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OVERSIGHT OF THE DEPARTMENT OF HOMELAND SECURITY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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OVERSIGHT OF THE DEPARTMENT OF HOMELAND SECURITY

WEDNESDAY, MARCH 9, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:06 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Kohl, Schumer, Durbin, Whitehouse, Klobuchar, Franken, Coons, Blumenthal, Grassley, Kyl, Graham, and Cornyn.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. I was meeting with the Secretary yesterday. How many appearances have you had on Capitol Hill in the last couple weeks?

Secretary NAPOLITANO. This will be my fifth full Committee hearing in the last 2 weeks, last week and this week combined. Yes, sir.

Chairman LEAHY. We are going to have to get you an office up here.

[Laughter.]

Chairman LEAHY. I am glad you are here, and I am going to put most of my statement in the record. I am just going to offer a few comments.

First off, Madam Secretary, I want to acknowledge your decision to delay the implementation of the REAL ID Act. I think that is very good. I think that gives States more time to make progress. It also allows those of us in Congress who are looking at an alternative to REAL ID to do so. We go from the concerns of the security of the country, to the concerns over requiring Americans to have a national ID card, which worries a lot of us, to a mandate on the States that many of the States are not prepared to meet. We will work with you and your Department, but I think the delay in implementation is a good thing.

We know that you are charged with protecting our security and responding to emerging threats, and I think all of us here are cognizant of that task. But we also hear from our constituents about security screening at airports. I think Americans expect to be treated with dignity when they go through an airport, just as we hope that our visitors to the United States are treated with dignity when they come here.

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For many Americans, the use of X-ray scanning machines that produce a detailed body image is a bridge too far. And for many Americans, the alternative of a pat-down is even more difficult to tolerate. I understand there is an effort among the TSA and the manufacturers of these scanners to develop new software that would render images without anatomical detail and in a truly anonymous manner. When you come from a small State like mine, where everybody knows everybody, no matter what kind of security technology you use, there is justifiable concern that an airport may use screening that produces images in graphic detail.

Also some are concerned about the health effects of these scanners. We should not dismiss any citizen's health concerns, and we should all support independent assessment of any associated health effects of x-ray screening. One person I mentioned to you is a cancer survivor, and she will not go through the x-ray screening. She is a registered nurse. She has read all the reports. And she just cannot bring herself to go through an x-ray screening. Her reaction is one that weighs heavily on me. I have been married to her for 48 years.

We cannot set aside the need to reform our Nation's broken immigration system, and we have to look at what might produce smart reform.

And, finally, I want to thank you for working with me to protect refugees and asylum seekers. I was gratified by the announcement in December 2009 of a new parole policy for asylum seekers. I understand that it is being implemented with positive results, and I appreciate that.

I will put my whole statement in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. Again, Senator Grassley, I thank you for all your help, especially on the patent reform bill, which we passed last night.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. It is very gratifying to work with a bill that gets passed with only five dissenting votes in the U.S. Senate. But it is a tribute to you and a lot of other members other than me on this Committee who worked on it for a long period of time. I was on the sideline kind of in a sense of not being the main negotiator but being the beneficiary of a product that was well worked out because of your leadership.

Chairman Leahy, I thank you for calling this hearing. This Department was created to defend our Nation's borders and infrastructure. Yet as we look at the Department of Homeland Security today, we see agencies failing to coordinate with one another, breakdowns in judgments, and failures to protect our Government's own agents on the front lines. In short, what I see is approaching a level that some might call chaos.

With Mexican President Calderon visiting President Obama last week, it highlighted some of the problems that more and more Americans are becoming aware of. Violence on our southern border has escalated as gangs and cartels acquire more weapons. Further,

our lack of defenses and their ability to evade justice has emboldened these criminals, who are becoming a greater threat.

In just the last 3 months, the Department of Homeland Security has seen two of its own agents murdered in the line of duty: Border Patrol Agent Terry and Immigration and Customs Enforcement Agent Zapata. Both were tragedies, and my heart goes out to the families and loved ones of these agents.

Most troubling is that agencies of our Government have contributed to this violence by intentionally allowing thousands of guns to be trafficked from the U.S. to Mexico. The Bureau of Alcohol, Tobacco, Firearms, and Explosives decided to let thousands of guns "walk" after being purchased by straw buyers intent on reselling them. Many of those guns ended up in the hands of bandits who operate on the border, trafficking drugs and other illicit goods back to our country.

This risky strategy of letting guns "walk" did not occur in a vacuum. There are serious questions to be answered about the role played by the Justice Department and agencies within the Department of Homeland Security. This ill-conceived policy has clearly affected the lives of countless individuals who may have been victims of crimes perpetrated as a result of letting guns into the hands of criminals. Agents on the ground were ignored when they questioned the wisdom of this decision, and that just seems to pour salt on the wounds of the families who lost loved ones. When the agents came forward with concerns, you know what? They were shunned and retaliated against.

If the Federal agencies charged with protecting America's borders were not working together, I have to question why the left hand did not know what the right hand was doing. If they were working together, then that raises the question of whether any other agencies objected. Who else knew? How high up was it approved?

The American people deserve answers. The families of those who may have died as a result deserve answers as well. Our Government is organized precisely so that Congress can require accountability and oversight of the activities of the U.S. Government in situations like this.

There are many other issues that need to be discussed as well, so I am looking forward to asking our Secretary guest today about the internal memos written by officials in her Department that outline ways that the administration can circumvent Congress and provide legal status to millions of people who are in this country illegally.

Every Republican member of this Committee sent the Secretary a letter on September 21st of last year inquiring about the internal amnesty memos and the use of the special discretionary authority granted to the Secretary. We asked the Secretary to come before Congress to meet with members and explain the memos. The letter reply was unbelievably frustrating, to say the least. The Secretary responded to this very serious issue by changing the subject to enforcement. The response barely touched on the internal memo about how to sidestep Congress and keep the undocumented individuals in the country. The Department refused to allow a briefing for Committee members with the authors of the memo. The De-

partment assured the public that deferred action and parole would not be granted to the entire illegal immigrant population. But what about the tens of thousands that it could have applied to? Questions remain about potential plans to benefit certain large segments of the undocumented population.

I also have questions about the Department's misuse of the Privacy Act as an excuse to stonewall Congressional oversight by Senators who happen to be in the minority in the name of protecting the rights of terrorists.

I am also concerned about the extension of the deadline for States to comply with the REAL ID law and the inability to maintain operational control over borders.

I thank the Secretary for coming. I appreciate it very much and look forward to hearing what she has to do to address some of these concerns.

Thank you very much.

Chairman LEAHY. Thank you very much.

Madam Secretary, we will put your full statement in the record, but please feel free to go ahead.

STATEMENT OF JANET NAPOLITANO, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Secretary NAPOLITANO. Well, thank you, Mr. Chairman, and thank you, Senator Grassley, members of the Committee. I appreciate the opportunity to testify about the Department's work to keep our Nation safe from terrorism and other threats as well as our historic border security and immigration efforts.

As you know, we just observed the eighth anniversary of the Department. I believe in those 8 years and the nearly 10 years after the 9/11 attacks we have built a more effective and integrated Department, a strengthened homeland security enterprise, and a more secure America.

Indeed, last week we had a program at Georgetown University featuring all three Secretaries of the Department on the same stage: Secretary Ridge, Secretary Chertoff, and myself, each of us acknowledging Homeland Security 1.0 when it started, 2.0 under the Secretaryship of Michael Chertoff, and then the great advancement that has been made based on that strong foundation moving forward.

Now, as I often say, homeland security begins with hometown security. Working hand in hand with first responders, State, local, tribal, and territorial governments, community groups, our international partners, and the private sector, we have made great strides in protecting our Nation from terrorism and other threats while building a culture of resiliency and preparedness across the Nation.

Let me address just a few issues that are particularly within the jurisdiction of this Committee.

Border security. Over the past 2 years, the Obama administration has launched an unprecedented effort to bring focus and intensity to southwest border security, coupled with a reinvigorated, smart, and effective approach to enforcing our immigration laws in the interior of the country. Under our initiative we have increased the size of the Border Patrol to more than 20,700 agents today,

more than double the size it was in 2004. We have doubled personnel assigned to Border Enforcement Security Task Forces. We have increased the number of ICE intelligence analysts along the border who are focused on cartel violence. We have quintupled deployments of border liaison officers to work with their Mexican counterparts. And we have been screening 100 percent of southbound rail and also a large percentage of vehicle traffic for the illegal weapons and cash that are helping fuel the cartel violence in Mexico.

Additionally, with the aid of the supplemental requested by the administration, passed by the bipartisan Congress last summer, we are adding more technology, manpower, and infrastructure to the border, including 1,000 new Border Patrol agents, 250 new CBP officers at the ports of entry, 250 new ICE agents focused on transnational crime, two new forward operating bases, and two more unmanned aerial vehicle systems. In fact, we now have UAS coverage along the entire reach of the southwest border from El Centro to Brownsville.

President Obama also has authorized the deployment of 1,200-plus National Guard troops who are actively supporting our work along the border, and we continue to engage in unprecedented cooperation with Mexico.

While we still face challenges—and we are not here running a victory lap—one thing is clear: The approach is working. Nationwide, Border Patrol apprehensions have decreased 36 percent in the past 2 years and are less than one-third of what they were at their peak. We extrapolate from that that fewer people are trying to cross our border illegally.

Our seizures of illegal cash, drugs, and weapons are up all across the board, and violent crime in southwest border communities has remained flat or fallen, even as drug-related violence has increased in Mexico, and we want to make sure it stays that way.

Now, we remain very concerned about drug cartel violence in Mexico, and we must vigorously guard against potential spillover effects into the United States. As you know, or as many of you know, I remain in regular contact with the police chiefs and sheriffs along the southwest border because they will be the first ones to see if there is an uptick in spillover violence before we actually get the FBI crime statistics. So even as we get the statistics, we are keeping live contact with those directly involved on the front line.

Now, I can speak for the entire administration when I say we are not only saddened by the loss of our agents, but we are outraged by these acts of violence against officers of the United States. Justice will be brought to those involved. We owe nothing less to the memory of Agent Zapata, Agent Terry, and to those who are still on the job along the border and in Mexico. And I look forward, Senator Grassley, to answering, to the extent I can in a public hearing, your questions about those deaths.

Our fiscal year 2012 budget request continues the administration's continued and historic border security efforts by supporting a record number of Border Patrol agents and border protection officers in addition to the deployments of proven effective technology along the highest trafficked areas of the southwest border, as well

as technologies tailored to the maritime and cold weather environments we experience on our northern border.

Currently we have more than 2,200 Border Patrol agents on the northern border, a 700-percent increase since 9/11, and nearly 3,800 CBP officers at ports of entry and crossings. We are also in the process of modernizing more than 35 land ports of entry along the northern border to meet our security and operational needs, and we recently extended the range of UAS coverage there by nearly 900 miles.

Let me address immigration enforcement because as we have strengthened the border, we have stepped up our efforts on the interior of the country. Over the past 2 years, ICE has removed more illegal immigrants from our country than any 2-year period before, with more than 779,000 removals nationwide. And in 2010, more than half of those removed were convicted criminals.

We have worked to ensure that employers have the tools they need to maintain a legal workforce and face penalties if they knowingly and repeatedly violate the law. And we have made changes to our immigration detention system to recognize the basic differences between immigration violators, some of whom we find are children, families, and the like, and the detention system needs to recognize the violators that fall in those categories all the way up to and including the most serious violent criminals.

Our fiscal year 2012 budget request continues these priorities, supporting efforts to fund 33,400 detention beds, removal of over 200,000 criminal aliens, and deploy Secure Communities to 96 percent of all jurisdictions nationally in fiscal year 2012, while promoting compliance with worksite-related laws through criminal prosecutions of egregious employers, Form I–9 audits and inspections, and continued expansion and enhancement of E-Verify.

At the same time, we must continue to improve our legal immigration system. By streamlining and modernizing operations, we are now processing applications for naturalization and other immigration benefits in record time. We have made our online systems more customer friendly, and we naturalized record numbers of military personnel this past year.

All of this work will only get stronger with comprehensive immigration reform, and I look forward to working with the Congress to make changes to our immigration laws to more effectively secure the border and support our law enforcement priorities, while meeting the labor, economic, and other needs of our country.

Thank you, Mr. Chairman, for this opportunity to testify. I am happy to answer the Committee's questions.

[The prepared statement of Secretary Napolitano appears as a submission for the record.]

Chairman LEAHY. Thank you, Madam Secretary. As I said, your full statement will be placed in the record, as well as statements by any of the members. We will go to 5-minute question rounds for members. I will ask questions first, then Senator Grassley, and then we will go back and forth based on the order of arrival.

Americans and a good number of Vermonters, as I mentioned to you privately earlier, express concern over the screening technology and the physical searches conducted in airports. I understand the need for safety, but Americans appreciate their privacy. I under-

stand TSA is working with industry to develop software that will render X-ray images of travelers into anonymous images without anatomical detail. But I also understand that even when the software takes an image and alters it to obscure body images, there is still a raw X-ray image that is captured. And so we need a little bit more information about this.

First, how long will it be before all airports' screening machines are updated to better protect citizens' privacy? And what protocols or procedures are followed by TSA to make sure that the raw images are not stored or improperly viewed or disseminated?

Secretary NAPOLITANO. Well, thank you, Mr. Chairman——

Chairman LEAHY. Of course, it would be a crime to disseminate them, but go ahead.

Secretary NAPOLITANO. Exactly. First of all, we are moving to this new technology because of the threats that we faced as illustrated by the so-called underwear bomber in December of 2009. But it is clear that al Qaeda and its affiliates still view aviation as a target. The intelligence tells us that. And they have moved beyond explosives that contain metallic material, so the magnetometer is not by itself always adequate.

The new machines, we call them AIT, advanced imaging technologies. We are piloting right now software that produces on the image a stick figure as opposed to a more complete image. And even as we purchase the machines, the protocols, the contracts, the rules all say they cannot collect, store, disseminate any image. Indeed, all that has happened is that the officer who is not actually at the line so they cannot associate an image with a person, they see it, they see whether there is an X for an anomaly and it moves on.

Chairman LEAHY. Even though the machine would pick up the raw image, the person who conducts the screening is only going to see the stick figure?

Secretary NAPOLITANO. Under the new software, that is how it would work, yes, sir.

Chairman LEAHY. Are manufacturers working with you on this? What role do they play?

Secretary NAPOLITANO. Yes, we are working with the vendors on the software, and we are continually working to improve the software to eliminate false positives as well as to make sure we accurately capture what needs to be checked out.

Chairman LEAHY. Would you welcome an independent study and assessment of any potential health hazard for this screening?

Secretary NAPOLITANO. Well, absolutely. We have already had it. We have had it through the National Institute of Standards. We have had it through Johns Hopkins University. They have all concluded that the machines are more than safe. The amount of radiation is approximate to about 2 minutes in the air.

Chairman LEAHY. I mentioned I am glad you delayed implementation of the REAL ID Act. I have said for years that the best way to encourage the States to make improvements in their driver's licenses is to make the States a partner in this.

Now, there have been homeland security grants that have been used by States to meet some of the REAL ID benchmarks. If REAL ID were repealed and replaced with an alternative program, would

that result in a waste of taxpayers' money? Or would we be able to build on what has already been done?

Secretary NAPOLITANO. Actually, Mr. Chairman, I am harkening back to my days as a Governor. I never saw an issue unite Republican and Democratic Governors so much as REAL ID as a huge unfunded mandate that really did not recognize how motor vehicle divisions actually worked State by State by State.

We worked with the Governors and with the national Governors Association shortly after I became Secretary to devise an alternative that would meet our Nation's security needs but——

Chairman LEAHY. Concerning PASS ID.

Secretary NAPOLITANO. PASS ID. It did not move forward in the Congress, I suppose with the press of other things. We would ask that the Congress take a fresh look at that.

Chairman LEAHY. Okay. Now, as I wrap up my first round, can you tell me what are the emerging threats facing us today from the perspective of your Department? And if the House-passed budget cuts become law, what effect would that have on your programs?

Secretary NAPOLITANO. Well, the House-passed budget is, to say the least, not helpful in any number of regards. It will require cutting 250 ICE agents. It will reduce our ability to deploy new technology, and also technologies like explosive trace detection, machinery in our Nation's airports. It will delay our ability to deploy EINSTEIN 3, which is the cyber protection program for our Nation's civilian networks, particularly of the Federal Government's civilian networks. It will cut our ability to provide support to State fusion centers, which are a key part of our homeland security architecture. And it will cut grants to State and local first responders by almost $1 billion. And in this era of their constrained budgets, that will have a real and discernible impact on the ground.

Chairman LEAHY. Thank you.

Senator Grassley.

Senator GRASSLEY. Yes, thank you, Madam Secretary.

Over the past month, I have been investigating serious allegations regarding Bureau of Alcohol, Tobacco, and Firearms, the allegations that thousands of guns were intentionally allowed to flow through known straw purchasers near the southwest border into Mexico, and those allegations are stunning. As of now, I have received nothing but denials from Acting Director Melson or Attorney General Holder.

Now, I am not sure I expect you to know what happens at the grass roots in everything in your Department, and this is not "gotcha" questions. It is kind of what do you know and what you did not know. So these are my questions:

Are you aware that one of your Immigration and Customs agents was working on this case out of Phoenix called Operation Fast and Furious? And if so, when and how did you learn about it?

Secretary NAPOLITANO. I am not aware of any particular agent. I am aware of the ATF operation generally and have become aware in the wake of the murders of Agent Terry and Agent Zapata.

Senator GRASSLEY. Did you sign off on this operation? And if so, when?

Secretary NAPOLITANO. No. This is within the Justice Department, sir.

Senator GRASSLEY. Okay. Did anyone ever express concern to you about the Bureau of Alcohol, Tobacco, and Firearms purposely allowing gun traffickers to purchase through straw buyers? And if so, what did you know about it?

Secretary NAPOLITANO. No, no concerns were expressed to the Secretary.

Senator GRASSLEY. Okay. Did you ever discuss with anyone anything similar to the strategy described by whistleblowers in this case, that of allowing guns to walk to make a bigger case against the cartels? And if so, I would like an explanation.

Secretary NAPOLITANO. No, I was not so informed, and I know that, however, the Attorney General has asked his Inspector General to look at the operation.

Senator GRASSLEY. Okay. I would like to ask you how you feel about the fact that another agency's decision to put hundreds of guns into the hands of criminals on both sides of the border may have contributed to the death of Border Patrol Agent Brian Terry.

Secretary NAPOLITANO. Well, Senator Grassley, to date—and I have asked that question. My understanding is that the whole Terry matter is under investigation, including the source of the guns that were held. So I think it would be immature—premature, not immature—premature and inappropriate to comment on that right now.

Senator GRASSLEY. Part of the reason I ask that question is because the family is not very satisfied with the information that they are getting, and I do not blame you for that, but I want you to know that there is that dissatisfaction.

Let me go on. When Border Patrol Agent Brian Terry was killed, his tactical unit used thermal binoculars to spot at least three bandits seeking to cross the border carrying AK–47s. Yet according to a sworn affidavit from an FBI agent, when the bandits refused to drop their weapons, our agents fired non-lethal bean bags, like this. The bandits responded with gunfire of this type, the bullets that I am showing the picture of. These are .762 caliber cartridges.

I would like to ask you, according to Agent Terry's family, Federal officials told them in a family briefing that two of the agents in his group carried only these bean bag guns while two others had regular weapons. Do you know if that is true or not?

Secretary NAPOLITANO. I do not know if that is true, but I would like the opportunity to talk about our lethal force policy because I think there is a lot of misinformation in the blogosphere and other places.

The head of the Border Patrol, Chief Fisher, actually comes out of Special Operations, so he comes out of the same group that Agent Terry was in when he was murdered. Our lethal force policy is the same as virtually every law enforcement department I know of in the country; that is, if you are under threat of serious injury or death, you may use lethal force. And like any other law enforcement agency, there is usually a mix of lethal and non-lethal devices that are carried, particularly when you have a multi-agent event.

So while I know holding up the pictures seems very dramatic, the plain fact of the matter is that the lethal force policy of our Border Patrol is that they are entitled to use lethal force if they are under such a threat.

Now, the particulars of the Agent Terry operation are still under investigation, and I think the facts will come out over time.

Senator GRASSLEY. I sent a letter on Friday asking for a copy of the use of force policy. Would you be able to provide that to us very soon?

Secretary NAPOLITANO. Sure.

Senator GRASSLEY. Okay. You may have answered this question, but let me ask it anyway. Is it true that Agent Terry's team was under a standing order to use non-lethal force even against armed bandits refusing to drop their weapons? And if not, how would you explain reports that he was under that kind of order?

Secretary NAPOLITANO. I have asked that question, and my information is absolutely not. Our lethal force policy is what I have described to you.

Senator GRASSLEY. Okay. I will continue my questions on a second round.

Chairman LEAHY. Senator Kohl.

Senator KOHL. Thank you very much, Mr. Chairman.

Secretary Napolitano, I have heard from several businesses in my State of Wisconsin about visa processing delays that hinder their ability to do business with international customers. These companies manufacture and sell complex machinery, bringing business into the American economy, but when foreign buyers apply for short-term business visas to come to the United States for training in how to operate this complex machinery, they can face delays of more than 90 days. Companies in Wisconsin are concerned that, when faced with this delay, foreign customers will be more likely to turn to overseas competitors who do not have such a cumbersome visa process. Therefore, these visa processing delays have a real potential to harm the American economy and cost us jobs.

Of course, we need to maintain the highest level of national security in making visa determinations, but there must be a way to improve visa processing times while still fully protecting national security interests. What are you doing to work with the State Department to shorten the amount of time these B–1 visas take to process?

Secretary NAPOLITANO. Well, it is not just the State Department in those visas. It is also the Commerce Department, and I will be happy to share your concerns with them. We are always willing and able—and we work with those Departments on an ongoing basis. We have overall shortened visa times remarkably over the past few years. We continue to work on efforts to meet the dual demands. You have got to move commerce. You have got to protect security.

Senator KOHL. With all due respect, that is not the answer, naturally, that I would like to hear. I seem to get the impression that there is not going to be much priority placed on shortening the time to wait for——

Secretary NAPOLITANO. No, that is not what I said, Senator, and if that was the suggestion, that would be inaccurate. What I am suggesting is that we are working not just with the State Department but also with the Commerce Department on those kinds of visas to shorten the amount of time as much as we possibly can.

Senator KOHL. All right. Madam Secretary, as you know, the dairy industry is critical to Wisconsin and its economy. Wisconsin produces more dairy products than any other State except California, and it does lead the Nation in cheese production. Often immigrants are the only workers dairy farmers can find to keep their dairies running 24 hours/7 days a week.

It is important to ensure that dairy farmers have access to the workers they need. Currently, farmers may bring in seasonal immigrant workers on H2–A visas, but dairy farmers cannot use this visa program because dairy farming is not considered to be seasonal. I believe we must revise the H2–A visa program to allow year-round agriculture, such as dairy farming or sheepherding to have access to year-long agricultural visas.

As you know, there are legislative proposals to address this problem, but in past oversight hearings before this Committee, you committed to look into whether this problem can be fixed by a rule or a regulation rather than by legislation. Assuming you have completed that review, what are the results? And what can you do administratively to ensure that dairy farmers have access to the workers that they so desperately need?

Secretary NAPOLITANO. Senator, I appreciate that need, and I have looked into it, and the answer is that this would require a statutory fix because of the distinction between seasonal and nonseasonal labor. It is one of the hundreds of areas we run into now where real needs cannot be met because we have not been able to address the underlying immigration law.

Senator KOHL. Madam Secretary, the Urban Area Security Initiative programs build local, regional, and statewide capabilities to respond to threats of terrorism and other manmade or natural disasters. Though many people may not know this program by name, we are safer because it provides first responders in the Milwaukee area, for example, with the ability to effectively coordinate and respond to our communities in times of need.

For example, during the catastrophic flooding in the Milwaukee area last summer, this funding was used to train and dispatch volunteer rescue workers. I have heard from law enforcement back home that without this funding the Milwaukee area's ability to respond to these events would be hamstrung. I am sure that the Milwaukee situation is not unlike other mid-size cities.

The recent House spending bill included an amendment to eliminate Urban Area Security Initiative funding for 39 of the 64 urban areas that now receive it. And under this plan the Milwaukee area would no longer be eligible for any funding.

On March 4th, the President called for nearly half of UASI funding to be cut, but he did not specify whether it would take a similar approach to some cities ineligible. I appreciate the need to make cuts and sacrifices, but I am concerned that Milwaukee and other mid-size cities will be cut out entirely, as the House did in their bill.

Madam Secretary, do you support the President's cuts to these Urban Area Security Initiatives? And if so, will you commit to ensuring that cuts are shared more broadly instead of taking the House approach of singling out mid-size cities like Milwaukee to lose out entirely on the funding?

Secretary NAPOLITANO. Senator, I think that, first of all, H.R. 1, the House-passed budget, cuts grants $1 billion, and it will affect our ability to train first responders and the like and to support UASI and some of these other very important initiatives. So there needs to be—I think there is a philosophical difference perhaps between the House and the Senate about the grants and the need to financially support our cities, our towns, our first responders, recognizing that all of them face risks of some nature.

It seems to me that if reductions are to be made—and we have proposed, for example, consolidating 17 grant programs into 9 to eliminate administrative overhead, both by us and by States, cities, and towns—we need to maintain flexibility so that we can evaluate every locale and every application on its own merits, you know, in exchange for some reductions that flexibility is given.

So without commenting on the House-passed resolution beyond that, that is one of the things I think the States and cities would like to see is, if grant funding overall is to be reduced, greater flexibility on how they can apply the monies.

Senator KOHL [presiding.] Thank you so much.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

Madam Secretary, I would like to return very briefly to the Agent Terry issue. I was at the ceremony in Tucson, and I can attest to the fact that there are still a lot of questions that people would like to have answers to.

You indicated that the case is still under investigation and were unwilling to describe whether or not you had been advised as to whether or not Senator Grassley's statement was correct, namely, that two of the agents were carrying firearms, two were carrying only weapons that could fire the bean bags.

Have you asked that question and have you received an answer?

Secretary NAPOLITANO. Senator, I have received information about the investigation into Agent Terry's death. I think the murder of Agent Terry and the murder of Agent Zapata are outrageous acts against Federal officers in the line of duty, and they require our highest effort.

However, because it is under criminal investigation in Arizona, I think it inappropriate to comment on the facts as I know them.

Senator KYL. Do you think that disclosing publicly whether or not the information that has been described is accurate would impede the investigation or the prosecution?

Secretary NAPOLITANO. I would prefer, Senator, before I talk about the details of the case, to be able to confer with the U.S. Attorney who is prosecuting it.

Senator KYL. There is an affidavit from FBI Agent Scott Hunter dated December 29th that is public. He is an FBI agent, and he alleges that the denial by CBP that agents were under specific—that agents were under specific orders to use less than legal force, he says that this is incorrect. Are you familiar with his affidavit?

Secretary NAPOLITANO. I have not seen that affidavit. I have, however, gone over the lethal force, use of force policies extensively with the leadership of the Border Patrol, who, as I said, come out of Special Ops.

Senator KYL. Excuse me, but if, of course, the agents do not have the weapons to use, then the ability under policy to use them is of little use.

Secretary NAPOLITANO. Senator, I think, first of all, I have been—as a U.S. Attorney, as an Attorney General, and now involved in, unfortunately and tragically, many cases where an officer has died in the line of duty, in my judgment it is important to let the prosecutor handle the facts, produce the evidence, and at that point we will do our own internal investigation.

Senator KYL. Well, and I appreciate that. You can understand the concerns of the family, and I have been an advocate of victims' rights for a long time, among which are to understand the facts of the case surrounding the death of a loved one. And too often, in my experience, prosecutors use the excuse of it is under investigation—I should not just say prosecutors but Government officials—to not disclose information to families.

There is another tragic case in Arizona involving the U.S. military, and that involved a beloved military figure in Arizona. I am speaking of Tillman, the——

Secretary NAPOLITANO. Oh, Pat Tillman.

Senator KYL. Pat Tillman, the former Arizona Cardinal who was killed. And because information was not provided to the family, that has remained to be a matter of great concern to a lot of people in the State, and I do not want that to happen with regard to Agent Terry and his family as well.

Secretary NAPOLITANO. Senator Kyl, if I might add, we have been in contact, my understand is, with the family, as has the Justice Department through their victims assistance program, and we will continue to be so. My understanding as well is that this case is moving forward in the U.S. Attorney's Office there.

Senator KYL. Was the Department of Homeland Security consulted by anybody in the House of Representatives prior to the reduction in funding carried in the continuing resolution? And if it was, can you share with us what advice the Department gave?

Secretary NAPOLITANO. If it was, it was not at the higher levels.

Senator KYL. DHS has an outside working group of advisers that has prepared a draft report that, among other things, deals with the terminology for referring to Islamist terrorists, although that term would apparently be banned as a result of the findings of this working group. In fact, as I understand it, any reference to Islam or jihad would be inappropriate because it is alleged that the sociology regarding the motivation of these terrorists is still being studied.

Do you have any problem acknowledging the influence of their faith on the various Muslim terrorists who have been arrested during your 2-plus years as Secretary?

Secretary NAPOLITANO. Senator, you know, I do not. I mean, there is, in fact, a small group of Muslims—"Islamists" I think would be a better way or "jihadists" would be a better way to describe them—who target the United States and are the focus of a lot of the work that we do at the Department of Homeland Security. But that should not be used to tar the entire Muslim community.

I believe—and I do not see it, and it is hard to respond to something you do not have before you, but we have focused—you know, the question for the Department of Homeland Security is: How do we prevent a homegrown terrorist, a homegrown extremist, Muslim motivated or not, from being able to actually commit an act of violence, how do we detect and prevent? And we believe that one of the most effective ways we can do that is through supporting trained community police departments who are on the front lines, in the neighborhoods, know the people, have built bridges into communities.

And so our strategy is really based on from a security level what can we do within the homeland that would be most effective. This is the strategy that was used a lot in the 1980s and 1990s to break up some of the major gangs that were plaguing our cities and the like.

The strategy was devised by or advised by an outside group that included a lot of chiefs, and we have been field-testing it at FLETC with other police and sheriff leaders from across the country over the past 2 weeks. So, really, what we are trying to do is, recognizing that we have—and this has evolved over the past 2 years—people who are actually U.S. persons who have become motivated to become jihadists or who have become motivated to commit violent acts in the name of an extremist ideology, Muslim based or other—and there are others—what is the best way that we can devise to have the homeland security architecture that would prevent such an act from being committed?

Senator KYL. Mr. Chairman, if I could just make a final comment. I appreciate that. Obviously that makes sense. It is important in dealing with an enemy here—and these are not just crimes. These are people who have a larger purpose in mind, and they are worldwide. And, of course, they do not represent anywhere near the majority of the muslims of the world, but I think it is appropriate—in fact, it is necessary to know who your enemy is in order to prevail against them, and acknowledging that in these cases people are influenced by their view of their faith and that some of them are, therefore, Islamists, jihadists—both of those I think are accurate terms—I think is important, and I appreciate your answer and would strongly encourage you to ensure that others in the Department do not shy away from, when it is appropriate, referring to terrorists by their real name.

Thank you.

Senator KOHL. Thank you, Senator Kyl.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Thank you, Secretary Napolitano, for your testimony.

I want to talk a little bit about and probably pick up a little bit on Senator Kyl's last few questions about the Somali community in Minnesota. About a couple of years ago now, a very small number of members of that community went back to Somalia, very young men, to train with Al-Shabaab, a terrorist organization. My experience is that no one was more upset about what happened than the Somali community in the Twin Cities itself. But yesterday I heard a Member of Congress on television say very categorically that there had been no cooperation from the Somali community or from

community leadership, including imams, in the Twin Cities with Federal authorities. But my understanding from Federal authorities themselves, including in Minneapolis, is that there had been real cooperation from that community in Minnesota, including imams and the mosques.

Is that your understanding?

Secretary NAPOLITANO. My understanding, Senator, is that there has been very active interaction between the Somali community in the Twin Cities and different aspects of the Federal Government, yes.

Senator FRANKEN. I just found it very disturbing, as I was watching this, the mischaracterization that I saw. And on behalf of my constituents who are in the Somali community in the Twin Cities, I took some umbrage.

Secretary NAPOLITANO. Senator, we have within the Department a section—it goes by the name Civil Rights, Civil Liberties, but they have been doing a lot of outreach to different Muslim communities around the United States and have done a lot of work in the Twin Cities itself with the imams, with others in the Somali-American community. So I know from our Department's perspective—I cannot speak with a lot of personal knowledge about Department of Justice and so forth. But from our Department's perspective, we have had good and healthy interaction with the Somali-American community there.

Senator FRANKEN. I have talked to people from the Department of Justice on this as well.

Now, you have talked about combating this trend of recruitment by—and this is a quote—"using many of the same techniques and strategies that have proven successful in combating violence in American communities." My question is: How are you putting this idea into practice? For example, it seems to me like it would make sense to have a Somali face on some of our counterterrorism efforts in the Somali community in Minnesota. Is that something you are working on?

Secretary NAPOLITANO. Yes, and as I mentioned, Senator, one of the things we have done is devise a training curriculum to counter violent—on how to detect and prevent violent extremism from being able to successfully carry out an attack, looking at tactics, looking at techniques, and the like, and we are field-testing that right now.

Senator FRANKEN. Madam Secretary, I want to talk about enforcing immigration laws and how they are enforced, and I know you have an important job in doing that. I am worried about making sure that our Nation's children do not suffer unnecessarily because of this.

This is from a recent report from the Women's Refugee Commission. It talks about a Haitian woman from Florida named Jeanne who had four U.S. citizen children, and this is what happened to her kids after she was detained. Her abusive boyfriend made a 911 call, and she was taken away, and it was kind of—it does not matter. But here it says, Jeanne "was unable to make arrangements for her children and for months had no idea where they were. When a nonprofit attorney was able to get her out of detention after 6 months, Jeanne discovered the children also had no idea

where she had been or how to contact her. One child spent most of his time in his abusive father's taxicab, even sleeping there. One was found living with an unknown family that had taken him in, and a third was living with a school friend's family after having been kicked out of her abusive father's home."

Madam Secretary, at least 100,000 parents of U.S. citizen children have been deported over the past 15 years. I know that you have worked to protect children. There is a policy for nursing mothers, for worksite raids of 25 or more people, and for cases where an ICE agent has actually seized a child during a raid. But we still do not have a single comprehensive policy on how to identify kids that might get left behind, how to make sure they know where their parents are, and how to make sure they do not get lost in the system.

Now, last year I introduced a bill called the Help Separated Children Act with six other colleagues, including five on this committee, to fix this. So we have thought about this problem, and I just want to make a simple request of you. Would you and your staff commit to working with me to try to find a way to improve the way kids are treated by this immigration system?

Secretary NAPOLITANO. Oh, absolutely.

Senator FRANKEN. Thank you. And thank you so much. I am looking forward to working with you very much.

Mr. Chairman, thank you.

Chairman LEAHY [presiding.] Thank you.

And as we go to border States again, Senator Cornyn.

Senator CORNYN. Thank you, Mr. Chairman.

Good morning, Madam Secretary.

Secretary NAPOLITANO. Good morning.

Senator CORNYN. According to the Government Accountability Office, last fiscal year, 2010, there were 445,000 individuals detained at the southwest border. The Government Accountability Office points out that of the 2,000 miles along the southern border, 1,120 of those miles were not yet under operational control by the Federal Government. And of the 873 miles that were under operational control, they differentiated between controlled at 15 percent of that 873 and 85 percent, which they call managed, which means that basically they are in a position to try to detect and detain illegal aliens within a hundred miles of the border. I raise that issue because you made the statement, I believe, earlier that you think the administration's approach is working when it comes to border security. And you can correct me if I'm wrong.

I would just give you one other bit of data, and that is, from the Border Patrol, the apprehensions during fiscal year 2009 up to April 30, 2010, out of the 445,000 individuals detained at our southwestern border, there were 45,000 detained coming from a total of 140 different countries. In other words, these are not just individuals coming from Mexico or points South.

Secretary NAPOLITANO. These are the category known as "other than Mexico."

Senator CORNYN. That is correct. I noted in looking at these statistics and these numbers, which I will in a moment ask to be made a part of the record, that at least four countries are represented on this list of 140 countries that have been designated by

the U.S. Department of State as state sponsors of terrorism. How can you possibly claim that the approach of the administration is working when it comes to border security in light of these statistics?

Secretary NAPOLITANO. Well, I think you have to look at the entire picture Senator. You have to understand, first of all, that "operational control" is a term of art by the Border Patrol. It does not include all of the assets that are being deployed to the border, the technology and so forth. And you also have to look at all of the numbers, and while our efforts need to be sustained and moved forward, we think we are on the right path. The numbers that need to go up are going up dramatically. The numbers that need to go down are going down dramatically.

We are not done. We are continuing to work that border and work it hard. I have, as Senator Kyl knows——

Senator CORNYN. We think more needs to be done.

Secretary NAPOLITANO. Well, we at the minimum need to be able to financially sustain what we are doing at the southwest border and that I think is something we will need to work with the Congress on.

Senator CORNYN. Madam Secretary, sustaining the current effort means about a half million people coming across the border a year that are detained. And, of course, this is a strange way to keep statistics because as you know and I know, how many are detained tells you nothing about how many who got away. And, of course, there are many guesses about whether that is two get away for every one detained, three or four.

But I also want to ask you, in the GAO report—which I will ask to be made part of the record in a moment—that is dated February 15th, they say that Customs and Border Patrol does not have an estimate of the time and efforts needed to secure the border.

Do you have an estimate of the time and efforts needed to secure the border?

Secretary NAPOLITANO. Well, first of all, let me go back to your earlier point, Senator Cornyn. When I say sustain, I mean sustain the trends, sustain our downward trend on illegal immigrants getting across our border, sustain our upward trend on the seizures of drugs and illegal guns and bulk cash. So when I say sustain, I do not mean steady state. I mean sustain the kind of trend lines that we have developed over the past 2 years.

Senator CORNYN. I understand, but do you have an estimate of the time and efforts needed to secure the border that the Customs and Border Patrol said they were unable to provide?

Secretary NAPOLITANO. Well, if I might, Senator, this is not one of those projects where you say, well, by April 1, we are going to secure the border. This has to be——

Senator CORNYN. Madam Secretary, I think I am asking—I am asking you a simple question. Do you or do you not have an estimate of the time and efforts needed to secure the southwestern border? Yes or no.

Secretary NAPOLITANO. Well, my answer, Senator, is that our efforts to secure the border will be continuing. And what I am afraid of is if I give you a date, at that point then resources will be taken

away and put somewhere else. This will need to be a sustained effort over time.

Senator CORNYN. I would suggest to the contrary, Madam Secretary. You know that you have members of this Committee who have been very active in the effort to provide your Department the resources that are necessary to finish the job. And I would just say that you mentioned the issue of immigration reform, and I join you in your observation that our immigration system is broken and needs reforming. But I have to tell you that as long as the American people have no confidence that the Federal Government is doing its job when it comes to securing the border based on enforcement of the rule of law, which is basic to our National creed, but is also a national security threat with our porous border admitting people coming from 140 different countries other than Mexico, including four Nations that are state sponsors of international terrorism, this is a national security threat. So we need to regain the confidence of the American people before they are going to allow us to move forward on the sorts of things that you know and I know we need to do to fix our broken immigration system.

Secretary NAPOLITANO. If I might Senator, we have invited bipartisan leadership of the Congress to come down to the southwest border to see all the activities that at a bipartisan level have been supported across this border. I would suggest——

Senator CORNYN. Madam Secretary, you do not need to invite a Texan or Arizonan to come to the border.

Secretary NAPOLITANO. I would suggest, however—I know that and I have spent almost my entire life on the border. I was raised in New Mexico; I spent my adult life in Arizona until I moved here. So I know that border very, very well. But there are other Members of the Congress who do not, and I think once they see what is down there and what is coming—because more and more keeps coming—they will understand both the enormity of the task, but also all of the operations that have been put into place.

Senator CORNYN. Mr. Chairman, I would ask unanimous consent to make part of the record the GAO study that I referred to dated February 15th as well as the statistics I referred to with regard to apprehensions of aliens from countries other than Mexico, if I could make both of those part of the record.

Chairman LEAHY. Without objection, they will be made part of the record.

[The information appears as a submission for the record.]

Senator CORNYN. Thank you. I see my time has expired. Thank you.

Chairman LEAHY. It has and we will go to Senator Franken.

Senator FRANKEN. Well, I think actually we are going to Senator Blumenthal.

Chairman LEAHY. That is right. You have already asked. I am sorry. To Senator Blumenthal.

Senator FRANKEN. Obviously very memorable.

Chairman LEAHY. I saw that look on Senator——

[Laughter.]

Chairman LEAHY. I had to step out on another matter and I apologize.

Senator BLUMENTHAL. I would, needless to say, be happy——

Chairman LEAHY. I saw the look on Senator Blumenthal's face, and I realized just as I said that.

Senator Blumenthal, go ahead.

Senator BLUMENTHAL. Well, I am sure that Senator Franken's questions would be much more enlightening than mine, but I appreciate his deferring.

First of all, let me begin, Madam Secretary, by thanking you for your extraordinary service to our Nation and to the State of Arizona as a Federal official, as United States Attorney and then as Attorney General, and now in your present position. And let me ask you, since we are here to talk about the readiness and oversight of your Department, what would be the impact of a Government shutdown on the Department of Homeland Security?

Secretary NAPOLITANO. Well, our Department, since we did not exist in 1995 when the last shutdown occurred, we have actually had to go and develop a plan for that. We would have some aspects of the Department that would shut down totally. The operational aspects that people see—the TSA officers, the Border Patrol officers, the port officers—they would continue, but all of the backroom work that is necessary to support and maximize their efforts would probably also have to shut down.

So I think that it would be a very destructive event should it occur. I know that and hope that both sides are working to avoid it.

Senator BLUMENTHAL. And fair to say you would do everything possible, you would hope we would do everything possible to avoid a shutdown.

