AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

DEPARTMENT OF HOMELAND SECURITY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

OCTOBER 26, 2011

Serial No. 112–111

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

70–912 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

LAMAR SMITH, Texas, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
MARK AMODEI, Nevada

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
[Vacant]

SEAN MCLAUGHLIN, *Majority Chief of Staff and General Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

CONTENTS

OCTOBER 26, 2011

Page

OPENING STATEMENTS

The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary 1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 2

WITNESSES

The Honorable Janet Napolitano, Secretary, Department of Homeland Security
Oral Testimony 4
Prepared Statement 7

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Material submitted by the Honorable Judy Chu, a Representative in Congress from the State of California, and Member, Committee on the Judiciary 53
Material submitted by the Honorable Henry C. "Hank" Johnson, Jr., a Representative in Congress from the State of Georgia, and Member, Committee on the Judiciary 67

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Response to Post-Hearing Questions from the Honorable Janet Napolitano, Secretary, Department of Homeland Security 97

DEPARTMENT OF HOMELAND SECURITY

WEDNESDAY, OCTOBER 26, 2011

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

The Committee met, pursuant to call, at 10:07 a.m., in room 2141, Rayburn Office Building, the Honorable Lamar Smith (Chairman of the Committee) presiding.

Present: Representatives Smith, Conyers, Nadler, Sensenbrenner, Scott, Coble, Lofgren, Gohmert, Quigley, Poe, Chu, Chaffetz, Griffin, Jackson Lee, Gowdy, Johnson, Adams, Marino, Pierluisi, Quayle, Gallegly, Deutch, Issa, Sánchez, King, and Forbes.

Mr. SMITH. The Judiciary Committee will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time.

This morning, we welcome Secretary Janet Napolitano to the Committee for an oversight hearing on the Department of Homeland Security. The Department of Homeland Security was created to protect our country from terrorist attacks, enforce Federal immigration laws and provide disaster response and assistance.

DHS also performs important law enforcement functions related to intellectual property and child pornography.

As we begin today's hearing, I'd like to pose two questions. First, how effectively has DHS secured our borders? The nonpartisan Government Accounting Office has found that only 44 percent of the Southwest border is under the operational control of the Border Patrol. Nearly 450,000 illegal immigrants enter the U.S. each year.

Meanwhile, Mexican drug cartels are out of control and the violence threatens to spill over into the U.S.

The Administration needs to do more to secure the borders and protect the American people. Some have claimed what are supposedly the largest number of removals in history. However, even President Obama has said the statistics put out by DHS are, quote, "A little deceptive." And a study by the Washington Post found that the Administration has inflated its removal numbers.

My second question is how effectively has DHS protected jobs for American workers. With the unemployment rate over 9 percent, jobs are scarce, and millions of American families have been hurt.

According to the Pew Hispanic Center, 7 million people are working in the U.S. illegally. These jobs should go to legal workers, and securing these jobs for American workers and legal immigrants should be a priority of the Federal Government.

Each time DHS arrests, detains or deports an illegal worker, it creates a job opportunity for an American worker. Worksite enforcement actions open up jobs for unemployed American workers.

Unfortunately, worksite enforcement has plummeted under this Administration. Administrative arrests fell by 77 percent from 2008 to 2010. Criminal arrests fell by 60 percent, criminal indictments fell by 57 percent and criminal convictions fell by 66 percent.

With millions of Americans unemployed, it is hard to imagine a worse time to cut worksite enforcement efforts by more than half. It is true that DHS has increased the number of audits of companies' employment eligibility verification forms.

However, these audits are of questionable benefit. The GAO has found that, quote, "ICE officials told us that because fine amounts are so low, the fines did not provide a meaningful deterrent. The amount of fines may be, in the opinion of some ICE officials, so low that they believe that employers view the fines as a cost of doing business, making the fines an ineffective deterrent," end quote.

And what happens to illegal workers when ICE declines to arrest them? They go down the street and knock on the door of the next employer and take jobs away from American workers.

DHS has also signaled that it may grant administrative amnesty to potentially hundreds of thousands of illegal immigrants currently in removal proceedings and to many others who have yet to be placed in proceedings. But we know that when this Administration issues deferred action to illegal immigrants, it routinely grants 90 percent of them work authorization.

How can DHS justify granting work authorization to illegal immigrants when so many American citizens don't have jobs? Twenty-three million Americans who are unemployed or can't find full-time work must wonder why this Administration puts illegal immigrants ahead of them.

Citizens and legal immigrants should not be forced to compete with illegal workers for scarce jobs. The Administration should put the interests of American workers first.

That concludes my opening statement, and the gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers, is recognized for his opening statement.

Mr. CONYERS. Thank you, Chairman Smith, and Members of the Committee. I join with you in welcoming the Secretary of the Department of Homeland Security.

And I wanted to start out by reminding everybody on the Committee that we had some hearings about all these jobs that immigrants are taking. What was it, in Alabama and Georgia? And nobody wanted the jobs. They couldn't get—they can't get anybody for the jobs.

And if there's anybody on the Committee that thinks that, among the millions of unemployed, that they are looking for stoop labor, please see me immediately after this hearing so I can put that misunderstanding to rest.

The heart of this hearing, from my point of view, is to ask this one question. Who would say that the Immigration and Customs Enforcement (ICE)—that their time and resources are better spent raiding kitchens and fields to deport busboys and farm workers who've been working here for years to support their families, usu-

ally, rather than targeting those convicted of serious crimes or repeat offenders? And I think within the resources of this very important agency, we will get the answer to that.

Now, 2 months ago, the Immigration Subcommittee of the Judiciary held a hearing on the Chairman's bill, H.R. 2497. I always loved the title of this bill—"Hinder the Administration's Legalization Temptation Act, acronym HALT.

Now, 2 weeks ago, that same Subcommittee met again to conduct oversight with the director of Immigration and Customs Enforcement, John Morton, and in both hearings, my conservative friends of the Judiciary leveled essentially the same criticism—that the President of the United States refuses to enforce our immigration laws and is dead set on legalizing hundreds of thousands of undocumented immigrants with the stroke of a pen, and it was called back-door—a back-door amnesty strategy, and I'll be waiting carefully to see if I hear that phrase raised again.

And, of course, this is incorrect. Earlier this year, Director Morton of ICE issued a series of memoranda identifying Immigration and Custom Enforcement's priorities, providing guidance on how ICE employees should exercise discretion to carry out those priorities. The memos aren't surprising and I hope that they aren't controversial to anyone.

Given the resources limited that he has, ICE intends to prioritize, from my understanding of the hearing, the removal of people who threaten our safety—such as terrorists, such as criminals—before focusing on people who pose no such threat. And I will be carefully listening for any objection to that that might occur.

Now, no agency or department can do it all. They have to make choices, and I will probably—we will have some of these choices that the Secretary has to make. The Department of Homeland Security and the Department of Justice are working together putting these enforcement priorities into action on a department-wide basis, and these actions couldn't have come soon enough.

Our immigration courts are backed up—we know that—that deportation hearings are being set for, get this—for 2014. And the Department of Homeland Security would act to alleviate this embarrassment just makes good common sense.

And so I close, Mr. Chairman, that—asking us to look at this. Remember, this is the Judiciary Committee of the House of Representatives, and remember that in the two-and-a-half years of this Administration, we have deported a record one million individuals, one—over a million individuals, something that I do not—I'm not bragging about that, don't get me wrong—increased worksite enforcement and targeted employers who break the law by conducting I-9 audits, levying fines, bringing criminal charges, push for the national expansion of Secure Communities, despite some opposition from some state governments or local law enforcement and even some advocacy groups, and finally increase criminal prosecution of immigration offenses so much that a legal reentry after deportation is now the most prosecuted Federal felony in the country.

So I'm happy to see Ms. Napolitano here and welcome her, as does all of us on the Committee, for the discussions that will follow this morning, and thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Conyers.

Our witness today is Janet Napolitano, Secretary of the United States Department of Homeland Security.

Sworn in on January 21, 2009, Janet Napolitano is the third Secretary of DHS. Prior to becoming Secretary, Ms. Napolitano was in her second term as governor of Arizona. While serving as governor, she became the first woman to chair the National Governors Association and was named one of the top five governors in the country by Time magazine. Ms. Napolitano also was the first female attorney general of Arizona and served as U.S. Attorney for the district of Arizona.

Ms. Napolitano was born in New York City and grew up in Pittsburgh, Pennsylvania and Albuquerque, New Mexico. She is a 1979 graduate of Santa Clara University, where she won a Truman Scholarship and was the university's first female valedictorian.

She received her Juris Doctor from the University of Virginia School of Law in 1983. Before entering public office, Ms. Napolitano served as a clerk for Judge Mary M. Schroeder on the U.S. Court of Appeals for the Ninth Circuit, and practiced law in Phoenix.

We welcome you today, look forward to your testimony, and please proceed.

TESTIMONY OF THE HONORABLE JANET NAPOLITANO, SECRETARY, DEPARTMENT OF HOMELAND SECURITY

Ms. NAPOLITANO. Well, thank you. Thank you, Chairman Smith and Ranking Member Conyers and Members of the Committee for the opportunity to testify this morning.

Today, I would like to update the Committee on the progress we are making, particularly with respect to our efforts to prevent terrorism and enhance security, secure and manage our borders and enforce and administer our Nation's immigration laws, and I think I will begin there.

The Obama Administration's approach to immigration enforcement has been widely discussed among those who like to debate the topic, including Members of this Committee.

Our policies have been simultaneously described as engaging in a mean-spirited effort to blindly deport record numbers of illegal immigrants, and alternatively described as comprehensive amnesty that ignores our responsibility to enforce the immigration laws.

These opposing views are both incorrect, and it is my hope that moving forward we can have a civil and fact-based dialogue about immigration enforcement.

And here are the facts. Overall, in fiscal year 2011, ICE removed or returned nearly 397,000 individuals, the largest number in the agency's history. Ninety percent of these removals fell within one of our priority categories, and 55 percent, or more than 216,000, of those removed were convicted criminal aliens—an 89 percent increase in the removal of criminal aliens from fiscal year 2008.

And this includes more than 87,000 individuals convicted of homicide, sexual offenses, dangerous drugs or driving under the influence. Of those we removed without a criminal conviction, more than two-thirds in fiscal year 2011 fell into the priority categories of recent border crossers or repeat immigration law violators.

Now, as part of the effort to continue to focus on high-priority cases, ICE, in partnership with DOJ and across the Department of

Homeland Security, has implemented policies to ensure those enforcing the immigration laws make appropriate use of the discretion they already have in deciding the types of individuals prioritized for removal from the country.

This policy will help immigration judges, the Board of Immigration Appeals and the Federal courts to focus on adjudicating high-priority removal cases more swiftly and in greater numbers, enhancing ICE's ability to remove convicted criminals.

It will also promote border security, as it sharpens ICE's focus on recent border entrants and allows for the expansion of ICE operations along the Southwest border.

We have also stepped up our efforts against employers who knowingly and repeatedly hire illegal labor and have taken action to identify visa overstays and to enhance refugee screening and also to combat human trafficking.

Additionally, since 2009, we have carried out major reforms to the immigration detention system. These reforms ensure the health and safety of the detainees in our custody and allow ICE to maintain a significant, robust detention capacity to carry out serious immigration enforcement.

So as I hope this makes clear, we cannot on the one hand be on the verge of removing for the third consecutive year a record-breaking number of unlawful individuals from the country, with the highest number of criminal removals in history, and at the same time be abrogating our law enforcement responsibilities.

Similarly, exercising discretion with more speed and better prioritization than at any time in history, protecting victims of domestic violence, engaging in worksite enforcement rather than workforce raids, is not cosmetic tinkering. It is real change with real results, and vesting discretion in our immigration enforcement officers and immigration lawyers is not amnesty. It is a prioritization system that begins with finding and removing individuals who are criminals and repeat offenders.

Now, at the same time, our officers have the legal responsibility to remove unlawful individuals from the country. They will also do so according to our priorities but they will also do their job. This Administration is committed to making sure that we have a southern border that is safe, that is secure, that is open for business.

We are more than 2 years into our Southwest Border Initiative, and based on previous benchmarks set by the Congress, it is clear that the additional manpower, technology and infrastructure we have added are working. Apprehensions have decreased 36 percent along the Southwest border over the past 2 years and are less than one-third of what they were at their peak.

And we have matched decreases in apprehensions—and apprehensions are a rough way to estimate how many are attempting to immigrate—we have matched decreases in apprehensions with increases in seizures of drugs, cash and weapons. Violent crime in United States border communities has remained flat or has fallen in the past decade.

And then finally, U.S. Citizenship and Immigration Services—USCIS—continues to improve our ability to provide immigration benefits and services to those legally eligible in a timely and efficient manner by streamlining and modernizing our operations.

Our priorities are common sense. They enhance public safety. They help secure the border. They promote the integrity of the immigration laws.

Yet, I think we all can recognize that more is required to fully address our Nation's immigration challenges. President Obama is firm in his commitment to advance immigration reform, and I personally look forward to working with the Congress in a bipartisan way to achieve this goal and to continue to set appropriate benchmarks for our success in the future.

So I want to thank this Committee for its support of our mission to keep America safe.

I want to thank the men and women who are working day and night to protect and defend our country, often at great personal risk. And I look forward to a dialogue with this Committee on these important issues, or any other issues you wish to raise.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Napolitano follows:]

Testimony of

Secretary Janet Napolitano

U.S. Department of Homeland Security

Before the

United States House of Representatives

Committee on the Judiciary

October 26th, 2011

Introduction

Chairman Smith, Ranking Member Conyers, and members of the Committee: Thank you for the opportunity to testify today about the Department of Homeland Security's (DHS) efforts to secure our Nation from the many threats we face.

This committee continues to play a critical role in helping the Department in our security mission, and I am grateful for the chance to update you on the progress we are making. The Department has six mission areas:

- Preventing terrorism and enhancing security;
- Securing and managing our borders;
- Enforcing and administering our immigration laws;
- Safeguarding and securing cyberspace;
- Ensuring resilience to disasters; and
- Providing essential support to national and economic security.

In each area, we have continued to grow and mature as a department by strengthening our existing capabilities, building new ones where necessary, enhancing our partnerships across all levels of government and with the private sector, and streamlining our operations and increasing efficiency.

Now, eight years since the Department's creation, and ten years after the September 11, 2001, terrorist attacks, I believe the results are clear: a more effective and integrated Department, a strengthened homeland security enterprise, and a more secure America that is better equipped to confront the range of threats we face.

Today, I would like to focus on a few areas of interest to this Committee, including law enforcement and its work to prevent terrorism and enhance security; enforcing and administering

our immigration laws; and securing and managing our borders while facilitating legitimate trade and travel.

Preventing Terrorism and Enhancing Security

Response to a Changing Threat

As I have noted on a number of occasions before Congress, the United States has made important progress in securing our Nation from terrorism since the September 11, 2001, attacks. America is stronger than we were a decade ago. We have bounced back from the worst attacks ever on our soil, and have made progress on every front to protect ourselves. Our experience these last ten years also has made us smarter about the threats we face, and how best to deal with them. We have used this knowledge to make ourselves more resilient, not only to terrorist attacks, but also to threats and disasters of all kinds. Nevertheless, the terrorist threat facing our country has evolved significantly in the last ten years, and continues to evolve.

Indeed, this threat will continue to change in the wake of successful operations that ended in the deaths of Osama bin Laden and Anwar al-Awlaki. These operations mark the most significant achievements to date in our nation's effort to defeat al Qaeda. I commend the President and the men and women of the Intelligence Community and our Armed Forces, as well as our counterterrorism professionals, who played such an important role in these operations.

Yet we know that threats of terrorism did not begin with the September 11, 2001, attacks, nor did they end with the deaths of these two terrorist leaders. Today, in addition to the direct threats we continue to face from core al-Qaeda, we face growing threats from al-Qaeda affiliates, including al Qa'ida in the Arabian Peninsula, al Qa'ida in Iraq, and Al Shabaab. Perhaps most

crucially, we face a threat environment where violent extremism is not defined or contained by international borders. Today, we must address threats that are homegrown as well as those that originate abroad.

What we are seeing now in some cases reflects a conscious effort by terrorists to recruit people who are already in the United States. We continue to operate under the assumption, based on intelligence and arrests that individuals prepare to carry out terrorist attacks and acts of violence, some of which may be in the United States, with little or no warning.

This threat of homegrown violent extremism fundamentally changes who is positioned to spot, investigate, and respond to terrorist activity. More and more, state and local law enforcement officers are likely to be in a position to notice early signs of terrorist activity. This has profound implications for how we go about securing our country against the terrorist threat.

DHS Efforts against Terrorism

Over the past two years, DHS has been working diligently to build a new architecture to better defend against this evolving terrorist threat.

First, we are working directly with law enforcement and community-based organizations to counter violent extremism at its source, using many of the same techniques and strategies that have proven successful in combating violence in American communities. In the past, law enforcement officials at the state, local, tribal and federal levels are leveraging and enhancing their relationships with members of diverse communities that broadly and strongly reject violent extremism.

Second, we are focused on getting resources and information out of Washington, D.C. and into the hands of state and local law enforcement, to provide them with the tools they need to

combat threats in their communities. Because state and local law enforcement are often well-positioned to notice the early signs of a planned attack, our homeland security efforts must be interwoven in the police work that state, local, and tribal officers do every day. We must make sure that officers everywhere have a clear understanding of the tactics, behaviors, and other indicators that could point to terrorist activity.

Consistent with the vision of Congress and the direction the President has set for a robust information sharing environment, DHS is providing training programs for local law enforcement to help them identify indicators of terrorist activity. And we are also improving and expanding the information-sharing mechanisms by which officers are made aware of the threat picture and what it means for their jurisdictions.

Our work in this area includes the current implementation of a Countering Violent Extremism (CVE) curriculum for state and local law enforcement that is focused on community-oriented policing, which will help frontline personnel identify activities that are indicators of potential terrorist activity and violence. In conjunction with local communities and the Department of Justice (DOJ), we also have published guidance on best practices for community partnerships to prevent and mitigate homegrown threats.

In addition, we hold regular meetings and briefings with state and local law enforcement, state and local governments, and community organizations. We have issued, and continue to release, unclassified case studies that examine recent incidents involving terrorism so that state and local law enforcement, state and local governments, and community members can understand the warning signs that could indicate a developing terrorist attack.

We participate in the FBI's Joint Terrorism Task Forces (JTTF), provide support for state and local fusion centers, and work with our partners at DOJ on the Nationwide Suspicious

Activity Reporting Initiative, which trains state and local law enforcement to recognize behaviors and indicators related to terrorism, crime and other threats; standardize how those observations are documented and analyzed; and expand and enhance the sharing of those reports with the Federal Bureau of Investigation (FBI) and DHS.

We also are encouraging Americans to alert local law enforcement if they see something that is potentially dangerous through the nationwide expansion of the "If You See Something, Say Something" campaign – a clear and effective means to raise public awareness of indicators of terrorism and crime, and emphasize the importance of reporting suspicious activity to the proper law enforcement authorities. We have seen the value of public awareness time and again and the importance of having suspicious activities quickly forwarded to the FBI-led JTTFs for investigation. Indeed, it was an alert street vendor in Times Square that helped thwart a successful attack in May, 2010 by reporting a suspicious vehicle to law enforcement. In January of this year, alert city workers in Spokane, Washington, reported a suspicious backpack and prevented what almost certainly would have been a deadly bombing along a busy parade route. More recently, a store employee in Killeen, Texas reported the suspicious behavior of one of his customers to authorities, potentially averting another deadly attack at the Fort Hood Army Base.

In April, DHS replaced the color-coded alert system, created shortly after the 9/11 attacks, with the new National Terrorism Advisory System (NTAS)—a robust terrorism advisory system that provides timely information to the public and the private sector, as well as to state, local, and tribal governments about credible terrorist threats and recommended security measures.

Taken together, these steps provide a strong foundation that DHS; the public; federal, state, local, tribal, territorial and private sector partners across the country; and international

partners can all use to protect communities from terrorism and other threats. This homeland security architecture will be paired with continuing efforts to better understand the risk confronting the homeland, to engage and partner with the international community, and to protect the privacy rights, civil rights and civil liberties of all Americans.

Strong, Strategic Enforcement of Our Immigration Laws

I would also like to describe this Administration's approach in enforcing our Nation's immigration laws, and the important results that have been achieved as a result of these efforts.

Over the past two and a half years, this Administration has dedicated unprecedented resources to securing the Southwest border, and we have made the enforcement of our immigration laws smarter and more effective. Security along our borders is inseparable from immigration enforcement in the interior of our country, and both are critical to an effective immigration system. Our approach to immigration enforcement is guided by a common-sense premise based on sound prosecutorial practice: establish clear priorities and implement measures that best promote those priorities. We have focused on identifying and prioritizing for removal those who pose a threat to our communities, including criminal aliens; as well as repeat and egregious immigration law violators; recent border crossers; and immigration fugitives. We also have worked to ensure that employers have the tools they need to maintain a legal workforce, and face penalties if they knowingly and repeatedly violate the law.

Our interior enforcement efforts are achieving unprecedented results, underscoring the Department's ongoing focus on removing individuals from the country that fall into the Administration's priority areas for enforcement. Overall, in FY 2011, ICE's Office of Enforcement and Removal Operations removed 396,906 individuals – the largest number in the

agency's history. Of these, 55 percent or 216,698 of the people removed were convicted criminal aliens – an 89 percent increase in the removal of criminals since FY 2008. This includes 1,119 aliens convicted of homicide; 5,848 aliens convicted of sexual offenses; 44,653 aliens convicted of dangerous drugs; and 35,927 aliens convicted of driving under the influence. ICE achieved similar results with regard to other categories prioritized for removal. Ninety percent of all ICE's removals fell into a priority category and more than two-thirds of the other removals in 2011 were either recent border crossers or repeat immigration violators.

Secure Communities

A major part of this success can be attributed to the expansion of Secure Communities, an information-sharing partnership between DHS and the FBI that uses fingerprints taken when individuals are booked into state prisons and local jails to identify removable aliens who have been arrested and booked for the commission of a non-immigration related criminal offense. Secure Communities is an important and valuable tool that helps ensure that the finite immigration enforcement resources of the federal government are used most effectively to improve public safety and remove those who violate both our immigration and criminal laws.

ICE receives an annual appropriation from Congress sufficient to remove a limited number of the more than 10 million individuals estimated to be in the United States who lack lawful status or are removable based on their criminal history. Given this reality, ICE has set as a clear and common-sense priority the identification and removal of criminal aliens and those who have been booked into jail for the commission of a non-immigration related criminal offense. Secure Communities is critical to implementation of this approach.

As they have for decades, local jails share fingerprint data with the FBI to run against FBI criminal databases. FBI, in line with Congressional mandates, then shares this information with DHS to run against its immigration databases.[1] Since 2008, ICE has expanded Secure Communities from 14 jurisdictions to more than 1,595 today, including every jurisdiction along the Southwest border. As a result of ICE's use of this enhanced information-sharing capability which began in October 2008, ICE has removed more than 105,000 criminal aliens — more than 37,000 of whom were convicted of felonies such as murder, rape, kidnapping and the sexual abuse of children through the end of FY 2011. ICE continues to work with its law enforcement partners across the country to responsibly and effectively implement this federal information sharing capability and plans to reach complete nationwide activation by 2013.

Secure Communities is an important and valuable tool to enforce our immigration laws and promote public safety. Nonetheless, no program is perfect, and there is always room to improve. In June, ICE Director John Morton announced a number of steps and changes that will help to improve the program and clarify its goals to law enforcement and the public.

These improvements include the creation of a quarterly statistical review of the program by ICE and the Office of Civil Rights and Civil Liberties (CRCL). To implement this review, ICE and CRCL have retained a leading statistician who is examining data for each jurisdiction where Secure Communities is activated to identify any inconsistencies in the program or indications of racial or ethnic profiling. Statistical outliers will be subject to more in-depth analysis and, if problems are identified, they will be rectified.

In addition, ICE and CRCL are developing a new series of training tools, including written materials and videos for state and local law enforcement agencies in jurisdictions where

[1] 8 U.S.C. § 1722

Secure Communities is activated. These training materials will provide information for state and local law enforcement about how Secure Communities works and related civil rights issues. The first set of training materials was released in June 2011 with more to follow.

ICE has created a new complaint process for Secure Communities, and will jointly run an intake center with CRCL to investigate allegations with local jurisdictions. ICE also launched a new public website that answers questions about Secure Communities and provides a complete and accurate statistical overview of the program.

ICE works closely with local law enforcement agencies to ensure victims and witnesses of crimes it encounters are properly identified and treated appropriately. At my direction, ICE, in consultation with CRCL, has developed a new policy specifically to protect crime victims, especially victims of domestic violence, which will help to prioritize the use of ICE resources on the removal of perpetrators of crimes, rather than victims and witnesses.

ICE has taken steps to clarify some matters related to Secure Communities that have not always been clear in the past. ICE eliminated the Memorandums of Agreement (MOAs) that created confusion about the proper role of state and local governments and updated its detainer form to clarify the longstanding rule that state and local authorities are not to detain an individual for more than 48 hours except for holidays and weekends. The new detainer form also requires state and local law enforcement to provide the arrestees with a copy of the form, which includes a number to call if they believe their civil rights have been violated by ICE. The revised form includes information in six languages on how to file a complaint.

All of these steps and changes are improving the Secure Communities program as a tool that pursues important public safety goals. These measures will further clarify and further those goals.

Prosecutorial Discretion

There have never been, nor will there be in tight fiscal times, sufficient resources to remove all of those unlawfully in the United States or who are otherwise removable. At DHS, we work to ensure our immigration enforcement resources are focused on the removal of those who constitute our highest priorities, specifically individuals who pose threats to public safety such as criminal aliens and national security threats, as well as repeat immigration law violators, recent border entrants, and immigration fugitives. There are hundreds of thousands of cases currently pending before DOJ immigration courts, many of which could take years to resolve. Tens of thousands more are pending review in federal courts. Each of these cases costs considerable taxpayer dollars, and those involving low priority individuals divert resources away from and delay the removal of higher priority individuals. The expenditure of significant resources on cases that fall outside of DHS enforcement priorities hinders our public safety mission by consuming litigation resources and diverting resources away from higher-priority individuals.

The former Immigration and Naturalization Service under DOJ, and later ICE under DHS, have always used discretion on a case-by-case basis where appropriate and responsible to do so, and where it enhances our ability to meet our priorities. In keeping with this practice, DHS and DOJ have recently established an interagency working group to implement existing guidance regarding the appropriate use of prosecutorial discretion in a manner consistent with our enforcement priorities.

This interagency working group will allow immigration judges, the Board of Immigration Appeals, and the federal courts to focus on adjudicating high priority removal cases more

swiftly. In part, the process designed by the working group will identify low priority cases and on a case-by-case basis, set those cases aside. This will permit additional DHS resources to focus on the identification and removal of those individuals who pose greater threats. As a result, this process will accelerate the removal of high priority aliens from the United States. At no point will any individuals be granted any form of "amnesty." There will be no reduction in the overall levels of enforcement and removals – only a more effective way of marshaling our resources towards our highest-priority cases and thus, increasing the number of criminal aliens, recent border crossers, and repeat immigration violators who are removed.

Likewise, the civil enforcement prioritization will enhance ICE's partnership with U.S. Customs and Border Protection (CBP). Over the past few years, ICE has worked closely with CBP to increase efforts to prevent illicit trade and travel across our borders. This partnership includes the dedication of ICE officers, agents, and detention facilities to the apprehension and detention of recent border crossers. The record-setting results achieved along the Southwest Border are attributable, in part, to this unprecedented partnership. Notably, by freeing up ICE resources that had previously been devoted to low priority cases, this process will make available additional ICE resources that DHS will dedicate to the Southwest border.

Worksite Enforcement and E-Verify

DHS has implemented a smart and effective approach to worksite enforcement. By focusing on employers who knowingly and repeatedly hire illegal labor, we are targeting the root cause of illegal immigration, utilizing robust Form I-9 inspections, civil fines, and debarment, and enhancing compliance tools like E-Verify. Since Fiscal Year 2009, ICE has audited more than 6,000 employers suspected of hiring illegal labor, debarred 441 companies and individuals,

and imposed more than $76 million in financial sanctions—more than the total amount of audits and debarments during the entire previous administration. In Fiscal Year 2011, ICE also criminally arrested 221 employers accused of violations related to employment, an agency record. In short, our approach to worksite enforcement has been working, and has been successful at bringing employers into compliance with the law.

As a corollary, we have strengthened the efficiency and accuracy of E-Verify – our web-based employment verification system managed by U.S. Citizenship and Immigration Services (USCIS) and designed to assist employers in complying with the law. As of Fiscal Year 2011, more than 292,000 employers have enrolled in E-Verify, representing more than 898,000 locations. More than 1,000 new employers enroll each week and the number of employers enrolled in E-Verify has more than doubled each fiscal year since 2007. In Fiscal Year 2011 alone, E-Verify processed 17.4 million employment queries.

In March of this year, USCIS launched the new E-Verify Self-Check feature, an innovative service that allows individuals in the United States to check their own employment eligibility status before formally seeking employment. This voluntary, free, fast, and secure service gives users the opportunity to submit corrections of any inaccuracies in their DHS and Social Security Administration records before applying for jobs, thereby making the process more efficient for employees and employers. The Self Check service is currently available in both English and Spanish to users who maintain an address in 21 states[2] and the District of Columbia. Self Check will be available nationwide by March 2012.

USCIS has continued to improve E-Verify's accuracy and efficiency, enhance customer service, and reduce fraud and misuse in a number of additional ways. To improve E-Verify's

[2] Arizona, California, Colorado, Idaho, Louisiana, Ohio, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, South Carolina, Texas, Utah, Virginia and Washington.

accuracy, USCIS reduced mismatches for naturalized and derivative U.S. citizens by adding naturalization data and U.S. passport data to E-Verify. Because of this enhancement, in Fiscal Year 2011, more than 80,000 queries that previously would have received an initial mismatch requiring correction at the secondary verification stage were automatically verified as employment authorized. In June 2010, E-Verify launched improved navigational tools to enhance ease-of-use, minimize errors, and bolster compliance with clear terms of use. USCIS also has increased its staff dedicated to E-Verify monitoring and compliance, adding 80 staff positions to support monitoring and compliance since the beginning of Fiscal Year 2010. Finally, to more effectively address identity theft, USCIS now allows for the verification of passport photos through the E-Verify system.

