, was arrested on Federal charges of conspiracy to distribute controlled substances and use of a false passport. The investigation revealed that Leija was involved in cross-border drug trafficking and allowing the transport of controlled substances into the United States. Leija has pled guilty to the use of a false passport and is awaiting sentencing.

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Post-Hearing Questions for the Record
Submitted to the Honorable James Tomsheck
From Senator John Ensign

"New Border War: Corruption of U.S. Officials by Drug Cartels"
March 11, 2010

1. According to reports, roughly 10 percent of CBP employees undergo a polygraph screening during their background investigation. According to federal investigators, this polygraph has proved effective in weeding out people with drug ties. In your opinion, what percent of new CBP employees should get the polygraph test to be most effective? When is the appropriate time for these new employees to get the test? (During the initial application, upon arrival at the training academy, at the end of the academy?) Is it important for CBP to go back and give a polygraph screening to all current employees as well?

Response: CBP is in the process of building our polygraph program capabilities.
As is the current practice at CBP, polygraph tests should be conducted on applicants during their initial application process. This provides significant efficiencies in cost and time to CBP for those applicants/tentative selectees eliminated from consideration early in the process. Early elimination from consideration avoids costs associated with scheduling these individuals for Academy training, paying housing, per diem, travel, and other costs of training, as well as the cost of continuing or initiating a Background Investigation. CBP's current process of testing at the initial stages of the application process (as opposed to waiting until after the employee EODs) also avoids the costs associated with removing employees from our roles. It is a well-established fact that government agencies that use polygraph as a screening tool acquire more adjudicative information from polygraph than any other vetting tool.

CBP is considering the implementation of counterintelligence-scope polygraph examinations to CBP employees being considered for assignment to positions overseas.
At this time, conducting polygraph testing on all current employees occupying law enforcement positions or in the agency as a whole would present a variety of obstacles.

2. Can you describe to me how you are leveraging the trends of the people that fail the polygraph test? Do you go back and look at their background investigations to see where the red flags may be and then apply that to the decision making process for who else should receive the polygraph?

Response: In most instances, background investigations are not completed for applicants who fail the polygraph examination. The CBP Internal Affairs Integrity Programs Division (IPD) evaluates cases from the population of failed polygraph examinations with admissions of significant drug or alien smuggling activity as part of its multi-layer proactive approach to detecting vulnerabilities and instances of corruption within the CBP workforce. Where IA's polygraph examinations identify individuals with significant criminal activity related to illegal drugs and aliens, IPD conducts in-depth research and analysis to determine if these individuals are affiliated with any current CBP employees. Although just one of the proactive methodologies employed by IPD, the use of the failed polygraph reports are a compelling methodology to identify individuals sent by nefarious individuals or groups to infiltrate CBP as CBP officers or Border Patrol agents. These cases provide a useful tool to effectively identify infiltrators. With only 10% of the CBP applicant pool for these law enforcement occupations being administered the polygraph examination, it is possible there may be a number of untested applicants entering the CBP workforce who have criminal associations that are undetected in the Background Investigation (BI) process. Expansion of the polygraph program and increased analysis of information developed through the program would provide a critical countermeasure layer to ensure that the CBP workforce is comprised of men and women with the highest integrity.

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3. I understand that there are limited resources within CBP to conduct the polygraph screening. Can you provide me with a cost analysis of the cost to conduct a polygraph for every CBP employee and new hire versus the cost of the CBP employee investigations currently being undertaken by the Department as a whole? This would include investigations of CBP employees by the DHS Inspector General, ICE Office of Personal Responsibility, and CBP Internal Affairs?

Response: It is difficult to estimate the costs (including man hours and resources used) of misconduct investigations, which can vary in complexity and investigative requirements, and the disciplinary/adverse action process. Unlike the uncertainty associated with employee investigations, applicant screening polygraph examination costs are generally standardized.

The cost to CBP to conduct an applicant screening polygraph examination is approximately $1,200 (polygraphs generally last from 4-7 hours). While a precise cost savings comparison cannot be made, the predictable cost savings is significant. With the data available from CBP polygraph program, CBP determined that employees who underwent an applicant screening polygraph are much less likely to be involved in internal misconduct investigations than employees who were not vetted by polygraph. A comprehensive researched risk analysis method for all types of behavior (e.g., automobile insurance, criminal recidivism, espionage) has established that pre-existing proclivities are the best predictor of future behaviors, and polygraph is the method that reveals such pre-existing proclivities.