Secretary NAPOLITANO. Yes, absolutely.

Senator BLUMENTHAL. Going to the issue of immigration reform, you have spoken very compellingly about the architecture of security enforcement involving State and local police. Do you foresee greater authority, which probably would require greater training for local and State police, in the enforcement of our immigration laws?

Secretary NAPOLITANO. We actually think that greater authority in that sense is not needed, nor particularly desirable. Immigration fundamentally is a Federal responsibility with some partnerships with State and locals in the enforcement arena. The most successful of those we call Secure Communities, which is an agreement between DHS and the Department of Justice where, when somebody is arrested and booked, their fingerprints are run not just through the DOJ criminal databases, but through the immigration databases as well. So that after an individual has served their time, they go immediately from whatever State system there is or local system right into removal proceedings.

Senator BLUMENTHAL. So the direction you would foresee is providing greater resources at the Federal level, maybe even greater authority to enable local enforcement to be a partner, but not take more authority from the Federal Government.

Secretary NAPOLITANO. That is right, and the Federal Government always needs to retain the authority to enter into the partnership and to describe the parameters of the partnership.

Senator BLUMENTHAL. Thank you.

Going to a different subject. As you know, this past winter has been really pretty brutal in many parts of the country.

Secretary NAPOLITANO. Indeed.

Senator BLUMENTHAL. And a number of them have applied for emergency disaster relief, including Connecticut, and I know that many of us in the Congress have in mind those applications and measures that can be taken to expedite them. So I would ask you whether there are steps being taken to expedite those applications for relief, in particular the applications from Connecticut for two of our counties. We thank you for approving many of our counties, but in particular two, Windham and Middlesex, still have not been approved.

So I wonder if you could comment on when you foresee other decisions being made with respect to them and perhaps other areas of the country that have similarly made application.

Secretary NAPOLITANO. Senator, I think we have been actually moving those emergency declarations through very, very rapidly. Sometimes a jurisdiction when it applies, they do not meet the criteria, and it may be that our FEMA regional individuals, at that time they will work with the local officials and say, "Go back and look at X, Y, and Z because right now you do not satisfy the criteria." That could cause some delay.

But my understanding is that with respect to Connecticut and basically all of the Northeast snow-impacted States and counties and towns and so forth, that those applications have been moving very rapidly.

Senator BLUMENTHAL. Thank you. And perhaps I could pursue a number of these areas with you or your staff after this session. I know even Vermont may have an application, judging by the snow that it received over the weekend.

Secretary NAPOLITANO. We have had quite a few.

Senator BLUMENTHAL. Well, thank you very much.

Secretary NAPOLITANO. Thank you, Senator.

Chairman LEAHY. Thank you.

Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

Thank you, Madam Secretary. I appreciate your service to the country at a very important time and a tough job. You have got a big portfolio.

I just got back from Laredo, Texas, just, I guess, last week. It was a fascinating trip. I understand from the local community—Senator Cornyn's people were incredibly helpful—that the points of entry, the crossings in from Mexico to Texas, that a lot of technology is 30, 40 years old, and the point of entries should, in my view, be considered part of border security. And I am going to ask the Chairman that we have a hearing about upgrading our points of entry.

What is your view of the status of points of entry and how efficient they are in Texas?

Secretary NAPOLITANO. Thank you, Senator. Laredo actually is one of our largest land ports along either border. And a lot of truck traffic has to go through there as well as vehicle traffic.

They have been, and we are, as quickly as the Congress approves it, replacing and updating technologies—VACIS machines, mobile

backscatters, handheld devices, K–9 teams, and coupled with additions for port of entry officers, who are the people who actually have to manage the port.

So we would be happy to brief you off-line or—I do not know about a hearing, but we would be happy to brief you off-line.

Senator GRAHAM. Well, I think it would be good to have the people from the community to come up and talk. Senator Cornyn has done a very good job. I am on his bill.

One of the things I learned, too, is that, you know, the border really goes right through towns, and there is a way to secure our side of the border without having a fence for the whole 2,200 miles, if you listen to the local community. And I would like to maybe talk with you at a later time about security in population areas where the river basically cuts through two towns and making it more secure, but at the same time not killing commerce. I think you can do both.

Generally speaking, from 2007 to now, how would you evaluate the security situation in Mexico? Has it gotten worse or better?

Secretary NAPOLITANO. I would say, first of all, I think that we all have to appreciate what President Calderon is trying to do in Mexico. This is tough, tough work. These cartels have existed for a long time, and they are entrenched and they are large and they are powerful. He has put much of his country's resources into this battle. We are providing any assistance we can, and we will continue to do that.

That being said, I think it fair to say that at least in several of the states of Mexico—and I would suggest Chihuahua, Tamaulipas, Nuevo Leon, and perhaps even now Sonora—that the trend line has not gone in the right direction.

Senator GRAHAM. Yes, I think that is a fair statement. From listening to border communities people on our side, they used to routinely go across to meet their Mexican neighbors, go hunting. There are people who have been doing this all their life who have stopped that activity in the last 4 or 5 years because they are, quite frankly, afraid. So I think the observation is pretty clear to me that the trend lines are going in the wrong way.

Has there been any suggestions of joint operations with Mexico to go after some of these violent gangs?

Secretary NAPOLITANO. There are joint operations that are underway at the request of Mexico, and there are a number of agreements and things that we are doing with Mexico at the Federal level particularly focused on the cartels.

Senator GRAHAM. Well, I think border security is more important than ever because the violence has increased, but I think, you know, being flexible in how to do it makes sense.

Now, about Guantanamo Bay, that is back in the news again. If someone were captured tomorrow in Yemen or Somalia, a high-value al Qaeda target were captured by U.S. forces, what would we do with that person?

Secretary NAPOLITANO. Well, I assume if they are on the field of battle, they would be held by DOD.

Senator GRAHAM. Where would they hold them?

Secretary NAPOLITANO. I do not know the answer to that question.

Senator GRAHAM. Okay. I think the facts are that we do not have a jail. I am not blaming anybody. That is just a fact. If you caught someone tomorrow in Yemen or Somalia, they are not going to go to Bagram Air Base. The Afghan Government is not going to allow that. We are not sending people to Gitmo. So we are in a situation where we have no jail for future captures, so we are either killing them rather than capturing them, or you wind up renditioning them. And that is exactly what we are doing.

Would you support transferring a Guantanamo Bay detainee to the countries of Yemen, Somalia, or Pakistan? Do you think that would be a wise, safe move to repatriate a Guantanamo Bay detainee to those three countries?

Secretary NAPOLITANO. Senator, I think that the issue of the Gitmo detainees has to be evaluated on a case-by-case basis, so I think that is the way you have to look at it. Each person there has a different file and a different set of facts.

Senator GRAHAM. You would be willing to send somebody to Yemen?

Secretary NAPOLITANO. Senator, it depends on what that person is and what that person allegedly has done.

Senator GRAHAM. Do you think Yemen is safe to—they will not go back to the fight if they go to Yemen?

Secretary NAPOLITANO. I think there are legitimate concerns with Yemen. But, again, I think that that is up to the Department of Justice and an evaluation of each of the facts of each detainee.

Senator GRAHAM. Thank you for your service.

Senator WHITEHOUSE [presiding.] Senator Schumer.

Senator SCHUMER. I would also like to thank you for your service, Madam Secretary.

My question is first on the northern border and the radar system there. On December 17, 2010, the GAO issued a report on the state of security on the northern border, in which it indicated that, "The northern air border is vulnerable to low-flying aircraft that, for example, smuggle drugs by entering U.S. airspace from Canada."

A month ago, I along with many of my colleagues from northern border States sent you a letter, asking DHS to use military-grade radar along the northern border to detect low-flying planes. This technology was successfully used, as you know, in Washington State during Operation Outlook in 2008. Does the Department plan on using this radar, and will the radar be deployed on the northern border in short order to deal with the drug smuggling, which has a rapid increase in my State and many others?

Secretary NAPOLITANO. Senator, we are working with DOD and with NORTHCOM on radar and other related issues and technologies in efforts on the northern border.

Senator SCHUMER. How soon can we expect—can we expect to get it at some point?

Secretary NAPOLITANO. Senator, I would prefer to answer some of those questions off-line, but I will simply state for open hearing purposes that this is moving very rapidly.

Senator SCHUMER. Good. And it is a good idea.

Secretary NAPOLITANO. Yes.

Senator SCHUMER. Thank you.

Next, FEMA flood maps, going from one to the other. This is an issue of real importance in my State.

Secretary NAPOLITANO. Right. Many States, yes.

Senator SCHUMER. Yes, FEMA has been updating the flood maps. They are placing thousands of Long Island homeowners in high-cost insurance zones. It raises the cost of their living up to $3,000 a year.

These are average middle-class people. They have not had a flood ever in their area. Some live as far as 5 miles from the water, and they are getting socked with these increases. It is amazing.

And what we found out—and FEMA admits this—they get information gathered in Suffolk County to draft Nassau County's flood maps. FEMA rejected requests to conduct a Nassau-specific study, even though Nassau's geography should have been subject to a separate study.

Madam Secretary, the Army Corps district commander advised me yesterday that the Corps, who does the basic studies, was not consulted when FEMA mapped Nassau County. The commander went so far to say that FEMA should have used Nassau-specific Army Corps data.

It is shocking news, particularly given that FEMA was mapping not some rural area that had a few people on it, but a densely populated area. There are 25,000 people new to the flood zone who want to know if the Government used the most appropriate data when mapping their community. I have requested an IG investigation to get to the bottom of this.

My question to you is: Will you help me fix these maps if the investigation shows that we should start over? Would you be willing to work with the Army Corps, who is very willing to work FEMA to get this right, to develop a Nassau-specific storm surge model so Nassau can be mapped accurately? This is not a little area. Nassau County, as you know, has 1.5 million people.

Senator GRASSLEY. We have got exactly the same problem in Iowa, so I await your answer.

Senator SCHUMER. Both Chucks have the same question.

[Laughter.]

Secretary NAPOLITANO. I am delighted to receive a bipartisan inquiry from the Committee.

Senator, if the facts are as you state them with respect to Nassau County, I do not think I need to wait for an IG inspection. I will go back and ask FEMA right now what happened, why they did not use Nassau-specific maps, and if there are better maps and better data available. They should be using the best data available.

With respect to Iowa and to other States, I confronted this when I was Governor of Arizona, and they put some cities and towns into the floodplain. We are working with communities, towns, and counties, saying, "Look, if you have better data, we will review it."

Senator SCHUMER. They might in Nassau have to do a survey for Nassau. They did not have the survey. It would not cost that much. But they took Suffolk's data instead, even though the Army Corps, we were told, told them do not.

Secretary NAPOLITANO. I do not know whether that is true or false, but what I can say is, look, if there is better data to use, we should use it.

Senator SCHUMER. Right. Thanks. Finally—well, I am over my—no, I have a little time left. This is on southern border security, something we have talked about a great deal. I hope to take a trip with you soon—my colleagues, I know Senator Graham is interested in that—so we can see with our own eyes. Even though there is still work to be done, the border is much more secure than when you became Secretary. You are familiar with this very intimately, as former Governor of Arizona, and we passed, as you know—this helped—the $600 million appropriation bill last August.

But, unfortunately, the long-term continuing resolution passed in the House, the 7-month, cuts border security infrastructure and, much worse, Border Patrol agents at a time when violence from Mexico is at an unprecedented level and when a growing economy is likely to produce more desire by individuals to illegally immigrate to the U.S. Senator Kyl, who graciously cosponsored the bill on border security last year, along with Senator McCain, has also recently criticized these cuts.

Can you unequivocally say today to my colleagues that if we pass the House's proposed 2011 continuing resolution our border will be less secure than it is today and we will be going backward instead of forward?

Secretary NAPOLITANO. Yes. It is a bad border bill on the House side. And I think even Representative King, who is the Chair of the House Homeland Security Committee, said that last week when we had our appropriations hearing. So we would hope, as the budgets move forward and these negotiations move forward, that the numbers in that part of the House resolution not be accepted.

Senator SCHUMER. Thank you, Madam Secretary.

Senator WHITEHOUSE. All right. Just to recap where we are, Senator Coons is next, then Senator Klobuchar, then myself, unless and until Senator Durbin returns, in which case he jumps ahead. And I think all of the Republican Senators have been heard, so from now on out it is just us, Madam Secretary.

Senator Coons.

Senator COONS. Thank you, Senator Whitehouse.

Madam Secretary, great to see you again. Thank you for your service and the early predictor that service as a Truman Scholar can lead to later success in life. I thank you for your service, both in Arizona, and leading a very complex and critical agency at this time.

Just to follow up on some of the questions raised in the previous colloquy, I, too, as a former county executive saw a great deal of challenges with FEMA maps. And I am coming from a meeting with Delaware's counties who raised that same question with me. Kent and Sussex in particular have some concerns about FEMA floodplain mapping, so allow me to simply pile onto the concerns raised by the other two.

We also in Delaware happen to have a manufacturing company whose product I got to see in place in Afghanistan that makes a tethered balloon product that is designed to deliver down-looking radar that is used in border security very successfully in the field in Afghanistan, and I believe is being considered for some use northern and southern border, and I would just recommend them to you.

This is a bad border bill, H.R. 1. I think it is a also a bad port security bill, and I would be interested in your comments. Your Department has done a great deal of work in delivering port security funding and in making our ports safer in a particularly challenging global environment at a particularly difficult time. Would you comment on what sort of impact the cuts in H.R. 1 might have on the path forward for port security?

Secretary NAPOLITANO. Well, one particular impact would be a dramatic reduction in port security grants, which are used, as you know, Senator, for a lot of the on-the-ground efforts to secure port infrastructure.

Senator COONS. Yes. And the Delaware Bay actually has a great deal of traffic through it that goes up to New Jersey, to Pennsylvania, as well as to my home State of Delaware. There is about $14 million worth of port security funds that have been allocated since 2008 but have not yet been spent because of the local match requirement, and the fiscal condition of some of our municipalities and State and local governments is preventing that.

Any input for me about the path forward on addressing or resolving this with funds that have already been allocated but have not yet been spent?

Secretary NAPOLITANO. It is a difficult area because we do have some discretion to waive the 25 percent—I think port security is a 25-percent match grant. I would be happy to explore that particular aspect of it and get back to you after this hearing.

Senator COONS. That would be great. I would appreciate it, in particular whether in-kind contributions of resources might be eligible to count toward that.

I was particularly interested in the conversation that was going on before about immigration. There are other ways that immigration I think positively contributes to job creation and to growth in this country. And there has been some back and forth on the H1–B visa program and the EB–5 investor visa program. As a former in-house counsel for a high-tech company, one of our challenges often was finding sufficiently trained folks in the United States at the very highest levels of technology.

How effectively are we using H1–B visas? What challenges are there? How can we strengthen enforcement, particularly with the EB–5, so that there is not fraud? And how can you help us assess their positive contributions to the American economy?

Secretary NAPOLITANO. Well, Chairman Leahy has mentioned EB–5 to me several times as a job creation device. We have actually increased the number of EB–5 visas over the last several years. We want to prevent fraud and abuse in these programs, and that is a concern. We have created a fraud unit within CIS, and we also have done a number of things.

For example, we have increased the number of spot onsite inspections of companies, of employers, who say they are putting to work people to do certain things. We are doing a lot more by way of follow-up with employers and really more oversight of the visa recipients after the visa recipients go to work. So both on the EB–5, we are trying to increase it, but on the H1–B we want to make sure we use it as a country. We need it as a country. But we need to make sure that it is free of fraud and abuse.

Senator COONS. Absolutely. Thank you for your hard work in that field.

And last, if you have got a moment, there was a GAO report on high-risk areas that focused on cyber terrorism. Cyber terrorism and access to cyber attack is something that the financial services community in Delaware has a lot of experience in and is fairly strong in. The National Guard actually nationally is standing up units that are specifically dedicated to fighting cyber terrorism that are a great resource.

I am wondering what plans you have, what the path forward is for your department to strengthen and collaborate and partner with folks in our private sector and our defense communities around being prepared to deal with cyber terrorism?

Secretary NAPOLITANO. Senator, we have an entire directorate within the Department that is on cyber. We have done a lot of work on that in the last 2 years. It is probably our fastest growing area, aside from the southwest border security area. And we have received permission from the Office of Personal Management to do direct hire of 1,000 more cyber security experts. We have opened the National Cyber Security Center in Virginia. We have entered into an agreement with the Department of Defense so that we can have people at the NSA helping us with work and use the technology experts at the NSA, with lawyers and privacy individuals right there so that we do not cross the line. I am very careful about that. And we are working with the private sector, financial institutions being key among them, on the things they need to do to protect their own systems and networks.

Finally, we have been growing US–CERT, which is the response team, and their efforts to be able when an intrusion is detected or something, a virus, or something of that sort, that they can immediately connect with critical infrastructure in the country, which would include the financial services sector.

Senator COONS. Well, thank you. And, Madam Secretary, thank you for your diligent and disciplined service to our country. I see my time has expired.

Senator WHITEHOUSE. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Thank you, Madam Secretary, for coming. I am going to take you from the southern border to the northern border. And as you know, on the northern border of our country is Fargo-Moorhead, the scene of some floods in the past.

Secretary NAPOLITANO. The Red River.

Senator KLOBUCHAR. The Red River, that is good. We like that you know that.

I wanted to thank you again for your help in the past for you personally getting involved when we had that close call in 2009. And just to let you know that there is a lot of concerns right now. FEMA has been working with us, but we are looking at a 35-percent chance now that the flood level could exceed what it did in 2009.

Secretary NAPOLITANO. Senator, thank you. And, yes, in fact, with the amount of snowfall we have had this year, we expect some severe spring flooding. FEMA is already leaning forward into it before a flooding occurs, working with locales, making sure that

equipment and so forth are pre-deployed so that we can respond as quickly as possible.

Senator KLOBUCHAR. Yes, thank you very much.

And then I had two other issues that I am going to put in writing because I do not really expect you to answer them right now. One is about our town of Owatonna, Minnesota, problems or issues with the FEMA hazard mitigation grant program. It is in southern Minnesota. The city has been working with my office, Congressman Walz's office, to work through some red tape to access discretionary funds. And they have been having some issues on removing hazards that contribute to flooding.

The second is Browns Valley, Minnesota, which is an even smaller town. It is on the South Dakota border. This is incredibly complicated. They are caught in a jurisdictional fight between the States and two FEMA regions. South Dakota is in FEMA Region VIII, Minnesota is in FEMA Region V. And so they are having some issues with funding there.

Secretary NAPOLITANO. Yes, that is right.

Senator KLOBUCHAR. And so I am going to put this in writing, and I will not call you out on any answer right now about Browns Valley.

Secretary NAPOLITANO. I appreciate that consideration, but I will tell you, as soon as we get your request, we will work with it as fast as we can.

Senator KLOBUCHAR. OK, very good. Thank you very much.

Second, as you know, I have worked very hard in the area of international adoptions, and with the help of your department and the help of Senator Sessions and Senator Inhofe, we were able to pass a really ground-breaking bill last year that solved some of the issues with the inter-country adoptions and made it so that; one, kids could get immunized here—there was a lot of concern about that—and second, that orphans who were between the ages of 16 and 18 who are overseas can be adopted if a younger sibling is adopted. And so we have been working with your Department to try to get this bill implemented.

We have, for instance, one family, the Macoruses, who are adopting nine siblings from the Philippines—one family who had been orphaned when their mom died, and the older kids have held this family together, and they want to bring them all home together, not just the young kids that are younger than 16.

And so that is just a real example of how we need to get this bill implemented through the embassies and our agencies so we can get this done. And I just urge you to move on that as soon as possible.

Secretary NAPOLITANO. I believe, Senator, actually—and this was not done because of this hearing, but there is a meeting this afternoon on that very subject at our Department. So thank you.

Senator KLOBUCHAR. Okay. Just picture the nine children. We are trying to get them over.

The last thing I wanted to raise was that I saw in mid-February that DOJ and DHS announced the execution of seizure warrants against 10 domain names of websites engaged in the advertisement and distribution of child pornography as part of Operation Protect Our Children, which is a joint operation between DOJ and DHS to target sites that provide pornography.

When I looked at this as a former prosecutor—I know you used to do that job, too, and I am not sure that people realize that DHS through ICE, that your agency plays a role in protecting kids from exploitations over the Internet.

Do you want to talk about that work that is being done?

Secretary NAPOLITANO. Well, ICE is doing a terrific amount of work in this area to protect children from exploitation in the pornography area and also in the human-trafficking area—a real problem globally, a problem in our country. We have special units that are assigned to this. We have some new technology that we are using.

Actually the Secret Service has some state-of-the-art technology that they are using, and we are working with the organization the Center for Missing and Exploited Children. That is, I think, located actually in Virginia in the suburbs.

So we have a lot of work ongoing in this area, and because we have international reach, we are able to do a lot of different things, and we intend to, if anything, expand those efforts.

I might add, however, that if the House budget, H.R. 1, becomes basically the budget for 2012—in other words, we finish 2011 with that and it rolls into and becomes the budget for 2012—some of those efforts will have to be cut back, particularly on the Secret Service side.

Senator KLOBUCHAR. I understand that you were talking earlier with Senator Leahy and Senator Coons about this and that it could result in, just on the first responder side if you look at H.R. 1, a $1 billion cut to State and local first responders. Could you just elaborate on that?

Secretary NAPOLITANO. I will be very short. Yes, H.R. 1 cuts State and local grants by a large amount; it is about $1 billion.

Senator KLOBUCHAR. Okay. Thank you very much.

Senator WHITEHOUSE. Madam Secretary.

Secretary NAPOLITANO. Senator.

Senator WHITEHOUSE. I would like to follow up a little bit on cybersecurity. I assume you are familiar with the status of the interagency process that is taking place within the executive branch?

Secretary NAPOLITANO. Yes, and we are participating in it.

Senator WHITEHOUSE. Can you give us any information on when it might draw to a conclusion? The Commerce Committee has pretty much completed, I think, its work on its bill. Homeland Security has completed its work on its bill. Intel, which I was on through all of this, has been looking at this very carefully, and on Judiciary we will be looking at it as well.

If we are going to proceed legislatively, we need input from the executive branch in order to sort out the differences between the different committees. There is no point sorting it out if we do not know where the executive branch is going to stand.

As I understand it, the interagency process has lasted more than a year already, during which we have been basically cut out of discussions between the executive and legislative branches. So in the legislative branch, we are now probably a year into a stall on preparing the legislation that I think we urgently need in order to protect our country from cyber attack. I do not think it is purely an

executive administrative function and that shuffling things around within the executive branch under existing authorities is adequate.

So the time that it has taken to get through the interagency process I think creates a real risk for the country because I think we are not going to be really secure until we can get some legislation passed. And, frankly, it would have to be good legislation to boot.

So if you could let me know when you think this interagency process might come to an end so that we can get to work with you on joint bipartisan legislation that moves this process forward. At the moment I think the ball is in your court, and it just has stayed there quite a while.

Secretary NAPOLITANO. Well, I think it is in the interagency process, if I might be precise, and what I will do, Senator——

Senator WHITEHOUSE. By "you," I was referring to the executive branch generally. I apologize for loading the entire executive branch onto you.

Secretary NAPOLITANO. That being said, I think your communication of urgency is very clear. We have been moving forward without that, but I think, you know, cyberspace and the authorities and jurisdictions that govern cyberspace and our ability to protect our networks is key and so very, very important, and so what I will do, Senator, is——

Senator WHITEHOUSE. But when will it end?

Secretary NAPOLITANO. So what I will do is communicate your concern to the White House and get an answer to you.

Senator WHITEHOUSE. Based on your familiarity with the process so far, just from your observation of it, do you think we are anywhere near an end to it? Are you seeing—you know, I have done interagency stuff at different levels before, and you kind of know when you are getting near the end and you kind of know when you are not near the end. From your vantage, what do you see in terms of the proximity of a resolution to the interagency process?

Secretary NAPOLITANO. Well, I hope that we are near the end, in part because I know both the Homeland Security Committee and the Commerce Committee are drafting legislation.

Senator WHITEHOUSE. Well, they drafted it actually, I think, a year ago.

Secretary NAPOLITANO. Well, yes.

Senator WHITEHOUSE. We are kind of on hold now waiting.

Secretary NAPOLITANO. Senator, all I can say is let me find out. I just do not know the answer to that question.

Senator WHITEHOUSE. So as far as you know, we are at least not close to the conclusion of that interagency process?

Secretary NAPOLITANO. I did not say that. I said I did not know the answer. So let me check and get back to you.

Senator WHITEHOUSE. But since you are involved in it, presumably you have some visibility into it, and all I am trying to get—I mean, you are the Secretary of Homeland Security. That is the central agency for cybersecurity other than NSA, which provides the technical horses to everybody. You have got to have a sense of how close this is. When you say you are going to get me an answer from the White House, I appreciate that and I would love to have an answer from the White House. But I would also like your sense

of when this is going to come to an end because you have to be involved in this and have some familiarity with it.

Secretary NAPOLITANO. Senator, I think it is fairly close, but I hesitate to give you a deadline because I do not know that there is one. But we share the sense of urgency.

Senator WHITEHOUSE. Okay. Do you share the belief that there are, in fact, legislative changes that are necessary in order to adequately protect the country from this threat?

Secretary NAPOLITANO. Senator, I think that that clarity in terms of authorities and jurisdiction in this new and developing area is—clarity always facilitates operations, and we are on the operational side in terms of the actual protection aspect of our civilian networks. And so if we can work with the Senate and get to a bill that clarifies authorities and jurisdictions, I think that would be very helpful.

Senator WHITEHOUSE. It would take legislation, for instance, to establish a secure domain for critical infrastructure, would it not?

Secretary NAPOLITANO. It would.

Senator WHITEHOUSE. Okay. My time has expired.

I know that the Ranking Member and I assume the distinguished Senator from Arizona both are interested in a second round because they have been faithful and patient about staying through, so we will go on to that second round. And instead of going back and forth, since I am here for the duration, we will go directly from the Ranking Member to Senator Kyl, and then if I have anything further I can wrap up.

Senator GRASSLEY. Just three things I want to discuss: one would be one little follow-up on Terry; No. 2, the Farooque case; and then, No. 3, about the amnesty memos.

According to CBP agents who spoke to the Terry family, the standing order to use non-lethal force first was reportedly given by former Tucson sector chief and the order was not withdrawn when the chief was transferred to El Paso. Are you aware of any other sector chiefs who have given similar orders?

Secretary NAPOLITANO. Senator, as I have said, I have inquired. I have been informed that the standard policy, the training, and the practice in the Border Patrol in use of force is as I have stated earlier.

Senator GRASSLEY. Okay. On November 3rd last year, I wrote to you requesting information on Farooque Ahmed, I guess it is pronounced, a naturalized citizen who was arrested by the FBI for planning terrorist attacks in the Washington, DC, subway. Three months later, one of your Assistant Secretaries responded, "Unfortunately, the Department is legally prohibited from disclosing the information you requested." The Department claimed that the Privacy Act prohibits the disclosure of information unless there is a formal request from a Chairperson.

Instead of asking about 10 questions, I want to make some statements and ask one question. The Privacy Act contains an express exemption for Members of Congress. The exemption states that disclosures are exempt from the Privacy Act if they are made to "a Committee or subcommittee." So I do not think the Privacy Act says anything about needing the request from a Chairman. There is case law directly on point, holding that a disclosure to a Member

of Congress in his or her official capacity falls "squarely within the ambit of the exemption."

So my question is in regard to your Assistant Secretary saying that the Privacy Act would not allow us to get the information requested, and giving you the background that I know about the Privacy Act and in a sense the denial of ours, it was saying in a sense go get your information under the Freedom of Information Act: Do you believe that the Privacy Act should be used to withhold important information from Congress regarding an alleged terrorist?

Secretary NAPOLITANO. Senator, I believe we are bound by the law. And I believe we must have a disagreement because we have Department of Justice guidance that the Privacy Act applies to the Chairman only in terms of the exemption that you described and not to all Members of Congress. So I think we just have a plain disagreement, and we have abided by DOJ's advice.

Senator GRASSLEY. Well, it is impossible under—it is even impossible under average citizens Freedom of Information. It is a terribly complicated process to get information. But we have *Divine* v. *United States* that the Justice Department is ignoring the case law as far as *Divine* v. *United States* is concerned.

But you know what, it makes it practically impossible for Congress to do its oversight work, and I know when I had discussions with you prior to your confirmation, we got all these promises—not just from you, but from everybody that comes before us that they are going to cooperate on Congress' constitutional responsibility of oversight. And this just makes it impossible and how ludicrous it is for us not to know about something about how a person got into this country, got naturalized, and then he is going to turn against the very country that he becomes a citizen of and wants to blow up or kill everybody in the subways in the United States. It just is not reasonable.

Let me go on to another, this amnesty memo, because I am holding up my colleagues. You are fully aware of the internal documents that surfaced last August that outlined the administrative option to keep undocumented aliens from being removed from the United States. Since then this administration has ignored repeated requests to answer questions about this memo, and so I hope to get some answers today from you, and I have three of them.

Who directed the four officials at the U.S. Citizenship and Immigration Service to write the internal amnesty memo that my office obtained last year?

Secretary NAPOLITANO. Senator, first of all, on the Privacy Act issue, let me if I might, your question No. 2. We will be happy to look at the case. We will be happy to look at the exemption. In terms of oversight, if there is anybody that has oversight, it is the Department of Homeland Security.

In the 111th Congress, we provided over 3,000 briefings to the Congress. We provided over 250 testimonies at hearings, 140 from leadership. I think I testified myself over 20 times. We get the most FOIA requests of any department by far. So we have a lot of oversight. I think over 100 committees and subcommittees of the Congress have oversight of the Department of Homeland Security.

And one of our asks—and the reason I make this point—of the Congress is that when it created the Department, it did not simi-

larly reorganize its own oversight structure to match the Department of Homeland Security. And one of the recommendations, Senator, of the 9/11 Commission and virtually the only one on which no movement has been made is an effort by the Congress to try to streamline our oversight because it takes a huge amount of manpower.

Now, with respect to the memo, question three, to which you referred, I am unaware that it was directed by anyone. And I will tell you that in the Department people come up with ideas. And that is not a bad thing for people to be thinking. They may be ideas that are bad. They may be ideas that are unworkable. They may be ideas that have no force other than employees thinking about their area of expertise.

But as our process works through it gets ultimately up to the Assistant Secretary, Under Secretary, Deputy Secretary, and myself. Those ideas get winnowed down. So the memos to which you refer—and I think we have been very, very clear about this—have never been acted upon, were never accepted, and are not the policy or practice of the Department.

Senator GRASSLEY. Well, I have a draft copy of a memo. By the way, it appears to me to be quite complicated, and a lot of effort went into it and not a lot of people that knew what they were doing. So it is just not somebody out there looking for some idea to bring some idea forth through a memo. But I have a draft copy of the memo written February 26, 2010, that was intended for you, Madam Secretary.

Did you at any time since you became Secretary review memos or proposals that describe administrative options such as deferred action or parole to get around Congress' inaction on the immigration reform bill? And some of these memos—or this memo referred to efforts that we are not getting anything done on immigration in the Congress, so maybe we ought to take some action through the executive branch.

Secretary NAPOLITANO. Well, I can understand the Senator's concern there. All I can say is, Senator, we have been very clear. We are not going to give deferred action to large groups as opposed to on a case-by-case basis, which is what I believe the statute permits.

However, I will say that the President is very committed and asks again for the Congress on a bipartisan level to take up the overall issue of immigration, because even some of the questions that were asked of me today about visas for dairy farmers and what we do with H1–B and how do we handle this and how do we handle that, as a Department we are enforcing the law as it currently exists. We took an oath to do so. We are doing that. However, we think that law—and I think there is a lot of agreement by different aspects, the business community, others who think the law needs to be revised.

Senator GRASSLEY. Well, I think that you do correctly state that the law does allow on a case-by-case basis, but the impression you get from these memos that we receive is that Congress was not acting, we need to do something to make a massive amount of people that came here illegally to make them legal. And that gets way beyond a case-by-case basis if you are talking about, you know, I do

not know how many people, but it sounds to me like thousands of people.

Let me ask the last point. Would you commit to providing me by the end of this week with statistics that we have asked for about the number of deferred actions and paroles granted since you became secretary?

Secretary NAPOLITANO. Well, I think if I might, let me—I have some. As you say, we can do deferred action on a case-by-case basis. The law permits that, and it is usually for compelling humanitarian concerns, and those are done.

Now, in fiscal year 2010, we removed over 395,000 aliens. We exercised deferred action in fewer than 900 cases, which was actually fewer deferred actions than were granted in the years prior to that. So I will be happy to put that in writing for you, Senator, but those are the fiscal year 2010 numbers.

Senator GRASSLEY. That was deferred actions. Does that also include what we call paroles? And I assume deferred actions and paroles are different. And I am done.

Secretary NAPOLITANO. My understanding is it does not include the paroles. We will provide that for you.

Senator GRASSLEY. Thank you.

[The information appears unsder questions and answers.]

Secretary NAPOLITANO. If I might, I am sorry, Senator. I left out one category for which we grant deferred actions. It is humanitarian, but the vast majority of these will be requests by law enforcement to defer action on individuals who are witnesses and are needed for prosecution.

Senator GRASSLEY. One last commentary to something you said 5 minutes ago about all the oversight you have. And I do not doubt that you do, and it is probably very complicated for you. But it should not have taken 3 months or more to get a one-line statement that you cannot answer us because of the Privacy Act.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator Grassley.

Senator Kyl.

Senator KYL. Thank you very much. I want to go back to two things. Obviously, you and Senator Cornyn and GAO have somewhat different definitions of operational control. I want to get away from the semantics about operational control on the southwest border. Let me just ask you three questions. I think we are in total agreement on these.

Would you agree that not enough of the border is under enough control?

Secretary NAPOLITANO. I would agree. And I would put it this way, that there are more efforts at this border than ever before in our history. And we are going to continue and we hope grow those efforts.

Senator KYL. Because not enough of the border is under enough control.

Secretary NAPOLITANO. Well, we want to sustain the control that we have.

Senator KYL. No, we want to increase the control we have until we have total control as much we can possibly get. Wouldn't that be the goal?

Secretary NAPOLITANO. I think so. I think that is a fair——

Senator KYL. All right.

Secretary NAPOLITANO. Senator, but let me——

Senator KYL. I do not want to get into semantics. I am just trying to look——

Secretary NAPOLITANO. I hope not because one person's control is another person's actually sealing the border. And as we know, that is not possible.

Senator KYL. Control is a subjective phrase. And that is why I just tried to state it in a general proposition. We need to do more than we are doing. We need to get it better than we have it today. That is all I am trying to establish. Agreed?

Secretary NAPOLITANO. What you are—Okay. Yes.

Senator KYL. Okay. I guess another way I was going to say this, we have got about a quarter of a million apprehensions, which is a reflection depending upon how many other people come across illegally that are not apprehended, but it is a general indication of the degree of the problem. And so that would indicate that it is too many and we have a ways to go. That would be another way of putting it.

Secretary NAPOLITANO. Well, and as you and I have discussed, my No. 1 priority is the Tucson sector.

Senator KYL. Right. I am sorry. That is what I was talking about.

Secretary NAPOLITANO. I think so. That was the number to which you referred. And absolutely, and we are pouring resources into that sector.

Senator KYL. And then that was the final point. And adequate resources are a part of the answer to this.

Secretary NAPOLITANO. Absolutely.

Senator KYL. Other things that would help, for example, would be better enforcement of the hiring of illegal immigrants.

Secretary NAPOLITANO. That is why we have focused our efforts on employers who continually hire illegal immigrants. I might suggest, Senator, one of the areas of the law we would hope the Congress would take up are the elements of proof you have to have to do a criminal prosecution of an employer.

Senator KYL. Okay. I would be happy to receive any recommendations that you have in that regard because clearly both the draw to this country as well as the kinetic energy there on the border are sides of the same coin with respect to control.

Secretary NAPOLITANO. I think that is fair. You have to look at demand as well as supply.

Senator KYL. Right. Now, let me get to something specific. We have talked about this a lot. It is the Operation Streamline, the idea that for people who cross illegally there will be consequences, specifically jail time. And in the Yuma sector, we have gone through the numbers. There has been a dramatic decline in attempted crossings. And the agents there have, over the last several years, attributed that, among other things, to the effective use of Operation Streamline, the incarceration for a relatively short period of time, in most cases a week or two, of people who cross.

Alan Bersin on February 8 gave a speech in Tucson. And one thing he said was, "No mas. No more returns without con-

sequences." And the ABC affiliate in Tucson, KGUN9, a TV station, followed up to find out exactly what the consequences would be, and the station was told, and I am quoting now, "First-time arrestees will be charged with a misdemeanor for illegal entry and then will be bussed or flown to an area far away from where they crossed. Illegal immigrants arrested the second time will then face illegal re-entry charges, a felony that carries a prison sentence between 6 months to 2 years."

Are you aware of that statement?

Secretary NAPOLITANO. Yes, I am.

Senator KYL. Do you think that accurately describes the consequences that the Department has in mind?

Secretary NAPOLITANO. I think it accurately describes some of the consequences.

Senator KYL. And actually my question was not intended as a trap. I will tell you that it seems to me that there is something in between, and that may be the reason for your answer just now.

Secretary NAPOLITANO. Well, and as you and I have discussed, Streamline is an effective program. At least the initial data suggests that. We are also doing other types of consequences that do not have such a heavy burden on the justice system—because Streamline is justice focused—that have consequences.

And, you know, we are still collecting data to see, well, do those have the same as Streamline? In other words, is there a more cost-effective way to achieve what Streamline has achieved in a busy sector like the Tucson sector?

Senator KYL. Right, and I appreciate that. The reason that I think your answer was correct about the consequences is that in the Yuma sector even first-time crossers go to jail. And generally the term of the first-or second-or third-time crosser is somewhere around a week or 2 weeks, or it could be up to 60 days. But that has proved to be a very effective deterrent. And that is not what is being applied in the Tucson sector, even in the relatively few cases where there are prosecutions. Frequently it is time served, which is a day or two, and, therefore, it is not nearly as effective.

In order to determine what is both cost-effective as well as—throw out the element of cost for a minute—an effective deterrent, I think it is very important that we spend the relatively small amount of resources necessary to implement in a more aggressive way the elements of Operation Streamline in the Tucson sector. I provided you with estimates of the cost from Judge John Roll.

Secretary NAPOLITANO. You did.

Senator KYL. You have those now. And what I am going to ask you to do is to work with me and Attorney General Holder to identify the needs and to support those needs in requests for funding to Congress so that we can try to employ Operation Streamline in an effective way in the Tucson sector.

You are welcome to comment on it if you would like, but I am going to make that request very specifically because I think that until we do that, we are not going to be able to get the Tucson sector under control, and it has obviously been effective in other areas of the border, both in Texas and Arizona. And, therefore, it seems to me to be well worth pursuing given the costs involved.

Secretary NAPOLITANO. Senator Kyl, we will be happy to work with you and others in the Congress on Streamline. I would make a request as well, that as we gather data on how some of these other consequence regimes work in terms of particularly recidivism, that we be able to supply that data to you, that we keep an open mind.

Senator WHITEHOUSE. Madam Secretary, back to cybersecurity for one moment. We have here a bipartisan desire to proceed with a substantial cybersecurity bill. It is a national security priority. Indeed, it was Director Clapper's No. 1 priority in his testimony for his confirmation hearing. There is a need for legislation in order to adequately protect the country, and the legislation is stalled for the interagency process.

So what I would like to do is to bifurcate my question to you, to pass to the White House and try to get an answer to, or to answer yourself. One part of the question is what we asked already: When will this interagency process end? And the second is: If that cannot be answered, or if it is at a point so distant that it does not make sense to hold back on legislating in the meantime, would there be a time when the executive branch would be willing to engage with the legislative branch, even before the full conclusion of the interagency process in order to get the craftsmanship, the drafting of the legislation moving along?

At the moment it is my understanding that there is a general sort of stand-down on contacts with us from the executive branch while the interagency process proceeds. That stand-down presumably could be lifted separately from the conclusion of the interagency process if we were down to issues that were not particularly significant to the overall shape of legislation and it was not useful or significant to hold us back for that reason.

Secretary NAPOLITANO. Senator, I do not know if we have in this Congress since the beginning of the year, but in 111th Congress we were providing direct input into both the Commerce Committee and the Homeland Security Committee in terms of operations, how things actually work, what is going on in the cyber arena. And all I can suggest at this point—I understand and take your frustration to heart. I will take it to the White House, and we will try to generate an answer for you.

Senator KYL. And to both questions, when does the IAP end? And is there a moment before its complete conclusion when engagement on the draftsmanship of legislation might commence?

Secretary NAPOLITANO. Indeed.

Senator WHITEHOUSE. Got it. Okay. Thank you.

Let me conclude with just an expression of personal gratitude and appreciation. As you will recall, about a year ago you were flying around Rhode Island in a Black Hawk helicopter——

Secretary NAPOLITANO. I was.

Senator WHITEHOUSE.—looking down at the most devastating floods Rhode Island has ever seen, and I appreciate your personal attention to that, as does Senator Reed. And we also appreciate the extraordinary effort that FEMA put forward to reach out across Rhode Island to open temporary offices, to be everywhere from, you know, Cumberland to Westerly. You were on the ground rapidly

and widely, and it was from that perspective very successful, and we are very grateful for you.

We are doing kind of an after-action report on what the lessons learned are. I think there are a few areas in which we can improve a little bit. I think that some of the claims and denials, that process seemed a little tough for some of our towns. And there is at least a sentiment from some of our municipalities that if they hired a contractor expert in coping with this kind of interagency engagement, that there was a penalty for that, that the FEMA folks would prefer to deal with the town manager not familiar with this stuff rather than the contractor hired by the town manager who actually knew his or her way through the process.

So we will get back to you on that. I think we need to engage the SBA because we found precious little for small businesses in all of this given how low interest rates have fallen, the statutory rate that the SBA is allowed to offer actually -you had to be creditworthy to begin with, and if you were creditworthy, given interest rates, people could go to their local bank and get a better deal.

