

**OVERSIGHT OF THE U.S. DEPARTMENT OF  
HOMELAND SECURITY**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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OCTOBER 19, 2011

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## **OVERSIGHT OF THE U.S. DEPARTMENT OF HOMELAND SECURITY**

**WEDNESDAY, OCTOBER 19, 2011**

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

The Committee met, pursuant to notice, at 10:07 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feinstein, Schumer, Durbin, Whitehouse, Klobuchar, Coons, Grassley, Sessions, and Hatch.

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

Chairman LEAHY. Good morning, everybody. Thank you all for being here. It has been another good week for our Nation and our Federal law enforcement efforts. Last Tuesday, we learned of the foiled assassination attempt in the United States of the Saudi Ambassador to the United States. This case involved the Department of Justice, the FBI, and the DEA in a coordinated effort to stop an act of terrorism on U.S. soil, and I want to praise the agencies involved in the investigation. I was also pleased to see that, in this instance, Members of Congress did not engage in armchair quarterbacking over whether the suspect should be transferred to military custody or sent to Guantanamo.

I remember nearly 2 years ago, when a terrorist attempted to blow up an airplane on Christmas Day, some politicians used the occasion to criticize the Attorney General after the suspect was arrested. They made all kinds of claims, none of which came true. One I recall was people saying, well, why was he given Miranda rights? Well, most of who have been involved in law enforcement know if somebody is going to confess, they are going to confess whether you give them Miranda rights or not. We obtained a lot of useful intelligence from the suspect. People complained about trying the Christmas day suspect in Federal court. He was tried in Federal court and showed the rest of the world that our courts work. The suspect pled guilty. He now faces a potential life sentence. The prosecution can feel very happy that they followed it exactly the way they did and did not listen to the Monday morning quarterbacks. More than 400 terrorism cases prosecuted by the Department of Justice since September 11, 2001.

Over the last 2½ years, the President and his national security team have done a tremendous job protecting America and taking the fight to our enemies. Earlier this year, the President ordered

a successful strike against Osama bin Laden. He has stayed focused on destroying al Qaeda from his first days in office. I commend the President and the CIA on that success.

Last month, the administration was also able to locate Anwar al Awlaki, a terrorist operative in Yemen who was recruiting Americans to attack within the United States, in one case with horrible and tragic effects at Fort Hood.

Now, do we remain vigilant? Of course. But I think we ought to acknowledge that there has been a great deal of progress made.

In the aftermath of 9/11, the country spent trillions of dollars trying to shore up our security. Some of the efforts, especially those undertaken in the early years, were wasteful and ineffective. The Bush-Cheney administration insisted on shifting our focus from bin Laden to Saddam Hussein in Iraq, even though Saddam Hussein and Iraq had absolutely nothing to do with 9/11. That cost thousands of American lives and added hundreds of billions, possibly over \$1 trillion, to our national debt. We continue to take money from programs in the United States—including education, medical research, infrastructure, and housing—and we dump it into Iraq. I hope that the Nation and the Congress are now ready for a new discussion about the next chapter in our efforts.

Secretary Napolitano, you and I first met back in the days when you were a prosecutor. I have a great deal of admiration for you and the way you have run your office, and I thank you for joining us this today. I look forward to hearing from you what you believe have been the successes of the past few years and what our priorities should be moving forward. I hope that your Department can strengthen its effort to provide help not only to Vermonters but others around the country who have been so devastated by recent natural disasters. That has been an important and necessary role for the Federal Government that is much needed.

I do appreciate all of the Department's efforts to help Vermonters begin rebuilding after the devastating floods we experienced this spring and this summer. I was born in Vermont. I have never seen anything so disastrous in my life. It reminds me of the stories my grandparents and parents would tell me about a disastrous flood from 100 years ago. These emergencies are difficult enough for the Americans living through them, especially as winter approaches. We should not complicate the situation with the added uncertainty that comes from ideological opposition to this fundamental Federal role and that results in Congressional inaction on desperately needed funding for disaster relief. The American people waiting for disaster assistance should not be victimized again. Americans should help other Americans as we have for generations.

As somebody said to me, we seem to have an unlimited amount of money to build roads and bridges and houses in Iraq and Afghanistan, and then they are blown up. Build them in America for Americans by Americans, and Americans will protect them and use them.

We in our State bore the full brunt of Irene. Roads, bridges, homes, farms, and businesses were all destroyed when gentle rivers became torrents of destruction. I want to compliment Craig Fugate, the Administrator for FEMA, and his staff. He came up to Vermont, where my wife and I met with him. I have gone around

and visited a number of the FEMA offices in Vermont, and I thank the FEMA staff for doing such good work.

Border security is another area in which we have progress to report. I think it is finally time to renew a discussion of comprehensive immigration reform, a discussion that went off track after the Senate passed a bipartisan bill in 2006. Madam Secretary, I look forward to your help on immigration reform.

Our work is not done. Change has never been quick or simple. The kind of change brought about by comprehensive immigration reform depends on persistence and determination. I realize it is a different world than when my grandparents, my maternal grandparents, emigrated from Italy to the United States, to Vermont. But we have to realize we are a Nation of immigrants, and we have got to have a better immigration policy.

I look forward to the day when, to paraphrase President Obama, barricades begin to fall and bigotry begins to fade. Then, not only laws, but hearts and minds will change. New doors of opportunity will swing open for immigrants who want only to live the American dream. Our Nation will be stronger, better, and more productive on that day.

So with that, Senator Grassley, I yield to you.

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

Senator GRASSLEY. Oversight is a critical function of our Government, a constitutional responsibility of Congress. It is often an overlooked function for members. It is not always glamorous. It is hard work, and it can be frustrating because of bureaucratic stonewalling.

In 2008, I was glad to hear the President-elect talk about the most transparent Government ever. Unfortunately, this administration has been far from transparent. Today's hearing will give us an opportunity to ask questions that have gone unanswered. I am frustrated by the less than forthcoming answers we receive from the administration when conducting our constitutional duty of oversight.

We need a little bit more straight talk. This Senator for one feels as though our concerns are often dismissed. An example: Just last week, 19 Senators received a response to a letter that we sent to the President about immigration policies. The response did not come from 1600 Pennsylvania Avenue. It did not even come from the Secretary before us. It came from a bureaucrat in the Office of Legislative Affairs. The response was non-responsive. It is as if our concerns are somehow trivial or insignificant.

We wrote to the President about prosecuting discretion directives being issued by the Department of Homeland Security. In June, Assistant Secretary Morton released a memo directing and encouraging Immigration and Customs Enforcement officers to exercise prosecuting discretion. Officers were asked to consider the alien's length of presence in the United States; the circumstances of the alien's arrival in the United States, particularly if the alien came as a young child; their criminal history, age, service in the military, and pursuit of education in the United States.

On August 18th, the Secretary announced an initiative to establish a working group to sort through an untold number of cases currently pending before the immigration and Federal courts to determine if they can be “administratively closed.” Combined, these directives are alarming, especially to those of us who firmly believe in the rule of law.

We have many unanswered questions from this administration about their prosecuting discretion initiatives. We want answers. We want transparency and accountability. Constitutionally, we are a part of the process. The American people are shareholders, and they deserve to be consulted when major immigration policy is being formulated. Americans also want the truth.

I am frustrated about the administration’s deceptive marketing tactics in claiming that they have deported more undocumented people than ever before. The Secretary continues to use statistics that are inflated and inconsistent with the official data produced by the Office of Immigration Statistics. That office has been around awhile—since 1883, to be exact—so I would like to know why the Secretary cherrypicks what numbers she wants to use and refuses to use the statistics provided by the Office of Immigration Reform.

And I will point now to all of you to look at the poster. The Department has a credibility problem. The Washington Post uncovered the story last December. The headline says it all: “Unusual methods helped ICE break deportation records.” The administration, including the Secretary, uses figures prepared by ICE. ICE uses a different methodology, counting deportations from previous years and operating a repatriation program longer to pad the numbers. The Office of Immigration Statistics, on the other hand, only counts removals that actually took place during that year.

Let me provide another example. The Secretary gave a speech at American University on October 5th saying that in 2010 ICE removed over 195,000 convicted criminals. However, the official statistics of the Office of Immigration Statistics is 168,500, so that is a difference of 27,000.

The point is we do not know what to believe. The Department is using different methodologies from 1 year to the next. Homeland Security personnel, according to the Washington Post, are encouraging immigration officials to do what they can to increase the overall removal numbers. There is funny business going on, and the Department’s credibility is at stake.

But do not just take it from this Senator. Even the President acknowledged that the numbers are dubious. During a recent online discussion aimed at Hispanic voters, President Obama said that, “The statistics are a little deceptive.”

So I would like to hear from the Secretary why they continue to use these deceptive statistics and why the Department chooses to use ICE figures which are embellished and inconsistent rather than using the data from the Office of Immigration Statistics.

I would also like assurances again that this administration is not using creative ways to keep as many undocumented people in this country. We have talked a lot about deferred action and parole, but there are many other ideas in the memo.

For example, one of the most egregious options laid out in that memo was a proposal to lessen the extreme hardship standard. The

amnesty memo states, "To increase the number of individuals applying for waivers and improve their chances of receiving them, CIS could issue guidance or a regulation specifying a lower evidentiary standard for extreme hardship."

If the standard is lessened, untold numbers of undocumented individuals would be able to bypass the 3-year and the 10-year bars that are clearly laid out in the Immigration and Nationality Act. I expect to hear from the Secretary if such a plan is being discussed by anyone within the Department. If it is, I will warn her that such an action would be another blatant attempt to circumvent Congress and the laws that we put in place.

On a final matter related to immigration, I am very concerned by the administration's inconsistent position when it comes to suing States for enacting various immigration laws. The administration has sued Arizona and Alabama, and now news reports claim that the attorneys are considering challenges in other States, including Utah, Georgia, Indiana, and South Carolina. But what about cities and States that ignore Federal law? Will the administration turn a blind eye to them?

Finally, I have asked Secretary Napolitano in the past about the involvement of the Immigration and Customs Enforcement officers being detailed to Phoenix to the ATF's Operation Fast and Furious. I also asked the Secretary at a hearing back in June about whether she had had any communication about Fast and Furious with her former chief of staff, Dennis Burke, who was the U.S. Attorney in Arizona responsible for Fast and Furious. I did not get any response back.

Mr. Burke is to be commended to some extent for being the only person to resign and take responsibility for a failed operation. Of course, I do not believe that he should feel obligated to be the only fall guy. If there are other higher-ranking officials in the Justice Department who should also be held accountable, they should also step up to take responsibility.

Thank you, Mr. Chairman.

Chairman LEAHY. Well, thank you.

Now with all those greetings, Secretary Napolitano, please feel free to start. We have Senators Coons, Durbin, Schumer, Feinstein, myself, Grassley, and Hatch here. Others will be joining us.

**STATEMENT OF HON. JANET NAPOLITANO, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC**

Secretary NAPOLITANO. Well, thank you, Mr. Chairman and Ranking Member Grassley, members of the Committee, for the opportunity to testify today.

I would like to update you on the progress we are making, particularly with respect to our efforts to prevent terrorism and to enhance security, to secure and manage our borders and to enforce and administer our Nation's immigration laws. In these and other areas, we have continued to grow and mature as a Department by strengthening our existing capabilities, building new ones, enhancing our partnerships across all levels of Government and with the private sector, and streamlining our operations and increasing efficiency.

Nonetheless, we know the terrorist threat facing our country has evolved significantly over the last 10 years, and it continues to evolve. Perhaps most crucially, we face a threat environment where violent extremism and terrorism are not defined or contained by international borders. So today we must address threats that are homegrown as well as those that originate abroad.

Over the past 2½ years, DHS has worked to build a new architecture to better defend against this evolving terrorist threat. For one part, we are working directly with law enforcement and community-based organizations to counter violent extremism at its source, using many of the same techniques and strategies that have historically proven successful in combating violence in American communities.

We are focused on getting resources and information out of Washington, D.C., and into the hands of State and local law enforcement, to provide them with the tools they need to combat threats in their communities.

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.

We are encouraging the public to play a role in our shared security through the nationwide expansion of the “If You See Something, Say Something” campaign. And we have replaced the color-coded alert system with the new National Terrorism Advisory System, the NTAS, to provide timely information about credible terrorist threats and recommended security measures.

These steps provide a strong foundation that DHS and our partners can use to protect communities, better understand risk, engage and partner with the international community, and protect the privacy rights, civil rights, and civil liberties of all Americans.

Over the past 2½ years, this administration also has dedicated unprecedented resources to securing our borders, and we have made the enforcement of our immigration laws smarter and more effective, focusing our finite resources on removing those individuals who fit our highest priorities. These include criminal aliens as well as repeat and egregious immigration law violators, recent border crossers, and immigration court fugitives. The efforts are achieving unprecedented results.