4. It is my understanding that CBP has a backlog of 25,000 to 30,000 background investigation cases, including some 14,000 past due investigations on current CBP agents. I have been informed that during the past year, CBP has significantly reduced the number of background investigations performed. If my numbers are correct, in April, May and June of 2009, averages of approximately 400 cases per month were referred for investigation. Yet, in December 2009, January and February 2010, that average dropped to approximately 150. I am very concerned about the reduction in cases being referred for investigation. Can you explain to the Subcommittee why this average dropped so significantly? Who decides how to prioritize background investigations? Can you explain what the Department is doing to correct the slowdown and how you intend to eliminate this backlog? Can you provide us with a timeline?

Response: CBP security investigations may generally be divided into two categories:

Applicants (those pending initial investigation in conjunction with appointment as a Federal employee or contractor); and

Employees (Periodic Reinvestigations (PRs) conducted in accordance with OPM standards).

APPLICANT: Presently, IA Personnel Security Division (PSD) has no "backlog" of Applicant investigations, other than those being routed through the normal pre-investigation processes. Previously, there was a backlog in scheduling these investigations as CBP implemented a significant recruitment efforts to ensure that it was able to reach various hiring initiatives (Presidential hiring initiative for BPAs, CBPOs, and Office of Border Patrol mission support). This backlog reached its peak of approximately 6,000 investigations in approximately January 2009. As a result, the number of investigations scheduled during FY09 was at greater-than-normal rates until the backlog was eliminated and the hiring initiatives completed.

PSD records reflect for the three-month period of April-June 2009, CBP averaged approximately 1,500 Applicant investigations scheduled per month for a total of approximately 4,500 investigations. In contrast, in FY10, 2,000 such investigations have been scheduled for an average of 330 cases per month. Note: FY10 investigations continue to be inflated somewhat based on the resolution of applicant status issues with CBP's Office of Human Resources Management resulting in the need for additional investigation.

EMPLOYEE: Our records reflect approximately 19,000 employees are due for a PR. Many of these are due to the re-designation of the CBPO position as a national security position – which requires a PR.

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PRIORITY: In the past few years, PSD gave priority to the completion of initial Applicant investigations in order to facilitate CBP's ability to meet various hiring initiatives. With that accomplished, PSD recently shifted its priority to PRs for current employees.

TIMELINE PROJECTION:
Applicant Investigations: We will continue to process as received to avoid the creation of any backlog.

Employee Investigation/PRs: We anticipate initiating (via OPMs electronic e-QIP process) approximately 2,100 PRs per month for the remainder of 2010 for a total of 16,800. Cases will be scheduled for investigation based on the successful submission of the reinvestigation package. Provided funding is available, we anticipate that all "overdue" employee PRs will be initiated by the end of calendar year 2010.

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Post-Hearing Questions for the Record
Submitted to the Honorable Thomas Frost
From Senator John Ensign

"New Border War: Corruption of U.S. Officials by Drug Cartels"
March 11, 2010

Question: In a New York Times article in December you mentioned that in years past, new CBP hires rarely served in areas where they had grown up, but recently that practice has been relaxed somewhat to attract more recruits. Because of this, you mentioned that it has made it easier for traffickers. It seems to me that this is inviting corruption. Can you first explain to me that policy and tell me who directed it to be relaxed? Are there any metrics that show that there are significantly more applicants if they are allowed to serve in areas where they grew up?

Answer: Since this involves CBP management decisions, I believe they are best suited to respond.

Question: Roughly how many open CBP employee cases does the IG's office have and how many investigators do you have assigned full time working those cases? Roughly how many open cases across all of DHS does the IG have and how many investigators?