So what was set for SBA years ago when interest rates were higher has left us in this circumstance with SBA providing far less relief than it wished to in this circumstance. So I will get back to you on that, but I would ask that when the time comes, that that receive at least a moment of your personal attention because we are going to try to be very serious about it on our end to make sure that you get as good a lessons learned response from us as possible.

Secretary NAPOLITANO. I think that is fair. We are always seeking to—thank you for your comments, by the way, but we are always looking for things that we can do to improve the process so that communities can recover as quickly and get back to normal as smoothly as possible.

Senator WHITEHOUSE. Well, the energy, the dispatch, the immediacy, the breadth of your agency's response was really fabulous, and these other things, I think it is always good to work to make it better. But overall we were just delighted at the way you all managed things, and these other parts we will work on.

Secretary NAPOLITANO. Fair enough.

Senator WHITEHOUSE. I appreciate your testimony here today. It has been a long morning for you. We will hold the record open for 1 week for anything that anybody wishes to add, and without further ado we are adjourned.

Secretary NAPOLITANO. Thank you.

Senator WHITEHOUSE. Thank you, Madam Secretary.

[Whereupon, at 12:08 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Question#:	1
Topic:	SB inspections
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Various experts have indicated that one way for the U.S. to stem the flow of bulk cash and illegal weapons into Mexico is to institute 100% southbound inspections. According to CBP, DHS is currently conducting southbound inspections at all Southwest border ports of entry. However, these inspections are not conducted on a 24/7 a day basis.

Can you explain why we do not have 100% southbound screening at this time?

Response: CBP believes the most efficient and effective use of scarce federal resources is to establish a 24/7 outbound presence at higher priority Southwest Border crossings while utilizing a "pulse and surge" strategy for outbound operations at other southern land borders. This represents the most effective law enforcement use of outbound inspections at Southwest Border crossings given staffing, infrastructure, technology, and targeting capabilities, and identifies high risk travelers, cargo, and conveyances and mitigates the impact on outbound traffic.

"Pulse and surge" operations are short duration, periodic outbound inspections. The operations are conducted either randomly and/or are intelligence driven. During "pulse and surge" operations, individuals and conveyances are stopped and a brief interview may take place. If further checks are needed, the person or vehicle will be referred to "secondary" where further questioning and/or inspections occur. If during a secondary inspection CBP officers encounter violations, they may make seizures, issue penalties, or make arrests depending on the offense. The very nature of "pulse and surge" operations allows for an immediate stand-down of outbound inspections in order to manage the traffic attempting to exit the United States at a port of entry.

Question: What is your plan to put 100% southbound screening into effect by the end of FY 2012?

Response: CBP will continue, as resources permit, to support 24/7 southbound operations at higher priority Southwest Border crossings. CBP is currently developing plans for the long term goal of establishing a holistic and layered approach to controlling the flow of people and goods exiting the United States along the Southwest Border. For the Southwest Border, this would result in providing measured resources that are commensurate with corridor threats and permit ports to expand beyond "pulse and surge" type operations. CBP must develop an outbound screening program that achieves the maximum law enforcement benefit given available resources and infrastructure while simultaneously facilitating legitimate trade and travel.

Question#:	2
Topic:	coordination
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: According to DHS, despite $282 million in illegal currency seizures by CBP in the past two years, there is still approximately $38 to $58 billion being smuggled into Mexico by the drug cartels.

We have heard from our State and local law enforcement partners in Texas that they stand ready and are willing to provide the manpower necessary to assist with southbound inspections but it doesn't appear that DHS is using them as a valuable, force multiplier.

Given the amount of bulk cash and guns being transported into Mexico, it seems to make perfect sense to use State and local border law enforcement officers to help DHS in this area.

Why isn't DHS using State and local law enforcement officers to help with southbound inspections?

Response: CBP has been working with some State, local, and tribal (SLT) law enforcement officers on southbound inspections. SLT officers are required to meet certain requirements, including receiving training from CBP on border search authority prior to working southbound operations.

SLT officers that are working with CBP, for the most part, are compensated via Operation Stonegarden grants (DHS provided) or the Treasury Executive Office of Asset Forfeiture (TEOAF) funding (coordinated with ICE).

However the use of TEOAF funds is in addition to other initiatives in the state of Texas such as the use, in some cases, of BORDERSTAR monies to help fund southbound operations. It is our understanding that, at the state level, an effort is underway to clarify existing guidance to highlight the ability to use BORDERSTAR funds for outbound operations.

Question: Is there a legal impediment to such coordination?

Response: No. As mentioned above, it is a question of training and resources.

Question#:	3
Topic:	funding
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: I understand that DHS can also use money from the Treasury's Forfeiture Fund to purchase equipment and infrastructure to help support southbound operations.

Has CBP requested money this year from the Treasury Forfeiture Fund?

Response: CBP has submitted an FY 2011 Super Surplus request package to the Treasury Forfeiture Fund.

Question: If yes, how is that money going to be used on southbound inspections? If no, why not?

Response: This money will be utilized for outbound infrastructure at the Southwest border. Outbound infrastructure includes license plate readers, traffic control devices, containment barriers, inspection shelter canopies, lighting, signage, speed bumps, rumble strips, etc.

Additionally, OFO requested, and Treasury Executive Office for Asset Forfeiture (TEAOF) has recommended approval of, TEAOF funding in the amount of $500,000 for a requirements study and development of the conceptual design. This will assist CBP in determining what type of permanent outbound infrastructure can be fitted and deployed at existing land ports on the Southwest Border where there is limited space for outbound port expansion or where it will not be cost effective to build infrastructure that mirrors inbound operations.

Question: If no, why not?

Response: n/a

Question#:	4
Topic:	manpower
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: We have heard from our State and local law enforcement partners in Texas that when CBP conducts operations based on intelligence from use of the Corpus Christ based Predator UAV, CBP's operations are not coordinated with State and local law enforcement and there is no real time sharing of actionable intelligence.

Our State and local law enforcement officers stand ready and willing to provide the manpower necessary to assist with border operations but it doesn't appear that DHS is using them as a valuable, on-the-ground resource.

Is there a reason DHS is not coordinating with State and local law enforcement on border actions?

Response: As America's frontline border agency, CBP is responsible for securing America's borders against all 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. Moreover, CBP has increased partnerships with Federal, State, local, and tribal law enforcement agencies, as well as with the public and private sectors, as coordination and cooperation among all entities that have a stake in our mission has been, and continues to be, paramount.

CBP works very closely with its state and local partners in the State of Texas. CBP maintains representatives at the Texas Fusion Center and the Texas Border Security Operations Center to facilitate the sharing of real-time intelligence and coordination of operations. CBP is currently engaged in a number of intelligence sharing initiatives with the Texas Fusion Center, the Texas Border Security Operations Center, the Texas Rangers, and the Texas Department of Public Safety (DPS). CBP also actively supports State border enforcement operations and will be directly supporting upcoming operations in the Laredo area through the deployment of both personnel and intelligence assets.

The newest addition to CBP's Predator Unmanned Aircraft System (UAS) fleet was delivered in February 2011 to Corpus Christi Naval Air Station. Until recently, winter weather and a shortage of specialized launch and recovery pilots have hindered routine UAS flight operations from Corpus Christi, although this has not prohibited the CBP UAS from being flown in support of Texas Department of Public Safety's Operation Seven Pines. Toward this end, CBP ensures each UAS sortie is sufficiently tasked to maximize operational effect. CBP has also invested in architectures that facilitate the

Question#:	4
Topic:	manpower
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

ability of all Federal, State and local law enforcement to receive the UAS video in near-real-time when the UAS is tasked to support their requirements, and the UAS was recently programmed with additional Texas law enforcement radio codes to ensure seamless communication between CBP and Texas Department of Public Safety (DPS) officers

CBP hosts a weekly briefing/teleconference with state and local partners regarding the current state of the border. These calls are designed to establish and refine a mechanism to monitor emerging trends and threats along the Southwest Border with a specific focus on the Arizona corridors, and to provide a cross-component, multi-agency venue for discussing trends and threats. The weekly briefing focuses on CBP narcotics, weapons, and currency interdictions and alien apprehensions both at and between the ports of entry across the Southwest Border. These briefing/teleconference currently includes over 290 participants representing agencies and units across law enforcement, Department of Defense, and the intelligence community. Examples of participants include: U.S. Coast Guard, Drug Enforcement Agency, Immigration and Customs Enforcement, State Fusion Centers, local law enforcement, NORTHCOM, Joint Interagency Task Force-North, Joint Interagency Task Force-South, Bureau of Alcohol, Tobacco, Firearms, and Explosives, the U.S. Attorney's Office, Canada Border Services Agency, and the Naval Command.

CBP is working closely with Federal, State, local, tribal, and international partners to increase intelligence and information sharing. We also are improving coordination with military forces on the Southwest Border. In partnership with the Drug Enforcement Administration (DEA), and with support from the Department of Defense (DOD), DHS is standing up the new Border Intelligence Fusion Section (BIFS) in the El Paso Intelligence Center (EPIC), which will integrate and synthesize all available Southwest Border intelligence from Federal, State, local, and tribal partners to create a common intelligence picture to support border enforcement activities on the Southwest Border.

By disseminating real-time operational intelligence to our law enforcement partners in the region, BIFS will streamline and enhance coordinated Federal, State, local, and tribal operations along the border. CBP is working closely with Federal, State, local, tribal, and international partners to increase intelligence and information sharing. A Processing, Exploitation, and Dissemination (PED) cell has been established to enable essential information to be provided to law enforcement across the nation—increasing understanding of evolving threats and providing the foundation for law enforcement entities to exercise targeted enforcement in the areas of greatest risk. This intelligence-driven approach prioritizes emerging threats, vulnerabilities and risks, thus greatly enhancing our border security efforts.

Question#:	4
Topic:	manpower
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Is it a question of additional funding or resources through programs like Operation Stonegarden?

Response: No, this is not an issue of additional funding or resources through programs like Operation Stonegarden. There are a multitude of efforts that take place between CBP and the state and local law enforcement agencies and offices. CBP leverages all Federal, State, and local law enforcement entities in order to provide for a more efficient effort for all operations to address immediate threats as they are known and surge into areas for a more prolonged period. The Border Patrol sectors disseminate information at the local levels to other law enforcement entities through Joint Intelligence and Operations Centers, Sector Border Intelligence Centers, and the Border Security Operational Center in Austin, Texas.

Question#:	6
Topic:	crossings
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Drug cartels are increasingly involved in nondrug criminal activities, such as human smuggling. There also has been an increase in transnational gangs and their illegal networks throughout the United States and abroad.

Some aliens are willing to pay large sums of money to be smuggled into the United States. Statistics also show that aliens trying to enter the U.S. are not just from South American countries but include countries like China, India, Somalia, Iraq, Iran, Syria and Afghanistan. In the first five months of FY 2011, your Department has reported over 1,300 OTM apprehensions in the Rio Grande Valley and a total of 16,590 OTMS aliens to date. That is a startling and disturbing figure.

What is your assessment of the threat posed by drug cartel activity on the southern border?

Response: The majority of illicit drugs and undocumented immigrants in the United States are smuggled into the U.S. through the nearly 2,000-mile Southwest border. Conversely, a significant number of illegal firearms and weapons as well as bulk currency are smuggled across the U.S. Southwest border region into Mexico. The Government of Mexico's (GOM) intensified counter drug operations, in addition to intra- and inter-cartel warfare and plaza competition, have resulted in unprecedented violence in northern Mexico. In late February, the violence resulted in a brutal attack on two Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents who were shot in the line of duty while on assignment in central Mexico. ICE HSI Special Agent Jaime J. Zapata lost his life and Special Agent Victor Avila was seriously injured in the service of our country. The Mexican government has detained suspects for this crime, and DHS is working with the Government of Mexico to assist the ongoing Mexican investigation to ensure that all the perpetrators of this crime are brought to justice. Unfortunately, we also have seen troubling incidents of violence along the U.S. side of the Southwest border in recent months including, for example, the fatal shooting of Border Patrol Agent Brian Terry, in December 2010, near Rio Rico, Arizona. The investigation into that incident is ongoing.

These tragedies underscore the risks our men and women on the front lines face every day as they work to protect our borders and our country, and the tremendous sacrifices they make on our Nation's behalf. I know Congress and this committee, in particular, share my commitment to do everything we can to ensure the safety of our law

68104.007

Question#:	6
Topic:	crossings
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

enforcement officers by providing them with the resources they need to protect our borders and our communities.

Illicit drugs, smuggled bulk cash, and weapons continue to support transnational criminal organizations, including drug cartels operating along the Southwest border. Drug cartels are resourceful and creative in formulating smuggling methods which attempt to evade detection by land, air, and marine law enforcement platforms. DHS remains committed to mitigating this threat through the Southwest Border Initiative that focuses on interrupting the illicit cross-border flow of money, weapons, and contraband through the mitigation of risk with capabilities such as mobile response and partnerships.

Question: Has DHS developed a plan that will directly target drug cartel and transnational gang activity in the U.S.?

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

Under this initiative, DHS has increased the size of the Border Patrol to more than 20,700 agents today, which is more than double the size it was in 2004. We also have doubled personnel assigned to Border Enforcement Security Task Forces (BEST), which work to dismantle criminal organizations along the border. In addition, DHS has increased the number of U.S. Immigration and Customs Enforcement (ICE) intelligence analysts along the border focused on cartel violence. In all, a quarter of ICE's personnel are now in the Southwest border region – the most ever. DHS also has quintupled deployments of ICE Border Liaison Officers to work with their Mexican counterparts, and we are inspecting southbound rail and vehicle traffic for illegal weapons and cash that are helping fuel the cartel violence in Mexico. To address concerns about transnational gang activity, CBP developed an Anti-Gang Initiative to improve the component's awareness of gangs through increased partnerships with other federal agencies and to provide gang awareness training for its personnel.

DHS efforts to counter the threats posed by drug trafficking organizations and transnational gangs extend beyond the border. Since 2005, ICE's Operation Community Shield has targeted members of transnational criminal gangs for arrest and removal from the United States. Beginning in 2008, ICE's Secure Communities Initiative's focus on the removal of dangerous and violent criminal aliens charged with or convicted of crimes

68104.008

Question#:	6
Topic:	crossings
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

such as drug offenses has further enhanced DHS enforcement efforts to directly target drug cartel and transnational gang activity in the United States. A total of $184 million is requested for the Secure Communities Initiative – which uses biometric information and services to identify and remove criminal aliens and those who pose a public safety risk in state prisons and local jails. The $64 million program increase will expand deployment to 96 percent of all jurisdictions nationally in FY 2012. The Secure Communities Initiative will provide resources necessary to confirm the identification of an estimated 199,000 more criminal aliens through interoperability in FY 2012 than FY 2010 and transport more than 44,000 criminal aliens from state and local jails into the custody of ICE following the completion of their sentences. ICE will work with DHS's Office for Civil Rights and Civil Liberties and the Department of Justice to develop a robust oversight and evaluation process of the Secure Communities and to provide training to state and local law enforcement. The Secure Communities Initiative is on track for nationwide deployment by 2013.

The U.S. Coast Guard (USCG) and CBP/Office of Air and Marine conducts maritime interdiction operations along the Southwest border. Operation Baja Oleada (Eastern Pacific) and Operation Gulf Watch (Gulf of Mexico) are two ongoing operations, conducted in coordination with land-based operations, designed to counter the flow of illicit traffic across the Southwest maritime border. These operations are supported by CBP/ Office of Air & Marine, ICE and often other Federal, State, local, tribal, and GOM partners. Targets of interest include both northbound vessels carrying contraband and undocumented migrants, as well as weapons and bulk cash movement on southbound vessels. USCG communicates with the Mexican Navy (SEMAR) to ensure a robust presence is maintained along the Pacific and Gulf maritime borders. In both areas of responsibility, the USCG will surge additional assets to the maritime border as necessary in response to relevant intelligence or other circumstances.

Additionally, to support state and local law enforcement jurisdictions along the border, DHS directed more than $123 million in Operation Stonegarden funds in 2009 and 2010 to Southwest border states to pay for overtime and other border-related expenses.

Partnerships with Federal, State, local and tribal agencies, as well as the private sector remain critical to our overall success. DHS has initiated new programs to increase collaboration, enhance intelligence and information sharing and develop coordinated plans.

One example of this is the Alliance to Combat Transnational Threats (ACTT). ACTT utilizes a collaborative enforcement approach to leverage the capabilities and resources of DHS in partnership with more than 60 law enforcement agencies in Arizona and the

68104.009

Question#:	6
Topic:	crossings
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Government of Mexico to deter, disrupt, and interdict individuals and criminal organizations that pose a threat to the United States.

From its inception in September 2009 through January of 2011, ACTT has been a critical component in the seizure of more than 1.6 million pounds of marijuana, 3,800 pounds of cocaine, and 1,000 pounds of methamphetamine; the seizure of more than $13 million in undeclared U.S. currency and 268 firearms; nearly 14,000 undocumented migrants denied entry to the United States at Arizona ports of entry due to criminal background or other disqualifying factors; and nearly 270,000 apprehensions between ports of entry.

Question: You have pointed to decreasing apprehension statistics—463,000 in FY2010. However, the number of apprehensions tells us little about effectiveness of your border security measures without comparing them to the amount of illegal entries that go undetected. Some have estimated that for every alien apprehended at the border, at least two are able to enter the U.S. without being detected. This means that at least 66% of the illegal population entering the United States each year is not detected or detained.

What is your estimate of the total number of illegal crossings each year?

Response: The Border Patrol currently participates in a workgroup, lead by CBP's Office of Technology Innovation and Acquisition, to monitor the development of a new methodology for estimating the total flow of persons who illegally enter across the Southwest border between the ports of entry. This methodology is still under development.

Question: Does you Department have a plan in place to better identify illegal cross-border trafficking?

Response: DHS is actively seeking technological solutions to enhance our detection capabilities. Methods to estimate illegal crossings consistently by zones and sectors, with some degree of confidence in the integrity of the data and resulting sums are being explored.

Question: You have the authority to expand expedited removal to additional categories of aliens. Are you going to expand expedited removal this year? If no, why not?

Response: Although DHS currently has no plans to expand expedited removal this year, we continually seek ways to enhance our border security and immigration enforcement efforts. As part of this ongoing effort, we are evaluating a host of available options and enforcement tools.

Question#:	7
Topic:	overstays
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: The Pew Hispanic Center has estimated that at least 40% of the overall illegal population in the United States is composed of people who came to the U.S. legally but simply stayed after their authorized time expired. I am concerned that, in the absence of U.S. VISIT exit tracking, there is a considerable gap in enforcement as it relates to visa overstays.

What is ICE doing to identify, apprehend and detain aliens who have overstayed their visas?

Response: In June 2003, the U.S. Immigration and Customs Enforcement (ICE) established its Compliance Enforcement Unit (CEU) as the first national program dedicated to the enforcement of nonimmigrant visa violations. The CEU focused on preventing criminals and terrorists from exploiting the nation's immigration system by proactively developing cases for investigation from systems such as the Student and Exchange Visitor Information System (SEVIS) and the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program's Arrival and Departure Information System (ADIS). These systems allowed the CEU to access information on the millions of authorized students, tourists, and temporary workers present in the U.S. and proactively identify those who violate their status or overstay their periods of authorized admission.

In September 2010, ICE's Office of Homeland Security Investigations (HSI) established the Counterterrorism and Criminal Exploitation Unit (CTCEU) to address the changing landscape of the national security arena and the expanded responsibilities and mission of the CEU. The mission of the CTCEU was enhanced to proactively scrutinize known or suspected terrorist and their associates; identify terrorist criminal enterprises; prevent terrorists and other criminals from exploiting the nation's immigration system and to expand the resource equities within the various law enforcement agencies and intelligence communities. The CTCEU accomplishes its mission through research and analysis, targeted operations and special initiatives, and by leveraging HSI's expertise with the assistance of partnering agencies in identifying national security threats.

The CTCEU prioritizes its overstay cases by potential threat to national security according to the latest threat stream reporting by the intelligence community. With that, the CTCEU assembles the Compliance Enforcement Advisory Panel (CEAP) on a tri-annual basis (every 120 days) to review the existing criteria and to discuss possible changes based on current threat trends. CEAP is comprises agency members of the

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Question#:	7
Topic:	overstays
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

intelligence and law enforcement communities. Additionally, the CTCEU's priority criteria may be expeditiously updated in order to ensure a rapid response to emerging threats.

In addition, the Department of Homeland Security (DHS) currently has an air exit system based on biographic data from all international airports. Data collected by the air carriers and submitted to U.S. Customs and Border Protection's (CBP) Advance Passenger Information System (APIS) is transmitted to the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program, which matches the biographic information to that contained in the Arrival and Departure Information System (ADIS). Using this, DHS creates records of those who overstay in order to alert DHS and Department of State (DOS) decision makers on a next encounter for consideration in admissibility or visa decisions. This system is used to ensure that those who enter under the Visa Waiver Program depart on time, and ICE is notified when it is discovered that an alien who entered under the Visa Waiver Program has overstayed his or her period of admission.

Question: How do visa overstays fall into ICE's prioritization system for removal of aliens from the United States?

Response: ICE is focused on smart, effective immigration enforcement that prioritizes criminal aliens who pose a public safety threat. On March 2, 2011, ICE Assistant Secretary John Morton issued the Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens memorandum. The memorandum outlines ICE's civil priorities into three priorities: aliens who pose a danger to national security or a risk to public safety, recent illegal entrants, and aliens who are fugitives or otherwise obstruct immigration controls. Depending on their criminal history, those aliens who overstay their periods of authorized admission would either fall into priorities one or two. If they obtained their visa through fraud they would fall into the third priority.

In addition, the mission of the CTCEU complements the ERO focus on criminal aliens by targeting those aliens that have not previously been identified as having criminal convictions and is a threat to public safety, such as a gang member or a fugitive.

Question: If Congress imposed a criminal penalty on aliens who overstay their visas, so you think that would be an effective deterrent?

Response: An ideal immigration environment would be one in which visitors to the United States routinely depart the country before their periods of authorized admission expire, precluding the need for ICE to take enforcement action. Absent voluntary

Question#:	7
Topic:	overstays
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

compliance, DHS is charged with developing, implementing, and managing systems and processes to compel compliance as a cornerstone of national security.

Rather than imposing criminal penalties for overstaying a period of authorized admission, it may be more effective to create expedited proceedings for those who overstay their visas. DHS would model that effort after a program already in place for visitors who come to the country as part of the "visa waiver" program (VWP), which allows passport holders from certain countries to travel to the United States without obtaining a visa. Participants in VWP waive the right to contest their removal from the United States other than on the basis of an application for asylum. Visa waiver program travelers are removable without any hearing before an immigration judge, except on their application for asylum. Aliens subject to such expedited proceedings could still apply for benefits based on a familial relationship, as a victim of trafficking, as the victim of a crime, or pursuant to VAWA.

Question#:	8
Topic:	stations
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: After the attempted bombing by Umar Farouk Abdumutallab (aka "the Christmas Day bomber"), I think it has become all too clear how important it is that we have appropriate measures in place, overseas, to preclude potential terrorists from entering the United States.

I understand that you currently have pre-clearance stations overseas as well as Immigration Advisory Officers who will screen travelers or cargo prior to departure.

Can you tell me how many additional pre-screening stations you intend to establish overseas and on what timeframe?

Response: CBP currently conducts preclearance of commercial air passengers at fourteen airports located in five countries. At this time, there is no plan to further expand preclearance operations.

In FY 2012, DHS is proposing an increase of $7.5 million to complete the Immigration Advisory Program (IAP) expansion to Paris and to open new IAP locations in Abu Dhabi, Amman, and Dubai. Further expansion is guided by an analysis of the current available threat and intelligence information and FY 2010 arrival data, the most recent available. Proposed IAP expansion locations may be adjusted, should a future assessment identify a diminished threat at one location, a more urgent need at a different location, or other changes in the threat stream.

Question: How many additional Immigration Advisory Officers do you intend on deploying overseas in FY 2012?

Response: During FY 2010, IAP officers recommended that 3,056 passengers not board flights, including 51 with fraudulent documents; 607 who were confirmed National Targeting Center (NTC) targets, and 170 passengers who were matches to Terrorist Screening Database (TSDB) (13 of whom were matches to the No Fly list subset of the TSDB). CBP estimates that the activities of IAP during FY 2010 has saved CBP approximately $4.6 million dollars in processing costs and saved carriers approximately $5.2 million dollars in carrier fines avoided. Also in FY 2010, CBP built upon the IAP concept by launching the Joint Security Program (JSP) for Travelers in Mexico City, partnering with the Mexican government to identify air passengers linked to terrorism, narcotics, weapons, and currency smuggling. JSP officers assisted their Mexican counterparts in intercepting 122 passengers with fraudulent documents; nine passengers

68104.014

Question#:	8
Topic:	stations
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

who were known alien smugglers; confirmed 19 NTC targets, including one passenger who was a positive match to the Terrorist Screening Center's No Fly list; intercepted 25 passengers who were wanted fugitives; and two passengers smuggling narcotics. In the FY 2012 budget, CBP is requesting $7.5 million to hire 11 CBP officers and pay the associated relocation and administrative expenses in order to expand the IAP in Paris, Abu Dhabi, Dubai, and Amman.

Question#:	9
Topic:	VSP (1)
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: During your testimony before the House Budget Committee you were asked about the Visa Security Program and placement of DHS officers in overseas consulates and embassies.

My understanding is that there are approximately 14 posts where DHS personnel are stationed. However, many of the 57 U.S. consulates around the world, some of which are considered high-risk or high-volume visa issuing posts, do not have DHS personnel on the ground to review visa decisions.

Under the Homeland Security Act, you were given authority over visa policy and consular decisions, especially when it relates to homeland security.

Do you think the Visa Security Program adds value to our national security screening process?

Response: The Visa Security Program (VSP) is currently operating in 19 ICE attaché offices located in 15 countries, in addition to the Security Advisory Opinion Unit in Washington, D.C. VSP enhances our national security screening process by extracting law enforcement value from the visa process and by sharing law enforcement expertise and guidance with our visa process partners. VSP also assists in identifying non-obvious relationships key to detecting unknown threats. ICE Homeland Security Investigations (HSI) special agents initiate and conduct complex criminal investigations regarding threats to the visa process and pursue prosecution of individuals who might be responsible for those threats. ICE HSI special agents coordinate with host country and U.S. law enforcement entities to integrate a law enforcement perspective into the visa screening and vetting process. This additional layer of security provided by experienced ICE HSI special agents assists Department of State (DOS) Consular Officers and our intelligence community partners, and they further overseas and domestic investigations.

Question: Do you think we should mandate 100% visa screening by DHS officers like we did for Saudi Arabia?

Response: To date, ICE has prioritized deployment based on threat assessments developed in conjunction with DOS. ICE continues to evaluate the need to screen and vet additional visa applicants at high-risk visa issuing posts other than the 19 posts at which the agency currently operates. At this time, the Administration has not proposed

68104.016

Question#:	9
Topic:	VSP (1)
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

additional VSP locations. However, ICE will continue to conduct joint site visits with DOS to identify locations where deployment is required based on emerging threats.

Question: Is DHS actively pursuing new agreements with the State Department to expand the Visa Security Program to those posts not already covered by existing or pending agreements?

******* LAW ENFORCEMENT SENSITIVE START *******

[redacted]

******* LAW ENFORCEMENT SENSITIVE END *******

Question#:	10
Topic:	ports of entry
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: Congress and the Bush and Obama Administrations have made bolstering the ranks of Border Patrol a top priority. I agree that Border Patrol is critical to ensuring strengthened border security and I applaud that agency for its dedication to our country's security.

But a February 2011 report by the National Immigration Forum cites estimates that approximately 70% of illegal immigrants are apprehended between the ports of entry, but that only about 30% of those attempting illegal entry and the ports of entry are caught. The same report states that 90% of illegal drugs come through the ports. I've seen other estimates that that figure is more like 70%. But either way – 90% or 70% - it's concerning.

Can you tell me what the Obama Administration's plan is for directing needed resources to the ports of entry?

Response: It is important to acknowledge that CBP has a dual mission: 1) to prevent terrorists and their weapons of mass destruction from entering the U.S., and 2) to facilitate legitimate trade and travel while securing the global trade environment. CBP has found that by using a combination of advanced information, risk assessment, appropriate scanning and other technologies, and by partnering with Federal, state, local, tribal and foreign law enforcement agencies as well as private industry and international partners, these goals need not be mutually exclusive.

In support of this dual mission, CBP has instituted various programs and initiatives such as the Alliance to Combat Transnational Threats, also known as the "Arizona Surge"; a comprehensive multi-year plan to secure America's borders and reduce illegal migration; the Container Security Initiative, a program designed to help increase security for containerized cargo shipped to the United States from around the world and the Customs-Trade Partnership Against Terrorism, a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security.

The FY 2012 President's budget includes an increase of $39.7 million to allow CBP to hire 300 CBP officers. These officers will be assigned to new and expanded POEs that were constructed in accordance with CBP's five-year modernization plan. The additional officers will provide much needed assistance to move closer to the CBPO staffing levels necessary at the new and expanded POEs.

68104.018

Question#:	10
Topic:	ports of entry
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

In addition, the request includes an increase of $3.4 million to hire 11 U.S. Customs and Border Protection Canine Enforcement officers (including one manager) and one support person, to support the Canine Enforcement Program and provide assets and infrastructure upgrades. The requested funding will provide ten additional canine assets to the highest threat locations and support the associated infrastructure to maintain all existing OFO canine teams.

Question#:	11
Topic:	resources
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: The emergency supplemental we passed last year allocated funds for 250 new CBP officers at our ports of entry. But I still hear day in and day out from members of the trade community in cities like El Paso, Laredo and the Rio Grande Valley that these numbers are a drop in the bucket to what is really needed.

As a former border state governor, I'm sure you'll agree with me that adequate resources at our port of entry are critical to our country's economic health and the economic health of States like Texas for whom our neighbor Mexico is our largest trading partner.

Are you satisfied with the President's FY 2011 or FY 2012 request for additional CBP officers to be stationed at ports of entry?

Response: The CBP officer is the backbone of CBP's efforts to protect our nation from harmful people and goods at ports of entry (POEs). CBP officers are multi-disciplined and perform the full range of inspection, intelligence analysis, examination, and law enforcement activities relating to the arrival and departure of persons, conveyances, and merchandise at our POEs. These enforcement activities aim to prevent the entry of terrorists and instruments of terror, harmful pests and diseases, illegal drugs and contraband, illegal and inadmissible aliens, and importations/exportations contrary to law and trade agreements, from entering/exiting the United States. CBP's ability to execute these enforcement activities in a timely, appropriate manner contributes directly to the expedient flow of legitimate passenger and cargo traffic into the United States.

The President and I are committed to ensuring optimum staffing at all our ports of entry consistent with budget constraints. Our budget request reflects our combined judgment of the law enforcement needs and budget environment facing DHS and CBP.

Question: If not, do you intend to ask for an increase in such personnel for FY 2012?

Response: The FY 2012 budget request includes an increase of $39.7 million to hire 300 CBP officers (CBPOs) who will be assigned to new and expanded POEs that were constructed in accordance with CBP's five-year modernization plan. The additional officers will provide much needed assistance to move closer to the CBPO staffing levels necessary at the new and expanded POEs. The request also includes an increase of $3.4 million to hire additional CBP Canine Enforcement officers and to provide assets and infrastructure upgrades for the Canine Enforcement Program. The requested funding will provide ten additional canine teams and one canine manager to the highest threat locations and support the associated infrastructure to maintain all existing Office of Field Operations (OFO) canine teams.

68104.020

Question#:	12
Topic:	SBINet
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: With the termination of SBINet you redeployed $50 million of stimulus funds to procure "off-the-shelf", readily available technology and equipment for Southwest border personnel. You also requested $185 million in the FY 2011 budget to allow CBP to procure additional technology for Arizona.

Did you make a similar request for Texas, California and New Mexico?

Response: No, DHS did not yet request additional technology investment funding for regions beyond Arizona.

The re-deployed $50 million of ARRA funding was used to procure existing and proven technologies, namely thermal imaging devices, mobile vehicle inspection systems, pursuit camera systems, aerial observation cameras, and mobile surveillance capability (MSC) systems, that are being or will be deployed to several regions in Texas, New Mexico, California, and Arizona.

DHS conducted a comprehensive, science-based Analysis of Alternatives (AoA) to determine the most efficient, effective, and economical way to meet our nation's border security needs with respect to technology. After completion of the AoA, CBP used the results to develop a detailed technology plan for different border regions across Arizona. The Department's FY2011-12 budget requests support this top priority.

The Department is in the process of conducting the same rigorous, science-based review of the remaining southwest border regions. The next three focus sectors are: El Paso, Rio Grande Valley, and San Diego. Following these three high-priority sectors, the Department will complete the same process for the remaining sectors along the southwest border.

Question: If yes, how much have you requested for Texas specifically?

Response: Not Applicable, please see the response above.

Question#:	13
Topic:	tribal lands
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Question: We also are hearing from our American Indian law enforcement partners that drug cartel traffic has increased on tribal lands.

What is your plan to help the Tohono O'Odham nation's residents eliminate human smuggling/drug trafficking on their land?

Are there any existing agreements that address the issue?

Response: The proximity of the Tohono O'odham Nation land to the United States border and the geography of the region, as well as a myriad of other factors, present considerable challenges in halting drug/human smuggling across the nation's lands. The regional situation demonstrates how law enforcement must integrate long-term partnerships with ingenuity and perseverance to be effective toward mitigating vulnerabilities.

Toward this end, U.S. Immigration and Customs Enforcement's (ICE) Office of Homeland Security Investigations (HSI) Assistant Special Agent in Charge (ASAC) office in Sells, Arizona, expanded to 33 additional law enforcement personnel dedicated to the region. This includes two full investigative groups totaling 22 special agents, plus two highly specialized ICE tactical officer units comprised of an 11-member complement.

The HSI ASAC Sells facility, which is the only permanent non-tribal United States law enforcement facility ever authorized on the Tohono O'odham Nation, has been expanded and co-location office space has been offered and accepted by the Tohono O'odham Police Department's (TOPD) Border Crime Unit (BCU). TOPD BCU is comprised of one sergeant, two detectives, and one Bureau of Indian Affairs narcotics agent. HSI ASAC Sells and the TOPD BCU work together daily on an "ad hoc" basis. Both agencies are moving toward applying the operationally-driven law enforcement task force concept to daily operations in the near future.

The ASAC Sells supervises the ICE Shadow Wolves Unit, a specialized anti-smuggling unit of tactical officers that is based exclusively in Sells. The Tohono O'odham Nation is its primary area of responsibility. The Shadow Wolves Unit was first authorized in 1974 and consists of Native American ICE tactical officers who are experts in backcountry tracking. They apply their skills in targeting, locating, and arresting smugglers transiting the Tohono O'odham Nation by backpack, horseback, or mechanized vehicles. The

68104.022

Question#:	13
Topic:	tribal lands
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable John Cornyn
Committee:	JUDICIARY (SENATE)

Shadow Wolves Unit also takes a "community-based policing" approach in conjunction with TOPD to develop "real time" actionable intelligence from the tribal communities within the Tohono O'odham Nation.

Furthermore, HSI re-established in 2010 the Resident Agent in Charge (RAC) office in Ajo, Arizona. RAC Ajo is comprised of one HSI supervisory special agent and four HSI special agents. RAC Ajo services the Lukeville Port of Entry, the Ajo Border Patrol Station, western Pima County, and southern Maricopa County. RAC Ajo provides timely investigative support and a full-time investigative presence in extreme Western Pima County and the western tribal districts within the Tohono O'odham Nation.

HSI Special Agent in Charge Phoenix is a full-time participant in the Alliance to Combat Transnational Threats, which conducts joint operations both on the Tohono O'odham Nation and the areas of egress from the nation. ACTT is a collaborative enforcement effort launched in September 2009 that leverages the capabilities and resources of more than 60 federal, state, local, and tribal agencies in Arizona and the Government of Mexico.

HSI has one agreement with the Tohono O'odham Nation, which dates back to 1974 when the Shadow Wolves Unit described above was first established by the former U.S. Customs Service.

ICE will continue to scrutinize illegal activity in the tribal communities and strategically adjust operational activities to counter any push by foreign-based drug cartels. At the same time, ICE will continue to maintain and build upon its relationship with Tohono O'odham Nation law enforcement through joint activities, regular communication, information sharing, and full partnerships.

68104.023

Question#:	14
Topic:	visa fraud
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: According to the Department of Homeland Security's latest statistics, there are more than 10,000 schools approved by DHS to accept nonimmigrant students and exchange visitors to study at their institutions through the Student Exchange Visitor Program. I am increasingly concerned about the number of these approved institutions that have turned out to be operating not for educational purposes but instead solely to manipulate immigration law to admit foreign nationals into the country or to scam unsuspecting students out of thousands of dollars.

In one recent example from California, DHS approved a school to accept 30 international students. By the time DHS discovered the fraudulent nature of the school, there were over 1,555 foreigners with visas to attend the school.

Response: Of the more than 10,500 schools that the Student and Exchange Visitor Program (SEVP) has certified, 111 currently appear on its compliance list awaiting further investigation and site reviews. From this group of 111 schools, a subset are either being reviewed by the Counterterrorism and Criminal Exploitation Unit (CTCEU) for possible criminal investigations or are currently the subject of a criminal investigation by CTCEU.

Not all of these schools fall into the same category as the more recent investigation from California demonstrates; some begin as administrative reviews while others fall along a continuum that can range from a lack of training of a particular designated school official (DSO), to persistent misunderstanding of a policy by a certified school, to more significant performance issues. Each school on the compliance list undergoes an investigation and much of this investigative work is conducted at headquarters, through research and extrapolation of Student and Exchange Visitor Information System (SEVIS) data. Site reviews are then conducted to examine actual student files and school reporting and to determine whether cause exists to remove the schools' access to SEVIS. Schools must first receive a Notice of Intent to Withdraw before receiving a Withdrawal on Notice (WON). Both notices have regulatory response times and appeal rights.

Question: Does the Department of Homeland Security have appropriate procedures in place to detect fraud in the Student Exchange Visitor Program school certification process?

Question#:	14
Topic:	visa fraud
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Response: On occasion, a certified school will not comply with the obligatory reporting requirements or will initiate policies that SEVP does not sanction. SEVP learns of these non-compliant behaviors in multiple ways:

- The bi-annual recertification process;
- Tips from other schools or students; and
- The analysis of SEVIS data against a risk matrix.

Through these means, SEVP can become aware that sometime after certification, school officials engaged in non-compliant behaviors. SEVP will then place the school on its compliance list for further investigation. During this investigatory phase, there is a site review (a site visit solely for compliance). A certified school is still eligible during this phase to recruit nonimmigrant students and to issue Forms I-20, "Certificate of Eligibility for Nonimmigrant Student Status," which are necessary for the visa interview process, to these students.

SEVP does not have the statutory authority to close noncompliant schools and to restrict DSOs access to SEVIS immediately; schools retain due process rights that allow officials to appeal such decisions while retaining the ability to issue Forms I-20.

As an alternative, SEVP had previously identified the need to restrict the issuance of Forms I-20 in such instances and took steps to mitigate the risk noted above. While the implementation of SEVIS II in 2013 will eliminate this vulnerability, SEVP has taken steps to install a limited similar functionality in SEVIS. SEVP has asked to receive a listing of all schools which have issued Forms I-20 in excess of the capacity established during certification. Each instance will be investigated by the SEVP Compliance Team to determine causation. This functionality will be available in the near future.

Question: How does Immigration and Customs Enforcement communicate the number of students that the certified school can reasonably accept to United States Citizenship and Immigration Services and the Department of State to ensure that only an appropriate number of visas are issued for each certified school?

Response: Visas are issued by the Department of State (DOS); U.S. Citizenship and Immigration Services (USCIS) does adjudicate change of status applications such as that from a B/2 to F/1.

DOS is a signatory to a memorandum of understanding with ICE for SEVIS data sharing, and receives SEVIS data on a nightly basis. While DOS does receive all SEVIS data, it

Question#:	14
Topic:	visa fraud
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

has elected to use only a specific set of data elements for use by its consular officials, referenced as the CCD or Consolidated Consular Database. SEVP has initiated discussions with DOS in an effort to determine whether this data set continues to be adequate for their uses.

Until a school has exhausted its appeal rights in response to a WON, its ability to issue Forms I-20 is not affected and visas may be issued. SEVP has instituted a mechanism to address this vulnerability that will be implemented within the next six weeks, in anticipation of SEVIS II deployment, which will flag schools that issue Forms I-20 in excess of the number of students for which it had initially been certified.

Question: Are there adequate measures in place to detect fraud on the part of these certified schools once they begin accepting foreign students?

Response: SEVP has an internal compliance team devoted to administrative investigations that has recently been staffed. CTCEU conducts criminal investigations. SEVP places schools on the compliance list in accordance with a risk assessment analysis it implemented in 2009 when the requisite staffing became available.

This risk analysis determined which of the 6,487 SEVP-certified schools with active records showed evidence in the risk categories of low, medium, and high. Of those, SEVP found the following breakdown of the schools:

- Low risk – 4,794 schools, or 74 percent of all the schools examined;
- Medium risk – 1,276 schools, or 20 percent of the schools examined; and
- High risk – 417 schools, or six percent of all the schools examined.

******* LAW ENFORCEMENT SENSITIVE START *******

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******* LAW ENFORCEMENT SENSITIVE END *******

Administrative investigations require less time for development in comparison to criminal investigations, and SEVP always curtails them when CTCEU initiates a criminal investigation. Many of the noncompliant schools are already the subject of ongoing criminal investigations, forestalling any administrative action to limit access to SEVIS to issue Forms I-20.

Question#:	14
Topic:	visa fraud
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Are site visits to Student Exchange Visitor Program certified schools being conducted with enough frequency and thoroughness to detect fraud?

Response: SEVP conducts both site visits at the time of certification and site reviews which are used to monitor performance. The application and certification process is comprehensive, lengthy, and requires multiple phases including site visits and requests for school officials to submit additional information. The site visit at this time focuses on information sharing and document gathering in support of the petition.