Overall, in fiscal year 2011, ICE removed nearly 397,000 individuals, the largest number in the agency’s history. Ninety percent of those removals fell within one of our priority categories, and 55 percent, or more than 216,000 of the people removed, were convicted criminal aliens—an 89-percent increase in the removal of criminals over fiscal year 2008. This includes more than 87,000 individuals convicted of homicide, sexual offenses, dangerous drugs, or driving under the influence.

Of those we removed without a criminal conviction, more than two-thirds in fiscal year 2011 fell into our other priority categories: recent border crossers, repeat immigration law violators, and fugitives.

Now, as part of the effort to continue to focus the immigration system’s resources on high-priority cases, ICE, in partnership with DOJ, has implemented policies to ensure that those enforcing im-

migration laws make appropriate use of the discretion they already have in deciding the types of individuals prioritized for removal from the country. This policy will help immigration judges, the Board of Immigration Appeals, and the Federal courts to focus on adjudicating high-priority removal cases more swiftly and in greater numbers, enhancing ICE's ability to remove convicted criminals. This policy will also promote border security as it sharpens ICE's focus on recent border entrants and allows for the expansion of ICE operations along the southwest border.

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

Smart and effective enforcement is just one part of the overall puzzle. This administration is also committed to making sure we have a southern border that is safe, secure, and open for business. We are more than 2 years into our Southwest Border Initiative, and based on previous benchmarks set by Congress, it is clear that the additional manpower, technology, and resources we have added with bipartisan support are working.

Illegal immigration attempts, as measured by Border Patrol apprehensions, have decreased 36 percent along the southwest border over the past 2 years and are less than one-third of what they were at their peak. We have matched decreases in apprehensions with increases in seizures of cash, drugs, and weapons.

Violent crime in U.S. border communities has remained flat or fallen in the past decade. CBP is developing a comprehensive index that will more holistically represent what is happening at the border and allow us to better measure our progress there. I look forward to updating this Committee as those new measures are developed.

Finally, USCIS continues to improve our ability to provide immigration benefits and services to those eligible in a timely and efficient manner by streamlining and modernizing its operations.

We know more is required to fully address our Nation's immigration challenges. President Obama is firm in his commitment to advancing immigration reform, and I personally look forward to working with this Committee and with the Congress to achieve this goal and to continue to set appropriate benchmarks for our success in the future.

So I would like to thank this Committee for its support of our mission to keep the United States safe, and I want to thank the men and women who are working day and night to protect and defend our country, often at great personal risk.

I am happy to take your questions, Mr. Chairman.

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

Chairman LEAHY. Well, thank you, Madam Secretary.

To begin with, you have been attacked for issuing the new prosecutorial discretion policy. All prosecutors, as you know, having been one yourself, have to make at least some decisions based upon resources, whether you are a State's attorney in Vermont or Secretary of Homeland Security or the Attorney General. So I think we have to be realistic about the situation we face.

It would be impossible to deport all of the immigrants in the United States who are undocumented. Nobody is asking the Government to redirect billions of dollars to try to remove 10 million individuals, even if that would be possible. That is not an amnesty policy. Recipients of deferred action do not receive lawful permanent residence. Not all people are going to be granted authorization to work. Meanwhile, as far as I can tell, DHS is still deporting a record number of immigrants each year—in fact, over a million in this administration since President Obama took office.

So let me ask you this: How does this prosecutorial discretion policy strengthen law enforcement and border security? Is it a smart use of our Federal resources? Is it a good use of our Federal resources?

Secretary NAPOLITANO. Well, Mr. Chairman, you have hit the nail on the head. Any prosecution office has finite resources, and you have to set priorities. What has been a bit surprising is the reaction that somehow the prosecution memo that Director Morton issued this summer was something new. In fact, if you go back historically in the immigration area, there is U.S. Supreme Court case law; there are memos from directors in both Republican and Democratic administrations; and it makes common sense.

So when we look at the fact that there are 10 million or so illegal immigrants probably in the country and the Congress gives us the resources to remove approximately 400,000 per year, the question is who are we going to prioritize, and we are very clear: We want to prioritize those who are convicted criminals; we want to prioritize those who are egregious immigration and repeat violators; we want to prioritize those who are security threats, those who have existing warrants. And what you see happening now, particularly over the last year, fiscal year 2011, is that while the number, around 400,000, remains about the same, the composition of those within that number who are being removed is now really shifting to reflect the priorities we have set.

Chairman LEAHY. Let me talk about another issue: what comes across our borders. Right after 9/11, a large number of Department of Agriculture people who checked for invasive pests, and plants coming across our borders were shifted to look for terrorists. We now find that invasive wood-boring pests, such as the emerald ash borer beetle, cost homeowners an estimated \$830 million a year in lost property values; local governments, almost \$2 billion; woodlands that are destroyed; as well as that these pests do to our environment. These pests cost taxpayers billions of dollars a year, plus irreparable damage that cannot be quantified. Too many pests have slipped undetected into the country since U.S. Customs and Border Protection took over these inspections from the Department of Agriculture. They threaten the quality of our Nation's food supply in some agricultural areas, specially items like specifically Vermont maple syrup.

Some Senators in both parties would like to see the inspections return to the USDA. Others say we ought to elevate the agricultural mission within Customs and Border Protection.

What do you recommend that we do? What kind of assurances can you give us that the inspections we need at our airports, our

border crossings, our seaports, even rail, are going to be done the way it should be?

Secretary NAPOLITANO. Yes, thank you, Mr. Chairman. We have within CBP I want to say somewhere between 2,300 and 2,800 agriculture specialists located at the ports of entry to search exactly for what you are suggesting, different kinds of pests, invasive species, things that could wipe out an entire crop or actually an industry very quickly should they take hold in the United States.

We also work with our international partners at the last points of departure for the United States in this regard. I do not have an opinion to express now on whether the Agriculture Department should take over this role, but I will say—

Chairman LEAHY. I understand, but you would accept the fact that it is an important issue?

Secretary NAPOLITANO. Oh, absolutely.

Chairman LEAHY. And I would hope you would look at this very carefully. I just want to make sure that we have the best people possible do it, because the danger to this country is significant.

Secretary NAPOLITANO. I would agree, and the people who do it are specially trained in this regard.

Chairman LEAHY. Let me talk about H-2A agriculture visas. There is considerable unhappiness about how the H-2A program is administered. We in Vermont—and I am sure it is the same in some of the other States represented here—have dairy farmers and other agricultural businesses, such as apple growers, who have experienced very difficult challenges within the Department of Labor and USCIS, and I am afraid we are maintaining something that is fundamentally unfair. I am not alone in my frustration with the situation that dairy farmers and others face. A seasonal visa for a dairy farmer does not do much good.

Senator Lee, who is a member of this Committee, recently introduced a bill to provide dairy farmers access to the H-2A program. Senator Enzi and I previously introduced a similar bill.

Now, if I had my druthers, it would be to tackle immigration in a broad manner, which I tried to do with President Bush, and I praised him in the effort to do it. For now, would you support us in a bipartisan effort to provide some basic fairness in the H-2A program for dairy farmers and shepherders?

Secretary NAPOLITANO. With the caveat that we always want to see the actual language, the answer is yes. We have had this dairy issue for a couple of years now, and our hands are tied until the law is changed.

Chairman LEAHY. And I realize I have gone over my time, but I want to look also at another thing, the question of material support for terrorism. We have seen a case of a refugee who sold flowers, or gave a bowl of rice to a member of a terrorist organization, who is then barred. If somebody gives a donation of \$1, that is one thing. Somebody who gives hundreds of dollars is another. Somebody who sells flowers to a terrorist is not providing support to a terrorist, but actually taking money out of that terrorist's pocket. Can we take a look at the interpretation of what is "material" support so that we are dealing with truly material contributions and not immaterial support?

Secretary NAPOLITANO. And it is also something that obviously involves the Department of Justice, but the answer is yes. For example, I think we have recently been providing some clarification with respect to those who provided medical care. So the answer is yes, we do need to look at some of these on a case-by-case basis.

Chairman LEAHY. With that, Chuck?

Senator GRASSLEY. Thank you.

Thank you, Madam Secretary, for coming. I am going to start out by asking you for some memos that you just referred to that previous administrations have exercised prosecutorial discretion both in Republican and Democratic administrations. I would like to have copies of those, if I could, please.

Secretary NAPOLITANO. Absolutely, Senator, and these memos were actually referred to by date and author in the PD memo that Director Morton issued. But we will give you copies of all of them.

Senator GRASSLEY. Thank you.

Exactly 2 months ago, you announced the prosecutorial discretion initiative focusing on high-priority cases. While you say that the working group is still finalizing the implementation details, this Committee needs some answers about what has been discussed and decided up to this point. We hear estimates of 300,000 cases could be reviewed. Some say it is upward to 1 million. Could you give us an estimate of how many individuals or cases could be reviewed, at least as roughly as you can?

Secretary NAPOLITANO. Yes, Senator. Just referring to the master docket of what is pending in immigration courts now, it is roughly 300,000.

Senator GRASSLEY. OK. Will those with final orders of removal be eligible for relief through this process?

Secretary NAPOLITANO. Absent unusual circumstances, no. This is for cases that are pending are clogging up the docket and preventing us from getting to the higher-priority cases.

Senator GRASSLEY. According to information from your Department, some individuals who are given relief will obtain work authorizations so people with no right to be in the country will be allowed to work here. Is that correct?

Secretary NAPOLITANO. Well, Senator, since around 1986, there has been a process where those who are technically unlawfully in the country may apply for work authorization. This goes to CIS. It is not an ICE or a CBP function. And those cases are reviewed by CIS on a case-by-case basis. So there is no change in that process—it goes back to the mid-1980s and is contemplated now.

Senator GRASSLEY. But, yes, some of them could have an opportunity to work here even though they are here illegally?

Secretary NAPOLITANO. Well, that happens now, Senator.

Senator GRASSLEY. OK. My staff sent over a request for answers about this new process. I would like to have those questions answered in a timely manner, please. Would you do that?

Secretary NAPOLITANO. I would be happy to.

Senator GRASSLEY. OK. Will you commit to keeping the Committee informed as the process unfolds, including providing real-time data on how many people are considered and how many are provided relief, biographical information and the number of work authorizations approved?

Secretary NAPOLITANO. We will be happy to keep the Committee staff apprised. I do not know what you mean by “real time.” With 300,000 cases, obviously you can not apprise a Committee each time a decision is made. But I think we can reach an agreement as to how to keep the Committee appropriately briefed.

Senator GRASSLEY. Periodic updates. Thank you.

When Congress created your Department, there was some discussion about taking away the Department of State’s consular function and giving it to Homeland Security. As a compromise, Congress allowed State to keep it, but gave Homeland Security final authority over visa policies. Congress also dictated that all visa applicants between the ages of 14 and 79 be interviewed in person with only a few extremely limited exceptions. This was because 17 of the 19 September 11th hijackers got visas without an interview and despite putting nonsensical answers on their visa applications. I am concerned about attempts to do away with the required in-person interview. I am concerned about the State Department possibly reinterpreting the law in order to exempt some more people from the requirement. Frankly, this is a September 10th mentality that risks our national security.

Do you think all visa applicants should be interviewed by consular officers abroad? And if you do, will you push back on an attempt by the Department of State to roll back the in-person interview requirement?

Secretary NAPOLITANO. Senator, I need to look into that. You are giving me some new information. I will say this, however: We have our own people in many embassies as visa security program officers who do separate security checks. I think we need to not only support that but look at that function because that is a check against many relevant databases, and we need to do it at least on a risk-based basis.

Senator GRASSLEY. As you heard in my statement, I have got serious concerns about the proposal outlined in a memo released last summer that suggested the Department lessen the definition of “extreme hardship.” I brought this issue up when the memo was released and find it to be an egregious option that we need to discuss. The authors of the memo suggest that some people could apply and receive a waiver to stay in the United States and not be subject to the congressionally mandated 3- and 10-year bars if this definition was watered down.

Changing the standard would be a huge policy change resulting in relief for millions of people who are here unlawfully. Are you aware of any discussion to change or lessen the definition of “extreme hardship”?

Secretary NAPOLITANO. Senator, I think what you are putting your finger on is the fact that the existing immigration law is very difficult. It is something that we would really urge the Congress to take a look at holistically. We are ready to work with the Congress on that.

My discussions have focused primarily on making sure that as we exercise our enforcement functions, we are really prioritizing in a common sense way consistent with what I have been informing this Committee since I first became Secretary.

Senator GRASSLEY. Have you received any memo on that proposal?

Secretary NAPOLITANO. Not that I am aware of, no.

Senator GRASSLEY. Well, if such a memo would arrive at your desk, would you consider it dead on arrival at your desk?

Secretary NAPOLITANO. Well, again, I am not going to speculate on a memo I have not seen, but I understand your concerns.

Senator GRASSLEY. Well, you understand—and I think you expressed it—that Congress needs to deal with that. And if Congress has to deal with it, it would seem to me you can not deal with it through administrative action. That is my point of view.