Identifying Visa Overstays

Over the past two years, DHS has accelerated efforts to synchronize, integrate, and streamline the Department's vetting capabilities in order to increase efficiency and effectiveness of DHS screening efforts. The enhanced biographic program is a primary example. Previously, as part of the review process, a potential visa overstay record would undergo three automated searches against other government systems. A record that could not be closed during those automated searches would then be manually validated through up to 12 federal systems. This process was time consuming, expensive, and led to a backlog of un-reviewed records.

In May 2011, the Department began a coordinated effort to vet all potential overstay records against Intelligence Community (IC) and DHS holdings for national security and public safety concerns. In total, the Department reviewed the backlog of 1.6 million overstay leads within the United States Visitor and Immigrant Status Indicator Technology Program (US-

VISIT) and referred leads based on national security and public safety priorities to ICE for further investigation.

Through a new automated system currently under construction, we will be able to enrich data sources, enhance automated matching, eliminate gaps in travel history, and aggregate information from multiple systems into a unified system. As a result, DHS will be able to quickly and accurately identify overstays, and prioritize those who constitute a threat to national security or public safety.

Over the past two years, DHS has expanded its partnership with the NCTC. Today, NCTC is an integral part of DHS efforts to screen and vet those seeking to travel to, or receive immigration benefits from the US. Those who travel to the US or seek immigration benefits are screened against a broad array of data repositories, including those maintained by NCTC. This has allowed DHS to identify those persons who pose a public safety or national security risk prior to their entering to US, or as part of our efforts to determine admissibility or deportability.

In addition, the biometrics interoperability mandated by Congress continues to show significant success. Biometrics sharing through the Terrorist Screening Center (TSC) has resulted in more than 3.5 million terrorist record searches to date. More than 50,000 10-print fingerprint devices are now in use worldwide. There are many success stories resulting from the work of the TSC. For example, in May 2011, an applicant for U.S. immigration benefits was positively matched against a Department of Defense detainee who had interfered with an investigation by stealing evidence in Afghanistan.

Human Trafficking and Human Smuggling Investigations

Combating human trafficking and protecting victims also remain a priority for DHS. In July 2010, DHS launched the Blue Campaign to coordinate and enhance the Department's anti-human trafficking efforts. Seventeen of our components are involved in the Blue Campaign, which harnesses and leverages various DHS authorities and resources. The Blue Campaign also provides a variety of informational resources and materials about human trafficking to help raise awareness of this important issue among the public, law enforcement, and our international partners.

To support this effort, we have trained officers, prioritized the identification of traffickers and their victims, and coordinated enforcement action against traffickers. DHS continues to educate its personnel, as well as state and local law enforcement agencies and citizens, to identify and report indicators of human trafficking. Through our education and outreach efforts, we are able to help citizens and state and local law enforcement agencies to identify victims of human trafficking in the United States. For example, in 2010, investigations led to the arrest of 29 individuals in Nashville, TN, for the sex trafficking of juveniles, and the conviction and sentencing of a woman in New Jersey for trafficking women and girls for forced labor.

We also have played a critical role in providing victim assistance to foreign victims of trafficking in the United States. Through Continued Presence and T and U nonimmigrant status, DHS permits eligible victims of trafficking to remain in the United States for an extended period of time, allowing them to assist with criminal investigations and prosecutions. Eventually, eligible individuals can then apply for permanent resident status.

In addition, ICE works closely with our interagency and international partners to disrupt and dismantle international human smuggling and trafficking networks and organizations. ICE's "Operation Predator" targets and investigates human smugglers and traffickers of minors, as well

as child pornographers, child sex tourists and facilitators, criminal aliens convicted of offenses against minors, and those deported for child exploitation offenses who have returned illegally. Since its launch in 2003, Operation Predator has resulted in the arrest of over 13,594 sexual predators, of which 10,975 were non-citizens. In Fiscal Year 2012, ICE will expand its Child Exploitation Section by establishing the Child Exploitation Center and deploying Child Sex Tourism Traveler Jump Teams to conduct investigations of U.S. citizens traveling in foreign counties for the purpose of exploiting minors.

The Department of Homeland Security is also re-energizing the Human Smuggling and Trafficking Center (HSTC), an interagency information and intelligence fusion center and clearinghouse that helps in coordinating the U.S. Government's efforts against human smuggling, human trafficking, and criminal smuggler facilitation of terrorist travel. Besides facilitating the broad dissemination of information and producing strategic assessments, the HSTC is also supporting efforts against smuggling and trafficking networks.

Refugee Screening Efforts

Over the past 25 years, the United States has sheltered over a million refugees fleeing armed conflict, ethnic cleansing, persecution, and torture. DHS, and specifically ICE, bears a unique responsibility in protecting those who came to the United States seeking to escape those who perpetrated such atrocities, while ensuring human rights violators are not allowed to enter our country. ICE is committed to ensuring the United States does not become a safe haven for human rights abusers.

Today, ICE is handling more than 1,900 human rights-related cases. These cases are at various stages of investigation and litigation, including removal proceedings. They involve

suspects from approximately 95 countries, primarily in Central and South America, the Balkans, and Africa. ICE currently has more than 200 active human rights investigations, which could ultimately support criminal charges or removal proceedings. Since Fiscal Year 2004, ICE has successfully removed more than 400 known or suspected human rights violators and more than 75 suspected human rights violators have been prevented from entering the United States either by visa revocations or refusals by the Department of State or by stops at ports of entry by CBP officers.

Southwest Border Enforcement

In March 2009, the Obama Administration launched the Southwest Border Initiative to bring focus and intensity to Southwest border security, coupled with a reinvigorated, smart and effective approach to enforcing immigration laws in the interior of our country. We are now more than two years into this strategy, and based on previous benchmarks set by Congress, it is clear that this approach is working.

Unprecedented Resources at the Southwest Border

Under the Initiative, we have increased the number of Border Patrol Agents deployed to the Southwest border to more than 18,000 which is more than twice the number stationed in the region in 2004. We have doubled personnel assigned to Border Enforcement Security Task Forces (BEST), which work to dismantle criminal organizations along the border. We have increased the number of ICE intelligence analysts along the border focused on cartel violence. In all, a quarter of ICE's personnel are now in the region, the most ever. We have tripled deployments of Border Liaison Officers to work with their Mexican counterparts, and we are

now screening all southbound rail traffic and a random number of other vehicles for illegal weapons and cash that are helping fuel the cartel violence in Mexico.

In terms of border infrastructure, we have constructed a total of 650 miles of fencing out of nearly 652 miles where Border Patrol field leadership determined it was operationally required, including 299 miles of vehicle fence and 351 miles of pedestrian fence. The remaining two miles will be completed by April 2012. With our share of the $600 million provided in the 2010 emergency border security supplemental appropriation act (Public Law 111-230), we have added more technology, manpower, and infrastructure including 1,000 new Border Patrol Agents by the end of Fiscal Year 2011; 250 new CBP officers at ports of entry; and 250 new ICE special agents investigating transnational crimes.

We are also improving our tactical communications systems, adding two new Border Patrol forward operating bases and three more CBP unmanned aircraft systems. For the first time, we now have Predator Unmanned Aircraft System coverage along the Southwest border from the California-Arizona border to the Texas Gulf Coast. These investments are augmenting the additional non-intrusive inspection systems, Remote Video Surveillance Systems, thermal imaging systems, radiation portal monitors, mobile license plate readers, and other technologies that CBP has deployed to the Southwest border over the past two years, along with the mobile surveillance equipment that will be purchased with Fiscal Year 2011 funding and deployed in every Border Patrol sector in Arizona.

The DHS Science and Technology Directorate (S&T) also has multiple ongoing efforts to develop, test, and implement new technology for use at the border. These efforts include Tunnel Activity Monitoring (TAM) sensors, technology evaluation for the detection of clandestine tunnels, enhanced sensor capabilities for Mobile System Surveillance units, advanced

Unattended Ground Sensor (UGS) features, a border buried cable tripwire, and airborne wide area surveillance. The S&T Directorate also has supported CBP by providing comparative testing of state-of-the-art radars and UGS, the results of which will provide an independent assessment of their performance and help define future requirements for technology procurement.

Since 2009, DHS also has provided $167 million in Operation Stonegarden funding to Southwest border law enforcement agencies – a record amount – to pay for overtime costs and other border-related expenses.

Because partnerships with federal, state, local, and tribal law enforcement agencies, as well as the private sector, remain critical to our overall success, we have initiated new programs to increase collaboration, enhance intelligence and information sharing, and develop coordinated operational plans. One example of a significant interagency partnership is the Border Enforcement Security Task Force (BEST). Led by ICE, the BEST teams incorporate personnel from ICE, CBP, and the U.S. Coast Guard within DHS; the DEA, FBI, Bureau of Alcohol, Tobacco, Firearms and Explosives, and U.S. Attorney's Offices within the Department of Justice; as well as other key federal, state, local and foreign law enforcement agencies. BEST teams leverage federal, state, local, tribal, and foreign law enforcement and intelligence resources in an effort to identify, disrupt, and dismantle organizations that seek to exploit vulnerabilities along our borders and threaten safety and security. As of Fiscal Year 2011, there are over 690 members of 64 state and local law enforcement agencies participating in the 22 BESTs along the Southwest and Northern borders, at seaports, and in Mexico City.

Another example is the Alliance to Combat Transnational Threats (ACTT). ACTT utilizes a collaborative enforcement approach to leverage the capabilities and resources of DHS in partnership with more than 60 law enforcement agencies in Arizona and the Government of Mexico to deter, disrupt, and interdict individuals and criminal organizations that pose a threat to the United States. Since its inception, ACTT has resulted in the seizure of more than 2.2 million pounds of marijuana, 8,200 pounds of cocaine, and 2,700 pounds of methamphetamine; the seizure of more than $18 million in undeclared U.S. currency and 343 weapons; over 16,000 aliens denied entry to the U.S. at Arizona ports of entry due to criminal background or other disqualifying factors; and approximately 342,000 apprehensions between ports of entry.

As we have taken these steps to enhance border security, we are also bringing greater fiscal discipline to our operations. The SBI*net* program, which began in 2005, was an attempt to provide a single one-size-fits-all technology solution for the entire Southwest border. Unfortunately, throughout its development, the program was consistently over budget, behind schedule, and simply did not provide the return on investment needed to justify it.

Last year, I directed an independent, quantitative assessment of the SBI*net* program, which combined the input of U.S. Border Patrol agents on the front lines with the Department's leading science and technology experts. This assessment made clear that SBI*net* could not meet its original objective of providing a one-size-fits-all border security technology solution. As a result, earlier this year, I directed CBP to redirect SBI*net* resources to other, proven technologies – tailored to each border region – to better meet the operational needs of the Border Patrol. This new border security technology plan – which is already well underway – is providing faster deployment of technology, better coverage, and a more effective balance between cost and

capability. It includes non-intrusive inspection equipment at the ports of entry and tested, commercially available technologies for immediate use between the ports.

Northern Border Security

The Obama Administration has made significant advancements in creating a secure and resilient Northern border. DHS has invested in additional Border Patrol agents, technology, and infrastructure. Currently, CBP has more than 2,200 Border Patrol agents on the Northern border, a 500 percent increase since 9/11. CBP also has nearly 3,700 CBP officers managing the flow of people and goods across ports of entry and crossings along the Northern border.

The Department has continued to deploy an array of technologies along the Northern border, including thermal camera systems, Mobile Surveillance Systems, and Remote Video Surveillance Systems. CBP successfully completed the first long-range CBP Predator-B unmanned aircraft patrol under expanded Federal Aviation Administration authorization that extends the range of approved airspace along the Northern border. Approximately 950 miles along the Northern border from Washington to Minnesota are currently covered by unmanned aircraft, in addition to approximately 200 miles along the northern border in New York and Lake Ontario—none of which were covered prior to the creation of DHS.

CBP officers and agents provide support to the Integrated Border Enforcement Teams (IBET) that operate as intelligence-driven enforcement teams comprised of U.S and Canadian federal, state/provincial and local law enforcement personnel. By incorporating integrated mobile response capability (air, land, marine), the IBETs provide participating law enforcement agencies with a force multiplier—maximizing border enforcement efforts.

Finally, in February 2011, President Obama and Canadian Prime Minister Harper announced a landmark "Shared Vision for Perimeter Security and Economic Competitiveness"

that sets forth how the two countries will manage shared homeland and economic security in the 21st century. This "Shared Vision" focuses on addressing threats at the earliest point possible; facilitating trade, economic growth, and jobs; collaborating on integrated cross-border law enforcement; and partnering to secure and strengthen the resilience of critical infrastructure.

Results

Taken as a whole, the additional manpower, technology and resources we have added over the past two years represent the most serious and sustained action to secure our borders in our Nation's history. And it is clear from every measure we currently have that this approach is working.

With respect to the Southwest border, illegal immigration attempts, as measured by Border Patrol apprehensions, have decreased 36 percent in the past two years, and are less than one third of what they were at their peak. We have matched decreases in apprehensions with increases in seizures of cash, drugs, and weapons. In fiscal years 2009, 2010, and the first half of 2011, CBP and ICE have seized 75 percent more currency, 31 percent more drugs, and 64 percent more weapons along the Southwest border as compared to the last two and a half years of the previous administration. As we have worked to combat illegal crossings, violent crime in U.S. border communities has remained flat or fallen in the past decade. Indeed, four of the biggest cities in America with the lowest rates of violent crime – San Diego, Phoenix, Austin, and El Paso – are on or near the border. Violent crimes in Southwest border counties have dropped by more than 30 percent and are currently among the lowest per capita in the Nation. Crime rates in Arizona border towns have remained essentially flat for the past decade, even as drug-related violence has dramatically increased in Mexico.

Developing Measures for Progress at the Border

As we assess the marked improvements in border security over the past two years, it is important to focus on how we can best measure progress in the future. DHS has been working to improve each of the individual metrics that are currently used to describe capabilities and results. However, it is clear we must also focus on more comprehensive and accurate measurements of the state of border security.

CBP is in the process of developing a comprehensive index that will more holistically represent what is happening at the border and allow us to measure our progress there. This process is still in its early stages and I look forward to updating the Committee as the new measures are developed. This new index will help DHS:

- Capture the "state" or "condition" of the border;
- Evaluate trends over time;
- Adjust goals and objectives; and
- Support resource allocation decisions.

We fully understand that the "state" of the border is complex and depends on many factors, but we are optimistic based on the analytical rigor thus far, that this new index will be able to combine an appropriate set of those factors as reflective of the "big picture."

In developing these border metrics, it is important to keep in mind our ultimate goals. Combating transnational crime, while promoting legal travel and trade, makes border communities more secure, which in turn provides a basis for economic prosperity and an improved quality of life. Illegal traffic diminishes quality of life in a number of ways, such as

increased property crime. The "success stories" in border security are the communities where enforcement efforts have supported and enhanced the quality of life.

CBP has consulted with experts and stakeholders on what data to include, and how to formulate a reliable index. This process has been led by a steering committee with representatives from CBP, including the Border Patrol, OMB, and the Homeland Security Institute. To date, a list of candidate measures have been identified based on peer and stakeholder input. The data is now being analyzed and compiled into a model index, which will be reviewed by peers and external stakeholders (including those from border communities) and refined, based on that feedback.

Defining success at the border is critical to how we move forward, and how we define success must follow a few guidelines: it must be based on reliable, validated numbers and processes, tell a transparent statistical story, and draw heavily upon the values and priorities of border communities. The approach currently underway is designed to meet all of these criteria. We expect to finalize the index during the second quarter of Fiscal Year 2012.

Improvements to Legal Immigration Programs

Another critical element of an effective immigration system is ensuring that we provide immigration benefits and services to those eligible in a timely and efficient manner. Our country is a nation of laws and of immigrants, and we must remain open and welcoming to legal immigrants while supporting their integration into our society.

Over the past two years, USCIS has taken a number of actions to improve its ability to meet these goals. By streamlining and modernizing operations, USCIS is now processing

applications for naturalization and other critical immigration benefits more rapidly, exceeding its goals.

As a customer-focused agency, USCIS also has taken steps to improve one of its primary interfaces with the public: www.uscis.gov. In FY 2010, USCIS launched a new online inquiry tool to make it easier to check case status, receive updates via e-mail and text message, and find information of specific relevance to an individual's case. In addition, USCIS launched a new Citizenship Resource Center on its website that serves as a one-stop resource for students, teachers, and organizations to obtain citizenship preparation educational resources and information.

USCIS has made security enhancements to some of its key identity documents to prevent counterfeiting, obstruct tampering, and facilitate quick and accurate authentication. The Permanent Resident Card, commonly known as the "green card," now contains several major new security features, and USCIS redesigned the Certificate of Naturalization to more effectively detect document tampering, validate identity, reduce fraud, and decrease overall expenses. DHS also has joined with the Department of Justice and the Federal Trade Commission in a nationwide initiative to combat immigration scams involving the unauthorized practice of law. This initiative seeks to protect vulnerable immigrant populations from those who seek to exploit them.

USCIS also has continued to naturalize hundreds of thousands of new Americans each year, including record numbers of members of our nation's armed forces. In Fiscal Year 2010, USCIS granted citizenship to 11,146 members of the U.S. Armed Forces at ceremonies in the United States and abroad. This figure represents the highest number of service members naturalized in any year since 1955. In Fiscal Year 2011 (as of August 2011), USCIS has granted

citizenship to 9,530 members of the U.S. Armed Forces. Since Fiscal Year 2005, USCIS has naturalized U.S. military personnel during ceremonies abroad in 25 different countries. Indeed, since September 2001, USCIS has naturalized more than 74,000 service men and women, including those serving in Iraq and Afghanistan.

Taken together, these improvements to our legal immigration system, coupled with our efforts to secure the border and enforce immigration laws in the interior, are producing significant results. We intend to make even greater strides in the coming year.

But we know that more is required to fully address our nation's immigration challenges. Congress needs to take up reforms to our immigration system to address long-standing, systemic problems with our nation's immigration laws. President Obama is firm in his commitment to advancing immigration reform, and I am personally looking forward to working with Congress to achieve this goal, and to continue to set appropriate benchmarks for our success in the future.

Conclusion

Chairman Smith, Ranking Member Conyers, and members of the Committee: Thank you for inviting me to testify today. I want to thank this Committee for its support of our mission to keep America safe. I also want to thank the men and women who are working day and night to protect and defend our country, often at great personal risk. We owe them our continued support and gratitude. I will be pleased to take your questions.

Mr. SMITH. Thank you, Ms. Napolitano.

I'm going to recognize myself for questions and then other Members will be recognized.

Ms. Napolitano, my first question is this. DHS currently declines to detain many criminal immigrants that are now held in our local

jails and the result of that is that they are released into our communities.

The Congressional Research Service says that under this Administration over half of the criminal immigrants identified, 300,000-plus have been released. Yet, when I ask what crimes these released criminals have been charged with, DHS responded that ICE does not track this data.

So we don't even know what crimes were committed by the criminal immigrants that DHS refused to detain. I am just wondering if that is the case. Do we in fact not determine what crimes have been committed and do we not know what crimes were committed by those individuals that DHS refuses to detain?

Ms. NAPOLITANO. Well, Mr. Chairman——

Mr. SMITH. It seems so incredible that we would be releasing individuals without even knowing what crimes they might have committed. But I hope there is a good answer.

Ms. NAPOLITANO. Yeah. Mr. Chairman, I don't know the—I'm not personally familiar with the CRS study that you reference. But we detain and have beds at the number that the Congress funds, which is roughly around 34,000 beds, and there are decisions made about——

Mr. SMITH. But my question wasn't about the number released or the beds. It was about do you know the crimes that were committed by those that you refuse to detain.

Ms. NAPOLITANO. Well, I will look into that, Mr. Chairman. I will assume, because of my work with ICE and in this field over the past several decades, that detention decisions are made just as they are made in normal criminal prosecutions—based on public safety and based on risk of flight.

Mr. SMITH. But you don't know whether you know the crimes that were committed or not?

Ms. NAPOLITANO. I don't know exactly how they track but I will find out for you.

Mr. SMITH. Okay. My information, incredibly enough, is that you don't know what crimes were committed and these individuals are still being released, in effect.

A second question is this—that I wrote you in August requesting to be provided a list of the immigrant criminals that DHS has declined to detain. Your staff at ICE and DHS have been cooperative and I appreciate their assistance. I was told that DHS has generated a list of names that being cleared before it was given to me.

Instead, a letter I received yesterday from DHS's assistant secretary for legislative affairs contained no names whatsoever but simply summary statistics about the Secure Communities Program. To me, this was not a good faith response. And so, I am just wondering what happened to the promised cooperation?

And I would like a commitment from you that by 10 a.m. next Monday I get the information that I was promised and I would like to be delivered by that time. And can I get a commitment from you now that I will get that information?

Ms. NAPOLITANO. I will look into that, Mr. Chairman.

Mr. SMITH. You will what?

Ms. NAPOLITANO. I said I will look into that, Mr. Chairman.

Mr. SMITH. Okay. Well, let me say to you that it has been 2 months since I requested this information. We've had a good relationship with your staff. I was told that the list was available, had to be cleared, and now suddenly the list has apparently disappeared.

And if I am not given that list as I understood to be promised that list, I will have no choice but to issue a subpoena. So I hope we can get that list.

Let me go on to my next question, and you have heard me mention this in my opening statement. Now, worksite enforcement has dropped 70 percent over the past 2 years. ICE agents are instructed not to detain or remove most illegal immigrants found working illegally in the U.S. These illegal immigrants can simply walk down the street, knock on the door of another employer and take another job away from an unemployed American worker.

At an Immigration Subcommittee hearing 2 weeks ago, ICE Director John Morton stated that illegal workers not detained, quote, "can obviously continue to try to find employment," end quote.

So my question is why does the Administration allow illegal workers to take jobs away from unemployed American workers? Why do you allow these individuals to walk down the street? Why don't you make an effort to detain them and remove them and send them home?

Ms. NAPOLITANO. Well, let me—let me, if I might, address the numbers and then go to—to the detention. First of all, if you only look at the numbers in terms of percentages, you are right. The percentage has dropped in terms of workers who are being put into removal proceedings. But the base number is very small.

I mean, between 2008, before this Administration, to fiscal 2011 you are talking about a reduction from between around 5,000 worker removals to 1,500.

You have to look at that in conjunction with the increase in criminal alien removals, which we have increased almost 100,000 over the same period.

Mr. SMITH. Right. Again, I am not talking about criminal immigrants. I'm talking about——

Ms. NAPOLITANO. I know you are not but I—I am making this point because, because we have prioritized and because we are removing more criminal aliens, you are going to see more of those in detention because they are more serious offenders.

Mr. SMITH. Yeah. That—that——

Ms. NAPOLITANO. With respect to the individuals who we find at worksites, that is really not a case of——

Mr. SMITH. Madam Secretary, that really—that was not responsive to my question and you didn't answer my question, which was why does the Administration intentionally allow these illegal workers to walk down the street and take other jobs from Americans. Why aren't they being detained? Why aren't they being removed?

Ms. NAPOLITANO. They are being handled the way they have always been handled, Mr. Chairman.

Mr. SMITH. No. The previous Administration did a lot better job at worksite enforcement than this Administration. As you just admitted——

Ms. NAPOLITANO. Well, I would just have to respectfully disagree.

Mr. SMITH. You—you admitted a while ago that my statistics were right—it is down 70 percent since the last Administration.

Ms. NAPOLITANO. That is right. And as I tried to explain—let me say it again. If you actually look at the numbers, yes, you are right if you only look at 70 percent. But it is a small part of removal operation, and in exchange for that 3,500 diminution, we have increased the removals of criminal aliens who are a danger to public safety and I pointed that out.

Mr. SMITH. I understand that, and my time has expired. But we are still talking about thousands of individuals taking jobs away from American workers.

Ms. NAPOLITANO. Not necessarily, but we can discuss that further.

Mr. SMITH. Okay.

The gentleman from Michigan, Mr. Conyers, is recognized.

Mr. CONYERS. Can I yield to Jerry Nadler?

Mr. SMITH. And the gentleman yields to the gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you.

Madam Secretary, there are many and serious problems with respect to immigrant detention. I want to focus on the repeated transfers of detainees between ICE facilities.

According to a June 2011 report by Human Rights Watch, there were about 2 million detainee transfers between 1998 and 2010, often over long distances that required the use of airplanes. Almost half of all detainees were moved at least twice.

These transfers lead to inefficient removal hearings and cost $366 million in transportation alone, facts that should concern my friends on the other side of the aisle, among others.

And the problems seem to be growing. Transfers tripled between 2004 and 2009. Now, moving detainees away from where they live impedes their ability to retain counsel, often on a pro bono basis.

Since they are often moved when their removal hearing is already underway the entire process bogs down, and detainees lose access to evidence as well as friends and family, which makes it difficult to show to a court in a bond hearing that they are not a flight risk, and this results sometimes in unnecessary and costly detention.

Now, DHS and ICE seem to recognize that a transfer policy needs reform. In August of 2009, ICE Director Morton announced a series of changes, including the creation of an Office of Detention Policy and Planning to revise transfer policy.

In October 2009, Special Advisor to ICE, Dora Schriro, recommended that detainees who are represented by counsel should not be transferred outside the area unless there are exigent health or safety reasons, and when this occurs the attorney should be notified promptly.

In July of last year, ICE adopted an online locater—locater system so counsel, friends and family could at least locate detainees. Despite these steps, however, there still has not been a comprehensive change to detainee transfer policy.

Now my questions. Madam Secretary, do you agree that we need to change to the policies which lead to the repeated transfer of de-

tainees so that we can finally protect their due process rights and improve the efficiency of our immigration courts?

Ms. NAPOLITANO. Representative Nadler, there are a number of reasons why we want to limit transfers of detainees—the cost, efficiency, access to counsel, access to family members. The practical problem we confront is that we don't always have detention beds where we have detainees and that causes there to be movement.

One of the things we are doing through our Office of Detention Policy is trying to contract for more beds in some of our higher intensity areas so that we can limit the number of—of movement among our detainees.

Mr. NADLER. Do you have any estimate of when the new policies to appropriately limit the transfers will be in place?

Ms. NAPOLITANO. Well, it is our policy now to limit transfers. I think the question really is when will we have contracts for more beds, and as soon as we can get them we will get them.

Mr. NADLER. So until you have contracts for more beds you cannot really limit transfers?

Ms. NAPOLITANO. Well, we limit them as much as we can.

Mr. NADLER. Do budget cuts negatively impact your ability to adopt a more humane and cost-effective transfer policy?

Ms. NAPOLITANO. The Congress gives us a certain amount of—of money. We have to operate as efficiently as possible within the scope of that appropriation. We cannot remove 10 million people from this country. We have to make choices. We have to prioritize.

But it that conjunction, yes. If we don't have the money to move and if, more importantly, the Justice Department, the marshals, everybody else involved in the system doesn't have the ability to—to manage that it—it is a problem.

Mr. NADLER. Thank you. Among many problems relating to these transfers one that struck me was the impact it has on detainees' ability to be represented by counsel.

A June—a recent June report from Human Rights Watch says, and I quote, "Attorneys with decades of experience told us that they had—that they had not once received prior notice from ICE of an impending transfer. ICE often relies on detainees themselves to notify attorneys. But the transfers arise suddenly and detainees are routinely prevented from or are otherwise unable to make the necessary call. As a result, attorneys have to search the online detainee locator for their clients' new locations. Once a transferred client is found, the challenges inherent in conducting legal representation across thousands of miles can completely sever the attorney-client relationship. This is especially true when the same person is transferred repeatedly."

That's the quote. Now, this is all very problematic, obviously. Can you commit to me and to the Committee that you will take whatever the steps necessary to try to reduce significantly detainee transfers far away from counsel? In other words, the location of counsel should be one of the major—should be a determinant in—in who gets transferred to where. Can this be a part of ICE's new policy on detainee transfers?

Ms. NAPOLITANO. I think it should be one of the factors taken into account and—and I do think, you know, the—the fact that we now have a locator when we didn't have one before, it sounds like

a simple thing but given the number of people who run through the immigration system in a given year, it—it was a difficult IT thing to—to get done because it is a fast-moving system.

But that will help counsel as well.

Mr. NADLER. And—and would you agree that it would be a better practice and policy to at least notify counsel when his or her client has been transferred and not make them look around on the online system?

Ms. NAPOLITANO. Well, I think to the extent possible we should do that.

Mr. SMITH. And the gentleman's time has expired.

Mr. NADLER. Thank you.

Mr. SMITH. And the gentleman from Wisconsin, Mr. Sensenbrenner, is recognized.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Madam Secretary, it is no secret that you don't like the REAL ID Act and you have given numerous statements and speeches that you would like to see the REAL ID Act repealed and in its place put something called PASS ID on the books.

Well, that is not going to happen. The suggestion didn't get off the ground in the last Congress and it has not gotten off the ground in this Congress.

The current exemption or extension that the DHS has given on REAL ID To the states is now January 15th, 2013. Are you going to extend it again?

Ms. NAPOLITANO. Representative Sensenbrenner, first of all, I cannot take sole credit for opposing REAL ID. When I was involved with the National Governors Association it was bipartisan and uniform amongst all the governors that the—the line in the appropriations bill that was REAL ID did not appropriately incorporate concerns of state officials on how you actually implement, and was an unfunded mandate.

That being the case, we did work with the governors on PASS ID and, unfortunately, for whatever reasons the Congress decided they didn't want to take that up. It would have been better to do so. Now we have a bill the governors still are uncomfortable with implementing. They have budget constraints of their own.

But we agree with the goal of the bill, and the goal of the bill, of course, is to have a more secure, particularly, driver's license. So we are working with the states and a number of them—I think 22 now—are almost at the point where they would meet REAL ID. Others are along the way.

Mr. SENSENBRENNER. Are you going to—are you going to drop the boom on the states that refuse to comply or can't comply as of January 15th, 2013? Meaning that the non-compliant driver's license, can that be used to enter Federal buildings, nuclear power plants, get on a planes during the TSA inspection or is there going to be a further delay in this?

Ms. NAPOLITANO. Representative Sensenbrenner, I can't say right now. There's a—a year between now and then to work with the states. I think the governors generally agree with the goal of REAL ID. It's just how you get there.