SEVP regularly monitors SEVP-certified schools to determine their compliance with governing regulations and to verify that they qualify for continued approval to participate in the program through the use of a site review either for recertification or for an out-of cycle review. Site reviews are always compliance driven. Title 8 Code of Federal Regulations (8 CFR) section 214.3(h) (4) provides the regulatory authority for SEVP to conduct periodic reviews of approved schools and states that SEVP "may, at any time, review the approval of a school to verify compliance with the reporting requirements of paragraph (g)(2) of this section and continued eligibility for approval pursuant to paragraph (e) of this section."

Question#:	15
Topic:	exit system
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: One of the biggest gaps in our Nation's security system is the Visa Waiver Program and the absence of a biometric entry and exit system for foreign visitors.

While I am encouraged that DHS has made some progress in addressing this security gap through the Electronic Travel Authorization System, I remain deeply concerned that a fully operational biometric exit system is not present at our airports. Currently, there is no means to compare data on an actual person entering and then leaving the United States.

I am troubled that I have not received a response to my repeated requests to the Department of Homeland Security for country-by-country visa overstay rates. I first asked for a country-by-country breakdown of visa overstay rates in 2008. I wrote again in 2009 and Acting Assistant Secretary Richard Barth responded stating that DHS was working to calculate a country-by-country breakdown of overstay rates. Finally, I wrote a letter to Assistant Secretary David Heyman in July, 2010, regarding my repeated requests for a country-by-country breakdown of visa overstay rates. I have not yet received a response to this request.

What is the status of DHS efforts to calculate visa overstay rates by country?

What steps has DHS taken to ensure that a person entering the United States through the Visa Waiver Program in fact leaves the United States within 90 days?

What resources are necessary to implement a biometric exit system at all air ports of entry?

When can we expect a fully operational biometric exit system in place at all U.S. ports of entry?

Response: The Department of Homeland Security (DHS) currently has an air exit system based on biographic data from all international airports. Data collected by the air carriers and submitted to U.S. Customs and Border Protection's (CBP) Advance Passenger Information System (APIS) is transmitted to the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program, which matches the biographic information to that contained in the Arrival and Departure Information System. Using this, DHS creates records of those who overstay in order to alert DHS and DOS decision makers on a next encounter for consideration in admissibility or visa decisions. This

68104.028

Question#:	15
Topic:	exit system
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

system is used to ensure that those who enter under the Visa Waiver Program depart on time.

Since Congress enacted the statute that included a mandate for biometric air exit, DHS has implemented several automated systems based on biographic data that much more effectively capture arrival and exit information as compared to the processes in use at the time.

Additionally, DHS has conducted a number of pilots and studies since 2003 to assess options on how to meet the biometric exit mandate. The pilots have demonstrated that while the technology exists to collect biometrics - the costs associated with the operational facilities and staffing needs necessary to achieve effective compliance with biometric air exit requirements using currently available technology and processes are quite high, particularly when compared to any potential security gains. DHS does not invest money into solutions where the benefits are not commensurate with the costs incurred.

Accordingly, DHS will explore new biometric air exit solutions that can be implemented in a cost-effective way, while simultaneously implementing enhancements to existing biographic air exit systems. These enhancements will focus on strengthening Customs and Border Protection's (CBP) Advance Passenger Information System (APIS) information collection and carrier compliance auditing; enhancing US-VISIT's automated matching of arrival and departure records, review of records of potential overstays, and posting of "lookouts" for those who have overstayed.

68104.029

Question#:	16
Topic:	VSP (2)
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Since 2003, the Visa Security program has not significantly expanded. In response to GAO recommendations, DHS developed a five-year strategic plan for expansion of the Visa Security Program. To date, Visa Security Units have been deployed at 19 posts in 15 countries, out of a total of 220 State Department visa-issuing posts.

In a 2008 report, the DHS Office of Inspector General noted that Immigration and Customs Enforcement should develop and implement a plan to monitor and analyze visa security activities conducted at posts and the impact of the Visa Security Program.

Has Immigration and Customs Enforcement followed through on this recommendation? If so, what are the results?

Response: Immigration and Customs Enforcement (ICE) is currently enhancing its information technology systems in coordination with U.S. Customs and Border Protection (CBP) and the Department of State (DOS) to enable the screening and reviewing of all visa applicants worldwide. Use of CBP's TECS and the Automated Targeting System databases, in addition to improved transfer of information, will enhance communication within DHS and DOS, thereby strengthening the layered defense strategy. Both the physical presence of ICE Homeland Security Investigations (HSI) special agents at overseas locations and worldwide coverage through technical enhancements to information systems are integral parts of the Visa Security Program (VSP). Information technology enhancements will enable ICE to conduct visa security investigations at all existing ICE Attaché offices, providing coverage to an additional 34 high-risk posts in furtherance of the VSP Expansion Plan. In addition, these enhancements will further ICE's ability to monitor and analyze the impact of the VSP.

Question: Is Immigration and Customs Enforcement still on track to cover 75 percent of the highest-risk posts by 2013? What are the challenges in meeting that benchmark?

*******LAW ENFORCEMENT SENSITIVE START *******

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Question#:	16
Topic:	VSP (2)
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

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*******LAW ENFORCEMENT SENSITIVE END *******

Question: What other enhancements are planned for the Visa Security Program?

Response: With existing funding ICE would continue to enhance information technology systems to improve communications with CBP and DOS. ICE will expand to one additional overseas office within FY 2012.

Question#:	17
Topic:	grant programs
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: As a result of the mounting federal deficit, members on both sides of the aisle, and in both houses of Congress are looking for places to save money. One pot of money that some have suggested cutting is the $3.845 billion that the President proposed for homeland security grants to States and local governments.

I have been a long time proponent of programs such as the Urban Area Security Initiative (UASI) and the FIRE and SAFER grants to local fire departments, and I know that I share your belief when I say that these program help make all Americans safer. But the difficult budget times require that we reexamine even our own highest priority issues to ensure that money is being used wisely, and as effectively as possible.

How do you intend to improve oversight of UASI expenditures?

Do you plan on adding additional criteria to DHS grant programs that would further prioritize the areas that are at the greatest risk of terrorist attack? Does the Department take into account existing response capabilities when awarding grants?

Unlike fire departments in other states, California Firefighters must respond to wildfires as well as medical and structure fire calls. This puts added stress on their time and resources. When awarding FIRE and SAFER grants, what weight does this added responsibility carry in your decision making process?

The U.S. Fire Academy in Emmitsburg, MD provides a valuable service to firefighters across the nation. However the scope of classes offered at the academy does not cover the needs of local, state or federal wildland firefighters. What training can you provide wildland firefighters, and what is being done to update the curriculum so that their needs are accommodated?

Additionally, has the Department considered the possibility of opening a second Fire Academy on the West Coast which would be closer to the fire departments in my state and could focus on the specific needs of wildland firefighters? Please explain the justification for the Department's decision not to pursue a second academy on the West Coast.

68104.032

Question#:	17
Topic:	grant programs
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Response:

• While FEMA currently has procedures in place, such as monitoring, to validate if the grant recipients meet the desired outcome of the funding, FEMA is also developing a robust set of performance measures with stakeholders to enhance the agency's ability to measure the effectiveness of the grant programs and minimize duplication and unnecessary redundancies.

• Additionally, FEMA's annual monitoring process provides the opportunity to verify these state-developed mechanisms are in place and continuously looks for inefficiencies in our programs.

• FEMA is currently in the process of evaluating recommendations from the Local, State, Tribal, and Federal Preparedness Task Force report to see how those recommendations would improve coordination and consolidation of FEMA's grant programs, including coordination of interagency grant programs and more closely linking capability assessment and grant activities. FEMA has also contracted with the National Association of Public Administration (NAPA) to conduct a study to develop a core set of performance measures that can be used to track performance of the State Homeland Security Grant (SHSP) and Urban Area Security Initiative.

The FY 2011 guidance for the Homeland Security Grant Program (HSGP) includes several DHS priorities in the current grant cycle. These include:

A primary focus of State and Major Urban Area Fusion Centers (Fusion Center) will be to prioritize all SHSP and UASI funds supporting their respective Fusion Centers in order to achieve the baseline capabilities identified in the *Baseline Capabilities for State and Major Urban Area Fusion Centers*.
DHS stresses advancing the "Whole Community" concept of Security and Emergency Management. Specifically, communities are challenged to develop collective, local abilities to withstand the potential impacts of disasters, respond quickly, and recover in a way that sustains or improves the community's overall well-being.
Focus on building Prevention and Protection capabilities. DHS encourages the use of SHSP and UASI funding to support programs and initiatives that support efforts to build local counterterrorism capabilities.

Finally, in regards to consideration of existing capabilities when awarding grants, states and urban areas that receive HSGP funds are required to have an approved Homeland Security Strategy; the strategies provide a strategic document to identify needed capabilities. As part of the application process for the Homeland Security Grant Program, each State and UASI is required to submit Investment Justifications describing

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their proposal for the expenditure of grant funds, which must be in support of the goals and objectives identified in the Strategy.

FIRE and SAFER grant applications are reviewed by panels of volunteers who are fire service professionals. Each application must address, and is scored on, four critical elements: Project Description, Cost-Benefit Statement, Financial Need, and Effect of the Grant on Daily Operations. Both the Project Description and the Effect of the Grant on Daily Operations sections provide the reviewers with information on a department's resources and capabilities, as well as their unique firefighting responsibilities, such as providing protection from wildfires. Peer reviewers take all of this information into consideration when evaluating applications and making award recommendations.

At the national level, the National Wildfire Coordinating Group (NWCG) provides interagency coordination through establishing, implementing, maintaining, and communicating interagency wildland fire policy, standards, guidelines, and qualifications for wildland fire program management. Accordingly, the purpose of NWCG is to coordinate programs of the participating wildfire management agencies so as to avoid wasteful duplication and to provide a means of constructively working together. Its goal is to provide more effective execution of each agency's fire management program and provide a formalized system to agree upon standards of training, equipment, qualifications, and other operational functions.

The NWCG is comprised of: the Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, U.S. Forest Service/Fire and Aviation Management, Federal Emergency Management Agency/U.S. Fire Administration, the National Association of State Foresters, and the Intertribal Timber Council.

State Fire Service Training Agencies, State Departments of Natural Resources, local community and technical colleges and other local fire service training agencies all conduct classes in wildland fire suppression. The Department of the Interior's Bureau of Land Management and the National Association of State Foresters among others provide advanced training in wildland fire command and control. The U.S. Fire Administration, National Fire Academy (NFA) does not try to duplicate these programs.

Through a Memorandum of Understanding, the National Wildfire Coordinating Group has partnered with the NFA's on line learning system to deliver the following courses:

S-130 Wildland Firefighter Training (Q901)
S-190 Introduction to Wildland Fire Behavior (Q900)

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S-230 – Crew Boss (Single Resource) – to be released this Spring
S-231 – Engine Boss (Single Resource) – to be released this Spring

The National Fire Academy also offers its own ICS Simulation Series: Wildland Fire (Q617) online course.

To date we've had 4,868 students complete S-130 Wildland Firefighter Training (Q901) and 7,719 students complete S-190 Introduction to Wildland Fire Behavior (Q900) online. There are 5,104 and 4,404 students currently enrolled in those courses respectively.

The NFA has planned to develop a new course in Code Enforcement in the Wildland/Urban Interface. When funds become available, that development will go forward. In cooperation with the National Wildfire Coordinating Group, we are developing a class in Interagency Incident Business Management.

The U.S. Fire Administration has evaluated the creation of a second academy on the West Coast and found it to be financially non-viable. Specifically, data collected from NFA students and their supervisors attest to the high value of sharing perspectives and learning from the experiences of colleagues from across the country. Dividing students among two or more institutions would preclude the synergies that develop when a diversity of students come together in one place.

USFA and NFA do coordinate all activities (prevention, response and recovery) for all firefighting with NWCG to ensure efforts are not duplicative, and that training is appropriate for wildland and structural firefighters. This coordination occurs directly with USFA as a member of the NWCG, the Federal Fire Policy Council and as the DHS representative to Wildland Fire Leadership Council.

A provision of wildland firefighting training by USFA/NFA would be duplicative of the 8 facilities located in California to support wildland firefighting training at this time. These facilities provide NWCG developed courses, two located in Northern California and six in Southern California. Information on these facilities can be found at: http://www.nationalfiretraining.net/ca/index.html

68104.035

Question#:	18
Topic:	wait times
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Inadequate staffing and outdated infrastructure at land ports of entry threaten our national security and hinder the flow of trade which is critical to the national economy. My office in San Diego receives frequent complaints from a number of community groups about border crossing delays.

What steps have been taken by Customs and Border Protection to address the increasing pedestrian wait times at the San Ysidro and Calexico Ports of Entry?

Response: In response to the increase in pedestrian volumes, local CBP management requires that all pedestrian inspection booths be staffed in advance of peak processing periods. This action alone should have a positive impact on the reduction of wait times for pedestrians. Due to infrastructure constraints CBP is in the process of making improvements at San Ysidro (currently in the construction phase) and Calexico (currently in the design phase) ports of entry to facilitate the increased pedestrian traffic.

Prior to the infrastructure improvements CBP has made significant progress in the implementation of a number of process improvements at the San Ysidro and Calexico ports of entry. We continuously strive to advance innovative business and technical enhancements to establish a model pedestrian process and to create a welcoming and secure inspection environment.

At San Ysidro and Calexico, pedestrian lanes are now divided to support dedicated SENTRI (one of CBP's trusted traveler programs) and at San Ysidro, WHTI compliant travelers. CBP has placed bilingual signs at the beginning of each of the primary lanes to direct travelers to the appropriate pedestrian lane. United States citizen travelers who do not present WHTI-compliant documents entering at the San Ysidro port of entry represent a process inefficiency as CBP officers must take additional time to manually input data from birth certificates or other documents establishing identity and citizenship. A noncompliant traveler's process time can average well over 115 seconds compared to a SENTRI applicant's average process time of 24 seconds. DHS will continue to promote the use of secure WHTI-compliant documents as a way for travelers to enjoy more efficient and quicker entry at the border.

CBP continues to work in partnership with the Government of Mexico to segment pedestrian traffic on the Mexican side in Tijuana as well. We have created a separate access from Mexico for SENTRI program members and have purchased durable and

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Question#:	18
Topic:	wait times
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

permanent lane dividers that are being placed to further enhance the flow of the pedestrian traffic.

CBP eagerly anticipates the start of construction and the completion of the second phase of San Ysidro's redesign project which will include a new re-engineered pedestrian processing area in 2013. The clear goal of this pedestrian re-engineering project will improve the pedestrian process through innovative enhancements to facilities, technology and operational processes to more efficiently and securely facilitate pedestrian travelers.

CBP is keenly aware of the impact these very important issues have on local communities. We constantly strive to balance the need to protect our Nation while facilitating legitimate travel. CBP appreciates the open dialogue and commitment that you have shown in working with CBP and we look forward to continuing to work with you in the future.

Question: Does Customs and Border Protection have sufficient staff to manage the anticipated traffic delays at the San Ysidro Port of Entry due to an ongoing construction project?

Response: To mitigate the vehicle wait times, construction will be done so that all remaining lanes will have a stacked booth configuration to increase traffic flow through the lanes. CBP is committed to addressing staffing and resource needs in order to meet mission critical needs at our POEs.

Question: As new lanes begin to open at the San Ysidro Port of Entry in the next 18 to 24 months, has Customs and Border Protection made plans to ensure that sufficient staffing is available to work at these new lanes?

Response: CBP's five-year land-border POE modernization plan includes more than 30 new and/or expanded POEs at air, land, sea, preclearance and other locations, including San Ysidro, which will require additional personnel. The FY 2012 budget request includes an additional $39.7 million to allow CBP to hire 300 new officers who will be assigned to the new and expanded POEs constructed in accordance with the modernization plan. CBP will determine the specific locations of the additional personnel based on operational need at the time of hiring.

Question: According to a survey conducted by the South County Economic Development Council, only five percent of pedestrians surveyed were participants in the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program. In an attempt to increase participation in SENTRI, I understand that Customs and Border

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Topic:	wait times
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Protection plans to lower the cost of SENTRI participation as well as initiate a public relations campaign. When the SENTRI fee reduction will take place?

Response: The temporary SENTRI fee reduction is still under review by CBP.

Question: What specific steps will be taken by Customs and Border Protection to increase public participation in SENTRI?

Response: On March 1, 2011 CBP opened a new trusted traveler enrollment center conveniently located adjacent to the San Ysidro pedestrian border crossing. The new enrollment center has a bilingual staff and is customer focused with an emphasis on assisting every traveler with the SENTRI application process and promoting its benefits. We also have been promoting and utilizing our mobile enrollment equipment to process large groups of business traveler applicants at corporate locations within the San Diego area.

CBP local management has held media events to publicize the new enrollment center to the community. The facility has drawn over 200 new applications per week to the program.

CBP listened to community stakeholders' input when deciding to increase the SENTRI trusted travelers to five years from two years. In addition, applicants can now pay application fees with credit cards. CBP continues to aggressively pursue fee reductions for SENTRI membership and hope to further reduce the fee to $100.00 per individual as soon as regulatory approval is received. SENTRI members may also enroll in the Global Entry Program, at no additional cost—making participation in SENTRI all the more attractive. CBP has also made program eligibility changes so that minor transgressions of the law that took place long ago do not preclude membership.

68104.038

Question#:	19
Topic:	value cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Mexico's brutal drug trafficking organizations are fueled by money that illegally moves from the United States to Mexico, much of it across our Southwest border.

As you know, the use of stored value cards – for example, pre-paid gift or credit cards – is an increasingly popular means of illegally transferring money from the United States to Mexico. Remarkably, stored value cards are not subject to any cross-border reporting requirements. This means that an individual crossing from the United States to Mexico with thousands of dollars on pre-paid cards would not be required to declare these cards at the border.

Do you believe that stored value cards should be subject to cross-border reporting requirements?

If the Treasury Department were to produce regulations on stored value, including the creation of cross-border reporting requirements, how quickly could the Department of Homeland Security implement these regulations? Approximately, how much would it cost to implement these regulations?

Response: U.S. Immigration and Customs Enforcement (ICE) recognizes the rapidly changing monetary instrument and cash transfer environments, including through pre-paid and stored-value cards. Even these instruments are being rapidly overcome by financial transactions through smart phones and major consumer credit lenders now offering direct card-to-card monetary transfers.

All types of pre-paid/stored-value cards and similar products should be included in the definition of monetary instruments under Title 31, United States Code, Section 5312, making these instruments subject to cross-border reporting requirements.

Pre-paid and stored-value cards are increasingly encountered by the Department of Homeland Security's (DHS's) interdiction and investigation personnel. If the Department of the Treasury were to produce regulations on pre-paid/stored-value cards, including the creation of cross-border reporting, DHS could implement the regulations immediately. However, for law enforcement to take full advantage of regulations or legislation designed to limit the illicit use of prepaid or stored value, officers would need access to a device that allows users to immediately determine the amount of money loaded onto a card and access such funds. Then, if a violation is discovered, DHS could

68104.039

Question#:	19
Topic:	value cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

immediately move the card's full amount to a suspense account for treatment as a seizure. Without DHS having the ability to seize funds immediately, couriers of illicit funds could quickly remove those funds and there would be no value seized. The DHS Office of Science and Technology and ICE are currently scoping the full law enforcement needs and are in the market research stage of the development. There are devices presently on the commercial market that have potential for law enforcement application to this area.

The actual cost for procuring this capability is difficult to forecast and depends on several factors including the selection of technology, integration with existing systems, and connectivity in remote locations.

Question#:	20
Topic:	tunnels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: I am increasingly disturbed by the increase in the illegal use of tunnels on the Southwest border linking the United States with Mexico. Mexican drug trafficking organizations use these tunnels to transport narcotics from Mexico to the United States, but the tunnels may also be used to smuggle people, guns, and other contraband. Illegal tunneling activity poses a significant and persistent threat to the security of the United States.

These tunnels are more and more sophisticated. Just this past November, the San Diego Border Tunnel Task Force discovered a half mile long tunnel linking two warehouses in Otay Mesa, California, with a private home in Tijuana, Mexico. The tunnel had advanced rail, electrical and ventilation systems. Federal law enforcement seized 20 tons of marijuana in connection with the tunnel investigation and arrested 8 suspects.

Can the Department explain why we are seeing such an increase in illegal border tunnel construction?

Response: CBP is tasked with border security and is responsible for guarding nearly 7,000 miles of land border. The increase in illicit tunneling activity can be directly linked to CBP's enhanced law enforcement presence and technology on our surface, air, and waterway areas of operation.

As CBP enhances security on the land, in the air, and in our maritime environment, criminals seek to utilize illicit and existing subterranean infrastructure, such as storm drains and sewers, non-illicit tunnels, to smuggle their contraband, currency, and weapons across our borders. Since the first documented illicit tunnel in 1990, as of March 11, 2011, 155 tunnel attempts have been discovered, of which 134 have crossed either the U.S./Mexico or the U.S./Canada border. DHS considers "attempts" in its investgations to identify the criminal organizations responsible for financing, constructing, and using cross border tunnels. Tunnels have been discovered by diligent law enforcement work, human intelligence, and through other means (e.g., roads collapsing due to vehicle weight). These tunnels have increased both in sophistication and construct.

Question: The Border Tunnel Prevention Act, which became law in 2006, criminalized the construction or financing of an unauthorized tunnel or subterranean passage across an international border into the United States. It also outlawed recklessly permitting others to construct or use an unauthorized tunnel or subterranean passage on their land.

68104.041

Question#:	20
Topic:	tunnels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

What is the Department of Homeland Security doing to hold landowners accountable for border tunnels discovered on their property?

Response: Landowners may also be subject to criminal charges under the Border Tunnel Prevention Act in cases where U.S. Immigration and Customs Enforcement (ICE) can prove that landowners knew of or even recklessly disregarded illicit tunneling activity.

Question: What type of outreach is the Department of Homeland Security doing to inform property owners of their liability if an illegal tunnel is discovered on their property?

Response: The San Diego Tunnel Task Force has piloted a community outreach program in San Diego specifically designed to address business owners and residents in areas affected by illicit tunnel activity. The program serves to educate land and business owners on what to look for to avoid illicit tunneling construction on their property. The outreach program, initiated through the Border Enforcement Security Task Force, which includes ICE, CBP, and DEA, also provides awareness to these individuals of the penalties associated with facilitating such construction and provides direct contact information for reporting suspicious tunneling activity.

Question: What limitations does law enforcement have in tunnel investigations? Would enhancements to punishments or additional legal capabilities in tunnel investigations help to curb the increase in tunneling activity?

Response: Initially, one of the challenges ICE faced in counter-tunnel investigations was interagency coordination. To address this issue, ICE adopted the Border Enforcement Security Task Force (BEST) platform. BEST is a DHS-led initiative that leverages the collective efforts of federal, state, local, tribal, and foreign law enforcement and intelligence resources to disrupt and dismantle organizations that seek to exploit vulnerabilities of the United States border.

Although tunnel detection technologies may address vulnerabilities in the future, the current technologies are not sophisticated enough for routine tunnel detection. Additionally, the use of sensors, such as geophones, is restricted to public land where there is no reasonable expectation of privacy. This further reduces the usefulness of current tunnel detection technology.

However, even with the limits of technology the investigative methods used by ICE have proven very effective. ICE uses human intelligence, Title III wire taps, financial

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Question#:	20
Topic:	tunnels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

analysis, surveillance, subpoena authorities, community outreach, and leverages the capabilities of the intelligence community.

The BEST platform has been an extremely effective law enforcement tool and its Tunnel Task Forces (TTFs) established along the Southwest Border would be the best mechanism through which to locally coordinate counter-tunnel operations, intelligence, and investigations.

The BEST TTFs have also had a positive impact across the border in Mexico. The BEST TTFs include Mexican law enforcement authorities and the BEST TTFs work closely with the BEST in Mexico City, Mexico.

Question: Recently U.S. law enforcement and the Mexican federal police (the Secretary of Public Security, known as the SSP) initiated a series of joint sweeps across the Southwest border for illegal tunnels. I understand that this cooperation led to the discovery of the most recent tunnel in Nogales, Arizona.

Please provide more information about this new collaborative effort with the Mexican federal police?

Response: In border areas such as Arizona and California, collaboration with Mexico's Federal Police on tunnel matters is critical. Specifically, in Nogales, Arizona, the Office of Border Patrol (OBP) coordinates directly with the Commander of the SSP Patrulla Fronteriza, a 30-man unit created to specifically address border security issues.

The construction of tunnels usually starts on the Mexican side of the border; the OBP often discovers the tunnels before they are completed. Mexico's Federal Police provide assistance by working leads provided by CBP and/or ICE. Tunnel sweeps are conducted on a regular basis, usually bi-weekly, in order to detect illicit cross border tunnels and tunneling efforts. The sweeps have been very productive and have lead to the discovery of numerous incomplete tunnels this year. Border Patrol or ICE agents are often escorted by the SSP through an entrance to a tunnel in Mexico. If no exit on the U.S. side of the border exists, Mexico will remediate the exposed tunnel on their side of the border rendering it useless. If an exit does exist on the U.S. side, it is investigated by ICE. CBP will subsequently remediate the tunnel rendering it useless.

68104.043

Question#:	21
Topic:	protection
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The United States Secret Service derives its authority to protect our nation's leaders primarily from Title 18 U.S.C. § 3056. The Secret Service protects the President, the Vice President, former Presidents, visiting heads of foreign states or governments, and other individuals as designated per the aforementioned statute or by Executive Order of the President. Additional authority to protect the head of a federal agency, other than the Secretary of Homeland Security, was established in subsequent appropriation legislation. However, the Secret Service is expressly prohibited from providing protection to another federal agency head if there is no agreement to perform such service on a completely reimbursable basis. The Secret Service must adhere to fiscal responsibility during challenging economic times. Consequently, the agency utilizes their congressionally approved budget to ensure the maximum amount of protection is afforded to our nation's leaders.

Question:

(1)(a) Secretary Napolitano, who in the Department of Homeland Security is authorized protection by the Secret Service?

(1)(b) Does that authorization extend to the Deputy Secretary of the Department of Homeland Security?

(1)(c) Has the President signed an Executive Order to afford Secret Service protection to any official in the Department of Homeland Security besides you, Madam Secretary?

(1)(d) Has the Secret Service received reimbursement, as authorized by law, for the protection of Department of Homeland Security officials, specifically the Deputy Secretary?

(1)(e) Will you please provide this committee with all applicable costs associated with the protection of Department of Homeland Security officials, specifically the Deputy Secretary of the Department of Homeland Security?

Response: This answer was provided via a briefing to Sen. Grassley, and no written response is required.

Question#:	22
Topic:	bio
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In March 2011, the Government Accountability Office (GAO) completed a report regarding duplicative efforts in the federal government. The GAO report indicated that according to the bipartisan Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (referred to as the WMD Center), there are more than two dozen presidentially-appointed individuals responsible for biodefense. The report also stated the WMD Center, as recently as March 2010, gave the nation a failing grade concerning "rapid response to prevent biological attacks from inflicting mass casualties." Nevertheless, according to the GAO report, there is "no individual or entity with responsibility, authority, and accountability for overseeing the entire biodefense enterprise." Furthermore, the WMD Center's same report stated "there is no national plan to coordinate federal, state, and local efforts following a bioterror attack, and the United States lacks the technical and operational capabilities required for an adequate response. While the need to coordinate federal, state and local assets in order to prevent a biological attack is obvious, designating 24 separate entities to achieve that mission is counterproductive and evidently ineffective.

Question: (2)(a) Secretary Napolitano, do you feel you should be responsible for coordinating our nation's assets in order to prevent a biological attack?

Response: Unlike nuclear weapons, biological pathogens are universally available and the source of many naturally occurring infectious disease outbreaks around the world. Bioterrorism prevention requires a collective, whole-of-government effort, both domestically and overseas. The best defense against bioterrorism is a distributed defense which maximizes U.S. Government capabilities to be on alert, and a centralized, coordinated response effort when a biological threat has national security implications. The keys to success are to rapidly identify disease outbreaks or emerging biological threats, to accurately characterize the event as a natural or deliberate event, to respond with appropriate countermeasures across multiple levels of government and to inform the public so they can make informed choices on how to protect themselves.

A whole-of-government effort does not imply a duplicative effort. Federal Departments and Agencies exercise their bioterrorism prevention activities as an integral part of their programmatic activities under existing authorities. For example, the Food and Drug Administration and Customs and Border Protection (CBP) both contribute to bioterrorism prevention efforts by screening and targeting high risk food products and exercising food import restrictions when unsafe food is found, whether from intentional or unintentional contamination. Investments in the implementation of the Food Safety Modernization Act

68104.045

Question#:	22
Topic:	bio
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

will benefit public safety and well as help prevent bioterror attacks. These are important team efforts which are not duplicative.

Question: (2)(b) Do you feel it is necessary for approximately 24 presidentially appointed individuals to be responsible for biodefense?

(2)(c) Of the aforementioned 24 presidentially appointed individuals, how would you reduce potential duplication in these biodefense government programs in order to prevent a biological attack?

Response: The Department of Homeland Security (DHS) supports the President's National Strategy for Countering Biological Threats and the Homeland Security Presidential Directive-10 which outlines the team approach. The approach maximizes biodefense preparedness by leveraging what each Department does best; such as HHS leading the research and development into new drugs for biodefense, and the Intelligence community collecting signals about terrorist attempts to acquire a bioattack capability. There is no one agency that could be solely responsible for both intel collection and drug discovery, nor the full suite of capabilities necessary for countering biological threats, including agricultural threats. The system as a whole must work.

Under the President's strategy, DHS leads National Biodetection architectures, Threat Characterization, Assay Equivalency Testing, and Bioforensics efforts. DHS also has important leadership roles to enhance all-hazard emergency preparation and response, working with State, Local, Territorial, and Tribal officials, including biodefense preparedness and response. A large scale bioattack would require a whole-of-government(s) emergency response coordinated through the Federal Emergency Management Agency's (FEMA's) national response framework.

DHS operates a national network of early warning systems to detect whether a biological attack has occurred. The DHS Biowatch Program has been fully operational since 2003 with zero false positives. DHS provides biodetection support to National Security Special Events (NSSE), including the Presidential Inauguration. DHS has lead responsibility for building a National BioForensics Analysis Center. Forensic work in biological pathogens is scientifically challenging given the natural variability in human immune systems and the ability of biological organisms to mutate. DHS performs cutting edge research to identify promising approaches to the challenge and performs forensic analysis on behalf of the full range of U.S. Government agencies. For example, DHS began providing Science and Technology (S&T) support to the FBI in response to the Amerithrax investigation and continues to do so.

68104.046

Question#:	22
Topic:	bio
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

DHS further supports the President's strategy by leading the Bioterrorism Risk Assessment (BTRA) report on behalf of Federal Departments and Agencies. The BTRA is a biennial, science-based review and technical tiering of all known biological threats, vulnerabilities and the consequences of a biological attack with specific organisms and/or through specific means. The BTRA sets the stage for a systematic approach to building U.S. biological defenses, especially with respect to the long-term investments in medical countermeasure priorities.

DHS looks across the full spectrum of bioterrorism prevention, preparedness and response efforts, and engages with the national security staff and interagency partners to focus attention on any weak links.

Question: (2)(d) What entity in the Department of Homeland Security should be responsible for improving our nation's "rapid response to prevent biological attacks from inflicting mass casualties?"

Response: Rapid response is the key goal in building homeland security defenses against biological threats. For unity of effort, DHS has established an Anthrax Steering Committee that meets once per week under the leadership of my office to direct actions to improve our nation's rapid response capabilities to prevent biological attacks from inflicting mass casualties. All of the entities in DHS who encounter a biological threat are expected to deliver on their responsibilities for protecting the homeland. It is a team effort and the lead component depends on the threat being addressed.

Every day, CBP is responsible for being alert to suspicious travelers or cargo associated with terrorists groups who have a known desire to attack the homeland with biological pathogens. CBP is on the frontline in rapidly responding to prevent the introduction of foot and mouth disease and other biological threats through legitimate or illegitimate imports. The Office of Health Affairs (OHA) and FEMA lead the DHS response to the President's Executive Order for Establishing Federal Capability for the Timely Provision of Medical Countermeasures Following a Biological Attack. OHA has designed ways to speed up the rapid provision of medical countermeasures to DHS employees in the event that an attack has occurred. OHA, working with Federal partners, has developed Anthrax Attack Guidance for Protecting First Responders, which reduces uncertainties about protective measures in a presumed hotzone and enables first responders to act swiftly.

The DHS Science and Technology component performs the basic research and development necessary to enable much more rapid biodetection equipment, and robust assays while preserving the accuracy of the biodetection alerts. S&T invests in next generation biodetection equipment that could provide State and local responders with an

68104.047

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Topic:	bio
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

immediate sense of where the attack actually occurred, speeding the process of Federal, State, Territorial, Tribal and public response. In the near future, DHS will be calling for a Senior Level Exercise to test the rapid response capabilities of the system as a whole. DHS expects that lessons learned from the current state of capability will drive additional rapid response initiatives. State, Local, Territorial and Tribal public health partners own much of the rapid response challenge but DHS, with Federal partners, will continue to pursue approaches to speed response times as directed by the President's Executive Order.

68104.048

Question#:	23
Topic:	missions
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Department of Homeland Security was created in the aftermath of September 11th and includes a diverse collection of agencies to include the U.S. Secret Service, the U.S. Coast Guard, the Federal Emergency Management Agency, the U.S. Immigration and Customs Enforcement agency and the Transportation Security Administration. The mission statement of the Department of Homeland Security contains five core responsibilities: (1) prevent terrorism and enhance security; (2) secure and manage our borders; (3) enforce and administer our immigration laws; (4) safeguard and secure cyberspace; (5) ensure resilience to disasters. Unfortunately, the department's aforementioned mission and responsibilities statement doesn't include the important assignment of protecting our nation's financial infrastructure, which is contrary to the work performed by several departmental component agencies. Our current economic uncertainty, together with the ever-increasing offenses against our country's financial institutions, necessitates that law enforcement agencies work to promptly eliminate instances of such financial fraud to ensure the safety of our nation's payment and financial systems. The Department of Homeland Security has five missions, yet none of them include protecting our nation's financial infrastructure.

(3)(a) Secretary Napolitano, do you feel the Department of Homeland Security prioritizes protection of our nation's financial infrastructure?

(3)(b) If so, why is this not included in the Department of Homeland Security mission statement? If not, why is this not one of the department's priorities?

Response: The Department of Homeland Security (DHS) views the protection of financial infrastructure as a priority aspect of homeland security, and protection of financial infrastructure is a key element of the Preventing Terrorism and Enhancing Security, Securing and Managing our Borders, and Safeguarding and Securing Cyberspace missions.

The nation depends on financial systems and services to ensure continued prosperity. However, this very fact creates a vulnerability that malicious actors may seek to exploit. And the increasing interconnectivity of this infrastructure and its dependence on cyber systems creates opportunities for adversaries across the globe to attack financial infrastructure. Moreover, the open and globalized nature of the financial system means that terrorists, proliferators, and other criminal elements will seek to take advantage of its legitimate and beneficial functions to move money in support of their dangerous conduct.

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Topic:	missions
Hearing:	Oversight of the Department of Homeland Security
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As articulated in the Quadrennial Homeland Security Review (QHSR) Report and the DHS Bottom Up Review (BUR) Report, DHS takes these threats seriously and has made the protection of financial infrastructure a key part of our strategy. The QHSR describes the homeland security missions and associated goals and objectives. Three of these missions – Preventing Terrorism and Enhancing Security, Securing and Managing our Borders, and Safeguarding and Securing Cyberspace – address the threats to financial infrastructure. Our strategic approach to these threats is oriented around two overarching objectives: the physical and cyber protection of financial infrastructure, and the prevention of exploitation of financial services by transnational criminal and terrorist organizations.

One specific example of how DHS works to secure the national financial infrastructure is through our cybersecurity information sharing program with the Financial Services Information Sharing and Analysis Center (FS-ISAC). In February 2010, DHS, the Department of Defense, and the FS-ISAC launched a pilot designed to help protect key critical networks and infrastructure within the financial services sector by sharing actionable, sensitive information. This information enables the owners and operators of financial information infrastructure to better secure and protect their networks, enables DHS to provide analysis and mitigation recommendations, and ensures that information and communications are confidential and protected from disclosure.

Question: (3)(c) Who are the agencies in the department that best exemplify the ability to conduct complex financial fraud investigations?

Response: DHS law enforcement components— particularly U.S. Immigration and Customs Enforcement (ICE) and the U.S. Secret Service (USSS)—play key roles in investigating, disrupting, and deterring crimes that threaten the integrity of the financial system, and those that seek to exploit the financial system for criminal or terrorist purposes. In these law enforcement roles, DHS works closely with other Federal agencies, particularly the Departments of Justice and the Treasury, and State, local, tribal, territorial, and international partners.

Financial investigations are one of ICE's top investigative priorities. ICE targets the underlying cross-border financial systems that terrorist and transnational criminal organizations may exploit in raising, moving, and storing illicit funds. ICE also seeks to deny transnational criminal organizations access to these systems. The USSS has critical responsibilities for criminal investigations relating to the integrity of the financial system and the counterfeiting of U.S. currency. Through their 142 domestic field offices and 24 foreign field offices, the USSS works daily to combat numerous types of financial crimes including identity theft, bank fraud, mortgage fraud, counterfeit currency, and cyber

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crimes. Additionally, the USSS has established a network of 31 domestic and international Electronic Crimes Task Forces (ECTF) to combine the resources of academia, the private sector, and Federal, State, local, tribal, and territorial law enforcement agencies to combat computer-based threats to U.S. financial systems and critical infrastructure—a capability that has allowed ECTFs to identify and address potential cyber vulnerabilities before criminals exploit them. Additionally, the USSS is authorized by law to prevent, detect, and investigate a wide array of traditional financial crimes. In support of this, the USSS has created 38 Financial Crimes Task Forces across the nation that concentrate on violations that don't typically contain a cyber or computer centric nexus, such as mortgage fraud. FCTFs are modeled along the ECTF blueprint and also seek to leverage the capacities of the private sector and fellow law enforcement agencies.

Question: (3)(d) Do you support the work of the agencies responsible for protecting our nation's financial infrastructure? Please provide examples of your support?

Response: As described in 3(a), the Department of Homeland Security has prioritized the protection of financial infrastructure as a key aspect of the homeland security mission set. We advance this priority as One DHS: leveraging the comparative strengths of ICE and USSS as part of an effective and integrated DHS approach. The President's Budget Request for Fiscal Year 2012 demonstrates the strong support of this Administration to the investigative and law enforcement work of ICE and USSS. We will continue to work with Congress to enhance the DHS role and improve the protection of the Nation's financial infrastructure through increased support of, and cooperation and collaboration between, ICE's and USSS's financial infrastructure protection functions and activities.

68104.051

Question#:	24
Topic:	fees
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Last year, Congress passed a $600 million border security bill. This bill was paid for using fees from the H-1B and L visa programs, and investing the funds in technology, manpower, infrastructure, and border enforcement activities. Since collection of the fees began on August 14, only $30 million has been collected by your Department.

Questions:
(4)(a) Since this is a drop in the bucket compared to what is needed for your Department's expenditures, do you anticipate that taxpayers will have to pick up the tab despite the intention of the 2010 law to have foreign outsourcing companies pay for these investments?

(4)(b) If taxpayers do not pay these costs, will they instead come from the Department's budget for investing in border security enhancements?

(4)(c) What is your plan to implement this aforementioned law?

Response:

(a) Unfortunately, at this point in time, we are not able to determine if the collections will increase beyond the rate experienced during the last few months.
(b) Funding has already been appropriated as part of the FY 2010 Emergency Supplemental for Border Security (P.L. 111-230) and is not dependent on fee collections.
(c) An expenditure plan delineating the $394 million provided to DHS was submitted to the Appropriations Subcommittee on Homeland Security in September 2010. The plan includes funding for 250 U.S. Customs and Border Protection officers (CBPOs) to strengthen CBP's ability to detect the importation of illegal contraband and interdict illicit currency and weapons being smuggled across the border into Mexico. The funds provide a proposed deployment of these new positions to the Laredo Field Office, El Paso Field Office, Tucson Field Office, and the San Diego Field Office. The planned funding enables the Border Patrol to assign 500 additional Border Patrol agents to the Tucson Sector, and to establish a 500-agent Mobile Response Team that will have the ability to respond rapidly to emergent situations in San Diego, El Paso, and the Rio Grande Valley without depleting Border Patrol staffing from other locations. Funding for the CBPOs and Border Patrol agent positions along with the support and equipment is estimated to be $254 million.

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$14 million of supplemental funding will be used to support CBP's Tactical Communications Modernization effort in the Laredo Sector. The supplemental funding will be first directed to the planning efforts needed to complete the system design.

CBP will use $32 million in supplemental funding to procure additional Unmanned Aircraft Systems (UAS) and equipment to support increased surveillance along the southwest border in accordance with our current Federal Aviation Administration Certificates of Authorization. In addition, newly acquired and existing UAS will be launched from UAS sites in Ft. Huachuca, Arizona, and Corpus Christi, Texas, with additional support from the Cape Canaveral site as needed. Aircraft and equipment deliveries are expected during the first and second quarters of FY 2012.

$6 million in supplemental funds will support the construction of two Forward Operating Bases (FOB) on the southwest border for the Office of Border Patrol. The FOBs will be located within the Tucson, Arizona Sector.

U.S. Immigration and Customs Enforcement's (ICE) $80 million in supplemental funding will be used to deploy 250 special agents, investigators, and intelligence analysts to the border. These additional resources will support the disruption and dismantling of transnational criminal organizations, increase security along the southwest border, and promote integration of U.S. and Mexico law enforcement entities along the southwest border. In addition to deployments at ICE offices along the southwest border, the supplemental will also enable ICE to fund positions within international offices in the following locations: Nogales, Mexico; Matamoros, Mexico; Merida, Yucatan, Mexico; Guatemala City, Guatemala; Nuevo Laredo, Tamaulipas, Mexico; and Guadalajara, Mexico.