I mentioned former U.S. Attorney Dennis Burke in my opening statement. This is an issue that I asked you in June to respond to in writing. Have you had any communications with Mr. Burke about Operation Fast and Furious?

Secretary NAPOLITANO. No.

Senator GRASSLEY. So you then obviously did not talk to him anything about Agent Terry's death, and then I will go on to—

Secretary NAPOLITANO. Well, that is a different question.

Senator GRASSLEY. Then answer that.

Secretary NAPOLITANO. If I might—

Senator GRASSLEY. You have had some communication—

Secretary NAPOLITANO. No, not about Fast and Furious. When Agent Terry was killed on December 14, I went to Arizona a few days thereafter to meet with the FBI agents and the Assistant U.S. Attorneys who were actually going to look for the shooters. At that time nobody had done the forensics on the guns, and Fast and Furious was not mentioned. But I wanted to be sure that those responsible for his death were brought to justice and that every DOJ resource was being brought to bear on that topic.

So I did have conversations in, it would have been, December of 2010 about the murder of Agent Terry. But at that point in time there, nobody knew about Fast and Furious.

Senator GRASSLEY. OK.

Secretary NAPOLITANO. So that is a different question.

Senator GRASSLEY. Then the last point here is: Since I first asked you about Fast and Furious in March, have you done things beyond what you just told me looking into it in any way? If you have not, it is OK. If you have, I would like to know about it.

Secretary NAPOLITANO. I did ask ICE to look into whether there had been any involvement there. I think we responded last night to you with respect to that, but that is all. We are waiting for the Inspector General.

Senator GRASSLEY. I will ask you one last question, and then my time will probably be about what the Chairman used.

As you heard in my opening statement, I have concerns that this administration chooses to sue some States, like Arizona and Alabama, and chooses to turn a blind eye to places that are like, I will say, Cook County, Illinois, as an example, that refuse to cooperate with Feds on immigration matters. Have you had any discussion with the Department of Justice about suing cities or States that harbor undocumented immigrants? And what do you think about Cook County's ordinance? Have you had any contact with them about their ordinance?

Secretary NAPOLITANO. I have not had any discussions at this point in time, and I have not had any communications myself with Cook County. But I will say that one of the key tools we are using to enforce the priorities we have set with respect to removals is the installation of Secure Communities throughout the country in jails and prisons.

The huge majority of jurisdictions have no problem with this. We have been improving the system as we have been doing the installation. We intend and expect to be completed by the year 2013.

Senator GRASSLEY. Thank you, Madam Secretary.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, and having removed 397,000 last year alone, you are removing a lot.

Senator FEINSTEIN.

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

Madam Secretary, welcome. You run 22 departments with 240,000 employees, certainly one of the biggest departments in the U.S. Government. I just want to say I think you are doing a very good job. I think the times are tough. I think leadership is very hard in this time, and a lot of things are controversial, but I just want you to know that you have my support. And I also want you to know that I want to do everything we can to prevent guns from going to Mexico because I know where they end up, and that is not good for anyone.

So having said that, I want to concentrate on two programs which I have kind of been at Immigration for for the 18 years I have been here, certainly following 9/11. One of them is student visa fraud, and the other is the Visa Waiver Program.

Let me begin with student visa fraud. I got into this many, many years ago where there was a storefront school next to our San Diego office, and, voila, it turned out to be a phony university, essentially attracting people from abroad illegally to come to the United States on a student visa, and then they just disappeared.

Well, that was a long time ago, but it is still going on, and as late as, I believe, January of this year, there was Tri-Valley University, which is in California, which was apparently authorized for 30 students and ended up with some 1,500. And it was really a scam because they collected up to 5 percent of the tuition—well, each foreign national collected up to 5 percent of the tuition of any new student, and there was profit sharing and really visa fraud.

Today I understand that there are more than 10,500 schools approved by DHS to accept non-immigrant students and exchange visitors to study at their institutions through the Student Exchange Visitor Program. I am concerned about the number that have turned out not to be operating for student purposes. My understanding is that an internal risk analysis performed by ICE determined that 417 schools have showed evidence of being a high-risk school for fraud.

So here is the question: What type of enforcement measures have been brought to bear and initiated by the Department to get at these high-risk schools and shut them down if they are not doing the right thing?

Secretary NAPOLITANO. Senator, I share your concern. We have increased the number of individuals who are looking at the whole

SEVIS program and these institutions. Tri-Valley was obviously one of the cases we brought to light. There have been others. We are working with the Department of Justice on prosecuting the perpetrators and really tightening up on the whole student visa program in that regard.

I would be happy to send you a longer answer as to all of the efforts there, but I think for the purpose of the hearing, yes, this is a concern, and we have been putting additional resources to it.

Senator FEINSTEIN. I can tell you, more than a decade ago, when I looked into it, universities that took these students were not even verifying that they, in fact, were in the university. We had an agreement then through the University Association that that would change. I suspect now that schools have so many financial problems that there may be an inclination, you know, to accept more foreign students who really do not turn up but pay a large amount of money.

Secretary NAPOLITANO. Pay tuition, right.

Senator FEINSTEIN. So I think it is a very good thing to be on your guard, and I appreciate the fact that you are.

My other interest was in the Visa Waiver Program. I believed—and this is over 18 years now—that a number of illegal entries came in through the Visa Waiver Program. If you come from a visa waiver country, you come in without a visa. You are supposed to leave in 6 months. We have had no exit system. We could not tell who was leaving and who was staying.

So a new database system, SEVIS-II, that is supposed to—well, wait a minute. That is the—

Secretary NAPOLITANO. That is the students.

Senator FEINSTEIN. Right, right. So the elec ESTA, the Electronic Travel System, in a recent report by GAO identified several measures that you should take. I sent a letter to you dated August 15th requesting information on your efforts to implement the GAO's recommendations. I am sorry to say I have not received a response.

So here is the question: What are the Department's efforts to implement the GAO recommendations to improve the Visa Waiver Program, in other words, so that we know that someone that comes here leaves when they are supposed to leave? It is supposed to be a visitor program, not a permanent program.

Secretary NAPOLITANO. That is right, and I apologize that you do not have a response. You will get one forthwith. But I will say that, first of all—and this is very common in the GAO. I am not being critical, just descriptive. A lot of times there is a lag between the data they have and what is currently happening, and so as we have improved our systems and as we have been able to merge or develop search engines that can quickly search different databases on a real-time basis, the ESTA numbers have gone up. The checks have gone up, and we have developed a very robust biographic system to measure overstays and to prioritize overstays in terms of who we are going to direct ICE to go out and find.

Senator FEINSTEIN. How many visa entrants are there a year, visa waiver entrants?

Secretary NAPOLITANO. I do not have that number. I will get it for you. It is a lot.

Senator FEINSTEIN. Could you get me that? Could you show me the trend line?

Secretary NAPOLITANO. Yes.

Senator FEINSTEIN. And could you show me the estimates that you have pursuant to this data program of people not returning to their home country?

Secretary NAPOLITANO. That is right. Yes.

Senator FEINSTEIN. I would appreciate that. Thank you.

Thanks, Mr. Chairman.

Senator Hatch.

Senator HATCH. Well, thank you, Madam Chairperson.

Welcome. We are happy to have you here.

Secretary NAPOLITANO. Thank you, Senator.

Senator HATCH. We appreciate the tough job that you have to do. It is a difficult job.

Recently, Immigration and Customs Enforcement, ICE, officials conducted an audit on the Weber County, Utah, jail that concluded that the facility did not meet some of the established ICE detention standards. Now, as a result, the Weber County jail can no longer house approximately 30 to 60 ICE detainees.

Now, they claimed that ICE mandates their detainees do not undergo strip searches, do not have to pay the \$10 co-pays for medical treatment, cannot have their mail read like other inmates, and deserve their own barbershop. The sheriff said that is disparate treatment. He said that gets around immediately. The other inmates resent it, and that gets staff hurt. That gets inmates hurt.

Now, what are the options, in your opinion, and hopefully speaking for the Department, for local jails that are unable to comply with some of the more costly or onerous detention standards? And do you agree that there is a role for some of these noncompliant jails in assisting ICE officials in identifying and removing criminal aliens?

Secretary NAPOLITANO. Well, Senator, I would have to look at this Weber jail situation. We use a lot of jails around the country who have no problem complying with the standards.

Senator HATCH. Would you look at it?

Secretary NAPOLITANO. But we will look into that one.

Senator HATCH. Please look at it, because it just seems ridiculous to me.

Secretary NAPOLITANO. It does not sound completely accurate, if I might say so. I am pretty familiar with the detention standards. So we will take a look.

Senator HATCH. Well, if you would, I would appreciate it because, as far as I know, they are humane and conduct good jails in that area.

Now, one of the recommendations from the 9/11 Commission report is to create a Visa Exit Program for foreign visitors to the United States. Departure information is vital for determining whether foreign visitors are leaving the U.S., maintaining their visa status, and evaluating future visa eligibility for these visitors. Now, not to mention the ability to track departures goes to the heart of keeping our Nation safe.

That is why I reintroduced the Strengthening Our Commitment to Legal Immigration and America's Security Act, which would re-

quire the Secretary of Homeland Security to create a mandatory exit procedure for foreign visitors to the United States. You have approached this to a degree here today, but without such exit procedures, the task of determining whether aliens have overstayed their visas in the United States it seems to me would be nearly impossible.

Now, it is my understanding that since 2004 the Department of Homeland Security has been testing various exit programs and departure controls at U.S. airports for visa holders leaving the United States. And in July 2009, another pilot program was conducted by DHS. Yet we have not seen any implementation of exit procedures for our country's visitors, nor have we seen any final conclusions made by the Department. Or at least I have not seen them.

I would prefer not to create an exit procedure legislatively, but it seems like that may be the only way we are going to get the results that we need on this important matter. And if technology is available to implement an exit procedure, why hasn't DHS acted on this? It has been over 7 years since the first pilot program was completed, and I guess my question is: How many more years do we have to wait until we get this going? Or am I right on these things?

Secretary NAPOLITANO. Well, I think we have to, Senator, distinguish between biometric exit and a very robust biographic exit system that combines a lot of different databases now that we did not have even 2 or 3 years ago. These are new developments.

We have piloted biometric exit. It is very expensive, and in these fiscal times I do not see how, unless Congress is willing to give us billions of dollars, we can actually install it over the next few years. But I think we can basically get to the same point using the biographic exit systems we are beginning to deploy. And we have also been able to go back—and we started this project last spring—and look at the backlog of visa overstays.

One of the things we have discovered using our enhanced biographic system is about half of those people actually have left the country. And now we have run the other half against our priorities—criminal convictions, recent border crossers, fugitives and the like—and that way we can prioritize ICE operations on the overstays to meet our other priorities.

Senator HATCH. OK. Thank you. I have been getting a lot of complaints lately about the checks as you pass through the monitoring stations where people do not want to go through the x-ray station, so they line up on the one side where just the open-door station is. And some of your people force them to go over to go through the x-ray station. And then if they say, "Well, I do not want to do that. I would rather go through the other one," they say, "Well, you can do it, but then you are going to have to be patted down."

Now, my question that they want me to ask is: Why do you need a patdown if they go through that smaller station? Is that just a way of forcing them to go through the other? Or can't they have their choice? And give me the reason why a person cannot have his or her choice if they are just afraid of getting a shot of radiation or whatever it is that they are afraid of or just plain do not like to go through that particular station?

Secretary NAPOLITANO. Well, I can say the answer in one word, and that is Abdulmutallab and others like him who have been trying to bring explosives onto planes or other material that does not have a metal component, and, therefore, the magnetometer will not pick it up. So that is why you see the patdown procedure has been adjusted to reflect, that plain reality.

We actually have been looking nationwide at how we can move people through—we handled about 1.5 to 1.8 million passengers a day in the U.S. air system and things that we can do to make it easier for passengers to process through the system, and we continue to look for ways. But the reason for that basic choice and where we are is the actual threat that we are dealing with.

Senator HATCH. Why can't a person, if they line up to go through the smaller station because that is what they prefer to do, why can't they just do that? Why do they have to be forced to go through the other?

Secretary NAPOLITANO. Well, I do not know about that. I mean, they should usually have a choice. And most people opt for the AIT.

Senator HATCH. No, they do not. I am telling you.

Secretary NAPOLITANO. I will speak with Director Pistole about this.

Senator HATCH. It seems to me, you know, there is—people ought to be able to use either one. Now, admittedly, if somebody looks suspicious, you have got to have that right to have them go through the more serious station, I guess. But the vast majority of people are not suspicious at all. I have just had a lot of complaints from that, and that is something—

Secretary NAPOLITANO. Well, I will be happy, Senator, to look both into the Weber County jail situation and some of those complaints and see what can be done.

Senator HATCH. OK. It is “Weeber,” by the way. We have got to get that right.

Secretary NAPOLITANO. I apologize for that.

[Laughter.]

Senator HATCH. If you would look into that, because that seems ridiculous to have to provide facilities that they are not providing for regular people, and yet they are a humane jail.

Secretary NAPOLITANO. Got it.

