

**BORDER CORRUPTION: ASSESSING CUSTOMS AND
BORDER PROTECTION AND THE
DEPARTMENT OF HOMELAND SECURITY
INSPECTOR GENERAL'S OFFICE COLLABORATION
IN THE FIGHT TO PREVENT CORRUPTION**

HEARING

BEFORE THE

AD HOC SUBCOMMITTEE ON DISASTER RECOVERY
AND INTERGOVERNMENTAL AFFAIRS
OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
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THURSDAY, JUNE 9, 2011

U.S. SENATE,
AD HOC SUBCOMMITTEE ON DISASTER RECOVERY AND,
INTERGOVERNMENTAL AFFAIRS
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:04 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Mark L. Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor and Paul.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. I will call our meeting to order here. First I want to welcome Senator Paul to his Ranking Membership of this Subcommittee. This is the first time you have had a chance to sit in as the Ranking Member, so thank you for your service and for doing this, and I look forward to working with you.

I would also like to thank our panelists today and the distinguished audience that is here today because many of you all have been following these issues for a long time, and I just want to thank everyone for their attendance.

We are going to examine the progress of the U.S. Customs and Border Protection (CBP) in preventing corruption in its workforce as well as the work of the Inspector General's office at the Department of Homeland Security in investigating and prosecuting those individuals who have been accused of corruption.

Securing the United States' borders is a constant struggle for the residents of the border States and for the government officials who represent them. The Mexican cartels dominate drug trafficking into the United States. Their operations and methods are sophisticated, ruthless, and well funded. Their notorious presence and power in Mexico is made possible by bribery and corruption, intimidation, paramilitary force, and murder. The impact of their operations in the United States has been widespread.

(1)

This Subcommittee held a hearing in March 2010 at which we learned that the cartels' operations are changing. They used to rely mostly on stealth techniques and the United States distribution network with operations in an estimated 230 American cities, according to the National Drug Intelligence Center (NDIC). Three of those cities are in Arkansas.

The good news about the changing operations is that heightened U.S. border defenses have put a squeeze on the cartels. Unfortunately, these cartels are not easily deterred, and they seek to regain an advantage by exporting to the United States their experience and success in bribing and corrupting government officials who can facilitate their business.

We must continue to do everything that we can to disrupt and prevent these gangs from penetrating our communities. That is why I am pleased that last year the Congress passed and the President signed the Anti-Border Corruption Act of 2010. This bill is designed to complement CBP's Workforce Integrity Plan and prevent rogue border agents from being hired and retained.

The bill requires that CBP follow its own employment policies requiring polygraph tests of all new applicants for law enforcement positions. It also directs CBP to initiate background checks on all backlogged employees within 6 months. Hiring new Border Patrol agents will help secure our borders only if these agents are truly committed to protecting our country. I look forward to hearing from Commissioner Bersin on the progress he has made in implementing this bill.

Another area of interest today is the ongoing concern about the lack of true collaboration and information sharing between CBP and the Inspector General's office when it comes to investigating alleged acts of corruption. Fighting corruption is vital to protecting our borders and securing our communities. We must aggressively attack and investigate these cases if we are going to end corruption within the U.S. law enforcement agencies. However, we must conduct these investigations in an efficient and collaborative way that leads to results in the quickest way possible.

Based on reports, this does not seem to be the way we are currently operating when conducting these investigations. I also look forward to our witness comments in this area.

Our witnesses today are both very experienced individuals: Commissioner Bersin of the CBP and Charles Edwards, the Acting Inspector General (IG) of the Department of Homeland Security (DHS). These gentlemen are leading much of the U.S. Government's efforts to fight against drug-related corruption. We welcome them. We look forward to their testimony, but first I would like to recognize Senator Paul.

OPENING STATEMENT OF SENATOR PAUL

Senator PAUL. Thank you very much, Mr. Chairman. Thank you for coming to testify here today. I, like Senator Pryor, am concerned about the lawlessness south of our border and the extent to which that lawlessness creeps across the border.

The lawlessness has become so severe that people fear traveling to Mexico. There are people who are now referring to Mexico as a "failed nation State." Is that an overstatement? I do not know. Re-

ardless, I am worried about the lawlessness coming across our border.

Corruption of our law enforcement personnel is a problem, but I am also worried about their physical safety. Our Border Patrol agents, our sheriffs, and our citizens traveling across the border are frequent targets of violence.

I am also concerned about legal immigration, the issuance of visas, and whether or not we are monitoring those who we let into our country. Just last week, in Bowling Green, the Federal Bureau of Investigations (FBI) captured two alleged terrorists who came to the United States on an asylum program. We admitted last year 18,000 people from Iraq. This to me sounds like a large number. I wonder if we are adequately monitoring these people. Are we doing a good enough screening process?

This goes for a lot of other people who are coming here legally. It is not just illegal immigration I am worried about. I am worried about legal immigration, whether or not it is being monitored properly.

We have 40,000 students coming to this country from all over the world. Could some of them be potential attackers? The people who attacked us on September 11, 2001, were here on student visas. They were overstaying their visas. Was anybody monitoring them? Are we overseeing the whereabouts of students who are in our country now? Are we overseeing the refugee process?

One of the men captured in Bowling Green had previously been in jail in Iraq. His fingerprints were found on an unexploded improvised explosive device (IED). His fingerprints were in our database for 2 years before we were able to arrest him.

I do not know that we are doing a good enough job. I think as a country we are spending an amazing amount of resources on screening everyone universally as if everyone is a potential terrorist. I think that is a mistake. We are combing through everybody's bank records. We are invading the privacy of everyone in our country. We are doing pat-downs and strip searches of 6-year-olds in our airports. But are we spending enough time and resources targeting those who are potential attackers of our country?

I would like to learn more about how the visa process is working, whether or not we are overseeing the people who have been admitted to our country, and whether or not there are sufficient safeguards to protect our country from terrorists who enter our borders legally. Thank you.

Senator PRYOR. Thank you.

Sometimes we say that these people do not need any introduction, and really on these two, you really do not. So I am just going to be very brief and just say our first witness today is Alan Bersin. He is the Commissioner at the U.S. Customs and Border Protection. We look forward to hearing from you, Mr. Bersin.

And then we will hear from our next witness, Charles Edwards. He is the Acting Inspector General at the Department of Homeland Security. Thank you very much for being here.

We have a timing system today, and I think we are doing 5 minutes on the opening statements. So if you could keep yours to 5 minutes, we will submit your written statements for the record, so those will be made part of the record. But we look forward to hear-

ing from you, and we look forward to a good discussion afterwards.
Mr. Bersin.

STATEMENT OF THE HONORABLE ALAN D. BERSIN,¹ COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BERSIN. Good morning, Mr. Chairman, Ranking Member Paul. It is an important day for me to appear here before you to update you on the progress that U.S. Customs and Border Protection is making to combat corruption and maintain integrity with our workforce.

Senator Pryor, you and this Subcommittee have been an important force in getting recognized the threat that we face on the U.S.-Mexican border and generally in terms of the men and women of CBP, now 60,000 strong, 48,000 of whom are on the front line of protecting this Nation and its borders.

You recognize and we emphasize the commitment, bravery, vigilance, and character demonstrated by the vast majority of CBP agents and officers who indeed put their lives on the line to protect this Nation.

Having said that, we recognize that there are bad apples in the barrel, and it is our job to minimize those, and it is our job to prevent corruption, detect it when it happens, prosecute it after investigating it, in concert with other Federal agencies and the United States Attorney's Office and the Department of Justice (DOJ).

Unfortunately, CBP employees have and will continue to be targeted by criminal organizations, as the Chairman suggested and as the Ranking Member confirms. As we continue to see successes in our efforts to secure our Nation's borders, our adversaries continue to grow more desperate in their attempts to smuggle humans and illegal contraband into this country.

Our most valuable as well as in some rare cases our most vulnerable resources are our employees. I am here today to candidly confront with you this vulnerability and the steps that we are taking with your assistance and the assistance of the Administration to mitigate this threat.

Recently I put forward my first Statement of Intent and Policy as the Commissioner of CBP after a year of service outlining specific and high-level propositions to be incorporated into all aspects of CBP's interactions with the public, with other law enforcement, and within our own institution. That Statement of Intent and Policy dealt with integrity. It outlined the absolute importance that we attach to integrity in the discharge of our duties.

We pride ourselves on being a family. However, when one of our own strays into criminality, we do not forgive him or her. Such was the case with Martha Garnica, the Customs and Border Protection Officer (CBPO) who betrayed her country, betrayed her fellow officers, betrayed our trust, and now sits in Federal prison for 20 years, as she so richly deserves.

We recognize that we need to confront this, and we are doing so with the help of the resources and with the help of the Anti-Border

¹The prepared statement of Mr. Bersin appears in the appendix on page 19.

Corruption Act that this Chairman and this Senate and Congress passed and the President signed.

Since October 2004, 127 CBP personnel have been arrested, charged, or convicted of corruption. This breach of trust is something that we do not stand for, and while 7 years and tens of thousands of employees are besmirched by these evidences of corruption, we take each and every one of them seriously.

The Anti-Border Corruption Act of 2010, which the Chairman championed, is one of the first steps to address the issue of corruption within the workforce before it can take hold. I look forward to discussing with you this morning the steps that we have taken in order to implement that act and be prepared to meet its deadlines.

We recognize that there is work to be done. We are committed to doing it, and I believe you will be satisfied that we have made a good start along the path to being able to meet these deadlines.

We also need, frankly, Mr. Chairman, to recognize that our best defense against corruption are the men and women of CBP themselves and, therefore, we have taken on the so-called Code of Silence within our institution. When we ask our officers to uphold the honor and integrity of their service, we add security to the border.

Mr. Chairman, again, let me thank you for the Anti-Border Corruption Act and the role you played in securing it. I look forward to answering your questions and the Ranking Member's as we proceed this morning. Thank you, sir.

Senator PRYOR. Thank you. Mr. Edwards.

STATEMENT OF CHARLES K. EDWARDS,¹ ACTING INSPECTOR GENERAL AND DEPUTY INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. EDWARDS. Good morning, Chairman Pryor, Ranking Member Paul, and distinguished Members of the Subcommittee. I am Charles K. Edwards, Acting Inspector General for the Department of Homeland Security. Thank you for inviting me today to testify about the Office of Inspector General (OIG's) role in the effort to eliminate corruption in the CBP workforce, a threat that strikes at the foundation of securing our Nation's borders.

The smuggling of people and goods across the Nation's borders is a large-scale business dominated by organized criminal enterprises. The Mexican drug cartels today are more sophisticated and dangerous than any other organized criminal group. They use torture and brutality to control their members and intimidate or eliminate those who may be witnesses or informants to their activities. The drug-trafficking organizations also turn to corrupting DHS employees.

Border corruption impacts national security. A corrupt DHS employee may accept a bribe for allowing what appear to be undocumented aliens into the United States while unwittingly helping terrorists enter the country. Likewise, what seems to be drug contraband could be weapons of mass destruction, such as chemical or biological weapons.

¹The prepared statement of Mr. Edwards appears in the appendix on page 30.

OIG has made investigation of employee corruption a top priority. In accordance with the Inspector General Act of 1978 and the Homeland Security Act of 2002, the OIG exists as an independent element within DHS tasked with coordinating, conducting, and supervising investigations relating to DHS programs and operations. These statutes vest the OIG with the primary responsibility within DHS for investigating allegations of criminal misconduct of DHS employees.