Mr. SENSENBRENNER. Well, they are not going to get unilateral revenue sharing out of the Congress on this. So they can increase

the cost of driver's licenses, as my state has. But your REAL ID rules review in your shop only consists of three professional staff members and one administrative support person.

And as there are more documents that are submitted by the states that are not in compliance, how do you expect to get through that paperwork with just four people working on it?

Ms. NAPOLITANO. Well, Representative Sensenbrenner, if we need to put some more people on that project we will. I have not been informed that we need to do so.

Mr. SENSENBRENNER. Mm-hmm. Now, I'm getting back to the question that I asked and I don't think you answered—as the—if states are out of compliance on January 15th, 2013, are DHS personnel going to be instructed not to accept noncompliant identification to get into the Federal facilities or to get on a plane?

Ms. NAPOLITANO. Well, Representative Sensenbrenner, I—I really don't like to speculate on things that could happen over a year from now. I am going to work with the states. We will work with the states and bring them into compliance if we can.

Mr. SENSENBRENNER. Okay. When are you going to start informing the states of how and when REAL ID will be enforced?

Ms. NAPOLITANO. Well, we—we stay in regular contact with the governors primarily through the NGA about REAL ID. And I suspect when they have their winter meeting here in January that will be one of the topics that we take up with them.

Mr. SENSENBRENNER. Well, the 9/11 Commission was very firm in saying that we had to have secure ID after looking at the—the IDs that the 19 hijackers were able to get for themselves. And the longer this Administration and the governors that don't want to do this delay this, the more risk the American public has on a terrorist that wants to commit a major act of terrorism.

And I spent a lot of time during my chairmanship to try to prevent that from happening. This is still a hole in the system that can be exploited and it is not due to a lack of congressional action, for once.

It is due to a lack of implementation by DHS and it is due to a lack of will by the governors in providing for the safety and security of their driver's licenses.

I am not for a national ID card. But the longer this goes on, if there is a major terrorist attack because REAL ID has not been implemented for whatever reason, there will be a huge push here for a national ID card.

So I think it is in the interest of everybody to make sure that REAL ID is implemented the way it was written and passed in 2005.

Thank you.

Mr. SMITH. Thank you, Mr. Sensenbrenner. The gentleman from Virginia, Mr. Scott, is recognized.

Mr. SCOTT. Thank you. Madam Secretary, the Alabama law that was recently passed allows Alabama to inquire into immigration status. Is the Department of Homeland Security working with Alabama in helping them implement that law?

Ms. NAPOLITANO. Representative Scott, could you—is your microphone——

Mr. SCOTT. Alabama has—Alabama's immigration law allow—allows Alabama officials to inquire as to immigration status. Is the Department of Homeland Security working with Alabama to help them implement that law?

Ms. NAPOLITANO. Not in that sense. We have been working with the Department of Justice on its challenge to that law.

Mr. SCOTT. Okay. And is there any way that—and how would that law affect Hispanic citizens?

Ms. NAPOLITANO. It—you know, I don't know the answer to that question right now. The law has just gone into effect.

Mr. SCOTT. Well, I mean, you—you would have to assume that Hispanic citizens would be adversely affected because they would have to be showing ID about everywhere they go, other—a—a situation that other citizens would not have to do.

Ms. NAPOLITANO. I think that should be a real concern. You are correct.

Mr. SCOTT. The Prison Rape Elimination Act—has that been applied to ICE facilities?

Ms. NAPOLITANO. Yes. We have a zero tolerance policy for sexual harassment or misconduct by detention officers, be they those who are actual public employees or—or contracted.

Mr. SCOTT. And how—how are we doing on that? Have there been any complaints of sexual harassment and illegal sexual activity?

Ms. NAPOLITANO. Yes, there are—there are complaints. And when there—there are, the instruction is that they are to be explored and they are to make sure that if there needs to be corrective action taken, whatever that may be under the circumstances, that is to be done.

Mr. SCOTT. How are we doing in that—in that area?

Ms. NAPOLITANO. My understanding is that we are being very firm in this area and that we are dealing with those complaints expeditiously.

Mr. SCOTT. Are you familiar with the Frontline expose from a few weeks ago?

Ms. NAPOLITANO. Yes.

Mr. SCOTT. Was that accurate?

Ms. NAPOLITANO. No.

Mr. SCOTT. Could you give an update on the TSA work with religious groups as far as how people with religious dress can get through security?

Ms. NAPOLITANO. We are working—you know, the—the issue for us is what to do with those who wear—who have bulky clothing on, and particularly bulky head gear, and this can affect particular religious groups and religious beliefs. We have a process that we follow that I think has accommodated both religious group beliefs and our security needs.

But we continue to have ongoing dialogue as—as I think we should.

Mr. SCOTT. Within ICE, do you have detainees with mental illness that causes problems, like people who are incompetent that stay in ICE kind of limbo indefinitely?

Ms. NAPOLITANO. Given the number of people that we have in detention at any given time and over the course of a year, we—I am

certain we have some detainees who have mental health issues as well as detainees who—of course, who have physical health issues.

Mr. SCOTT. Now, what is done for those that are kind of in limbo—those who are mentally incompetent that just kind of sit there indefinitely?

Ms. NAPOLITANO. Well, one of the things that we are trying to do by the prioritization process and by reviewing the cases currently on the master docket is to speed up the time by which those in detention can actually have their cases heard. That is one of the impetuses behind the case-by-case review.

Mr. SCOTT. And—and do we have people kind of in limbo that are there indefinitely?

Ms. NAPOLITANO. Well, there are people in limbo in the immigration system generally, and the fact that there are people in limbo is one of the reasons why we hope at some point in time the Congress could take up the overall immigration system and immigration reform.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Scott.

The gentleman from North Carolina, Mr. Coble?

Mr. COBLE. Thank you. Thank you, Mr. Chairman. Madam Secretary, good to have you on the Hill. Good to have you with us.

Do you, Madam Secretary, agree with President Obama's statement that removal numbers are deceptive and what—do you know what he meant by that?

I am thinking he may have been referring to voluntary returns.

Ms. NAPOLITANO. No. I think what he was referring to, if I recall the context of that quotation, Representative, was that overall removal numbers are up.

As I said, we removed 397,000 people last year, more than ever before, but he was explaining that you also have to look at what comprise—what was in that number and he was referring to the fact that we have greatly increased the number of criminal aliens that are removed within the context of the overall number.

Mr. COBLE. So voluntary returns would not have been part of his statement on that?

Ms. NAPOLITANO. I don't believe so, no.

Mr. COBLE. Over the length, Madam Secretary, of the Bush Administration, I am told that yearly removals went up in excess of 90 percent. Will the current Administration come close to this rate of increase?

Ms. NAPOLITANO. I would have to check those numbers. My under—I don't know where those numbers come from.

Mr. COBLE. And I don't recall my source. If you will get back to us on that, I would appreciate that.

Ms. NAPOLITANO. Yes, sir.

Mr. COBLE. Yesterday—well, strike that. Last week, you told Senator Durbin that it cost in the neighborhood of $23,000 to $30,000 to annually remove one person. Earlier this year, however, ICE provided the Judiciary Committee with data indicating a total cost of removal of $12,198.

So the disparity is significant. Have you seen ICE's immigration enforcement lifestyle unit cost report?

Ms. NAPOLITANO. I don't know whether I have seen that report. The number I gave was what it cost to go through the entire removal including through the court system, and that is an estimate, of course.

I don't know whether the ICE number was with respect to ICE's part of that only. So we will—we will get back to you on that as well.

Mr. COBLE. I would be appreciative to you if you do that. Now, again, and I'm going to blank on my source, I don't recall where I read this or heard it, but I have heard that DHS might consider reopening cases in which aliens with final orders of removal have already been removed from the United States.

Is there any credence to that?

Ms. NAPOLITANO. That would be news to me.

Mr. COBLE. Okay. If you could check that out.

Ms. NAPOLITANO. I—yes. I don't—I don't think that is accurate.

Mr. COBLE. Okay. Might DHS reopen cases in which final orders of removal have already been removed? You say this is not known to you?

Ms. NAPOLITANO. No.

Mr. COBLE. Okay. Last week, again, during your appearance before the Senate Judiciary Committee you testified that absent unusual circumstances, cases with final removal orders will not be reopened.

If you would, Madam Secretary, elaborate on what would constitute an unusual circumstance.

Ms. NAPOLITANO. Oh, it is hard to say, Representative. There are so many human factors that go into immigration. There are so many—so many variations in the cases.

It—one might be where someone is needed to come back to be a witness in another ongoing and unrelated criminal prosecution and where the Department of Justice asks us to bring someone back.

Mr. COBLE. Prosecutorial discretion is already being exercised as it has always been by the officers and agents on the front lines who are closest to the facts of the cases involved.

Let me put a two-part question to you. Why do DHS and Department of Justice bureaucrats in Washington have to go back and double-check the work and expertise of those front-line law enforcement professionals?

Ms. NAPOLITANO. Well, Representative—and I have led large prosecution offices many times, both as a U.S. Attorney and an attorney general, and it is important to the field for fairness, for consistency to have guidance as to what the prosecutorial priorities are and that is exactly what we have been doing.

We have a big field, lot of agents out there. You are right, they have a lot of expertise, but their expertise—and they like this. It puts their cases—they know where they stand and where our priorities are—puts them into an overall framework.

Mr. COBLE. I thank you, Madam. Mr. Chairman, I see my red light is illuminating so I yield back.

Mr. SMITH. Thank you, Mr. Coble.

The gentlewoman from California, Ms. Lofgren?

Ms. LOFGREN. Thank you, Mr. Chairman, and thank you, Madam Secretary, for being here with our Committee.

I want to touch first on a cyber security issue. DNSSEC, which is the Domain Name System Security Extensions, was ordered—deployed across the Federal Government in 2008 by OMB, and in 2010, the White House said that the DNSSEC for the Internet's root zone was a major milestone for Internet security.

On the Homeland Security website, DNSSEC is quoted as being of critical importance to securing a Federal Internet domain. So here's my question. Do you think it is important that U.S. government policies toward the Internet should preserve the effectiveness of DNSSEC and other authentication technologies for a cyber security point of view?

Ms. NAPOLITANO. Yes.

Ms. LOFGREN. Thank you very much.

I want to get into the immigration issue, the detention issue.

Last week, the ACLU filed a lawsuit—*Doe v. Neveleff*—accusing ICE of failing to protect female detainees from sexual assault by a private prison guard at Hutto Detention Facility.

Nine women are specifically identified as being—having been sexually assaulted by a guard when he transported them out of the facility during a release process without appropriate supervision and that countless others may have been assaulted.

In April this year, the National Immigrant Justice Center filed a complaint with your Office for Civil Rights and Civil Liberties alleging serious mistreatment of 13 gay and transgender detainees, alleging sexual assault by guards and fellow detainees, denial of medical care, use of long-term solitary confinement, and 36 of my colleagues brought this complaint to your attention and to the attorney general earlier this year and I understand it is still under review.

Now, going back to Mr. Scott's question about the rape—Prison Rape Elimination Act—it is my understanding that the Department of Justice has specifically excluded immigration detention facilities from their proposed rule. They seem to be relying on ICE's detention standards on sexual abuse, but those are not mandatory. They lack the force of law.

So I am wondering if, by your answer to Mr. Scott, you are agreeing that that Prison Rape Elimination Act ought to, in fact, be imposed on detention standards—in ICE detention.

Ms. NAPOLITANO. Well, let me answer in two parts. One is that I would obviously have to look at the act but—before making a blanket agreement. But going to the problem that—that we are trying to address, which is if there is inappropriate, wrong or criminal conduct, and it can be in some circumstances criminal, by officers against detainees, that needs to be dealt with and it needs to be dealt with efficiently, firmly and quickly and that—and we have a zero tolerance policy for that conduct.

Ms. LOFGREN. Well, you inherited an awful mess when—in terms of detention when you came in. There were a lot of stories in the—in the New York Times, the Washington Post. There were deaths in detention, and you brought in an expert to try and put some order to it. There was a report that was a pretty good report and it doesn't look to me, but I guess this is a question, that we have actually implemented that report fully.

Can you address that?

Ms. NAPOLITANO. Well, I would say we have implemented good measures of that report and we use it as our guidepost. We did create a separate office within ICE to deal solely with detention.

We eliminated a number of the contractors that we were dealing with and consolidated facilities.

Ms. LOFGREN. Well, let me do this. Let me—I see my yellow light on. I don't want to be rude but I know the Chairman's going to gavel me down. Perhaps I can follow up with some of the detailed questions I have with you.

I have a final question on how we are going to interact with the new Alabama law. As you know, their new law makes it a felony for an undocumented person to engage in any business transaction with a government entity.

What that means is if you had a mother who is undocumented and she gets a library card for both of her U.S. citizen children, she committed two felonies.

Under our detention and removal priorities, that woman who got two library cards would be the worst of the worst to be deported. How are we going to deal with that Alabama law in our priorities in Mr. Morton's memo?

Ms. NAPOLITANO. Well, the scenario you depict is not within our priorities and it is—you know, the purpose of the litigation we have undertaken is—the underlying principle is that it is for the Federal Government to set immigration law enforcement priorities.

Ms. LOFGREN. So we will look beyond the mere conviction?

Ms. NAPOLITANO. We will look at the cases individually, yes, as we will in other states as well.

Ms. LOFGREN. Very good.

Ms. NAPOLITANO. Not just in Alabama.

Ms. LOFGREN. Very good. Thank you very much.

Mr. SMITH. Thank you, Ms. Lofgren.

The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman, and thank you, Secretary, for being here.

Just for my own edification, did the president get any information or guidance from you or anyone in your department before his decision to support the ouster of President Mubarak and also to assist the rebels in Libya?

Ms. NAPOLITANO. He did not get any information from me or my department, to my knowledge.

Mr. GOHMERT. You didn't give any guidance on that at all—nobody from your—Homeland Security did that?

Ms. NAPOLITANO. No.

Mr. GOHMERT. Okay. Did the President get any information or guidance from Homeland Security before his decision to pull out the troops from Iraq or a drawdown in Afghanistan? Do you assist in that at all or anybody from your department?

Ms. NAPOLITANO. Again, these are not matters really within the purview of the Department of Homeland Security.

Mr. GOHMERT. Okay. So they were considered completely unrelated to our own homeland security?

Ms. NAPOLITANO. Well, you can—Homeland Security covers so many fields that I wouldn't—that what I would say simply is, if the question is were we involved in that——

Mr. GOHMERT. Well, the question was as it was.

Ms. NAPOLITANO [continuing]. Was I involved in that decision.

Mr. GOHMERT. Did you provide information that would have been utilized in any of those decisions?

Ms. NAPOLITANO. Not that I—not that I know of.

Mr. GOHMERT. Okay. Last year, Admiral Mullen said that—his words—the national debt is the single biggest threat to our national security. We have millions of people coming into this country on visas, some illegally, who come in and get health care and leave without paying. It is an ongoing problem.

We now are seeing that there will be Americans who are not getting health care as quickly as they need or that they need because it appears we are moving to rationed care. So it should be a very important issue.

We have inquired of the State Department about the applications for visas. They tell us that there is no provision in the application that indicates whether they have been diagnosed with any condition—heart problems, cancer, pregnancies, needed surgeries—on the application for a visa. So that is not considered at all when people come in.

We are also told by the State Department that even though the spouse's name is on the application, they don't normally ever check the spouse's name on the terrorist watch list before deciding to approve the benefits of a visa.

Do you think that would be a good idea to check the spouse's name on the terrorist watch list or do you concur that there is just not time and it is not worth it?

Ms. NAPOLITANO. Well, I can't answer because I haven't seen what the State Department responded to or what they——

Mr. GOHMERT. Well, I am just—that wasn't my question to you. My question to you is would it be a good idea to check the spouse is on the terrorist watch list.

Ms. NAPOLITANO. Well, I think that one of the—the things that we have been able to do over the past several years is to unify databases, unify search engines in such a way that those kinds of security checks can be more easily done.

Mr. GOHMERT. But if they don't do the checks it is a problem, isn't it?

Ms. NAPOLITANO. It could be a problem. But, again, I don't know about that.

Mr. GOHMERT. Thank you. All right. Let me move on.

Do—do you make the final decision as to who is put on your Countering Violent Extremism Working Group?

Ms. NAPOLITANO. We have an individual in the department who is the lead on CVE and so——

Mr. GOHMERT. Okay. Do you—are you consulted at all on who is put on that working group?

Ms. NAPOLITANO. I have not been, no.

Mr. GOHMERT. All right.

Are you aware that the president of ISNA, Imam Magid, is a member of that working group, correct?

Ms. NAPOLITANO. I can't answer that. I don't know whether that is an accurate statement or not.

Mr. GOHMERT. Okay. Well, you can go look at your own website and find the documentation. He has been on your working group, the Countering Violence—Violent Extremism. Do you know how many of the members of your Countering Violent Extremism are members of Muslim Brotherhood?

Ms. NAPOLITANO. Again, since I—I am not involved in the appointment but if I might—if I might just——

Mr. GOHMERT. Well, let me—my time is running out, so I really don't have time but——

Ms. NAPOLITANO [continuing]. If I might elaborate on my answer.

Mr. GOHMERT [continuing]. But I have got a very serious question that needs to be confronted.

Ms. NAPOLITANO. Well, I would be happy to look into that.

Mr. GOHMERT. Are you familiar with Mohamed—are you familiar with——

Ms. NAPOLITANO. Sir—sir, I would like the ability to expand on my answer, if that is all right with you.

Mr. GOHMERT. I don't have time. I am running out and I can't be filibustered.

Ms. NAPOLITANO. Well, okay.

Mr. GOHMERT. But let me ask you, Mohamed Elibiary is—was a member of the working group. You promoted him, and it said there—I have got articles here that say you swore him in as a member now of your, let's see, the Homeland Security Advisory Group. He has apparently been given a secret clearance. Do you know, Mr. Elibiary?

Ms. NAPOLITANO. Yes.

Mr. GOHMERT. OK. Were you aware he had a secret clearance?

Ms. NAPOLITANO. I believe everybody on the Homeland Security Advisory Council ultimately gets a secret clearance because of the materials they would get.

Mr. GOHMERT. Would you be surprised if they—well, I don't have time. But were you aware that he spoke at the big event in Texas honoring the Ayatollah Khomeini?

Ms. NAPOLITANO. I am not aware of all the places he has spoken.

Mr. SMITH. The Chairman's time has expired.

Mr. GOHMERT. But may I—if I could just have 15 seconds. This is critical.

Secretary, were you aware that a week ago today, from his home computer he accessed the SLIC database, got information off and has been shopping a story to national media on Islamophobia directed at the governor of Texas and the security folks there in Texas? Were you aware of that?

Ms. NAPOLITANO. No.

Mr. SMITH. Thank you, Mr. Gohmert.

Mr. GOHMERT. I'm telling you it happened. Do we need to appoint somebody or will you have that investigated yourself, and if so, by whom?

Ms. NAPOLITANO. Well, since I don't know the facts, I will have to look into the facts.

Mr. GOHMERT. So you will be the one to make that call?

Ms. NAPOLITANO. We will have somebody, and it will be myself or someone.

Mr. GOHMERT. Does it concern you at all that it happened? I am telling you it happened.

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

Mr. GOHMERT. Okay. Doesn't come——

Mr. SMITH. The gentleman from Illinois, Mr. Quigley, is recognized.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Thank you, Madam Secretary, for being here today.

As you know, I am the sponsor of the Secure Travel and Counterterrorism Partnership Program Act, which would allow you to bring additional eligible countries into the visa waiver program by modifying the primary qualifying criteria for entry. I am doing that with many others, including Mr. Chaffetz, from this Committee.

On Wednesday, October 5th, the House Homeland Security Subcommittee on Counterterrorism and Intelligence held a hearing on what DHS is doing regarding security and safety for international travel.

At that hearing, Mr. Heyman testified and spoke to the issue of the visa waiver program and said that it would be—he thought it would be terrific to expand visa waiver.

He didn't have the technical specifications about the department's data capabilities, but he did say that any changes would be rolled over—rolled out over a period of time and they would allow DHS to meet the necessary requirements.

What I have been telling folks about why I support this program is that it is not your father's visa waiver program—that your agency and others have been working hard to increase the security in this program and how it would perform under existing programs and additional in countries.

I was hoping that you might speak about what the department is doing, the work on this data and what we might be seeing in the coming weeks and months that would increase our knowledge about who is coming and going under existing programs and under countries like Poland that, I think, should have been part of this program for a long time.

Ms. NAPOLITANO. Well, Representative Quigley, we would like to provide not only technical assistance on review of that but support. You know, Poland's been an ally of ours for a long time. They are—they are—we have a very good relationship with Poland. So that is, I think, would be a good thing for the United States to do.

With respect to visa waiver generally, one of the things, as I was explaining earlier, we have been able to do over the past several years is to really make our data systems, both biographic and biometric, much more robust in a way that gives us a lot of the security features of the old visa—of visas without necessarily having a visa issued.

Part of this, of course, is what we have done to incorporate ESTA with respect to flights leaving for the United States. Part of it has to do, again, with uniting CBP databases with TSA databases in a way they weren't united prior to 2009.

Mr. QUIGLEY. I think you testified earlier to the Senate about some of this, and you were stressing biographic information and the new research that is being done and the new work you are

doing, why that is as important or more important or more feasible than biometrics. Could you focus on that for a minute?

Ms. NAPOLITANO. That is right. Well, biometric, as we have looked at it, particularly for exit, is extraordinarily expensive. And what we have found is by greater use of much more robust biographic data, we really get to 99 percent of what you would have with a very expensive biometric system.

Mr. QUIGLEY. In—in a nutshell, can you explain to those new to this issue why countries that participate in a visa waiver program, especially under this new information you are requiring, actually makes us safer?

Ms. NAPOLITANO. Well, because part of the agreement to engage or be a visa waiver country, part of that agreement is also the agreement to sign other agreements; for example, one called the PCSC—the Preventing and Combating Serious Crime—which relates to the exchange of criminal history databases.

So in exchange for a visa waiver, there are other agreements that we get from the countries in the program.

Mr. QUIGLEY. Very good.

Thank you, Mr. Chairman. I yield back.

Mr. SMITH. Thank you, Mr. Quigley.

The gentleman from Texas, Mr. Poe, is recognized.

Mr. POE. Thank you, Mr. Chairman.

Thank you for being here, Madam Secretary.

The GAO has reported that 44 percent of the border is somewhat secure. Fifty-six percent is not secure. Do you agree with that statistic?

Ms. NAPOLITANO. No, and I don't think that is exactly what they said, and I have testified to this several times, Representative. They were using the phrase "operational control," which is a term of art within the Border Patrol.

It is actually somewhat misleading because it doesn't capture not—not just the—the Border Patrol, but the technology and infrastructure that goes along with it. So it is not an accurate statement.

Mr. POE. So what would you say is secure? So it is not an accurate statement?

Ms. NAPOLITANO. It is not an accurate statement, no.

Mr. POE. All right. So who controls the other 56 percent if we don't have operational control?

Ms. NAPOLITANO. No. We—we have—we have the responsibility for that entire border, as you know. It includes a——

Mr. POE. So who controls it?

Ms. NAPOLITANO [continuing]. Amount of manpower and technology and infrastructure we have put down at the border. It is a very different border than it was even three or 4 years ago.

Mr. POE. I agree. It is worse.

The Iranians, apparently, think our border is less secure than we do. Otherwise, they wouldn't have gone to Mexico to work with supposedly the Zetas to smuggle in explosives into the United States.

What do the Iranians know about the cross-border traffic of the Zetas or other drug cartels that we are missing? In my opinion, the

Zetas, other drug cartels, have—they have access to the United States. They have access back to Mexico.

So it seems like the Iranians, obviously, know something about the—the lax border than we do.

The Bureau of Prisons says that 27 percent of the people in the Federal penitentiary—27 percent—are foreign criminal aliens. That means they are illegally in the United States when they commit a felony. All of those 27 percent—a fourth of the population in the Federal penitentiaries—got here some way, and they got here illegally, according to the statistics of the Bureau of Prisons.

And if the border is so secure—let me give you some insight as to the Texas border where I have been numerous times in areas that aren't exactly as safe as you claim.

The sheriffs—on any given day, we will call the sheriffs in the border jails and say, how many people are in your jail that are foreign nationals? Not criminal aliens—foreign nationals.

The most recent one is a—I have the border counties—and the average is about 34.5 percent of the people in Texas border jails are from foreign countries. Now, these are cross-border criminals. These are people who come in the United States, many of them commit their crimes and then they go back to where they came from—into Mexico—unless they are caught by local law enforcement.

These aren't people in jail with immigration violations. Based on your experience, do you think 34 percent is a high number of foreign nationals in anybody's jail?

Ms. NAPOLITANO. Well, I—I——

Mr. POE. I mean, either you do or you don't.

Ms. NAPOLITANO. Listen——

Mr. POE. I am listening. You listen. Answer the question. You're a lawyer. You know to answer the question and not just ramble so that the time expires.

Do you think 34.5 percent of the people in jail being from foreign countries is a high number or not?

Ms. NAPOLITANO. The border communities in Texas, Arizona, New Mexico and California have either had violent crime rates the same or decreasing in the last 5 years, and dramatically so. They are listed—El Paso, Austin, San Diego—among the safest communities in the United States. We have, and that does not mean——

Mr. POE. Reclaiming my time. Sorry. Reclaiming my time.

I'm not talking about specific towns—El Paso. The crime is in between the ports of entry. It is not necessarily in Brownsville or San Diego or in the city of El Paso. The crime is in between. The jails are occupied by 34 percent foreign nationals.

My question is simple. Do you think that is a high number? Either you do or you don't.

Ms. NAPOLITANO. Well, that is one of the—if that is accurate—and I don't know that it is accurate—if it is accurate, it is one of the reasons we installed Secure Communities in the border jails first.

Mr. POE. Let me ask you another question.

The 20-point deferred prosecution memo that came out—Mr. Morton testified that there was White House input on that. Do you

agree with his statement when he testified before us that there was White House input on the 20 points deferred prosecution?

Ms. NAPOLITANO. Well, I think the memo was prosecutorial discretion, not deferred prosecution.

Mr. POE. That's correct. I'm sorry. Prosecution discretion.

Ms. NAPOLITANO. And—well, because immigration involves two major agencies—DHS and DOJ—it is entirely appropriate, and yes, there was coordination with the White House.

Mr. POE. Do you know of statutory authority, not court authority, statutory authority for deferred prosecution? Congress, that is us, Congress passing laws allowing for deferred prosecution, or prosecutorial discretion. I'm sorry. Prosecutorial discretion.

Ms. NAPOLITANO. Well, there—you know, you forget Congress. You go back to Article 2, Sections 1 and 3 of the Constitution.

Mr. POE. Well, of course, the Constitution does say that the—Congress is to be responsible for naturalization and making the laws on naturalization, not the Executive Branch. So if you want to quote the Constitution you might want to——

Ms. NAPOLITANO. Well, the——

Mr. POE [continuing]. Read that section as well.

Ms. NAPOLITANO [continuing]. Section in the—Article 2, Section 3 says, "The Executive Branch shall make sure the laws are carried out." And that has been interpreted by the U.S. Supreme Court and by statute to mean——

Mr. POE. What's the statute?

Ms. NAPOLITANO. That the Executive Branch has prosecutorial discretion.

Mr. POE. I didn't ask you about the Heckler case. You noticed I didn't ask you about that. I am asking about constitutional, legislative, statutory authority to ignore portions of the law based on a memo. Is there statutory authority to do that?

Ms. NAPOLITANO. Well, there——

Mr. POE. The Constitution does say that the——

Ms. NAPOLITANO. Wait.

Mr. POE. Wait a minute. I'm talking.

Ms. NAPOLITANO. Yes.

Mr. POE. The Constitution does say that the Executive Branch is to enforce the law of the land—carefully enforce the law of the land—and it seems to me the Executive Branch is giving a pass to a lot of folks under the guise of prosecutorial discretion. I will yield back my time.

Mr. SMITH. Okay. The gentleman's time has expired. Which——

Ms. NAPOLITANO. Mr. Chairman—Mr. Chairman, may I—may I respond or——

Mr. SMITH. Yeah.

Ms. NAPOLITANO [continuing]. Would you like me to wait?

Mr. SMITH. Madam Secretary, please respond to the question. Sure.

Ms. NAPOLITANO. Yeah. I would—I would simply say that prosecutorial discretion by prosecutors, by immigration has been enforced and—and done by Republican and Democratic administrations, and it makes sense.

Mr. SMITH. Okay. And let me also add and say to the gentleman from Texas that the GAO study that he referred to which found

that only 44 percent of the border was under operational control found that only 15 percent of the border was under actual control. So it is a lot less than might—than many people might think.

The gentlewoman from California, Ms. Chu, is recognized.

Ms. CHU. Thank you, Mr. Chair.

Madam Secretary, I want to thank you for moving forward with clearer guidelines for ICE officers to use prosecutorial discretion on these immigration cases. And I think, in fact, that it uses our available resources to target those who need it the most, which is serious felons, drug traffickers, and others who would do America harm.

This is just common sense. We should be using our scarce taxpayer dollars not to deport students but to primarily convict—to deport those convicted of violent felonies who pose a threat to public safety. And though some say that you are doing something new here, I know that all law enforcement bodies set priorities and that our immigration enforcement agencies are not different.

Republicans and Democrats have called for more discretion and your agency under both Republican and Democratic administrations have issued policies on, and required the use of, prosecutorial discretion. And, in fact, as a long-time prosecutor, you know better than most that you can't enforce the law and prosecute if you can't get it on the court's docket.

Our immigration court system is incredibly backlogged. More than 300 cases—300,000 cases are pending at any time and immigration judges are scheduling hearings for 2014. So it makes sense that you are now reviewing that backlogged docket to—to sort through the cases.

And isn't it right that Code 6 USC 202 specifically directs you to establish national immigration enforcement policies and priorities? And in Congress' annual appropriations bills, have we not directed you to repeatedly prioritize the removal of serious criminal aliens, and funded programs that specifically target such—such populations?

And, in fact, in this effort could you tell me how it enhances your ability to swiftly remove people who are a priority to the agency?

Ms. NAPOLITANO. Well, the answer is yes. Congress has given such direction. I don't know the exact number of the citation but I think that is accurate.

What we are doing is—is if you—if you think about the immigration system in segments, the segment is who is being picked up for removal and that is where we are prioritizing our enforcement efforts.