Senator HATCH. Thank you.

Chairman LEAHY. I might note, I would like to work with the senior Senator from Utah on the TSA issue he raises. He is absolutely right. You know, many pilots will not go through the x-ray. I realize that some former officials of the Department of Homeland Security have lobbied to get the U.S. Government to spend hundreds of millions of dollars on the x-ray machines. But I have seen exactly the same situation the Senator from Utah has. I have known people, member of my own family, who are cancer survivors and will not go through the x-rays, and then have to wait to clear security. Children have to go through x-rays and patdowns. There is almost an arrogant disregard at TSA for real Americans who have to put up with this screening.

Senator HATCH. Could I add something?

Chairman LEAHY. I share the frustration of the Senator from Utah, and we will work together on this.

Senator HATCH. If I could just add, my wife loves to go through the larger station. I do not know how else to refer to it. I do not. But I have been forced to—I line up to go through that, and I have been forced twice, at least twice. And I always comply, but I am just saying—and I do not ever raise a fuss about it, nor would it. But it seems to me if you do not—maybe I look like a terrorist. I do not know. But I do not think so. I am really very kind and loving, you know.

[Laughter.]

Chairman LEAHY. I do provide a lot of amusement for people who are taking cell phone pictures of me getting the patdown.

Secretary NAPOLITANO. Well, I do have a great crew working at TSA. But I appreciate these concerns.

Chairman LEAHY. At the very top of TSA there is a disconnect with reality.

Senator HATCH. Well, let me just add that I agree with that. I think that your employees have been great. And I will always comply with whatever they say because—

Chairman LEAHY. As do I.

Senator HATCH.—it is certainly right, and I know you will, too. But there is a ridiculous nature to it, too, sometimes, and they have always been very gracious and nice to everybody I have—

Secretary NAPOLITANO. Well, I think we can continue to look into it and to improve, and we will work with you. We will look into your complaints. I understand that and why people get concerned and frustrated when they travel. But I also think we have the safest aviation system in the world, and there is a reason for that. But, Senator, I will give you that. You look kind and loving—

Senator SCHUMER. He usually is.

Secretary NAPOLITANO.—and we should be able to handle this, and also look at some of the things that are coming in.

Chairman LEAHY. I understand the people that work there are some of the nicest people I have ever met. I just worry about some of the directions they are getting from on top, which are so unrelated to reality it is frustrating.

Senator HATCH. Sometimes.

Chairman LEAHY. Senator Grassley reminded us of the risks our Federal law enforcement officials face. Since the beginning of 2009, 12 Department of Homeland Security law enforcement officers have lost their lives in the line of duty. I am going to put in the record their names, because that is one thing that unites every single one of us on this panel, the grief we feel when they have lost their lives.

It is also a reminder that people in your Department put their lives on the line every single day for all of us, including the TSA folks. I just want to note that.

Secretary NAPOLITANO. Thank you, Mr. Chairman.

Chairman LEAHY. Senator Schumer.

Senator SCHUMER. Thank you, Mr. Chairman.

Well, let me pay you a compliment to start off, Secretary Napolitano. I think your administration is doing—I want to pay a compliment on immigration enforcement because your administration is the first really to take a rational approach to this issue, and the statistics speak for themselves. You are using scarce enforce-

ment resources to deport many more dangerous criminals than prior administrations, and you are focused very carefully on making us safer rather than causing disruptions to the economy or families to placate critics who will look for reasons to fault you regardless of how you enforce the law. It makes a great deal of sense when you have scarce resources to focus on those who are dangerous criminals, not willy nilly across the map, and that is what you are doing. So keep up the good work on that.

I sent you a letter on April 14th that asked you to implement these changes. You are doing it, and you are doing a good job.

Secretary NAPOLITANO. Thank you, sir.

Senator SCHUMER. Now, a couple of questions, one about the Peace Bridge up on the Buffalo-Canada border, of great importance to the western New York economy. In yesterday's *Globe and Mail*—I take it that is the *Toronto Globe and Mail*—there was an article indicating there is an imminent border security agreement between the U.S. and Canada. The article specifically quotes CPB Commissioner Alan Bersin, who says he thinks, "The United States needs to find ways of expediting low-risk cargo and travelers to focus resources on high-risk traffic."

Nowhere is that more true than on the two bridges we have in western New York—the Peace Bridge and the Lewiston-Queenston Bridge. They are respectively the third and fourth busiest commercial crossings in the Nation, handling \$30 billion in commerce between the U.S. and Canada. But my office has been fielding lots of complaints from business leaders and average citizens about the length of time it takes for commercial traffic to enter the U.S. from Canada, and that is mainly because the space on the New York side of the border is very small. There is plenty of space on the Canadian side. If we could do the inspections on the Canadian side, which everybody wants, it would be good.

So can you commit to me that as part of any future border deal with Canada you will expedite commercial truck traffic to the United States from Canada by prescreening trucks on the Canadian side of the Peace Bridge and that this prescreening will begin soon?

Secretary NAPOLITANO. Yes.

Senator SCHUMER. Great. There is no better answer than that. Yes and yes. I will take it yes to both, right? Good. OK. Let us go on to our next one. See, it always pays to start off with a compliment.

[Laughter.]

Secretary NAPOLITANO. You can do that again if you want.

Senator SCHUMER. Nanotech threats. Recent reports have highlighted—but, no, I am glad to hear it because this, as you know, has been a nightmare for us on the Peace Bridge, long before you were—

Secretary NAPOLITANO. If I might, let me expand. I thought your question permitted a yes-or-no answer, and I thought I would give you one.

Senator SCHUMER. Great.

Secretary NAPOLITANO. We really are very interested in how we can expedite the free flow of goods on both borders, northern and southern, and looking at ways where we can do pre-inspections, if

not actually preclearance, on the Canadian side and to facilitate that into some of the smaller areas onto the U.S. side. So you have clearly got our attention. We have been working on this with—

Senator SCHUMER. This is just what we need because you could have a whole lot of booths on the Canadian side; you cannot on the New York side, just by the geography.

OK. Let us go to nanotech. Recent reports have highlighted an emerging threat to the U.S. There is a growing concern that universities with nanotechnology research programs could be attacked by package bombs from Mexican terror groups who oppose nanotechnology for religious or cultural reasons. These same terrorists are already linked to attacks in Mexico, South America, and Europe. Praise God, none of them have happened here so far, but they clearly have an ability to cross international borders.

New York State is one of the leading nanotechnology hubs with facilities in Albany and Troy—the capital region is probably number one in the country—and in Rochester. At the moment it is my impression that the Department of Homeland Security is not participating in efforts to keep schools and other hubs safe from attacks.

Can you commit to working with and helping our New York universities and nanotechnology hubs with their ability to detect and thwart potential threats? And is your Department assisting the FBI to try and go after these groups?

Secretary NAPOLITANO. Well, without commenting on investigations in an open setting, I will say that we are working with universities and schools across the country on a number of things to increase their security measures.

Senator SCHUMER. OK. We have not had that with the New York schools. Can you commit that you will work with the New York schools?

Secretary NAPOLITANO. Let me look into this, Senator, and we will get back to you on that in terms of exactly what is going on.

Senator SCHUMER. OK. Good. But I am sure you would have no problem working with our New York schools to make them safer.

Secretary NAPOLITANO. No.

Senator SCHUMER. Good. Thank you. And, finally, this is about fake IDs from China. I wrote you a letter in August, you may remember, about companies in China who produce exact replicas of driver's licenses from various States for sales to people who might be terrorists, illegal immigrants, or probably primarily underage teenagers trying to drink illegally. These licenses are very well done, with the bar code and everything else, so it is very hard for the person at the bar, or wherever else, to actually detect that they are false. Sometimes you can detect it by a false address, but they usually give an out-of-State one. So if a New York bar in Syracuse gets a driver's license that says 123 Elm Street, Altoona, PA, he has no idea that there is no 123 Elm Street, Altoona, PA.

Last week, Western Union gave me good news by agreeing to work with the DHS to refuse payments to businesses who, when you indicate to them that they are providing fake IDs from China—this is the only way to cut it off if we do not allow them to wire money. That is what they do. And Western Union took a big step forward there. But despite this accomplishment, the work is not

done. These new false IDs pose a major threat to the security of the U.S. as anyone who is on a no-fly list and terrorist watchlist can now evade our defenses by using these licenses to fly on airplanes with a false identity. A TSA agent who has the backlight is incapable—it is not their fault; I think they do a good job—is simply incapable of detecting whether these IDs are real or fake.

So I am asking you to begin installing integrated electronic ID readers at TSA security points that can electronically scan and verify that the identification provided by an airline passenger in order to board a flight is indeed valid lawful identification. The readers should also electronically scan the name against terrorist watchlists, no-fly lists, et cetera.

Are we on any path to doing this? What is happening? Can we expect it to happen?

Secretary NAPOLITANO. Yes, we are on a path. There is an installation plan. Part of it may be dependent on what we get in the fiscal year 2012 and fiscal year 2013 budgets, obviously, but we are on a path to have these integrated readers and are doing a number of other things for the detection—not just detection of fraudulent documents, but the flip side of that is verification of actual identity.

Senator SCHUMER. Yes, OK. That is great. Well, thank you for your very fine answers on every question I asked.

Secretary NAPOLITANO. Thank you, Senator.

Chairman LEAHY. Senator Sessions.

Senator SESSIONS. If you need to go, I will pass.

Chairman LEAHY. Senator Durbin.

Senator DURBIN. Thank you, Senator Sessions, and thank you, Madam Secretary.

Congress has dealt you and the President an impossible hand. The United States has a confusing, dysfunctional, and often cruel immigration system, and you are charged with executing the laws that are associated with it. We all know as Senators and Americans that undocumented workers are an essential part of our economy, from the fields and orchards of California, Arizona, Utah, and Florida, to the meat and poultry plants of Iowa, Illinois, and across the Midwest, to the major restaurants in Washington, D.C., and Chicago. We avert our eyes and pretend these workers are all legal. We know better. They are an essential part of our economy, and yet there is this revulsion, aversion, and negative feeling about this, and you are caught in the middle. You are given these laws and are told, “Make them work.”

I think you are right to speak about the issue of prosecutorial discretion. Every President and members of the Cabinet under the President have that responsibility, even recognized by the Supreme Court. And I certainly think you were right on August 17th when you sent me a letter saying that DHS will review all pending deportation cases, and that cases involving criminals and threats to public safety will be given priority while low-priority cases will be closed in many instances. You also said DHS would issue guidance to prevent low-priority cases from being put into deportation proceedings in the future.

I appreciate your commitment to this process, but I am concerned. It has been 4 months since the Morton memo was issued and 2 months since you announced the process for implementing

it. The review of pending deportation cases, as I understand it—correct me if I am wrong—has not yet begun. In fact, we do not even know what the criteria will be for the review, and you have not issued guidance on who will be put into deportation proceedings in the future.

So when will your review of pending deportation cases begin?

Secretary NAPOLITANO. Well, the review of pending deportation cases—I think it is important to segregate cases coming into the system versus those that are on the master docket already. That is the 300,000 that I was referring to with Senator Grassley earlier. Those cases, that process involves not just DHS but DOJ as well.

There has been an interagency group working on how you actually accomplish that. My understanding is that within the next few weeks they will begin piloting in certain districts the actual review and hope very shortly thereafter to begin going through the master docket cases.

The goal, of course, is to administratively close some of the low-priority cases so that we can facilitate handling the higher-priority cases. In a way, we are kind of reverse—we are trying to adjust the line in terms of who goes through.

Now, in terms of—

Senator DURBIN. What is the timeframe?

Secretary NAPOLITANO. I do not have an end timeframe, but I can share with you that I would expect the full review process to be—the pilot will start in a few weeks. I would say 2 to 3 weeks. The pilot is not going to be one of these 6- or 12-month typical pilots. It will be very short in its design to find logistical issues that happen when you are trying to do a massive review of lots of cases all at the same time. So we all want to move as quickly as possible once we have kind of identified that we have got the logistics down.

Senator DURBIN. So let me ask you this: There are troubling reports that there are ICE and CBP field offices which have announced that these new deportation priorities do not apply to them. Is that true?

Secretary NAPOLITANO. Well, if there are some, I would like to know about it. I have personally, by VTC, spoken with the heads of the ICE ERO offices across the country and the heads of the OPLA offices across the country, which are the regional counsel. My understanding is that they are very excited about having clear priorities, that the priorities are the right ones. The priorities actually, Senator, I gave this Committee—in May of 2009 I said we were going to start moving the system so we could focus on criminal aliens, and that is what we are doing.

Senator DURBIN. I was going at this point to show the faces and tell the stories of three DREAM Act students whom I believe most people would agree, having been brought to this country at a very early age, have made an amazing record in their short lives and are being held back from contributing to the United States. And I certainly believe the President's criteria and your criteria are the right criteria. Let us focus on removing those people who are a threat to our Nation. That should be our highest priority, and it certainly will not include these college graduates desperate to go to

work and make this a better Nation. So I hope that you will continue along this line on an expedited basis.