The IG statutory independence and its dual reporting responsibilities to the Department and to the Congress make it ideally situated to address employee corruption. Inspectors General play a critical role in assuring transparent, honest, effective, and accountable government. The organizational independence of OIG criminal investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust.

The DHS Management Directive plainly establishes OIG's right of first refusal to conduct investigations of criminal conduct by DHS employees and the right to supervise any such investigations that are conducted by DHS Internal Affairs components.

It is the OIG's policy to investigate all allegations of corruption of DHS employees or compromise of systems related to the security of our borders and transportation networks. The Department's Internal Affairs offices play a useful role to the OIG by enabling the OIG to leverage its resources.

CBP Office of Internal Affairs (IA) focuses on preventive measures to ensure the integrity of the CBP workforce through pre-employment screening of applicants, including polygraph examinations, background investigations of employees, and integrity briefings that help employees recognize corruption signs and dangers. These preventive measures are critically important in fighting corruption and work hand in hand with OIG's criminal investigative activities.

The OIG has been working tirelessly in an honest attempt to negotiate a cooperative working arrangement that will detail CBP IA agents to the OIG to participate in the investigation of CBP employees along with the Immigration and Customs Enforcements Office of Professional Responsibility (ICE OPR). These additional assets are especially necessary as the CBP workforce continues to expand significantly while OIG remains relatively flat.

DHS OIG works cooperatively with external law enforcement agencies on border corruption matters involving DHS employees. A key component of our investigative strategy is to leverage our limited resources and share intelligence with other law enforcement agencies. DHS OIG participates with border corruption task forces in many parts of the country. These cooperative relationships serve to ensure that different law enforcement agencies are not pursuing the same targets which duplicates efforts and places law enforcement agents' safety at risk.

In conclusion, I appreciate the Subcommittee's attention and interest in the work of the OIG to investigate corrupt employees within the DHS workforce. We will continue to aggressively pursue these investigations with all resources at our disposal and in cooperation with law enforcement at all levels to ensure that employee corruption does not jeopardize our national security.

Chairman Pryor, this concludes my prepared remarks. I would be happy to answer any questions that you or the Ranking Member may have. Thank you.

Senator PRYOR. Thank you, Mr. Edwards.

Let me start with you, if I may, Mr. Edwards. On this chart,¹ my understanding is you provided these numbers to the Subcommittee as part of your testimony today, and I see a big upswing in the number of investigations. Do you know why that is? Why are you seeing a pretty dramatic spike there in the number of investigations?

Mr. EDWARDS. Well, actually, there is a 38-percent increase in complaints against CBP since 2004 from 3,112 to 4,162. These increases are because we have the act that was passed last year and we need to go back and CBP needs to do the background investigations, the polygraphs of the employees, because we find 60 percent of the employees who go through this do not pass it because of the corrupt or criminal background in their background. So there is a big spike in that.

Senator PRYOR. OK. Say that again? As you are doing more of the polygraphs, more and more is showing up?

Mr. EDWARDS. Well, we had a huge backlog—

Senator PRYOR. Right.

Mr. EDWARDS [continuing]. And now CBP has gone back and has done that. Without doing that, there was a huge spike.

Senator PRYOR. I see.

Mr. EDWARDS. They still have not caught up. And we are hoping by 2012 we are able to do 100 percent.

Senator PRYOR. I got you. Perfect. That makes sense.

Now, there is also a pie chart¹ that you provided to the Subcommittee as part of your testimony, and in this pie chart the navy blue, these are open, named CBP employee investigations, and I think the “named” is important because this does not mean it is all but it is one category of them, at least. So there are 613 total, and the navy blue is for corruption. It may be hard to see for the audience. That is 44 percent. And then red is civil rights, and the green is suspicious behavior. So if you add the corruption and the suspicious behavior together, you get 78 percent. Those seem like alarming numbers to me. Could you talk about that for a little bit?

Mr. EDWARDS. Well, corruption is abuse of public power for private gain. Examples are bribery, smuggling, theft, disclosure of sensitive law enforcement information. The cartels, the drug business, organized criminal enterprises, they are becoming very sophisticated, so they are trying to infiltrate our CBP workforce, and, our investigations, we have to get to the root of the problem. If we just go ahead and get rid of that one employee, we still have not gotten to the bottom of the problem. And, there is a huge percentage of it unnamed, and we have recently established a Forensic Threat Analysis Unit to get to the bottom of this.

Senator PRYOR. OK. Did you want to comment on that, Mr. Bersin?

¹ The chart referenced by Senator Pryor appears in the appendix on page 41.

¹ The chart referenced by Senator Pryor appears in the appendix on page 42.

Mr. BERSIN. Mr. Chairman, I think as we are openly confronting the issue and the challenges that we face, and I want to point out and I commend the OIG as well as CBP IA and the FBI in terms of actually the number of investigations that have started. I think we have to recognize, though, and put in perspective that it is the kind of emphasis that the agencies are giving to the problem, that put more resources into the problem, that begin in the first instance to see an increase in the number of cases that are open. So more cases have been referred by CBP IA to the JICMS, the Joint Information System, and, in fact, those cases are being taken at a greater rate by DHS OIG for which we are thankful. But this is an issue of attention and focus and resource allocation.

Senator PRYOR. Right. Let me followup on that, if I can, Mr. Bersin, because one of the things that you have had a really large backlog on is your periodic reinvestigations, and I think you went through some numbers in your opening statement. Could you go through those again in terms of how many periodic reinvestigations you have completed so far.

Mr. BERSIN. Yes, sir. We recognize that under the Anti-Border Corruption Act we are obliged as a matter of law to complete the period reinvestigations by the end of 2012. We will meet that objective by July 2012. We also understand the polygraph responsibilities. Every employee pre-employment will be polygraphed as of January 2013.

Where we stand today—and as we have been working and keeping your staff and you informed of this—15,197 periodic reinvestigations previously backlogged, all of those have been initiated. And to be precise, as of May 31 of this year, 5,386 periodic reinvestigations have been adjudicated; 9,219 are pending investigation or adjudication.

What we have done to be sure that we are online to meet this, notwithstanding the hiring requirements of the southwest border supplemental bill, is to have the Personnel Security Division of Internal Affairs that handles this have devoted the bulk of their resources to these periodic reinvestigations.

So while the task has been complicated by the additional hirings that the supplemental bill have provided us, we do not complain about those, but it does add another 1,250 additional cases, so to speak, to the backlog. But we are on target, Mr. Chairman, to meet the requirements of the act.

Senator PRYOR. How many do you think you will have completed by the end of 2011?

Mr. BERSIN. We have in the area of 800 that are in adjudication now, so I suspect that we are talking between now and the end of the Fiscal Year perhaps 1,200. So we have a fair amount to do, but we expect that we will be online to meet the end of Fiscal Year 2012 deadline.

Senator PRYOR. If you do the reinvestigations and the polygraphs, what percentage of the employees turn up with an issue? What percentage are you catching?

Mr. BERSIN. Well, in the last number, in the one that was referenced by my colleague, the Inspector General, was that 60 percent present an issue. It depends on the population that you polygraph. And the nature of the issue differs, and what we are at-

tempting to do because of the expense involved in polygraphing is actually to have a process in which we can see rise to the top those applicants who are less likely to face issues in a polygraph examination. But the number will depend on the actual population of applicants that you put through the examination.

Senator PRYOR. So you are not saying those 60 percent is the number of folks that are showing corruption. You are just saying they are showing some sort of—

Mr. BERSIN. Absolutely not.

Senator PRYOR. What is your sense of the number of applicants who somehow get tagged with corruption? Do you know that?

Mr. BERSIN. I could not give you a specific number. I will tell you, in the course of reviewing these, we do come across cases in which people reveal themselves to either have criminal backgrounds or links to organized criminal elements based in Mexico or gangs based in the United States, which disqualifies them. But I think it would be a disservice to the applicant pool to suggest that this is a large or even significant percentage.

What we have to do is be sure that we have the filter that catches each and every one of those. But particularly given my background in education, I do not think that this is a generation of young people that presents generally more problems than my generation did.

Senator PRYOR. I am going to ask one more question, and then I will turn it over to Senator Paul here in just a second. This is a question really from another context, and that is the Federal Motor Carrier Safety Administration (FMCSA), is doing a pilot project for Mexican trucking companies to bring materials in, and I really have two questions for you.

One, have you heard from FMCSA on this? And are you all taking any special precautions or any special procedures for these Mexican-owned trucking companies bringing goods into the United States?

Mr. BERSIN. Mr. Chairman, this is the pilot program to move away from the drayage issue, which will permit Mexican long-haul carriers to actually cross the border, not have to reconnect, and continue on into the United States.

In the first instance, this is a Department of Transportation (DOT) safety certification issue. We, of course, will be involved in clearing and inspecting cargo containers contained on those trucks, and we are keeping abreast of developments as this pilot unfolds. But it is a safety issue in the first instance, and then it presents the same issue of inspection, targeting, risk management that we do with regard to each of the 27,000 trucks that enter this country every day.

Senator PRYOR. The reason I am asking, of course, is because if the Mexican drug cartels are successful in corrupting local officials, police, judges and the military, it seems to me pretty likely that they could also corrupt these Mexican trucking companies, and they could just bring matters in, unless we pay special attention to them. So that would be a concern of mine.

The other question I have is something that I talked with DOT about. The challenges you have had in your agency about finding corruption there and the drug cartels trying to actively, in some

cases successfully, corrupt our agents there and I have asked them to reach out to you about some of the lessons you have learned in terms of making sure that their workforce that is going to be down on the border maintains their integrity.

Have they had a chance to reach out to you yet?

Mr. BERSIN. We have not specifically talked, but we do work together on the interagency policy coordination on the border, and I will reach out to my colleague at the Department of Transportation.

Senator PRYOR. That would be great. Mr. Paul.

Senator PAUL. Mr. Bersin, do you keep a database on all those who are visiting our country on a visa, a travel visa or student visa?

Mr. BERSIN. Senator Paul, what CBP does in terms of admissibility of everyone who crosses into the United States every day—and we have a million people coming into the United States every day whose admissibility is handled by CBP officers at airports, land ports, and seaports. So we have a record of every person entering into the country and the basis on which he or she does so. Yes, sir.

Senator PAUL. OK. Do you also have a record of when they leave?

Mr. BERSIN. We do not have a biometric exit system in place yet. We have been working within DHS to look at the exit system, and there have been a number of pilots that have been handled by US-VISIT, TSA, and CBP in terms of coming up with a recommendation as to how an exit system can be reliably handled, recognizing that the airport context is one that is a manageable environment. The land borders are actually the environment that present the greatest challenge to our exit verification.

Senator PAUL. You have to go through Customs on the way into the United States. Do you go through Customs when leaving the country?

Mr. BERSIN. Only when we do outbound inspections, which we are doing on the U.S.-Mexican border in keeping with our new relationship with Mexico. But we do not for the most part do exit except on a surge basis in places like the northern border.

Senator PAUL. So there are a million people coming into the United States every day from other countries.

Mr. BERSIN. Yes, sir—well, and returning U.S. citizens. It is a mix.

Senator PAUL. Right. The thing I am still concerned about is, once people enter the country, how do we know if they are overstaying their visas? Do we know if they are obeying the rules of their students visas? Under whose purview does that fall? Who is checking that? Is that ICE? Who is checking to see whether someone overstays their visa?