So you get operations like Cross Check, where we picked up thousands of criminal fugitives just a—a couple of weekends ago. Then we have the—the 300,000 or so cases already on the master docket, and it turns out those aren't prioritized at all. And so you get these never-ending court dates that just get pushed back and back and back, as you referenced.

What we are doing is going through those to make decisions as to which should come first in order to facilitate the movement of the—the detainee docket through the removal process and to facilitate the removal of criminal aliens from the country. It is one of

the reasons why we are going to continue to see those numbers go up.

Ms. CHU. And why is this not amnesty and not a free pass?

Ms. NAPOLITANO. I—I couldn't hear you with the bell. Excuse me?

Ms. CHU. Why is—is your effort toward prosecutorial discretion not an amnesty, as some claim, and not a free pass?

Ms. NAPOLITANO. Oh, it is—it is clearly not. Yeah, it is what law enforcement does on a routine basis, which is to evaluate cases on their facts and make decisions as to which one merit the use of the government's resources.

Ms. CHU. Thank you for that.

I'm going to turn toward a different topic and it is on TSA—TSA and the racial profiling issue. First, I'd like to ask unanimous consent that this letter from the Sikh Coalition can be entered into the record expressing their current concerns about the treatment by TSA.

[The information referred to follows:]

October 25, 2011

The Honorable Judy Chu
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Re: October 26, 2011 Hearing | Oversight of the Department of Homeland Security

Dear Representative Chu:

The Sikh Coalition submits this letter to express concern about the civil rights impact of Transportation Security Administration (TSA) airport screening policies on religious minorities. We respectfully request that this letter be incorporated into the official record of the above-referenced hearing.

By way of background, the Sikh Coalition is the largest and most-staffed Sikh American civil rights organization in the United States. Followers of the Sikh religion—the fifth largest world religion—are distinguished by turbans and uncut hair and have experienced widespread discrimination in the post-9/11 environment on account of their appearance. In June 2010, we testified before the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties to discuss law enforcement policy in the context of air travel.[1] Our testimony focused on TSA policies that subject Sikh travelers to disparate rates of secondary screening at airports throughout the United States.

According to TSA, improvised explosive devices (IEDs) "pose the single greatest threat to aviation [security]" because such devices can be composed of elements as small as a pen cap and are "extremely difficult to detect through traditional metal-detector based screening."[2] In this context, TSA asserts on its website that "baggy, loose fitting, bulky clothing and headcoverings that are non form-fitting present a particular challenge for officers in their mission to ensure IEDs are not smuggled on board [aircraft]."[3] As you know, the attempted Christmas 2009 attack on Northwest Flight 253 by Umar Farouk Abdulmutallab demonstrated that criminals can hide incendiary devices in clothing as tight as their underwear. Low-density items, such as powders, liquids, and thin plastic, can be concealed underneath virtually any form of clothing.[4] And yet, we consistently receive reports from our community members that religious headcoverings, including Sikh turbans, which are protected by the most fundamental laws of our country, are being scrutinized more aggressively than other garments.

---

[1] *See Racial Profiling and the Use of Suspect Classifications in Law Enforcement Policy: Hearing Before the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Committee On the Judiciary*, 111th Cong. (2010) (statement of Amardeep Singh, Director of Programs, Sikh Coalition), *available at* http://judiciary.house.gov/hearings/printers/111th/111-131_56956.PDF and http://judiciary.house.gov/hearings/pdf/Singh100617.pdf.
[2] Transportation Security Administration, *TSA's Head-to-Toe Screening Policies*, *available at* http://www.tsa.gov/press/happenings/sop_facts.shtm.
[3] *Id.*
[4] Jane Merrick, *Are Planned Airport Scanners Just a Scam*, THE INDEPENDENT (Jan. 3, 2010), *available at* http://www.independent.co.uk/news/uk/home-news/are-planned-airport-scanners-just-a-scam-1856175.html.

THE SIKHCOALITION
www.sikhcoalition.org

National Office
40 Exchange Place, Suite 728
New York, NY 10005
t: 212.655.3095
f: 212.208.4611

Western Region Office
2201 Walnut Avenue, Suite 275
Fremont, CA 94538
t: 510.659.0900
f: 510.659.0903

Washington DC Office
PO Box 17871
Arlington, VA 22216
t: 202.747.4944
f: 202.330.5574

According to TSA, air travelers who wear religious headcoverings, including Sikh turbans, are subject to the "possibility of additional security screening, which may include a pat-down search of the head covering."[5] Additional screening is justified, according to the TSA, "if the security officer cannot reasonably determine that the head area is free of a detectable threat item,"[6] even after a traveler passes through a screening device without incident. In practice, however, instead of being subject to the 'possibility' of random additional screening, Sikh travelers who wear turbans have been advised by TSA personnel that such screening is mandatory, resulting in 100 percent additional/secondary screening rates of Sikhs at most U.S. airports. Given this information from TSA personnel, we are concerned that turbans are subjected to disparate screening compared to other pieces of clothing that can been deemed "non-form fitting" or which can conceal an IED as small as a pen cap.

In light of these concerns, we urge the Committee on the Judiciary to request that TSA and the Department of Homeland Security (DHS) take the following actions:

- **Undertake an independent audit of TSA screening practices to determine whether the agency is subjecting travelers to disparate screening based on religious attire or suspect classifications, such as actual or perceived race, religion, ethnicity, and nationality.**

- **Clarify in writing how the future adoption of a tiered or risk-based screening approach (commonly referred to as the 'Trusted Traveler' program[7]) by TSA will affect the screening experiences of Sikhs and other individuals who wear religious headcoverings.**

We appreciate the opportunity to express our concerns. Please let us know if you require additional information, and please accept our gratitude for your consideration.

Respectfully yours,

Rajdeep Singh
Director of Law and Policy
(202) 747-4944 | rajdeep@sikhcoalition.org

[5] Transportation Security Administration, *Security Screening of Headcoverings, available at* http://www.tsa.gov/press/happenings/head_coverings.shtm.
[6] Transportation Security Administration, *Religious and Cultural Needs, available at* http://www.tsa.gov/travelers/airtravel/assistant/editorial_1037.shtm.
[7] Ashley Halsey III, *Panel urges TSA to implement 'trusted travelers' program*, WASHINGTON POST (Mar. 15, 2011), *available at* http://www.washingtonpost.com/local/panel-urges-tsa-to-implement-trusted-travelers-program/2011/03/15/ABoOtxa_story.html.

Ms. CHU. Well, this year marked the 10th anniversary of 9/11, yet South Asians continue to be the victim of discrimination. And here in the Judiciary Committee I heard the anguished testimony of Sikh Americans who are pulled out of lines at airports just because they were wearing a turban. They were put in glass cages on display like some animal—pulled into rooms and interrogated

for hours where even their babies were searched, yet no Sikh has ever committed a terrorist attack in the United States.

But when Sikhs complain about this racial profiling, there have just been a—a lack of response from the TSA, and when guidelines are passed down many times they are ignored. Both TSA and the Department of Homeland Security claim to have a robust complaint and redress system.

However, the experience for Sikh travelers have been woefully inadequate. Complaints oftentimes go unanswered for several months. And, in fact, there was an instance of one complaint that I looked at where their response took 6 months and it basically said you don't have any documentation.

Now, we met with Administrator Pistole and he said that they are going to have a review of the complaint system. I wanted to know what the status is of that review. We have waited for 3 months for some kind of system to be put into place that—that would be more timely.

Ms. NAPOLITANO. Yes, there is that review, and our Civil Rights and Civil Liberties group has been looking into the—that issue specifically. We have greatly reduced the time it takes to address complaints. We do have outreach to the Sikh and other communities.

I would suggest, however, that, you know, we are very respectful of the Sikh community and—and work with them on a number of areas. The issue from a TSA security perspective is if there is bulky headgear or bulky clothing, the current technology cannot ascertain whether there may be something in it of an—that is explosive and they have to find some way to clear that passenger.

Mr. SMITH. The gentlewoman's time has expired. Thank you, Ms. Chu.

The gentleman from Utah, Mr. Chaffetz?

Mr. CHAFFETZ. Madam Secretary, thank you for being here.

You said you disagreed with the GAO analysis of the percentage of the border that is secure. What percentage of the border do you think is secure?

Ms. NAPOLITANO. Well, I think that having lived and worked on that border——

Mr. CHAFFETZ. I'm just looking for a number. I got to go very quickly.

Ms. NAPOLITANO [continuing]. And having lived and worked on that border most of my—my life, I say it is as secure as it has ever been. But it is an ongoing project.

Mr. CHAFFETZ. Like what—do you have a percentage? You don't have a percentage?

Ms. NAPOLITANO. Well, I would say it is very secure, Mr. Chaffetz. [Laughter.]

Mr. CHAFFETZ. Okay. When did you first speak with Eric Holder about "Fast and Furious?"

Ms. NAPOLITANO. I don't believe I have ever spoken with Eric Holder about "Fast and Furious."

Mr. CHAFFETZ. How many—how many agents—since you have taken office, how many of your agents have been killed in the line of duty?

Ms. NAPOLITANO. Oh, too many.

Mr. CHAFFETZ. Do you know the—do you have any number?

Ms. NAPOLITANO. Well, I would—I would have to double-check but I would say at least 12.

Mr. CHAFFETZ. How many guns from "Fast and Furious" operation were detected crossing the border?

Ms. NAPOLITANO. I do not know.

Mr. CHAFFETZ. How many guns from "Fast and Furious" were seized at the border?

Ms. NAPOLITANO. I do not know.

Mr. CHAFFETZ. Why is it that an operation that big and that important and that much in the news you don't have the details of?

Ms. NAPOLITANO. Well, Representative, as you know, it was an ATF operation.

Mr. CHAFFETZ. In 2009, we know of two incidences where ICE ceased investigating at the request of the ATF.

Are there any other instances where you were asked—your department, your agency, was asked not to pursue cases that potentially had a conflict with "Fast and Furious?"

Ms. NAPOLITANO. In the wake of your investigation of "Fast and Furious" I have been made aware of those two ICE instances. I don't think I have been made aware of any others.

Mr. CHAFFETZ. Let me go to testimony that you had last week. Last week you were with Senator Grassley. You were asked about communication with Mr. Burke regarding "Operation Fast and Furious." Question from Senator Grassley: "Have you had some communications?"

Your response, and I will read it very quickly: "No, not about 'Fast and Furious.' When Agent Terry was killed it was December 14th. I went to Arizona a few days thereafter to meet with FBI agents and assistant U.S. Attorneys who were actually going to look for the shooters. At the time, nobody had done forensics on the guns and 'Fast and Furious' was not mentioned."

You went on to say, "But I wanted to be sure that those responsible for his death were brought to justice and that every DOJ resource was brought to bear on the topic. So I did have conversations and it would have been December of '09—I think you meant December of '10 about the murder of Agent Terry. But at the point in time, nobody knew about "Fast and Furious" so that is a different question."

And yet, we have documents that show, and this is a quote, "an urgent firearms trace requested by ATF agents on the scene to determine that these firearms came from 'Fast and Furious'."

Why is that you, as the Secretary of Homeland Security with one of your agents dead on the scene, did not get briefed about "Fast and Furious?"

Ms. NAPOLITANO. I do not know.

Mr. CHAFFETZ. How is that acceptable? Do you think that they withheld that information from you or is it your responsibility to actually find that information?

Ms. NAPOLITANO. Well, I think the focus, Representative Chaffetz, is we had a dead agent, and a dead agent killed in a very rugged area of Arizona. And the number-one thing that was on my mind when I went out there was to make sure that the appropriate resources were being dedicated to that investigation.

Mr. CHAFFETZ. But you have guns from "Fast and Furious" that are found on the scene. You testified here just last week that there was no knowledge of "Fast and Furious" at the time—that the—you went out of your way to say that the forensics were not done. And yet, that is not true. That is not true.

Ms. NAPOLITANO. I am not going to comment on that. I don't know the document to which you refer. What I can say and what I think is fairly clear from the context is I was speaking to my knowledge at the time and I did not know about "Fast and Furious."

Mr. CHAFFETZ. Did you direct or was there any direction from your department and agency to allow the guns to go across the border that were involved in "Fast and Furious?"

Ms. NAPOLITANO. "Fast and Furious" was an ATF operation.

Mr. CHAFFETZ. So you—if your agents detected weapons going south across the border, you'd just let them go because it was an ATF operation?

Ms. NAPOLITANO. As the two incidents you refer to—the two ICE incidents—I think, reveal, is when they ran gun—picked up guns and ran them or asked ATF to E-trace them, ATF came back and said these are part of a larger operation—stand down.

After the second incident in which that occurred, that matter was taken by the ASACs to the assistant U.S. Attorney, which is common. That happens in the field. And the assistant U.S. Attorney said that the ATF operation would take precedence.

Mr. CHAFFETZ. So was it the Department of Homeland Security's policy to allow guns to go south into Mexico if they were involved in "Fast and Furious?"

I'm looking for a yes or no.

Ms. NAPOLITANO. No.

Mr. CHAFFETZ. How is it that you can make the claim that the border is now more secure than ever and yet the Obama Administration purposely allows more—nearly 2,000 guns to be released, knowing that they are going to go to Mexico, with hundreds of people killed by those weapons—two dead U.S. agents—and yet you don't even know if we have detected even one of those guns?

In fact, on January 14th, you did detect somebody in New Mexico. There were eight guns found. They didn't even run a trace on them and you let those guns go into Mexico. I find that absolutely stunning.

And for you to have two dead agents and to have never had a conversation with Eric Holder about "Fast and Furious" and about this is totally unacceptable. Totally unacceptable.

I'll yield back.

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

The gentleman from——

Ms. NAPOLITANO. Mr. Chairman, I know Representative Chaffetz has his opinion on this matter, as his—as the tone of his question reveals, but I simply would suggest that no one takes the deaths of agents more seriously than I, and also, that one of the reasons that we have not directly dealt with the attorney general on this is he very quickly and appropriately put this matter in the hands of the inspector general.

Thank you.

Mr. SMITH. And the gentleman from Arkansas, Mr. Griffin?

Mr. GRIFFIN. Thank you, Mr. Chairman.

Madam Secretary, I want to talk to you about the memo that has been raised earlier here today—the Morton memo from June, and the part of it, in particular, entitled, "Factors to Consider When Exercising Prosecutorial Discretion."

I—I am certainly familiar with the concept of prosecutorial discretion. In my experience, that has been more of a bottom-up discretion exercised by individual prosecutors.

That having been said, when I look at the list of factors and the degree of specificity in that list, it strikes me that whether intended in this—to be this or not, it strikes me that it is a roadmap for retaining illegal immigrants.

And it seems to me you could look at this list and meet a few of these categories and have a good chance at being pushed to the bottom of the prosecutorial list. That is particularly so when I—when I look at the draft memo that—that referred to the DREAM Act that came out of U.S. Citizenship and Immigration Services last year.

And I understand we have had assurances that that draft memo was just a draft and parts of it were not included in the Morton memo.

But my question is, looking at the extensive nature of the list of factors to consider, in your experience as a prosecutor have you ever seen or are you aware of other memos like this in the context of other crimes—for example, in the context of Federal crimes at the Department of Justice, or any other crime?

Are you familiar with memos this extensive that lay out with this specificity what prosecutorial discretion is? Because I have never seen such detail and I would be interested to hear your view on that.

Ms. NAPOLITANO. Well, the Department of Justice has the whole U.S. Attorneys manual, which is to guide the exercise of prosecutorial discretion and it is pretty thick.

Mr. GRIFFIN. Sure.

Ms. NAPOLITANO. So there's a lot there. And also, Representative, there is a November, I think, 2000—I have to go back and check the date out—I want to say 19—it's a Doris Meissner memo that lays out the exercise of prosecutorial discretion in immigration cases and specifies what a significant Federal interest is in that connection. That memo has in turn been cited by subsequent directors, either of INS or ICE, as recently as Julie Myers in the previous Administration.

Mr. GRIFFIN. Sure. I would—I will say a couple of things. The U.S. Attorneys manual certainly lays out broadly for individual prosecutors guidance for them as they prosecute cases. This, I have—I have never seen and I would—I would like if you—if you can point to other guidance with this specificity, I would love to see it, particularly when these factors consider things like whether the person subject to prosecutions spouse suffers from an illness. That seems extraordinary when you are deciding whether to prosecute someone for a criminal act.

Ms. NAPOLITANO. If I might explain.

Mr. GRIFFIN. Yes.

Ms. NAPOLITANO. Here's—here's what can happen in the immigration context. You have a U.S. citizen spouse who is very ill and requires home care, and the issue is do you deport someone who has been taking care of that U.S. citizen spouse, and then put that spouse into much more expensive health care or do you allow the spouse to stay in country.

Mr. GRIFFIN. Sure. Sure.

Ms. NAPOLITANO. So those are the kinds of scenarios that need to be adjudicated or looked at on a case-by-case basis.

Mr. GRIFFIN. If you take this list, you can—you can see a lot of—you can come up with a number of—of different individual circumstances. Certainly most prosecutors know, in my experience, the difference between prosecuting a petty thief and a terrorist and without the specificity here.

I could make the case that certain aspects of the DREAM Act are implemented in here—not—not verbatim. But when you read all of the policy documents that relate to this stuff, it is—it is not difficult to see that this, in my opinion, and a lot of people in my—in the 2nd Congressional District of Arkansas—in our opinion, this looks like—more like a policy document.

And let me say a couple things. I am running out of time here. If you look over at the—the ICE union issued a press release in response to this. These are union members.

They said, quote, "Unable to pass its immigration agenda through legislation, the Administration is now implementing it through agency policy and bypassing Congress."

Now, this is a union agreeing with me, which doesn't happen a lot. But on this particular instance, I would welcome your comments.

Ms. NAPOLITANO. Well, I would say we are not bypassing the Congress, much as we would like the Congress to address these issues and, in fact, would invite that kind of engagement. What we are is suggesting or—or giving guidance to the field.

By the way, I met yesterday in Chicago with all of the area directors for ICE in this area and—and we went through and talked about the operations that are going on and how they are going to impact public safety and how we want to guide our resources. And this is a group that is fully engaged. They get it.

Mr. GRIFFIN. Let me—let me real quickly mention a couple of things.

It—it seems to me that a lot of what we see in terms of state legislation in Arizona and Alabama and—and Florida and—and Virginia and other states that is passed to address immigration issues, it seems to me that that is simply the states' reaction to what they see as the Federal Government's failure to do its job on the border. Not just in this Administration—in Administration after Administration, including the one that I served in—the last one.

And it seems to me if—if the Federal Government was truly securing the border, you would not have to deal with this—with a lot of these state laws that are percolating up to address what folks back in the states see as the Federal Government's failure to do its job. And, again, it goes across Administration. But I have one quick question—unrelated question.

Mr. SMITH. The——

Mr. GRIFFIN. May I have a——

Ms. NAPOLITANO. Could I—may I—and I would like an ability to respond to that, if I might.

Mr. SMITH. The——

Mr. GRIFFIN. Mr. Chairman, may I have a quick——

Mr. SMITH. The gentleman's time has expired. Let—we will let the Secretary respond to your question.

Ms. NAPOLITANO. Thank you, Mr. Chairman.

I would suggest, first of all, that much of the information about the border that is distributed is not in fact accurate and one of the things I am trying to do is get—get the accurate information to the Congress and invite anyone from the Congress to come to the border.

But, secondly, in my judgment, I think a number of the states are acting because the Congress has failed to act.

Mr. SMITH. Thank you, Mr. Griffin.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. JACKSON LEE. Secretary, thank you so very much for sharing your time with the Judiciary Committee this morning, recognizing the challenges of multi-jurisdiction for Homeland Security.

I wanted to compliment you on one aspect of your very august resume and that is that you are a graduate of the University of Virginia Law School, one of the best law schools in the Nation. I happen to have passed through there a couple of years. And so I just wanted to make note about our fellow or common law school and I hope it served you well, as it did me.

Let me raise some questions and repeat what I heard you say in your opening statement—that 90 percent of the deportations are priority deportations, as I understood your testimony.

Ms. NAPOLITANO. For fiscal year '11.

Ms. JACKSON LEE. Fiscal year '11. Fifty-five percent were criminal aliens. Is that——

Ms. NAPOLITANO. That's true.

Ms. JACKSON LEE [continuing]. About the right number? And it looks as if you said that two-thirds were without—were recent border crossers or repeat violators. Is that accurate?

Ms. NAPOLITANO. Two-thirds of the remaining 45 percent fell within those categories.

Ms. JACKSON LEE. All right. So I think if we look—and the reason why I want to clarify this because many of us who have been advocating for a comprehensive approach to immigration might take offense to the recitation by the Administration that they have done more than Bush, Clinton, et cetera, in deportations.

We might take offense because we believe that it might have an impact on the people we believe could readily be, if you will, legalized or given some status through a comprehensive approach.

But when you look at these numbers and you clarify them, many of us would not have a disagreement that this is the appropriate approach to take.

So I just want to make sure these numbers—I want to recite them into the record. And I want to ask the question, is the Administration stepping away from its commitment to comprehensive immigration reform?

Ms. NAPOLITANO. Not at all. The President wants it. I would like to see it and stand ready to work with the Congress on a moment's notice on it.

Ms. JACKSON LEE. Before I go into my questions about comprehensive immigration reform, let me pose a question on our detention facilities, which you have overlapping jurisdiction.

I have worked through my years on this Committee—in Judiciary—on trying to improve those Committees—excuse me, those facilities, particularly as it relates to women and children.

We have made some progress. We passed legislation where there are facilities that address the question of women and children waiting for deportation, putting families together. It has come to our attention that we have had some incidences at the detention facilities impacting—I read an article. I read a news line on assaults by officers in those facilities.

Are you aware of that, and if not, what kind of procedures are in place to protect those incarcerated who are non-criminal, who are waiting for action through the court or waiting for action in deportation? They include families and children, and particularly women.

Ms. NAPOLITANO. Well, as I explained earlier, we have a zero tolerance policy for any of—any misconduct of that nature. There is a grievance process. There is a process by which we will immediately deal with officials who are—or officers who are found to have committed that kind of conduct.

We are constantly auditing or—or reviewing, particularly the facilities that we contract with—we have reduced the number of contractors—but to improve the conditions of detention.

Ms. JACKSON LEE. Well, could I ask you as—whether or not you are ensuring sufficient attentiveness and staffing to ensure the highest level of protection of those non-criminal—well, everybody should be protected but certainly those non-criminal families, children who are waiting on a civilian or a non-criminal processing.

Ms. NAPOLITANO. I think that we are.

Ms. JACKSON LEE. Okay. Let me proceed with—and I would ask if I could follow up after the fact either with your office directly or—on a specific questions in our region in Texas. But I want to go to the Morton Amendment that seems to have caused so much attention.

And part of it is—delineates and—and let me say that I claim a—a good relationship with unions from—from all over the sectors and including the union that my colleague just mentioned. But we can have differences of opinion, and I appreciate prosecutorial discretion. It is used all the time.

One aspect of his delineation, and I think it should be noted, the memo includes factors—the length of time a person has lived in the United States, the circumstances of arrival, a child that has come, military services by a person, the strength of ties and contributions to the community, the strength of ties to the home county conditions, and whether the person has a U.S. citizen or lawful permanent resident parent, child, or spouse.

Do you think that is unreasonable? You have been an attorney general for the state. You've prosecuted. Do you think that is an unreasonable, if you will, framework, and ties the hands of pros-

ecutors in making an appropriate decision on behalf of the people of the United States?

Ms. NAPOLITANO. No. I think that is an important factor to consider given that the Congress gives us the resources only to remove about 400,000 a year.

Mr. SMITH. The gentlewoman's time has expired.

Ms. JACKSON LEE. Mr. Chairman? Mr. Chairman? Mr. Chairman? The last gentleman—I had one last question. The last gentleman went on and on on the red light and you allowed that gentleman——

Mr. SMITH. Most Members have been granted an extra 30 to 45 seconds——

Ms. JACKSON LEE. Well, I would—I would appreciate it——

Mr. SMITH [continuing]. And you—you reached that limit like all the others. But we will be happy for you to ask another question.

Ms. JACKSON LEE. I thank you so very much, Mr. Chairman.

There have been a number of legislative initiatives introduced by Members of Congress upwards of 175, 200 on comprehensive immigration reform. I want to defend the Congress in the sense that there is a body politic of those of us in the House and the Senate that desire comprehensive immigration reform.

I would like to just point to one Save America Comprehensive bill—there was the Ortiz bill—but, in particular, access to legalization where you have a process for those who have been here to access legalization.

Is that still a—a readily acceptable approach to look at that would answer some of the concerns of our colleagues that have been mentioned here?

These are individuals that are working, paying taxes. Wouldn't that be an aspect of what we might look at if we ever got to comprehensive immigration reform?

Ms. NAPOLITANO. Yes, but with a clarification I think because these terms get—get confused. Access to legalization versus access to citizenship—that's something I think that would have to——

Ms. JACKSON LEE. Two distinct points.

Ms. NAPOLITANO. Yeah.

Ms. JACKSON LEE. And so the legalization is giving them status while they pay fines and look at how they would process citizenship. Is that my understanding?

Ms. NAPOLITANO. That—that is a—yes. That is a common use of the word "legalization."

Ms. JACKSON LEE. Still in discussion and still——

Mr. SMITH. The gentlewoman's time has expired.

Ms. JACKSON LEE. Thank you.

Mr. SMITH. The gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. GOWDY. Thank you, Mr. Chairman.

Madam Secretary, you were both a state and Federal prosecutor. Did you ever approve or sanction investigations that allowed gun walking?

Ms. NAPOLITANO. No. Not to my knowledge.

Mr. GOWDY. Why would you not allow gun walking?

Ms. NAPOLITANO. Well, I don't think the—those matters or those kinds of investigations were ever presented to me.

Mr. GOWDY. But had they been presented to you, there is a reason you don't allow contraband cash and guns to walk. As a former Federal and state prosecutor, can you give us those reasons?

Ms. NAPOLITANO. Well, I—I don't like to speculate. You know, every case is different.

Mr. GOWDY. I am not asking you to speculate.

Ms. NAPOLITANO. Every prosecutor makes different decisions and I don't believe I was ever presented with that decision.

Mr. GOWDY. So you can't think of any reasons not to let contraband walk outside the care, custody, and dominion of a law enforcement officer?

Ms. NAPOLITANO. Well, I think in the common context when you—in drug cases or firearms cases or whatever, when you are trying to work the case up, you know, from the low level to the higher levels and—and put somebody more—the more serious criminal off the streets, often times you let contraband get into the hands of others.

Mr. GOWDY. And then you immediately interdict it and arrest them? I have done it—did it for 16 years, Madam Secretary. You never let drugs, cash or guns walk. You immediately interdict them.

When do you learn of "Fast and Furious" for the first time?

Ms. NAPOLITANO. I learned of it after the death of Agent Terry.

Mr. GOWDY. And when did you learn that gun walking was part of "Fast and Furious?"

Ms. NAPOLITANO. I would say sometime between his death and the early spring.

Mr. GOWDY. To your knowledge, is every—has anyone ever communicated or did anyone communicate with Mexican authorities that guns were being allowed to cross our border into Mexico in contravention of their gun laws?

Ms. NAPOLITANO. I can only speak for communications that I know of and I know of no such communications.

Mr. GOWDY. When you were the United States Attorney in Arizona, did you make routine use of proffers, 5K1.1s and Rule 35s?

Ms. NAPOLITANO. Sure.

Mr. GOWDY. So there is no prohibition in the District of Arizona from using the same investigatory and prosecutorial tools that we use in every other district?

Ms. NAPOLITANO. Not that I know of.

Mr. GOWDY. So there is no reason that this, quote, "gun-trafficking case" could not have been handled like it is handled in all the other states?

Ms. NAPOLITANO. I am not commenting to this one. I am not second-guessing "Fast and Furious." It is under investigation now.

Mr. GOWDY. Everyone else has second-guessed it. The attorney general has said there were problems. The President has said there were problems.

So I am not asking you to say anything they haven't already said. Do you agree there were problems with "Fast and Furious?"

Ms. NAPOLITANO. I thought you were asking a much more specific question. But what I would say is obviously there were problems with "Fast and Furious."

Mr. GOWDY. What were those problems?

Ms. NAPOLITANO. Well, obviously, you don't want to let guns with the kind of firepower that—that we now know were involved to get out of your—your control.

Mr. GOWDY. Is firepower the only reason you don't allow guns to walk?

Ms. NAPOLITANO. Well, there is—there is a number of them. But—but if you want to cross-examine me about it——

Mr. GOWDY. I am not cross-examining you, Madam Secretary. I am asking you about "Fast and Furious." I am asking you when you knew about it.

Ms. NAPOLITANO. Well, what I am explaining to you—what I am explaining to you is that the case itself and the matter in which it was handled is under the jurisdiction of the Inspector General. But, obviously, from a—from a what-we-know perspective, yeah, there were—there were problems. Absolutely.

Mr. GOWDY. When you were the United States Attorney in the District of Arizona did you ever have Title 3 cases?

Ms. NAPOLITANO. T-3s? Yes.

Mr. GOWDY. And those applications were approved by whom?

Ms. NAPOLITANO. The court.

Mr. GOWDY. And, ultimately, before they got to the court they had to be approved by the Department of Justice, correct?

Ms. NAPOLITANO. Well, yes.

Mr. GOWDY. So for the Department of Justice to contend in a Title 3 OCDETF case that they did not know about "Fast and Furious" would be disingenuous at best, correct?

Ms. NAPOLITANO. I just am not going to comment to that. I don't know those specifics. That was not within the Department of Homeland Security.

Mr. GOWDY. Well, let me—I am asking you as a former prosecutor who did T-3 cases. The Department of Justice has to approve those applications, correct?

Ms. NAPOLITANO. That is the procedure, yes.

Mr. GOWDY. And in those applications is a narrative or summary of the case?

Ms. NAPOLITANO. That is correct, yes.

Mr. GOWDY. So someone at the Department of Justice had to know about "Fast and Furious" for the T-3 to ever have been approved, correct?

Ms. NAPOLITANO. I—I just can't comment. I don't know that there was a T-3 approved in "Fast and Furious."

Mr. GOWDY. If there were a T-3 approved in "Fast and Furious", and there were, the Department of Justice would had to have known about it, correct?