Finally, The Federal Law Enforcement Training Center will apply the $8.1 million from the Border Security supplemental and prior appropriated basic training funds to the training of DHS officers and agents associated with the Border Security Supplemental.

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Question#:	25
Topic:	transformation
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On February 23, 2011, USCIS Officials briefed my staff on the status of the on-going USCIS Transformation Project, and information technology modernization initiative, and provided data on the costs and projections along the planned timeline for completion.

(5)(a) How is a cost plus contract with IBM, containing an 11% possible award fee (4% automatic, 7% discretionary) with no penalties for delays, a wise agreement for a government agency to enter into?

Response: After evaluating the technical and price proposals and completing a cost realism analysis of each offeror's proposal, DHS determined that a cost-plus-award-fee contract was the most appropriate contract type. This contract type provided the most incentive for the contractor to work towards achieving exceptional performance and provided the government with the flexibility to evaluate both actual performance and the conditions under which it is achieved.

The solicitation allowed for contractors to propose a base fee and award fee amount. The Contracting Officer (utilizing the services of the Defense Contract Audit Agency and DHS Cost and Price Analysts) evaluated the contractor's proposal including the fees proposed and after conducting negotiations determined those costs to be fair, reasonable, and consistent with the work to be performed. The award fee is assessed based upon an evaluation by the Government, as discussed in the award fee plan, established at time of contract award.

Penalty-type clauses in service contracts, in the form of liquidated damages, are authorized by federal regulation only in limited circumstances, such as where the Government can make a reasonable forecast of just compensation for the harm caused by untimely performance. Such a clause would not have been authorized here because just compensation for any delay would have been too difficult to forecast in advance.

Question:
(5)(b) How does USCIS plan to continue to hold IBM accountable for timely completion of project milestones?

Response: The Office of Transformation Coordination (referred to as Transformation hereafter) Chief, Deputy Chief/ Program Manager, Chief Information Officer (CIO), and Deputy Chief Information Officer meet with IBM's senior leadership several times a

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week to discuss program status, performance, cost, risks, and issues. USCIS holds a monthly Program Management Review with IBM, which is attended by representatives from the DHS Office of Procurement, the Under Secretary for Management's Acquisition Program Management organization, and the Office of the CIO. The purpose of the monthly program review is to gauge the progress and performance of the program and the contractor. The DHS CIO, Richard Spires, attends these meetings on a quarterly basis. He last attended the April 26, 2011 Transformation program review.

Further, Transformation requires IBM to provide detailed estimates of planned work for design, development, test, and deployment of the initial release. The Government performs independent validation of IBM's work estimates. Additionally, Transformation provides oversight to IBM through a series of regular meetings. Transformation personnel meet on a daily basis with IBM and, as an integrated team, work through the details of the transformed business requirements; this has helped IBM understand the government's business requirements and has provided the government with a venue to ensure that the requirements are interpreted accurately by the contractor.

In addition, IBM is required through government technical direction to provide Transformation with a daily escalation log that brings to the government's attention new risks and issues regarding the schedule. IBM is required by Transformation to submit Earned Value (EV) reports on a regular basis showing actual variances regarding schedule, and cost versus amount of work completed. These reports are reviewed on a regular basis by the Transformation Program Management and Integration Division.

Finally, the USCIS CIO and his resources actively engage with IBM on a weekly basis to assess IBM's progress from a technical and systems engineering perspective. They leverage these meetings to help ensure IBM follows best practices for delivering the first release while minimizing risk. The CIO's team in partnership with Transformation monitors risks through the established internal risk and escalation process.

Question:
(5)(c) Other agencies have undertaken major IT upgrade projects in the recent past and have wasted significant government resources in the process of accomplishing little toward their goals. The original contract with IBM was for $490 million plus the award fees. USCIS officials claimed that the project is currently under budget and the next milestone to assess the program is April 22, 2011, with an initial prototype representing 70% of the functionality by December of this year. What is the contingency plan for funding the project if the money currently allocated from USCIS premium processing fees runs out?

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Response: USCIS is financing the Transformation program mostly through prior- and current-year premium processing revenue. However, other application and petition fee revenue not tied to premium processing is available to finance the Transformation program if, in any year, premium processing revenue does not fully cover program costs. USCIS financial plans have incorporated the possibility that this might occur for at least some years of the program's deployment.

Question:
(5)(d) Why was former CIO Jeff Conklin reassigned from the Transformation project?

Response: Pursuant to the authority granted USCIS by 5 C.F.R. § 317.901(b), an Office of Personnel Management (OPM) regulation, Mr. Jeff Conklin was reassigned from his position as USCIS Chief Information Officer to that of Deputy Chief of the USCIS Office of Security and Integrity in June 2009 to increase the effectiveness of the agency's performance. USCIS makes SES reassignments to increase the effectiveness of the agency's performance in the best manner available, in light of our important responsibilities under the law. Today, Mr. Conklin is on detail from USCIS to the US Coast Guard supporting the Assistant Commandant for Command, Control, Communications, Computers and Information Technology (C4&IT).

Question:
(5)(e) USCIS Officials advised that there are several vacancies in positions on the Transformation IT Team. The Government Accountability Office (GAO) has indicated that the absence of a full IT team can be a degrading factor in the level of effectiveness in a project of this type. How does USCIS plan to address these vacancies?

Response: The Office of Information Technology (OIT) has made great strides in addressing the staffing concerns of the General Accountability Office. USCIS hired a new Chief Information Officer (CIO), a Deputy Chief Information Officer (DCIO), and a very experienced OIT Project Manager for Transformation. OIT recruited and filled 69 vacancies in FY10. Currently OIT is fully staffed with the exception of 6 vacancies due to attrition.

Question:
(5)(f) Will the personnel vacancies impact the schedule for completion?

Response: Vacancies in OIT staffing have not, and will not, impact the Transformation schedule for completion.

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Question:
(5)(g) What is the contingency plan for managing the contract if the vacancies are not filled in a timely manner?

Response: Personnel vacancies have not, and will not, impact the Transformation schedule for completion. If the need arose, USCIS would certainly adjust workload priorities and worked with DHS to identify alternative staffing mechanisms.

Question:
(5)(h) How many USCIS staff are currently assigned to Transformation?

Response: Currently, Transformation has 66 staff on board or selected. Transformation's workforce also is augmented with four full-time detailed employees with specialized experience in communications and stakeholder outreach, legal analysis, and privacy compliance. In addition, Transformation has support from the Directorates and Programs through 8-full-time on-site detailees (includes union representation) to the Program Integrated Product Team (PIPT) and 65-onsite and virtual detailees to the Working Integrated Product Teams (WIPTs).

Question:
(5)(i) How many USCIS staff were detailed to Transformation from other offices on a temporary basis in FY 2008, FY 2009, and FY 2010?

Response: USCIS detailed approximately 38 full time employees in FY 2008 to Transformation on a temporary basis, 41 in FY 2009, and 65 in FY 2010.

Question:
(5)(j) What was the overall budgetary cost of these detailed staff in FY 2008, FY 2009, and FY 2010?

Response: Estimated travel related costs were $2.5 million to support approximately 40 detailed employees to Transformation between 2008 and FY 2010.

Question:
(5)(k) What is the planned cost of Transformation in FY 2011 and FY 2012?

Response: Planned costs are $337.2 million in FY 2011 and $248 million in FY 2012. These costs include the Solution Architect contract, information technology and program upgrades, salaries, general expenses and support contracts.

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Topic:	transformation
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question:
(5)(l) Altogether, how much does USCIS anticipate spending on Transformation?

Response: Transformation plans to spend $1.38 billion from the beginning of the program in 2006 through the final deployment of capabilities in 2014. These projected expenditures include the Solution Architect contract, information technology and program upgrades, salaries, general expenses and support contracts. The total includes actual expenditures from FY 2006-2010 of $499.4 million and estimated costs of $337.2 million in FY 11, $248 million in FY 12, $180.4 million in FY 13, and $117.3 million in FY 14.

68104.059

Question#:	26
Topic:	FOIA 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Secretary Napolitano, I am extremely concerned that there is political involvement in the Department of Homeland Security's FOIA process.

Questions:
(6)(a) What are DHS's FOIA procedures?

Response: DHS's current procedure for responding to all FOIA requests is as follows:

1. DHS receives a request for information under the FOIA.
2. The request is logged by the relevant component FOIA office, and reviewed for compliance with DHS regulations and to ensure it reasonably describes the records sought (i.e., that it is perfected). If the request is not perfected, the FOIA professional corresponds with the requester to seek clarification of the scope of the request; once the request is perfected, the FOIA professional sends an acknowledgement letter to the requester.
3. Career FOIA professionals then determine whether or not the request is significant using criteria and factors that have not changed materially since 2006.
4. Information about significant requests, including the actual request letter and a summary, is submitted to the DHS Privacy Office which consolidates significant requests and reports them to DHS senior management on a weekly basis for awareness.
5. The relevant FOIA Office tasks out the request to a component, group or subject matter expert(s) within the Department who may have responsive federal records according to the information requested and the scope covered.
6. Federal records from the subject matter experts or identified parties that are responsive to the request are returned to the FOIA Office from which it was tasked.
7. Career FOIA professionals review the response and identify appropriate legal exemptions (for law enforcement, national security, privacy and pre-decisional considerations, among other things as defined in the law).
8. After the DHS subject matter expert (custodian of the federal records) confirms the final response is appropriate, the FOIA professional then prepares the information for release – including a letter and explanation of various exemptions.

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9. In many DHS components and offices, attorneys from the Office of the General Counsel review the proposed response prior to release to confirm that all redactions and disclosures are being made appropriately.
10. FOIA releases are reviewed and approved by a FOIA manager.
11. Non-significant FOIA releases (over 99.5 percent of releases) are then released to the requester. Significant FOIA releases are uploaded into a SharePoint system for a limited awareness review period – one business day – and then automatically released by the relevant component FOIA office to the requester.

Question:
(6)(b) Are political appointees informed of FOIA requests?

Response: Yes. The FOIA itself, at 5 U.S.C. § 552(j), provides that each agency Chief FOIA Offier shall be "at the Assistant Secretary or equivalent level." The Chief FOIA Officer of the Department of Homeland Security is politically appointed as are Chief FOIA Officers at many other agencies. As the Chief FOIA Officer, she has responsibility for all FOIA responses. While she does not personally review every one of the more than 130,000 requests and responses DHS processes every year, she does review many and has the right to view any one of them. Moreover, I am politically appointed, as is much of my staff. We have clear authority to ask questions of, review, and manage the operations of all parts of the Department, including the Privacy Office and its elements that handle the FOIA process. Title 6 U.S.C. § 112(a)(2) states, "[t]he Secretary is the head of the Department and shall have direction, authority, and control over it." Consistent with practices since the inception of the Department, the DHS FOIA office provides notice of significant FOIA requests to senior leadership, including staff in my office.

Question:
(6)(c) If they are informed, at what point in the FOIA process are political appointees involved?

Response: Typically, political employees who work in the Privacy Office, the DHS components, and my office may be involved with the FOIA process in their respective capacities during steps 4, 9, and/or 11 outlined in the answer to Question (6)(a) above.

Question:
(6)(d) Do you have any direct knowledge of political appointees being informed of FOIA requests?

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Response: Yes. The senior staff at any Department or agency has an obligation to manage the entire Department or agency, including FOIA operations. Because many political appointees serve as managers and senior leaders in this Department, appointees play an integral role the FOIA process. In fact, pursuant to both Executive Order 13,392 and a 2003 DHS Management Directive, all Departmental FOIA operations are overseen by the politically appointed Chief FOIA officer.

Question:
(6)(e) If so, on which requests were they informed?

Response: Most of the Department's managers and senior leaders are political appointees. As such, they are made aware of many of the significant FOIA requests made to their components or offices. In addition, consistent with the previous administration's policy, career FOIA officials flagged significant requests for Departmental leadership. In no case, did this process inhibit documents from being released pursuant to FOIA and only attorneys and other FOIA professionals determined the substance of redactions. In total, less than one half of one percent of all FOIAs were flagged for awareness purposes.

Question:
(6)(f) Why were political appointees chosen to be informed on those specific requests?

I am also concerned that you may have been aware of this practice and contributed to its perpetuation.

Response: This particular process provided senior leadership with awareness of FOIA releases to enable the Department to be as responsive as possible to follow-up questions from members of Congress, the press and other stakeholders, to ensure that Departmental attorneys were aware of FOIA releases related to ongoing litigation, and to help better manage the Department. In order to make the process more efficient, during the spring of 2010, the Department made additional revisions to our process including a new online SharePoint system that allows DHS officials to view significant FOIA releases, for informational purposes only, during a limited time period – now no more than one day – after which the documents requested would be released by the relevant component FOIA office automatically. This process does not inhibit documents from release under FOIA and only attorneys and other FOIA professionals determine the substance of redactions.

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Question#:	26
Topic:	FOIA 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question:
(6)(g) Secretary Napolitano, do you have any direct knowledge of political appointees being given advance notice of FOIA requests?

Response: Yes. As described above, I am aware that senior leaders and managers are provided with advance notice of significant FOIA requests that either pertain to their component or office or require intra-department coordination.

Question:
(6)(f) If so, when did you become aware of political appointees receiving advance notice?

Response: Senior political appointees have long served an integral role in the Department's FOIA operations. These practices predate my tenure as Secretary.

Question:
(6)(g) How were you told that political appointees were being made aware of FOIA requests?

Response: As noted above, these practices are set forth in Executive Orders, Management Directives and policy documents that predate my tenure as Secretary.

Question:
(6)(h) On which FOIA requests were you personally informed?

Response: As noted above, I am only generally familiar with the role played by senior leaders and managers in the Department's FOIA process.

Question:
(6)(i) If you were informed, what action if any did you take on learning this information?

Response: As noted above, I am only generally familiar with the role played by senior leaders and managers in the Department's FOIA process.

68104.063

Question#:	27
Topic:	FOIA 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: My concerns go to a larger issue: that DHS information which is the property of the American people is being withheld and delayed from reporters and other FOIA requesters.

(6)(j) Secretary Napolitano, do you think it is an acceptable practice for political appointees to have any role in the FOIA process?

Response: Yes.

Question: (6)(k) If yes, what role is acceptable and why?

Response: The FOIA itself, at 5 U.S.C. § 552(j), provides that each agency Chief FOIA Offier shall be "at the Assistant Secretary or equivalent level." The Chief FOIA Officer of the Department of Homeland Security is politically appointed as are Chief FOIA Officers at many other agencies. It is by definition appropriate for the Chief FOIA Officer to have a role in the FOIA process. Moreover, I am politically appointed, as is much of my staff. We have clear authority to ask questions of, review, and manage the operations of all parts of the Department, including the Privacy Office and its elements that handle the FOIA process. Title 6 U.S.C. § 112(a)(2) states, "[t]he Secretary is the head of the Department and shall have direction, authority, and control over it." How and whether the Secretary uses this authority may be limited by available resources and policy considerations, but it would be inaccurate to imply that the Secretary and her staff may not take an active role in reviewing or managing the Department's operations, including its FOIA operations. Consistent with practices since the inception of the Department, the DHS FOIA office provides notice of significant FOIA requests to senior leadership. Within this context I believe it is acceptable for senior Department leadership, including political appointees, to be informed of upcoming significant events affecting the Department, including the release of important Departmental information. When afforded such visibility, not only do we gain deeper awareness of issues but we are able to refer FOIA responses to the General Counsel's office for additional review to properly construe the FOIA statute, and ensure the protection of sensitive security information and Privacy Act protected information. With the awareness this process provides, we can more effectively respond to inquiries from Congress, the press, and the public about documents released by the Department, and better manage the Department.

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Question: (6)(l) Are you concerned that the evidence uncovered by the Associated Press harms the credibility of the FOIA system?

Response: Yes. I am always concerned when evidence or allegations are leveled against the Department.

Question: (6)(m) Do you believe that all FOIA requests should be handled in an even handed manner with no one requester receiving either more information or faster service than another?

Response: No. The identity of the requester should have no bearing on the amount of information disclosed (subject to narrow exceptions regarding requests from fugitives from justice, requesters who have waived by plea agreement their FOIA rights, or requests from foreign governments or their representatives who seek records of intelligence agencies). With regard to faster service, however, the FOIA statute itself provides for differing treatment, depending on the identity of the requester and other factors. 5 U.S.C. §552(a)(6)(E) states that "[e]ach agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records in cases in which the person requesting the records demonstrates a compelling need; and in other cases determined by the agency. However, other than what is contemplated by FOIA, no one requester should receive more information or faster service than another.

Question: (6)(n) The Associated Press has reported that your staff asked questions about requester's backgrounds. Do believe that these types of questions are relevant to FOIA requests?

Response: As part of its process, DHS FOIA staff provides a brief synopsis of incoming significant requests, which includes basic information about the request, a practice that pre-dates this Administration. Background information that is relevant to my staff's awareness in determining the significance of a request includes whether the requester is a member of Congress or the media, whether the request relates to a controversial or sensitive topic, and whether the request relates to Presidential or agency priorities.

Question: (6)(o) If yes, then why?

Response: Please see my answer to (6)(n) above.

Question: (6)(p) Have you taken any action against DHS employees that requested

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information on FOIA requesters?

Response: No.

Question: (6)(q) If not, do you plan to do so in the future?

Response: I plan to do so in the future if it is warranted.

Question: (6)(r) Was anyone at the White House aware of the involvement of political appointees in DHS FOIA requests?

Response: Yes with respect to the general fact that political appointees at DHS participated in the FOIA process.

Question: (6)(s) If yes, who was made aware?

Response: Many people at the White House are aware that the Chief FOIA Officer of the Department of Homeland Security is politically appointed as are Chief FOIA Officers at many other agencies, as well as the fact that political appointees of DHS and other agencies are often advised of FOIA releases so that they can respond to questions from Congress, the press, and stakeholders.

Question: (6)(t) Did they try to stop this practice?

Response: The White House did not try to prevent political appointees at DHS from having a role in the FOIA process.

68104.086

Question#:	28
Topic:	mandate
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Congress mandated that an entry/exit system be created to track foreign nationals coming and going from the United States. This mandate from 1996 continues to be ignored. The exit system is an integral part of knowing who is in our country, and ensuring that foreign nationals depart when they are required. We've done the pilots and the studies. We know the airlines don't want to fully cooperate.

Can you assure us today that your Department will fulfill the 1996 mandate by finalizing a process as soon as possible to check outbound passengers who are leaving the United States?

Response: The Department of Homeland Security (DHS) currently has an air exit system based on biographic data at all international airports. Data collected by the air carriers and submitted to U.S. Customs and Border Protection's (CBP) Advance Passenger Information System (APIS) is transmitted to the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program, which matches the information to that contained in the Arrival and Departure Information System. Using this, DHS creates records of those who overstay.

Since Congress enacted the statute that included a mandate for biometric air exit, DHS has implemented several automated systems based on biographic data that much more effectively capture arrival and exit information as compared to the processes in use at the time.

Additionally, DHS has conducted a number of pilots and studies since 2003 to assess options on how to meet the biometric exit mandate. The pilots have demonstrated that while the technology exists to collect biometrics - the costs associated with the operational facilities and staffing needs necessary to achieve effective compliance with biometric air exit requirements using currently available technology and processes are quite high, particularly when compared to any potential security gains. DHS does not invest money into solutions where the benefits are not commensurate with the costs incurred.

Accordingly, DHS will explore new biometric exit solutions that can be implemented in a cost-effective way, while simultaneously implementing enhancements to existing biographic air exit systems. These enhancements will focus on strengthening Customs and Border Protection's (CBP) Advance Passenger Information System (APIS) information collection and carrier compliance auditing; enhancing US-VISIT's automated matching of arrival and departure records, review of records of potential overstays, and posting of "lookouts" for those who have overstayed.

68104.067

Question#:	29
Topic:	cities
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: I believe that cities that refuse to cooperate with the feds—especially your Department—when it comes to undocumented or criminal aliens are breaking the law. These sanctuary cities also pose a threat to our national security.

(8)(a) Do you agree?

Response: Policies—official or otherwise— that provide a "safe haven" for criminal aliens and national security threats pose a potential threat to national security and a risk to public. Federal law, including 8 U.S.C. § 1373, prohibits state and local government entities or officials from directly restricting the voluntary exchange of immigration information with ICE. Determining whether a jurisdiction's actions violate federal law depends on the applicable facts and would require involvement by the Department of Justice.

Question: (8)(b) Have you considered ways to make sure cities, do in fact, share information about undocumented individuals in the U.S. – such as withholding federal funding for such cities?

Response: The Department of Justice administers the State Criminal Alien Assistance Program which provides funding to state and local jails.

Question: (8)(c) In other words, are there actions that your Department will take against sanctuary cities?

Response: As part of comprehensive immigration reform, ICE has articulated strategies to better tie federal funding to cooperation with federal law enforcement. The Department of Justice holds the authority in this area. ICE is a strong proponent of state and local cooperation.

68104.088

Question#:	30
Topic:	everify
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Citizenship and Immigration Services Director Mayorkas recently said that the agency could handle a mandatory participation of E-Verify, but politicized his remarks by adding that such an initiative should be coupled with immigration reform.

(9)(a) If Congress provided illegal immigrants with a path to citizenship as we know the President wants wouldn't this add a lot of strain on an agency that will be in charge of processing millions of applicants?

Response: As previously stated for the record by U. S. Citizenship and Immigration Services (USCIS) Director Alejandro Mayorkas before the Senate Committee on the Judiciary, USCIS will be prepared to implement comprehensive immigration reform (CIR) if Congress decides to pass legislation. USCIS has been analyzing its ability to implement some form of CIR for years and has consistently indicated an ability to implement CIR given the proper time and funding.

Question: (9)(b) Would you support a move to make the E-Verify program mandatory for all employers?

Response: The administration supports phasing in mandatory use of the E-Verify system over a multi-year period in conjunction with a program that requires the undocumented population to get right with the law. Under this plan, employers with more than 1000 employees would be required to join the system first, with additional phases that add more employers in succeeding years. Some small businesses could be exempt from using E-Verify system.

DHS is committed to expanding and improving E-Verify, along with our partners in government. E-Verify is well-equipped to handle continued expansion. E-Verify currently has the capacity to handle at least 60 million electronic queries annually, which could accommodate all new hires in the United States. DHS has invested in a dedicated information technology environment to transfer data from E-Verify to the Social Security Administration to handle increased growth in query volume. The increased use of E-Verify will necessitate further improvements to information technology infrastructure.

In order to attain E-Verify use on a wider scale, DHS will require increased funding for additional staffing, expanding our customer service and employee redress process, performing monitoring and compliance activities, and conducting outreach and advertising efforts to educate employers and workers about E-Verify. The federal

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Question#:	30
Topic:	everify
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

agencies involved in the E-Verify Program may also need to expand their capacity to administer the queries processed and address allegations by new employees of errors or employer misuse quickly and efficiently.

Furthermore, the expanded use of E-Verify will require DHS to meet additional challenges. The E-Verify system is predicated on an employer's web browser access or, alternatively, on an employer's ability to contract with a third-party provider who uses the E-Verify system for clients based on fees. Thus, the ability of some sectors of the market – for example, small businesses – to access the E-Verify system will need to be addressed.

Question#:	31
Topic:	memos
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: I appreciated our dialogue about the internal memos that outlined administrative options to provide relief to people illegally in the United States. I also appreciate your willingness to share statistics with me about how many deferred action and paroles have been granted by your Department. During the hearing, however, I asked you a question that went unanswered, so allow me to ask again.

(10)(a) Did you, at any time since you became Secretary, review memos or proposals that describe administrative options – such as deferred action or parole – to get around Congress' inaction on immigration reform?

Response: As I indicated in my testimony, internal draft memoranda are not and should not be equated with official action or the policy of DHS. I welcome and encourage DHS employees to raise their best ideas and thoughts on a wide range of policy issues. This is a best practice and an important professional responsibility of the DHS workforce. At the same time, not every idea is accepted for action; some are refined and adopted, while others are rejected. That is the very essence of deliberation and sound policymaking. Deferred action and parole are discretionary mechanisms that the Department considers on a case-by-case basis. The Department's position is clear: we will not afford deferred action or parole to all immigrants without lawful status but will continue to consider deferred action and parole as appropriate on a case-by-case basis. I continue to believe that comprehensive bipartisan legislation, coupled with smart, effective enforcement, is the best solution to our Nation's immigration challenges and remain committed to working with the Congress toward that end.

68104.091

Question#:	32
Topic:	danger pay
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: The murder of ICE Special Agent Jaime Zapata and the wounding of Special Agent Victor Avila by cartel gunman in Mexico last month highlight the dangerous environment of DHS personnel assigned to the country of Mexico.

Please provide the following information:

Can you give me a breakdown by agency of DHS personnel assigned to the embassy in Mexico City and in other cities in Mexico?

Response:

*******Law Enforcement Sensitive Start*******

[redacted]

*******Law Enforcement Sensitive End*******

Question#:	32
Topic:	danger pay
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Are these personnel receiving danger pay and if so, in what cities and at what percentage?

Response: The offices receiving danger pay and the percentage of danger pay received are determined by the DOS Office of Allowances. http://aoprals.state.gov/Web920/danger_pay_all.asp. Consistent with the DOS designation, the DHS federal employees who receive danger pay in Mexico are those in Ciudad Juarez (20 percent), Monterrey (20 percent), Tijuana (15 percent), Nuevo Laredo (15%), Matamoros (15%), and Nogales (5%). (These designations began in March 2010 and have fluctuated as conditions change in Mexico.) ICE federal personnel receive a 10-percent retention allowance under ICE policy for working in a post in Mexico.

Question: If they are not receiving danger pay, have you discussed the issue of danger pay with the State Department to see how these personnel can receive danger pay?

Response: DHS and DOS agree that taking care of our employees is a top priority. DHS will continue to work with DOS on how to best designate our employees.

Question: Will you or have you already discussed with the appropriate State Department personnel and Mexican Officials, the need to revise embassy and host country policy that bars DHS personnel from possessing weapons (long guns and pistols) while traveling by vehicle on official U.S. government business inside of Mexico?

Response: As the President noted in his March 3, 2011 press conference with Mexican President Filipe Calderon, "There are laws in place in Mexico that say that our agents should not be armed. ...When it comes to our partnership, our cooperation in battling the drug cartels, our job is to help with information, it's to help with equipment, it's to help in coordination. We are in an advisory capacity; we do not carry out law enforcement activities inside of Mexico....We're constantly refining how we do that in a way that is respectful of Mexico's sovereignty...I assure you that we will be examining all our procedures and protocols in terms of how our agents travel throughout Mexico." DHS continues to work with the Department of State, other U.S. agencies and the Government of Mexico to ensure the safety of all of our personnel abroad.

68104.093

Question#:	33
Topic:	pilot
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: I have introduced legislation that requires DHS to implement exit procedures for foreign visitors. The department has conducted quite a number of visa exit pilot programs since 2003. In 2009, another pilot program was completed at the Detroit and Atlanta airports. To date, we have not seen any final implementation of any form of a visa exit program.

Please provide the following information:

1. What is the status of the department's review of data gathered under the 2009 pilot program?

2. Why has the department not implemented some form of visa exit program at major airports that have significant foreign departures (example: ATL, JFK, LAX and SFO)?

Response: To satisfy a congressional mandate included in the 2009 Department of Homeland Security (DHS) Appropriations Act (P.L. 110-329), DHS collected biometric information from departing passengers at two airports (Atlanta-Hartsfield and Detroit) from May 28, 2009, until July 2, 2009. During this pilot program, DHS processed approximately 30,000 passengers. The results of the pilot program were provided in a report to the House and Senate Appropriations Committees in October 2009.

DHS currently has an air exit system based on biographic data. Data collected by the air carriers and submitted to U.S. Customs and Border Protection's (CBP) Advance Passenger Information System (APIS) is transmitted to the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program, which matches the information to that contained in the Arrival and Departure Information System. Using this, DHS creates records of those who overstay their period of admission.

Since Congress enacted the statute that included a mandate for biometric air exit, DHS has implemented several automated systems based on biographic data that much more effectively capture arrival and exit information as compared to the processes in use at the time.

Additionally, DHS has conducted a number of pilots and studies since 2003 to assess options on how to meet the biometric exit mandate. The pilots have demonstrated that while the technology exists to collect biometrics - the costs associated with the operational facilities and staffing needs necessary to achieve effective compliance with

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Question#:	33
Topic:	pilot
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

biometric air exit requirements using currently available technology and processes are quite high, particularly when compared to any potential security gains. DHS does not invest money into solutions where the benefits are not commensurate with the costs incurred.

Accordingly, DHS will explore new biometric exit solutions that can be implemented in a cost-effective way, while simultaneously implementing enhancements to existing biographic exit systems. These enhancements will focus on strengthening Customs and Border Protection's (CBP) Advance Passenger Information System (APIS) information collection and carrier compliance auditing; enhancing US-VISIT's automated matching of arrival and departure records, review of records of potential overstays, and posting of "lookouts" for those who have overstayed.

Question#:	34
Topic:	287g
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Another component of my immigration legislation looks to address sanctuary cities by holding state and local agencies enrolled in the 287(g) and Secure Communities programs accountable for carrying out the goals of those programs. I have worked closely with the Department of Homeland Security, including Immigration and Customs Enforcement as well as Customs and Border Protection to bring these programs to Utah. Utah's Sheriffs and Police Chiefs are supportive of expanding both the 287(g) and the Secure Communities programs. However, it appears that 287(g) is being marginalized in favor of Secure Communities.

What is the department's future plan for the expansion and continuation of the 287(g) program?

Response: The technology of the Secure Communities program allows ICE to identify aliens upon their booking on criminal charges. The state and local law enforcement officers are not authorized to enforce immigration law or process removable aliens who are identified based on their fingerprints. In contrast, the 287(g) program acts as a force multiplier because state and local officers enforce federal immigration law and process aliens for removal under the supervision of ICE. Currently eight applications are under final review by ICE, and five new applications will be presented to the 287(g) Advisory Board in June 2011.

Question: What is the department's future plan for the expansion and deployment of Secure Communities nationwide?

Response: Secure Communities enables ICE to utilize a federal biometric information sharing capability to identify aliens arrested, charged, and booked into the custody of local law enforcement. It neither authorizes, nor permits, state or local law enforcement to enforce immigration laws. However, the two programs, Secure Communities and 287(g), can work together and agents and officers of the 287(g) Program benefit from the federal biometric information sharing capability when it is activated in their local jurisdictions. It provides a quick and accurate identification of the alien in custody so that ICE can determine appropriate immigration enforcement action.

Future plans for the expansion and deployment of Secure Communities seek to achieve complete nationwide activation by fiscal year (FY) 2013. As of March 16, 2011, Secure Communities has deployed IDENT/IAFIS Interoperability to 1,110 jurisdictions in 39 states. The goal for FY 2011 is 897 deployments, for a cumulative total of 1,555

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Question#:	34
Topic:	287g
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

jurisdictions. The goal for FY 2012 is 1,594 deployments, for a cumulative total of 3,149 jurisdictions. The remaining 32 jurisdictions will be completed in FY 2013, which will achieve nationwide deployment. In Utah, Secure Communities has been deployed in 13 jurisdictions and plans call for deployment in the remaining 16 jurisdictions throughout FY 2011, FY 2012, and FY 2013.

Question#:	35
Topic:	Hurtt
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Last June, former Phoenix and Houston Police Chief Harold Hurtt was selected to head the Immigration and Customs Enforcement - Office of State & Local Activities. I do not question Mr. Hurtt's qualifications, he has agency executive experience. However, he was an outspoken proponent in favor of sanctuary cities.

While serving as police chief in both Phoenix and Houston there were some high profile tragic events that I believe should have made him rethink or revise his position of refusing to turn over arrestees to immigration officials and refusing to run arrestees through immigration databases. The hiring of Mr. Hurtt, a well documented supporter of sanctuary cities, puts him at odds philosophically with his assignment within ICE.

What factors did you and Director Morton take into consideration when hiring Mr. Hurtt?

Response: In considering Mr. Hurtt for the Assistant Director position, ICE considered many factors. Mr. Hurtt began his career with 4 years of military service, followed by 41 years of public service. He began his law enforcement career as a police officer walking a beat, and eventually climbed through the ranks to Police Chief, serving in two major cities in the states of Arizona and Texas. He also spent 6 years as Chief of Police in Oxnard, California. Two of the cities in which he served, Houston and Phoenix, have the 4th and 5th largest police departments in the country. This experience provided Mr. Hurtt a very special insight into criminal activities and illegal immigration, especially along the southern border. In addition to his military and police service, Mr. Hurtt served 2 terms as President of the Major City Chiefs Association, a group of police chiefs who represent more than 60 of the largest cities in the United States and Canada. During the time Mr. Hurtt has been an ICE employee, there has been no doubt of his strong leadership role and his support for ICE policies and directives. Mr. Hurtt has aggressively reached out to state, local, and tribal law enforcement agencies, government entities, and nongovernmental organizations to enhance partnership support and trust between this agency and other federal agencies, in addition to state and local entities.

Question: Were Mr. Hurtt is very public and vocal positions in favor of sanctuary cities made aware to you during his vetting and consideration for this position?

Response: While serving as the Chief of Police in the City of Phoenix, Mr. Hurtt was very vocal in his support of ICE, especially when there was a nexus of criminal alien involvement. Mr. Hurtt changed the existing long-standing policy on ICE access to inmates held at the Houston City Jail; this policy change allowed ICE access on a 24/7

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Question#:	35
Topic:	Hurtt
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
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basis. Further, under Mr. Hurtt's leadership, the Houston Police Department participated in a taskforce with ICE, which was focused on transnational gangs and fugitives.

Toward the end of his tour as Chief of Police, the City of Houston started the process to partner with ICE via the 287(g) jail program. When Mr. Hurtt and the Mayor learned of the Secure Communities effort, Houston later became a Secure Communities partner. Secure Communities now operates statewide in Texas.

Question#:	36
Topic:	AIT
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: I receive a lot of mail from concerned Utahns who express frustration, anger and embarrassment at the methods of screening they are subjected to at TSA airport passenger screening checkpoints. The use of Advanced Imaging Technology, that generates a black and white image of the screening subject, leaves little to the imagination and Utahns feel that these images do little to protect the recipient's privacy. I am aware that images are not recorded or saved to a hard drive. But that does little to comfort the public when they know that at least two people, the TSA screener at the machine and the TSA employee watching remotely, can essentially see the subject naked. I believe the American people understand the need for tightened airline security. But DHS has to do a better job of explaining to the flying public why the need is there.

Last summer, TSA announced its pilot program to begin enhanced pat downs, there was no rollout like you have done with the "See Something, Say Something" campaign. You made a major announcement at the Super Bowl and NBA All Star game for that campaign. However, for the enhanced pat downs, only after weeks of public outcry and threats by the pilots association did Administrator Pistole start doing interviews and outreach on this issue.

Please provide the following information:

a. What efforts is TSA making to ensure traveler's privacy and address the public's criticisms of advanced imaging technology and enhanced pat down searches?

Response: The Transportation Security Administration (TSA) makes great efforts to ensure the privacy of the public is protected. TSA conducted a Privacy Impact Assessment to assess the privacy impact of the technology and operational protocols, which was first published in January 2008 and has been updated as appropriate. The PIAs can be found at: http://www.dhs.gov/files/publications/gc_1280763432440.shtm

Passenger anonymity is preserved by separating the individual being screened from the image created by the Advanced Imaging Technology (AIT). Images generated by AIT are viewed in a walled-off location that prevents the image operator from seeing the individual undergoing screening. The officer assisting the passenger at the machine cannot view the image. Imaging technology cannot store, export, print, or transmit images, and both systems use algorithms that blur the face. All images are cleared from the screen after they are reviewed by the remotely located operator. While AIT can be manufactured with storage capability, all AIT installed in the airports have such storage

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Question#:	36
Topic:	AIT
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

disabled. No cameras, cellular telephones, or other devices capable of capturing an image are permitted in the resolution room. The use of these devices is a terminable offense.

TSA is also currently testing new software for the AIT machines that enhances privacy by eliminating passenger-specific images. The software auto-detects potential threat items and indicates their location on a generic outline of a person. TSA began testing the software at Las Vegas McCarran International Airport (LAS), Hartsfield-Jackson Atlanta International Airport (ATL) and Ronald Reagan Washington National Airport (DCA) in February 2011.

Additional privacy protections include providing passengers with notice and information that permits the exercise of informed choice before undergoing the screening, and permitting the passenger to choose to opt-out from AIT screening in favor of physical screening.

All passengers have important rights during a pat-down. They may request the pat-down be conducted in a private room and to have the pat-down witnessed by a person of their choice. All pat-downs are only conducted by same-gender officers. The officer explains the pat-down process before and during the pat-down.

Question:
b. What outreach is DHS making to the flying public and people who make a living by flying to justify the case for enhanced pat down searches?

Response: The Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) regularly conduct outreach with the flying public by creating and sustaining an open dialogue with diverse community groups. Direct access to TSA is also available through TSA's website (www.tsa.gov). TSA has conducted informal surveys, and is developing critical information regarding the pat downs in various languages to better communicate with persons with limited English proficiency. TSA will soon be providing information on the TSA website (www.tsa.gov) in other languages to reach more members of the traveling public.

Furthermore, TSA is a part of the Community Outreach Working Group at DHS, which meets to communicate and coordinate events across the country to reach out to the public on both a national and local level. TSA also hosts an Annual TSA Coalition Conference wherein diverse community partners from around the country can engage in a direct dialogue with members of the TSA Senior Leadership Team on questions and concerns regarding screening procedures, policies and technologies.

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Question#:	36
Topic:	AIT
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

TSA also partners with DHS to participate in community and interagency roundtable discussions across the country with diverse groups to educate and inform the public about the screening procedures, their rights during the screening process, and filing a complaint or compliment.

Question#:	37
Topic:	radiation
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: On March 11, 2011, TSA announced that it would re-test 247 x-ray scanners in use at U.S. airports after maintenance checks indicated that the devices emitted radiation doses 10 times higher than expected.

a. During your testimony, you stated that exposure to AIT and screening is the radiation equivalent to two minutes of flying at high altitude.

Response: The Transportation Security Administration (TSA) recently conducted a review of radiation testing reports generated by manufacturer and third-party maintenance providers. Multiple reports include inaccuracies that affected the documentation of some of the test results; notwithstanding these inaccuracies, the data shows that each piece of technology included in the review is operating well-within applicable national safety standards.
Advanced Imaging Technology (AIT) units have imbedded safeguards similar to the protection a circuit breaker provides to a home. TSA machines contain safety systems that are intended to prevent the production of radiation levels in excess of the limits established by the applicable radiation standards for such devices.
A review of field equipment survey forms found that in some instances calculations were not divided by ten as required, and this erroneously indicated elevated radiation levels. As a precaution, TSA's equipment was resurveyed and the results validate that each piece of technology is operating and continues to operate within applicable safety standards.

Please provide the following information:

Question: b. Did TSA inform you of this finding prior to your appearance before the Senate Judiciary Committee?

Response: The Department of Homeland Security (DHS) received preliminary results from the radiation surveys in early December 2010. However, TSA did not finalize its full review of all surveys and correction pages until March 11, 2011. Once finalized, TSA promptly shared the results with DHS and the public.

Question#:	37
Topic:	radiation
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: c. Why was the committee not informed of this finding during your testimony?

Response: The final results from the review were not available until March 11, 2011, after my March 9, 2011 testimony.

Question: d. At what airports or locations are these machines being retested for high levels of radiation?

Response: The Transportation Security Administration (TSA) required vendors to resurvey all of the backscatter Advanced Imaging Technology (AIT) units due to inaccuracies that affected the documentation of some of the test results. All resurveys indicate that the technology was operating well-within the applicable safety standards. The airports that currently have backscatter AIT units are: Bradley International Airport (BDL), Boise Airport (BOI), Logan International Airport (BOS), Brownsville/South Padre Island International Airport (BRO), Buffalo Niagara International Airport (BUF), Charlotte Douglas International Airport (CLT), Port Columbus International Airport (CMH), Corpus Christi International Airport (CRP), Cincinnati/Northern Kentucky International Airport (CVG), El Paso International Airport (ELP), Fort Lauderdale – Hollywood International Airport (FLL), Spokane International Airport (GEG), Gulfport-Biloxi International Airport (GPT), Gerald R. Ford International Airport (GRR), Saipan International Airport (GSN), Valley International Airport (HRL), Washington Dulles International Airport (IAD), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), LaGuardia Airport (LGA), Lihue Airport (LIH), Laredo International Airports (LRD), Kansas City International Airport (MCI), Orlando International Airport (MCO), Memphis International Airport (MEM), McAllen-Miller International Airport (MFE), Minneapolis-St. Paul International (MSP), Oakland International Airport (OAK), Eppley Airfield (OMA), O'Hare International Airport (ORD), Phoenix Sky Harbor International Airport (PHX), Pittsburgh International Airport (PIT), T. F. Green Airport (PVD), San Diego International Airport (SAN), San Antonio International Airport (SAT), Seattle–Tacoma International Airport (SEA), Norman Y. Mineta San Jose International Airport (SJC), Luis Muñoz Marín International Airport (SJU), and Lambert-St. Louis International Airport (STL).

Question#:	38
Topic:	SFI
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Last May, as you are aware, Faisal Shahzad attempted to detonate a car bomb in Times Square. Within hours, the NYPD, FBI Joint Terrorism Task Force, DHS entities and Connecticut law enforcement focused in on Shahzad.

On May 3, 2010, the Monday following the bombing attempt, at 12:30pm, DHS put Shahzad on the no-fly list. Minutes after that nomination, DHS sent out a notification to all airlines to check the database for updates.

On this same date, at 4:30pm, DHS sent out additional information containing Shahzad's passport information. At 6:30pm, Shahzad made a flight reservation over the telephone to fly out of New York on Emirates Airlines to Pakistan. At 7:30pm, Shahzad showed up at the Emirates ticket counter to check-in for his flight. He paid cash for his ticket. During this check-in process, Emirates personnel never consulted the updated no-fly list. As a result, Shahzad was able to pass through TSA screening and boarded the plane. Only after Shahzad had boarded the plane, the cabin door was secured and the plane was literally preparing to pull back from the gate, was his presence discovered onboard the aircraft.