Mr. BERSIN. This would be a responsibility of DHS in terms of Homeland Security Investigations on visa overstays. But this is an issue that, as you suggested in your opening remarks, has to be handled on a risk management basis. This has to be an ability to identify high-risk entrants into the country because we do not, obviously, have the resources nor should we be devoting equal resources to every one of those million people.

Senator PAUL. Those million people may also include a lot of U.S. citizens who are just coming back from a long-time trip to London so that is part of the million. Can you break the million down further? How many of them are visiting us from another country?

Mr. BERSIN. I will supplement the record. I cannot give that off the top of my head.

INFORMATION FOR THE RECORD

FISCAL YEAR (FY) 2010

Total Passengers and Pedestrians	352,731,093
Total Immigrants Processed (LPR)	53,954,941
Total Non-Immigrants Processed	167,383,751
Total Non-US Citizens Processed	221,338,692
Total Inadmissible Aliens	231,197

Senator PAUL. Yes, I think that is what we need to do. If you were looking at a million entrants, you would find out if 500,000 of them are U.S. citizens traveling on business. Obviously they would not need as much scrutiny. Entrants from Middle Eastern countries might need a little more scrutiny, but we would have to do good police work to do that. Once you narrow that down, we need to know who comes in and who leaves, and the difference between the two is those who are overstaying their welcome. We live in such an electronic age that you would think even if you are driving across the border to or from Canada, that would be entered into a data bank and should be easily reconcilable with who is overstaying their welcome here. Since September 11, 2001, we have begun to treat everyone as a potential terrorist. Universally we have begun scrutinizing everybody to the nth degree, instead of doing what I think would be just good police work. It would be less expensive and less intrusive into our privacy to focus our efforts on the people who did attack us and who continue to attack us, instead of focusing on U.S. citizens.

Mr. BERSIN. The essence of our system at CBP and across DHS increasingly is risk management. It is exactly that. It recognizes that we have limited resources and that we have to do targeted attention. And after making a risk assessment in terms of trusted shippers, high-risk shipper, trusted travelers, high-risk travelers, we then have to segment the traffic to permit us to deal with it in sequence.

But just to indicate that your general point I could not agree with more, but when we look at a Faisal Shahzad, who is a U.S. citizen, naturalized, we have to recognize that this risk assessment system cannot just be cut into certain categories.

Senator PAUL. Yes, it is not just citizenship status. If you are a U.S. citizen and you have been to Yemen three times in the last year and you are a not a businessman who has business, or a family, in Yemen, that might be a red flag for us. You are right. It is not as simple as what your religion is, the color of your skin, or any of that. It is more complicated. There is a whole host of figures that we need to look at and then excluding the people who are traveling frequently on business. It is the same what we are doing in our country, though, with the TSA. How many people fly every day within the United States? A million or more fly every day. I

think we are wasting resources and not doing good enough police work. We are distracted from the real police work we could do because we have to treat everybody universally as a potential terrorist.

I would recommend that at some point in time—and it sounds like this is an ongoing process that we do talk about monitoring who comes in and who leaves, and it should be very easy to determine from that. I do not get a good feeling that a decade after September 11, 2001, we know where everyone in the country is who is on a student visa, how often they are being checked, and whether or not they are in the country and obeying the rules of their entry.

The other question I have—I do not know if you know the answer to this or not—is: What percentage of visas approved by the State Department and issued in another country, once they come through Customs are then rejected? Because that happens, right?

Mr. BERSIN. Yes, when a visa is presented at a point of admission, there are circumstances in which the CBP officer will refuse admission, and based on information that would be available and would alert the officer, the visa can be set up for revocation.

I would need to supplement in terms of the millions with which we deal what the actual percentage of revocation is.

Senator PAUL. Yes, I would like to know. It is important to me to know not the exact number but the percentage. If you are rejecting 5 percent of State Department visas, maybe that means you are just doing a good supplementary job to the State Department. However, if you are rejecting 30 percent, maybe it means the State Department is not doing a very good job. I don't want to point fingers, but we need to ask these questions, which gets us back to all these refugees and political asylum people we are letting in from Iraq. We need to know who is approving them, what kind of screening process they undergo.

Now, do you have anything to do with the refugee admittance into our country?

Mr. BERSIN. CIS handles the status issues. We would be involved in the initial admissibility issues, as we would be with anyone presenting themselves for admission into the United States.

Senator PAUL. So they go through the State Department first and then are subject to screening by Customs and Border Protection when they come through the airport, you mean?

Mr. BERSIN. To the extent that—yes, if there is an admissibility issue. But the actual refugee status would be State Department and a combination of Citizenship and Immigration Services at DHS.

Senator PAUL. Right. So Customs and Border Protection is not actually actively doing extensive background checks on individuals. That is something the State Department is supposedly doing before they get to you.

Mr. BERSIN. That is correct, Senator. But what we rely on is information that would give us an ability to make a risk assessment with regard to any of those people based on the collected data and databases available to the U.S. Government.

Senator PAUL. All right. Thank you very much. If you can find any of that other information, I am interested in having it. I think

there is a big picture here that we still need to be pursuing as far as the safety of our country is concerned. Thank you.

Mr. BERSIN. Thank you.

Senator PRYOR. Thank you, Senator Paul. Good questions.

Let me go ahead and dive into a little bit of a follow-up from previous hearings and other matters that we have worked on here together. I am interested in the way you two see your specific roles in investigations, and my understanding is—and I have talked to both of you and both your offices about this. In the past there has been some, I guess I would say, friction—or I do not know if I would say gaps, but some friction, some disagreement about what the roles should be. And my understanding is that you all have worked hard to try to address these.

I also understand that you may be fairly close to doing some sort of written agreement on what your roles would be, and I would like to get a status report on that. Mr. Edwards, do you want to start there?

Mr. EDWARDS. Sure. Well, there are three reasons. First, the Inspectors General play a critical role in assuring transparency, honest and effective and accountable government, both personal and organizational independence of OIG's investigators to carry out the work. Second, it is the public trust and also, third, avoiding duplication.

The statutory authority that IG has, we do all 100 percent of the criminal investigations on all allegations. Our position is CBP IA plays a complementary role by—and even Congress recognized that with the Anti-Border Corruption Act of 2010. CBP does the integrity work by doing the pre-employment screening of applicants, including polygraph and background investigations.

Both myself and Alan have been working together trying to come up where CBP IA agents could work—could be detailed to OIG and work under the OIG's supervision to work some of the cases. That gives Commissioner Bersin the information that he is looking for, and the agreement that I, in fact, last night signed and sent over—I am waiting still for Alan to sign it, because I have to look into my independence, the statutory authority, and the management directive where OIG has the lead. I think Alan recognizes that, but we just have—from his point I think he still has some differences, but I have done my part.

Senator PRYOR. OK. Mr. Bersin.

Mr. BERSIN. First I should say, Senator, that what a difference 3 months makes. So, yes, I think it is fair and the law enforcement professionals both in OIG and IA will know that I say this respectfully when I say that there was more than tension and friction. There was outright confrontation and an unacceptable situation. And in most situations like this, it makes no sense to try to fix the blame but, rather, fix the problem. And I want to compliment both offices for endeavoring to do precisely that.

In April of this year, the Inspector General reached out very directly and said that he wanted to discuss this issue and he wanted to see that working together we could actually reverse the history of the last few years, which, again, was a function of people passionate about their duties and dedicated public servants who saw

the world in a different way. I think we have made huge strides toward that goal.

In January 2011, as the Senator knows, we entered into an unprecedented agreement within DHS with ICE, with Homeland Security Investigations, in which for the first time CBP IA agents are detailed into ICE offices and are working to supplement the resources of ICE, ICE's Office of Professional Responsibility, to work down the investigative caseload, and we have seen tremendous progress in the first 5 months of that collaboration.

When you put law enforcement professionals together in the field to work on a case, the work gets done without the kind of friction that often attaches to turf battles that occasionally surface in Washington.

What we have seen already in the ICE-CBP collaboration is that the number of cases being worked have been decreased from 160 to 127, and we have seen the clearing up of cases because of the additional resources. We recognize in that agreement, that memorandum of understanding with ICE, that the ICE lead case agent has supervisory responsibility. We have engaged in thus far I think very successful negotiations with OIG. Our staff members have brought us to the positive brink, so to speak, of entering into a similar agreement in which CBP acknowledges the responsibilities under the management directive of OIG and will be, I believe, welcomed into the OIG investigative effort as a full law enforcement member. That can only be to the good of the American people and to challenging and taking on the threat of corruption.

So I think we are close, and I think we can overcome the remaining issues. Those issues, frankly, are not so much about the relationship between the CBP and OIG but, rather, the way in which OIG could be welcomed back within—recognizing its responsibilities under the Inspector General Act and its responsibilities under the DHS Management Directive, could be welcomed back into the Border Corruption Task Forces that exist in 22 sites in the United States that have been organized by the Federal Bureau of Investigation and the Department of Justice and are a critical element in a whole-of-government approach to taking on border corruption.

Those issues need to be worked through. That happens to be a tripartite negotiation, and I am confident that over time we can address it and expect that we can overcome the issues. But that is where the issues are. That is where the remaining issues are in terms of closing off a chapter that all of us want to put behind us in terms of tension between CBP IA and DHS OIG.

Senator PRYOR. Mr. Edwards, you said you sent a draft agreement over last night?

Mr. EDWARDS. Yes.

Senator PRYOR. Is it your intention that the draft agreement would cover all the outstanding issues—

Mr. EDWARDS. Yes.

Senator PRYOR. Or are there still issues beyond that?

Mr. EDWARDS. Right, well, first I must commend Secretary Janet Napolitano for her leadership in bringing us together. She has given pretty good advice to us to get this thing resolved.

I have taken into account our independence, the statutory authority that we have. At the same time, we do not have the re-

sources necessary to—because we have to have one DHS. There has to be one face. And I recognize that, and my staff has been actively working with Alan's staff, and we have overall an agreement, but there is still a sticking point, because we feel that if you are working along with us and you are having visibility to 98 percent of the cases, and then along with Border Corruption Task Force (BCTF) you are still there, then it is a duplicative effort.

The reason we pulled out from BCTF last year was because it goes against the whole OIG statutory authority. Everybody is equal partners, but the statutory requirement says that we supervise, lead the investigations, and the FBI was the only lead. So we went back and for the last several months we have been working with—we have a similar situation in San Diego that for several months we worked together with the U.S. Attorney there and as a joint leadership between the FBI and OIG. The talks for a couple of months went ahead, and the U.S. Attorney agreed with us. But all the parties did not agree to that, so the U.S. Attorney has withdrawn from BCTF and has taken our cases directly.

But having said that, there are several instances throughout the country, even though we have not signed an Memorandum of Understanding (MOU) with the FBI on the BCTF, we are still working with them. So we are hopeful that we can resolve this and have CBP IA agents work under us and bring down the caseload.

Senator PRYOR. From my standpoint this is just too important to get into a turf battle on. What you are talking about here is the security of our country and to make sure we do not have the corruption that may be rampant in other countries, but it is rare here. I just hope that you all will continue to work together to get this resolved.

I have no idea, of course, what is in your proposed agreement, but, Mr. Bersin, certainly I know you just got it last night, so it is not fair to ask you about it today. But I hope that you all will look at it and continue to work to some understanding and get some agreement as quickly as possible.