Ms. NAPOLITANO. I am going to leave that for your own investigation, sir. I am just not going to comment or go beyond what I know, and what I know is that after the death of Agent Terry, it—the "Fast and Furious" label became apparent and we become knowledgeable about it.

Obviously, there were problems with the operation. Obviously, it did not succeed and—and the Inspector General has that under investigation right now. From a law enforcement perspective—from a law enforcement perspective, yes, "Fast and Furious" is very troublesome.

Mr. GOWDY. Mr. Chairman, if I might, could have just an additional 30 seconds, which may be the custom this morning.

Mr. SMITH. Without objection.

Mr. GOWDY. Madam Secretary, my point on "Fast and Furious" is that there weren't just problems. It was flawed from its inception. Any investigation that countenances gun walking across the border is flawed in its inception.

So what I take offense at is when the attorney general and others on the other side of the aisle say that only when problems became apparent that—this investigation was a problem from the very beginning. I am going to ask you one final question because you mentioned twice this was an ATF investigation.

It was, in fact, an OCDETF investigation, which means what, as a former U.S. Attorney?

Ms. NAPOLITANO. Well, it means—and now you are into something I really don't know anything about. I don't know whether it is OCDETF, whether it was handled by an AUSA. I—I really don't know that.

Voice. Would the gentleman yield?

Mr. GOWDY. If it were OCDETF, then there would be more than one Federal law enforcement agency involved, correct? That is by definition.

Ms. NAPOLITANO. I just can't comment to that. I just don't know the answer to that.

Mr. GOWDY. Okay. Fair enough.

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

The gentleman from Georgia, Mr. Johnson, is recognized.

Mr. JOHNSON. Thank you.

And Secretary Napolitano, I think you have done an admiral job here this morning. It is always impressive to see a long table and a big room with a bunch of men, mostly seated, ready to question one solo witness down there and that witness has no control—just has to respond to the questions, sometimes the insinuations, sometimes which can border or which can be political in tone and totally inappropriate.

But you have endured through this process. It is, in fact, part of your job, and I know it is not probably one of the most pleasant aspects of the job but you have acquitted yourself well before this Committee and I appreciate your service to the Nation.

And I am not going to blame every problem that exists as far as immigration or, you know, Federal law enforcement—I am not going to blame that on you or make you responsible or appear to be responsible for that nor will I infer that the Obama Administration is immune to the normal problems that crop up in the course of the Federal Government's dealings. I mean, you are going to have some mistakes made. You are going to have some bad choices made. You are going to have some good things done, too. Those things should be pointed out.

But I will say that you weren't the Secretary of Homeland Security in 1999. Department of Homeland Security itself wasn't created until 3 years later. But back in 1999, we also saw Members of Congress express frustration with the INS about the issue of prosecutorial discretion.

As we have heard today when Chairman Smith led a bipartisan letter to Attorney General Janet Reno and the INS Commissioner Doris Meissner on that topic, he specifically urged the INS to use prosecutorial discretion to avoid unfairness and, quote, "and unjustifiable hardship," end quote.

The following year, according to Anthony Lewis' op-ed in the United—excuse me—in the New York Times, Chairman Smith complained that the INS was spending its time on cases that cry out—that, quote, "on cases that cry out for compassion," end quote, instead of focusing resources on, quote, "hardened criminals or hardened criminal aliens," end quote.

Now, I would like to enter both the letter and the op-ed* into the record. Is that permissible?

Mr. SMITH. Without objection that will be made a part of the record.

[The information referred to follows:]

*The Committee did not receive the op-ed referred to in time for it to be included in this printed record.

Appendix I

Congress of the United States
Washington, DC 20515

Embargoed for release Monday
November 8, 1999

Contact: Allen Kay
Rep. Lamar Smith
202-225-4236 (O)
202-225-2659 (cell)
301-990-3749 (H)

November 4, 1999

The Honorable Janet Reno
Attorney General
Department of Justice
10th St. & Constitution Ave. NW
Washington, DC 20530

The Honorable Doris M. Meissner
Commissioner
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: Guidelines for Use of Prosecutorial Discretion in Removal Proceedings

Dear Attorney General Reno and Commissioner Meissner:

Congress and the Administration have devoted substantial attention and resources to the difficult yet essential task of removing criminal aliens from the United States. Legislative reforms enacted in 1996, accompanied by increased funding, enabled the Immigration and Naturalization Service to remove increasing numbers of criminal aliens, greatly benefitting public safety in the United States.

However, cases of apparent extreme hardship have caused concern. Some cases may involve removal proceedings against legal permanent residents who came to the United States when they were very young, and many years ago committed a single crime at the lower end of the "aggravated felony" spectrum, but have been law-abiding ever since, obtained and held jobs and remained self-sufficient, and started families in the United States. Although they did not become United States citizens, immediate family members are citizens.

There has been widespread agreement that some deportations were unfair and resulted in unjustifiable hardship. If the facts substantiate the presentations that have been made to us, we must ask why the INS pursued removal in such cases when so many other more serious cases existed.

PRINTED ON RECYCLED PAPER

Appendix I, continued

Attorney General Reno and Commissioner Meissner
November 4, 1999
Page 2

We write to you because many people believe that you have the discretion to alleviate some of the hardships, and we wish to solicit your views as to why you have been unwilling to exercise such authority in some of the cases that have occurred. In addition, we ask whether your view is that the 1996 amendments somehow eliminated that discretion. The principle of prosecutorial discretion is well established. Indeed, INS General and Regional Counsel have taken the position, apparently well-grounded in case law, that INS has prosecutorial discretion in the initiation or termination of removal proceedings (see attached memorandum). Furthermore, a number of press reports indicate that the INS has already employed this discretion in some cases.

True hardship cases call for the exercise of such discretion, and over the past year many Members of Congress have urged the INS to develop guidelines for the use of its prosecutorial discretion. Optimally, removal proceedings should be initiated or terminated only upon specific instructions from authorized INS officials, issued in accordance with agency guidelines. However, the INS apparently has not yet promulgated such guidelines.

The undersigned Members of Congress believe that just as the Justice Department's United States Attorneys rely on detailed guidelines governing the exercise of their prosecutorial discretion, INS District Directors also require written guidelines, both to legitimate in their eyes the exercise of discretion and to ensure that their decisions to initiate or terminate removal proceedings are not made in an inconsistent manner. We look forward to working with you to resolve this matter and hope that you will develop and implement guidelines for INS prosecutorial discretion in an expeditious and fair manner.

Sincerely,

Rep. Henry J. Hyde

Rep. Barney Frank

Rep. Lamar Smith

Rep. Sheila Jackson Lee

Rep. Bill McCollum

Rep. Martin Frost

Rep. Bill Barrett

Rep. Howard L. Berman

Appendix I, continued

Rep. Brian P. Bilbray
Rep. Corrine Brown
Rep. Charles T. Canady
Rep. Barbara Cubin
Rep. Nathan Deal
Rep. Lincoln Diaz-Balart
Rep. David Dreier
Rep. Bob Filner
Rep. Eddie Bernice Johnson
Rep. Sam Johnson
Rep. Patrick J. Kennedy
Rep. Matthew G. Martinez
Rep. James P. McGovern
Rep. Martin T. Meehan
Rep. F. James Sensenbrenner, Jr.
Rep. Christopher Shays
Rep. Henry A. Waxman
Rep. Kay Granger
Rep. Gene Green
Rep. Ciro D. Rodriguez

Mr. SMITH. But I would also like to say to the gentleman from Georgia that he might want to put the contents of those letters in context. They were generally referring to legal immigrants or legal—and also was referring to not making general categories of individuals eligible but for going through on a case-by-case basis.

So I wouldn't want the gentleman to give a misimpression to anybody about the contents of those letters.

Mr. JOHNSON. Certainly, and no intent to do that, Mr. Chairman. And the letter and the article will speak for themselves and you have made—you have duly noted your position for the record.

And I look at the immigration laws that were creating unfairness and injustice in 1999 and they look like the same—they look like the same laws that we are dealing with today. Small wonder that the need for prosecutorial discretion has not diminished during that period.

You have spoken about the need for prosecutorial discretion in order to meet smart law enforcement priorities, but what about the cases that, quote, "cry out for compassion," to use Chairman Smith's words?

Ms. NAPOLITANO. Well, thank you and thank you for your—your opening comments, and I would simply say that nothing in—in Director Morton's memo suggests a categorical amnesty for any group. What it suggests is that there be a case-by-case evaluation of the individual circumstances in—there are very clear cases that require immediate deportation.

There are very clear cases where we know the Nation's public safety is involved. We have repeat violators. We have fugitives. But there are other cases that are different in context and kind, and part of having a—a reasonable immigration system is the ability to look at those.

Mr. JOHNSON. Thank you. And I will yield the balance of my time.

Mr. SMITH. Thank you, Mr. Johnson.

We will now go to the gentlewoman from Florida, Mrs. Adams.

Mrs. ADAMS. Thank you, Mr. Chair, and thank you, Secretary.

I have been sitting listening with great interest as a law enforcement officer for so many years. I have to tell you I was interested in hearing what you said about Alabama and that you were part of that. And you have said over and over again, including this morning, that you don't have the funds so you have to prioritize.

So why not accept states' help to be a force multiplier for your agency?

Ms. NAPOLITANO. Well, we—we do in what—and—and let me tell you, the most important way that states help us right now and localities is through Secure Communities. That is an important tool, as we have now been able to expand it, to help us identify criminal aliens in the Nation's jails and prisons.

Mrs. ADAMS. And I listened as many of my colleagues asked questions and the one in particular, Representative Gohmert, had said something and I was watching your reaction, and I was surprised that you didn't say if, in fact, that is a problem that we need to look into it and, you know, has something been compromised and is someone shopping a story.

That concerns me that you didn't step up and say, we will put national security over any type of politics and I will look into it. Will you commit to look into what Representative Gohmert brought up earlier? Yes or no.

Ms. NAPOLITANO. Well, I apologize. I don't remember specifically what he brought up, but, yes, if there are national security issues or important policy issues involved then, obviously, we would.

Mrs. ADAMS. Well, I want to make sure that we are doing our national security above politics at all times. I am really——

Ms. NAPOLITANO. Of course.

Mrs. ADAMS.—I—I believe that wholeheartedly.

Ms. NAPOLITANO. Of course.

Mr. SMITH. Would the——

Mrs. ADAMS. I heard someone else say——

Mr. SMITH. Will the gentlewoman yield for just a moment?

Mrs. ADAMS. I will in just a minute. I want to get through my questions.

I heard someone else ask you about limbo indefinitely but, in fact, isn't it true that if they are in a deportation status and their home country will not accept them that you release them back into the communities——

Ms. NAPOLITANO. Well, there——

Mrs. ADAMS [continuing]. Based on a ruling?

Ms. NAPOLITANO. Yeah. There is a Supreme Court case called Zadvydas, which is a due process case, which, if—if the home country cannot accept or will not accept, gives us about a 6-month detention period.

Mrs. ADAMS. And, in fact, some of these people have come back into the communities and committed heinous crimes—truly heinous—like Huang Chen, who killed a young woman, I believe, after China had refused to repatriatize him. Is that true? And if I remember reading this correctly, they still have not located her heart and lungs.

So, I mean—and another one who killed a police officer in Ft. Myers after being released back into the community because their home country would not take them.

You know, Section 243(d) of the Immigration Nationality Act requires a government to sanction countries that refuse to repatriate by suspending issuance of immigrant or nonimmigrant visas or both to nationals of the country until it takes the aliens back.

You—now it is DHS—is supposed to order or give the country that refuses back—take back its aliens to the Secretary of State shall order that the visas to its citizens be suspended.

How many have you recommended, under Section 243(d)?

Ms. NAPOLITANO. We have not. What we have done is work with their countries that systemically refuse to accept their aliens back.

Mrs. ADAMS. So you are telling you have not done any?

Ms. NAPOLITANO. Not that I am aware of.

Mrs. ADAMS. And so we could possibly have——

Ms. NAPOLITANO. I don't know if we are talking about the same thing. I am having a——

Mrs. ADAMS. Well, it says that these are people who were pending removal but their home countries aren't taking them.

Ms. NAPOLITANO. All right.

Mrs. ADAMS. You have the ability to recommend that they—you know, upon notification by the Attorney General now given by DHS that a country refuses to take back its aliens, the Secretary of State shall order that further visas to its citizens be suspended.

I asked you how many times have you recommended and how many times has that happened.

Ms. NAPOLITANO. I would have to look into that.

Mrs. ADAMS. It seems to me, Madam Secretary, that if you are not willing—you said just a minute ago you had not, now you are going to look into it. I have listened to that all morning long.

I have been amazed at some of the answers given, knowing that you were coming before this Committee. You have got deaths of agents in "Fast and—"Fast and Furious."

You have Iran planning to come across our borders because they see what, apparently, your agency does not—that we have an open border, and you have deaths of our citizens and law enforcement officers based on people being—not because their—their own home countries won't take them but because they are being released into our country after committing crimes.

And you are telling me you don't know now—at first you said you hadn't done it, now you don't know if you had recommended that there be some kind of diplomacy pushed forward on these countries because——

Ms. NAPOLITANO. Well——

Mrs. ADAMS. Now, let me finish.

Ms. NAPOLITANO. Excuse me, Representative. I just want to make sure we are being clear because in this Committee, I think it—I am trying to provide as accurate information as I can.

Mrs. ADAMS. Correct.

Ms. NAPOLITANO. What I am suggesting to you is that we have been working through the State Department with some of the countries that routinely refuse to accept illegal aliens back. But I don't know for other diplomatic reasons whether the State Department has actually suspended visas.

Mrs. ADAMS. Okay. Tell me this. Has DHS sought or obtained—has DHS sought or obtained any legal opinion that, for some reason, DHS need not comply with this duly enacted statute?

Ms. NAPOLITANO. I am not sure. Again, that is kind of a "gotcha" question. What I am saying is that we are working and have been working with the State Department with some of the countries that routinely refuse to take back criminal aliens.

Mrs. ADAMS. Madam Secretary, with due respect, that is not a "got you." These are statutes, and what I have heard from my Committee Members is that they have been asking you several times have you been complying with statutes or is there a statute that you can rely on for not complying to statute.

So well, I will ask respectfully if you will get me that number—how many times. Since you do not have that number now—you said at first, no, you didn't do it—now you don't know—I will be more than happy for us to put it in writing so that there will be no misinformation or misunderstanding. And I yield back.

Mr. SMITH. The gentlewoman's time has expired.

The gentleman from Puerto Rico, Mr. Pierluisi, recognized for his questions.

Mr. PIERLUISI. Thank you, Mr. Chairman.

Madam Secretary, I would first like to applaud you for crafting a common sense policy of exercising discretion over which immigration cases to prosecute. But I would now like to address the department's drug interdiction work in the Caribbean region, particularly Puerto Rico.

Many experts, including the U.S. Attorney in Miami, have recognized that as the Federal Government curtails the flow of drugs across our Southwest border, drug trafficking organizations are increasingly turning to the Caribbean as an alternate means to get their products to end users in the—in the U.S.

According to estimates provided to my office, approximately 80 percent of the South American cocaine that arrives in Puerto Rico is subsequently transported to the U.S. mainland, and the 20 percent of cocaine that remains in Puerto Rico for local consumption is the primary cause of the island's unacceptably high number of murders.

I know you share my view that from the Federal Government's perspective the violent death of an American citizen in Puerto Rico is of no less consequence than the violent death of any American citizen, be it in Florida, New York, or any other state.

ICE has made several high-profile drug arrests on the island over the past year. But I remain concerned that ICE and other DHS component agencies are not devoting sufficient resources to address the surge in drug trafficking through Puerto Rico.

I, thus, have a couple questions for you. First, how has DHS responded to the balloon effect I just described whereby drug traffickers are shifting part of their operations from the Southwest border to the Caribbean? Have you increased the personnel and assets you are deploying in the Caribbean?

You know, I am a former AG in Puerto Rico and I know very well that this is like a moving target. You need to make sure that your resources are well placed. But you cannot just leave one area unprotected because they just go there.

The second question—and I just want to know whether you have given additional attention and resources to Puerto Rico and the—and the Caribbean region. The second question I have is the following. It is related.

Most of the drugs entering Puerto Rico come from the Dominican Republic these days. But there has been a surge as well entering the island from the east coast, particularly from the smaller Caribbean islands, and I understand that it takes the Coast Guard over an hour to respond to a suspected incoming drug shipment in the eastern part of the island and that CBP's presence in the area is minimal.

Again, what is the department doing in terms of CBP resources, Coast Guard resources? So, again, first question is in general—are you taking a look at our area and devoting additional resources as you should in terms of protecting our borders? This is the southernmost border, and secondly, eastern Caribbean—what is happening over there? Because I am concerned.

Ms. NAPOLITANO. Yes, Representative. First, I think this is—I don't want to make too big a point of this but I think it is important to note that the—that the fact that drug trafficking has moved into the littorals, into—into the area you suggest, I think, is evidence of the fact that the Southwest border is actually been fortified to a large degree so and—and now the traffickers are having to move.

Mr. PIERLUISI. I agree.

Ms. NAPOLITANO. We are looking at that. We are looking at do we have the right amount of Coast Guard assets already deployed there—do we need to change the number and also the kinds of vessels we have. We have a BEST team now in Puerto Rico.

We—we—we will evaluate and continue to evaluate whether we have the right number of agents associated with that. We are working with the OCDETF unit down there, among other things. But the answer to your question is, yes, I am aware of it, yes, I share your concern, and yes, we are looking at our deployments there.

Mr. PIERLUISI. Okay. I have met with Attorney General Holder to go over the details of—of this situation in the past, and I would really appreciate it if you would give me the time to sit down with you and get to the specifics at some point in the near future.

Ms. NAPOLITANO. We will make sure you get briefed.

Mr. PIERLUISI. Thanks.

Mr. SMITH. Thank you, Mr. Pierluisi.

The gentleman from Arizona, Mr. Quayle, is recognized.

Mr. QUAYLE. Thank you, Mr. Chairman, and thank you, Madam Secretary.

I just want to get some clarification. Earlier you testified that Congress has only appropriated about $400,000—I mean, 400,000 deportations. Is that based on the $23,000 number for—that you state is the cost for—after, you know, arrest, removal and deportation?

Ms. NAPOLITANO. I would have to check.

Mr. QUAYLE. So you——

Ms. NAPOLITANO. But it is a—it is a commonly used number. It has been the same for several years and it is the number referred to in the Appropriations bill.

Mr. QUAYLE. It is the number—they—so the Appropriations bill actually has 400,000?

Ms. NAPOLITANO. May not be in the bill but in some of the supporting materials in the Committee.

Mr. QUAYLE. Because usually it is just the—the actual dollar amount, right? Okay.

Ms. NAPOLITANO. Exactly right. So I think it is in some of the materials provided to the Committee.

Mr. QUAYLE. Okay. Because I am trying to—earlier Mr. Coble was talking to you about the discrepancy between the ICE number and the number that you have used in—in testimony where you were saying it is $23,000 to $30,000 per actual person who is deported.

And ICE basically said—they said it was about $12,500, and I appreciate that you are going to get us the information in where that discrepancy is. But when you were speaking earlier, you said kind of just off the top of your head that maybe the ICE one doesn't actually include the amount that could be used in—for trial. Is that right?

Ms. NAPOLITANO. Well, it may not include the Justice Department factors in there, and I will just have to look into that for you.

Mr. QUAYLE. Okay. Because—because what I am trying to make it clear or get a clear understanding is that last week when you testified before the Senate Judiciary Committee, you stated that

the number was $23,000 to $30,000 and that was only for what DHS has and that excluded the Department of Justice.

So is the $23,000 to $30,000 with Department of Justice or not?

Ms. NAPOLITANO. We will get back to you on that.

Mr. QUAYLE. Okay.

Ms. NAPOLITANO. I just—I want to be very clear on that——

Mr. QUAYLE. Yeah.

Ms. NAPOLITANO. Because obviously you all want to—want to make some points with those numbers. So you need to have the accurate numbers.

Mr. QUAYLE. Yeah. We are—we are just trying to figure out exactly where the cost breakdown is——

Ms. NAPOLITANO. Indeed.

Mr. QUAYLE [continuing]. And that—and that is because—I would also like, if you could, kind of—if that number came from internal computations of the actual breakdown in the costs—if you could tell us that.

Is that actually from internal computations or did you get it from external sources?

Ms. NAPOLITANO. I will find out for you. It may be—it could be a number of sources——

Mr. QUAYLE. Okay.

Ms. NAPOLITANO [continuing]. Internal, OMB, Appropriations Committee. A lot of people have input into what is appropriated there.

Mr. QUAYLE. Because when we were looking into this—because that number just kind of jumped out at me when—when it was—when it was stated, and we called over and they said that that number actually came from the Center for American Progress, which is a liberal think tank that has been pushing the—the high costs of deportations.

And I would hope that DHS would be more reliant on their actual internal numbers rather than relying on an external think tank. So if you could get some clarification on that as well.

Ms. NAPOLITANO. Right. But I think your point, and—and I think it is important for—for this Committee in particular—the Judiciary Committee—the immigration system crosses Federal agencies and, indeed, it crosses branches of government, and one of the things—because we have never addressed comprehensively immigration in the Congress, what gets lost in there is what the total cost of the system is.

Gets divided between different Appropriations subcommittees. It gets divided, you know, some here the—what—what DOJ gets, what we get, et cetera. So one of things I think would be beneficial is to look at the system as a whole.

Mr. QUAYLE. Well, I—I—I appreciate that, but I think the other thing that we are looking at is that as Administration officials and you as well have said that you don't have the resources to be able to actively and pursue deportation just because the money is not really there and you said that there is only 400,000 people that you can actually deport.

Ms. NAPOLITANO. Yeah, I understand the point you all——

Mr. QUAYLE. So I am just trying to say, you know, the breakdown of cost and make sure that we are actually doing this in an

efficient manner. I think that that is extraordinarily important, especially when we are in these tough budgetary times.

Ms. NAPOLITANO. Indeed.

Mr. QUAYLE. And switching topics, I was just wondering and this has nothing to do with any specific state law but as we are looking Federal Government and Federal budget restraints and the problems that the Federal Government is having to live within its means and we don't have the resources, as some have said, to actually enforce our immigration laws. They are just making it more difficult.

If certain states want to actually act as force multipliers, shouldn't we be looking to them and—and actually embracing that to be able to enforce those immigration laws?

Ms. NAPOLITANO. Well, I think it is important to recognize that what is involved here is who sets the immigration priorities for the country, and that is a Federal responsibility.

Mr. QUAYLE. Absolutely.

Ms. NAPOLITANO. Now—now, we do work with states and localities. The primary way we do it now is through Secure Communities. And as you have heard in earlier conversation from some of the members, we—we—we have been criticized by some communities that don't want to participate in Secure Communities but I believe it is an essential tool moving forward to help us direct our prosecutorial resources.

Mr. QUAYLE. Okay. Great. Thank you, Madam Secretary. I yield back.

Mr. GALLEGLY. The gentleman from Florida, Mr. Deutch?

Mr. DEUTCH. Thank you, Mr. Chairman. Madam Secretary, thank you for being here. Thanks for the fruitful exchange.

I am concerned with the Department of Homeland Security's formula that is used to determine the tier status of urban-area security initiatives for purposes of receiving funding.

Specifically, I am extremely concerned with the application of the department's formula to the Miami-Fort Lauderdale UASI in the state of Florida.

The Miami-Fort Lauderdale UASI encompasses Palm Beach, Broward, Miami-Dade and Monroe counties, including the district I represent.

The Miami-Fort Lauderdale UASI has more than 5.6 million residents living throughout—throughout these counties' population with the highest level of density and diversity.

There are more than a hundred municipalities, four international airports, large convention centers, numerous sports venues that host major sporting events and other critical utility and water infrastructure.

It is also home to agriculture, banking, health care and other major industries. Moreover, the U.S. Southern Command Homestead Air Reserve Base, U.S. Coast Guard operations at Air Station Miami and Station Miami Beach, the National Access Point Center for the Americas, Turkey Point Nuclear Power Plant and the National Hurricane Center are located in the Miami-Fort Lauderdale UASI.

It also covers more than 300 miles of coastline. An extensive coastline is very porous and is a risk for drug and arms trafficking

and other threats. Many large cruise ships dock at Port Everglades in Fort Lauderdale and the Port of Miami, both of which are located in the Miami-Fort Lauderdale UASI.

In fact, Port Everglades is the home port of more cruise ships than any other port in the world. These cruise ships transport thousands of families and crew members in and out of the United States.

In addition, Miami-Fort Lauderdale UASI is a gateway to South America and Central America for business, tourism and international trade. Millions of people and commerce cross the border through south Florida airports and ports.

In fact, the Port of Miami, Madam Secretary, imports and exports more than 7.8 million tons of cargo annually to more than a hundred countries and 250 ports around the world, and Port Everglades, Florida ranks as the 12th leading container port in the Nation, exporting to and importing from more than 150 ports in 70 different countries.

The port is also the primary storage and distribution center for refined petroleum products for all of south Florida, supplying nearly one-fifth of entire state's energy requirements, ranging from propane and gasoline and diesel and jet fuel.

Yet, despite being major centers of economic security and tourism activity, the Miami-Fort Lauderdale UASI inexplicably does not qualify for Tier One funding out of the Department of Homeland Security's current funding formula.

Because the Miami-Fort Lauderdale UASI does not qualify for Tier One funding, it will have its funding for the upcoming year dramatically reduced, cut almost in half—reduced by $8 million from $17 million down to $9 million.

The Department of Homeland Security's funding formula is limited to accounting for legal and border crossings. This formula, therefore, does not include the more than 300 miles of coastline, four international airports and several cruise ship ports that are located within the Miami-Fort Lauderdale UASI.

Several questions—shouldn't these air and water entry points in the U.S. be considered with legal and border crossings by the department in its formula?

And it is my understanding that the Secretary of Homeland Security has the discretion to expand the number of UASIs that are included in Tier One funding. In fact, there has been expansion recently. Currently, 11 UASIs are eligible for Tier One funding.

And so for the reasons that I have laid out, for the safety and security of the millions of Americans who live in, do business in and visit south Florida, I would urge you in the strongest possible terms that you expand the Tier One funding to include Miami-Fort Lauderdale UASI.

I would welcome any response now or following this Committee meeting.

Ms. NAPOLITANO. Well, I would make two points. One is the—the reduction in Tier One identification was in part a reaction to Congress's reduction—significant reduction in UASI funding overall, and the question presented to us and to me was whether we just dole out smaller amounts of money or do we continue to fully fund at prior year levels the Tier One locations.

We made the decision to—to—to restrict the number of locations so that we could fully fund the Tier Ones.

Tier Ones are evaluated by risk and consequence. So national elements such as you described—coastline, nuclear reactors, critical infrastructure, economic impact—are all taken into account.

As I recall, when we made the decision to cut back and then to identify Tier One, Tier Two, there was a clear delineation from an evaluative standpoint between the top 10, and 11 was virtually identical to 10, so top 11 and those below it, and that is—that is where Miami was.

If—if Congress puts more money into UASI or goes back to prior year levels, we can reconsider that decision.

Mr. DEUTCH. But—but the decision—the decision to expand Tier One is a decision made by your office.

Ms. NAPOLITANO. That is correct.

Mr. DEUTCH. And, in fact, Tier One has been expended in the past not just to include——

Ms. NAPOLITANO. When there was money, yes.

Mr. DEUTCH. I understand, but the further—and I—I also understand the decisions Congress makes about funding, but the—it is the decision of the Department of Homeland Security to keep the Tier One funding the same and slash dramatically the funding to the Miami-Fort Lauderdale UASI.

Ms. NAPOLITANO. I think that the reason, Representative, is because the evaluation of risk and consequence did not put the Miami UASI into the Tier One status.

Mr. DEUTCH. I would urge you to reconsider the—and—and realize the—the risk and consequences involved in the decision.

I yield back. Thank you, Madam.

Mr. GALLEGLY. Time of the gentleman has expired.

Mr. Issa?

Mr. ISSA. I thank you, Mr. Chairman.

Madam Secretary, back in February, I recall that you and I were on the phone and on another important issue, but it had to come to a premature end or come to an end because you had to attend a memorial service for Jamie Zapata.

Do you remember that conversation?

Ms. NAPOLITANO. I don't remember the conversation. I do remember the murder of Jamie Zapata.

Mr. ISSA. But I won't forget it because it was sort of just at a point in which "Fast and Furious" obviously was becoming a major issue, both with Senator Grassley and with my Committee next door.

Since that time, we have done a lot of work and I—I want to run you through some questions that concern me that fall within your lane.

One of them is earlier today, you have repeatedly said that this was an ATF operation. Out of concern for the investigatory process and the prosecutions that are ongoing, we have—we have avoided interviewing Lane France. Do you know Lane?

Ms. NAPOLITANO. I do not.

Mr. ISSA. Do you know he works for you? He is an ICE agent that was part of the "Fast and Furious?"

Ms. NAPOLITANO. I know there was a field agent assigned to a task force—this is all things I have learned in the wake of your investigation—assigned to a task force for deconfliction purposes in the wake of the two ICE matters that were resolved by the AUSA to be within the context of ATF.

Mr. ISSA. Well, it is—it is our judgment that he likely was very aware that there was gun walking going on, had that information. The question is, when you assign somebody like that, do you have a flow of information back to your department so that your—somebody in your department could have, should have or would have known about the operation?

Ms. NAPOLITANO. Representative, we have hundreds of operations and—and thousands of agents on a daily basis. So to my knowledge, the fact that an agent was assigned somewhere about some matter would not necessarily come to——

Mr. ISSA. So——

Ms. NAPOLITANO [continuing]. Even—even to ICE headquarters, much less to DHS headquarters.

Mr. ISSA. Okay. So I guess I am going to make an assumption here and that is that it is a fire and forget. You send——

Ms. NAPOLITANO. Pardon?

Mr. ISSA [continuing]. You send these people over there.

Ms. NAPOLITANO. I'm sorry. I couldn't hear you. Sorry——

Mr. ISSA. Fire and forget, kind of like the missile that you just send off and it looks for heat, and if it hits something so be it, even if it is one of the friendly aircraft.

Ms. NAPOLITANO. Oh, I don't think that is a——

Mr. ISSA. Well, let's go through this.

Ms. NAPOLITANO. Accurate——

Mr. ISSA. You—you testified that in December, you became aware of "Fast and Furious."

Ms. NAPOLITANO. I said after the death of Agent Terry, yes.