After this incident, TSA ramped up its Secure Flight program so that in addition to screening domestic flights it was supposed to be screening passenger lists on international flights.

Please provide an update on TSA's implementation of the Secure Flight program for both domestic and international passenger manifest screening?

Response: As of November 23, 2010, Secure Flight has completed deployment for all U.S. aircraft operator and foreign flights into, out of, and within the United States, as well as U.S. aircraft operator international point to point flights – completing deployment for all aircraft operators originally scheduled for implementation a full month ahead of the schedule.

Secure Flight remains actively engaged with the airline industry to ensure all covered aircraft operators operating flights into, out of, and within the United States are compliant with the Secure Flight Final Rule. As of May 10, 2011, four new U.S. aircraft operators and 11 new foreign air carriers have cutover to Secure Flight, bringing the total number of aircraft operators cutover to Secure Flight to 212. Secure Flight currently conducts watch list matching against the No Fly and Selectee Lists, which are subsets of the

Terrorist Screening Databases (TSDB). Additionally, in April 2011, the Secure Flight program implemented an expanded screening capability including not only the No Fly and Selectee subsets of the TSDB in its watch list matching, but all those records included in the full TSDB that contain specific identifiers.

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Question#:	39
Topic:	POTUS protection
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Please provide the following information:

Has DHS consulted with the Secret Service to determine if 18 USC 3056 needs to be amended to protect former presidents permanently, or until the former President or former First Lady waive protection, upon leaving office?

Response: The Secret Service routinely engages in internal discussions within DHS concerning various protective matters, including the protection of former Presidents. The Secret Service has had preliminary, informal discussions within DHS concerning this issue.

Question: Would the Secret Service and DHS support efforts to amend 18 USC 3056 to protect former Presidents beyond 10 years after leaving office?

Response: The Department has not taken a position on this proposal.

Question: What budgetary considerations (FTEs, assets, funding) would the Secret Service require to carry out this mission?

Response: If 18 USC 3056 is amended in the future to provide life time protection to former Presidents, the Secret Service would have to request additional funding in our "Protection of persons and facilities PPA" to cover the FTE, equipment and other cost associated with providing life-time protection to a former President and their spouse.

Question: Would the Secret Service need other budgetary considerations? For example, amending the Presidential Protection Assistance Act of 1976, to raise the expenditure limit to a level more in line with today's dollars as opposed to a dollar amount ($200,000) tied to 1976 figures?

Response: Yes. This is another area that would need to be addressed. At the present time, the Secret Service is statutorily limited to spending no more than $200,000 at the secondary residence of a former President. In 2011, $200,000 is not sufficient for the Secret Service to adequately provide the necessary security items needed, to properly secure the secondary residence of a former President.

The most recent increase in the spending cap was in 1995, when the cap was raised from $75,000 to $200,000. The Secret Service would propose that the current cap be raised to $500,000. Increasing the cap to $500,000 will provide the Secret Service with the necessary resources to protect secondary non-Governmental properties.

Question#:	40
Topic:	cyber
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: DHS law enforcement entities have a mission to not only protect against truck bomb parked in front of the White House or at a National Special Security Event, these law enforcement agencies are responsible for protecting against an email bomb or a "bot" attack directed at critical infrastructure entities.

Please provide the following information:

With the emergence of attacks emanating and originating from outside the United States, what efforts is DHS making to position personnel who investigate cyber crime in foreign nations that are often the point of origin for cyber hacks, malware and denial of service attacks against U.S. companies and interests?

Response: The U.S. Secret Service (Secret Service) places great value on close, professional contacts with foreign law enforcement to quickly respond to foreign initiated attacks against the country. The Secret Service has positioned special agents trained in computer forensics and network intrusion detection in foreign countries to protect against foreign based cyber attacks. In addition, the Secret Service has 23 foreign offices and has established cyber crime working groups in Latvia, the Netherlands and London, where Secret Service agents work directly with foreign law enforcement to prevent cyber crime.

Currently, working groups are also being established in the Ukraine and Estonia. Through the USA PATRIOT Act, which mandated the Secret Service establish a nationwide network of Electronic Crimes Task Forces (ECTFs) to "prevent, detect, and investigate various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems," the agency now has 31 ECTFs, including ECTFs in London, England and Rome, Italy. ECTFs focus heavily on the following types of investigations: network intrusions, hacking attacks, phishing schemes, skimming, access device fraud, carding portals, wire fraud, use of malicious software, and other computer related offenses. The Secret Service has taken a lead role in investigating and dismantling international networks of online cyber criminals with a focus on our core jurisdictions of investigating financial crimes, to include access device fraud, computer fraud and identity theft.

Question#:	40
Topic:	cyber
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Do DHS entities that investigate cyber crime compile statistics for countries that are often cited as the point of origin for cyber attacks?

Response: The Secret Service has adapted its traditional investigative techniques into the virtual world of cyber space, which has no international boundaries or time constraints. The Secret Service is currently investigating over 35 large scale network intrusion cases involving the theft and exploitation of hundreds of millions of financial accounts. However, the Secret Service does not compile statistics in relation to the point of origin of cyber attacks or the nationality of cyber attackers. In today's cyber environment, attackers have proven very mobile and constantly relocate to escape apprehension by authorities. For this reason, it is common for cyber criminals of one nationality to be living and operating from another country.

In addition, cyber attackers regularly utilize techniques and devices to obfuscate their location. This technique of mobility was allegedly used extensively by Vladislav Anatolievich Horohorin, one of the world's most notorious traffickers of stolen financial information, who was arrested on August 25, 2010, in Nice, France, pursuant to a U.S. arrest warrant. Horohorin allegedly created the first fully-automated online "store" vending stolen credit card data. Horohorin's arrest is largely a result of USSS undercover operations and data sharing techniques. Numerous separate investigations originating in Secret Service field offices contributed information indicating that Horohorin was allegedly the real world name of the notorious Russian speaking online criminal, known as "BadB". International cooperation and Secret Service partnerships with various foreign law enforcement agencies contributed key data leading to the identification and investigation of Horohorin.

Question: What if any efforts are DHS entities making to provide training to foreign counterparts in the investigation and preservation of evidence relating to cyber crime directed at United States government systems, financial systems, transportation systems, the electric power grid or other identified sectors of critical infrastructure?

Response: As mentioned, the Secret Service works and collaborates with many foreign law enforcement partners in furtherance of its cyber investigative mission, as well as protective functions. For example, the Secret Service provides investigative support to foreign law enforcement personnel by assuming an active role in the International Law Enforcement Academy (ILEA) to provide counterfeiting, financial crimes and electronic crimes training to foreign law enforcement. This training has enhanced our liaison and partnerships overseas and has assisted the Secret Service in conducting its investigative and protective missions.

68104.108

Question#:	40
Topic:	cyber
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

The Secret Service Critical System Protection program (CSP) is a protective related program which seeks to leverage the Secret Service's cyber investigative skills to augment its physical protection capabilities and mission. At a protective site, CSP personnel seek to identify systems which could be attacked by an intruder to thwart the physical protective plan surrounding a protectee or protective site. The President's FY '12 Budget includes $12.7 million dollars for the Secret Service's Critical System Protection program.

Currently, CSP personnel are conducting briefings and joint practical exercises with British law enforcement agencies at the request of the British government as they seek to prepare for the upcoming Olympic Games to be held in London. The British recognized that their cyber protective stance in relation to CSP matters had been under-utilized and requested to learn more about the Secret Service's expertise in this area.

Question#:	41
Topic:	origin
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Recently, National Geographic aired a documentary about United States Secret Service efforts to combat the counterfeiting of United States currency in Bogota, Colombia. The segment detailed the partnership between vetted Colombian law enforcement and the Secret Service.

From previous briefings, I am aware that the Secret Service noted a 156% increase in worldwide passing activity of counterfeit United States currency emanating from Peru. These counterfeit notes, referred to as the Peruvian Note Family, have emerged as one of the leading domestically passed notes in the last 12 months.

Please provide the following information:

Question: Based on successes with interdiction efforts in Bogota, is DHS supportive of expanding Secret Service investigative capability in Peru?

Response: DHS has been supportive in ensuring mission requirements are being met in addressing counterfeit concerns in South America, particularly Peru. On February 15, 2011, the USSS received approval from DHS for an NSDD-38 requesting a permanent presence through a Resident Office to be based in Lima, and on March 7, 2011, officially forwarded the request to the State Department for further consideration.

Question: What efforts is DHS and Secret Service making to increase investigative capabilities in Peru?

Response: In response to the increased passing activity of the Peruvian Note Family, the Secret Service formed a temporary Peruvian Counterfeit Task Force (PCTF) in collaboration and partnership with Peruvian law enforcement officials. Since opening in Lima, Peru on March 15, 2009, the PCTF has yielded 50 arrests, 22 counterfeit plant suppressions, and the seizure of almost $40 million in counterfeit United States currency.

In addition, as detailed above, the USSS has requested the establishment of a permanent presence through a Resident Office in Lima, Peru. It is anticipated that operations and procedures in Peru will closely model those already in effect and utilized by our Bogota, Colombia Resident Office with documented success, to include the use of vetted anti-counterfeiting forces staffed through host country law enforcement agencies.

Question: Are there other countries of concern in South America that require additional

Question#:	41
Topic:	origin
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

investigative efforts on behalf of the Secret Service to address and curtail the counterfeiting of United States currency?

Response: While the USSS is currently focusing anti-counterfeit operations in Colombia and Peru, we aggressively monitor global activity and trends to identify operational needs and allocation of resources. The USSS has not currently identified additional significant "trouble" spots specific to South America.

Question#:	42
Topic:	HMGP
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Amy Klobuchar
Committee:	JUDICIARY (SENATE)

Question: Secretary Napolitano, I wanted to raise an issue that Owatonna, Minnesota is facing with FEMA's Hazard Mitigation Grant Program. Owatonna is located in Southern Minnesota, and has experienced flooding numerous times over the past decade most recently with the severe storms that hit the region last fall. The City has been working with my office and Congressman Walz' office to manage through the Mitigation program red tape, and access discretionary funds as well as a Congressionally Directed grant. Owatonna residents are depending on removing these hazards that contribute to flooding.

I recently met with the Owatonna Mayor Tom Kuntz, who described the difficulty that the city has encountered with FEMA. I asked him to detail the issues in a letter, and I am providing that letter along with these questions. Will you work with me on these outstanding issues so we can protect the community of Owatonna?

Response: Owatonna, MN received an FY 09 PDM Earmark in the amount of $400,000. The City of Owatonna submitted an application for a detention basin to the State however, the application was withdrawn per the request of the City and State. Owatonna has submitted a revised application to the State. The revised application is under review at the State and has not yet been forwarded to FEMA for review. FEMA has coordinated with the State which has engaged with Owatonna to identify mitigation opportunities and to develop an eligible project application. FEMA wants to work with all interested parties to help mitigate flood damage as provided by law. To that end, FEMA regional staff is currently working to schedule this meeting at the request of Congressman Walz.

Question#:	43
Topic:	appeal
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Amy Klobuchar
Committee:	JUDICIARY (SENATE)

Question: Browns Valley, Minnesota lies on the South Dakota border at the southern end of Lake Traverse, and has been caught in a jurisdictional fight between the states and two FEMA regions (South Dakota is in FEMA Region 8, but Minnesota is in FEMA Region 5). Browns Valley needed flood protection but the only way to effectively provide relief was to construct a diversion in South Dakota. Now the Upper Minnesota River Watershed District owns and maintains the project, and spent nearly $300,000 for repairs and maintenance resulting from the 2010 floods, and is seeking reimbursement under the Federal Disaster Declaration, which included the counties in both states. However, according to FEMA Region 8 and the State of South Dakota, the watershed district is not an eligible sub-applicant to receive reimbursement because it is neither a South Dakota government entity nor a non-profit entity (the watershed is a unit of local government in Minnesota). I understand that the Upper Minnesota River Watershed District is appealing this decision by FEMA Region 8.

It is my hope that FEMA will carefully consider this appeal, and the unique circumstances facing this community that was only seeking to save taxpayer dollars by building flood protection. Will you commit that FEMA will give due consideration to the special difficulties that cities face which are close to state and Flood Region boundary lines?

Response: The Upper Minnesota River Watershed District constructed a diversion project adjacent to Browns Valley, Minnesota on the South Dakota side of the border and spring flooding caused damage to the structure. The Upper Minnesota River Watershed District (UMRWD) is an eligible applicant under FEMA-1900-DR-MN. The facility that was damaged, however, is not eligible for assistance under the Minnesota disaster because it is not located in Minnesota.

UMRWD submitted a Request for Public Assistance under the major disaster declared for the flooding event in South Dakota. Working closely with the State in reviewing the submitted information it was determined that the UMRWD should be evaluated as local government entity (as opposed to a private non-profit). As a local government entity, FEMA requested information to support their legal status to perform work within the State of South Dakota. According to the State, they are neither registered with the South Dakota Secretary of State nor are they recognized or registered as a local government within the State of South Dakota. Neither did FEMA find that UMRWD had any Memorandum of Agreement (MOA) with any South Dakota local governments to perform work within the boundaries of South Dakota.

Question#:	43
Topic:	appeal
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Amy Klobuchar
Committee:	JUDICIARY (SENATE)

Based on the information received to date, FEMA has been unable to establish that UMRWD is recognized as a legal entity operating within the State of South Dakota, which is necessary to establish eligibility for the facility located in South Dakota. According to the UMRWD charter, they have the ability to enter into Memorandum of Agreements with South Dakota recognized local governments when operating outside UMRWD areas of legal authority. These local governments can either sponsor the work, or perform the work and would then be eligible as an applicant under the Public Assistance program of the Stafford Act.

FEMA Region VIII and the State of South Dakota have advised the UMRWD to gather additional information to support their legal standing to perform work within the State of South Dakota and submit an appeal to FEMA's initial determination

Question#:	44
Topic:	San Luis 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Local authorities say it will cost $80 million to fund the construction phase of the San Luis I port-of-entry reconfiguration project. DHS plays a pivotal role in advising GSA about the port improvement projects it deems a priority. Senator McCain and I wrote to OMB in November 2010 asking that the President include funding in his FY 2012 budget for these necessary improvements, but it was not included. In addition to the construction funding, San Luis I reports that it needs 50 additional CBP offices for inspections at the two ports. I am told that the officers were transferred from San Luis I to San Luis II, but that no new officers have been added to the San Luis (I and II) ports since November 2009. San Luis is in need of these resources and personnel. In fact, all the major ports in Arizona are in need of improvement resources. An amendment Senator McCain and I offered last year during floor consideration of the FY 2010 supplemental would have provided 200 additional Customs inspectors, in addition to the 250 additional inspectors appropriated in the supplemental. Why weren't these additional inspectors included in the President's FY 2012 budget?

Response: The FY 2012 President's budget includes an increase of $39.7 million to allow CBP to hire 300 CBP officers. These officers will be assigned to new and expanded POEs that were constructed in accordance with CBP's five-year modernization plan. The additional officers will provide much needed assistance to move closer to the CBPO staffing levels necessary at the new and expanded POEs.

The five-year land-border POE modernization plan includes more than 30 new and/or expanded POEs at air, land, sea, preclearance and other locations which will require additional personnel, including San Luis, as well as many other facilities such as the new North Terminal at the Miami International Airport, the expansion of the World Trade International Bridge in Laredo, the new international terminal at the Atlanta International Airport, the expansion of the port in Blaine, Washington, the port renovation at the Detroit Windsor Tunnel and Donna, Texas and the Anzalduas, Texas Bridges.

CBP is committed to ensuring optimum staffing at all our ports of entry consistent with budget constraints. Our budget request reflects our combined judgment of the law enforcement needs and budget environment facing DHS and CBP.

Question#:	45
Topic:	JFC
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: It is my understanding that you have formed a new Joint Field Command to serve as the operational component for Border Patrol, Air and Marine, and Office of Field Operations for the entire state of Arizona. I understand that the CBP has moved the Joint Field Command, serving as the operational control component for the state of Arizona, from D.C. to Tucson, is that correct? If that is true, then has the size of the staff at CBP Headquarters decreased by the number of positions included in the Joint Field Command?

Response: CBP established a Joint Field Command (JFC) in Tucson, Arizona to more effectively meet the unique challenges facing the operational components within the Arizona area of operations. The creation of the JFC-AZ will ensure that CBP's Arizona-based leadership within Border Patrol, Air and Marine, and Office of Field Operations can direct a joint and integrated approach to border security, commercial enforcement, and trade facilitation missions throughout the Arizona area of operations. CBP Headquarters elements will realign staffing positions from Headquarters and the field in order to meet the staffing requirements of the JFC-AZ through the utilization of existing CBP staff.

The Joint Field Commander oversees all CBP operations throughout Arizona, and is responsible for strategic and operational force lay down for the U.S. Border Patrol's Tucson and Yuma Sectors, the Office of Field Operation's Tucson Field Office as well as the Office of Air and Marine's Yuma and Tucson Air Branches.

Question: In an era of declining budgets and increasing violence, please explain the reason for directing resources toward a new supervisory organization rather than using the resources for additional 'boots on the ground' manpower, technology, and infrastructure.

Response: The creation of the JFC-AZ by the Commissioner is intended to create efficiencies within the Arizona area of responsibility through more efficient utilization of resources, assets, technology and manpower. The collaborative resource allocation of existing assets by all operational components is designed to more effectively address Arizona law enforcement operations in light of the declining budget environment. The joint efforts of local, state, and federal law enforcement entities and the intelligence community continue to show beneficial results along the Southwest Border.

68104.116

Question#:	46
Topic:	Operation Streamline
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: On February 22 I sent you another memo about Operation Streamline and my request that resources be provided to expand this program and I am awaiting a response. In addition to the information in the memo, I note that in a February 8, 2011 speech in Tucson, CBP Commissioner Alan Bersin announced, "No mas. No more returns without consequences." The ABC affiliate in Tucson, KGUN 9, followed up with the Department of Homeland Security to find out exactly how consequences are now going to be applied. The station was told that, `first time arrestees will be charged with a misdemeanor for illegal entry and will then be bused or flown to an area far away from where they crossed. Illegal immigrants arrested a second time will then face illegal re-entry charges, a felony that carries a prison sentence between six months to two years." Is this true? Please provide specific details about how this is being applied in Arizona.

Response: In February of 2011, Commissioner Bersin announced a new initiative to end the practice of voluntary returns. Commissioner Bersin's statement, "no mas," was to inform potential immigration violators that U.S. Customs and Border Protection (CBP) will no longer grant voluntary returns without consequences.

The goal of reducing the number of individuals who enter the country illegally will be achieved by applying a system of consequences that have been systematically employed over the last several years. Operation Streamline (Streamline) is simply one component of CBP's comprehensive Consequence Delivery System (CDS) that addresses arrest, prosecution, and removal with the desired outcome of reducing illegal cross-border activity and maintaining effective operational control of the border. The CDS includes additional programs such as the Alien Transfer and Exit Program (ATEP), Expedited Removal (ER), Operation Against Smugglers Initiative on Safety and Security (OASISS), and various other administrative and prosecutorial programs to target individuals and organizations that are involved in illegal cross-border activity. Consequences are applied consistently and systematically, based on the availability of consequences, apprehension volume, and evaluation/classification of each alien apprehended.

In districts where Operation Streamline is operational, the Department of Justice (DOJ) has been able to better address the current resource needs. Through regular and supplemental appropriations over the last few fiscal years, and through personnel moves, DOJ has added resources and funding for detention and processing of defendants generated by Streamline and other immigration enforcement strategies. It should be noted that DOJ does not currently employ a methodology to split out activities solely related to Operation Streamline. In the Tucson Sector, Operation Streamline case

68104.117

Question#:	46
Topic:	Operation Streamline
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

submissions were originally limited to 40 cases per court day, but have gradually increased to the current level of 70 cases per court day–which is the maximum that the court will currently allow. To expand the number of Operation Streamline cases that can be prosecuted, Tucson is also utilizing the federal court in Yuma which allows 40 Operation Streamline cases per day. Due to the significant decrease in arrests within the Yuma Sector, these slots are being used to prosecute Tucson Sector arrests. This allows for the prosecution of up to 110 Operation Streamline cases per day.

ATEP is currently applied only in the states of Arizona and Texas. Through a close partnership with U.S. Immigration and Customs Enforcement's Office of Enforcement and Removal Operations (ERO), within existing authorities CBP currently buses, on a daily basis, approximately 100 (typically Mexican nationals subject to removal) arrested in Tucson, Arizona, to ports of entry in California for removal. Up to another 94 individuals are bused to El Paso, Texas where they are held overnight by ERO and are subsequently transported to Del Rio, Texas, for removal. In addition, each Monday, 135 illegal aliens arrested in Tucson board an ERO contract flight and are delivered to Laredo, Texas. Upon arrival in Laredo, they board a bus and are removed to Mexico through the port of entry in Eagle Pass, Texas. On April 19, 2011, ERO and CBP started removing, Tuesday through Friday, up to 135 illegal aliens arrested in the Rio Grande Valley sector and the Laredo sector, via an ERO contract flight to Yuma, Arizona. Upon arrival in Yuma, the illegal aliens board a bus and are removed to Mexico through the port of entry in Calexico, California.

While the nature and scope of illegal activity on the border is diverse, CBP strives to apply consequences in the most appropriate manner to dissuade those that would otherwise attempt to illegally enter the United States through Arizona.

68104.118

Question#:	47
Topic:	Ag Jobs
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: ICE claims to prioritize the deportation of immigrants with criminal records, but we hear stories across the country that immigrants with no criminal record are being targeted for deportation. In Vermont, we continually hear about immigrant farm workers being targeted by ICE and the Border Patrol, not just at the worksite, but in grocery stores and other locations throughout the community. This seems inconsistent with DHS's stated enforcement priorities.

Like so many in America's agricultural community, I want to see Ag Jobs passed so that these farm workers can gain lawful status, but until we can overcome opposition to that common-sense legislation, will you continue to ensure that ICE exercises the prosecutorial discretion it claims to be following?

Response: ICE has focused enforcement in a manner that best protects public safety, and the success of this strategy is clear. For two years running, this agency removed more aliens than at any other time, including an unprecedented number of criminal aliens—a more than 70 percent increase over the previous administration.

To memorialize ICE's focused enforcement, on June 30, 2010, Assistant Secretary Morton issued the Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens memorandum, which outlines ICE's enforcement priorities. There are three levels of enforcement priorities—aliens who pose a danger to national security or risk to public safety; recent illegal entrants; and aliens who are fugitives or otherwise obstruct immigration controls. The memorandum specifically notes, however, that it "should [not] be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully present in the United States." The memorandum is attached for your reference.

Question#:	48
Topic:	H2A
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I have been frustrated for years about dairy farmers' lack of access to the H-2A visa program. At a previous appearance before the Committee, you agreed that it is illogical that such an important agricultural industry is arbitrarily excluded through regulation.

My preference is to see the broad solution contained in the AgJOBS legislation. If Congress is unable to advance this legislation, I will again pursue legislation I introduced last year to give dairy farmers access to the H-2A program. Will you work with me and other Senators to achieve a common-sense solution to the challenges American farmers currently face?

Response: First, I respectfully disagree with the premise of the question that I have agreed that dairy farmers are "arbitrarily excluded by regulation" from the H-2A program. DHS regulations on this subject apply the statute as enacted by Congress. I have no objection to a change in the statute to specifically allow dairy workers to be classified as H-2A nonimmigrant workers, despite the year-round nature of such work. As you know, such a change requires legislative action. Current law precludes dairy workers from eligibility under the H-2A classification since that category is limited to work of a seasonal or temporary, and not year-round, nature.

I further would offer you the assistance of my staff to advise on any technical issues that may arise in revising the statute to accomplish your objectives, including the appropriate definition of dairy workers for the purpose of the change.

68104.120

Question#:	49
Topic:	NB
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: In December the GAO issued a report on interagency cooperation along the Northern Border that shows that DHS can do more to address border vulnerabilities by improving coordination among federal agencies, pushing technology out into the field, and partnering with local and state law enforcement officials. I am pleased that DHS concurred with the GAO report and said that it intends to work towards these goals.

Unfortunately, I understand that overall CBP staffing in my home state of Vermont has dipped considerably in recent years as CBP staffing vacancies go unfilled and CBP officers and Border Patrol agents are detailed to the Southern Border. I am particularly concerned about insufficient staffing levels causing excessive delays at the ports once the summer tourism season starts in a few months.

How have border staffing levels on the Northern Border - and in Vermont, specifically - changed in the past decade?

Response: Staffing levels on the Northern Border have increased from 340 Border Patrol Agents (BPA) in 2001 to 2,224 BPAs as of 2/26/2011. In Vermont, the Swanton Sector has grown over the same time period from 82 BPAs to 287 BPAs.

Since FY 2004, the first full year that CBP was in existence, the number of CBP officers and CBP Agriculture Specialists on the Northern Border increased by approximately 360 positions. For Vermont specifically in this time-frame, the number of CBP officers and CBP Agriculture Specialists increased from 254 in FY 2004 to current staffing of 279.

Question: How do such figures account for those detailed to the Southern Border?

Response: All staffing levels are of full time employees at their permanent duty stations. Currently, only Border Patrol Agent trainees are detailed to the Southern Border, and only in continuation with their basic training requirements. Once they have completed their basic training, they return to the Northern Border. All Northern Border - Border Patrol Agent trainees currently completing their basic training requirements along the Southern Border are scheduled to return to their permanent duty stations on the Northern Border no later than July 2011. In addition, there currently are 4 CBP officers from Vermont who are detailed to the southwest border. All are scheduled to return by May 27th, before the tourism season begins.

68104.121

Question#:	49
Topic:	NB
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Are the officers who were transferred counted as Northern Border employees or Southern Border employees?

Response: All staffing levels are of full time employees at their permanent duty stations. If an employee is permanently transferred from one location to another location, staffing levels will reflect that movement.

Question: Do you have plans to increase staffing along the Northern Border - and specifically in Vermont - where many ports now cannot operate at full capacity due insufficient staffing? Has CBP been actively hiring in Vermont?

Response: The Department and the President are committed to ensuring optimum staffing at all our ports of entry consistent with budget constraints, including those in Vermont. CBP has not been actively hiring in Vermont.

Question#:	50
Topic:	timeline
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: The Canadian government has announced that beginning on April 1, 2011, it will be closing three ports-of-entry to the United States and reducing hours at four more. I understand that U.S. Customs and Border Protection is still evaluating whether the United States will match the new Canadian hours.

Do you have a timeline about when this decision will be made?

Will you inform me and the public once you make a decision about the Vermont ports?

Response: CBP has made no determination about reducing the hours of operation at our ports in locations where the Canadian ports will be reducing their hours. Should CBP determine in the future that adjustments to the hours of operation at any of these ports are advisable we will notify the public.

Question#:	51
Topic:	I91
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Following your April 27, 2010, appearance before the Committee, I asked you about the Department's plans for the Border Patrol Checkpoint that is operated on a temporary basis on Interstate 91 in Vermont. In response to my question, you assured me that DHS had no plans to make the checkpoint permanent, and that CBP was developing a study to look at the effectiveness of this and other interior checkpoints. This checkpoint is a continuing concern to many Vermonters. I appreciate that in your response you recognize that these checkpoints to have a significant impact on local communities.

What progress has CBP made on its study?

Response: The checkpoint studies are currently ongoing.

68104.124

Question#:	52
Topic:	secure communities
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I am concerned about press reports suggesting that States and localities cannot opt out of participation in the Secure Communities program. What exactly is the DHS position on this issue?

First, can a state or locality that agreed to cooperate with Secure Communities later opt out?

Second, what about a state that has never signed up for Secure Communities, such as my home state of Vermont? If Vermont does not wish to sign up for Secure Communities, will it lose access to national criminal databases?

Response: ICE acknowledges that some of its previous public statements on Secure Communities were unclear and may have led to confusion about whether a jurisdiction can "opt out" of the program. ICE apologizes for any misunderstandings that its earlier messages may have caused.

Secure Communities is mandatory in that, once Secure Communities is activated in a jurisdiction, the fingerprints that state and local jurisdiction submits to the FBI to be checked against the Department of Justice's biometric system for criminal history records are automatically sent to DHS's biometric system to check against its immigration and law enforcement records. Further, jurisdictions cannot demand that the identifications that result from DHS's processing of the fingerprints not be shared with local ICE field offices in that jurisdiction. The local ICE field office, and not the state or local law enforcement agency, determines what immigration enforcement action, if any, is appropriate. In that sense, a state or local jurisdiction may not "opt out" of Secure Communities.

A jurisdiction may, however, choose not to receive the identifications that result from processing the fingerprints through DHS's biometric system that are provided to the local ICE field office. This ability for jurisdictions to choose not to receive the results of the information sharing between the FBI and DHS has in the past been mischaracterized as a mechanism for a jurisdiction to "opt out" of the program as a whole. In fact, a jurisdiction's decision not to receive this information does not affect whether the local ICE field office in that jurisdiction will or will not take enforcement action based on those results.

68104.125

Question#:	52
Topic:	secure communities
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Under this administration, ICE has prioritized the removal of aliens who pose a danger to national security or public safety, with a particular focus on convicted criminals, as well as the removal of recent border violators, illegal reentrants, and fugitives because these priorities best protect public safety in the United States.

One important tool that ICE relies upon to advance these priorities is Secure Communities, which facilitates ICE's ability to identify and remove aliens who pose a threat to public safety. Between October 2008 and the end of FY 2010, the number of convicted criminals that ICE removed from the U.S. increased 71%, while the number of non-criminals removed dropped by 23%. These trends are due in significant part to the implementation and expansion of Secure Communities. In fact, Secure Communities has accounted for 29% of all ICE criminal alien removals this year to date.

Although Secure Communities will be activated nationwide in 2013, a jurisdiction that wishes to adjust its deployment schedule can contact ICE to discuss. ICE will work with them to address any concerns and determine appropriate next steps.

If Vermont, or any other state, does not sign the memorandum of agreement, it will not lose access to the national criminal databases.

ICE continues to work with its law enforcement partners across the country to responsibly and effectively implement Secure Communities. This cooperation has resulted in the removal of more than 72,000, convicted criminal aliens, including more than 26,000 convicted of the most serious offenses like murder, rape, and the sexual abuse of children.

Question#:	53
Topic:	TVPRA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I am currently drafting a bill to reauthorize the Trafficking Victims Protection Act. In our last reauthorization in 2008, Congress recognized that not only the victim of trafficking is at risk of harm from traffickers. The family of that victim, back in the home country, often faces threats from the traffickers. Therefore, Congress gave DHS discretion to bring members of a trafficking victim's family to the United States. (See Section 205(b) of the 2008 TVPRA.) Yet, three years after the last reauthorization of TVPRA, no action has been taken to issue regulations to authorize parole.

What is the cause of this delay? When will DHS issue these regulations?

The 2008 TVPRA law called on DHS to extend "continued presence" – a lawful immigration status – to a trafficking victim who is pursuing a civil case against the traffickers. (See Section 205(a)(1) of TVPRA 2008.) Some of these cases take time to reach judgment, but result in payment of years of back pay and damages for a trafficking victim who was subjected to indentured servitude. Why has DHS failed to issue regulations to authorize continued presence to victims seeking civil remedies? When will we see these regulations issued by the Department?

Response: This matter is under active consideration by the Department of Homeland Security (DHS). Section 205 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044-5091, does not require regulations. Nonetheless, DHS is actively considering whether regulations are appropriate. On August 30, 2010, DHS received a letter from the Alliance to End Slavery and Trafficking (ATEST) requesting regulations or guidance related to Section 205 of the TVPRA 2008. DHS is construing the ATEST request as a petition for rulemaking pursuant to 5 U.S.C. § 553(e). We are currently considering the issues raised in ATEST's petition and are working to provide a response.

Since the passage of TVPRA 2008, ICE has issued guidance on continued presence and parole for family members of trafficking victims. In July 2007, ICE disseminated a public brochure on continued presence, explaining, among other things, what it is, how it is requested, and who authorizes it. The brochure is attached for your reference. Additionally, on April 6, 2011, ICE issued both an internal directive on continued presence and a protocol for law enforcement officials sponsoring continued presence for victims of trafficking. The internal directive and protocol address filing procedures for victims who file civil actions and general procedures for paroling qualifying family members into the United States.

Question#:	54
Topic:	protocol
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: A United States citizen and Army veteran, Rennison Castillo, was held in immigration detention for seven months in 2005. According to press accounts, he told ICE officials before he was taken into custody that he was a U.S. citizen and a veteran, and repeatedly restated his claim of citizenship while he was jailed. I appreciate that this incident occurred years before your tenure at DHS, but it is not the only case we've seen in recent years of U.S. citizens being deported.

What is the protocol that ICE is supposed to follow when a detainee claims to be a U.S. citizen?

Response: Although we are currently unable to address the specific facts at issue in Mr. Castillo's case, as it is currently pending litigation, we are glad to address U.S. Immigration and Customs Enforcement's (ICE) protocols for handling cases in which an individual in ICE custody claims to be a U.S. citizen.

On November 13, 2009, ICE Assistant Secretary John Morton issued a memorandum entitled *Superseding Guidance on Reporting and Investigating Claims to United States Citizenship* (USC Guidance). The USC Guidance requires ICE officers to immediately investigate all claims to United States citizenship (USC) made by individuals in ICE custody, and to report these claims to the local Office of Enforcement and Removal Operations (ERO) leadership, and to the local Office of Chief Counsel (OCC). The USC Guidance also requires local ERO and OCC to jointly prepare and submit a memorandum evaluating the validity of the individual's claim and then to recommend a course of action to both Headquarters (HQ) ERO and the Office of the Principal Legal Advisor (OPLA). Absent extraordinary circumstances, this memorandum is to be submitted no more than 24 hours from the time the individual made the claim. HQ ERO and OPLA will then respond to the field office within 24 hours with a decision on the recommendation. If the individual's claim is credible on its face, or if the investigation results in probative evidence that the detained individual is a USC, the individual should be released from detention.

Question: Are you monitoring ICE carefully to ensure that claims of citizenship are not ignored, as in the case of Mr. Castillo?

Response: ICE is carefully monitoring USC claims to ensure that they are addressed in accordance with the requirements of the USC Guidance issued on November 13, 2009.

68104.128

Question#:	55
Topic:	delay
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: It has been about 18 months since DHS issued a report calling for reform of the immigration detention system. Since then, we have seen and heard little from the Department about plans to implement the recommendations in the report. The revised detention standards seem to be stuck in a bureaucratic black hole. Other positive changes that are in the works, such as a policy against shackling pregnant detainees, never make it to public release and formal implementation.

What is the cause of this delay? When will we see genuine reform?

Response: U.S. Immigration and Customs Enforcement (ICE) is engaged in a broad detention reform effort and has made substantial progress in a number of critical areas identified in the report. Some of ICE's significant detention reform efforts have resulted in the consolidation of facilities and alignment of ICE bed space resources with apprehensions, reducing the frequency of detainee transfers, improving the provision of medical services, reducing costs, developing safe and secure civil detention principles, issuing new policy guidance covering a broad range of issues, and making the most effective use of ICE detention resources to ensure that ICE is prioritizing the use of bed space for individuals who pose a threat to public safety. Specifically, ICE has:

- Consolidated the number of facilities from 341 to 270, based upon state-of-the-art forecasting tools. ICE has also developed and is in the process of implementing a procurement plan to ensure that future bed space is aligned with apprehensions, limiting the need for transfers and ensuring detainees remain closer to their families and attorneys;
- Opened two new ICE facilities in Orange County, California, to reduce the number, costs, and deportation delays associated with detainee transfers;
- Initiated the creation of a new civil detention facility in Karnes County, Texas, through an Intergovernmental Service Agreement, incorporating new civil detention principles;
- Evaluated and initiated procurements for securing new detention bed space where it is needed most, in the Northeast, Chicago, Miami, California, and the Carolinas;
- Designed and tested a new Detainee Intake Risk Assessment Process to provide transparency and uniformity in the detention and classification processes to ensure the prioritization of detention resources and protection of the most vulnerable populations;

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Question#:	55
Topic:	delay
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

- Launched the Online Detainee Locator System for detainee family members and attorneys to locate individuals in ICE custody while ensuring the privacy and confidentiality of VAWA self petitioners, U visa and T-visa applicants;
- Hired and trained 42 full-time equivalent Detention Service Managers to monitor conditions at detention facilities housing 85 percent of the detained population;
- Improved medical services by simplifying the process for the delivery and auditing of authorized health care treatments;
- Drafted a policy to reduce out-of-region transfers of detainees who have community ties or attorneys of record; and
- Drafted a revised set of Performance Based National Detention Standards, which detail guidelines for the custody and care of ICE detainees.

A number of these reform initiatives are currently the subject of discussions with ICE's union prior to nationwide implementation.

In addition, and equally important for truly comprehensive reform, ICE Assistant Secretary John Morton has issued nationwide policies that have significantly impacted how ICE uses and prioritizes its detention resources consistent with reform principles. These include:

- Civil Immigration Enforcement Memorandum – This policy directs resources toward apprehending, detaining, and removing individuals who pose the most risk to national security, public safety, or are fugitives or recent border crossers;
- Parole of Arriving Aliens with A Credible Fear of Persecution – This new policy weighs in favor of release from detention so long as an alien's identity is reasonably known and the alien does not present a danger to the community or is a significant flight risk; to date, close to 70 percent of the individuals considered for parole have been released;
- National Fugitive Operations Program: Priorities, Goals, and Expectations – ICE issued new guidance that prioritizes apprehension and detention of criminal fugitives over non criminal fugitives, and clarifies that except for extraordinary circumstances, the policy prohibits detaining aliens who are seriously ill, disabled, pregnant, nursing, or are sole caretakers of minor children or the infirm; and
- Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions – This guidance directs ICE to request expedited adjudication of an application or petition (Form I-130) pending before U.S. Citizenship and Immigration Services for an alien in removal proceedings, if the approval of such an application or petition would provide an immediate basis for relief for the alien.

Question#:	55
Topic:	delay
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

With respect to policies against the shackling of pregnant women, the current Performance Based National Detention Standards detail specific requirements for situations in which physical restraint is required.

ICE's Field Office Directors are required to ensure that expectant mothers are treated professionally, and receive special attention, in light of their medical condition. When possible, aliens subject to removal who are pregnant are released on bond, orders of recognizance or supervision, or are enrolled into an alternative to detention program. If an expectant mother is subject to mandatory detention by statute or otherwise cannot be released from ICE's custody, ICE's detention standards enable agency personnel to properly balance the safety of the detainee, the public, and ICE personnel. While there are no reported cases, ICE policy only allows the restraint of a pregnant detainee under the following rare and highly unlikely circumstances:

1. a medical officer has directed the use of restraints for medical reasons;
2. credible, reasonable grounds exist to believe the detainee presents an immediate and serious threat of hurting herself, staff, or others; or
3. reasonable grounds exist to believe the detainee presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method.

For easy access, a full list of ICE's Detention Reform Accomplishments can be accessed from ICE's website at www.ice.gov/detention-reform/detention-reform.htm.

Question#:	56
Topic:	privacy
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I was disturbed to read a recent USA Today newspaper article about efforts by DHS in 2005 and 2006 to develop mobile x-ray screening technology, apparently designed to surveil the general public to try to identify suicide bombers. (See "Homeland Security Looked Into Covert Body Scans," USA Today, March 4, 2011.) What surprised me was the fact that a substantial amount of money was wasted before the Department determined that this technology would not work. I was also surprised to read that time and money were spent before the Department stopped to consider the privacy and legal issues implicated by this type of surveillance.

I recognize that the two projects I mentioned that were the subject of the article occurred before your tenure as Secretary. But as a general matter, is it common practice within the Department to avoid making assessments on the constitutionality or privacy implications of a program? It is routine to spend millions of dollars on technology prior to considering privacy and constitutionality?

Response: DHS is committed to examining privacy and civil liberties impacts at the earliest stages of program development. The Privacy Office, for instance, pioneered the use of the Privacy Threshold Analysis (PTA), which is used as a tool to understand the privacy issues within emerging technology and programs long before the Privacy Act or E-Government compliance requirements are triggered. In fact, PTAs are used by the Privacy Office to determine whether additional privacy compliance documentation is required, such as a Privacy Impact Assessment (PIA) and System of Records Notice (SORN). The PTA process is built into departmental reviews for technology investments and security.

In the past few years, the Privacy Office has taken additional steps to ensure our earliest involvement in new technology and program development possible by leveraging the operational knowledge of the growing complement of DHS Component privacy officers. Component privacy officers serve as first-line authorities on privacy issues related to their respective components' collection, use, sharing, and retention of PII. The appointment of component privacy officers expands and operationalizes the culture of privacy throughout the Department. Component privacy officers maintain an ongoing review of all component Information Technology (IT) systems, technologies, rulemakings, programs, pilot projects, and other activities to identify collections and uses of PII and to identify any attendant privacy impacts. DHS has senior federal privacy officials in each of its components, demonstrating DHS's commitment to privacy and to implementing Department-wide privacy protections.

Question#:	56
Topic:	privacy
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Additional material from the Office for Civil Rights and Civil Liberties
The Office for Civil Rights and Civil Liberties (CRCL) also takes an active role in providing guidance and oversight to DHS elements developing new programs and technologies, working with legal counsel, the Privacy Office and other DHS policy and oversight elements to ensure civil rights and civil liberties issues surrounding new technology are addressed appropriately throughout the research and development life cycle.