Mr. BERSIN. I am confident that we will continue to do that. As the Inspector General indicated, Secretary Napolitano has indicated very compellingly to both of us and to our offices that she expects a resolution. And as I said, I think for the most part we have a resolution as between our offices. What we need to do now is to see if we cannot take that spirit and create a whole-of-government approach. I do not think that it makes sense to see us in competition with the Department of Justice but, rather, to knit the Department of Justice and the Department of Homeland Security into a satisfactory arrangement that maximizes our joint approach to the threat of border security and the challenges to that security posed by corruption.

Senator PRYOR. I think if both of you are committed to working together and getting this done and closed I think that goes a long way. And like you, I appreciate Secretary Napolitano and her leadership on this. She and I have talked about this, and I know that she is concerned, and she knows I am concerned. So if you all can get this done as quickly as possible, I think it will do nothing but be a good thing for the country.

Let me ask just a few more questions—Mr. Bersin, let me start with you—on the current status today of the new hires receiving polygraphs. My understanding is you are not yet at 100 percent on the new hires. What percentage are you? And when will you get to 100 percent?

Mr. BERSIN. In Fiscal Year 2011 we have polygraphed 22 percent of the applicants, and we currently are implementing a business plan that would move us from 35 polygraphers inside CBP to 52 so that we can meet the January 2013 requirement set forth in the Anti-Border Corruption Act.

We have solicited help from other Federal agencies in terms of providing polygraphers to us, and I am pleased to report to you that, as expected, the Federal law enforcement community has reacted by providing 20 additional polygraphers so that we can ramp up consistent with the business plan we have outlined.

Senator PRYOR. Would that just be temporarily to help you with the backlog? Or you would retain those permanently?

Mr. BERSIN. Those 20 would be temporary and help us until we built up our in-house capacity, Mr. Chairman.

Senator PRYOR. Right. And is there a concern about your backlog actually increasing at the beginning of 2011, 2012, and 2013?

Mr. BERSIN. The challenge that we have is we have a fairly stable attrition rate, so we can project with some degree of certainty how many Border Patrol agents and how many CBP officers we are going to need to replace by reason of attrition.

Where the challenges come in this year—but it is a challenge we welcome because it provides more border resources to accomplish the mission—is that the southwest supplemental bill, as you know, of \$600 million provided that we hire an additional 1,000 Border Patrol agents and 250 CBPOs. The Fiscal Year 2012 budget provides an additional 350 CBP officers. So all of this gets added on to the attrition number that we replace each year, but that business plan that we have developed on polygraphers and on getting our periodic reinvestigations done, as well as the new background investigations, accounts for that bulge.

Senator PRYOR. Once you get your backlog down to where it needs to be, do you see this as the backlog going away permanently? Or do you think it will rise again in the out-years?

Mr. BERSIN. Senator, remember, CBP doubled in size between 2004 and 2010, so what we are seeing in the issue of backlog really arises from this kind of jump in the size of the workforce, so that by the end of this year we expect to see 5,000 more periodic reinvestigations required because every 5 years we are required to do these investigations. So we will have to live through a period where, because of that steep slope in growth, we will see that same steep growth in the 5 years when the periodic reinvestigations are due, absent whatever attrition has taken place.

What we need to develop within our agency is over the course of time we are going to need to even that out, and we are going to need to make some adjustments by having some periodic reinvestigations done in 3 years, some in 4 years, some in 5 years until we can actually get a much more even flow into internal affairs.

Senator PRYOR. Yes, that makes sense.

Well, listen, I have some other questions. I think what I will do is submit those for the record.

I appreciate both you all being here today, the fact that you are doing a better job and both of you are saying you are doing a better job in working together and coordinating and not having these internal struggles, I know we are not completely done yet, but I hope sometime soon we will get that written agreement done and everybody will be on the same page. So I want to thank you all for being here today.

Like I said, we will have some additional questions for the record, and what we will do is we will keep the record open for 14 days, and as Members of the Subcommittee may submit those, they will get them to Subcommittee staff, and we will get those to you, and we would just appreciate you getting those returned to us.

Thank you very much for being here, and I want to again thank Senator Paul for his time here, and I look forward to working with him on this Subcommittee.

Thank you very much.

Mr. EDWARDS. Thank you.

Mr. BERSIN. Thank you.

[Whereupon, at 10:59 a.m., the Subcommittee was adjourned.]

A P P E N D I X

Chairman Pryor and distinguished members of the Subcommittee, I am Alan Bersin, Commissioner of U.S. Customs and Border Protection (CBP). It is a privilege and an honor to appear before you today to discuss CBP's efforts to combat corruption and maintain the integrity of our workforce. I have no higher priority than ensuring the integrity of the CBP workforce, as reflected by my Commissioner's Statement of Policy and Intent on Integrity, a copy of which has been lodged with the Committee. In order to ensure that the propositions reflected in this document are implemented across the agency, I have established an Integrated Policy Coordination Cell on Integrity led by retired Marine Major General Michael Lehnert who has honored us by joining CBP as my senior advisor.

Background

As America's frontline border agency, CBP is responsible for securing America's borders against threats, while facilitating legal travel and trade. To do this, CBP has deployed a multi-layered, risk-based approach to enhance the security of our borders while facilitating the flow of lawful people and goods entering the United States. This layered approach reduces our reliance on any single point or program that has the potential to be compromised. It also extends our zone of security outward, ensuring that our physical border is not the first or last line of defense, but is instead one of many. Ensuring the continued integrity of the CBP workforce is essential to our efforts.

CBP is the largest law enforcement agency in the country. We deploy nearly 60,000 law enforcement officers and mission support personnel along the U.S. borders, at ports of entry and overseas on a continuous basis in support of our critical border security mission. Not only do our officers and agents serve under difficult circumstances and in a dangerous environments, they do so in an environment vulnerable to corruption, particularly along the southwest border.

After the creation of the Department of Homeland Security (DHS), CBP experienced a growth that was unprecedented in the history of U.S. law enforcement. Between FY 2004 and FY 2010, the U.S. Border Patrol more than doubled in size to a force today of more than 20,700 agents. During that time, CBP hired extraordinary men and women, almost all of whom continue to

serve our country with great distinction and integrity every day. During the same period of time, CBP greatly expanded and integrated the Office of Field Operations from the workforces of CBP's legacy agencies and grew the capabilities of the Office of Air and Marine to its current level.

This represents an unprecedented growth of human resources, technology, and infrastructure. On the whole, CBP found that its workforce was younger, less experienced, and in need of seasoned supervisors. In the vast majority of cases, we brought exceptional new agents and officers on board, but in some cases, I fully acknowledge that the agency has suffered from the corruption of employees that have disgraced the service and betrayed the trust of the American public and their fellow officers, agents and mission support personnel.

Simultaneous to the agency growth, Mexico took the historic step of taking on organized crime in that country. President Calderon's decision to confront the transnational criminal organizations that previously operated with impunity and trafficked drugs and aliens from Mexico, combined with CBP's increased hiring of agents and officers, amplified the incentives and opportunities for corruption of the CBP workforce through bribery, infiltration or other means. The accelerated hiring pace under which we operated between 2006 and 2008 – and, frankly, mistakes from which we are learning – exposed critical organizational and individual vulnerabilities within CBP. Each CBP officer and/or agent who commits an act of corruption betrays the trust of the American people. CBP takes any allegations of corruption very seriously and is addressing the issue of corruption through a comprehensive strategy that integrates prevention, detection and investigation capabilities to deter and, when necessary, rectify incidents of corruption and misconduct in the CBP workforce.

Since October 1, 2004, 127 CBP employees have been arrested or indicted for acts of corruption including drug smuggling, alien smuggling, money laundering, and conspiracy. Of the 127 arrests, 95 are considered mission compromising acts of corruption. This means that the employee's illegal activities were for personal gain and violated, or facilitated the violation of, the laws CBP personnel are charged with enforcing. An example of the impact a single corrupt employee can make through a mission compromising act of corruption can be seen in the

instance of former CBP Technician Martha Garnica who was indicted federally in 2009. In 2010 Garnica was sentenced to 20 years in federal prison, ordered to pay a \$5,000 fine, and serve four years of supervised release after pleading guilty to conspiring to import over 100 kilograms of marijuana into the United States, conspiring to smuggle undocumented aliens, three counts of bribery of a public official, and one count of importation of a controlled substance.

Apart from the 95 cases identified above, the remaining 32 arrests are considered non-mission compromising acts of corruption in which the employee's illegal activities involved the misuse or abuse of the knowledge, access, or authority granted by virtue of their official position in a manner that did not facilitate the violation of laws that the agency is charged with enforcing at the border. These cases fall into one of five broad categories: Theft; Fraud; Misuse of a Government Computer/Database; False Statements; and Drug-Related Offenses.

Theft

The majority of CBP employees arrested for theft-related corruption activity have stolen government money or property. For example, a Border Patrol agent (BPA) had been dispatched to an abandoned vehicle that contained \$4,000 as part of an integrity test executed by CBP Office of Internal Affairs. He returned to the station, reported to his immediate supervisor that he had recovered \$2,300, and subsequently prepared a report documenting that amount.

Fraud

CBP employees have been arrested for several types of fraud including wire fraud, workman's compensation fraud, Housing and Urban Development (HUD) fraud, and bank fraud. For example, a Customs and Border Protection Officer (CBPO), through the display of his official passport and government credentials, received \$220,000 from a Korean national as an investment in a computer school he fraudulently claimed to be establishing in the Philippines.

Misuse of a Computer/Database

CBP employees unlawfully abused their access to protected government systems and databases to gain information for personal use. For example, a CBPO was arrested and charged with three counts of unauthorized access to a government computer. The CBPO abused his position to gain access to two government databases to perform queries on a private citizen he was suing in small claims court. He also induced his law enforcement colleagues to access their government systems over 100 times under the guise of official business.

False Statements

CBP employees have been arrested for knowingly making false statements both on- and off-duty. For example, a CBP Agriculture Specialist (CBP-A) was arrested for making a false statement about her brother's residence status. The CBP-A inappropriately interfered with the CBP inspection of her brother and insisted he had only been out of the country for five months when in fact he had been living abroad for five years.

Drug-Related Offenses

A BPA was arrested and charged with one count of felony distribution of marijuana and six counts of using a communication facility to commit a felony. The BPA misused his government-issued equipment by organizing and executing four illegal drug transactions including the sale of marijuana out of his government-issued vehicle.

I cannot overemphasize that the overwhelming majority of CBP officers and agents demonstrate the highest levels of integrity every day. But the reality is that CBP employees have been and will continue to be targeted by criminal organizations or may otherwise seek to exploit their position of public trust for illicit gain and I am here today to discuss this vulnerability, and the steps that we are taking with your assistance to mitigate the threat it embodies.

The risk of employee corruption is a challenge that we have acknowledged and are confronting directly; it is a challenge that we work tirelessly to meet.

Anti-Border Corruption Act of 2010

More so than ever before, CBP is a standards-based and professional law enforcement organization. Our high standards are reflected in the quality of the people we hire, as well as in how we train and evaluate our employees. Central to our standards is an absolute commitment to integrity. Without integrity we cannot accomplish the mission which the nation has entrusted to us. Our commitment begins at the time of application for employment with CBP and continues throughout the careers of our officers, agents, and mission support personnel. It defines our relationship with one another and the nation we serve.

For this reason, no act of corruption within our agency can or will be tolerated. CBP's leaders, including myself, are committed to creating and maintaining an organization in which all employees have the strength of character and support to reject all opportunities for corruption, in whatever form they may take and to reveal them when discovered. I have personally and repeatedly emphasized to CBP leadership and the men and women of our workforce that there is no place for the "code of silence" in a professional law enforcement organization. There is no place for it in CBP.