Mr. ISSA. Okay. And the details you became aware of basically after our investigation began, putting those details out.

Ms. NAPOLITANO. I became aware, as I testified here and in other Committees, after the death of Agent Terry and—and knew some of the details and the name "Fast and Furious" certainly no later than March.

Mr. ISSA. Okay. You testified here today that you—you haven't talked to Eric Holder about this.

Ms. NAPOLITANO. That is correct.

Mr. ISSA. And he testified here that he only knew about it a few weeks before the interview he had in May here before this Committee and that he basically heard about it in the newspaper.

So you have two dead agents that worked for you—one north of the border, one south of the border—and particularly in the case of Brian Terry, he was gunned down with two weapons from "Fast and Furious."

It has been months, and you tell me that you are not—you were not—you were not doing it because of an IG investigation. Well, let's go through a few questions here, Madam Secretary.

Ms. NAPOLITANO. Well, wait—wait just a minute.

Mr. ISSA. No, no. No, wait——

Ms. NAPOLITANO. Wait just—wait just a minute.

Mr. ISSA. Let me finish my question.

Ms. NAPOLITANO. Wait just a minute.

Mr. ISSA. Madam Secretary, let me finish my question.

Ms. NAPOLITANO. Go ahead, but that insinuation is not an accurate——

Mr. ISSA. Your—Madam Secretary, you—you—we could have the record read back. It would take a few minutes but——

Ms. NAPOLITANO. No, it is the insinuation I am objecting to. But go ahead and ask your question.

Mr. ISSA. Look, the—you said because of an IG investigation you were not having further investigation, except you became aware of this in December. The IG investigation began in February.

For 3 months, you had a dead Border Patrol agent and there was no IG investigation. What did you do between December and February to find out about "Fast and Furious" since a—and we can give you the documents, happily. We would get you the unredacted ones if we could. You get them from other parts of government.

You—people on the ground knew those were "Fast and Furious" weapons found at the scene within hours. So it wasn't something that wasn't known. It was known at the time.

The question is, a Homeland Security employee is gunned down, two weapons found at the scene part of "Fast and Furious." Agents on the ground know that it is "Fast and Furious" before Brian Terry was laid to rest.

Three months go by, and now—and today you told us about an IG investigation. My question is, first of all, do you have an IG and are you going to have your IG look into what happens when you segund agents and they are aware of gun running or, sorry, gun walking and do nothing? Is that appropriate for you to have your IG investigate? Yes or no, please.

Ms. NAPOLITANO. Well, that—I think I—that question merits a lengthier response and I am glad to give it to you.

Mr. ISSA. I will look—I will look forward to that in writing. But back to the basic question. You knew about—when Brian Terry was gunned down you knew, in fact, he was gunned down.

People on the ground knew that he was gunned down with "Fast and Furious" weapons. Three months went by. What did you do between—between December and February to find out the details about his loss of life, and aren't you outraged here today that you—if you were not informed that you were not informed that weapons allowed to walk into drug dealers' cartels' hands had killed one of your agents and during those 3 months they kept it from you?

Ms. NAPOLITANO. I think your insinuation that——

Mr. ISSA. Ma'am, please answer the question. Don't—don't—please don't talk in terms of insinuation.

Ms. NAPOLITANO. Mr. Chairman, may—may I have the opportunity to answer, please?

Mr. GALLEGLY. Madam Secretary, I—if you would try to succinctly answer his question, and then if you would like to elaborate the Chair will give you the time.

Ms. NAPOLITANO. Well, what—let me make a suggestion, if I might, because he is—the representative is combining a lot of different things. If he would give me his questions I will be happy to respond in writing.

Mr. ISSA. Well, the one question I would like a succinct answer to is, you became aware that Brian Terry had been gunned down. People on the ground at that time knew they were "Fast and Furious" weapons. That was December.

Between December and February of 2011, what did you do to discover further the conditions around his death, one? And then the second question, which was equally straightforward, aren't you here today furious that the Justice Department—not ATF, the Justice Department—withheld from you the knowledge of "Fast and Furious" during this entire period of time, including one in which you had an agent dead?

Ms. NAPOLITANO. I think we all should be outraged at the death of Agent Terry, and I think the first thing is to recognize who actually killed him, and that our number-one priority was to make sure the shooters were found—some had gone back into Mexico—and that the FBI was in charge of that investigation.

Several days, as quickly as I could get to Arizona after his death, I met with the FBI, their agents in charge. I met with the AUSA who was going to conduct that investigation, and that was my number-one concern—that those responsible for the shooting death of Agent Terry were brought to justice, and that is what I was being kept apprised of.

I will be—I would be happy to answer your other questions in writing.

Mr. ISSA. Ma'am, we will be glad to follow up in writing, and I thank the Chairman for his indulgence.

Mr. GALLEGLY. The time of the gentleman has expired.

Ms. Sánchez?

Ms. SÁNCHEZ. Thank you.

Madam Secretary, we appreciate your presence today before the Committee, and as you can see, there is a broad range of questions that people can ask.

Ms. NAPOLITANO. I have noticed that.

Ms. SÁNCHEZ. And you are asked to be an expert on—on each and every one of them and to know information at the tip of your fingertips, which I know is not always possible.

Earlier in—we appreciate the effort nonetheless—earlier, you mentioned the Secure Communities program and it is principally that program that I want to discuss with you.

Studies by the Warren Institute showed that 93 percent of those identified through Secure Communities were Latino as of 2010, and given the scope of Secure Communities that number seems a bit—well, not a bit—it seems alarmingly high to me and hard to explain simply by saying, you know, with sample size or mathematical variance.

Many of my constituents, for example, look at that number and conclude that the Secure Communities program may be inadvertently encouraging local law enforcement officials to racially profile against the Latino community. And I am not suggesting that this is overt encouragement or even conscious activity on behalf of local law enforcement but that number does really trouble me.

I am wondering if, perhaps, you have a way to explain the 93 percent figure and what steps DHS has taken or could possibly take to address the concerns that are raised.

Ms. NAPOLITANO. Right, and, again, we get into these numbers things and you have to look at the period evaluated and the sample and all that.

But I think, more fundamentally, what we have done is through our Civil Rights and Civil Liberties unit established monitoring of the numbers—as we now have enough communities that are in the program that you are starting to get a substantial number—to monitor those numbers to see whether any are out of kilter with criminal prosecutions generally in an area and if statistically there are significant variances to have the ability to go in and actually look at A files or things of that nature to see what underlies the numbers.

So—and this is intended to be a very transparent process. We do not intend to keep those numbers secret. They will be—they will be put or posted when they become available with appropriate explanation.

Ms. SÁNCHEZ. Okay. But can you understand the concern that—that folks might hesitate to cooperate with local law enforcement if, you know, this perception, you know, backed by the initial figures, lead people to suspect that certain communities are, in fact, being racially profiled?

Ms. NAPOLITANO. I can understand that concern.

I can also understand that we have—we have Secure Communities now in enough jurisdictions to know how you work with Secure Communities, how police departments continue their relationship with the local community, how you use neighborhood policing in the right way with respect to Secure Communities. There are best practices that are developed that are being shared.

So I understand the concern. What I am suggesting is that we need to continue to watch it, to watch the numbers, to do it in a statistically valid way, to be able to make those numbers transparent, and then to work with and share best practices among all of the jurisdictions now using the program.

Ms. SÁNCHEZ. Okay. Following up on that, when U.S. citizens or legal residents are administratively arrested under the Secure Communities program, approximately how long are they detained for?

Ms. NAPOLITANO. Well, under the new detainer form they cannot be detained longer than 48 hours.

Ms. SÁNCHEZ. And during that process, what information are they given and are they allowed to contact counsel or their families during that process?

Ms. NAPOLITANO. There is a—there is a whole—there is a new detainer form that we have put into place. It is in English. It is also one available in Spanish—I think other languages as well. It has numbers to call and all sorts of information on it. We could get you a copy of it.

Ms. SÁNCHEZ. It would be helpful because, you know, part of the concern is that if legal permanent residents or citizens are somehow arrested under this or taken into custody, I should say, under this program that they would be able to communicate with family and——

Ms. NAPOLITANO. Well, they are not arrested, if I might, under Secure Communities. Secure Communities only comes into play

after an arrest and a booking, and what Secure Communities is is a data-sharing agreement between us and the FBI to check fingerprints not just against criminal databases but against immigration databases.

So it is not like there is a Secure Communities task force out there arresting people. It is an after the—after the booking process.

Ms. SÁNCHEZ. I understand. I misspoke, but my concern being that there could be legal permanent residents or citizens that are caught up in this and not—they don't have an opportunity to contact family or counsel to sort of——

Ms. NAPOLITANO. No, that—I don't think so and the reason is if—if—one of the things we run them through is IDENT and if there is an IDENT match and it shows that they are LPRs or citizens, we stop right there. So nothing else happens.

Ms. SÁNCHEZ. So there is never an incidence in which—in which a legal permanent resident or a citizen could be accidentally deported because of a program in which they have been picked up?

Ms. NAPOLITANO. Look, I—we deal with so many and, of course, it would be outrageous to have that kind of a situation. But what I am suggesting is—what I am suggesting——

Ms. SÁNCHEZ. And I would suggest that that has happened in the past.

Ms. NAPOLITANO. Well, there have been instances in the past, but under this program once an IDENT match is made and the IDENT match reveals that this person is a citizen or—or a lawful permanent resident, that is it. It is done. We don't put any detainer or anything on that individual.

The local authority may hold them under whatever criminal law they may have violated but we will not be putting a detainer on them.

Mr. GALLEGLY. Time of the gentlelady has expired.

Mr. King?

Mr. KING. Mr. Chairman, I would like to yield to the gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you, Mr.—thank you, Steve. Secretary, since you seemed a little fuzzy about Elibiary, let me make sure you leave here understanding. He was a featured speaker at the tribute to the great Islamic visionary, Ayatollah Khomeini, December 11th of 2004.

You had him on your Countering Violent Extremism working group. You promoted him and from your own website, Secretary Napolitano swears in Homeland Security Advisory Council members. You swore him in and according to your testimony here today that is where he got the security clearance.

He has written glowingly of Kotbi, on whom Osama bin Laden relied heavily for his barbarism justification. He has written against the trial and conviction of the Holy Land Foundation's funding of terrorism.

He has still remained in this Homeland Security Advisory Council and now he has accessed a week ago the state and local intelligence community database.

He took documents that said "For Official Use Only" and shopped them with national media. It appears not only is our secu-

rity being compromised—a secure system—but he is using it to help his friend politically, the President.

I have got one question and it is not a "got you" question. There is nothing confusing about it. Before you came in here today, were you given information about Elibiary using the state and local intelligence committee the—community database and taking information he downloaded and shopping it to the media?

Ms. NAPOLITANO. No.

Mr. GOHMERT. If anyone from Homeland Security, your staff, advised anyone else that you were briefed last night they would be wrong. Is that correct?

Ms. NAPOLITANO. Yes.

Mr. GOHMERT. Thank you.

Thank you, Mr. King. I yield back.

Mr. KING. Thank you, and reclaiming my time.

Thanks for your testimony, Madam Secretary. It just caught my attention when you responded to the gentleman from Texas, Mr. Poe, and this—the discussion about prosecutorial discretion, and you referenced Article II, Section 3 of the Constitution.

Could you expand on that a little bit and about how Article II, Section 3, grants prosecutorial discretion?

Ms. NAPOLITANO. Well, Article II, Section 3, says that the executive branch shall take care to faithfully execute the laws of the United States, and then when you read the U.S. Supreme Court authorities interpreting that Cheeney or Haney, whatever, and then *Reno v. Arab American Anti-Discrimination League* is the one that is specific to immigration, that is taken and put into the analysis of how you exercise discretion or the source of discretion——

Mr. KING. Well, thank you——

Ms. NAPOLITANO [continuing]. In the immigration context.

Mr. KING. And I expected that would be your response. I just wanted to make the point that the Constitution doesn't say so. You can make those references to those—those cases and I won't take issue with that. But it does say, "He shall take care that the laws be faithfully executed."

I would also point out in the President—the President's oath, "I will faithfully execute the office of president of the United States," by extension that oath then applies to his officers that also take that oath. Would that not be correct?

Ms. NAPOLITANO. That is true.

Mr. KING. Okay. Then I just wanted to clarify that. It isn't so much an issue. It is this—that when—when we see the litigation that is coming forward against Alabama, Arizona and it looks like any state that wants to pass immigration laws, the executive branch is litigating that through the courts.

Now, if they are successful—if Eric Holder is successful in scrubbing these immigration laws from the states—that leaves then the Federal Government with the exclusive authority to enforce immigration law, does it not?

Ms. NAPOLITANO. Well, again, as I've referenced several times, when we have partnerships like Secure Communities, that indeed helps us focus the exercise of that discretion.

Mr. KING. Then let me restate my question.

If the attorney general is successful in the litigation that he has initiated on these states that have passed immigration laws, rather than the Secure Communities component of this or the 287(g) component of this, there would be then no latitude for states to pass immigration laws that they would enforce at their discretion.

Ms. NAPOLITANO. There would be no latitude for states to—to make—pass laws that change Federal immigration policy.

Mr. KING. I don't think that is—I will disagree with that. But rather than dig down into that and burn up our time, I will just make this point—that it looks to me that the Administration is going down the path of shutting down all state legislation on immigration regardless of whether it goes beyond the mirroring the Federal law, which is what Arizona was designed to do, and that in the end it takes away the authority of the states to do that—to do immigration enforcement.

I will take you also to some other data that Judge Poe addressed and that is the 34-and-a half-percent of foreign nationals that are occupying the jails on the border states. Are you familiar with a GAO study that is March 2011 criminal alien statistics and it addresses the—okay. Then I have it in my hand and I will reference it.

In it, it has data in there that shows that we have 25,064 arrests of criminal aliens for homicide.

Now, that covers some years, I will admit, but I would put that up against the losses that we have had on the southern border—25,064 in arrests for homicide generally means at least one grave, and that generally that are—those are Americans that are—that are killed at the hands of criminal aliens.

And so when I heard you reference the 34,000 beds and that is all that Congress gives you to work with and you have to use prosecutorial discretion in order to utilize those beds to the best of your ability, what I don't remember hearing—and I have been here 9 years—is a request from the Administration, first, to look at all of the assets that are deployed on the southern border.

It wouldn't be just your department, obviously. I am going to suggest that that ranges in the area of $12 billion across that southern border—about $6 million a mile. I have yet to hear anybody put all those assets together and make the ask how many prison beds, how many prosecutors, how many judges—how do we actually get 100 percent enforcement on that border so we can begin to save some of these 25,064 lives.

Have you put together any kind of a proposal that would actually rearrange the assets so that we could bring 100 percent enforcement rather than letting drug smugglers go because we don't have the prosecutors or having to do, if it is something you are reluctant to do, this administrative amnesty that we call it and this discretion that you call it? Have you put that package together?

Ms. NAPOLITANO. Well, I am going to take the—your—this in two bites. Number one, under our policy, somebody who is accused of homicide would be detained and would be a priority case and we would have created room on the master docket to move that case through and—and we would get that case after the person served his sentence for the—for the homicide.

Mr. KING. But they might released into society under Zadvydas, wouldn't they?

Ms. NAPOLITANO. Secondly, as I mentioned earlier, one of the things I think it is important for this Committee to look at is the entire immigration system from where we get investigation to prosecution to—to incarceration and then potentially—and then to the removal.

And each one of those crosses different Federal agencies. So we have a comprehensive Southwest border strategy we use with ICE and CBP, to some degree CIS. We have moved ICE resources down to the border. We have moved detention beds down to the border.

We have more resources at the Southwest border than have ever existed before. But that is not to say that the Congress in its own organization doesn't have the ability to look at it overall.

Mr. KING. What are the sum total of the assets and what is asked of this Congress to give you all the tools you need to give a hundred percent enforcement on the border?

Mr. GALLEGLY. The time of the gentleman has expired but I will allow you to answer that question and then we will move on.

Ms. NAPOLITANO. I think the best way to answer it is to say that we believe that with the asks we have made for—particularly for CBP at the border and—and the movement of ICE resources to the border that from the DHS perspective we have been able to greatly improve and secure that border.

Mr. GALLEGLY. Time of the gentleman has expired.

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman. Madam Secretary, welcome. The U.S. Border Patrol agents that are employees of the Department of Homeland Security and under your jurisdiction have tough, tough jobs. They are out there in the middle of the night trying to track down illegal aliens and drug smugglers, weapon smugglers and other contraband and so on.

They are fired at, sometimes with weapons provided by other government agencies, sometimes wounded, sometimes killed. I wonder if you could comment on a court decision that came down in the case of the prosecution of one of your agents, a Jesus E. Diaz, Jr., who was sentenced last week to 2 years in prison for what could best be described—in fact, how the Washington Times described as improperly lifting the arms of a handcuffed 15-year-old drug smuggling suspect who was—that is a common technique used by law enforcement to force people to the ground to control them is to—is to lift their arms to force them down onto the ground if they are struggling, attempting to escape and so on.

This was—this prosecution apparently took place at the behest of the Mexican government and was conducted by the same U.S. Attorney's office that prosecuted two agents not under your watch but under the previous Administration for having shot at another drug smuggler. They were subsequently granted a pardon or had their sentences commuted by President Bush. You may recall those two agents.

Are you familiar with this case involving Jesus Diaz?

Ms. NAPOLITANO. I am not familiar with that decision.

I can agree, however, with your beginning statements that our Border Patrol agents have very difficult jobs under very difficult

physical circumstances and they do. It is a 24/7 job and they are doing a remarkable job down at the border.

Mr. GOODLATTE. This case has been pending for—for a few years now, and that seems a pretty serious sanction—two years in prison. Both your Inspector General's office and the Office of Professional Responsibility at ICE cleared this agent of any wrongdoing but nonetheless he was subsequently prosecuted.

The Law Enforcement Officers Advocates Council, an organization that obviously looks out for the interests of people who are doing these dangerous jobs, says that this was a totally improper prosecution of this individual, and you are not at all familiar with this?

Ms. NAPOLITANO. I am not.

Mr. GOODLATTE. Would you look into this and report back to the Committee and let us know what your thoughts are about this prosecution of one of your agents?

Ms. NAPOLITANO. I would be happy to review the decision.

Mr. GOODLATTE. I would appreciate that.

Let me ask you this. If you are not familiar with this, how often do you meet with Attorney General Holder?

Ms. NAPOLITANO. Oh, it varies. Not that often, really, in the context of things.

Mr. GOODLATTE. Do you think it would be helpful, in light of the "Fast and Furious" debacle, in light of prosecutions like this one, that that department of the government ought to be informing your department on a more regular basis of what they are undertaking so that you can be better informed and be outspoken in representing the interests of your agents and the responsibilities of your department?

Ms. NAPOLITANO. Well, sir, I think I am outspoken in the interests of my agents and I do think there will be lots of lessons learned from "Fast and Furious."

Mr. GOODLATTE. But if you are not informed, if you don't know about these incidents——

Ms. NAPOLITANO. Well——

Mr. GOODLATTE [continuing]. And if you don't know about "Fast and Furious" and it went on for a long period of time and you are not informed, how can you be effective?

Ms. NAPOLITANO. You know, what is the question?

Mr. GOODLATTE. The question is, shouldn't you have closer communications with the other principal law enforcement agency of the Federal Government so that you can know what is going on when your agents are being endangered by their allowing weapons to walk, when your agents are being prosecuted by their U.S. Attorneys?

If pressure was put on our government by the Mexican government to do this prosecution of one of your agents, don't you think you or somebody in your department should have been informed of that, either by the Secretary of State or by the Attorney General or somebody involved in this kind of cross-border politics where drug smugglers here—here for the second or third time?

I am aware of a prosecution of a—of a deputy in Texas as well for attempting to stop drug smugglers. And yet, the people who are

getting prosecuted aren't the drug smugglers in these cases—they are the people who are trying to enforce the law.

Ms. NAPOLITANO. Well, as I said earlier, I think my number-one interest when we had a dead agent, Agent Terry, was to get the shooters—to get those who killed him, some of whom had fled into Mexico. And I think that was——

Mr. GOODLATTE. I think that is a—that is a—that is a laudable goal, Madam Secretary, but it was too late. The fact of the matter is there needs to be better communication so somebody can say, "Whoa, this is a crazy idea. You are giving guns to drug smugglers that are going to come back and be used to kill my agents."

Ms. NAPOLITANO. And it—and, Representative, it—it will be, and I think this Committee has to avoid a rush to judgment here. But it seems to me that there will be lessons learned from this and there very well may be changes in the field as a result of this.

The question you asked me, however, was how often I met with Attorney General Holder, and I was saying in the context of things, given his schedule, my schedule, the myriad responsibilities we each have, not that frequently.

Mr. GOODLATTE. I hope that you will make an effort to—if I might have leeway to ask——

Mr. GALLEGLY. Without objection.

Mr. GOODLATTE. One more question.

You have indicated you will investigate this matter with regard to Jesus Diaz Jr., one of your Border Patrol agents, who is now facing 2 years in prison.

If the prosecution in this case—if the conviction is not overturned on appeal, will you recommend to President Obama that he pardon Agent Diaz? If you find—if you find, as your Inspector General found and as the ICE Office of Professional Responsibility found, that there was no wrongdoing on his part—if you find that to be indeed the case, would you recommend to the President that he protect your agent?

Ms. NAPOLITANO. You know, Representative, I don't play what-ifs. I will be happy to review the case and get back to you.

Mr. GOODLATTE. Thank you.

Mr. GALLEGLY. Time of the gentleman has expired.

For the record, you—you made a commitment you would review this officer's prosecution, and I would request——

Ms. NAPOLITANO. I said I would review the decision.

Mr. GALLEGLY. The decision. You would—you would review the decision. Further, would you make a commitment to this Committee that you would respond in writing to Mr. Goodlatte and also to the Committee your—your assessment of your review?

Ms. NAPOLITANO. We will get back to the Committee, yes, sir.

Mr. GALLEGLY. I will take that as a yes.

Ms. NAPOLITANO. We will get back to the Committee, yes, sir.

Mr. GALLEGLY. Mr. Marino?

Mr. MARINO. Good afternoon, Madam Secretary.

First of all, I want to state that I have the utmost respect for the ICE agents. I am a former district attorney and U.S. Attorney, and I kind of look at us as colleagues, based on our experiences, and some of the best people that I have ever worked with, and they

extraordinary circumstances which they work under. So I do have a total respect for those individuals.

You raised an issue concerning Zadvydas—the Zadvydas case, which I think in——

Ms. NAPOLITANO. Zadvydas?

Mr. MARINO. Zadvydas.

Ms. NAPOLITANO. Yeah.

Mr. MARINO. Yeah. Excuse me. That within, what is it, 60 days——

Ms. NAPOLITANO. Six—six months.

Mr. MARINO. Six months—they would be released if nothing is done. Does that just pertain to removal from the country or if they have committed a crime——

Ms. NAPOLITANO. No. I think it is a—it is a due process removal case.

Mr. MARINO. So if there is a crime committed by an individual who is here illegally——

Ms. NAPOLITANO. They still serve their sentence.

Mr. MARINO. They still serve the sentence.

Ms. NAPOLITANO. Yeah.

Mr. MARINO. Do—do you see a problem with that 6-month time period whereby you may not, in conjunction with the U.S. Attorney's office, have the time to get that prosecution completed?

Ms. NAPOLITANO. Well, I think it—it—it—I think we have to be guided by the Supreme Court and when it says that you have to—to move, you have to move. I mean, you have to—you have to meet the timelines they set.

Mr. MARINO. You stated earlier that Congress needed to act more so when it comes to immigrations. Could you explain to me what should Congress be doing pursuant to enforcement?

Ms. NAPOLITANO. Well, one of the areas where I think Congress should—should look at enforcement is—is in terms of employers. Right now, it is very difficult to getting a felony case against employers. The fines are too low to be an—a deterrent.

The employers are the magnet for much of the illegal immigration that goes on. So that, I think, is an area that deserves examination.

Mr. MARINO. Good. And I prosecuted one of those cases as a—as a U.S. Attorney and we did, in fact, send hundreds of illegals back but we went after the employers. I would like to see more of that because you are right—it is the magnet.

May I ask you a question and if you would care to share it with me? Do you support total amnesty?

Ms. NAPOLITANO. No.

Mr. MARINO. Okay. Now, you stated earlier—and I don't play gotcha so I am just paraphrasing this—that we as prosecutors we have slight differences or variations on our discretion on why we prosecute a case and why we do not prosecute other cases.

Do you—do you agree with me that there is just not a strict line to follow?

Ms. NAPOLITANO. I think that is accurate.

Mr. MARINO. I am going to go back to the factors for considering prosecutorial discretion and give me your input, give me your feeling on something like this when—there's a list of them and I have

not seen a list like this as a prosecutor pursuant to other crimes, at least federally. And I have had the manuals on my desk and I didn't memorize them by any stretch of the imagination, but I have gone through them.

But do you have any problems with—I am just going to rattle off three or four, and you have heard one of these—when a person has a U.S. citizen permanent resident spouse, child or parent, whether the person is a primary caretaker of a person with a mental or physical disability, minor or seriously ill relative, whether the person or the person's spouse is pregnant or nursing, and finally, whether the person or the person's spouse suffers from severe mental or physical illness.

I am not familiar with any other Federal crimes code that applies such strict parameters before enforcing the law. Can you help me out here?

Ms. NAPOLITANO. Well, I—no, I think—here is what we are doing, and I think what Director Morton is correctly doing is saying, look, we want to prioritize those who are criminals, those who are fugitives, those who are repeat violators, those who we are capturing at the border, those who raise national security interest.

And so in terms of planning our operations and where we want to put our manpower and the like, those are the things that really affect the public safety in our community.

And by deploying Secure Communities, among other things, we are now seeing the composition of the numbers—of the numbers deported—change, and the composition is changing to reflect that we are deporting more criminals than ever before.

Now, with respect to others who don't fit in those priorities, they are not given amnesty. But there are some factors to take into consideration, and I think that the memo is merely an effort to elucidate some of those factors.

Mr. MARINO. So you don't see this as a—as a strict guideline. You are looking at this as all right, the prosecutor or the—is the prosecutor because he or she is qualified, they are put in there in that responsible position, they have—they do have that discretion?

Ms. NAPOLITANO. That is right, and one of the things that we have done is speak with the lawyers—OPLA, the lawyers who handle these matters—and treat them like AUSAs who have discretion to look at a number of factors——

Mr. MARINO. And as was...

Ms. NAPOLITANO [continuing]. Just as they would in—in any other kind of a criminal case.

Mr. MARINO. And as was stated by the commissioner who participated in this, this isn't an invitation to violate or ignore the law.

Ms. NAPOLITANO. Not at all. It is—it is to enforce the law in a smart and effective way.

Mr. MARINO. Yeah. I have just a couple other questions. I will get through these quickly.

And I trust that you as a law enforcement colleague, as I said before I believe we have some type—something in common as being prosecutors—are going to keep politics out of when it comes to enforcing immigration laws.

Ms. NAPOLITANO. That is correct.

Mr. MARINO. We just—we just—both sides, we have to keep the political arena very far from us, particularly when it comes to immigration.

Ms. NAPOLITANO. That is right, and one of the things, you know, the—the insinuation of politics has—has been made by others, and I would remind the Committee—and I actually have the testimony—when I testified in the Senate in—in the spring of '09, not too long after I had become the Secretary of Homeland Security—I said specifically that we were going to focus on criminal aliens and that we were going to prioritize within the immigration universe.

And there was no question raised at that time as to whether that was proper or not. And that is really—we have done what I said we would do 2 years ago.

Mr. MARINO. Mr. Chairman, do I have a couple minutes here?

Mr. GALLEGLY. Would you please make it brief?

Mr. MARINO. I will make it brief.

Mr. GALLEGLY. A few minutes over so if you just have one——

Mr. MARINO. Okay.

Mr. GALLEGLY [continuing]. Question. We have two more witnesses. It has been a long morning.

Mr. MARINO. Okay. I have—I would never criticize you on a political aspect at all. I know how tough the job is. As a prosecutor, I am very familiar with it.

Let's switch gears here for a moment. Let's talk about FEMA for 1 second. We had quite a disaster in Pennsylvania where I am from, the 10th Congressional District. Many communities were destroyed. People just lost their homes.

One of the questions I raised in Homeland Security is do you feel that FEMA has to or is there some way that we in Congress can give FEMA the authority to step into a state when FEMA feels it is necessary even before a governor ask for that help?

Ms. NAPOLITANO. Well, in reality, that is what happens because one of the things we have been very successful at in terms of disaster management is when we see a disaster coming—a hurricane, flooding, a weather system like an Irene, for example—is to pre-deploy resources and pre-declare disaster before the disaster even hits. It allows us to put, as I like to say, speed and mass on target.

Mr. MARINO. Right. Thank you.

I yield back.

Mr. GALLEGLY. The time of the gentleman is expired.

At this point, I am going to yield myself 5 minutes in the—in the sequence that the Chairman had listed the speakers.

I, first of all, apologize for coming in a little late. I have been in a classified briefing for an hour and a half this morning on some national security things or I would have been here. And I certainly want to associate myself with a couple of things that my good friend from Pennsylvania, Mr. Marino, alluded to.

You have a very tough job. We all recognize that. And there are some very tough issues we are all dealing with, and I don't want to make your job more complicated and I think when I finish here, you will accept the fact that I have not done that.

When I walked in, Ms. Chu from California, my good friend and colleague, was talking about the number of precious dollars we

have to do the jobs that we have to deal with. As Chairman of the Immigration Subcommittee of this Committee, I have been working on immigration issues for 25 years and it seems to me that there are some issues that still boggle my mind how we are dealing with them.

One, of course, is the issue, and there is not a simple answer to it and it can be spun any number of ways, but at a time when we have the millions and millions of people unemployed, that the President of the United States would put out an order to put on hold approximately 300,000 deportation—people who are in the actual deportation process—and there have been millions and millions of dollars prosecuting these.

Ms. NAPOLITANO. Representative, that is not exactly what happened, but go ahead.

Mr. GALLEGLY. Okay. Well, for the sake of—of—of brevity here I will—I will let you have some time and set the record straight.

But however many they are we will set aside for a second. Are you aware of the earned income tax credit program or refunds?

Ms. NAPOLITANO. Yes.