During initial stages of a research and development project, fundamental choices about how the technology will operate and be fielded have yet to be made, so the advice offered by CRCL is necessarily generalized. As the technology matures, CRCL works with the program to issue spot and raise civil rights and civil liberties issues that may need to be addressed in pilot testing and by end users, working collaboratively with the program to find ways to do this consistent with accomplishing the DHS mission. This advice in turn may shape some of the technological choices, to ensure DHS components will be able to use the technology lawfully, and the program typically also relies on this advice to help structure pilot testing in a way that is respectful of individual rights. Technologies that could pose serious civil rights and civil liberties concerns may be selected for a Civil Rights and Civil Liberties Impact Assessment, a thorough, top-down examination of that technology or program that spots issues affecting individual rights and recommends safeguards. Finally, CRCL advises the end-user components that adopt the technology on how to employ it in a manner that respects civil rights and civil liberties, through informal advice and also through engagement in component working groups tasked with developing detailed policy and practices.

At the same time, the Office provides generalized and specific oversight of the Department's research and development programs. Monitoring technology development serves as an informal means of establishing oversight. Then, when a DHS component adopts the new technology, members of the public can file complaints with CRCL alleging violations of their individual rights relating to that technology, and the CRCL Review and Compliance Division will initiate an investigation or work with DHS component investigators, the Office of Inspector General or other oversight authorities, as appropriate, to address the allegations. The Office may also, at its discretion, initiate a complaint investigation where information comes to light that indicates a technology or program may pose a risk of violating individual rights.

Additional material from DHS Science & Technology
The Department of Homeland Security, Science & Technology Directorate (S&T) actively considers privacy during the research and development process. At the DHS

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Question#:	56
Topic:	privacy
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

S&T's Transportation Security Laboratory (TSL), only volunteers are selected to participate in research experiments. These individuals voluntarily disclose personally identifiable information to help DHS test prototypes. The volunteers are notified about the information that is being collected, and consent to disclosing personally identifiable information prior to participating in any research studies. Any data or images collected during the research and development activities are securely maintained by DHS.

In some projects, the initial, overriding issue is: "Does the technology work?" If the technology fails to work in a controlled laboratory setting, the program will be discontinued. If the technology proves promising or successful, privacy and civil liberties concerns are identified and addressed long before any public testing commences. DHS S&T must first understand the technology, its capabilities, and limitations before privacy or civil liberties issues are ripe for consideration.

Question#:	57
Topic:	rulemaking
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: In December 2009, DHS published a notice in the Federal Register stating an intention to amend the regulations governing how an asylum seeker can demonstrate that she is a member of particular social group that fears persecution. The amended rule should clarify the law for victims of extreme forms of domestic violence. In March 2010 you told me that, "This issue is a priority for the agency."

What is the status of that rule making process?

Response: DHS included this rulemaking in its 2009 and 2010 Unified Agenda, a notice of our future regulatory plan. DHS is actively working on promulgating a regulation on asylum and withholding of removal definitions, with a goal of publishing the proposed rule by the end of this year. This regulation remains a priority for DHS. It is under active development within the Department. Careful consideration is being paid to the complex issues involved.

This regulation will resolve a number of key interpretive issues of the refugee definition used by adjudicators deciding asylum and withholding of removal claims and applications for refugee resettlement. In particular, this rule will aid in the adjudication of claims based on "membership in a particular social group," including certain claims based on domestic violence.

By providing a clear framework for key asylum, withholding, and refugee resettlement issues, we anticipate that adjudicators will have clear guidance, increasing administrative efficiency and consistency in adjudicating these cases. The rule will also promote a more consistent and predictable body of administrative and judicial precedent governing these types of cases.

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Question#:	58
Topic:	refugees 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Iraqis who are screened for refugee protection overseas by USCIS have a high grant rate, reaching approximately 85%. I want to thank the agency for prioritizing these cases, and all Executive Branch agencies for working so hard to bring genuine refugees to the United States. When a case is denied, however, the applicant is provided very little explanation as to the reasons for denial or the possibility of seeking reconsideration. This lack of information also makes it difficult for UNHCR to determine whether it should try to place the applicant in another resettlement nation. I would like to see USCIS provide the application with more than a form letter with a box checked on it.

Will USCIS consider a more transparent process that informs Iraqi refugee applicants, in Arabic, of the reasons for denial, and that also provides greater detail to UNHCR?

Response: USCIS is committed to providing refugee applicants with clear information on the reasons they were found ineligible for refugee resettlement. Based on previous feedback received from stakeholders, USCIS issued a new Notice of Ineligibility for Resettlement (denial letter) in October 2009. The revised notice provides significantly more information to the refugee applicant regarding the reasons his or her case was denied while maintaining an efficient and consistent format for reporting such decisions. In addition, USCIS established a process, consistent with confidentiality requirements, to provide UNHCR, upon request, with additional information regarding the reasons for denial so that it is better equipped to identify the most appropriate durable solutions for applicants found ineligible for U.S. resettlement.

While USCIS believes the revised notice and reporting procedures are an improvement over prior practice, USCIS is conducting a review to assess their efficacy during FY2011. Upon completion of this review, USCIS will determine if additional modifications are necessary to improve transparency.

Also this year, USCIS is working to translate its decision notices into the primary languages spoken by the refugee populations it encounters. We expect to begin by having the letters translated into Arabic, Spanish, Russian and Nepali and will explore translations of these documents into other languages as well.

Question#:	59
Topic:	refugees 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I fully recognize that security is of the utmost importance in screening refugee applicants. Yet the security clearance process can take months, even for those who have been found to be genuine refugees and are in urgent need of settlement. Some of these refugees face imminent danger because they have worked for U.S. forces. Screening is conducted through an inter-agency process, of which DHS is only one agency.

What can be done to make this process more efficient so that refugees can be brought to safety as soon as possible?

Response: To qualify for refugee status, all refugee applicants must first clear several biographic and biometric security checks conducted against a variety of U.S. government databases. As a result of this screening, USCIS has successfully identified refugee applicants who have committed fraud, been involved in crimes or who are of national security concern.

USCIS conducts the same background checks on individuals who claim to have worked for the United States Government (USG) or military abroad as those required for other refugee applicants to ensure that (1) these individuals meet all eligibility requirements and (2) new derogatory information has not come to light since the person was first hired by the USG.

USCIS continues to work closely with the Department of State (DOS) and other interagency partners to develop new methods and solutions to address screening backlogs so that these security enhancements do not impede the flow of legitimate refugees to the United States. In addition, DOS and USCIS are able to request expedited processing of these checks for refugee applicants facing an imminent risk of harm or if other compelling circumstances exist.

While balancing USCIS' humanitarian and national security mandates can be a challenge, they are not at odds with one another. Instead, by adopting a strong, unequivocal position on fraud and national security, we have been able to ensure that precious resettlement opportunities remain available to those truly in need.

Question#:	60
Topic:	reform
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Last week, Utah passed legislation that includes both immigration enforcement provisions and also a guest worker program that might authorize undocumented immigrants to work in the state. Utah's approach was intentionally different than Arizona's, and recognizes that many American industries are dependent on immigrant labor. But these are not the only states that have considered immigration legislation; I think we are now seeing a trend of state action. It seems to me that states are filling the void left by the inaction of Congress to enact a comprehensive reform bill.

I know you agree that we need comprehensive immigration reform. How can we re-invigorate the process to enact a new law?

Response: I firmly believe that a comprehensive approach to immigration reform remains the best solution to our Nation's immigration challenges and that we are not well served by a patchwork of inconsistent state laws.

I support the President's call that only a "complete solution" can fix our immigration system. This complete solution includes a continued commitment to serious and effective enforcement, improved legal flows for families and workers, and a firm, equitable way to deal with those who are already here. All three aspects are crucial to building a successful system. If the millions of people currently living in the United States with no legal status do not have an opportunity to address their status and register their presence, other enforcement efforts will be undermined.

As a nation of immigrants and a nation of laws, it is imperative that we modernize our laws for the 21st century so that this can vision can endure. I will continue to work with the President, the Congress, and other public and private stakeholders to get this done.

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Policy Number: 10072.1
FEA Number: 601-14

Office of the Assistant Secretary

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536

JUN 3 0 2010

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Assistant Secretary

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

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- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.[1]

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.[2]

- Level 1 offenders: aliens convicted of "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act,[3] or two or more crimes each punishable by more than one year, commonly referred to as "felonies";
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as "misdemeanors"; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.[4]

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as "catch and release," the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

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[1] This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.
[2] The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.
[3] As the definition of "aggravated felony" includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.
[4] Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

- fugitive aliens, in descending priority as follows:[5]
  - fugitive aliens who pose a danger to national security;
  - fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - fugitive aliens with criminal convictions other than a violent crime;
  - fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
  - previously removed aliens who pose a danger to national security;
  - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - previously removed aliens with criminal convictions other than a violent crime;
  - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.[6]

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are

[5] Some fugitives may fall into both this priority and priority 1.
[6] ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. *See* Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

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primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then-Assistant Secretary Julie Myers.

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.

The Facts about Continued Presence

Fact CP applications should be submitted immediately upon identification of a victim regardless of whether or not the victim has cooperated. In some cases, due to the nature of trafficking crimes, victims are too traumatized to cooperate at the outset of an investigation; however, this should not preclude the submission of a CP application.

Fact CP applications can be approved with an uncorroborated victim statement. A victim's statement alone is sufficient as long as the law enforcement official finds it credible under the circumstances.

Fact CP approval is not dependant on the case being accepted for prosecution. A victim must only be a potential witness to the human trafficking crime.

Fact CP approval is not dependant on human trafficking charges being brought. CP is available to all trafficking victims even if a human trafficking violation is not charged or if charges are never brought.

Fact Deferred action should never be used in place of CP. Deferred action is a form of prosecutorial discretion, such as not placing an individual in removal proceedings, and is done as an act of administrative convenience to the government. It precludes a victim from receiving TVPA benefits and services.

Fact CP does not require that the victim has suffered a violent form of human trafficking. Human traffickers may employ a range of non-violent forms of coercion to hold victims against their will such as threats of deportation, document control and psychological coercion.

Fact CP is initially granted for one year and may be renewed in one-year increments. CP renewals are submitted by the federal law enforcement official and evaluated by their agency on a case-by-case basis.

Fact CP can be revoked. If it is later determined that the individual is not a victim of human trafficking and/or is no longer a potential witness, CP can be revoked.

Fact CP is not a guarantee of a long-term form of immigration status. Receipt of CP does not guarantee that USCIS will favorably adjudicate other long-term immigration status applications.

Fact CP recipients are permitted to travel domestically and may have their family members join them in the U.S. At the discretion of the federal law enforcement official and their agency, a victim may be granted authorization to have their family member enter the U.S. to join them.

Long-Term Immigration Status

Victims may qualify for other forms of immigration benefits depending on their unique circumstances. Law enforcement officials are encouraged to work with the local ICE victim assistance coordinator to obtain referrals to non-governmental victim service providers. These providers may offer a variety of services to assist crime victims such as immigration legal assistance, crisis intervention, counseling, medical care, housing, job skills training and case management.

Trafficking victims are eligible to self-petition to USCIS for T and U nonimmigrant status which permits them to remain in the U.S. for up to four years and can lead to lawful permanent residence. These applications may require a law enforcement certification. Federal, state and local law enforcement should, upon request, provide law enforcement certifications for human trafficking victims. USCIS will complete a comprehensive review of these applications prior to adjudication.

Important Numbers

ICE Law Enforcement Parole Branch:
202-732-8164 (law enforcement only)

ICE Headquarters Victim Assistance:
866-872-4973 or victimassistance.ice@dhs.gov

For human trafficking-related policy issues, please contact the ICE Headquarters Human Smuggling and Trafficking Unit at:
ICEHumanTrafficking.helpdesk@dhs.gov

Homeland Security
Blue Campaign

Report Suspicious Activity:
1-866-DHS-2-ICE (1-866-347-2423)
www.dhs.gov/humantrafficking

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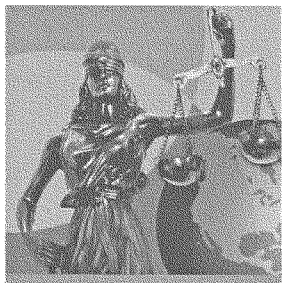
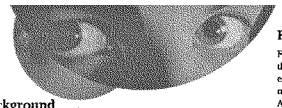


Continued Presence

Temporary Immigration Status for Victims of Human Trafficking

U.S. Immigration and Customs Enforcement



Background

U.S. Immigration and Customs Enforcement (ICE) is the lead DHS law enforcement agency that investigates human trafficking crimes. ICE places a priority on human trafficking investigations, recognizes victims of human trafficking as crime victims and secures access for victims to the rights and benefits afforded them under the Trafficking Victims Protection Act (TVPA).

Definition

Continued Presence (CP) is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking. This status allows victims of human trafficking to remain in the U.S. temporarily during the ongoing investigation into the human trafficking-related crimes committed against them. CP is initially granted for one year and may be renewed in one-year increments. CP is authorized under provisions of section 107(c)(3) of the TVPA, which has since been reauthorized, and is codified at 22 U.S.C. § 7105(c)(3).

Importance of Continued Presence

CP is an important tool for federal, state and local law enforcement in their investigation of human trafficking-related crimes. Victims of human trafficking often play a central role in building a case against a trafficker. CP affords victims a legal means to temporarily live and work in the U.S., providing them a sense of stability and protection. These conditions improve victim cooperation with law enforcement, which leads to more successful prosecutions and the potential to identify and rescue more victims.

How Is Continued Presence Requested?

Federal law enforcement officials, primarily from ICE and the Federal Bureau of Investigation as well as federal prosecutors from U.S. Attorney's Offices within the Department of Justice, are authorized to submit CP applications. An application for CP should be initiated immediately upon identification of a victim of human trafficking. All CP applications are submitted to the ICE Law Enforcement Parole Branch (LEPB).

Federal officials may submit CP applications on behalf of state or local law enforcement in cases where the victimization meets the federal definition of trafficking as found in the TVPA and at 22 U.S.C. § 7102. When state or local law enforcement officials identify a victim of human trafficking, they should coordinate with their federal law enforcement partners to submit an application for CP.

If required, CP renewals should be submitted by the federal law enforcement official thirty days prior to the one year expiration.

Who Authorizes Continued Presence?

The LEPB has the sole authority to approve or deny CP applications. Those results are sent to the federal submitting official and, in cases of approval, to the Department of Health and Human Services (HHS) and the Vermont Service Center (VSC), a component of U.S. Citizenship and Immigration Services (USCIS).

Once notified, HHS issues a letter authorizing the victim to receive federal and state benefits.[1] Additionally, the VSC produces a Form I-94 (Arrival-Departure Record) and an Employment Authorization Document (EAD) for the federal submitting official to provide to the victim.[2]

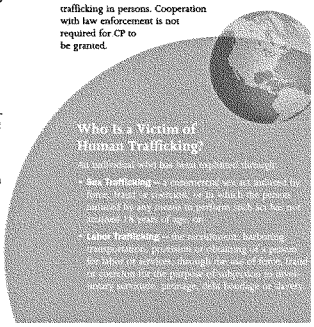
[1] In contrast to adult victims, minor victims are not required to cooperate with law enforcement in order to receive these benefits.

[2] An EAD is issued in conjunction with all approved CP applications. This includes minor victims where the EAD is often used as an identity document.

Only the federal law enforcement official or assigned agency victim assistance coordinator can provide the victim or their representative updates on the status of pending CP applications. Because of the sensitivity and confidentiality protections afforded trafficking victims, CP applications are subject to several levels of review within the submitting federal agency before the application is received by the LEPB.

Who Qualifies for Continued Presence?

An individual identified as a victim of human trafficking who is a potential witness in the investigation or prosecution of the trafficker. The federal law enforcement official makes the initial determination if the individual meets the definition of a victim of a severe form of trafficking in persons. Cooperation with law enforcement is not required for CP to be granted.



Who Is a Victim of Human Trafficking?

An individual who has been exploited through:

- **Sex Trafficking** – a commercial sex act induced by force, fraud or coercion, or in which the person induced has not attained 18 years of age; or
- **Labor Trafficking** – the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

SUBMISSIONS FOR THE RECORD

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Border and Maritime Security, Committee on Homeland Security, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EST
Tuesday, February 15, 2011

BORDER SECURITY

Preliminary Observations on Border Control Measures for the Southwest Border

Statement of Richard M. Stana, Director
Homeland Security and Justice Issues

GAO
Accountability * Integrity * Reliability

GAO-11-374T

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Highlights

Highlights of GAO-11-374T, a testimony before the Subcommittee on Border and Maritime Security, Committee on Homeland Security, House of Representatives

February 15, 2011

BORDER SECURITY

Preliminary Observations on Border Control Measures for the Southwest Border

Why GAO Did This Study

The Department of Homeland Security (DHS) reports that the nearly 2,000-mile U.S. border with Mexico is vulnerable to cross-border illegal activity. The Office of Border Patrol (Border Patrol), within DHS's U.S. Customs and Border Protection (CBP), is responsible for securing the border between U.S. ports of entry and has divided responsibility for southwest border miles among nine Border Patrol sectors. CBP reported spending about $3 billion on Border Patrol's southwest border efforts in fiscal year 2010, apprehending over 445,000 illegal entries. This testimony provides preliminary observations on (1) the extent to which DHS reported progress in achieving operational control—Border Patrol was able to detect, respond, and interdict cross-border illegal activity—of the southwest border; (2) the extent to which operational control reflects Border Patrol's ability to respond to illegal activity at the border or after entry into the United States; and (3) how DHS reports the transition to new border security measures will change oversight and resource requirements for securing the southwest border. This testimony is based on GAO's ongoing work for the House Committee on Homeland Security. GAO analyzed DHS border security documents and data supporting border security measures reported by DHS for fiscal years 2005 through 2010, and interviewed DHS officials. DHS generally agreed with the information in this statement and provided clarifying language, which we incorporated.

View GAO-11-374T or key components. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

What GAO Found

Border Patrol reported achieving varying levels of operational control for 873 of the nearly 2,000 southwest border miles at the end of fiscal year 2010, increasing an average of 126 miles each year from fiscal years 2005 through 2010. Border Patrol sector officials assessed the miles under operational control using factors such as the numbers of illegal entries and apprehensions and relative risk. CBP attributed the increase to additional infrastructure, technology, and personnel. Yuma sector officials reported achieving operational control for all of its 126 border miles; however, the other eight southwest border sectors reported achieving operational control of 11 to 86 percent of their border miles. Border Patrol attributed the uneven progress across sectors to multiple factors, including prioritizing resource deployment to sectors deemed to have greater risk from illegal activity.

Border Patrol reported that its levels of operational control for most border miles reflected its ability to respond to illegal activity after entry into the United States and not at the immediate border. Operational control encompassed two of the five levels used to classify the security level of each border mile. The two levels of control differed in the extent that Border Patrol resources were available to either deter or detect and apprehend illegal entries at the immediate border (controlled) versus a multi-tiered deployment of Border Patrol resources to deter, detect, and apprehend illegal entries after entry into the United States; sometimes 100 miles or more away (managed). GAO's preliminary analysis of the 873 border miles under operational control in 2010 showed that about 129 miles (15 percent) were classified as "controlled" and the remaining 85 percent were classified as "managed." Border Patrol stated that operational control does not require its agents to be able to detect and apprehend all illegal entries. Yuma sector reported operational control for all its miles although Border Patrol did not have the ability to detect and apprehend illegal entries that use ultra-light aircraft and tunnels.

DHS is replacing its border security measures, which could temporarily reduce oversight, and reports it may reduce resources requested for securing the southwest border. Border Patrol had established border miles under effective control as a measure of border security. DHS plans to improve the quality of boarder security measures by developing new measures with a more quantitative methodology. CBP is developing a new methodology and measures for border security, which CBP expects to be in place by fiscal year 2012. In the meantime, the absence of border security outcome measures in DHS's *Fiscal Year 2010-2012 Annual Performance Report* could reduce oversight. CBP does not have an estimate of the time and efforts needed to secure the border; however, DHS, CBP, and Border Patrol headquarters officials said that this new approach to border security is expected to be more flexible and cost-effective. As a result, Border Patrol headquarters officials expect that they will request fewer resources to secure the border. GAO will continue to assess this issue and report the final results later this year.

United States Government Accountability Office

68104.146

Chairwoman Miller, Ranking Member Cuellar, and Members of the Subcommittee:

I am pleased to be here today to discuss issues regarding the Department of Homeland Security's (DHS) process for measuring security for the nearly 2,000-mile U.S. border with Mexico. DHS reports that the southwest border continues to be vulnerable to cross-border illegal activity, including the smuggling of humans and illegal narcotics. The Office of Border Patrol (Border Patrol), within DHS's U.S. Customs and Border Protection (CBP), is the federal agency with primary responsibility for securing the border between the U.S. ports of entry.[1] CBP has divided geographic responsibility for southwest border miles among nine Border Patrol sectors, as shown in figure 1. CBP reported spending about $3 billion to support Border Patrol's efforts on the southwest border in fiscal year 2010, and Border Patrol reported apprehending over 445,000 illegal entries and seizing over 2.4 million pounds of marijuana.[2]

[1] Ports of entry are officially designated facilities that provide for the controlled entry into or departure from the United States.

[2] The $3 billion reflects Fiscal Year 2010 Border Patrol expenditures on southwest border security and CBP expenditures for high-priority investments in technology and tactical infrastructure along the southwest border.

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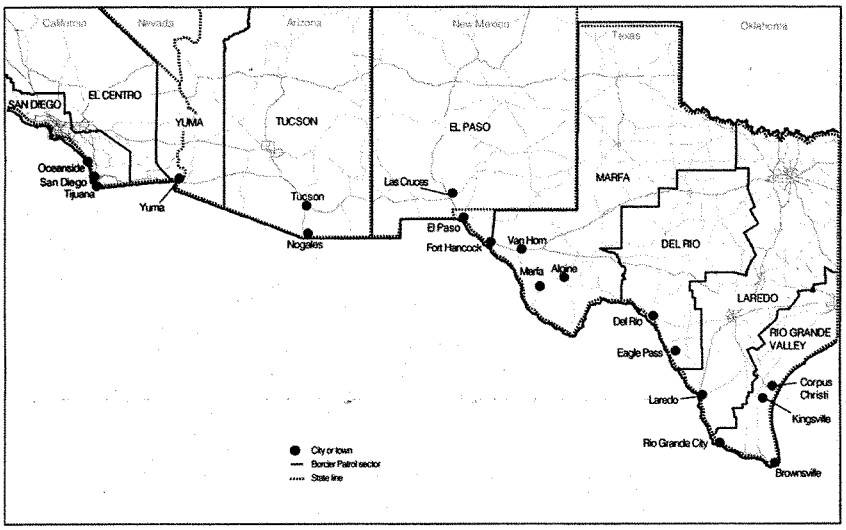
Figure 1: Border Patrol Sectors along the Southwest Border



Sources: GAO (analysis), Mapinfo (map), Border Patrol (data).

DHS is planning to change how it reports its status and progress in achieving border security between ports of entry to Congress and the public in its *Fiscal Year 2010-2012 Annual Performance Report*. In past years, DHS reported the number of border miles under effective control—also referred to as operational control—defined by DHS as the number of border miles where Border Patrol had the ability to detect, respond, and interdict cross-border illegal activity. DHS plans to improve the quality of border security measures by developing new measures that reflect a more quantitative methodology. DHS is also planning to change how it requests resources for border control in support of its effort to develop a new methodology and measures for border security.

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My statement is based on preliminary observations from our ongoing work for the House Committee on Homeland Security. We plan to issue a final report on this work—which involves reviewing Border Patrol's process for measuring border control—later this year. As requested, my testimony will cover the following issues:

(1) the extent to which DHS reported progress in achieving operational control—Border Patrol was able to detect, respond, and interdict cross-border illegal activity—of the southwest border,

(2) the extent to which operational control reflects Border Patrol's ability to respond to illegal activity at the border or after entry into the United States, and

(3) how DHS reports that the transition to new border security measures will change oversight and resource requirements for securing the southwest border.

To conduct our work, we interviewed officials at DHS headquarters in January and February 2011 and conducted preliminary analysis of DHS documentation relevant to border security assessments and resource requirements across the southwest border for fiscal years 2009 and 2010. We conducted preliminary analysis of data supporting the border security measures reported by DHS in its annual performance reports for fiscal years 2005 through 2009. For fiscal years 2009 and 2010 data, we interviewed Border Patrol headquarters officials regarding the processes used to develop each sector's Operational Requirements Based Budget Process (ORBBP) documents that include these data.[3] We also interviewed DHS, CBP, and Border Patrol officials responsible for overseeing quality control procedures for these data. We determined that these data were sufficiently reliable for the purpose of preliminary observations.

[3] Border Patrol officials provided us with fiscal year 2010 data, but said they could not provide us with the sector ORBBP documents that include these data as they had not yet been finalized. The ORBBP is Border Patrol's standardized national planning process that links sector- and station-level planning, operations, and budgets. This process documents how sectors identify and justify their requests to achieve effective control of the border in their area of responsibility, and enables Border Patrol to determine how the deployment of resources, such as technology, infrastructure, and personnel, can be used to secure the border.

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Past work that informed our current work included a review of guidance headquarters provided to sectors for development of the ORBBP documents, and interview with Border Patrol officials in the field who were responsible for preparing select ORBBP documents and headquarters officials responsible for reviewing these documents.[4] Additional work included site visits in January 2010 to Border Patrol's Tucson sector in Arizona, where we discussed ORBBP data entry procedures and oversight of performance indicators at the station and sector levels.[5] While we cannot generalize the results of these site visits to all locations along the southwest border, the site visits provided insights to the issues faced by Border Patrol in assessing and reporting the status of border control across federal, tribal, and private lands in urban and rural environments.

Additional past work informing our ongoing work included an analysis of Border Patrol's 2007 through 2010 ORBBP documents, which included assessments of the border security threat, operational assessment of border security, and resource requirements needed to further secure border miles within sectors. We reviewed these documents to determine the number of border miles that Border Patrol reported were under effective control and the number of miles reported as needing outside law enforcement support. We also interviewed Border Patrol officials in the field who were responsible for preparing the ORBBP documents.

We are conducting our ongoing work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[4] GAO, *Border Security: Enhanced DHS Oversight and Assessment of Interagency Coordination Is Needed for the Northern Border*, GAO-11-97 (Washington, D.C.: Dec. 17, 2010).

[5] GAO, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177 (Washington, D.C.: Nov. 18, 2010). The Tucson sector has experienced the highest volume of illegal cross-border activity, as indicated by marijuana seizures and illegal alien apprehensions, among southwest border sectors.

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Border Patrol Reported Achieving Varying Levels of Operational Control for Nearly Half of Southwest Border Miles

Border Patrol reported achieving varying levels of operational control of 873 (44 percent) of the nearly 2,000 southwest border miles at the end of fiscal year 2010. The number of reported miles under operational control increased an average of 126 miles per year from fiscal years 2005 through 2010 (see fig. 2). Border Patrol sector officials assessed the miles under operational control using factors such as operational statistics, third-party indicators, intelligence and operational reports, resource deployments, and discussions with senior Border Patrol agents.[6] Border Patrol officials attributed the increase in operational control to deployment of additional infrastructure, technology, and personnel along the border.[7] For example, from fiscal years 2005 through 2010, the number of border miles that had fences increased from about 120 to 649 and the number of Border Patrol agents increased from nearly 10,000 to more than 17,500 along the southwest border.

[6] Operational statistics generally include the number of apprehensions and known illegal border entries and volume and shift of smuggling activity, among other performance indicators. Border Patrol officials at sectors and headquarters convene to discuss and determine the number of border miles under operational control for each sector based on relative risk.

[7] Infrastructure includes fencing and roads, among other things.

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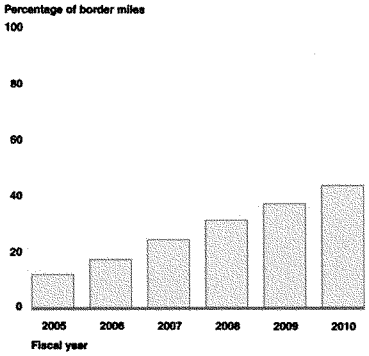
Figure 2: Southwest Border Miles under Border Patrol Operational Control from September 30, 2005, through September 30, 2010



Source: GAO analysis of Border Patrol data.

Across the southwest border, Yuma sector reported achieving operational control for all of its border miles. In contrast, the other southwest border sectors reported achieving operational control ranging from 11 to 86 percent of their border miles (see fig. 3). Border Patrol officials attributed the uneven progress across sectors to multiple factors, including terrain, transportation infrastructure on both sides of the border, and a need to prioritize resource deployment to sectors deemed to have greater risk of illegal activity.

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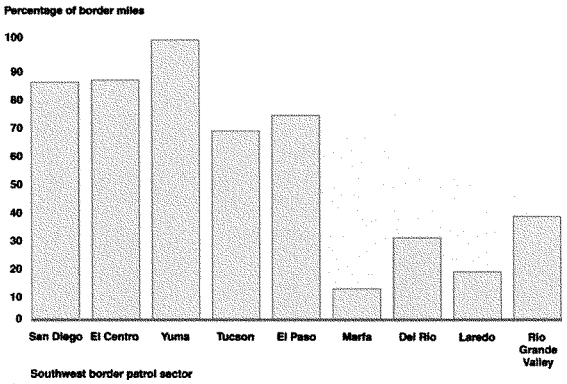
Figure 3: Southwest Border Miles under Operational Control by Border Patrol Sector, as of September 30, 2010



Source: GAO analysis of Border Patrol data.

Border Patrol reported that the sectors had made progress toward gaining control of some of the 1,120 southwest border miles that were not yet under operational control. Border Patrol reported an increased ability to detect, respond, or interdict illegal activity for more than 10 percent of these southwest border miles from fiscal year 2009 to September 30, 2010.

Operational Control Most Often Reflects Border Patrol's Ability to Respond to Illegal Activity after Entry into the United States

Border Patrol reported that operational control for most border miles reflected its ability to respond to illegal activity after entry into the United States and not at the immediate border. Border Patrol classified border miles under operational control as those in which it has the ability to detect, respond, and interdict illegal activity at the border or after entry into the United States. Operational control encompassed two of the five levels used by Border Patrol agents to classify the security level of each border mile (see table 1). The two levels of operational control differed in the extent that Border Patrol resources were available to either deter or detect and apprehend illegal entries at the immediate border (controlled) versus a multi-tiered deployment of Border Patrol resources to deter, detect, and apprehend illegal entries after entry into the United States;

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sometimes 100 miles or more away (managed). These differences stem from Border Patrol's "defense in depth" approach to border security operations that provides for layers of agents who operate not only at the border, but also in other areas of the sector.

Table 1: Border Patrol Levels of Border Security

Levels of border security	Definition
Controlled	Continuous detection and interdiction resources at the immediate border with high probability of apprehension upon entry.
Managed	Multi-tiered detection and interdiction resources are in place to fully implement the border control strategy with high probability of apprehension after entry.
Monitored	Substantial detection resources in place, but accessibility and resources continue to affect ability to respond.
Low-level monitored	Some knowledge is available to develop a rudimentary border control strategy, but the area remains vulnerable because of inaccessibility or limited resource availability.
Remote/low activity	Information is lacking to develop a meaningful border control strategy because of inaccessibility or lack of resources.

Source: GAO analysis of U.S. Border Patrol ORBBP documents.

Our analysis of the 873 border miles under operational control reported by Border Patrol in fiscal year 2010 showed that about 129 miles, or 15 percent, were classified as "controlled," which is the highest sustainable level for both detection and interdiction at the immediate border (see fig. 4). The remaining 85 percent of miles were classified as "managed," in that interdictions may be achieved after illegal entry by multitiered enforcement operations.

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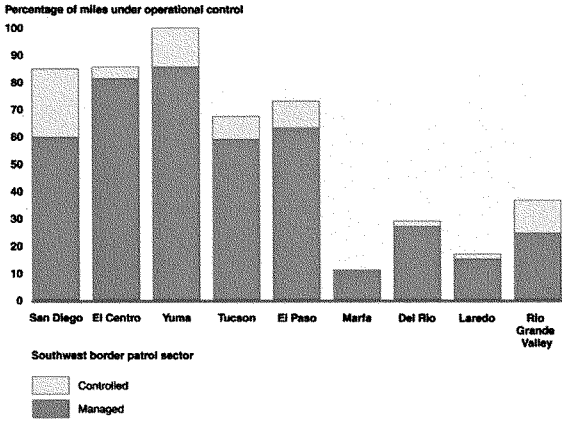
Figure 4: Southwest Border Miles under Operational Control of the Border Patrol by Level of Security, as of September 30, 2010



Source: GAO analysis of Border Patrol data.

Border Patrol's definition of operational control considers the extent to which its agents can detect and apprehend illegal entries, but does not require agents to have the ability to detect and apprehend all illegal entries, according to officials in Border Patrol's Strategic Planning and Policy Analysis Division. Yuma sector, for example, reported operational control for all of its border miles although Border Patrol did not have the ability to detect and apprehend illegal entries who use ultra-light aircraft and tunnels.[8] In fiscal year 2009 Yuma sector reported that of the known illegal entries, about half were apprehended somewhere in the sector,

[8] An ultra-light aircraft is defined in federal aviation regulations, 14 C.F.R. § 103.1 (and subsequent advisory circulars) as a single-seat powered flying machine that weighs less than 254 pounds, has a top speed of 55 knots (63 miles per hour), stalls at 24 knots (28 mph) or less and carries no more than 5 gallons of fuel.

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about 40 percent were turned back across the border sometime after entry, and about 10 percent were "got aways."[9]

Nearly two-thirds of the 1,120 southwest border miles that had not yet achieved operational control were reported at the "monitored" level, meaning that across these miles, the probability of detecting illegal cross-border activity was high; however, the ability to respond was defined by accessibility to the area or availability of resources (see fig. 5). The remaining miles were reported at "low-level monitored," meaning that resources or infrastructure inhibited detection or interdiction of cross-border illegal activity. Border Patrol reported that these two levels of control were not acceptable for border security.[10]

[9] "Got aways" are defined as persons who, after making an illegal entry, are not turned back or apprehended.

[10] None of the southwest border miles was classified at the lowest level of control—remote/low activity—which occurs when information is lacking to develop a meaningful border control strategy because of inaccessibility or lack of resources.

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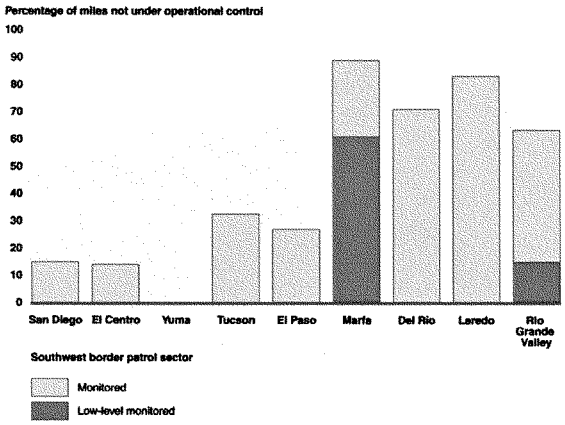
Figure 5: Southwest Border Miles That Were Not under Operational Control of the Border Patrol by Level of Security, as of September 30, 2010



Source: GAO analysis of Border Patrol data.

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DHS's Transition to New Border Security Measures May Reduce Oversight and Resources Requested for the Southwest Border

DHS is replacing its border security measures, which could temporarily reduce information provided to Congress and the public on program results. Border Patrol had established border miles under effective control as an outcome measure of border security operations between the ports of entry under the Government Performance and Results Act of 1993 (GPRA).[11] DHS plans to improve the quality of border security measures by developing new measures that reflect a more quantitative methodology to estimate outcomes. CBP is developing a new methodology and measures for border security, which CBP expects to be in place by fiscal year 2012.

The absence of measures for border security outcomes in DHS's *Fiscal Year 2010-2012 Annual Performance Report* may reduce oversight and DHS accountability. DHS reported that until new measures of border security outcomes are in place the department will report interim measures of performance that are to provide oversight and accountability of results on the border. However, these measures of performance output, such as the number of apprehensions on the southwest border between the ports of entry, do not inform on program results and therefore may reduce oversight and DHS accountability.[12] Studies commissioned by CBP have documented that the number of apprehensions bears little relationship to effectiveness because agency officials do not compare these numbers to the amount of illegal activity that crosses the border undetected.[13]

As of February 2011 CBP did not have an estimate of the time and efforts that are needed to secure the southwest border as it transitions to a new methodology for measuring border security. In prior years, Border Patrol sectors annually adjusted the estimated resource requirements that they

[11] Under GPRA, agencies are required to hold programs accountable to Congress and the public by establishing program goals, identifying performance measures used to indicate progress toward meeting the goals, and using the results to improve performance, as necessary. This information is publicly reported each year in the department's performance accountability report. Outcome measures offer information on the results of the direct products and services a program has delivered.

[12] Other performance measures the Border Patrol plans to report on include deployment of Border Patrol agents and joint operations on the southwest border. These measures, which focus on the quantity of direct products and services a program delivers rather than program results, are classified as output measures.

[13] For example, see Homeland Security Institute, *Measuring the Effect of the Arizona Border Control Initiative* (Arlington, Va.: Oct. 18, 2005).

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deemed necessary to achieve operational control. Under the new methodology, Border Patrol headquarters officials said that sectors are to be expected to use the existing personnel and infrastructure as a baseline for the agency's defense in depth approach and focus requests for additional resources on what is necessary to respond to the sectors' priority threats for the coming year. DHS, CBP, and Border Patrol headquarters officials said that this approach to securing the border is expected to result in a more flexible and cost-effective approach to border security and resource allocation based on changing risk across locations. As a result, Border Patrol headquarters officials expect that they will request fewer resources to secure the border. We will continue to assess DHS's efforts for measuring border security and plan to report our final results later this year. DHS generally agreed with the information in this statement and provided language clarifying the agency's rationale for replacing border security outcome measures and technical comments, which we incorporated as appropriate.

Chairwoman Miller, this completes my prepared statement. I would be happy to respond to any questions you or members of the subcommittee may have.

GAO Contacts and Staff Acknowledgments

For questions about this statement, please contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement included Cindy Ayers, Barbara A. Guffy, Brian J. Lipman, and Lara R. Miklozek.

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Statement of

The Honorable Chuck Grassley

United States Senator
Iowa
March 9, 2011

Prepared Statement of Ranking Member Chuck Grassley
U.S. Senate Committee on the Judiciary
Hearing on Oversight of the Department of Homeland Security
Wednesday, March 9, 2011

Chairman Leahy, thank you for calling this hearing today. I share your concerns about the activities of the Department of Homeland Security. This Department was created eight-and-a-half years ago to consolidate the various functions and agencies intended to defend our nation's borders and infrastructure. Yet as we look at the Department of Homeland Security today, we see agencies failing to coordinate with one another, breakdowns in judgment, and failures to protect our government's own agents on the frontlines. In short, what I see is approaching a level that some might call chaos.

With Mexican President Felipe Calderón visiting President Obama at the White House last week, it highlighted some problems that more and more Americans are becoming aware of every day. Violence on our southern border has escalated as gangs and drug cartels acquire more weapons and more expertise. Further, our lack of defenses and their ability to evade justice has emboldened these criminals, who are becoming a greater and greater threat.

In just the last three months, the Department of Homeland Security has seen two of its own agents murdered while in the line of duty: Border Patrol Agent Brian Terry and Immigration and Customs Enforcement Agent Jaime Zapata. Both were tragedies, and my heart goes out to the families and loved ones of Agent Terry and Agent Zapata.

Most troubling is the fact that agencies of our own government have contributed to this violence by intentionally allowing thousands of guns to be trafficked from the U.S. to Mexico. The Bureau of Alcohol, Tobacco, Firearms, and Explosives decided to let thousands of guns "walk" after being purchased by straw buyers intent on reselling them. Many of those guns ended up in the hands of bandits who operate on the border, trafficking drugs and other illicit goods back into the United States.

This risky strategy of letting guns "walk" did not occur in a vacuum. There are serious questions to be answered about the role played by the Justice Department and agencies within the Department of Homeland Security. This ill-conceived policy has clearly affected the lives of countless individuals who may have been victims of crimes perpetrated as a result of letting guns

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into the hands of criminals. Agents on the ground were ignored when they questioned the wisdom of this decision, and that just pours salt on the wounds of the families who lost loved-ones. When the agents came forward with concerns, they were shunned and retaliated against.

If the federal agencies charged with protecting America and its borders were not working together, I have to question why the left hand didn't know what the right hand was doing. If they were working together, then that raises the question of whether any other agencies objected. Who else knew? How high up was it approved?

The American people deserve answers. The families of those who may have died as a result deserve answers. Our government is organized precisely so that Congress can require accountability and provide oversight of the activities of the U.S. government in situations like this.

I continue to be concerned about the federal government's inability to secure our borders. According to the Government Accountability Office, half of the U.S.-Mexican border is not operationally controlled. The department just put a halt to the billion dollar virtual fence effort known as SBInet. The violence continues, and lives are being sacrificed.

In the interior of the United States, the department refuses to acknowledge that undocumented immigrants are lawbreakers. The Secretary says their approach to interior enforcement is guided by common sense, but Americans continue to shake their heads in amazement that the laws on the books are being ignored.

It's no secret that this Administration supports an amnesty program, or putting millions of people on a path to citizenship. Even the head of the enforcement agency, Assistant Secretary Morton, pressed Congress to pass the DREAM Act. Insiders say that he refused to endorse the legislation but was strong-armed to go public the morning that the Senate voted on the bill. His support for such legislation really undermines the department's credibility on enforcement.

Their credibility is also questioned when they tout record-breaking statistics but use "unusual methods" in calculating their numbers. As the Washington Post noted on December 6, 2010, the department has been cooking the books so they can say deportations are at an all-time high. While they're inflating their numbers, they institute policies that allow attorneys to dismiss removal proceedings, sometimes for criminal aliens.

I'm looking forward to asking the Secretary about the internal memos written by officials in her department that outline ways that the Administration can circumvent Congress and provide legal status to millions of people who are in this country illegally. Staff at U.S. Citizenship and Immigration Services wrote one such memo last spring, stating the purpose of their document is to "reduce the threat of removal for certain individuals present in the United States without authorization." In July of last year, many members of the Senate sent a letter to the department, asking for information on how the department was using its "deferred action" and "parole" authorities, which were created and reserved for individual cases that present "unusual, emergent, or humanitarian circumstances." We asked for specific data, only to be ignored and told that such data was not collected "in the way we requested."