These propositions form the basis of CBP policy with regard to integrity and are in complete alignment with the mandates of Public Law 111-376, the *Anti-Border Corruption Act of 2010*. Thanks to your leadership, Mr. Chairman, this law requires that by January 2013, all CBP law enforcement applicants must receive a polygraph examination before being hired. The Act further requires that CBP initiate all periodic personnel reinvestigations that were overdue for initiation and that Congress receive bi-annual reports on CBP's progress toward meeting these requirements for a period of two years. These requirements – background and periodic investigations as well as polygraph examinations – are consistent with, and form the basis of, a comprehensive workforce integrity plan. I am committed to utilizing these tools to their fullest extent.

CBP's comprehensive integrity strategy includes improved initial screening of applicants, pre-employment polygraph examinations of law enforcement candidates and an exhaustive background investigation that commences upon the initial selection of a prospective employee. Each tool is capable of identifying vulnerabilities that the other cannot, and in combination allow for a thorough vetting of the men and women seeking employment with, or employed by, CBP. Periodic reinvestigations of an employee's background are conducted every five years throughout an onboard employee's career and may identify emerging integrity and conduct concerns that have the potential to impact execution of the CBP mission.

CBP is working diligently to increase its capacity to polygraph all applicants for law enforcement positions consistent with the statutory requirements. Polygraph exams, properly administered, can be a valuable tool to screen law enforcement applicants and to help ensure workforce integrity. They are valuable as well, where it is possible, for use with onboard employees on a voluntary or exculpatory basis.

Logistically, in an effort to increase efficiencies in the background and periodic reinvestigation processes, the Office of Internal Affairs (IA) is moving to a paperless environment. This effort will allow CBP to most efficiently and effectively leverage its limited financial and human resources.

I am pleased to report that CBP is on target to meet the requirements of the *Anti-Border Corruption Act*. CBP has already initiated all past-due periodic reinvestigations, and I am committed to investigating, adjudicating and completing these investigations as quickly as possible. I am also committed to implementing an action plan that will allow CBP to polygraph all applicants for law enforcement positions and to remain current on periodic reinvestigations as they come due.

Additional Integrity Programs and Training

In 2006, IA was tasked with promoting the integrity and security of the CBP workforce. Since then, IA has aggressively reconstituted and reinvigorated its internal investigative capability as part of a comprehensive strategy to counter the threat of workforce corruption. The IA staff has grown from 162 on April 30, 2006, to 624 as of April 30, 2011. This includes 218 experienced Investigative Agents responsible for investigating those employees suspected of corruption and misconduct, as well as personnel responsible for the prevention and detection of these acts within prospective and onboard employees.

IA's comprehensive strategy integrates prevention, detection and investigation capabilities to deter, detect, and respond to corruption and serious misconduct in the CBP workforce. The strategy includes background investigations as explained previously, as well as security clearances; employee misconduct investigations; physical, informational, industrial, internal and operational security; and management inspections.

The integrity strategy includes the application of behavioral science and analytical research methods designed to flag indicators of potential workforce corruption. These tools support an intelligence-driven response to potential instances of corruption.

In concert with IA's efforts, the Office of Field Operations (OFO) has taken significant steps to utilize its resources to identify operational data anomalies. Under the leadership of OFO's Analytical Management Systems Control Office (AMSCO), CBP law enforcement officers and agents use CBP's automated systems to analyze crossing, referral, and results data to identify anomalies that may be indicative of integrity issues. This analysis is especially important as CBP continues to implement new systems to process travelers and cargo electronically in a more efficient and effective manner.

When AMSCO identifies an anomaly in the manner in which a CBP employee is performing his duties, the office works collaboratively with IA to mitigate any potential threat to the CBP mission. As a result of the excellent work AMSCO is doing, CBP has already identified and corrected operational vulnerabilities that created potential opportunities for employee corruption.

The efforts AMSCO has undertaken have also resulted in the development of new approaches, methodologies and tools that, once fully tested, will be deployed at the ports of entry to identify performance deficiencies and counter potential acts of corruption as well as serve as an important training and instructional tool.

OFO has also established Integrity Officers within each of its 18 Field Offices. These Officers act as liaisons to field personnel on integrity issues and are a conduit to headquarters for potential integrity concerns. Integrity Officers participate in local task forces, committees, and working groups, and collaborate with various federal law enforcement agencies to provide assistance in operational inquiries, research, and analysis to assist in the detection and deterrence of corruption and misconduct.

In September 2008, the U.S. Border Patrol created the Integrity Advisory Committee (IAC)—comprised of selected field leadership ranging from first-line Supervisory Border Patrol Agents through members of the Senior Executive Service—to proactively combat the threat of corruption within its ranks. The IAC provides a strategic analysis of vulnerabilities to corruption that can exist due to the unique nature of the Border Patrol operating environment and provides recommendations to address these vulnerabilities effectively.

Throughout an employee's career, CBP provides training that focuses on integrity, ethics, and ethical decision making as part of an anti-corruption continuum. When employees initially enter on duty they receive at least two hours of training geared toward promoting workforce integrity as part of CBP's New Employee Orientation Program. Newly hired CBP law enforcement officers receive an expanded level of mandatory integrity and ethics instruction as part of the basic training curriculum.

Recurring integrity training is also an integral part of the advanced and specialized training for CBP employees beyond their initial entry on duty. This training, combined with proper leadership, oversight, and management at all levels of the agency fosters a culture of personal accountability and integrity within CBP. It clearly communicates the standards of conduct with which all CBP employees must comply and identifies the consequences of engaging in inappropriate behavior. Most importantly, periodic in-service training equips CBP employees

with the tools they need to recognize, report, and respond to integrity challenges they will encounter both on- and off-duty.

Our focus on integrity is not limited to our non-supervisory personnel. CBP supervisory and leadership training programs such as Supervisory Leadership Training (SLT), Incumbent Supervisory Training (IST), the CBP Leadership Institute (CBP-LI), the Command Leadership Academy, and the Department's Senior Executive Service Candidate Development Program incorporate classroom instruction and a series of practical exercises that prepare CBP leaders to guide and direct the workforce in a manner that promotes personal integrity and accountability through critical thinking and integrity-based, ethical decision making.

Corruption Investigations

Beyond our proactive measures to prevent corruption before it begins, CBP is prepared to address allegations of employee corruption and misconduct in a timely and effective manner to ensure the integrity of the border. CBP maintains a cadre of experienced IA agents assigned to headquarters and 22 field offices strategically located throughout the United States where the potential threat of workforce corruption is most acute. CBP coordinates its internal investigative activities with the DHS Office of Inspector General (OIG), U.S. Immigration and Customs Enforcement's Office of Professional Responsibility (ICE OPR), the Federal Bureau of Investigation (FBI), and numerous other federal, state and local law enforcement authorities. Effective collaboration and information sharing among the federal agencies that have a stake in border corruption is a critical factor in maintaining border integrity and security and effectively addressing allegations of corruption lodged against CBP employees.

CBP IA agents participate as active members of the FBI-led National Border Corruption Task Force (NBCTF) initiative. Presently, CBP IA agents are deployed in 22 Border Corruption Task Forces (BCTFs) and/or Public Corruption Task Forces (PCTFs) nationwide, including 13 task forces operating along the southwest border. These multi-jurisdictional, multi-agency task forces share information, intelligence, and investigative resources in an effort to combat border

corruption. The task force approach serves as a force multiplier on corruption investigations and allows for a higher level of return on the investment of appropriated resources.

In addition to our task force efforts, in December 2010, I convened a meeting with all IA Special Agents in Charge from across the country to develop a strategy for collaborating with ICE OPR to more effectively address allegations of criminal conduct lodged against CBP employees. I strongly believe we must work collaboratively with ICE OPR, the FBI, and the DHS OIG to address corruption in the CBP workforce.

The first step toward implementing this strategy was to execute a Memorandum of Understanding (MOU) with ICE that established clearly defined protocols for the participation of IA agents in CBP-related investigations conducted by ICE OPR. On January 1, 2011, CBP detailed 25 IA agents to ICE OPR offices throughout the United States. These IA agents are now participating in more than 150 ICE OPR-led investigations into criminal allegations of CBP employee misconduct. The participation of IA agents in these ICE-led investigations provides a level of insight and influence not previously available to me and the CBP leadership team and will greatly increase CBP's and ICE's combined ability to ensure the integrity of the border. We have commenced discussions with DHS OIG, under the leadership of Acting Inspector General Charles Edwards, to establish a similar relationship with that agency.

CBP is also working in consultation with our partners at ICE, the DHS OIG, and other federal investigative agencies to more effectively and expediently use our administrative authorities to mitigate the threat caused by CBP employees accused of corruption during the course of an investigation. This may include reassignment to administrative duties, administrative leave, indefinite suspension, suspension of law enforcement authorities, or other appropriate actions. Where a preponderance of evidence indicates that a CBP employee is engaged in corruption, I intend to take appropriate action without undue delay to permanently remove that employee from their position. This forward-leaning approach provides CBP with the flexibility to address the threat posed by allegedly corrupt employees when sufficient evidence exists to support an administrative action.

We will seek to make this practice our default approach unless, in consultation with our law enforcement partners, a decision is made that no changes may be made to the accused employee's position in order to allow a meritorious criminal investigation to proceed. In these instances, CBP will take all necessary and appropriate steps to maintain officer and public safety and to ensure the integrity of our borders. This default approach will be implemented and deconflicted in a manner that does not compromise existing criminal investigations but provides CBP with the capability to take aggressive and consistent actions to deal with workforce corruption and misconduct.

I and the leadership of this agency must have complete and timely visibility into the corruption investigations that involve CBP employees and meaningful influence into the course these investigations take. As such, the steps that we have taken as an agency and that I have outlined here today are enhancing my capacity, and that of CBP leadership across the country, to prevent, detect, investigate, and respond to corruption and serious misconduct in the CBP workforce.

Conclusion

Mr. Chairman, integrity is central to CBP's identity and effectiveness as guardian of the nation's borders. It is the keystone of our agency. I thank you and the members of the Subcommittee for the opportunity to appear today and make clear our core values and strategic approaches in this regard. I will be pleased to answer any questions that you might have.

Good morning Chairman Pryor, Ranking Member Paul, and distinguished members of the subcommittee. I am Charles K. Edwards, Acting Inspector General of the Department of Homeland Security (DHS). Thank you for inviting me to testify today about our collaboration with U.S. Customs and Border Protection (CBP) to thwart attempts to corrupt the CBP workforce, attempts that strike at the foundation of securing our Nation's borders.

First, let me express my appreciation to Senator Pryor for focusing attention on this important aspect of border security. In March 2009, DHS commenced the Southwest Border Initiative to focus on border security in that region. As part of this initiative, DHS has deployed historic levels of personnel to the Southwest border. For example, the Border Patrol has increased to more than 20,700 agents, double its size in 2004. With enactment of the Emergency Border Security Supplemental Appropriations Act in August 2010, CBP will be adding 1,000 new Border Patrol agents and 250 new CBP officers at ports of entry over the next six months. With such rapid expansion, CBP must be alert to opportunities for those intent on harming this country to infiltrate or corrupt the ranks of the hard working men and women of CBP, who dedicate themselves every day to securing this country's borders.