Mr. GALLEGLY. These are where individuals earn some money but not quite enough money to pay any income tax——

Ms. NAPOLITANO. It's a refundable tax credit.

Mr. GALLEGLY [continuing]. And then at the end of the year they are eligible for a tax refund even though they paid no taxes.

Are you also aware that last year there were 2.3 million people illegally working in this country? This is per the Obama Treasury Department's records—2.3 million people illegally working in this country that received over $4 billion in tax refunds, and this is a 4 percent increase over what illegal immigrants were receiving in tax refunds after paying no taxes over the past 5 years.

Now, this is a matter of the record. I am not going to ask you to respond to that. However, you may or may not know the answer to this and if you don't know the answer to this I would like to see if you could get me the answer.

Of the 300,000 or whatever this magic number is of people that are in the process of being deported, how many of those have received earned—these tax refunds? And also, of those that have received tax refunds, how many have any form of a criminal record?

Ms. NAPOLITANO. Well, first of all, I don't know the answer right off the top of my head, as you might anticipate, but the case-by-case review of the—of the cases ongoing is designed to make sure that we are moving priority cases through the detained docket to removal from the country. Those that have a criminal record are those that fit within the priority category.

So what we are trying to do is clear the docket. Remember, the docket is setting cases in 2014 and 2015. So this is a docket that is really backlogged.

Mr. GALLEGLY. Oh, I know—I know. Some of these cases that have been pending for five, 6 years——

Ms. NAPOLITANO. Indeed.

Mr. GALLEGLY [continuing]. With just one—one——

Ms. NAPOLITANO. Continuance after another——

Mr. GALLEGLY. Just one extension or continuance after another——

Ms. NAPOLITANO. That is——

Mr. GALLEGLY [continuing]. Some arbitrarily and capriciously, in my opinion——

Ms. NAPOLITANO. Right.

Mr. GALLEGLY. With the hopes that one day amnesty will solve all these problems and these cases will disappear.

Ms. NAPOLITANO. Well, I think what we are trying to do is reprioritize the cases that are in the system so that the most serious ones go first.

Mr. GALLEGLY. Well, this gets back to the issue of—of what constitutes criminal and this—this—this prioritization is important. Is three drunk-driving arrests considered a criminal? Is it robbery? Is it assault? Is it burglary?

How—how does that—you know, and maybe you could just give us some kind of a written assessment of how these priorities work. Because sometime when someone has been arrested at three drunk-driving arrests and then on the fourth time they kill somebody, we have case after case after case of these where they are still living and they have been in the deportation process.

Ms. NAPOLITANO. I—I—I agree with you. I think those—those kinds of cases are the ones we want to put into detention and removal. I will be happy to describe for you level one, two and three and how that works.

Mr. GALLEGLY. That—you want to just send that to the Committee in writing for me or you want to try to do it now?

Ms. NAPOLITANO. We can—we can provide—I think we have provided a briefing to staff already but we will get you something.

Mr. GALLEGLY. And if you would, for my benefit and the Committee's benefit, send me an assessment—it may take a little time to put these together—of—of the number of people that have received income tax—this $4-plus billion in the last year—how many of those individuals have actually had a criminal record. To me, a criminal record is being put in jail for drunk driving.

Ms. NAPOLITANO. Okay.

Mr. GALLEGLY. Okay.

Ms. NAPOLITANO. And if you could supply my staff with the Treasury report to which you are referring so that we can take a look at it, that would be helpful.

Mr. GALLEGLY. We will be happy to get that to the appropriate person on your staff.

I do appreciate the job you are doing. Don't always agree with everything you are doing but I do understand it is complicated and I hope that we can work together for the sake of the country.

Ms. NAPOLITANO. Indeed.

Mr. GALLEGLY. Mr. Jordan?

Mr. FORBES. Well, I think you meant me.

But Madam Secretary, good news is I am last up for the——

Mr. GALLEGLY. Randy Forbes, I am sorry. I didn't mean to slander you.

Mr. FORBES. That is—that is okay. That is okay. [Laughter.]

I wouldn't mind being Jim Jordan.

Madam Secretary, I want to just continue, if you don't mind, with the discussion of what some people call administrative am-

nesty and I realize you call prosecutorial discretion and, as a courtesy, I will call it prosecutorial discretion.

We talked about the fact you have limited resources but the reality is every prosecutor has limited resources. So that doesn't justify bad policies if they happen to be bad policies.

I want to come back on some of the items in the memo and kind of elaborate on what Mr. Marino was talking about a little bit.

Do you know of any situation where the violation of law a prosecutor would be correct in discriminating by prosecuting more people who were uneducated or had less education than those who had more education?

Ms. NAPOLITANO. Educational attainment in and of itself is—is—in an isolated—as an isolated factor is—is not a prosecutorial issue in that sense.

Mr. FORBES. You talked about we should be prosecuting more employers perhaps, I think. Is that a fair representation?

Ms. NAPOLITANO. That is—and auditing more and debarring more and finding more. That is correct.

Mr. FORBES. Would there be a situation where you think a prosecutor would ever be justified in discriminating against employers who had less education by prosecuting them more than by those who had more education?

Ms. NAPOLITANO. I think the things we look at are employers who are intentionally and repeatedly violating immigration law.

Mr. FORBES. That is not my question. Madam Secretary, my question——

Ms. NAPOLITANO. It is an impossible question to answer.

Mr. FORBES. Well, the reason I say it is one of the——

Ms. NAPOLITANO. Yeah. You obviously have a situation in mind.

Mr. FORBES. I do.

Ms. NAPOLITANO. Why don't you just give me the situation?

Mr. FORBES. Well, one of the criteria you have in your prosecutorial discretion is to look at persons who are pursuing education in the United States.

So, effectively, by those people who couldn't afford to pursue that education, who might be undereducated or less educated, you are having a discrimination against them. The second——

Ms. NAPOLITANO. Well, I would—I would disagree and that is why I say it is important——

Mr. FORBES. Well, I am just looking——

Ms. NAPOLITANO [continuing]. It is important to look at factors all together in context.

Mr. FORBES. I am looking at the wording, Madam Secretary.

Ms. NAPOLITANO. That is what a case-by-case review means.

Mr. FORBES. The other thing I would like to look at is this. You have got one of your criteria persons whose spouse are pregnant. Would there ever be another situation where someone who had violated the law you would think a prosecutor could prosecute more individuals who were unmarried or perhaps in same-sex marriages and therefore didn't have a spouse that was pregnant?

Is there ever a situation where that would be justified?

Ms. NAPOLITANO. I think the prosecutorial discretion memo speaks for itself. It lists the categories. There are things that can

be taken into context by trained agents, by trained attorneys, looking at all of the—all of the facts.

Mr. FORBES. Madam Secretary, I am simply asking you is there any other law to which you would allow a prosecutor to say, if you have a pregnant spouse we are going to be less likely to prosecute you than if you don't have a pregnant spouse?

Ms. NAPOLITANO. You know, I think in being a former U.S. Attorney and attorney general and very familiar with county attorneys and district attorneys there are always situations where humane situations are taken into account.

Mr. FORBES. Madam Secretary, are you telling me that if you have an employer that you want to go after that you think a prosecutor should be able to prosecute those individuals who are unmarried or perhaps do not have spouses that are pregnant more than those who have a pregnant spouse?

Ms. NAPOLITANO. You know, Representative, I just can't answer the question as you phrased it.

Mr. FORBES. Madam Secretary, in all due respect to you, these are your policies that you have written or approved from your department, and what you have said in here is a prosecutor can discriminate in favor of people who have more education when you are talking about whether you are going to prosecute them for being in here illegally.

But there is no crime anywhere where you would justify prosecutors saying, we are going to prosecute people with less education more than we do with more education. So it is a bad policy.

There is no policy—there is no situation where you would look at an employer and say, well, if you have got a pregnant spouse we are not going to prosecute you for violating the immigration laws less than we prosecute somebody who might not have a pregnant spouse.

And then when you look at the situation on somebody who has a spouse that has an illness, there is no situation that you can suggest to me where any agency in the country has said that you ought to be able to have prosecutorial discretion on somebody that has violated the law in case they have a spouse that might have an illness.

And what I am going to ask you is give me the examples, if you can, of other such situations where prosecutorial discretion is there.

Ms. NAPOLITANO. Prosecutorial discretion is always there. There are always factors that are taken into account. And if I may finish, I think the way you have posited the question is determined to reach a particular result, and I just cannot answer it the way you have posited it.

Mr. FORBES. Madam Secretary, in all due respect, you just don't want to answer the question because they are the policies you wrote. So, what I am going to ask you is this, the same way the Chairman did.

Will you give me in writing a single situation where any agency in this country has given to their prosecutors a situation where they suggest that they use prosecutorial discretion and they use one of these criteria—either, one, you should prosecute less if somebody has an education, or that you should prosecute them less if

their spouse—they have a spouse that is pregnant, or you should prosecute them less if they have a spouse who is ill?

You can't say that here, I understand, because you don't know it, and the reason you don't know it is because it doesn't exist. But if you would go back and tell me, in writing, if it exists anywhere in the country. And Madam Secretary, it doesn't. And if it doesn't, then you ought to look at your policies and say maybe your policies aren't appropriate.

Mr. Chairman, with that, I yield back.

Mr. GALLEGLY. The time of the gentleman has expired.

We have no further requests. It has been a long morning. You have been under the gun for almost three and a half hours now. I thank you for your testimony and I would like to thank all the Members that participated. I will allow, without objection, all Members to have 5 days to submit additional written questions for the witness or additional material for the record.

And with that, the full Committee stands adjourned.

Ms. NAPOLITANO. Thank you, Mr. Chairman.

[Whereupon, at 1:16 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

LAMAR S. SMITH, Texas
CHAIRMAN

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona
MARK AMODEI, Nevada

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225-3951
http://www.house.gov/judiciary

JOHN CONYERS, JR., Michigan
RANKING MEMBER

HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO R. PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
(Vacancy)

January 11, 2012

The Honorable Janet Napolitano
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Napolitano,

The Judiciary Committee held a hearing on "Oversight of the Department of Homeland Security" on Wednesday, October 26, 2011 at 10:00 a.m. in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers to Alicia Church at alicia.church@mail.house.gov. If you have any further questions or concerns, please contact Crystal Jezierski, Chief Oversight and Investigations Counsel, at crystal.jezierski@mail.house.gov.

Thank you again for your participation in the hearing.

Sincerely,

Lamar Smith

Lamar Smith
Chairman

Question#:	1
Topic:	inspections
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: On January 14, 2010, CBP pulled over a vehicle in Columbus, NM attempting to cross the border. Eight weapons were in the vehicle, three of which were bought by known straw purchaser Jaime Avila. CBP failed to fully trace these weapons. Two days later, Jaime Avila bought the weapons that were later recovered at the murder scene of CBP Agent Brian Terry.

Are you aware of this incident?

Response: Yes, I am aware of this incident. My understanding is that on this date Border Patrol agents from U.S. Customs and Border Protection (CBP) conducted a traffic stop of two individuals and found weapons in the vehicle. CBP conducted database searches on the individuals and the weapons found in their possession. CBP found no indication that the weapons had been purchased illegally, were in the individuals' possession illegally, or were being smuggled into Mexico. Therefore the agents had no legal basis to seize the weapons or arrest the individuals and they were released.

Question: Please describe your reaction to learning that weapons purchased by Jaime Avila were not traced just two days before he purchased weapons that may have killed Brian Terry.

Response: My understanding is that the weapons were traced pursuant to database searches conducted on them and those searches turned up no legal basis to arrest the individuals who were carrying the weapons at the time of their stop by CBP.

Question: As a result of this incident, or any other similar incident, has CBP put in place new regulations pertaining to weapons tracing when firearms are recovered in vehicles attempting to cross the border?

Response: CBP has not, as a result of this incident, put in place any new regulations pertaining to weapons tracing when firearms are recovered in vehicles attempting to cross the border. However, CBP is working to ensure that all firearms seizures are submitted to eTrace.

Question: Please identify a member of the Department's staff who can provide additional information about this January 14, 2010 incident.

Question#:	1
Topic:	inspections
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Response: Please contact DHS Office of Legislative Affairs and we will identify such staff.

Question#:	2
Topic:	weapons
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: When CBP stops vehicles attempting to cross into Mexico and observes weapons in the vehicle:

What steps does CBP make to determine whether those weapons have been acquired legally?

Response: As part of its efforts to interdict firearms being smuggled into Mexico, CBP officers exercise their full border search authority to interview and inspect travelers, cargo, or conveyances that have demonstrated the intent to depart the United States. When CBP officers discover firearms being smuggled into Mexico, the firearms are seized, regardless of whether they were acquired legally or not. At the time of seizure, CBP officers query in TECS the serial numbers of all firearms seized to determine if the firearms are stolen.

The person in possession of the firearms may be charged and prosecuted by the United States Attorney's Office for attempted smuggling of firearms. If the firearms were reported as stolen, additional charges could be filed against the person by the USAO.

CBP notifies investigators at U.S. Immigration and Customs Enforcement (ICE)/Homeland Security Investigations (HSI) of all firearms seizures. Currently, for those cases that the United States Attorney's Office accepts prosecution, ICE personnel submit seized firearms information into the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) eTrace system. The eTrace submission apprises the ATF of the incident and provides a point of contact for the ATF should they have investigative questions or concerns. CBP is working to establish an internal capability to enter all firearms seizures into eTrace.

Question: Does CBP run traces on these weapons? If so, on what system does CBP run traces?

Response: At the time of seizure, CBP queries the serial numbers of firearms in TECS, a law enforcement system used by over 20 Federal agencies, to determine if the firearms are stolen. CBP is currently working on implementing a policy that all seized weapons are submitted through eTrace.

Question: Under what circumstances would CBP contact ATF pertaining to weapons seized, either temporarily or permanently, from these vehicles?

Question#:	2
Topic:	weapons
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Response: CBP notifies ICE/HSI of all firearms seizures. Currently, for those cases that the United States Attorney's Office accepts prosecution, ICE personnel submit seized firearms information into the ATF's eTrace system. The eTrace submission apprises the ATF of the incident and provides a point of contact for the ATF should they have investigative questions or concerns. CBP is working to establish an internal capability to enter all firearms seizures into eTrace.

ICE/HSI would coordinate investigations, as deemed appropriate, with the ATF as to whether the firearms were acquired legally or not.

Question: What types of inspections occur at the border for vehicles and individuals traveling south into Mexico?

Response: In March of 2009, CBP established the first sustained outbound inspection process along the Southwest Border (SWB). Although we do not have the resources to screen 100 percent of the outbound traffic, this presence provides CBP with the flexibility to select for inspection those travelers that are of interest or have been identified as being high risk, while also permitting the flow of legitimate trade and travel.

Question: In light of the problem of guns being smuggled south to Mexico, have there been discussions about increasing or enhancing southbound inspections? If so, with whom have these discussions taken place?

Response: In March of 2009, Secretary of Homeland Security Napolitano announced the Southwest Border (SWB) Strategy in support of the President's Southwest Border Initiative a significant part of which was the first-ever initation of regular outbound inspections.

The Southwest Border Strategy was designed to support three goals: reduce movement of contraband across the border, support Mexico's campaign to crack down on drug cartels in Mexico, and guard against the spillover of violent crime into the United States. CBP is working within the scope of the strategy to secure our borders and disrupt/dismantle criminal enterprises by seizing illegal firearms shipments that are used to fuel border violence and intimidation, depriving the cartels of the illicit proceeds that support their violent and unlawful activities, and arresting members or associates of these organizations.

To achieve these goals, CBP conducts southbound operations by:

Question#:	2
Topic:	weapons
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

- Deploying personnel and canine teams
  - CBP's outbound operations along the SWB are conducted by approximately 200 permanently assigned CBP officers and 116 Border Patrol agents. Additionally, CBP officers have been temporarily detailed over a period of time to Arizona to support the Alliance to Combat Transnational Threats (ACTT) operations. The deployment of these additional CBP officers to Arizona permits CBP to conduct 24/7 outbound enforcement operations in Arizona, helping to mitigate the threat posed by violent criminal enterprises working in these areas. Further, CBP has cross-designated officers from numerous state, local, and tribal law enforcement agencies to work alongside CBP in conducting outbound enforcement actions.
  - Prior to March 2009, there were only five permanently assigned currency/firearms detector dogs deployed to our SWB ports of entry. The SWB presently has 34 permanently assigned currency/firearm detector dog teams deployed to our ports of entry.

- Implementing infrastructure improvements to support outbound operations, including temporary facilities for inspections, deployment of license plate readers to identify high risk conveyances, and deployment of handheld wireless technology to detect and identify high risk travelers
  - CBP has initiated efforts to provide temporary/relocatable infrastructure at crossings along the SWB to improve outbound operations at priority ports of entry. The infrastructure improvements include canopies for conducting operations under inclement weather; improved lighting for performing night operations; traffic control devices for officer safety; connectivity to CBP automated databases; and port runner prevention devices for those attempting to flee prosecution. Construction is expected to commence in June 2012 and be completed at 18 SWB crossings in calendar year 2013.
  - CBP has implemented an outbound strategy which includes selectively identifying, targeting, controlling and examining travelers, conveyances, and cargo leaving the United States. License Plate Readers (LPR), a fundamental component of this strategy, provide advanced and tactical information to CBP officers conducting outbound operations and have been deployed to all 110 outbound lanes on the SWB.
  - To support outbound inspections, CBP has deployed handheld wireless technology to all 45 outbound crossings along the SWB. The wireless technology includes laptops and handheld devices which enhance CBP's ability to conduct queries for National Crime Information Center (NCIC)

Question#:	2
Topic:	weapons
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

fugitives, previous violators, subjects of interest in TECS, and lookouts that may be created in CBP's Automated Targeting Systems (ATS).

- Improving collaboration with Mexico and other law enforcement agencies
  - CBP conducts joint, coordinated, bi-national intensified border operations with the Government of Mexico (GOM) on a quarterly basis at border locations mutually determined by both countries. By coordinating efforts, the bi-national intensified border enforcement efforts maximize the number of locations covered and the number of inspections conducted; reduce duplication of effort; maintain control of legitimate trade and travel; and reduce the possibility that travelers would be subjected to dual inspection.
  - CBP partners with ICE to support the multi-agency Border Enforcement Security Task Forces (BEST) established to identify, disrupt, and dismantle criminal organizations posing a significant threat to border security. CBP personnel are supporting BEST at 11 established SWB sites.
  - CBP conducts 100 percent scanning of outbound rail cars at all eight railroad crossings on the U.S.-Mexico border. Notification protocols have been developed with Mexican Customs for the inspection of suspect rail cars, since the cars themselves are on Mexican soil immediately after the U.S. Non-Intrusive Inspection technology scan.

- Improving targeting capabilities
  - The National Targeting Center – Cargo (NTC-C) conducts research on weapons shipments exported from select U.S. manufacturers. Through the NTC-C, such shipments are identified and examined at the U.S. port of export to verify contents and quantities. Confirmation is obtained from Mexican authorities regarding the shipments, orders and expected delivery. These efforts help ensure the legitimacy of the shipments and reduce the possibility of diversion.

- Deploying personnel to work at the El Paso Intelligence Center's (EPIC) Gun Desk.
  - CBP personnel deployed to EPIC's Gun Desk receive compiled weapons seizure data, utilized to conduct interagency post-seizure analysis.

Since the Southwest Border Initiative was implemented, CBP has strengthened the security of the SWB. This approach to border security, along with the tireless efforts of our officers and agents in the field, has achieved historic decreases in illegal immigration;

Question#:	2
Topic:	weapons
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

unprecedented increases in the seizure of drugs, weapons, and contraband; and strengthened and increased partnerships with Mexico on trade and travel.

Question#:	3
Topic:	Fast and Furious 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: Have you asked anybody on your staff to look into what role DHS agents played in Fast and Furious?

Response: Yes. Last March, I asked ICE Director John Morton and then-CBP Commissioner Alan Bersin whether they were aware of CBP or ICE involvement in the Operation Fast and Furious investigation and whether they had examined their agencies' role. Both assured me that their agencies were not aware of any Fast and Furious strategy to intentionally allow guns to cross the border illegally. Since then, I directed the ICE Director and the CBP Commissioner to stay on top of this matter, cooperate appropriately with Congress, and review their existing policies and procedures, implementing any necessary changes to prevent an occurrence similar to what is alleged to have happened in Operation Fast and Furious.

Question: Who from the Department can brief my staff about actions taken by DHS leadership to examine the Department's role in Fast and Furious?

Response: Should you wish such a briefing, please contact Nelson Peacock, the Assistant Secretary for Legislative Affairs, and he or his staff will arrange for you to be briefed by the appropriate person.

Question#:	4
Topic:	Fast and Furious 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: You testified that Fast and Furious was an ATF Operation and disclaimed any role for your Department save for a field agent who was "assigned to a task force for purposes in the wake of the two ICE matters that were resolved by the AUSA to be within the context of ATF." In fact, an ICE agent was the co-case agent with an ATF agent during Operation Fast and Furious. This is a much more significant role than simply having an agent on the task force. As such, what investigative steps have you or your staff conducted to determine whether your agents in the field participated in firearms trafficking investigations?

Response: In January 2010, a U.S. Immigration and Customs Enforcement's (ICE), Homeland Security Investigations (HSI), special agent was assigned to work with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in Phoenix on the ATF Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force to facilitate de-confliction with HSI in ATF's ongoing investigation, titled "Operation Fast and Furious." Other agencies participating during the course of the investigation were the United States Attorneys' Office, Drug Enforcement Administration, Internal Revenue Service, the Phoenix Police Department, and the U.S. Marshals Service; however, as HSI was the only agency that assigned a full-time member to the ATF-led OCDETF Operation, the HSI special agent was listed as a "co-case agent" in part to facilitate the OCDETF approval, which prefers to list multiple agencies as "case agents," when possible, to reflect the spirit of a "task force." The HSI special agent was not involved in the investigative decision-making.

HSI offices participate in firearms trafficking investigations on a daily basis. To this end, HSI works with federal, state, and local law enforcement agencies in every field office across the country. As it is important to maintain good working relationships with our law enforcement partners, ICE HSI has hundreds of agents around the country assigned to investigations being handled under the task force concept. These task force investigations are run by the lead agency; participating agencies have no role in determining investigative strategy. Decisions to participate in any such task force are made at the local level by the Special Agent in Charge or his or her designee.

Question#:	5
Topic:	Fast and Furious 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: You testified that it was not DHS policy to allow guns to go south into Mexico if they were involved in Fast and Furious. Yet, guns from Fast and Furious did go south, on multiple occasions, because ATF told ICE to stand down. How do you reconcile these two contradictory policies?

Why did you and your staff allow ICE to subordinate its responsibility to prevent guns from entering Mexico to ATF's apparent desire to allow guns to cross the border as part of an obviously reckless program?

Response: U.S. Immigration and Customs Enforcement (ICE) did not subordinate its responsibility to prevent guns from entering Mexico. It is ICE policy to seize all weapons that are the subject of attempted unlawful export out of the United States. On two occasions pursuant to routine federal law enforcement information sharing and deconfliction procedures, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) requested that ICE Homeland Security Investigations (HSI) cease further investigation of preliminary investigative leads into weapons cases due to the possibility of conflict with an ongoing ATF investigation, which HSI later learned was the Fast and Furious investigation. These requests occurred before HSI joined the OCDETF case.

Based on ATF's request for HSI not to pursue investigative leads, HSI requested a meeting with an ATF Assistant Special Agent in Charge (ASAC) and the Assistant United States Attorney (AUSA) responsible for the prosecution of the ATF cases. At this meeting, the AUSA and ATF ASAC determined that the ATF investigations would take priority and asked ICE not to interfere with the ATF investigation. Further, the ATF ASAC and the AUSA requested that ICE coordinate with ATF before taking any enforcement actions against targets that may be associated with the ongoing ATF investigation. The ATF ASAC and the AUSA explained that such coordination was necessary to ensure that ATF's investigative efforts would not be damaged. HSI was asked not to interfere with the ATF-led investigation and to coordinate any enforcement action with ATF concerning any related targets. ATF and the United States Attorney's Office advised HSI that such coordination was necessary to ensure that ATF's investigative efforts would not be damaged.

During the time in which HSI had a Special Agent on the task force, he was advised by ATF of only one instance of a possible weapons smuggling attempt. On that occasion, HSI coordinated with U.S. Customs and Border Protection, and the Border Patrol encountered the individual and made the interdiction and arrest. This enforcement action,

Question#:	5
Topic:	Fast and Furious 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

which took place on the Tohono O'odham Nation Reservation near the border, resulted in the seizure of more than 40 weapons.

Additionally, as this was an ATF-led investigation, with full support from the United States Attorney's Office, the HSI Special Agent was not involved in the management, methodology, or the overall strategy developed during the pendency of the Fast and Furious investigation.

Question#:	6
Topic:	Fast and Furious 4
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: ICE Agent Layne France was a co-case agent for the OCDETF Fast and Furious case. Currently, the Justice Department's Inspector General is investigating the program. Shouldn't DHS's Inspector General also investigate the role played by your department given that Agent France was a co-case agent on the task force which allowed these guns to be walked?

Response: On February 21, Chairman Michael McCaul of the Subcommittee on Oversight, Investigations and Management of the House Committee on Homeland Security, asked DHS's Inspector General to investigate the Department's role in Fast and Furious. The Inspector General has begun this review and DHS is cooperating with it.

Question: Do you have any plans to ask your Inspector General to investigate ICE's role in the task force?

Response: Please see the response directly above this one.

Question#:	7
Topic:	Fast and Furious 5
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: We have recently learned more information about the night that Brian Terry was killed. We have begun the process of reaching out to some of the agents who were at the scene. Will you pledge to assist Congress in reaching out to those agents who were at the scene? If so, who is the best person in your office to contact to facilitate these discussions?

Response: We will cooperate, consistent with existing law enforcement needs and other obligations and policies. Please contact Michael Yeager, Assistant Commissioner for Congressional Affairs at U.S. Customs and Border Protection. He may be reached at (202) 344-1760.

Question: During a trip to Arizona shortly after Brian Terry's death, you stated that the forensics had not yet been done on the weapons recovered at Agent Terry's murder scene. Why did you say that when the trace on the weapons had in fact been performed the very day that Agent Terry was killed?

Response: I was not aware that the trace had already been performed when I made that statement.

Question: Have you ever spoken to the Attorney General about Agent Terry's murder? If so, how often, and what were the details of those conversations?

Response: No, I have not.

Question#:	8
Topic:	Fast and Furious 6
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: Have you discussed Agent Terry's murder with any White House official, including the President?

Response: No, I have not.

Question: Over the past year, since Agent Terry's murder, you testified that you have never spoken to the Attorney General about Fast and Furious. Given the involvement of ICE in the OCDETF Task Force and the murder of Agent Terry, why have you never spoken to the Attorney General about Fast and Furious?

Response: There are several reviews being conducted relating to Fast and Furious, including reviews undertaken by both the DOJ and DHS Offices of the Inspector General, in addition to the investigation undertaken by Congress. I have felt it is best to allow these reviews to reach their conclusions without interference.

Question: How often do you and the Attorney General converse? How many times have you and the Attorney General spoken since Agent Terry's death on December 15, 2010?

Response: The frequency of my conversations with the Attorney General varies. I could not recite with precision the number of times such conversations have actually taken place in that period. However, a search of my records indicates we have spoken at least five times by the phone since December 15, 2010, in addition to two meetings at which only our two Departments were represented. Finally, we have both attended a number of meetings at which principals from other agencies were also present, where I have occasionally spoken to the Attorney General.

Question#:	9
Topic:	Fast and Furious 7
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: You testified that you learned that gunwalking was a Fast and Furious investigative technique sometime between December 15, 2010 and the early spring of 2011.

Please narrow down this approximate date of when you learned this information.

How did you come to learn this information? Who told you?

Response: I believe I learned of allegations that ATF may have allowed guns to be delivered into Mexico sometime shortly before March 7, 2011. To the best of my recollection, I learned of this allegation either from media reports or in conversation with my staff, who I believe, had themselves seen it in media reports.

Question#:	10
Topic:	Fast and Furious 8
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: You testified that the Department of Justice must approve Title III wiretap intercept applications. Therefore, if there were Title III applications approved in Operation Fast and Furious, must someone at the Department of Justice have known about them?

Response: I cannot speak to the Department of Justice's knowledge and what occurred in the Operation Fast and Furious investigation in this regard. However, as I have testified, during my time as a United States Attorney, it was common practice for Title III applications to be approved by the Department of Justice.

Question: You testified there were problems with Fast and Furious, but would not second-guess the program since an Inspector General is investigating the program. Given that the Inspector General's investigation is likely going to continue well into next year, do you agree that you should become aware of, and make judgments about, the problems caused by Fast and Furious to ensure that the same mistakes are not made while you wait for the Inspector General's report?

Response: I agree that I should do what I can to become aware of DHS's involvement in the Operation Fast and Furious investigation and do what I can to ensure that problems surrounding the Fast and Furious investigation are not repeated. As noted, last March, I asked ICE Director John Morton and then-CBP Commissioner Alan Bersin whether they were aware of CBP or ICE involvement in the Operation Fast and Furious investigation and whether they had examined their agencies' role. Both assured me that their agencies were not aware of any alleged Fast and Furious strategy to intentionally allow guns to cross the border illegally. Since that initial meeting, I directed the ICE Director and the CBP Commissioner to stay on top of this matter, cooperate appropriately with Congress, and review their existing policies and procedures, implementing any necessary changes to prevent an occurrence similar to what is alleged to have happened in Operation Fast and Furious. I do believe, however, that it would be inappropriate to reach any final conclusions in this matter until both the DOJ IG and the DHS IG have completed their reviews and reported their findings.

Question#:	11
Topic:	Fast and Furious 9
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: How many guns from Fast and Furious were seized at the border?

Response: To our knowledge, as a result of three enforcement actions where ICE had direct involvement, a combined total of 53 assault rifles, 68 high caliber magazines, and 74 rounds of military-grade ammunition linked to the ATF-led Fast and Furious investigation were seized at or near the border. This includes one enforcement action on the Tohono O'odham Nation Reservation near the border that resulted in the seizure of more than 40 weapons.

Question: How many guns from Fast and Furious were detected crossing the border?

Response: To our knowledge, there were no weapons detected crossing the border linked to the ATF-led Fast and Furious investigation or otherwise. It is ICE and CBP policy to seize all weapons that are the subject of attempted unlawful export out of the United States.