Every Republican member on this committee sent the Secretary another letter on September 21 of last year inquiring about the internal amnesty memos and the use of the special discretionary authority granted to the Secretary. We asked the Secretary to come before Congress, to meet with members and explain the memos. The letter we received in response was unbelievably frustrating, to say the least. The Secretary responded to this very serious issue by suggesting that the "record-breaking enforcement statistics speak for themselves." The response barely touched on the internal memo that outlined administrative options to keep undocumented individuals in the country. The Secretary said the department would be available for briefings on enforcement-related issues, but when asked, the department refused to allow a briefing for committee members with U.S. Citizenship and Immigration Services or the authors of the memo. The department assured the public that deferred action and parole would not be granted to the entire illegal immigrant population. But they were unable to assure us that plans were not being drawn up to benefit certain segments of the undocumented population.

I'm still very disturbed that the department, and specifically U.S. Citizenship and Immigration Services, refuse to provide answers to Congress and the American people. I'm frustrated by their lack of straight-talk, and by their dismissal of our concerns that backdoor plans are being devised. I'm annoyed that this department apparently disregards the spirit of our immigration laws, and will go to great lengths to abuse the special authority Congress provided to the Secretary.

I was also disappointed to hear that the Secretary has again extended the deadline for states to comply with the REAL ID Act. Congress passed this law in 2005 in an effort to improve driver's licenses and require verification of an individual's identity. We passed this law because 18 of the 19 hijackers on 9/11 acquired some form of fraudulent ID. They had a total of 17 driver's licenses from various states. This law was specifically recommended by the 9/11 Commission.

The extension approved last week by the Secretary will now give states until January 2013. They delayed the deadline at the same time we heard about the Saudi student who was arrested on February 24, 2011 and charged with an attempt to use a weapon of mass destruction. This foreign student had laid out an elaborate plan that included obtaining false documents and driver's licenses. On page 10 of the criminal affidavit, it outlines how the student planned to get a forged U.S. birth certificate and then apply for a passport and driver's license. The suspect wanted to use different driver's licenses for each car he planned to rent, in hopes of detonating his bombs in different places during rush hour.

The Secretary has publicly stated that the terrorist threat facing our country continues to evolve. She says that we are seeing an effort by terrorists to recruit people who are already in the United States. Having secure standards for driver's licenses is one way to impede a terrorist's mobility. So I'd like to know why the Administration refuses to make sure driver's licenses are more secure, and why the Administration refuses to provide funding to help states comply with the law. I want assurances from the Secretary that she's committed to the law, and will not push to water down the requirements we put in place 6 years ago.

I also want assurances from the Secretary that the department will finalize a process to check

outbound passengers who are leaving the United States. Another initiative that has been mandated by Congress but ignored is the entry/exit system created in 1996. After 15 long years, the executive branch refuses to keep track of foreign nationals who depart the United States. The exit system is an integral part of knowing who is in our country and ensuring that foreign nationals depart when they are required.

Secretary Napolitano, I appreciate you coming today, and I look forward to hearing what you are doing to address these issues that I have outlined.

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
March 9, 2011

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Oversight Of The Department Of Homeland Security
March 9, 2011

I welcome Secretary Napolitano. Thank you for being with us today. Consistent with the Judiciary Committee's oversight responsibilities, today's hearing will focus on the current activities, challenges, and accomplishments at the Department of Homeland Security.

Let me begin by acknowledging your recent decision to delay the implementation of the Real ID Act. I am certain that this was a decision that was not taken lightly. But I appreciate your desire to give states more time to make progress. This delay also gives lawmakers more time to work toward an alternative to Real ID, and continue the efforts initiated in the last Congress. I suspect that your delay of Real ID implementation was welcome news to many of the Governors who were in Washington last week.

It is worth reminding the American public just how extensive the Department's responsibilities are—domestic security, including airline security and border security, natural disaster response, the Coast Guard, and immigration enforcement and benefits are all within the Department. The Department's various agencies have enormously important national security responsibilities.

We need only look to the work that Immigration and Customs Enforcement (ICE) is doing both in the United States and abroad. The cartel-related violence on both sides of our Southern Border is a serious and continuing problem. The recent attack on two ICE agents in Mexico is a particularly appalling escalation of this situation. I know that you and Attorney General Holder have been working cooperatively on this investigation and that some progress has been made. Our cooperative relationship with Mexico was front and center in the visit from President Calderon last week. We must strengthen and preserve the partnership to achieve security in both nations.

The Department is also challenged with protecting our security and preserving our right to privacy. As the Department takes steps to respond to emerging threats and keep Americans safe, many citizens have raised legitimate concerns about the intrusiveness of security measures. Recent concerns about airport screening procedures highlight the persistent tension between privacy and security in our daily lives. We can all agree that the security of air travel is critical.

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But Americans cherish their rights to privacy and liberty. They expect to be treated with dignity as they travel and pass through security screening. Americans will only tolerate so much in the way of intrusiveness, especially as they travel domestically.

For many Americans, the use of X-ray scanning machines that produce a detailed body image is a bridge too far. And for many Americans, the alternative of a pat-down is even more difficult to tolerate, especially as we receive reports of physically invasive searches. I understand there is an effort among the TSA and the manufacturers of these scanners to develop new software that would render images without anatomical detail, and in a truly anonymous manner. I would like to hear more today about how the Department is addressing this matter.

Many Americans also have concerns about the potential health effects of these scanners. TSA asserts that the health effects of these scanners are negligible, but not everyone in the scientific community shares that view. The bottom line is that back-scatter X-ray technology exposes traveling citizens to radiation. We should not dismiss any citizen's health concerns and must support independent assessment of any associated health effects. This is particularly true if the technology may affect pregnant women, children, and people with medical conditions. I urge you to continue to assess this technology and to invite independent experts to study potential health effects.

What was not reassuring was the recent report in USA Today that the Department wasted million of dollars paying contractors to develop and study covert surveillance systems to look under people's clothing while they were on the move. The report is about not one but two contracts to develop such scanners in 2005 and 2006.

It would be a mistake to underestimate the value that American citizens place on their privacy. Debates in Congress and around the country on proposals like the Real ID Act and the PATRIOT Act should make clear that the right to privacy and the principles of the Fourth Amendment remain important to the American people. When we listen to the concerns of citizens, and take concrete steps to respond, I expect that citizens will be far more accepting of the security measures they are asked to accept.

Finally, we cannot set aside the need to reform our Nation's broken immigration system. I continue to firmly believe that without a practical, humane solution to address the millions of undocumented people living and working in the United States, we will never have true border security or an orderly system of immigration. Throwing more taxpayer dollars at immigration enforcement or to the Southern Border alone will not provide a lasting or fundamental solution. Nor does it provide an economical solution. Given the Department's well documented efforts in the area of immigration enforcement, including record deportations, the enhancement of E-Verify, widespread audits of businesses, and substantially increased activity along our borders, it is time we looked seriously at the other components that make up smart reform.

And I want to thank you for working with me to protect refugees and asylum seekers. I was gratified by the announcement in December 2009 of a new parole policy for asylum seekers. Statistics for the first year of implementation of that policy should be released soon, but I am told that they will show a significant increase in the number of asylum seekers who pass credible fear and are paroled. This is a very positive shift and I thank you for it.

I thank you again for being here and look forward to your testimony.

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Testimony of

Secretary Janet Napolitano

U.S. Department of Homeland Security

Before the

United States Senate Committee on the Judiciary

March 9, 2011

Introduction

Chairman Leahy, Ranking Member Grassley, and members of the Committee: Thank you for the opportunity to testify today about the Department of Homeland Security's (DHS) efforts to keep our Nation safe from evolving threats while building more prepared and resilient communities, and a more informed and engaged American public.

This committee continues to play a critical role in helping us achieve these important goals, and I am grateful for the chance to update you on the progress we are making relative to your areas of jurisdiction. The Department has six mission areas:

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

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

Now, eight years since the Department's creation, I believe the results are clear: a more effective and integrated Department, a strengthened homeland security enterprise, and a more secure America that is better equipped to confront the range of threats we face, from acts of terrorism and natural disasters to cyber threats and pandemic diseases.

Today, I would like to discuss our strategy, key initiatives, and plans for the future, with a specific focus on the core areas of this committee's jurisdiction, including preventing terrorism and enhancing security; securing and managing our borders; and enforcing and administering our immigration laws.

Preventing Terrorism and Enhancing Security

Response to a Changing Threat

As I have noted on a number of occasions before Congress – most recently, the House Committee on Homeland Security[1] – the United States has made important progress in securing our Nation from terrorism since the September 11, 2001, attacks. Nevertheless, the terrorist threat facing our country has evolved significantly in the last ten years, and continues to evolve.

Following 9/11, the Federal Government moved quickly to build an intelligence and security

[1] Please see "Understanding the Homeland Threat Landscape – Considerations for the 112th Congress," February 9, 2011.

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apparatus that has protected our country from the kind of large-scale attack, directed from abroad, that struck us nearly ten years ago. The resulting architecture led to considerable success in both preventing this kind of attack and limiting, though not eliminating, the operational ability of the core al-Qa'ida group that is currently based in the mountainous area between Afghanistan and Pakistan.

Today, however, in addition to the direct threats we continue to face from al-Qa'ida, we also face growing threats from other foreign-based terrorist groups that are inspired by al-Qa'ida ideology but appear to have few operational connections to the core al-Qa'ida group. Perhaps most crucially, we face a threat environment where violent extremism is not defined or contained by international borders. Today, we must address threats that are homegrown as well as those that originate abroad.

One of the most striking elements of today's threat picture is that plots to attack America increasingly involve American residents and citizens. Our country has succeeded since 9/11 in making it more difficult for terrorists to travel here. What we are seeing now reflects a conscious effort by terrorists to recruit people who are already in the United States. We are, therefore, operating under the assumption, based on the latest intelligence and recent arrests, that individuals prepared to carry out terrorist attacks and acts of violence might be in the United States, and they could carry out acts of violence with little or no warning.

This threat of homegrown violent extremism fundamentally changes who is most often in the best position to spot, investigate, and respond to terrorist activity. More and more, state, local, and tribal law enforcement officers are most likely to notice the first signs of terrorist activity. This has profound implications for how we go about securing our country against the terrorist threat, and requires a new kind of security architecture that complements the structure we have already built to protect America from threats coming from abroad.

DHS Counterterrorism Efforts

Over the past two years, DHS has been working diligently to build a new architecture in order to better defend against this evolving terrorist threat. There are two dimensions of this architecture that I will discuss today.

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

Second, we are focused on getting resources and information out of Washington, D.C. and into the hands of state and local law enforcement, in order to provide them with the tools they need to combat threats in their communities. Because state and local law enforcement are often in the best position to first notice the signs of a planned attack, our homeland security efforts must be interwoven in the police work that state, local, and tribal officers do every day. We must make

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sure that officers everywhere have a clear understanding of the tactics, behaviors, and other indicators that could point to terrorist activity.

Accordingly, and consistent with the vision of Congress and the direction the President has set for a robust information sharing environment, DHS is providing training programs for local law enforcement to help them identify indicators of terrorist activity, while avoiding illegal and ineffective profiling based on race, color, national origin, or religion. And we are also improving and expanding the information-sharing mechanisms by which officers are made aware of the threat picture and what it means for their jurisdictions.

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

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

We continue to participate in Joint Terrorism Task Forces, provide support for state and local fusion centers, and work with our partners at the Department of Justice on the Nationwide Suspicious Activity Reporting Initiative, which trains state and local law enforcement to recognize behaviors and indicators related to terrorism, crime and other threats; standardize how those observations are documented and analyzed; and expand and enhance the sharing of those reports with the Federal Bureau of Investigation and DHS.

We also are encouraging Americans to alert local law enforcement if they see something that is potentially dangerous through the nationwide expansion of the "If You See Something, Say Something" campaign – a clear and effective means to raise public awareness of indicators of terrorism, crime and other threats and emphasize the importance of reporting suspicious activity to the proper law enforcement authorities.

Over the past year, we have expanded the "If You See Something, Say Something," campaign across the United States, through partnerships with Wal-Mart, Mall of America, the American Hotel & Lodging Association, Amtrak, the Washington Metropolitan Area Transit Authority, the general aviation industry, the National Football League, the National Basketball Association, the National Collegiate Athletic Association, and state and local fusion centers.

In collaboration with the "If You See Something, Say Something" campaign, the Transportation Security Administration also is providing suspicious behavior observation, assessment, and reporting training through its First Observer ™ program, which has trained thousands of state

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and local law enforcement personnel and private sector employees to observe, detect and report suspicious behavior at transportation and critical infrastructure sites and facilities across the country.

Taken together, these steps lay a strong foundation that police and their partners across the country can use to protect their communities from terrorism and crime by building a homeland security architecture that helps law enforcement everywhere protect against a variety of threats.

Securing and Managing Our Borders

Protecting our Nation's borders – land, air, and sea – from the illegal entry of people, weapons, drugs, and contraband, remains a critical DHS mission. Secure borders are not only vital to our national and homeland security, but vital to our economic prosperity.

In managing our borders, our goal is to maintain safe, secure border zones that are hospitable to and facilitate legal trade, travel, and immigration. This goal recognizes the border is not simply a line on a map. It is an entire geographic area. Moreover, a safe, secure border zone requires more than taking action at the border; it requires vigorous enforcement of our Nation's immigration laws in the interior of our country.

We must leverage every law enforcement asset and coordinate them in a way that acknowledges that our approach in one area of the border may differ from another. What we do to secure the border in El Paso may not be the same as what we do in San Diego, or in Detroit.

Enforcement of immigration laws in the interior of our country also must be smart and effective. That means going after criminals and employers who knowingly hire illegal workers, as we have, and doing so in a way that is consistent with our values and priorities. Equally important, our border policy should foster legitimate trade, travel, and immigration, accommodating the movement of commerce that generates billions of dollars in trade and tourism revenue and underpins hundreds of thousands of jobs.

Over the past two years, this approach, carried out with the tireless dedication of the thousands of men and women on the frontlines, has achieved major results, including historic decreases in illegal immigration; unprecedented increases in the seizure of drugs, weapons, and contraband; and record numbers of deportations of individuals in the U.S. illegally – both overall and in terms of criminal aliens. This approach has also led to strengthened partnerships with Mexico and Canada, not only in terms of security, but also on trade and travel.

We are deeply concerned about drug cartel violence in Mexico. It is clear that drug trafficking organizations are seeking to undermine the rule of law in Northern Mexico, and we must vigorously guard against potential spillover effects into the United States.

Unfortunately, we also have seen troubling incidents of violence along the Southwest border in recent months. In December, Border Patrol Agent Brian Terry was fatally shot near Rio Rico, Arizona. Several suspects have been apprehended in relation to Agent Terry's murder, and this investigation is ongoing.

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Last month, two U.S. Immigration and Customs Enforcement (ICE) agents working in Mexico also came under attack while driving between Monterrey and Mexico City. This attack took the life of ICE Special Agent Jaime Zapata and wounded ICE Agent Victor Avila. Attorney General Eric Holder and I formed a joint task force, led by the Federal Bureau of Investigation, to leverage the full investigative capabilities of both of our agencies to work with Mexico to track down the perpetrators and swiftly bring them to justice. Recently, Mexican authorities apprehended one of the alleged killers of ICE Agent Jaime Zapata, and we will continue to assist the ongoing Mexican investigation with every resource at our disposal.

These tragedies underscore the risks our men and women on the frontlines face every day as they work to protect our borders and our country, and the tremendous sacrifices they make on our Nation's behalf. I know the Congress and this committee, in particular, share my commitment to do everything we can to ensure the safety of our law enforcement officers in the field by providing them with the resources they need to protect our borders and our communities.

Southwest Border Initiative

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

I know the Southwest border well. I was raised in New Mexico. I have spent most of my adult life in Arizona as the U.S. Attorney, Attorney General, and as a two-term Governor. I have walked the border, flown it, ridden it on horseback, and worked with border communities from Brownsville to San Diego for the better part of 18 years as a public official. I speak from personal experience when I say that the Southwest Border Initiative is the most comprehensive and dedicated effort to strengthen border security our nation has ever deployed.

Under this initiative, we have increased the size of the Border Patrol to more than 20,700 agents today, which is more than double the size it was in 2004. We also have doubled personnel assigned to Border Enforcement Security Task Forces, which work to dismantle criminal organizations along the border.

In addition, we have increased the number of ICE intelligence analysts along the border focused on cartel violence. In all, a quarter of ICE's personnel are now in the region – the most ever. We also have quintupled deployments of Border Liaison Officers to work with their Mexican counterparts, and we are screening southbound rail and vehicle traffic for illegal weapons and cash that are helping fuel the cartel violence in Mexico.

In terms of border infrastructure, we have constructed a total of 649 miles of fencing out of nearly 652 miles mandated by Congress, including 299 miles of vehicle barriers and 350 miles of pedestrian fence.

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With the aid of $600 million from the border security supplemental requested by the Administration and passed by Congress in 2010, we also have continued to add more technology, manpower, and infrastructure to the border. This includes an additional 1,000 new Border Patrol Agents; 250 new CBP officers at ports of entry; and 250 new ICE agents focused on transnational crime.

We are also improving our tactical communications systems, adding two new forward operating bases to improve coordination of border security activities and two more CBP unmanned aircraft systems. For the first time, we now have Predator Unmanned Aircraft System coverage along the entire Southwest border, from the El Centro Sector in California to the Gulf of Mexico in Texas.

Further, President Obama authorized the temporary use of up to 1,200 additional National Guard personnel to bridge to longer-term enhancements in border protection and law enforcement personnel from the Department of Homeland Security to target illicit networks' trafficking in people, drugs, illegal weapons, money, and the violence associated with these illegal activities. That support has allowed us to bridge the gap and hire the additional agents to support the Southwest Border, as well as field additional technology and communications capabilities that Congress so generously provided. Secretary Gates and I agreed to equally fund this National Guard support and submitted two reprogramming requests to Congress to that end. Congress did not approve my reprogramming requests; therefore, The Department of Defense has been funding the full cost of this National Guard support.

Additionally, to support state and local law enforcement jurisdictions along the border, we directed more than $123 million in Operation Stonegarden funds in 2009 and 2010 to Southwest Border States to pay for overtime and other border-related expenses.

In partnership with the Drug Enforcement Administration and the Department of Defense, we also have achieved initial operational capability for the new Border Intelligence Fusion Section within the El Paso Intelligence Center. This new section will provide a comprehensive Southwest Border Common Intelligence picture, as well as real-time operational intelligence, to our law enforcement partners in the region – further streamlining and enhancing our operations. And we are continuing to work with Mexico to develop an interoperable, cross-border communications network that will improve our ability to coordinate law enforcement and public safety issues.

Beyond these steps, in recent months we also have undertaken additional actions to bring greater unity to our enforcement efforts, expand coordination with agencies including the Departments of Defense and Justice, and improve our response times. For example, we have initiated joint commands within CBP to unite the activities of the Border Patrol, Air and Marine, and Field Operations under a single reporting chain, with a single commander. This unified command structure is now in place in Arizona.

And, as part of the Southwest Border supplemental, CBP is developing new Mobile Response Teams that will provide new surge capabilities to send Border Patrol assets and personnel to a particular area of the border as needed.

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Because partnerships with federal, state, local, and tribal law enforcement agencies, as well as the private sector, remain critical to our overall success, we also have initiated new programs to increase collaboration; enhance intelligence and information sharing; and develop coordinated operational plans.

One example is the Alliance to Combat Transnational Threats (ACTT). ACTT utilizes a collaborative enforcement approach to leverage the capabilities and resources of DHS in partnership with more than 60 law enforcement agencies in Arizona and the Government of Mexico to deter, disrupt, and interdict individuals and criminal organizations that pose a threat to the United States.

Since its inception in September 2009, ACTT has resulted in the seizure of more than 1.6 million pounds of marijuana, 3,800 pounds of cocaine, and 1,000 pounds of methamphetamine; the seizure of more than $13 million in undeclared U.S. currency and 268 weapons; nearly 14,000 aliens denied entry to the United States at Arizona ports of entry due to criminal background or other disqualifying factors; and nearly 270,000 apprehensions between ports of entry.

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

Last year, I directed an independent, quantitative assessment of the SBI*net* program, which combined the input of Border Patrol agents on the front lines and the Department's leading science and technology experts. This assessment made clear that SBI*net* cannot meet its original objective of providing a one-size-fits-all border security technology solution, and earlier this year, I directed CBP to redirect SBI*net* resources to other, proven technologies – tailored to each border region – to better meet the operational needs of the Border Patrol.

This new border security technology plan – which is already well underway with resources invested through the Recovery Act and on the ground in communities along the border – will provide faster deployment of technology, better coverage, and a more effective balance between cost and capability. It includes non-intrusive inspection equipment at the ports of entry and tested, commercially available technologies, such as thermal imaging devices, ultra-light detection, backscatter units, mobile radios, cameras and laptops for pursuit vehicles, and Remote Video Surveillance System enhancements.

Southwest Border Initiative Results

Taken as a whole, the additional manpower, technology and resources we have added over the past two years represent the most serious and sustained action to secure our border in our Nation's history. And it is clear from every key measure that this approach is working, even as we acknowledge that our efforts must not let up.

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Nationwide Border Patrol apprehensions – a key indicator of illegal immigration—have decreased 36 percent in the past two years, and are less than one third of what they were at their peak.

As we have worked to combat illegal crossings, violent crime in border communities has remained flat or fallen in the past decade. Indeed, four of the biggest cities in America with the lowest rates of violent crime are in border states – San Diego, Phoenix, Austin, and El Paso. Violent crimes in Southwest border counties have dropped by more than 30 percent and are currently among the lowest in the Nation per capita. Crime rates in Nogales, Douglas, Yuma and other Arizona border towns also have remained essentially flat for the past decade, even as drug-related violence has dramatically increased in Mexico.

We have matched decreases in apprehensions with increases in seizures of cash, drugs, and weapons. In Fiscal Years 2009 and 2010, CBP seized more than $104 million in southbound illegal currency – an increase of approximately $28 million compared to 2007 and 2008. And in Fiscal Years 2009 and 2010, CBP and ICE seized more than $282 million in illegal currency, more than 7 million pounds of drugs, and more than 6,800 weapons along the Southwest border – representing increases of 35 percent in illegal currency seizures, 16 percent in illegal drug seizures, and 28 percent in weapons seizures, compared to the previous two years.

Complementing these efforts, the United States Coast Guard has continued to serve as an effective deterrent force against illegal immigration across our maritime borders, while working to combat the flow of illegal drugs and contraband into the United States. In FY 2010, the Coast Guard interdicted more than 2,000 undocumented migrants, felons and repeat offenders attempting to illegally enter the United States from the sea. The Coast Guard also seized more than 202,000 pounds of cocaine and 36,700 pounds of marijuana.

As we have taken these actions to secure our borders, we have continued to focus on growing the economy by expediting lawful trade and travel by expanding trusted traveler programs, making infrastructure improvements to our ports of entry, and streamlining and modernizing our customs processes.

For example, enrollment in Global Entry, a CBP trusted traveler program that facilitates expedited clearance of pre-approved low-risk air travelers into the United States through biometric verification and recurrent vetting, increased by more than 200 percent in 2010. Global Entry has reduced average wait times by more than 70 percent, with more than 75 percent of travelers using Global Entry processed in under five minutes, while enabling law enforcement to focus on the most serious security threats at points of entry to our country.

Northern Border

Over the past two years, we also have made critical security improvements along the Northern border, investing in additional Border Patrol agents, technology, and infrastructure. Currently, we have more than 2,200 Border Patrol agents on the Northern border, a 700 percent increase since 9/11. We also have nearly 3,800 CBP Officers managing the flow of people and goods across ports of entry and crossings, and with Recovery Act funds, we are in the process of

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modernizing more than 35 land ports of entry along the Northern border to meet our security and operational needs.

In addition to these personnel increases and infrastructure enhancements, we have continued to deploy technology along the Northern border, including thermal camera systems, Mobile Surveillance Systems, and Remote Video Surveillance Systems. We also successfully completed the first long-range CBP Predator-B unmanned aircraft patrol under expanded Federal Aviation Administration authorization that extends the range of our approved airspace along the Northern Border from Washington to Minnesota.

To enhance joint law enforcement with Canada, we also have continued to leverage the Shiprider agreement to bolster cross-border security operations. This agreement enables the Royal Canadian Mounted Police, the U.S. Coast Guard, Customs and Border Protection, and Immigration and Customs Enforcement to cross-train, share resources and personnel, and utilize each others' vessels in the waters of both countries. The Border Patrol, ICE, U.S. Coast Guard, Canadian law enforcement, and other federal partners also have continued their collaboration through Integrated Border Enforcement Teams, which work to identify, investigate, and interdict individuals and organizations that may pose a threat to national security or are engaged in organized criminal activity along the Northern border.

Our partnership with Canada is an important one. Not only do we share the longest geographic border in the world, but also the largest and most integrated economic partnership, with over $1 trillion in annual trade and foreign direct investment between our countries. To sustain this productive economic relationship, we must work together to protect our borders and shared critical infrastructure.

In recent months, we have begun several activities focused on protecting our borders and shared infrastructure. For example, ICE Director John Morton, CBP Deputy Commissioner David Aguilar, and then President of the Canada Border Services Agency Stephen Rigby signed a memorandum of understanding to promote the sharing of currency seizure information between our law enforcement agencies in order to improve our ability to identify potential threats and assist in money-laundering and terrorist-financing investigations.

I also have coordinated efforts with Transport Canada to conduct vulnerability assessments on shared bridges between the United States and Canada. These vulnerability assessments take a critical look at the individual components of a bridge structure from a security perspective and seek to identify strategies to shore-up and strengthen the structures. These assessments capture estimated costs associated with recommended mitigation strategies so that we can better focus our resources and prioritize which structures require immediate attention to guard against known threats.

In addition, Canada Minister of Public Safety Vic Toews and DHS announced a first of its kind plan to establish a comprehensive cross-border approach to critical infrastructure resilience, focused on sharing information and assessing and managing joint risks.

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Moreover, last month, President Obama and Prime Minister Harper signed a landmark "Shared Vision for Perimeter Security and Economic Competitiveness" that sets forth how our two countries will manage our shared homeland and economic security in the 21st century. This "Shared Vision" aims to grow our economies, create jobs, and expedite legitimate travel and trade by improving the efficiency of our busiest border crossing points, by taking a risk-management approach to the entry of travelers and goods, expanding our efforts to prevent, deter and disrupt evolving terrorist threats at the earliest point possible, and by dealing collaboratively with other crimes or natural disasters that affect both countries.

To achieve these goals, we will strengthen intelligence and information sharing efforts, continuing joint threat assessments and improving our ability to verify the identities of travelers passing through and between our countries to ensure our enforcement agencies have timely information.

We will also build on the successful elements of existing programs like NEXUS and Free and Secure Trade (FAST), which expedite the processing of pre-approved, recurrently vetted, low-risk travelers and shippers. And we will more closely coordinate investments in infrastructure and technology at our ports of entry, automating processes where possible.

Further, we will continue to identify areas where it makes sense to develop joint facilities, programs, and operations to improve coordination. This includes the creation of new bi-national port of entry committees to coordinate port operations and management, enhanced national efforts to coordinate planning and funding on both sides of the border, and the expansion of successful joint law enforcement initiatives that have proven effective in combating cross border crime and illegal immigration.

Finally, because many communities that span the border benefit from shared critical and cyber infrastructure, we will work to expand collaboration to prevent, respond to, and recover from attacks and disruptions to shared assets and key resources.

To develop and implement the nuts and bolts of this shared vision, President Obama and Prime Minister Harper have established a Beyond the Border Working Group, comprised of representatives from relevant U.S. and Canadian departments, that will report to them in the coming months with a joint plan of action to realize the goals of the vision, followed by an annual report on our progress.

Enforcing and Administering Our Immigration Laws

What we do to protect our borders is inseparable from immigration enforcement in the interior of our country, and both are critical to an effective immigration system. Our approach to immigration enforcement is guided by a common sense premise based on sound prosecutorial practice: implement the measures that best protect public safety and produce the most significant results.

Over the past two years, our approach has focused on identifying criminal aliens and those who pose the greatest risk to our communities, and prioritizing them for removal. We also have

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worked to ensure that employers have the tools they need to maintain a legal workforce, and face penalties if they knowingly and repeatedly violate the law. And we have made significant changes to our immigration detention system, to recognize the basic differences between immigration violators – from families with small children to hardened, violent criminals and gang members – and treat them accordingly.

Like our actions at the border, our interior enforcement efforts are achieving major results. In Fiscal Years 2009 and 2010, ICE removed more illegal immigrants from our country than ever before, with more than 779,000 removals nationwide in the last two years. Most importantly, more than half of those aliens removed last year – upwards of 195,000 – were convicted criminals, the most ever removed from our country in a single year.

This surge in criminal removals did not happen by accident; it is the result of a targeted enforcement strategy designed to set priorities, maximize resources, and identify and remove those who present the biggest danger to communities.

A major part of this success can be attributed to the expansion of Secure Communities, a program that has allowed law enforcement to identify and remove tens of thousands of criminal aliens in state prisons and local jails by running their fingerprints against federal immigration databases at the time of booking. Since 2008, ICE has expanded Secure Communities from 14 jurisdictions to more than 1,000 today, including every jurisdiction along the Southwest border. We expect to reach complete nationwide deployment by 2013.

We also have stepped up worksite enforcement, last year arresting a record number of employers who knowingly hire illegal aliens. ICE has significantly expanded its use of I-9 audits, which are used to investigate employers suspected of employing illegal aliens. Since January 2009, ICE has audited more than 3,600 employers suspected of employing unauthorized aliens, debarred more than 260 companies and individuals, and imposed approximately $56 million in financial sanctions – more than the total amount of audits and debarments than during the entire previous administration.

In addition, we have strengthened the efficiency and accuracy of E-Verify – our on-line employment verification system managed by U.S. Citizenship and Immigration Services (USCIS) which is designed to assist employers in abiding by the law. As of today, more than 249,000 employers are enrolled in E-Verify, representing more than 857,000 locations. More than 1,300 new employers enroll each week and the number of employers enrolled in E-Verify has more than doubled each fiscal year since 2007. In FY 2010, E-Verify processed 16.4 million employment queries.

Through a range of new measures and initiatives, USCIS has continued to improve E-Verify's accuracy and efficiency, enhance customer service, and reduce fraud and misuse. For example, in February 2009, USCIS began incorporating the ability to verify passport data into the E-Verify system to reduce mismatches for naturalized and derivative U.S. citizens and to combat identity fraud. Because of this enhancement, in FY 2010 more than 81,000 queries that previously would have received an incorrect mismatch were automatically verified as employment authorized. In September 2010, USCIS also added the ability to verify U.S.

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Passport and U.S. Passport Card photographs through E-Verify. This addition allows employers to compare the photograph displayed in E-Verify with the photograph on the employee's U.S. Passport, reducing identity theft.

To ensure that companies that enroll in E-Verify are legal and active corporate entities, in June 2010, USCIS also began using an independent information provider with a database of 177 million business records to establish corporate status. And to further increase accuracy and efficiency, USCIS has made enhancements to the E-Verify web interface. In June 2010, E-Verify launched improved navigational tools to enhance ease-of-use, minimize errors, and bolster compliance with clear terms of use.

USCIS also has increased its staffing dedicated to E-Verify monitoring and compliance, adding 80 staff positions to this program responsibility. USCIS also launched new initiatives to protect employee rights, including streamlining the process for addressing potential cases of discrimination and E-Verify misuse, establishing a hotline for employees, and producing new educational training videos that emphasize employee rights.

In addition to providing tools for employers to abide by the law, ICE has continued to implement major reforms to our immigration detention system, launching an Online Detainee Locator System to assist family members and attorneys in locating aliens detained in ICE custody, reducing the number of facilities where detainees are housed, improving access to medical care, drafting new detention standards, and creating a risk assessment tool to ensure ICE is detaining aliens commensurate with the risk they present.

Finally, to combat the growing problem of smuggling and trafficking, we have continued to conduct targeted enforcement operations while launching national public awareness campaigns, including in Central and South America, to shine a spotlight on this unconscionable crime.

In April 2010, ICE conducted "Operation In Plain Sight," the largest investigation of its kind, targeting shuttle companies that were transporting undocumented aliens throughout the state of Arizona and beyond. The investigation resulted in the criminal arrests of 62 subjects for alien smuggling and associated crimes. Overall in FY 2010, ICE initiated more than 2,200 human smuggling investigations, resulting in more than 2,500 arrests, 1,400 indictments, 1,500 convictions, and $15 million in asset seizures.

DHS also launched the Blue Campaign to Combat Human Trafficking, a national initiative focused on protection, prevention, and prosecution. The campaign includes an innovative computer-based training for state and local law enforcement officers; an international print, video, and radio public awareness campaign; a multi-lingual domestic public awareness campaign in 50 foreign language newspapers; victim assistance materials distributed at ports of entry; and a new DHS website, www.dhs.gov/humantrafficking, which provides comprehensive anti-human trafficking materials and resources for human trafficking victims, law enforcement officers, concerned citizens, non-governmental organizations, and the private sector.

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Improvements to Legal Immigration

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

Over the past two years, USCIS has taken a number of actions to improve its ability to meet these goals. By streamlining and modernizing operations, USCIS is now processing applications for naturalization and other critical immigration benefits rapidly, meeting or exceeding performance goals.

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

USCIS also has made security enhancements to some of its key identity documents to prevent counterfeiting, obstruct tampering, and facilitate quick and accurate authentication. The Permanent Resident Card, commonly known as the "Green Card," now contains several major new security features, and USCIS redesigned the Certificate of Naturalization to more effectively detect document tampering, validate identity, reduce fraud, and decrease overall expenses.

USCIS also has continued to naturalize thousands of new Americans each year, including record numbers of members of our nation's armed forces. In FY 2010, USCIS granted citizenship to 11,146 members of the U.S. armed forces at ceremonies in the United States and 22 countries abroad. This figure represents the highest number of service members naturalized in any year since 1955.

Since September 2001, USCIS has naturalized nearly 65,000 service men and women, including those serving in Iraq and Afghanistan. To expedite U.S. citizenship for qualified military personnel, last year DHS published a rule that reduces the time requirements for naturalization through military service from three years to one year for applicants who served during peacetime, and extends benefits to members of the Selected Reserve of the Ready Reserve of the U.S. Armed Forces.

Taken together, these improvements to our legal immigration system, coupled with our efforts to secure the border and enforce immigration laws in the interior, are producing significant results. We intend to make even greater strides in the coming year. However, we know that more will be required to fully address our nation's immigration challenges. Congress needs to take up reforms to our immigration system to address long-standing, systemic problems with our nation's immigration laws. President Obama is firm in his commitment to advancing immigration

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reform, and I am personally looking forward to working with Congress to achieve this goal, and to continue to set appropriate benchmarks for our success in the future.

Conclusion

The President's FY 2012 budget continues the investments we have made in counterterrorism, border security, and immigration enforcement, enabling the Department to sustain and build on the progress I have outlined for the committee in my testimony today.

To prevent terrorism and enhance security, the budget provides funding for Transportation Security Officers, Behavioral Detection Officers, canine teams and Advanced Imaging Technology machines at domestic airports, expands watch list vetting, and enhances screening and targeting of international travelers. It also strengthens surface transportation security, invests in radiological and nuclear countermeasures, improves biological and agro-defense, and increases support for state and local fusion centers.

The President's budget also supports a total of 21,370 Border Patrol agents and 21,186 U.S. Customs and Border Protection officers at our borders and ports of entry – both all time highs – and provides for the continued deployment of proven, effective surveillance technology along the highest trafficked areas of the Southwest border, new technology on the northern border, and additional maritime assets for the U.S. Coast Guard. In addition, the budget will enable ICE to fund 33,400 detention beds, remove more than 200,000 criminal aliens, and deploy Secure Communities to 96 percent of all jurisdictions nationwide in FY 2012.

I have said before that we cannot seal our country under a glass dome. We cannot address every threat, at every moment, in every place. But we can continue to provide the information, resources and support that the hardworking men and women of DHS, our federal partners, and state, local, tribal, and territorial law enforcement and first responders need to effectively prevent and recover from acts of terrorism, mitigate the threats we face, and protect our borders and our country.

The priorities we have set over the past two years are working. We are finding and interdicting terrorists and transnational criminals. Illegal immigration is decreasing. Deportations are increasing. Crime rates are dropping. The numbers that are supposed to go up have gone up, and the numbers that are supposed to go down have gone down.

I want to thank this Committee for its support of our mission to keep America safe. I also want to thank the men and women who are working day and night to protect and defend our country, often at great personal risk. We owe them our continued support and gratitude.

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U.S. Border Patrol OTM Apprehensions
FY2010 - FY2011TD through 2/28
Data includes Deportable Aliens Only
Data Source: EID (unofficial) FY10 as of 10/7/10, FY11TD as of 3/7/11

CITIZENSHIP	FY2010	FY2011TD
AFGHANISTAN	9	1
ALBANIA	42	22
ALGERIA	5	1
ANGOLA	2	3
ANTIGUA-BARBUDA	2	
ARGENTINA	62	19
ARMENIA	7	4
AUSTRALIA	5	2
AUSTRIA	1	2
AZERBAIJAN		1
BAHAMAS	16	13
BANGLADESH	123	25
BARBADOS	5	3
BELARUS	6	5
BELGIUM		2
BELIZE	57	26
BENIN	3	
BERMUDA	1	
BHUTAN		1
BOLIVIA	66	14
BOSNIA-HERZEGOVINA	1	
BOTSWANA		1
BRAZIL	812	167
BULGARIA	12	13
BURKINA FASO	6	2
BURMA	11	1
BURUNDI		2
CAMBODIA	12	2
CAMEROON	18	5
CANADA	690	82
CAPE VERDE	2	2
CENTRAL AFRICAN REPUBLIC	1	
CHILE	38	16
CHINA, PEOPLES REPUBLIC OF	1,157	334
COLOMBIA	517	152
CONGO	9	5
COSTA RICA	185	34
CROATIA		4
CUBA	712	414
CZECH REPUBLIC	22	1
CZECHOSLOVAKIA		1
DEM REP OF THE CONGO		1
DENMARK	1	1
DJIBOUTI		1
DOMINICA	2	2
DOMINICAN REPUBLIC	1,330	323
ECUADOR	1,777	398
EGYPT	10	9
EL SALVADOR	13,723	3,035
ERITREA	153	18
ESTONIA	1	3
ETHIOPIA	48	11
FIJI	1	1

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CITIZENSHIP	FY2010	FY2011TD
FINLAND	2	1
FRANCE	13	3
GABON		1
GAMBIA	7	5
GEORGIA	13	2
GERMANY	15	7
GHANA	34	16
GREECE	5	1
GRENADA	1	1
GUAM	1	
GUATEMALA	18,406	6,198
GUINEA	8	7
GUYANA	20	11
HAITI	419	47
HONDURAS	13,580	2,764
HONG KONG	1	
HUNGARY	18	2
INDIA	1,221	1,118
INDONESIA	15	3
IRAN	14	14
IRAQ	17	
IRELAND	13	3
ISRAEL	38	24
ITALY	11	5
IVORY COAST	13	1
JAMAICA	244	65
JAPAN	6	4
JORDAN	17	9
KAZAKHSTAN	10	3
KENYA	21	9
KOREA	1	1
KOSOVO	6	7
KUWAIT	1	
KYRGYZSTAN	3	4
LAOS	12	2
LATVIA	7	2
LEBANON	11	4
LIBERIA	3	1
LIBYA	3	1
LITHUANIA	8	3
MACEDONIA	7	4
MALAWI	3	1
MALAYSIA	13	2
MALI	6	
MARSHALL ISLANDS	1	
MAURITANIA	2	
MICRONESIA, FEDERATED STATES OF	1	
MOLDOVA	17	14
MONGOLIA	13	1
MONTENEGRO		1
MOROCCO	6	3
MOZAMBIQUE	1	
NAMIBIA	1	1
NEPAL	146	25
NETHERLANDS	7	1
NETHERLANDS ANTILLES	1	
NEW ZEALAND	5	1
NICARAGUA	909	199

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CITIZENSHIP	FY2010	FY2011TD
NIGER	3	
NIGERIA	38	8
PAKISTAN	37	32
PANAMA	24	5
PARAGUAY	12	6
PERU	410	148
PHILIPPINES	102	29
POLAND	100	13
PORTUGAL	9	1
QATAR	1	
ROMANIA	412	226
RUSSIA	52	34
RWANDA	1	
SAUDI ARABIA	5	1
SENEGAL	10	2
SERBIA AND MONTENEGRO	13	1
SIERRA LEONE	8	
SINGAPORE	2	1
SLOVAKIA	14	2
SLOVENIA	1	
SOMALIA	9	7
SOUTH AFRICA	21	7
SOUTH KOREA	47	13
SPAIN	8	4
SRI LANKA	203	109
ST. KITTS-NEVIS	3	3
ST. LUCIA	12	2
ST. VINCENT-GRENADINES	6	2
STATELESS	1	1
SUDAN	5	2
SURINAME	2	
SWEDEN	4	1
SYRIA	5	3
TAIWAN	5	5
TAJIKISTAN	2	8
TANZANIA	3	2
THAILAND	21	8
TOGO	3	1
TONGA	1	
TRINIDAD AND TOBAGO	60	22
TUNISIA	1	5
TURKEY	33	14
TURKMENISTAN		1
TURKS AND CAICOS ISLANDS	3	
UGANDA	3	1
UKRAINE	39	13
UNITED ARAB EMIRATES	1	
UNITED KINGDOM	40	10
UNKNOWN	14	
URUGUAY	22	17
USSR	1	
UZBEKISTAN	21	6
VENEZUELA	77	27
VIETNAM	16	5
YEMEN	11	4
YUGOSLAVIA	8	3
ZAMBIA	5	2
ZIMBABWE	7	1

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CITIZENSHIP	FY2010	FY2011TD
Grand Total	59,017	16,605

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