Scope of Border Corruption Issue

The smuggling of people and goods across the Nation's borders is a large scale business dominated by organized criminal enterprises. The Mexican drug cartels today are more sophisticated and dangerous than any other organized criminal groups in our law enforcement experience. They use torture and brutality to control their members and intimidate or eliminate those who may be witnesses or informants to their activities.

As the United States enhances border security with successful technologies and increased staffing to disrupt smuggling routes and networks, drug trafficking organizations have become not only more violent and dangerous, but more clever as well. In addition to the somewhat novel approaches to smuggling by using catapults, submarines, and ultralight planes, the drug trafficking organizations have also turned to recruiting and corrupting DHS employees. According to government reports, gangs such as Los Zetas are becoming involved increasingly in systematic corruption to further alien and drug smuggling, including smuggling of aliens from designated special interest countries likely to export terrorism. The obvious targets of corruption are Border Patrol agents and CBP officers; less obvious are those employees who can provide access to sensitive law enforcement and intelligence information, allowing the cartels to track investigative activity or vet their members against law enforcement databases.

As demonstrated by investigations led by the Office of Inspector General (OIG), border corruption may take the form of cash bribes, sexual favors, and other gratuities in return for allowing contraband or undocumented aliens through primary inspection lanes or even protecting and escorting border crossings; leaking sensitive law enforcement information to persons under investigation and selling law enforcement intelligence to smugglers; and providing needed documents such as immigration papers. Border

corruption impacts national security. Corrupt officials most often are paid not to inspect, as opposed to allowing certain prohibited items, such as narcotics, to pass into the U.S. A corrupt DHS employee may accept a bribe for allowing what appear to be simply undocumented aliens into the U.S. while unwittingly helping terrorists enter the country. Likewise, what seems to be drug contraband could be weapons of mass destruction, such as chemical or biological weapons or bomb making material.

As you, Chairman Pryor, noted just two months ago at a hearing on tactics to penetrate the border, the drug cartels and alien smugglers will stop at nothing. Nor will terrorists. Smuggling of drugs and people into the U.S. has returned tens of billions of dollars to the smugglers. As efforts to secure the border meet with increasing success demonstrated by decreases in apprehensions of those crossing the border illegally and increases in seizures of cash, drugs, and weapons, the smugglers have been forced to become more creative and clever in their illicit activities. They have turned to tempting DHS employees to assist in smuggling efforts for private gain. While those who turn away from their sworn duties are few, even one corrupt agent or officer who allows harmful goods or people to enter the country puts the Nation at risk.

OIG has made investigation of employee corruption a top priority, as we work to help secure the integrity of our immigration system, borders, ports of entry, and transportation systems. However, our investigations are complicated by the brutality the cartels use to control their organizations and coerce witnesses; and the sophistication and advanced technologies available to organizations with unlimited money. Drug trafficking organizations use their monetary resources to purchase and deploy sophisticated and military grade equipment and weapons to carry out their crimes, avoid detection, and evade law enforcement.

Roles and Responsibilities within DHS for Employee Border Corruption

Through the Inspector General Act of 1978 (IG Act), Congress established statutory Inspectors General, in part, in response to questions about integrity and accountability and failures of government oversight. The IG Act charged Inspectors General, among other tasks, with preventing and detecting fraud and abuse in agency programs and activities; conducting investigations; and recommending policies to promote efficiency, economy, and effectiveness. The position of Inspector General was strengthened by provisions in the IG Act creating independence from the officials responsible for programs and activities overseen, providing powers of investigation and subpoena, and mandating reporting not just to the agency head but to Congress.

Inspectors General play a critical role in assuring transparent, honest, effective, and accountable government. The organizational independence of OIG investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust in not only the work of the OIG, but also in the DHS workforce as a whole. The American public must have a fundamental trust that government employees are held accountable for their crimes or serious misconduct by an independent fact finder.

The Homeland Security Act of 2002, as amended, modified the IG Act to establish the DHS OIG as an independent organizational element within DHS tasked with, among other things, coordinating, conducting, and supervising investigations relating to DHS programs and operations. These acts vest the OIG with the authority and responsibility within DHS for investigating allegations of criminal misconduct of DHS employees.

Specifically, the IG Act provides:

§ 2--OIGs are established to create "independent and objective units" to conduct and supervise investigations relating to agency programs and operations;

§ 4(a)(1)--it is the duty and responsibility of the Inspector General "to provide policy direction for and to conduct, supervise, and coordinate" investigations relating to the programs and operations of the department;

§ 4(a)(3)--it is the duty and responsibility of the Inspector General "to conduct, supervise, or coordinate" activities carried out by the department to prevent and detect fraud and abuse in its programs and operations;

§ 4(a)(4)--it is the duty and responsibility of the Inspector General "to conduct, supervise, or coordinate relationships between [the department] and such other Federal agencies" with respect to all matters relating to "the prevention and detection of fraud and abuse in" agency programs and operations or "the identification and prosecution of participants in such fraud or abuse;" and

§ 6(a)(2)--the Inspector General is authorized to "make such investigations and reports relating to the administration of the programs and operations [of the Department] as are, in the judgment of the Inspector General, necessary or desirable."

The DHS Management Directive (MD) 0810.1, *The Office of Inspector General*, implements the authorities of the IG Act within DHS. MD 0810.1 plainly establishes OIG's right of first refusal to conduct investigations of criminal conduct by DHS employees, and the right to supervise any such investigations that are conducted by DHS internal affairs components. The MD requires that all allegations of criminal misconduct by DHS employees and certain other allegations received by the components be referred to the OIG immediately upon receipt of the allegations.

The MD mirrors language at page 12 of House Report 108-169 related to the DHS appropriations bill for Fiscal Year 2004:

It is the Committee's intent that the IG serve as the primary entity within the Department for investigating, as to employees, contractors, and grantees, all criminal allegations of waste, fraud, abuse and mismanagement; allegations of misconduct against all political appointees, personnel at the level of GS-15 and above; and any allegations that indicate systemic problems in the Department or otherwise affect public health or safety. The IG's statutory independence, and its

dual reporting responsibilities to the Department and to the Congress, make it ideally situated to address such matters. All employees must have immediate, direct, and unfettered access to the IG to report allegations without fear of retribution.

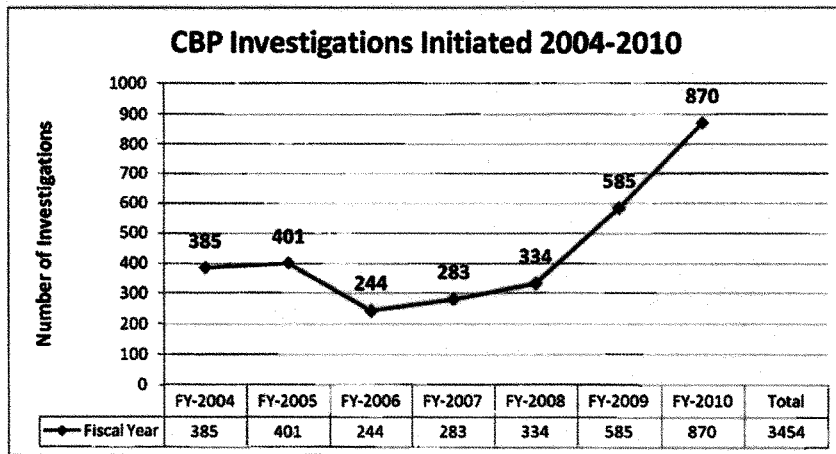
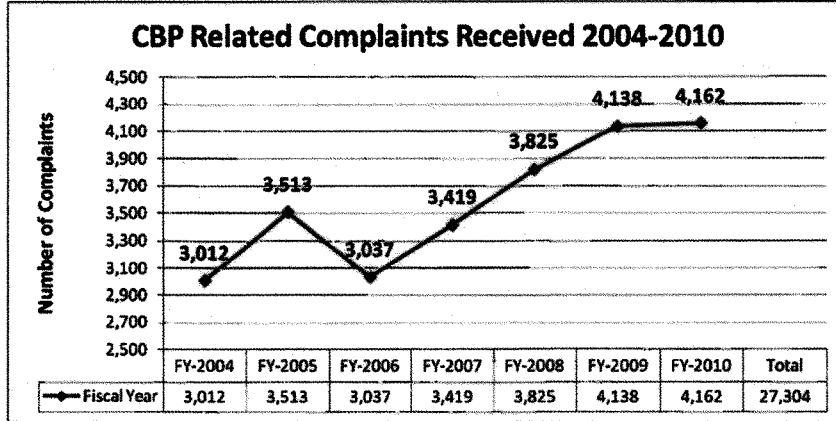
The Department's numerous internal affairs offices can play a useful role to the IG. By handling less serious investigative matters of an administrative nature, these internal affairs offices can enable the IG to leverage its resources, provided these offices cooperate fully with the IG and regularly report their activities to the IG.

It is the OIG Office of Investigations' policy to open all allegations of corruption of DHS employees or compromise of systems related to the security of our borders and transportation networks. OIG has a total of 213 full time, permanent criminal investigators (GS-1811s) deployed at 33 offices around the country, with a concentration of resources in the Southwest. According to the U. S. Office of Personnel Management's Qualification Standards, positions classified as GS-1811 supervise, lead, or perform work involving planning, conducting, or managing investigations related to alleged or suspected criminal violations of Federal laws. The work involves recognizing, developing, and presenting evidence; conducting investigations that meet legal and procedural requirements; and providing advice and assistance to the U.S. Attorney's Offices during investigations and prosecutions.

The growth of the OIG workforce necessary to investigate allegations of criminal misconduct by DHS employees has not kept pace with the growth of the DHS employee population, now over 225,000 strong. Component employee populations have grown significantly from Fiscal Year 2006 through Fiscal Year 2009; for example, the CBP workforce has grown 34 % during that time. During this same period, the DHS OIG has grown only 6%.

In Fiscal Year 2010, the OIG Office of Investigations added 10 additional positions to address allegations of criminal wrongdoing across the entire DHS workforce. In addition to the 1,250 Border Patrol agents and CBP officers mentioned above in the introduction, the Emergency Border Security Supplemental Appropriation Act included \$10 million for CBP integrity and background investigation programs. The Federal Bureau of Investigation (FBI) received an additional \$24 million through the Emergency Border Security Supplemental. DHS OIG did not receive additional resources in the Emergency Supplemental.

The OIG Office of Investigations has seen a 38% increase in complaints against CBP employees since Fiscal Year 2004. As a result of the increase in complaints, and without an increase in staffing, the Office of Investigations also has initiated more investigations annually. For example, the OIG initiated 585 CBP related investigations in Fiscal Year 2009 and initiated 870 in Fiscal Year 2010, a 48% increase. The charts below reflect investigative statistics related to CBP allegations starting with Fiscal Year 2004 through May 2011.



The scope of the complaints received and investigations initiated against CBP employees are divided into four broad categories: Corruption; Civil Rights/Civil Liberties; Suspicious Activities; and Other.

- **Corruption**—Abuse of public power for private gain. DHS employees or contractors who are alleged to have used their official positions for personal gain, financial or otherwise.

Such allegations include: Bribery, Smuggling, Public Corruption, Immigration Fraud, Trafficking in Illegal Drugs, Introduction of Contraband, Theft, and Unauthorized Disclosure of Sensitive Law Enforcement Information.

- **Civil Rights/Civil Liberties**—Deprivation of personal liberty guaranteed by the Constitution, and by certain legislation such as the Voting Rights Act. DHS employees or contractors, while acting under color of their authority, who are alleged to have deprived an individual of any constitutional right or liberty.