Last night, you may have seen or heard about the “Frontline” program that—

Secretary NAPOLITANO. Oh, I have heard about it.

Senator DURBIN. Yes. It went into some detail about the immigration detention facilities. It focused on a number of them, but particularly on the Willacy Detention Facility in Texas. I learned a lot about—“Frontline” always does a great job. But I learned a lot about the situation as I followed this program, that some 85 to 90 percent of those who were detained under civil charges—not criminal charges but civil charges—do not have benefit of counsel, that the due process requirements are very limited on their behalf, and that many times they are in facilities that are privatized—private businesses that are doing them and we do business with them. It has become a huge industry. I understand it is about \$1.7 billion a year that your agency spends on these immigration detention facilities.

There was an aspect of this program, though, that was particularly troubling. Maria Hinojosa in part of that program had a woman who was a victim at this Willacy Facility. She had been raped, and her identity was hidden from the camera, and she told her story about how it was virtually impossible for her to even seek justice in this circumstance because she was totally at the mercy of the guards in this privatized facility.

Now, I joined with Senator Sessions and some of my other colleagues in passing the Prison Rape Elimination Act of 2003, and I thank Senator Sessions for his leadership on this, to eliminate sexual abuse in custody in the United States. We wanted to create a zero tolerance policy. The “Frontline” episode was not the first time we have heard troubling reports about sexual abuse suffered by those in immigration detention. The National Prison Rape Elimination Commission said in its report, “Accounts of abuse by staff and by detainees have been coming to light for more than 20 years. As a group, immigration detainees are especially vulnerable to sexual abuse and its effect while detained due to social, cultural, language isolation, poor understanding of U.S. culture and the subculture of U.S. prisons, and the often traumatic experiences they have endured in their culture of origin.”

The Commission issued proposed standards. The Department of Justice is now finalizing its national standards to prevent, detect, and respond to prison rape. In April of this year, I wrote a letter to Attorney General Holder emphasizing the importance of strong standards.

What is the Department of Homeland Security doing to ensure that immigration detainees are safe from sexual abuse whether they are in ICE facilities or contract facilities?

Secretary NAPOLITANO. When I took over as Secretary, Senator, we found that there were little or no standards being applied uniformly across all of the many detention facilities that we use in the ICE context. Some of them are public jails, like Weber County, as Senator Hatch referred to. Others are privatized, companies like CCA. We have to have beds and, in particular, given our priorities

and how we are managing the system, we need beds that are near the southern border.

We have as part of that process brought in someone to actually look at standards, and we redid our contracts with some of the private providers. We do have a process by which we are regularly auditing and overseeing what is happening there, but that is not to say that there are not cases that are particularly horrific.

We also have, Senator, really tried to emphasize the availability of visas for those who are victims of crime, particularly victims of sexual crime and domestic violence, and we are trying to get out into the field the fact of the matter that the Congress and the regulations do permit these visas.

So we will obviously review the documentary that was on last night and follow up appropriately.

Senator DURBIN. Please do.

Secretary NAPOLITANO. And we will keep you posted about that.

Senator DURBIN. I am going to send you a letter, and I thank the Committee for its patience here. I just want to make one last point.

We spend, annualized, about \$40,000 a year for each of these detainees when you figure \$120 a day is the number that I have been told, and I am trying to discount that thinking some are probably not that expensive.

Secretary NAPOLITANO. That is probably a good average number.

Senator DURBIN. A good average? \$40,000 a year. It is not that they are charged with a crime. They are in for a civil offense. They have no benefit of counsel, 90 percent of them, and very few due process rights, limited command of the English language, and they are easily victimized. I think we have a responsibility to treat them humanely and fairly in this situation. So my follow-up letter to you will not only address this issue of standards to protect them from sexual assault and rape, but also to go into questions about those with mental disabilities who have been brought into this system.

There was this awful, awful case in San Diego that was prosecuted or raised just a few years ago where they have two individuals who suffer from serious mental illness who had been in the ICE system, lost in the system for 4 years. Four years. What I read and learned since the program last night and my study, there are totally inadequate medical facilities and staff for the people who are in these detention facilities, from psychologists and psychiatrists to nurses and dentists.

I mean, really, if we are going to take the responsibility of incarcerating them, we have a responsibility to treat them humanely. And I want to work with you to make sure that happens.

Secretary NAPOLITANO. I concur. Thank you.

Senator DURBIN. Thank you.

Chairman LEAHY. Thank you very much.

Senator SESSIONS.

Senator SESSIONS. Thank you, Mr. Chairman, and it is a criminal offense to enter the United States illegally. It is not a civil matter. And we do provide health care for people who are captured entering the country illegally that need it, do we not, Madam Secretary?

Secretary NAPOLITANO. Yes, we do.

Senator SESSIONS. So here you have got somebody entering the country and they have got a health problem, and we apprehend them and then we give them health care. I think in general they are being treated well. And isn't a fact that under Operation Streamline, people that are apprehended and prosecuted through a misdemeanor usually, I understand, prosecution, unless it is a repeat offense, are deported in far less than a year's time?

Secretary NAPOLITANO. I think that is right, Senator. I would have to confirm, but I think that is right.

Senator SESSIONS. I think it is except for people from distant lands who you have difficulties returning them.

Secretary NAPOLITANO. The country may not want to accept them. That is right.

Senator SESSIONS. Madam Secretary, I am very concerned about the morale of our ICE officers. I have spent 15 years as a Federal prosecutor working with customs officers and Border Patrol agents and others. You like to see them motivated, excited about their work, believing in their work, and they have to believe that people at the top support them and believe in the mission they have been given. And there is a real problem with this.

In June of last year, the ICE union cast a unanimous vote of no confidence in the Director of Immigration and Customs Enforcement, Mr. Morton, and the Assistant Director of ICE Detention Policy and Planning, Phyllis Coven. That was just last June. And they found that, "Senior ICE leadership dedicates more time to campaigning for immigration reforms aimed at large-scale amnesty legislation than advising the American public and Federal lawmakers on the severity of the illegal immigration problem, the need for more manpower and resources within ICE and ICE ERO to address it." They are currently, they say, "overwhelmed by a massive criminal illegal alien problem in the United States."

They go on to say—this was in 2010—"ICE is misleading the American public with regard to the effectiveness of criminal enforcement programs, like the Secure Communities programs, and using it as a selling point to move forward with amnesty-related legislation." This is their statement.

Then, again, in June of this year, they report in this release, "ICE Union leaders say that since the no-confidence vote was released problems within the agency have increased, citing the Director's latest Discretionary Memo as just one example."

"1A'Any American concerned about immigration needs to brace themselves for what's coming,' said Chris Crane, president of the National ICE Council which represents . . . 7,000 ICE agents, officers and employees." It goes on to say, "This is just one of many new ICE policies [in queue aimed at] stopping the enforcement of U.S. immigration laws in the United States. Unable to pass its immigration agenda through legislation, the administration is now implementing it through agency policy."

And he goes on to note that while immigrants' rights groups and other were involved in this policy, no input in these policies was received from the agency and its employees, which is one of the previous complaints that they have had.

So, Madam Secretary, first, are you concerned about this? For 2 years now, it appears that the representative group for these offi-

cers has voted no confidence in your leadership. And to what extent have you confronted this question, met with them, examined the charges that have been made, and made a formal response to them?

Secretary NAPOLITANO. Well, let me, if I might, Senator, I like you have worked as a prosecutor for many years, particularly on border and immigration-related matters, and I believe that the priorities we have set are actually enhancing morale amongst our troops. And I think results matter, and the results are really incontrovertible now. We are—

Senator SESSIONS. Well, let me say—

Secretary NAPOLITANO [continuing]. Removing more criminals from the United States than at any prior time.

Now, with respect to priorities that have been set, when you actually read what Director Morton sent to the field, he refers in that document to a number of prior memos by prior directors that were in his or similar positions back in the old INS days, and the priorities set are very similar historically. And that is because they make common sense, and they reflect the reality that we have never had enough resources to remove everyone who is in the country illegally. And so you have got to have priorities and give guidance to the field across the country about what the priorities are.

Senator SESSIONS. Well, I am just focusing mainly on the problems within the Department. I am told from the leaders of the ICE officers that morale is very low, and that they believe the new standards calling on them to consider DREAM Act-type issues in determining whether or not the person they detained ought to be released or not, whether they have got a high school diploma or whether or not they might be a witness to a crime, that these are very confusing directives and that it makes it more difficult for them to act effectively to apprehend people here illegally.

I see you look with—you are very disdainful about—

Secretary NAPOLITANO. Not disdainful. I am not disdainful—

Senator SESSIONS. I would just say that these are people on the front lines. You have not been out there having to deal with these arrests every day.

Chairman LEAHY. Let the Secretary answer the question.

Senator SESSIONS. And I say for me, as a person who has worked with Federal agents for years, when you hear this kind of comment and votes of no confidence—I have never heard of that—you should be paying real attention to them, not rolling your eyes at them.

Secretary NAPOLITANO. I am not rolling my eyes. What I am suggesting is that results matter here, and priorities really matter, and that the results reflect the priorities we have set. And these are priorities that are consistent with prior administrations and, indeed, with what I testified to this Committee my first months in office, that this is what we were going to do.

Senator SESSIONS. Well, I am told the ICE carried over from last year 19,000 removals, and they are counting them this year, and it is sort of a gimmick to making the removals look higher than they are. Are you aware of that?

Secretary NAPOLITANO. Oh, I think what you are referring to, Senator, is in the movement from fiscal year 2009 to fiscal year 2010, we made the decision that we would not count a removal

until there was an actual verified departure from the country. And that had the effect of moving some removals from 2009 into 2010 because there was a calendar—you know, there was the removal order, but we did not actually verify the departure until fiscal year 2010. We have continued that practice into fiscal year 2011, so that the comparison between the 2010 and 2011 numbers are exactly the same.

Senator SESSIONS. What I am hearing is that while claiming to arrest more criminal aliens, internal ICE documents show that DHS leadership has ordered field officers not to arrest fugitives and re-entries, and leadership efforts to conceal this from the public have led to confusion in the field. Officers are afraid to arrest, and suspected illegals have been aggressively pushing back, even showing agents the memo that you have. When they stop them, they show the memo and say, “President Obama says you cannot arrest me.”

Secretary NAPOLITANO. Well, if they say that, they are not reading it correctly because that is exactly not the case. They can be arrested. But at some point in the process, there need to be decisions made about who is to be removed.

Now, we just had a discussion with Senator Durbin about how much it costs to detain somebody. It costs in the neighborhood of \$23,000 to \$30,000 to actually remove somebody. That is our cost. That does not include Justice Department costs. The Congress gives us the ability to finance removals of 400,000 people a year. We can just remove anybody without any priorities, and that would be one way to do it. Or the other way and the better way, and probably the way you ran your office when you were a prosecutor, is to say we want to focus on expediting the removal of those who are criminals, of those who are fugitives, of those who are repeat violators, of those who are recent entrants, meaning within 5 years, into the United States. And what you are now seeing is that the numbers reflect those priorities.

Senator SESSIONS. Well, you have a problem with morale. I am confident—I think the officers feel like you have spent more time talking with the activist groups than the officers themselves and drafting guidelines that help them do their job.

Thank you, Mr. Chairman. I am sorry to run over. You were patient.

Secretary NAPOLITANO. Thank you, Senator.

Chairman LEAHY. Thank you.

Senator Coons.

Senator COONS. Thank you, Madam Secretary, for your testimony in front of this Committee and for your disciplined and determined leadership of this remarkably far-flung and broad agency in these very difficult times. It is always a source of some pleasure and pride for me to see a fellow Truman Scholar also do well. And as other members of the Committee have commented, you face some enormous challenges, and I just want to commend you for the work you are doing given the limited resources you have got available to you and given the great pressures to keep America safe and to secure our borders and to respect our Constitution and to advance our national interests.

Of the six priority mission areas for DHS, there is one that has not been touched on at all, and I wanted to take some time with it today, which has to do with ensuring the safety and security of cyberspace for the United States.

I earlier today was at a secure briefing that was hair-raising—probably not in my case hair-raising, but was deeply concerning—about cyber attacks and the coordination between the intelligence community and DHS. Recently, a University of Delaware instructor, actually the man who also wrote “Black Hawk Down,” came out with a book, “Worm: The First Digital War,” which lays out a fairly disconcerting picture of the connection between the private sector and Government and how we are doing at coordinating our defenses and preparedness.

Tell me if you would just at the outset how you see your Department coordinating with DOD, with the intelligence community, and with the private sector in making sure that we are sufficiently prepared defensively for the assaults that I really think are coming at us on a regular basis.

Secretary NAPOLITANO. Thank you, Senator. In fact, I was just in New York yesterday meeting with a number of individuals from the private sector, the financial institution sector, and the FBI on how we are coordinating in the protection of the cyber networks on which their operations depend.