Answer: Currently, the OIG has 1,947 open investigations of which 846 (or 43.5%) are CBP related. The OIG has 233 full time employees assigned to the Office of Investigations; 198 are criminal investigators. The vast majority of the CBP workload, 585 investigations, is on the southwest border and represents about 89% of the total workload of our eight offices that are staffed with 62 criminal investigators who cover that area of responsibility. A majority of their duties pertain to conducting investigations related to CBP employees. Staffing limitations and operational considerations, such as the interrelationship of corruption potential between components such as USCIS, CBP, and ICE (all of which have legacy INS functions), generally preclude the OIG from designating specific resources solely to CBP.

Question: In your testimony, you say that you investigate 100% of all allegations of serious criminal misconduct involving DHS employees and investigate all allegations of corruption of DHS employees related to the security of the nation's borders, including the smuggling of drugs. If that is the case, does CBP even need its own internal affairs criminal investigators? Can you describe what role you see CBP Internal Affairs playing?

Answer: CBP does not need criminal investigators. The OIG wholly supports a robust internal affairs component within CBP, as well as in other DHS components. It is our belief that CBP IA's resources would be more effectively used in pursuing our mutual goal to deter, detect and eliminate employee corruption, if they were focused on conducting pre-employment background screening, periodic background updates for current employees, employee integrity training, intelligence research and analysis, and administrative investigations including enforcement of workplace regulation. As an example, in spite of CBP regulation that prohibits the use of personal cell phones on duty, we have found that the majority of smuggling related investigations relating to corrupt CBP employees involve the use of personal cell phones or other electronic devices to signal or communicate with the traffickers. In another example, the majority of applicants who were given a

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pre-employment polygraph, did not pass, yet CBP IA only tested 15% of the applicants, citing a lack of resources. Similarly, CBP IA has cited a significant backlog in its periodic background updates.

Question: You mention that a key component of your investigative strategy is to leverage your limited resources and share intelligence. Do you and your field investigators always work in collaboration with CBP internal affairs, Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) and the FBI's Border Corruption Task Force and share information with the operational leadership of the agencies whose employees you are investigating? Has IG leadership in either Washington or the field ever directed its investigators NOT to share information with ICE OPR, CBP IA, or the FBI Border Corruption Task Force?

Answer: Our field agents do not always work in collaboration with ICE OPR, CBP IA, or the FBI Border Corruption Task Force on investigations. There are times, at the discretion of our field Special Agent in Charge, when we may work an investigation on our own or with another law enforcement partner. Consider that virtually every case involving border corruption involves a predicate offense that is the jurisdiction of another law enforcement agency, principally Immigration and Customs Enforcement (ICE), the Drug Enforcement Administration (DEA), or the Bureau of Alcohol Tobacco Firearms and Explosives (ATF). We have had much success working with these agencies, and the FBI. Many times agencies with sensitive human intelligence assets are reluctant to broadly share information. It is our goal to leverage all the law enforcement resources available to us. While sometimes limited in sharing all investigative information about a specific case, we do, however, always share basic information such as the nature of the alleged offense and the identity of the alleged offender to ensure operational deconfliction and case intelligence sharing. Moreover, the OIG and the FBI have a mutual reporting requirement by which we notify the FBI of every criminal investigation that we open for investigation.

Recently we instituted a policy that expands this practice so that we make specific and separate notification to the Border Corruption Task Force of any investigation we open relating to that issue. We have most recently appointed a National Director for Border Corruption Task Force operations to further guarantee our complete integration into this joint initiative. Within DHS, notification is also made to the DHS component whose employee is being investigated. Further, we routinely brief DHS component operational leadership on sensitive matters in the course of investigations and have always provided briefings to leadership upon request. As an example, last year, at the request of the Acting CBP Commissioner, we provided CBP with three separate comprehensive briefings on all active CBP related investigations we were conducting beginning in the Rio Grande Valley and moving west through Texas, New Mexico, and Arizona.

Question: Has the IG Office ordered an internal review of component agency internal affairs functions and what is the status of that review and report? It is my understanding that the report has been delayed multiple times and may have even been cancelled even though it has been long promised personally by Inspector General Skinner. Can you update us on the status of this review and when we can expect to see the report?

Answer: The review was initiated, but was cancelled and never completed due to other priorities and workload demands. There are no plans at this time to complete the review or issue a report on component agency internal affairs functions.

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