Such allegations include: Abuse of Authority, Use of Force, Assault, Physical or Sexual Abuse, Custodial Death, Denial of Due Process, Denial of Medical Services, Denial of Religious Freedoms, Profiling, and Hate Crimes.

- **Suspicious Activities**—Any basis, absent definitive proof, for suspecting a person of criminal activity. DHS employee or contractor alleged to have engaged in on duty or off duty conduct that could be considered an indicator of possible involvement in criminal or corrupt behavior. For example, suspicious financial activity, unexplained affluence, criminal associations, improper law enforcement database queries, etc.

Such allegations include: Unauthorized Access to a DHS Computer or Network, Personal Relationships, Unauthorized Release of Information, Immigration Failure, or False Statements.

- **Other**—Allegations in which any individual, not limited to a DHS employee or contractor, has committed a violation of law or regulation with a nexus to DHS programs or operations that does meet the criteria of the above categories.

Such allegations include: Program Fraud, Procurement Fraud, Off-duty Misconduct, Theft of Government Property, Time and Attendance Fraud, Mismanagement of Government Resources, Misuse of Government Credit Card, Harassment, or False Personation of a DHS Employee.

Many allegations of corruption received by DHS OIG are lodged against unknown or unnamed CBP employees. Historically, nearly 38% of the corruption allegations received by the OIG involve unknown or unidentified employee subjects. In order to address these investigative leads and identify these unknown subjects, the OIG Office of Investigations recently has established a Forensic Threat Analysis Unit. The unit integrates and analyzes incoming allegations and leads with information from ongoing and historical corruption cases, DHS databases, and other law enforcement and government databases, as well as open source data to document patterns of behavior, methods of operation, and other trends to aid in ferreting out corruption within DHS. OIG also collaborates with the DHS Office of Security, the Office of Intelligence and

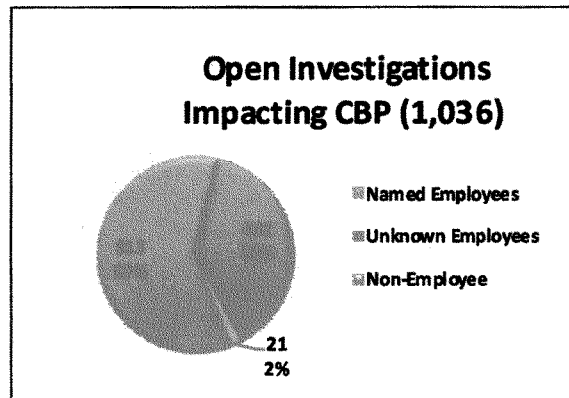
Analysis, and the intelligence units in various DHS components to ensure that information is shared and critical DHS assets are protected.

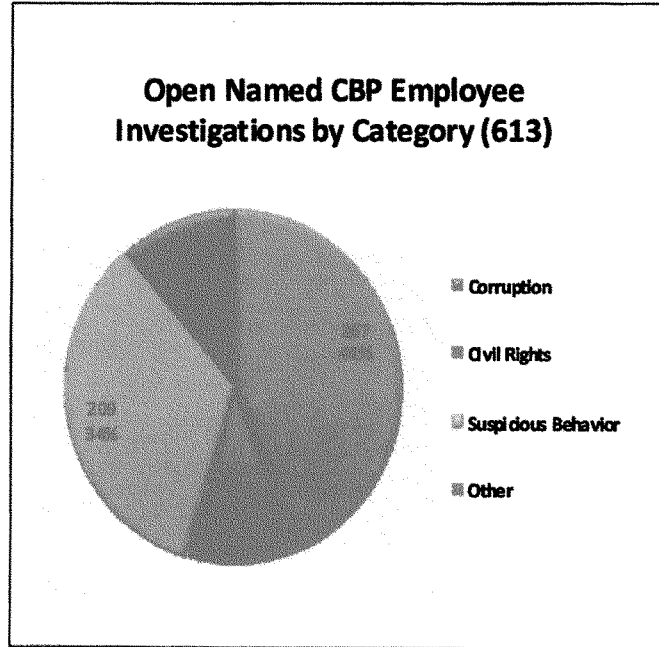
Corruption related allegations are a priority of the Office of Investigations and we open 100% of all allegations of corruption that we receive. The majority of both complaints received and investigations initiated by the OIG, however, are for allegations of other than corruption related activity. For example, of the 613 active investigations of allegations against named CBP employees, 56% are allegations of other than corrupt activity. Our open investigative portfolio includes 267 investigations (44%) on named CBP employees accused or suspected of corruption.

Resolutions of many complex corruption investigations involving law enforcement personnel who have decided to engage in unlawful acts are both challenging and time consuming. DHS OIG attempts to expedite corruption investigations as much as possible, but some of the more complex investigations do take time to obtain the necessary evidence of corrupt activity and identify any additional employee involvement. Over 70% of our open criminal investigations have been open for less than 24 months.

Since Fiscal Year 2004, DHS OIG has effected over 489 arrests of individuals, both employees and non-employees associated with our CBP related investigations. Of those total arrests, 160 have been CBP employees. The remaining arrests were of individuals who have either conspired with an employee or were otherwise associated with the criminal activity DHS OIG investigated.

The charts below show investigative statistics related to open investigations of allegations involving CBP as of May 2011.





The Inspector General Act and the Homeland Security Act establish a clear line of authority for investigating allegations of criminal misconduct by DHS employees. The statutes vest investigative authority in the DHS OIG, with the Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) having authority to investigate those allegations involving employees of ICE and CBP referred to it by OIG. The CBP Office of Internal Affairs (IA) investigates noncriminal allegations against CBP employees referred to it by ICE OPR and is staffed with GS-1801s, representing the general inspection, investigation, enforcement, and compliance series.

In July 2008, CBP asked the Secretary of Homeland Security for permission to convert IA's GS-1801s to the GS-1811 criminal investigator series. In January 2009, Secretary Chertoff denied the request because border-related investigative functions have been vested in ICE and the Secretary was concerned about potential overlap in ICE and CBP missions. The Secretary noted that "it is axiomatic that border-related corruption will be tied to potential violations of core ICE smuggling and trafficking statutes."

CBP IA has a crucial complementary role to OIG's criminal investigative function and the investigative function of ICE OPR. CBP IA focuses on preventive measures to ensure the integrity of the CBP workforce through pre-employment screening of applicants, including polygraph examinations; background investigations of employees; and integrity and security briefings that help employees recognize corruption signs and

dangers. These preventive measures are critically important in fighting corruption and work hand in hand with OIG's criminal investigative activities.

Congress recognized the importance of these complementary activities in enacting the Anti-Border Corruption Act of 2010. This Act requires CBP IA, by the end of calendar year 2012, to subject all applicants for employment in law enforcement positions to polygraph examinations prior to hiring. The Act also requires CBP to timely initiate periodic background reinvestigations of CBP personnel. The legislative history points out that CBP finds 60% of applicants subjected to a polygraph exam ineligible for employment because of prior drug use or criminal histories.

As part of CBP's efforts in implementing the Anti-Border Corruption Act, Commissioner Bersin has established an Integrated Policy Coordinating Cell (IPCC) to focus on integrity issues. DHS OIG has participated in several meetings of the IPCC, as has ICE OPR and the FBI. These meetings have provided updates on CBP's efforts to acquire polygraph examiners to comply with the 100% pre-employment standard established by the Act as well as various integrity training and awareness initiatives within CBP.

As discussed above, Congress has identified the OIG as the focal point for criminal investigations of employee misconduct. Within DHS, MD 0810.1 requires referral of all criminal allegations against DHS employees to OIG and prohibits any investigation, absent exigent circumstances, unless the OIG declines the case. DHS OIG operates a hotline for complaints which may be accessed through telephone, facsimile, electronic mail, or paper correspondence. In March 2004, ICE and CBP established the Joint Intake Center (JIC) responsible for receiving, documenting, and appropriately routing allegations of misconduct involving ICE and CBP employees. The JIC is staffed jointly by ICE OPR and CBP IA. DHS OIG has an agent co-located at the JIC to review allegations and promptly notify ICE OPR of our decision to accept or decline investigation of the matter. Both the OIG hotline and the JIC provide DHS OIG and CBP executive management with insight into the nature and volume of allegations made against CBP employees as well as the results of investigations.

In addition to working closely with internal affairs elements within DHS, we also work with ICE's Homeland Security Investigations (HSI) directorate. HSI investigates activities arising from the illegal movement of goods and people into, within, and out of the U.S. HSI investigates human smuggling and smuggling of narcotics, weapons, and other contraband that typically form the predicate, or underlying, offense for most border corruption cases. Consequently, we work very closely with HSI and ICE OPR on many CBP employee corruption cases.

Beginning in January 2011, CBP IA detailed agents to work under ICE OPR to augment investigations of CBP employees. Under this arrangement, ICE OPR leverages the additional agents contributed by CBP and gains additional insight into CBP systems and processes. CBP agents participate in ICE OPR investigations of CBP employees and CBP management uses the information gained by its agents to take appropriate action against employees under investigation.

DHS OIG and CBP are negotiating a cooperative working arrangement that would allow CBP IA agents to participate in OIG investigations of CBP employees. Cooperative efforts between OIG and CBP IA will provide additional visibility to CBP's executive management of OIG investigations into allegations of criminal conduct by CBP employees. OIG gains additional assets to continue our policy of opening all allegations of employee corruption or compromise of systems related to border security. These additional assets are especially necessary as the CBP workforce continues to expand significantly, while OIG growth remains relatively flat.

The OIG continues to work allegations of criminal misconduct and corruption within DHS. For example, a Border Patrol Agent at the Sonoita, Arizona, Border Patrol Station, was observed acting suspiciously as he asked others about the technology used to interdict smugglers. The agent had only entered on duty at Sonoita in March 2009 shortly after graduating from the Border Patrol Academy. OIG opened an investigation in Tucson, Arizona, and developed evidence that the agent had sold to a purported drug trafficker sensor maps, trail maps, landmarks, and terminology used by the Border Patrol to combat smuggling. Evidence showed that on at least four separate occasions, the agent accepted bribes totaling over \$5,000. The agent was arrested in October 2009. On August 12, 2010, he pled guilty in federal court to one count of bribery. On May 3, 2011, he was sentenced to 20 months incarceration, 36 months supervised release, and was ordered to pay restitution in the amount of \$5,500.

External Partners

Since its beginning in 2003, DHS OIG has worked cooperatively with other law enforcement agencies on border corruption matters involving DHS employees. A key component of our investigative strategy is to leverage our limited resources and share intelligence with law enforcement at the federal, state, and local levels. DHS OIG has agents participating in local Border Corruption Task Forces (BCTFs) and Public Corruption Task Forces in many parts of the country. These cooperative relationships serve to ensure that different law enforcement agencies are not pursuing the same targets which places law enforcement agents' safety at risk and is duplicative. We recognize the importance of strong cooperative relationships and work diligently to maintain and enhance these relationships, while at the same time ensuring our independence in a way that inspires the public's trust in the outcome of our investigations.

In March 2010, DHS OIG assigned a Deputy Assistant Inspector General for Investigations (DAIGI) to act as a liaison to the National BCTF in an effort to achieve full participation in all of the BCTF's investigations of DHS employees. In addition, this DAIGI was tasked with negotiating a memorandum of understanding (MOU) that would reflect the OIG's statutory responsibilities with respect to (1) investigating allegations of criminal misconduct against DHS employees and (2) providing oversight of the internal affairs offices within DHS, while ensuring the representation of departmental interests in the course of BCTF investigations. The effort to reach a formal agreement is ongoing. DHS recognizes that the first necessary step to achieving a workable agreement with the

FBI is clarifying roles and responsibilities among DHS OIG and the various internal affairs elements. The Secretary's personal leadership is moving us forward in this regard.