We really view ourselves, and I think the analysis is coming out and, legislation will come out, that DHS will have a primary responsibility with the protection of dot-gov networks and with the intersection with the private sector. We also through the Secret Service do crimes that are committed on the Internet, and we also do through ICE other kinds of things like child porn, for example, on the Net.

But with respect to the protection of critical infrastructure networks, that is in our NPPD Division. We have a memorandum of agreement with the Department of Defense on this, and we also have a memorandum within them as to how we can both utilize the technological resources of the NSA.

This is an area where, in my judgment, we need to grow. I think we will have a continuing and expanding threat. There is not yet any kind of international framework on which to hang our hats, and so there are a lot of challenges here, but it is definitely an area that we are moving forward on.

Senator COONS. Thank you. Two things, if I might. In your written testimony, you reference a number of very successful partnerships with local law enforcement, with local communities, the “See Something, Say Something,” Nationwide Suspicious Activity Reporting Initiative, the Secure Communities Initiative. What do you see as the future role for local law enforcement, for local first responder communities, and, frankly, for the National Guard and Reserve in providing some of the first points of contact and a trained workforce to help provide the sorts of security for infrastructure, for local communities, and for local government as we build out towards a future where you are literally policing an online border?

Secretary NAPOLITANO. Right. We are discussing it with our local and private sector partners. But I think this will be a unique area for the fusion centers to help. The fusion centers are designed to

be kind of an all-hazards collocation center. Almost all of them now have access to real-time classified information. I think through the fusion centers we can expand our local and private sector reach into the cyber arena.

Senator COONS. One of my larger concerns about cybersecurity long term is the protection of American intellectual property as well. A number of the more egregious recent intrusions have been not just to access banking data or financial data or to steal people's identities for financial gain, but also to download or take very large quantities of American innovation and invention. So I just wanted to point you to a number of initiatives that folks on this Committee are taking. I hope to work with you and your Department in making sure that the legal infrastructure we put together makes sense and is responsible.

I am also particularly concerned about infringing shipments, so I will move to that for a moment. My impression is that there are some ongoing challenges with Customs and Border Patrol when it intercepts shipments that it believes contain counterfeit goods and whether or not they share that information promptly and appropriately with the rights holders in a way that allows them to determine whether what is being blocked at the border is, in fact, counterfeit. That is something that some questions have been raised about whether CBP really has the necessary authority to share information about suspected infringing shipments with the rights holders and whether they can actually successfully protect shipments in a timely way. I would be happy to follow up further with your office if that is not something that is clear.

Secretary NAPOLITANO. Let us do that.

Senator COONS. A last question, if might. The EB-5 Immigrant Investor Visa Program can be a real opportunity to attract to this country foreign nationals with significant resources who want to invest them in American companies or in American communities. Our State Director of International Trade has been trying to be successful in this, but the areas that have been most successful have been through regional centers where they are able to aggregate significant numbers of EB-5 applicants. And he has found real difficulty in getting clear information about which regional center models are more successful, which have had the greatest success, and so I just wanted to leave with you a question about whether DHS might release more information about which of the regional centers and which models have been more successful than others.

Secretary NAPOLITANO. Yes, Senator, I think we would be happy to have someone meet with the individual you refer to and really look across the country and see what is going on.

Senator COONS. And I look forward to questions from my colleague about visa programs and how we can help advance tourism in the United States. I think there are good opportunities for us as well as challenges.

Secretary NAPOLITANO. Indeed.

Chairman LEAHY. We yield to your colleague from Minnesota, Senator Klobuchar.

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

Thank you, Madam Secretary, for being here and for the work that you are doing every single day. I want to mention two things

that I do not know have been discussed. I have been here for most of the questions, but just first is the good work that you have done in our area on flooding issues that FEMA has done in the Red River Valley and Administrator Fugate for his assistance during the Red River floods. It was very much appreciated.

Secretary NAPOLITANO. Great.

Senator KLOBUCHAR. And then the second piece of this is the work that I do not think many people focus on that you do with adoption when things come up and helping parents adopt children from other countries and some of the issues that come up. I did want you to know—at the last hearing I asked you about a family from the Philippines. Senator Sessions and Senator Inhofe and I worked together to pass a bill, as you know, which allowed older siblings, if they turn 16 or 17, to still be adopted if they have a younger sibling that is adopted. This literally allowed 10,000 kids retroactively to come into loving homes in our country. One of them was the Mikouras family that I brought up, and thanks to the help of your agency—they were going to have to leave the two older kids that had held this family of nine together when the mom died, and thanks to the work of your agency, the two older kids were able to get on that plane with the family. I met all nine children at a celebration in the community, and it would not have happened without the work of your agency, so I want to thank you for that on behalf of the family.

Now, I am also on the Commerce Committee, and so I wanted to focus on some of those related issues. The first of which I know we have been talking about is the aviation security. It has been my impression—as someone with a hip replacement, that I deal a lot with your TSA people, and there has been a great improvement in morale over the last few years. They especially appreciate the vocal defense that you and Director Pistole have given to them when questions have been raised. And obviously questions should be raised, but overall they are protecting the security of the people of this country, doing incredibly difficult jobs. And the issue that I wanted to raise was just the new stick-image body scanner. Obviously that has been a concern of some people with the new security that is there. I have not had a problem with it at all. I think it is a great thing because it goes faster. But could you discuss this new software and give your assessment of how it has been working?

Secretary NAPOLITANO. Yes. We have begun installing software that, rather than the smudged photo-like image, is just a stick figure, and it identifies where there may be an anomaly that requires something needs to be checked. They may have forgotten to take something out of their pocket. Initially when this was being deployed in, I think it was, Schiphol Airport in Amsterdam, there were a lot of false positives. But those problems have been rectified, and so we are now in the process of installing that type of software throughout the country.

Senator KLOBUCHAR. Good. And what is happening with the Pre-Check pilot, which is, I think, implemented to—it is, again, some pilots that are going on to speed things along.

Secretary NAPOLITANO. That is right. “Pre-Check” is the name for the program. That is the domestic version of Global Entry. It is the

process by which people can voluntarily provide information and biometrics, and then that will help speed them through the check-in or the security lines. Obviously, one of the issues with the pilots is going to be scalability given the number of passengers we have on a daily basis. But my initial reports are the pilot is very popular, and people really like it.

Senator KLOBUCHAR. OK. Senator Coons mentioned the tourism work. I chair that Subcommittee of Commerce along with Roy Blunt, and we just introduced the International Tourism Facilitation Act, which we worked with the State Department on those issues to make sure that we were doing something that had a chance of passing. We have also seen some improvements. We are waiting to get the exact numbers in the consulate offices on the State Department side and processing some of those.

As you know, since 9/11 we have lost 16 percent of the international tourism market, which is about 467,000 jobs, and so while we want to keep all those security measures in place, as my colleagues have discussed, we also want to see if there are ways, while keeping them in place, that we can make them more efficient. Even if we had one more point of that international tourism market, it is 167,000 jobs in this country, and they are going nowhere else. They are jobs in the country.

And so my question was about the background checks for tourist visas. They are performed by the State Department, but DHS does play a role in running background checks when a tourism B-1 or B-2 visa holder applies for an extension. Are you familiar with that? And how can we make that run more smoothly?

Secretary NAPOLITANO. Let me, if I might, Senator, check into that and perhaps have someone meet with you. When you say "more smoothly," that suggests that there are some problems. Let us figure that out and see what is going on.

Senator KLOBUCHAR. Senator Blunt and I view this whole thing as workable. We do not want to change your security, but we really believe—and it is mostly consulate officers on the State Department side—that you can process these faster, and this is one issue that has come up with the DHS side. So we would love to work with you on it.

Secretary NAPOLITANO. Right, and as the former Governor of a State that was heavily dependent on tourism, I appreciate the fact that this is a jobs issue.

Senator KLOBUCHAR. Yes, it is really a big jobs issue, and we are actually excited about the new efforts going on, which we have just had no change for the last 2 years, and suddenly there seems to be a lot of interest in making some changes. So we are excited about that.

The last thing I just want to follow up on was the cybersecurity issue. I share Senator Coons' view that this has got to be a public-private partnership. When you look at the fact that the private sector owns more than 80 percent of the networks, the cyber system networks, what more do you think we can do to encourage businesses and institutions to work with the Government on cybersecurity challenges?

Secretary NAPOLITANO. Well, I think this is one of the key issues that the Congress will have to take up when it takes up, hopefully,

cybersecurity legislation. But the extent to which particularly private business that is controlling critical infrastructure of the country should give notice if there has been an intrusion or an attack, what kind of notice, how is it shared, what is the Government's role, is this an incentive, is it a mandate, these are all things, I think, that are appropriate for Congressional resolution.

Senator KLOBUCHAR. I think people were kind of shocked a few weeks ago, months ago, when that one worker working on the power grid—was that in Arizona?

Secretary NAPOLITANO. It was in southwest Arizona, yes.

Senator KLOBUCHAR. OK, not to mention Arizona in that light, but that the power grid had gone down, affecting the power for people in Southern California and other places. And I do think more has to be done to protect the power grid and what should our priorities be there, and I am looking at this from a cybersecurity issue. Obviously, that was an accident, but it does highlight that we should be doing more.

Secretary NAPOLITANO. Right. That was a situation where I think 2 million people were without power for 6 hours because of the accident of one worker. So I have asked my staff to look into what actually happened and why there were not redundant or fail-safe systems in place to deal with that.

Senator KLOBUCHAR. OK. Thank you very much. And I also have—I noted Senator Schumer discussing his Buffalo bridge. I have a few questions that I do not know that the other Senators would really care to hear about with northern Minnesota, and so I will put those on the record and ask that you answer them at a later time. Thank you.

Secretary NAPOLITANO. I would be happy to. Thank you, Senator.

Senator KLOBUCHAR. Very good.

Senator KLOBUCHAR. Thank you.

Chairman LEAHY. I would note to the distinguished Senator from Minnesota that it is not without precedent that questions that may appear to be parochial have been asked here.

Senator KLOBUCHAR. Well, I think I have asked a few of them, Mr. Chairman.

Chairman LEAHY. Note the one about maple syrup earlier.

[Laughter.]

Senator KLOBUCHAR. I think I have asked a few, but I really appreciated the earlier answers, and I know my colleague Senator Whitehouse is here, so I will ask those on the record.

Chairman LEAHY. I would also note that there has not been a single time that I have called the Secretary that I have not been able to get a response. So this is not a Department where we have a difficult time getting answers. She has always been available.

Secretary NAPOLITANO. Thank you, sir.

Chairman LEAHY. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Madam Secretary, your remarks about the cybersecurity legislation that we ought to be and shall be undertaking fairly soon make a good segue into my questioning. Let me first ask you what level of urgency and dispatch would you advise that we proceed to this legislation with.

Secretary NAPOLITANO. I would hope that you proceed quickly. This is an area that is evolving very rapidly. I think having a basis in statute for jurisdiction, authorizations, and the like is very important. Work has been done on the Senate side. Work has been done on the House side. I would hope that Congress can move very quickly to resolve this and give us a bill.

Senator WHITEHOUSE. And you hope that we can do it quickly because what?

Secretary NAPOLITANO. Well, because this is an area that deserves some foundation in statute. Right now we are moving administratively, and things are moving, and they are moving expeditiously. But it does seem to me that there is a lot happening here, which ultimately needs to be established not just jurisdictionally but fiscally as well. And so this is something that Congress is going to have to take up.

Senator WHITEHOUSE. Do you think that the legislation that has been proposed, the ideas that have been proposed, particularly for allowing more protection, more Government support for protection of our critical infrastructure can be implemented quickly and will make a real difference in terms of the safety and security of the American people?

Secretary NAPOLITANO. I believe so. But I want to be frank with you, Senator. One of the areas where the Department of Homeland Security needs to keep expanding its capacity and capability is in cyber. It is very difficult to hire professionals in this area. There is a lot of competition for these individuals. It is one of the reasons we initially made the decision that we would not try to replicate a civilian NSA with a military NCS, that there would be arrangements made to share some of that technological expertise. But this is an area, even in a period of restrained fiscal resources, that needs a focus.

Senator WHITEHOUSE. At the moment, if our NSA folks were aware of an attack that was targeting, say, an American bank, a financial processing center, an electric utility network, would they need, would you need the kind of authorities that this legislation can provide in order to be able to intervene and protect that civilian infrastructure?

Secretary NAPOLITANO. Senator, it is hard for me to answer that hypothetical as posed. What I can say is right now, particularly with the financial institution sector, we have a lot of cooperation. Whether we have the authority of command and control ultimately in the event of an attack, no, that would be something that needs to be looked at legislatively.

Senator WHITEHOUSE. So, hypothetically, the Government could be aware of an attack that was taking place, but be unable to do anything as the Government to respond and head off that—

Secretary NAPOLITANO. Again, Senator, I am reluctant to answer the hypothetical as posed because in those extreme events, my experience now over the last years as Secretary is that, statute or no statute, we work things out. But the world would definitely be a better, more clear and focused place if we had a basic cyber statute to work from.