Question: Knowing that an ICE agent was co-case agent on Fast and Furious, do you still stand by your testimony that "Fast and Furious was an ATF Operation"?

Response: In January 2010, a U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) special agent was assigned to work with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Phoenix on the ATF Organized Crime Drug Enforcement Task Force (OCDETF) Strike Force to facilitate de-confliction with HSI in ATF's ongoing investigation, titled "Operation Fast and Furious." Other agencies participating during the course of the investigation were the United States Attorneys' Office, Drug Enforcement Administration, Internal Revenue Service, the Phoenix Police Department, and the U.S. Marshals Service; however, as HSI was the only agency that assigned a full-time member to the ATF-led OCDETF Operation, the HSI special agent was listed as a "co-case agent" in part to facilitate the OCDETF approval, which prefers to list multiple agencies as "case agents," when possible, to reflect the spirit of a "task force." The HSI special agent was not involved in the investigative decision-making.

HSI offices participate in firearms trafficking investigations on a daily basis. To this end, HSI works with federal, state, and local law enforcement agencies in every field office across the country. As it is important to maintain good working relationships with our law enforcement partners, ICE HSI has hundreds of agents around the country assigned to investigations being handled under the task force concept. These task force

Question#:	11
Topic:	Fast and Furious 9
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

investigations are run by the lead agency; participating agencies have no role in determining investigative strategy.

Question#:	12
Topic:	firearms 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: Have you ever, in your capacity as a state and federal prosecutor, approved of the investigative technique called gunwalking?

If yes, under what circumstances did you approve of this technique?

If no, what would be the reasons why you would not authorize gunwalking as a law enforcement technique?

Response: No, I have not ever knowingly approved an investigative technique that would intentionally allow the illegal transport or export of firearms across the borders of the United States.

Question#:	13
Topic:	firearms 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: The Office of the Deputy Attorney General in the Department of Justice issued a corrective directive in March 2011 stating that gunwalking is an unacceptable tactic and will not occur in any future investigations. Have you issued a similar directive to ensure that no gunwalking takes place within DHS or among any of its components?

Response: It is, and has been during my time as Secretary, the policy of the Department that firearms will not be permitted to cross the border illegally. As such, no corrective directive is necessary. However, in an abundance of caution, I asked the ICE Director and CBP Commissioner to review all existing policies to ensure that they were sufficiently clear to prevent conduct similar to what has been alleged in Operation Fast and Furious. I have also reemphasized to the Department's senior leaders the need to be vigilant in enforcing our policies in this regard.

Question#:	14
Topic:	firearms 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: On June 28, 2010, officials from the White House, led by John Brennan, met with Arizona Governor Jan Brewer and other officials, including CBP Commissioner Alan Bersin, ICE Director John Morton, and your former chief of staff Dennis Burke to discuss issues relating to the security of the Southwest Border.

How frequently did such meetings occur?

Response: This was the only such meeting.

Question: What familiarity do you have with the June 28, 2010 meeting?

Response: I generally recall the meeting, but did not attend. My understanding was that the meeting was to be focused on the Administration's decision to deploy the National Guard to the Southwest Border.

Question: Did gunwalking come up during that meeting?

Response: As I was not at the meeting, I do not know if the issue of gunwalking arose.

Question: Are you aware of any similar meetings between other White House officials relating to gun trafficking?

Response: I am not aware of any similar meetings.

Question: Who suggested these meetings – was this a White House initiative? How many other contacts with the White House have you had regarding border security issues?

Response: I do not recall specifically who suggested the meeting with Governor Brewer. Over the past three and a half years, I have had innumerable conversations with the White House about border security.

Question: Are you familiar with DOJ's 2009 cartel-based strategy document? Did this document come up at any of these meetings?

Response: I do not specifically recall DOJ's 2009 cartel-based strategy document and I cannot recall if it was raised in any meetings.

Question#:	15
Topic:	firearms 4
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Darrell Issa
Committee:	JUDICIARY (HOUSE)

Question: Are southwest border weapons trafficking cases a high priority to DHS?

Response: Yes, DHS considers weapons trafficking cases along the Southwest Border to be one of its highest priorities.

Question: When you receive weekly updates on important case developments sent directly to your attention, do you actually read these updates?

Response: Yes, as a general matter, I do read these updates, though on occasion I do not read all of them. My staff also monitors these case development updates.

Question: If it is the case that your staff reads weekly updates on your behalf, are they tasked with reporting to you important developments?

Response: In all circumstances, if my staff becomes aware of important developments that merit my attention, they are tasked with updating me.

Question: Are there consequences if your staff fails to alert you to important case developments?

Response: If I become aware of an instance where my staff has failed to alert me to an important case development, I take appropriate action.

Question#:	16
Topic:	Visa Waiver Program 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: The Visa Waiver Program has been beneficial to the U.S. in several ways. However, as a cosponsor of H.R. 959, the Secure Travel and Counterterrorism Partnership Program Act of 2011, I believe we need measures to enhance counter-terrorism cooperation with the United States and that these participating countries should maintain a low overstay rate among their citizens that travel to the U.S.

Secretary, is DHS currently seriously working with any countries to add them to the visa waiver program?

It is my understanding that Taiwan has made great strides in recent years to meet the eligibility requirements for the US Visa Waiver Program.

Can you please compare Taiwan to other potential countries and please give us a timeline on when they could be expected to be accepted into the program?

Response: Taiwan is currently the only VWP aspirant that meets the statutory low nonimmigrant visa refusal rate requirement and has completed the required information sharing agreements. Some interested VWP aspirants are now working towards meeting the current requirements for VWP designation.

The Department of Homeland Security, in close coordination with the American Institute in Taiwan (AIT), the Department of State, and the Department of Justice, has been engaging the authorities in Taiwan on VWP issues since October 2010, when Taiwan first met the low nonimmigrant visa refusal rate requirement for VWP eligibility. Over the past year, the authorities on Taiwan have undertaken significant efforts to improve their law enforcement and document security standards to meet the strict requirements for VWP eligibility. In addition to these measures, on December 20, 2011, the authorities on Taiwan concluded the last of the enhanced information sharing agreements to fulfill the information sharing requirement contained in section 217(c)(2)(F) of the Immigration and Nationality Act, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53. Specifically, through AIT and the Taipei Economic and Cultural Representative Office (TECRO), we concluded a bilateral Preventing and Combating Serious Crime Agreement.

Once Taiwan met these requirements, the Department of State determined that foreign policy and operational conditions warranted nominating Taiwan for VWP designation. On December 22, 2011, Secretary Clinton wrote to Secretary Napolitano to formally

Question#:	16
Topic:	Visa Waiver Program 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

nominate Taiwan for consideration for VWP designation. Following the State Department's nomination, DHS initiated a comprehensive review to determine Taiwan's suitability to participate in the VWP, as U.S. statute requires.

DHS is currently in the final stages of its rigorous examination of the Taiwan authorities' law enforcement, security, and immigration systems, as required by law prior to VWP designation. A technical team from DHS visited Taiwan in March 2012 to conduct the initial designation review. The results of that review will be consolidated with additional information from DHS and other U.S. Government agencies in the months ahead to produce the final report.

Question#:	17
Topic:	Visa Waiver Program 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Question: Can you please elaborate on why tracking overstays is a better measurement than basing membership on visa refusal rates?

Can you please explain DHS's ability to track overstay rates and how H.R. 959 could enhance counterterrorism efforts?

Response: The Administration endorses the use of overstay rates, calculated for Visa Waiver Program (VWP) and other tourist visa-based travelers (B-1/B-2 visas), as a stand-alone quantitative metric to determine a country's *continuing* designation in the VWP. For countries already in the VWP, the percentage of overstays can be regarded as an accurate indicator of the general propensity of short-term visitors from that country to remain in the United States beyond the period of admission. Overstay rates are a more objective indicator of illegal immigration risk than visa refusals because overstay rates are based on actual records regarding travelers admitted to the United States, rather than a consular officer's determination in applying Section 214 (b) of the INA that the visa applicant's social, economic and family circumstances will lead a him or her to overstay or otherwise violate the terms of his/her admission.

However, the overstay rate alone would not be a sufficient metric to measure the potential illegal immigration risk from visitors from countries seeking *initial* designation into the VWP. For countries with a high visa refusal rate, a low overstay rate may be attributed to the effectiveness of our consular officers overseas in denying visas to travel to the United States to the people most likely to overstay. The USG believes a country with a high visa refusal rate but a low overstay rate, once designated for participation in the VWP, could quickly develop a high overstay rate because higher-risk travelers previously denied a visa, or those who elected not to apply because they assumed they would not qualify, prior to VWP designation would then be free to travel to the United States. To mitigate the risk of a country's overstay rate increasing significantly after VWP designation, DHS recommends that initial designation in the VWP be subject to the *two prong requirement* of a low nonimmigrant overstay rate of no more than three percent *and* a nonimmigrant visa refusal rate of three percent or less.

As to your question regarding the tracking of overstays, DHS currently has an air exit system based on biographic data collected at all major airports. Data collected by the air carriers and submitted to DHS Customs and Border Protection's (CBP) Advanced Passenger Information System (APIS) is transmitted to the US-VISIT program, which matches the information to that contained in the Arrival/Departure Information System.

Question#:	17
Topic:	Visa Waiver Program 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve Chabot
Committee:	JUDICIARY (HOUSE)

Using this, DHS creates overstay records. Currently, all overstays are vetted for public safety and national security concerns, and DHS is conducting automated reviews of all overstays on a recurrent basis.

The introduction of the *Secure Travel and Counterterrorism Partnership Act (S.497/H.R. 959)* is an opportunity to expand the benefits of the VWP while strengthening security. Adjusting VWP designation requirements could judiciously expand the pool of eligible countries to include some strong candidates that have demonstrated a commitment to security cooperation with the United States.

The VWP is a critical tool for increasing homeland security by promoting better information sharing and strengthening international partnerships. VWP countries are required to meet strict security standards—including in passport issuance and by concluding information sharing agreements with the U.S. Government regarding known or potential terrorists and criminals. VWP countries are also required to enter into an agreement to report information on lost and stolen passports to the United States. In addition, the VWP's initial and periodic country reviews provide the U.S. Government with the opportunity to conduct broad and consequential inspections of a VWP member country's security standards and operations that the USG would not otherwise have the opportunity to conduct.

Question#:	18
Topic:	deployed
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Question: What is the sum total of the assets that the Department of Homeland Security has deployed to secure the United States southern border?

Response: To secure our nation's Southwest border, we have continued to deploy unprecedented amounts of manpower, resources, and technology, while expanding partnerships with federal, state, tribal, territorial, and local partners, as well as the Government of Mexico.

We have increased the number of Border Patrol agents nationwide from approximately 10,000 in 2004 to more than 21,000 today with nearly 18,500 agents as "boots on the ground" along the Southwest border. U.S. Customs and Border Protection has increased the number of CBP Officers and CBP Agriculture Specialists from approximately 19,500 in 2004 to nearly 24,000 today with over 6,600 along the Southwest border. Working in coordination with state and other federal agencies, we have deployed a quarter of all ICE operational personnel to the Southwest border region – the most ever – to dismantle criminal organizations along the border.

ICE has 4,604 operational staff deployed to the Southwest border. We have doubled the number of ICE operational personnel assigned to Border Enforcement Security Task Forces, which work to dismantle criminal organizations along the border. We have tripled deployments of Border Liaison Officers, who facilitate cooperation between U.S. and Mexican law enforcement authorities on investigations and enforcement operations, including drug trafficking (coordinated with the Drug Enforcement Administration). We also have increased the number of intelligence analysts working along the U.S.-Mexico border.

In addition, we have deployed dual detection canine teams as well as non-intrusive inspection systems, Mobile Surveillance Systems, Remote Video Surveillance Systems, thermal imaging systems, radiation portal monitors, and license plate readers to the Southwest border. These technologies, combined with increased manpower and infrastructure, give our personnel better awareness of the border environment so they can more quickly act to resolve potential threats or illegal activity. We also are screening southbound rail and vehicle traffic looking for the illegal weapons and cash that are helping fuel the cartel violence in Mexico. We also have completed 651 miles of fencing out of nearly 652 miles identified by Border Patrol field commanders, including 299 miles of vehicle barriers and 352 miles of pedestrian fence. Between 2009 and 2012, DHS provided more than $251 million in Operation Stonegarden funding to enhance

Question#:	18
Topic:	deployed
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

cooperation among local, tribal, territorial, state and Federal law enforcement agencies. Southwest border law enforcement agencies received over $203 million in grants through the Operation Stonegarden program – a record amount.

Our work along the border has included effective support from our partners at the Department of Defense (DOD). In addition to continuing support from DOD's Joint Task Force-North, beginning in March 2012, DOD's National Guard support to CBP began to transition from ground support to air support, essentially moving from boots on the ground to boots in the air with state of the art aerial assets equipped with the latest detection and monitoring capabilities. These aerial assets, which include both rotary and fixed-wing aircraft, supplement the CBP Office of Air and Marine aerial assets and support the Border Patrol's ability to operate in diverse environments, expand our field of vision in places with challenging terrain, and help us establish a greater visible presence from a distance, which increases deterrence.

The U.S. Coast Guard also has an integral role in our border enforcement strategy through its maritime operations at the Joint Interagency Task Force (JIATF)-South, the U.S. Southern Command entity that coordinates integrated interagency counter drug operations, the Caribbean Sea, Gulf of Mexico, and the eastern Pacific. In Fiscal Year 2011, the Coast Guard removed nearly 75 metric tons of cocaine, and more than 17 metric tons of marijuana. CBP Office of Air and Marine P-3 aircraft also have been an integral part of successful counter-narcotic missions operating in the Source and Transit Zones in coordination with JIATF-South. From Fiscal Years 2009 to 2011, DHS also seized 74 percent more currency, 41 percent more drugs, and 159 percent more weapons along the Southwest border as compared to Fiscal Years 2006 to 2008.

The results of these comprehensive and coordinated efforts are clear. Border Patrol apprehensions—a key indicator of illegal immigration—have decreased 53 percent in the last three years and are less than 20 percent of what they were at their peak. Indeed, illegal immigration attempts have not been this low since 1971. Violent crime in U.S. border communities has also remained flat or fallen over the past decade, and statistics have shown that some of the safest communities in the United States of America are along the border.

In addition to our efforts to strengthen border security, we made great strides in expediting legal trade and travel, working with local leaders to update infrastructure and reduce wait times at our Southwest border ports of entry. Along the Southwest border, new initiatives have included outbound infrastructure improvements and port hardening, which when completed, will expand our outbound inspection capabilities, enhance port security, and increase officer safety. We also have implemented Active Lane

Question#:	18
Topic:	deployed
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Management, which leverages Ready Lanes, Dedicated Commuter Lanes, and LED signage to dynamically monitor primary vehicle lanes and re-designate lanes as traffic conditions and infrastructure limitations warrant.

These efforts are not only expediting legitimate trade, they are also stopping contraband from entering and leaving the country. In Fiscal Year 2011, DHS interdicted goods representing more than $1.1 billion in Manufacturer's Suggested Retail Price. Further, the value of consumer safety seizures including pharmaceuticals totaled more than $60 million, representing a 41 percent increase over Fiscal Year 2010.

Question: What is the sum total of the assets that the Department has deployed to secure the United States northern border?

Response: Along the Northern border, we have continued to deploy technology and resources to protect the border, invest in port of entry improvements to enhance security and improve trade and travel, and deepen our already strong partnership with Canada. Over 3,800 CBP Officers and CBP Agriculture Specialists are located on the Northern Border. ICE has more than 1,600 personnel supporting the Northern border.

For instance, CBP expanded unmanned aerial surveillance coverage along the Northern border into eastern Washington, now covering 950 miles of the Northern border. In 2011, CBP Office of Air and Marine provided nearly 1,500 hours of unmanned aerial surveillance along the Northern border.

In 2011, CBP also opened the Operations Integration Center in Detroit—a multi-agency communications center for CBP, DHS, and other federal, state, local, and Canadian law enforcement agencies on the Northern border. The Operations Integration Center increases information sharing capabilities leading to seizures of drugs, money, and illegal contraband along the United States–Canada border within the Detroit Sector. The DHS Science and Technology Directorate is also evaluating new surveillance technologies for CBP in Swanton Sector, Vermont, that can operate in harsh and remote environments and use renewable energy such as solar and wind power. Sharing surveillance data with Canada to combat illegal border entries is also in progress.

We also have continued to invest heavily in infrastructure improvements at our ports of entry, including nearly $400 million in Recovery Act funds to modernize older CBP-owned facilities along our Northern border to meet post-9/11 security standards.

Similarly, ICE Special Agents conduct investigations which target illicit trade, travel, and finance along our Northern border. As an example, in response to increasingly

Question#:	18
Topic:	deployed
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

sophisticated transnational criminal organizations operating between the United States and Canada, ICE has Border Enforcement Security Task Forces (BESTs) which harness the cooperative efforts of our Federal, State, county, local, tribal, and Canadian law enforcement partners to conduct joint transnational criminal investigations. This effort has seen ICE commit extensive time and resources to those BESTs that are associated with the six Special Agent in Charge offices that have responsibility for responding to Northern border activity: Seattle, Denver, St. Paul, Detroit, Buffalo, and Boston.

ICE has also assigned liaison personnel to four Canadian regions (Ottawa, Vancouver, Toronto, and Montreal) to coordinate with law enforcement efforts within Canada as well. As part of the joint U.S.–Canadian Beyond the Border Action Plan, ICE will be incorporating best practices from existing domestic BESTs to implement "Next Generation" pilot projects with our Canadian partners to create integrated intelligence and criminal investigation teams. These teams will focus along those Northern border areas which lie between official ports of entry.

Question: What level of funding has DHS requested from Congress in each of the last 3 years?

Response: CBP is the DHS agency primarily responsible for protecting and securing America's borders to protect the United States against threats and prevent the illegal entry of inadmissible persons and contraband. The following table shows CBP appropriated funds for FY 2011 and 2012 and requested funds for FY 2013:

	FY 2011 Enacted	FY 2012 Enacted	FY 2013 Request
Securing America's Borders	9,899,700	10,163,122	9,888,065

Question: Did this level of funding take into consideration the number of illegal aliens that come to the United States each year?

Response: Yes, the President's budget request takes into consideration all relevant factors.

Question: Did this request consider the number of illegal aliens that are currently living in the United States?

Response: Yes, the President's budget request takes into consideration all relevant factors.

Question#:	19
Topic:	resources
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Question: Has the Department requested additional resources to address our nation's illegal immigration problem?

Response: The President's FY 2013 Budget requests sufficient funds to accomplish this goal and continues to strengthen ICE's mission to enforce and administer our immigration laws. The request includes $138.7 million to complete nationwide deployment of the Secure Communities program in FY 2013 and a realignment of $22 million from Secure Communities to the Criminal Alien Program in order to support increased identifications generated by the full deployment of the Secure Communities program. With continued deployment to additional jurisdictions, ICE will be able to confirm the identification of an estimated 145,000 more aliens charged or convicted of crimes in FY 2013 than in FY 2011. Also, as ICE continues working to focus on priority cases and expand the use of expedited removals, the request includes $39.9 million to expand the Alternatives to Detention program. The Department continues to be focused on smart and effective enforcement of U.S. immigration laws while streamlining and facilitating the legal immigration process.

Question: Has DHS consulted with the Department of Justice on how to strategically prosecute immigration lawbreakers?

Response: ICE is ensuring its use of civil enforcement is consistent with its focus on criminal aliens, national security threats, recent border entrants and criminal alien fugitives. One of the objectives of the process that ICE initiated to review cases for a possible exercise of prosecutorial discretion was to collect data to determine how to better allocate ICE's resources to address the processing of illegal immigration cases in the immigration courts. From December 4, 2011, through January 13, 2012, ICE collected data from specific offices, and that data is still being gathered and reviewed. Given their jurisdiction over immigration courts, ICE has communicated with the U.S. Department of Justice (DOJ) about the prosecution of illegal immigration cases as appropriate and continues to assess the data and other implementation outcomes related to this effort to improve the process of determining when an exercise of prosecutorial discretion is appropriate. ICE's recently issued guidance and long-standing authority to exercise prosecutorial discretion is part of its broader strategic efforts to optimize ICE's limited resources by prioritizing the agency's enforcement priorities, namely to promote national security, border security, public safety, and the integrity of the immigration system. ICE regularly works with DOJ to ensure its criminal investigations and

Question#:	19
Topic:	resources
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

prosecutions target transnational criminal organizations who seek to exploit our nation's borders.

Question: Does the Department have an adequate number of detention beds?

Response: In the FY 2013 budget, funding is provided for 32,800 detention beds for criminal aliens and those who fall into other priority categories including repeat immigration law violators, recent border entrants and immigration fugitives. DHS believes that the FY 2013 President's Budget requests an adequate number of detention beds to meet FY 2013 operational goals and priorities.

Question: Has the Department made a request for additional detention bed and/or facilities?

Response: In the FY 2013 budget, funding is provided for 32,800 detention beds for criminal aliens and those who fall into other priority categories including repeat immigration law violators, recent border entrants and immigration fugitives. DHS believes that the FY 2013 President's Budget requests an adequate number of detention beds to meet FY 2013 operational goals and priorities.

Question: Has DHS requested that DOJ provide more immigration judges to prosecute immigration crimes?

Response: It is important to note that immigration judges are not directly involved with prosecutions under the criminal statutes; criminal prosecutions are handled by the U.S. Attorney's Office. In removal proceedings, immigration judges determine whether an individual from a foreign country (an alien) should be allowed to enter or remain in the United States or should be removed. DHS works with DOJ concerning the appropriate number and optimal location of immigration judges identified in the FY 2013 President's Budget for DOJ.

Question#:	20
Topic:	funding
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Question: What level of funding does DHS need to achieve a 100% prosecution rate of illegal aliens along the southern border?

Response: The President's 2013 Budget requests $180.6 million for immigration and customs related legal operations under the INA. The Department of Homeland Security (DHS) defers to DOJ to respond regarding prosecutions under the criminal statutes.

Question: What level of funding does DHS need to achieve a 100% prosecution rate of illegal aliens in the entire United States?

Response: The President's 2013 Budget requests $180.6 million for immigration and customs related legal operations under the INA. DHS defers to DOJ to respond regarding prosecutions under the criminal statutes.

Question: What level of funding would you recommend DOJ request to achieve a 100% prosecution rate of illegal aliens along the southern border?

Response: DHS defers to DOJ to respond to this question.

Question: What level of funding would you recommend DOJ request to achieve a 100% prosecution rate of illegal aliens in the entire United States?

Response: DHS defers to DOJ to respond to this question.

Question: What level of funding does DHS need to achieve a 100% incarceration rate of illegal aliens along the southern border?

Response: In Fiscal Year (FY) 2011, ICE had a total detained population of 10,790 aliens along the Southwest border[1]. During this same period, ICE encountered 272,110 individuals who were placed on the non-detained docket. ICE prioritizes the detention and removal of criminal aliens, repeat immigration law violators, recent illegal entrants, and immigration fugitives who pose a risk to public safety or national security.

[1] This analysis considers the Southwest border areas of responsibility (AORs) to be San Diego, Phoenix, El Paso, San Antonio, and Houston.

Question#:	20
Topic:	funding
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

In response to this specific question, ICE has estimated the costs to detain 100 percent of the detained and non-detained docket along the Southwest border[2] [3]. This includes the full alien lifecycle cost related to identification, arrest and processing of aliens, detention, removal, and payroll to support the additional workload.

FY 2011 Southwest Border Alien Encounters	Population	Total Lifecycle Costs
Detained Docket	10,790	$96,322,330
Non-detained Docket	272,110	$2,775,522,000
100% Incarceration Estimate	282,900	$2,871,844,330

Question: What level of funding would you recommend DOJ request to achieve a 100% incarceration rate of illegal aliens along the southern border?

Response: DHS defers to DOJ to respond to this question.

Question: What level of funding would DHS require to achieve border security enforcement?

Response: This Administration has made unprecedented investments in border security and on every metric that measures progress, we are moving in the right direction. The budget request for FY 2013 includes the funds necessary to continue these efforts.

[2] This estimate is only representative of the AORs represented in this response. Estimates of the outyear docket levels are subject to significant fluctuation due to seasonal and economic factors, among others.
[3] ICE does not estimate the level of unknown encounters.

Question#:	21
Topic:	fencing 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Question: Have you consulted with the Department of Justice to determine what assets are needed to secure the United States' southern border with Mexico?

Response: The Department of Homeland Security (DHS) and its components are responsible for the security of the southwest border at and between the official ports of entry. DHS coordinates with other Federal agencies as required for the completion of this critical mission.

Question: How many miles of fence exists on the United States-Mexico border?

Response: There are approximately 651 miles of primary pedestrian and vehicle fencing constructed in various locations across the southwest border.

Question: What is the breakdown of that fencing regarding pedestrian fencing, vehicle fencing, tertiary fencing?

Response: There are approximately 352 miles of primary pedestrian fence; 36 miles of secondary pedestrian fence, and 14 miles of tertiary pedestrian fence. There are approximately 299 miles of vehicle fence.

Question: Has the tertiary fence ever been breached?

Response: The tertiary fence is primarily serving to protect and demarcate private property and is viewed as an additional physical obstacle to slow down illegal entrants and assist agents in pursuit to the north of the secondary fence. Currently there is tertiary fence in Border Patrol's San Diego, Yuma, and El Paso Sectors.

Question: What are the Department's efforts to complete tertiary fencing along our southern border?

Response: At this time, CBP does not have requirements for the construction of additional tertiary fencing.

Question#:	22
Topic:	fencing 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

Question: What funds are available to build a fence spanning the southern border with Mexico?

Response: There are no funds currently available to build additional increments of fencing—pedestrian or vehicle, primary or secondary—along the southern border. The 651 miles of fencing currently in place fulfills CBP's top mission priorities.

Question: Will additional funds be requested to complete the fence along our southern border?

Response: No, not at this time.

Question: What environmental concerns are taken into consideration when constructing the fence along our southern border?

Response: When undertaking fence construction along the southern border, CBP takes a full range of environmental issues into consideration. These environmental issues include: cultural resources, rare and sensitive plants and animals, wetlands and flood plains, air quality, noise, and other such site-specific environmental issues that may be applicable. For certain fence construction projects along the southern border, the Secretary of DHS has waived certain environmental laws under authority provided in Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended. Even where such waivers have been applied, the DHS Secretary has carefully planned fence construction in cooperation with environmental stakeholders to minimize or avoid environmental impacts to the extent practicable. As a part of that commitment, in January 2009, CBP entered into an agreement with the Department of the Interior (DOI) to fund mitigation of unavoidable impacts to natural and cultural resources associated with the construction of the Pedestrian Fence 225 (PF225) and Vehicle Fence 300 (VF300) projects. CBP is continuing to work with DOI to fund a range of conservation actions. Where waivers have not been applied, DHS complies with all applicable environmental laws.

Question: What is the status of the virtual fence?

Response: The Secure Border Initiative-network (SBInet) program, as conceived in 2005, was created to develop and manage the DHS / CBP investment in surveillance and detection technologies to improve situational awareness of frontline CBP agents and

Question#:	22
Topic:	fencing 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

officers. One of the resultant technologies deployed on the southwest border was the SBInet Block 1 system which provided a deployment of fixed towers equipped with a suite of integrated day and night cameras, radars, unattended ground sensors (UGS) and a communications package covering of approximately 53 miles of border in Arizona.

Due to concerns regarding the schedule and cost effectiveness of the program, in 2009, Secretary Napolitano asked CBP for an analysis of the SBInet program. Based on this analysis, Secretary Napolitano froze funding for SBInet beyond the initial deployments of Block 1 and ordered a Department-wide reassessment of the SBInet program to determine if SBInet was the most efficient, effective and economical way to meet our nation's border security needs.

As a result of the assessment, in January 2011, Secretary Napolitano directed CBP to end SBInet as originally conceived and instead implement a new border security technology plan, which will utilize existing, proven technology tailored to the distinct terrain and population density of each border region.

Question: How much has the Department spent on constructing the virtual fence?

Response: In recent years, CBP has spent approximately $1.3 billion deploying technology systems providing border area surveillance, detection and tracking, and command/control/communications along various portions of the Southwest and Northern borders. These systems include —

- SBInet Block 1 – a deployment of fixed towers equipped with a suite of integrated day and night cameras, radars, UGS and a communications package, covering 53 border miles in AZ
- Remote Video Surveillance Systems in Detroit, Buffalo AORs – fixed towers equipped with remote-controlled day and night cameras
- Mobile Surveillance Systems – truck mounted systems equipped with cameras and radars
- Agent Portable Surveillance Systems – a portable, rugged, ground-sensing radar and thermal imaging system that can be deployed and operated by Border Patrol agents
- Thermal Imaging Devices – devices which enable Border Patrol agents to see clearly up to 5 miles in dim light or total darkness
- Operations Integration Center, Detroit – a collaborative work area and communications capability for representatives of CBP, U.S. Coast Guard and

Question#:	22
Topic:	fencing 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Steve King
Committee:	JUDICIARY (HOUSE)

other Federal organizations, state and local law enforcement, and Canadian law enforcement agencies

- Tactical communications – upgrades and expands legacy analog communications to provide new digital technology with Advanced Encryption Standard protection, expanded coverage capacity, and enhanced interoperability
- Research & Development testbeds – DHS S&T has established testbeds on the Southwest and Northern borders to provide an in-the-field capability to evaluate technologies such as tripwires, unattended ground sensors and cameras to assess their operational utility for transition to CBP

Question: Does the Department have plans to move forward with the construction of a virtual fence despite reports of its ineffectiveness?

Response: The Department concluded a formal, science based analysis of what future technologies would be most cost-effective to establish required situational awareness throughout the Southwest border. In 2011, the Department approved the Arizona Technology Plan to procure, deploy and sustain these necessary surveillance technologies. More recently, Congress appropriated just over $300 million in FY 2011 and FY 2012 funding to implement the Arizona Technology Plan, and the Department is in varying stages of delivering and/or procuring the technologies. Additionally DHS S&T continues to evaluate commercial off-the-shelf (COTS) and DoD technologies used in Afghanistan for use in border security scenarios for CBP. S&T has been supporting CBP and the Arizona Technology Plan via the S&T Small Business Innovative Research (SBIR) Program by developing improved technology with Industry that could be used for future border security procurements.

○