With respect to information sharing, the OIG and FBI have a mutual responsibility under the *Attorney General's Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority* to promptly notify one another upon initiation of any criminal investigation, a responsibility the OIG meets in a timely way. Within DHS, all allegations of criminal misconduct by employees must be referred to OIG. The MOU, as drafted by the FBI, requires DHS participating agencies to provide the same information directly to the FBI. This duplication in reporting is not an efficient use of DHS or FBI resources, and opens the door for parallel investigations placing agent safety at risk. Furthermore, the MOU fails to recognize the OIG's statutory authority as the focal point for all criminal investigations of employee misconduct within DHS.

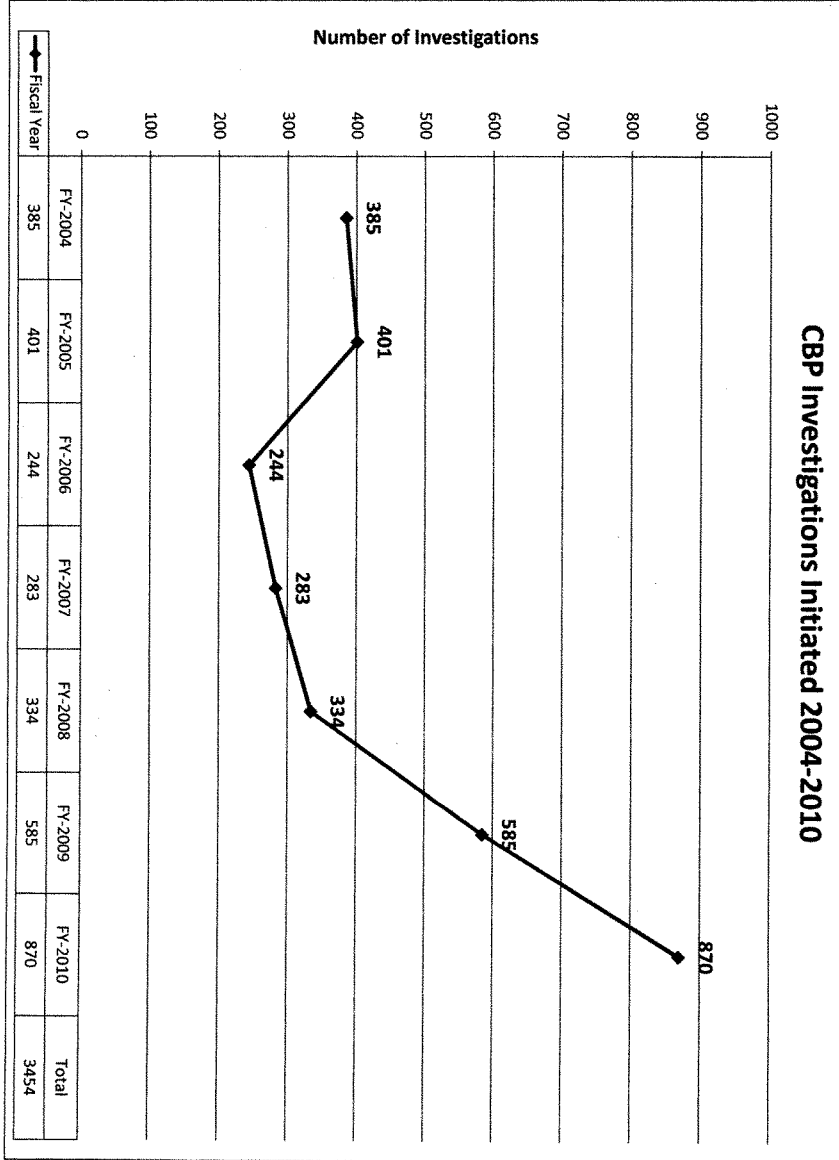
In May 2010, the FBI in San Diego presented the OIG with an MOU that contained provisions for shared management responsibility between DHS OIG and internal affairs offices of other DHS components, which failed to take into account the OIG's statutory responsibility for supervising, leading, and coordinating criminal investigations of DHS employees and interfering with our oversight responsibility with respect to component internal affairs offices. Many aspects of the MOU also interfered with the OIG's ability to investigate cases independently of the DHS component members of the BCTFs. These provisions placed significant restrictions on the OIG's independence, and were therefore unacceptable. Over the past year, we worked locally and at FBI Headquarters to resolve differences and craft language to which all parties could agree but no agreement has been reached.

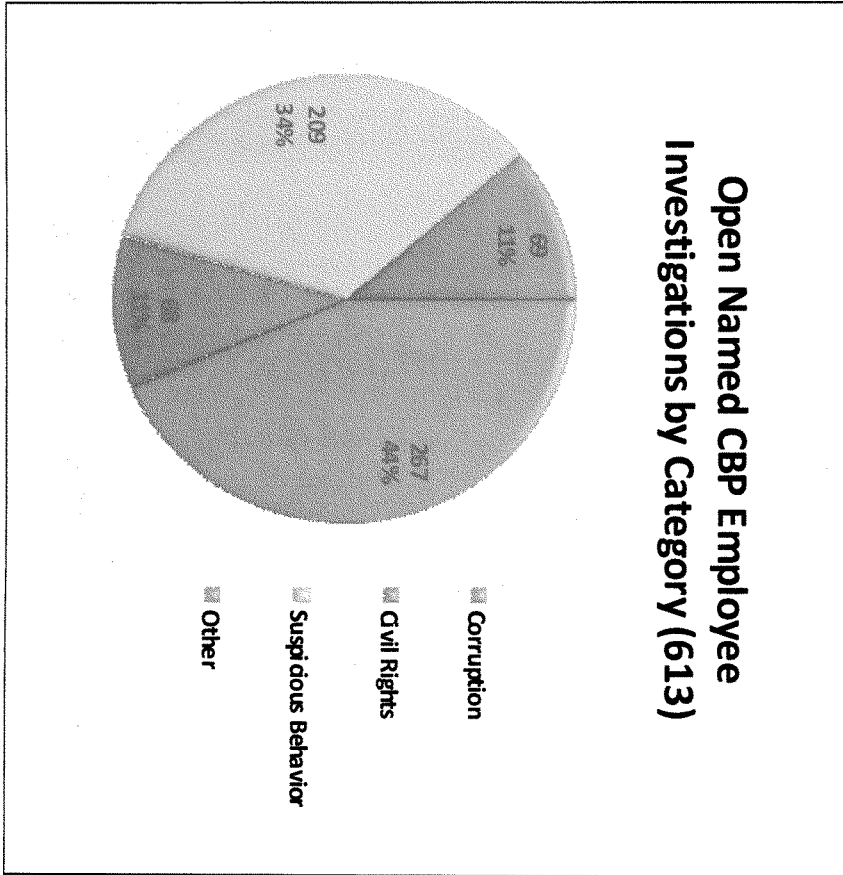
Within the past few weeks we have worked diligently with the U.S. Attorney for the Southern District of California to reach a compromise that would allow all parties to participate meaningfully in the work of the San Diego BCTF. As parties continue to negotiate, the U.S. Attorney's office has withdrawn from the 2010 version of the MOU and the OIG has resumed working directly with the U.S. Attorney's Office on several significant border corruption cases.

Conclusion

We appreciate the Subcommittee's attention and interest in the work of the OIG to investigate corrupt employees within the DHS workforce. We will continue to pursue collaboration and cooperation with our law enforcement partners within DHS and at the federal, state, and local levels to ensure that employee corruption does not jeopardize our national security.

Chairman Pryor, this concludes my prepared remarks. I would be happy to answer any questions that you or the Members may have. Thank you.





Post-Hearing Questions for the Record
Submitted to the Honorable Alan Bersin, Commissioner, Customs and Border Protection, (CBP),
Department of Homeland Security
From Senator Rand Paul

“Border Corruption: Assessing Customs and Border Protection and the Department of Homeland Security Inspector General’s Office Collaboration in the Fight to Prevent Corruption.”

June 9, 2011

1. During the hearing, we discussed the fact that approximately 1 million people enter the United States each day. Can you elaborate on that statistic? What percentage of those entrants are returning U.S. Citizens? How many are entering on Student Visas?

Response: In fiscal year 2010 (FY 2010), 352,731,097 persons entered the United States, or 966,387 persons per day. Of this number, the percentage of returning U.S. citizens was 37 percent. Student Visa holders comprised 1,997,898 (.57 percent of the total entrants in FY 2010) or 5,474 students per day entering the United States.

2. I am very concerned about our limited ability to track temporary visa holders as they exit the United States. A recent Congressional Research Service report details the difficulties of collecting I-94 Arrival/Departure forms as visitors leave the country. The report estimated that in 2006, there were between 3.3 million and 6.2 million nonimmigrants overstaying their visas and residing illegally in the U.S., comprising between 31 and 57 percent of the total unauthorized population. What can be done to improve the tracking of temporary visitors to the United States and prevent overstays?

Response: The Department of Homeland Security’s (DHS) collects biographic information from carriers and travelers on departures today. These capabilities have advanced significantly in the last few years, and DHS is planning additional improvements in the near term. In particular, DHS will pursue: additional carrier compliance auditing, to increase the completeness and accuracy of the departure information provided; system enhancements to improve how information is received, increased accuracy in arrival/departure record matching, increased automated vetting of records for national security and public safety concerns; and full review of overstay records to determine appropriate action.

3. While the Department of State and USCIS have primary responsibility for processing applications for asylum and performing the requisite background checks, CBP retains final authority for determining admissibility as refugees prepare to enter the country. You stated that a risk-management approach is used to prevent the entrance of those posing a threat.

- a. What percentage of visas approved by the State Department and issued abroad are subsequently rejected by CBP at entry?

Response: U.S. Customs and Border Protection (CBP) is the responsible agency charged with determining admissibility of aliens at ports of entry. This responsibility is distinct from the Department of State's (DOS) visa issuing authority and deliberately designed to ensure a system of checks and balances between DOS and Department of Homeland Security (DHS). In order for an alien to be admitted into the United States, the inspecting CBP officer must determine that the more than 60 grounds of inadmissibility enumerated in section 212(a) of the Immigration and Nationality Act (INA) do not apply to that individual, or where certain grounds do apply, that those grounds are waived in DHS's discretion pursuant to the statutory requirements. Section 291 of the INA [8 U.S.C. § 1361] provides that whenever any person makes application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of the INA. The issuance of a visa does not guarantee admission into the United States, but allows the alien to apply for admission to the United States at a port of entry. In fiscal year 2010, approximately 0.1 percent of non-immigrant visas issued to foreign nationals resulted in findings of inadmissibility when the visa holder applied for admission.

- b. Can you elaborate on the risk-management approach you mentioned, and explain the criteria used for determining whether or not an entrant deserves further scrutiny?

Response: CBP screens all people, goods and agricultural products to ensure they are not a threat before they may be properly released into the United States. CBP uses a layered enforcement approach using advance information to segment higher risk travelers and cargo for greater scrutiny, screening against all available law enforcement databases, and identifying high risk travelers or shipments prior for their departure from foreign locations to prevent their boarding conveyances destined to the United States.