Senator WHITEHOUSE. Well, I will leave it at that.

Thank you, Chairman.

Chairman LEAHY. Well, thank you. Senator Whitehouse has worked a great deal on this, and we are actually having a meeting, I think this afternoon, with some of us on cybersecurity. We passed a bill out of this Committee. There are other committees—Intelligence and Commerce and others—that are involved. I think we have to do it.

I am not as concerned now that somebody is going to try to hijack the passenger plane as much as I am that in the middle of the winter, when it ranges from 10 above to 30 below zero throughout the Northeast, and all the power grids get shut off through a cyber attack. You are talking about hundreds of thousands of people could die if it lasted any period of time.

What happens if our air traffic control is turned off? Not only the image it would give to the rest of the world, but the huge, huge commercial disruption, plus the very real possibility of loss of life, depending upon where the planes are and what the weather is.

These are things we have to look at. Communications, for example. What if all the phones all go dead? We move trillions of dollars worth of commercial activities each day in this country and overseas. If commercial transactions are closed down here or closed down overseas, these are things that we have to worry about.

Secretary NAPOLITANO. That is true.

Senator WHITEHOUSE. If I could add, Mr. Chairman, it is not only the risk of cyber sabotage to our critical infrastructure in finance and the electronic grid and communications, the places that you mentioned; it is also the question of the private sector's intellectual property being stolen and siphoned out through the Internet by some of our major international competitors in order to avoid either having to pay licensing fees to Americans who design stuff or to do their own research and development. How much more easy it is to hack into an American corporation's database and simply siphon out their trade secrets and rebuild a factory of your own. And it is being done by the terabyte. I contend that we are on the losing end of the single greatest transfer of wealth through piracy and illicit behavior in the history of humankind, and we are doing awfully little about it. Frankly, I had hoped to hear a little bit stronger clarion call from the Secretary about the urgency of passing this legislation and the kind of change that it can make if we get it passed.

Secretary NAPOLITANO. Well, if I might—

Chairman LEAHY. And, remember, a lot of these attacks are state-sponsored. Everybody wants to dance around that, and we will not go into it more, but some of it is state-sponsored. And that is a form of warfare, one way of looking at it.

You wanted to say something, Madam Secretary?

Secretary NAPOLITANO. I just wanted to clarify, Senator, I hope my answer did not suggest to you at all that we do not view this as urgent legislation. We do. The Department has participated, I think, in 80-some-odd briefings about the need for the legislation. We have testified 20 different times about the need for the legislation. We have participated heavily in the drafting of the legislation. We obviously believe there is an urgent need for the legislation.

I was interpreting your question as what are you doing now and how are you getting by, but the plain fact of the matter is that our

authorities, our jurisdiction, and moving forward the path would be much more clear, and there is an urgent need for legislation in this regard. And I am hopeful now that both chambers have been addressing this. That this is one area where the Congress is able to move.

Senator WHITEHOUSE. Good. It did sound a bit tepid, so I am glad you clarified your remarks, and I appreciate it.

Secretary NAPOLITANO. You bet.

Chairman LEAHY. Well, thank you. I understand that we are going to have votes here very soon, so I will wrap this up. I am going to have questions for you about the Secure Communities Task Force. I want to have a written response on that, and I have asked you previously about how DHS handles cases of U.S. citizens arrested and detained by ICE. I would like statistics on all U.S. citizens arrested under Secure Communities, the duration of their custody, and the resolution of these cases.

[The information referred appears under questions and answers.]

Chairman LEAHY. I thank you very much. Do you want to add anything else?

Secretary NAPOLITANO. No, Mr. Chairman. I have enjoyed being the witness here today.

Chairman LEAHY. Yes, I am sure.

[Laughter.]

Chairman LEAHY. Thank you. That would fall under “a New England understatement.” Thank you very much.

Secretary NAPOLITANO. Thank you very much, Mr. Chairman.

[Whereupon, at 12:07 p.m., the Committee was adjourned.]

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

## QUESTIONS AND ANSWERS

<b>Question#:</b>	1
<b>Topic:</b>	secure communities
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** I believe that most of us can agree that the stated priorities of the Secure Communities program are laudable. The Department has stated that it will target the “worst of the worst” and the “most dangerous and violent” immigrants for deportation. But in practice, many others have been caught up in the program, including immigrants with no criminal record or very minor misdemeanors. This broad sweep undermines the willingness of immigrant communities to report and help solve crime.

Researchers at Berkeley and Cardozo, who analyzed DHS data, found that six out of 375 persons arrested by ICE under Secure Communities were U.S. citizens. That is a limited data set, but it suggests that hundreds or even thousands of those arrested on immigration charges could be U.S. citizens. That is unacceptable to me. The Constitution does not allow us to arrest a U.S. citizen first, and investigate second.

You appointed a Task Force in June, which included a number of Chiefs of Police, Sheriffs, former Federal immigration officials, and other experts. That Task Force issued a report in mid-September with a number of consensus recommendations, including greater transparency, clarity of priorities, and the rebuilding of trust with communities.

**Question:** What is the Department’s response to the recommendations of the Secure Communities Task Force? Will you implement all or some of the consensus recommendations?

**Response:** The Homeland Security Advisory Council (HSAC) Task Force on Secure Communities recommendations are currently under review and consideration by U.S. Immigration and Customs Enforcement (ICE). ICE anticipates that it will provide a formal response to the HSAC in the coming weeks.

**Question:** When will you issue a written response to the Task Force?

**Response:** ICE is currently reviewing the Task Force’s recommendations. ICE anticipates responding to the recommendations in the coming weeks. The recommendations report is posted on the HSAC’s website at: <http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities.pdf>.

**Question:** I have asked you previously about how DHS handles cases of U.S. citizens arrested and detained by ICE. I would like DHS to produce statistics on all U.S. citizens

<b>Question#:</b>	1
<b>Topic:</b>	secure communities
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

arrested under Secure Communities, the duration of their custody, and the resolution of those cases. Will you produce that report by year's end?

**Response:** ICE is not aware of any U.S. citizens having been arrested or detained by ICE as a result of Secure Communities.

ICE has reviewed, in detail, the report you cited, including each of the referenced U.S. citizen incidents. The report was erroneous; in fact, the U.S. citizens identified in the report were each arrested by state, local, or federal officials based on criminal charges; none were arrested or detained by ICE as a result of Secure Communities; the report's conclusion to the contrary was apparently based on a misunderstanding of the relevant criminal procedures followed. ICE is committed to ensuring that the civil rights and civil liberties of all individuals (regardless of their nationality) remain protected throughout the course of its operations.

<b>Question#:</b>	2
<b>Topic:</b>	U visas
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** U Visas are available to eligible immigrants who were victims of crime and who assist law enforcement in investigating that crime. Earlier this year, you asked Congress to increase the number of U Visas authorized to be granted from 10,000 per year to 20,000 per year.

In the past two years, the cap on U Visas was reached prior to the end of the fiscal year. In 2010, we reached the cap on July 15, approximately 10 weeks prior to the end of the fiscal year. In 2011, we reached the cap on September 19.

How do U Visas help law enforcement, and how will increasing the cap expand those benefits?

**Response:** The U visa, which provides legal status to victims who cooperate with law enforcement in the investigation or prosecution of the crime, has helped to build trust between the immigrant community and law enforcement.

Increasing the U visa cap will allow USCIS to provide legal status to those victims who are willing to cooperate with law enforcement in the investigation or prosecution of the crime of which they are a victim. With an increase in the amount of U visas, we expect that additional crimes will be reported, investigated, and prosecuted.

**Question:** Some members of Congress believe that because it has a relatively high grant rate, the U Visa program is vulnerable to fraud. Should members of Congress be concerned that a high approval rate indicates fraud? Can you reassure us that there are appropriate measures in place to deter fraud?

**Response:** Fraud prevention and detection are a top priority for USCIS. At the Vermont Service Center (VSC), there is a dedicated fraud team within the U-Visa Adjudicating Petitions Unit. USCIS officers at VSC review and evaluate the results of Interagency Border Inspection System (IBIS) checks, FBI Fingerprint Checks, and FBI name checks. If any of these background checks result in derogatory information on a particular applicant, USCIS will evaluate that information on a case-by-case basis and take appropriate action. VSC also reviews the filings to identify fraud. In 2009-2010, the VSC fraud unit conducted a validation study of the law enforcement-issued certifications that accompany the U visa petitions. A sampling of law enforcement agencies that provided certifications were contacted to verify that the document submitted to USCIS was issued by that agency and contained accurate information that was still valid. In the

<b>Question#:</b>	2
<b>Topic:</b>	U visas
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

final analysis, the fraud unit determined a fraud rate of 0.5 percent, which is very low and reflects USCIS's extensive efforts to prevent fraud. In its efforts to identify potential fraud, VSC also engages in the following activities in addition to conducting background security checks:

- Electronic searches within USCIS database systems for petitions and applications submitted by attorneys who are suspected of having engaged in fraud;
- Consultations with fraud officers to identify fraud trends when suspect patterns are identified through adjudicator review;
- Additional review of cases with suspicious documents;
- Creation of a dedicated fraud team embedded within the adjudications unit that handles VAWA, T, and U cases. This team is separate from the larger fraud unit that supports the entire service center.
- The approval of a U-Visa requires that a properly executed certification from law enforcement be filed with every principal U-1 petition.
- Designated Law Enforcement Officials identify the victim of the criminal activity, and certify that: the qualifying criminal activity occurred; the victim possesses information about the certified crime; and whether the victim is, has been or is likely to be helpful in the investigation or prosecution of the crime. Additionally the certifying agency may disavow the certification if at any time the victim ceases being helpful in the investigation or prosecution of the criminal activity.

Though a certification is required, it does not result in an automatic approval of a case. However, the certification offers another layer to prevent fraud.

<b>Question#:</b>	3
<b>Topic:</b>	drones
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In testimony before the Judiciary Committee on May 17 of this year, CBP Commissioner Alan Bersin stated that northern New York and the St. Lawrence Seaway are now open for CBP Unmanned Aircraft System operations.

What types of information will be gathered and stored by these missions?

**Response:** The threats posed by illicit activity along our nation's borders are real and ever changing. U.S. Customs and Border Protection (CBP) counters those threats by remaining flexible in asset laydown and regional focus. Should intelligence drive the need for CBP Unmanned Aircraft Systems (UAS) operations in the northeast, an agreement with the U.S. Army 10th Mountain Division at Fort Drum, New York, is in place which permits CBP to conduct UAS surge operations out of that location. Consistent with the need requiring operation of the CBP UAS, CBP can obtain information relating to the movement of persons or objects on the ground, and radar mapping of terrain to identify changes in characteristics caused by human traffic or natural disaster ( e.g., flooding, wild fire, wind event, etc.). These images are stored, digitally, and maintained until overwritten (typically about 60 to 90 days, depending upon use and hard drive capacity).

**Question:** How many unmanned aircraft will operate out of the New York facility?

**Response:** CBP must remain flexible to the ever-changing threats posed by transnational drug and terrorist organizations. As mentioned above, CBP currently has a Memorandum of Agreement with the U.S. Army at Fort Drum to enable surge operations from Wheeler-Sack Air Base in case of a major natural disaster, evolving threats, or to support ongoing border security operations. CBP currently has nine UAS in operation: four at Sierra Vista; two at Grand Forks; two at Corpus Christi; one at Cape Canaveral. No UAS operates out of Fort Drum, NY on a permanent basis.

**Question:** I understand that currently, no flights are scheduled to occur as far east as Vermont.

Does CBP anticipate a future expansion of the use of unmanned aircraft to the eastern portions of the northern border in Vermont?

**Response:** CBP does not currently anticipate flying UAS missions over the eastern portions of the northern border in Vermont. However, CBP's operating locations and

<b>Question#:</b>	3
<b>Topic:</b>	drones
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

mission focus areas are constantly reviewed and adjusted based on known and anticipated threats.

**Question:** If such plans are developed, what is CBP's practice to inform citizens with all appropriate information about such flights?

**Response:** CBP operates in accordance with all applicable federal laws and regulations while working closely with Federal, State, local and tribal centers that share responsibility for stemming illicit border activity. CBP UAS carry the same or similar sensors installed on conventional aircraft, but the pilots and sensor operators are located in a ground control station. Therefore, there is no difference between the surveillance carried out by a UAS and a conventional aircraft. The UAS brings long duration, persistent surveillance capability to CBP, plus the capability to operate in environments considered dangerous to the crew of a conventional aircraft.

CBP typically publishes a news release in the event UAS operations are expanded to another area of the border.

**Question:** This past month, American Predator and Reaper drones flying overseas suffered a major data security breach, the second since 2009.

What measures has the Department taken and what measure will the Department take to secure and protect the information collected during these flights?

**Response:** The "security breach" noted was a virus contained in several independent ground control systems, not directly associated with the piloting of the aircraft. CBP has not experienced a similar incident, and system security processes and equipment interface standards are in place to prevent a similar incident from occurring.

<b>Question#:</b>	4
<b>Topic:</b>	reform
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In your recent speech at American University, you mentioned your disappointment with the often unfair criticisms that your border security efforts have received. I would agree such criticism is often misplaced. Federal law enforcement officers from many agencies are engaged in some very difficult and dangerous work along the Southern border. They deserve our appreciation and respect.

In 2010 Congress enacted \$600 million in supplemental appropriations for border security, which is notable given our recent struggles to simply make sure FEMA has enough funds to help Americans who have lost everything.

And you have outlined the significant improvements in many areas of border security. In my view, we will not have lasting, fundamental improvements to our overall border security without a complete overhaul of our immigration system.

How would you answer those who say that we cannot undertake immigration reform until the border is secure?

Would you agree that broad reforms to our overall immigration system could complement and strengthen ongoing enforcement measures?

**Response:** With the support of the President, the Department of Homeland Security (DHS) has dedicated unprecedented resources to securing our border by: putting more “boots on the ground”; increasing the Department’s investigation resources; working with our partners in Mexico to disrupt transnational criminal organizations; promoting economic prosperity along our border by focusing on enhancing legal trade and travel flows; and increasing community outreach initiatives between community groups and law enforcement officials, to work together to address views and concerns of individuals living in border towns. While our efforts over the past three years have led to progress on every significant metric, we continue to focus on new ways to measure results along the border, including how the investments we’ve made in border security are improving the lives and livelihoods of the people living in the region.

A comprehensive approach to immigration reform remains the best solution to our Nation’s immigration challenges. I support the President’s call that only a comprehensive approach can fix our immigration system. This includes a continued commitment to serious and effective enforcement, improved legal flows for families and

<b>Question#:</b>	4
<b>Topic:</b>	reform
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

workers, and a firm, equitable way to deal with those who are already here. All three aspects are crucial to building a successful and effective immigration system.

As a nation of immigrants and a nation of laws, it is imperative that we modernize our laws for the 21<sup>st</sup> century so that this vision can endure. I will continue to work with the President, the Congress and other public and private stakeholders on this effort.

<b>Question#:</b>	5
<b>Topic:</b>	SIV
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Many Iraqis who served the United States' government in Iraq are waiting for protection under a Special Immigrant Visa (SIV). I appreciate that there are a number of security checks that must be conducted on individuals seeking entry to the United States, whether they are refugees or applicants for the SIV program. I am also concerned, however, that threats against these Iraqis will only increase as the United States begins to withdraw from Iraq. We do not want to see a repeat of our withdrawal from Vietnam, when the United States abandoned many Vietnamese allies to face the aftermath of the war on their own.

Would additional resources enable DHS and the State Department to process the security checks more expeditiously, such that those in need of protection can be resettled to safety?

**Response:** With the exception of those applications requiring requests for evidence, USCIS adjudicates I-360 SIV petitions for Iraqi translators filed under section 1059 of Public Law 109-163 as amended, as well as Iraqis who have assisted the U.S. in Iraq who are filing under Section 1244 of Div. A of Public Law 110-181 as amended, within 3-10 days and therefore does not need any additional resources. We respectfully refer you to the Department of State to comment on whether they have unmet resource needs for the portions of the processing of petitions for Iraqi SIV petitioners over which they have responsibility, including Chief of Mission (COM) approval at the beginning of the process and National Visa Center (NVC) and embassy immigrant visa processing at the end, which includes coordinating security checks.

With respect to processing security checks for Iraqi refugee applicants, DHS has sufficient resources to coordinate the security checks for which it is responsible. We respectfully refer you to the Department of State and to the vetting agencies to address whether they have sufficient resources to process security checks for Iraqi refugee applicants expeditiously.

**Question:** Section 1236 of the National Defense Authorization Act for Fiscal Year 2011 requires you to develop a plan with the Secretaries of State and Defense to expedite resettlement of U.S.-affiliated Iraqis at risk as the United States withdraws from Iraq. I asked you in July for the status of that plan and was told that discussions were under way. What is the status of that plan? This is an urgent matter as our Armed Forces begin to draw down.

<b>Question#:</b>	5
<b>Topic:</b>	SIV
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Response:** In response to Section 1236 of the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 (P.L. 111-383), the Secretary of Defense, in consultation with the Secretary of State, the Attorney General, the Secretary of Homeland Security, the Administrator of the United States Agency for International Development, and the heads of other appropriate Federal agencies, submitted a report to the Congress in July 2011 on the situation of “certain Iraqis affiliated with the United States.” In particular, the report focuses on the situation of those Iraqi citizens or nationals who are or were employed by or on behalf of the United States, who have provided faithful and valuable service to the U.S. Government in Iraq, and who have experienced or are experiencing an ongoing serious threat as a consequence of their employment by the U.S. Government.

The report provides information on the number of certain Iraqis who are or were employed by the U.S. Government; the number of Iraqis who have applied 1) for resettlement in the United States under section 1243 of the Refugee Crisis in Iraq Act of 2007, 2) to enter the United States as a special immigrant under section 1244 of such Act, or 3) to enter the United States as a special immigrant under section 1059 of the NDAA for FY 2006; the status of those applications; and an estimated number of certain Iraqis who are or were employed by the U.S. Government who have been injured or killed in Iraq.

In response to Section 1236’s direction that the Secretaries of Defense, State, and Homeland Security develop a plan to expedite the processing of applications for refugee resettlement and applications to enter the United States as special immigrants, the report explains how the Department of State has prioritized the processing of special immigrant visas for these individuals as much as possible. The report also details some obstacles these special immigrant applicants face which the U.S. Government is working to address, including obtaining a copy of the contract under which they worked and a process for obtaining a recommendation from their previous supervisor. The U.S. Refugee Admissions Program has been operating in Baghdad since May 2008 and has the capacity to expedite cases as necessary and in some cases is able to move individuals to neighboring countries where processing times may be shorter and the individuals at a greater distance from immediate threats.

<b>Question#:</b>	6
<b>Topic:</b>	status
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** For over a decade, I have asked you, your predecessors, and Attorneys General about the status of regulations on asylum status based on membership in a particular social group. The asylum seeker in the seminal case on this issue, Ms. Rodi Alvarado, was finally granted asylum in December 2009 after a 14-year odyssey through the immigration courts, but her grant of asylum set no precedent for future cases. In December 2009, you published a notice in the Federal Register stating an intention to promulgate these regulations.

In March 2010, you said this was a priority. In June 2011, you said you have a goal of publishing the proposed rule by the end of this year.

Will we see that proposed rule on membership in a particular social group by the end of the year? If not this year, when?

**Response:** DHS included this rulemaking in its 2009 and 2010 Unified Agenda (RIN number 1615-AA41), a notice of our future regulatory plan. DHS is actively working on promulgating a regulation on asylum and withholding of removal definitions. This regulation is a priority for DHS. It is under active development within the Department.

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.” DHS has recognized that under some circumstances, domestic violence can constitute persecution on account of the applicant’s membership in a particular social group.

By providing a clearer framework for key asylum, withholding, and refugee resettlement issues, we anticipate that adjudicators will have better guidance, increasing administrative efficiency and consistency in adjudicating cases involving “particular social group” claims. The rule will also promote a more consistent and predictable body of administrative and judicial precedent governing these types of cases.

<b>Question#:</b>	7
<b>Topic:</b>	flooding
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Sheldon Whitehouse
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** As you observed during your visit to Rhode Island during the spring of 2010, flooding overwhelmed the state and caused an estimated \$200 million in damage to homes, businesses and communities. Since the flooding occurred, I have worked closely with FEMA in Region 1 to address the concerns of disaster victims and municipalities. Throughout this process, FEMA has been very responsive to our inquiries and I appreciate your agency's willingness to work with my office whenever a constituent inquiry is made. However, as a result of miscommunication by FEMA officials, the City of Providence stands to lose hundreds of thousands of dollars in FEMA funding and another approximately \$40,000 in funds it has expended.

In January of this year, several FEMA officials attended a meeting at the Providence Emergency Management Agency, which my staff attended, and agreed on the scope of work for a project to repair five public schools. Everyone left the meeting under the impression that the project would be eligible for FEMA Public Assistance funding. However, certain FEMA officials at the meeting knew that there had been internal discussions at FEMA where a conclusion was reached that the projects were ineligible for funding. Unfortunately, this was never conveyed to the City of Providence, the State of Rhode Island, or my staff at that meeting. In fact, the opposite occurred. Minutes of the meeting which were circulated to all present without objection or comment, indicate that all parties were in agreement with the scope of work to be performed and without any mention that any part of the projects were ineligible for funding. Further, Providence was not notified that the projects would be denied until late July, more than six months after the January meeting. In the meantime, the City had been soliciting bids for design work on the projects, spending approximately \$40,000 in the process.

Would you review this case and the losses borne by the City of Providence with all appropriate scrutiny and make sure that the Department adopts necessary measures to ensure accurate, timely and clear communication between FEMA and all applicants?

**Response:** FEMA Region I had a meeting last month with RIEMA and the City of Providence to officially inform the City that work associated with exterior damages to four schools was ineligible because the damages were pre-existing. FEMA had previously communicated to the City that the damage to the schools was eligible. During the original damage inspection the exterior stone work was noted to have been damaged and therefore it was documented as such. However, after further inspection and review of the documentation, it was determined the damage to the stone work was pre-existing to the declared event.

<b>Question#:</b>	7
<b>Topic:</b>	flooding
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Sheldon Whitehouse
<b>Committee:</b>	JUDICIARY (SENATE)

The City stated that it incurred approximately \$40,000 in pre-contract award costs for the four schools as a result of this miscommunication for which it would like reimbursement. FEMA has requested the City to provide information regarding these costs for our review in order for us to determine whether or not any of these costs are eligible for reimbursement. FEMA is currently evaluating that information to determine whether or not FEMA can potentially reimburse the City for these costs.

FEMA will coordinate closely with the City and RIEMA to ensure they are fully aware of the status and outcome of this review.

<b>Question#:</b>	8
<b>Topic:</b>	organization
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** DHS has almost 200,000 employees and tens of thousands of contractors. I believe that the Department's massive bureaucracy should be slimmed down in order to make it more efficient in executing its mission. For example, DHS's main law enforcement component, ICE, has increasing authority to investigate crimes that overlap the FBI's authorities, including child exploitation, financial crimes, cybercrime, drug crimes, and gang activity. Redundancy in programs inevitably leads to poor coordination of effort and waste of resources.

Meanwhile, DHS has a large headquarters presence. For example, the Office of Policy, to be led by an Under-Secretary per the recently marked-up DHS reauthorization bill, has almost 200 employees and budget of more than \$50 million. And the Office of Intelligence has significant personnel, even though it appears to be duplicative of work done by the FBI intelligence directorate.

Do you agree that changes in the Department's organization are necessary to improve its efficiency?

Are you planning any organizational or structural changes to improve efficiency?

What organizational changes would you recommend Congress make?

Given today's budgetary environment, do you agree that operating components should be prioritized over headquarters elements, such as a bloated Office of Policy?

Have you discussed with Director Mueller or DNI Clapper ways to reduce overlap and delineate responsibilities between the Office of Intelligence and Analysis and FBI's Directorate of Intelligence?

How does ICE avoid allocating resources on investigations that are either already addressed by or more properly conducted by the FBI?

**Response:** The first-ever Quadrennial Homeland Security Review (QHSR) noted the need to focus on maturing DHS by improving its organizational and programmatic alignment and its management systems and processes. DHS conducted a thorough review of DHS's business and organizational structures, particularly within the headquarters, in both the QHSR and Bottom Up Review (BUR). DHS has been improving the efficiency of its business processes continuously since the BUR.

<b>Question#:</b>	8
<b>Topic:</b>	organization
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

However, the BUR Report noted that the Secretary of Homeland Security cannot reorganize DHS to achieve enhanced integration in the manner envisioned by the Homeland Security Act because of the prohibition on the use of Section 872 authority. The Department continues to pursue improvements in its organizational structure with Congress.

DHS's budget reflects the importance of the five QHSR missions, which are primarily carried out by the Department's operational components. However, the Office of Policy, like other elements in headquarters, plays a critical role in DHS's efforts to mature and strengthen the homeland security enterprise over the long-term, as well as provide near-term recommendations on policy and programmatic improvements given both a dynamic threat environment, as well as the need to continue to evaluate mission execution in the current fiscal environment, and find ways to do more with less.

As DHS continues to mature, the Department will continue to look at ways to improve the effectiveness and efficiency of its operations. In FY 2013, the Office for State and Local Law Enforcement, Office of International Affairs, and Private Sector Office are proposed as direct reports to the Secretary, in order to more appropriately align the resources of the Office of Policy to its core mission to coordinate Department strategy and policy. The Office of Policy will focus its efforts on policy development, short and long-term policy initiatives, and risk analysis, which are all supported by the risk management and analysis functions the appropriators redirected to Policy in FY 2012.

During the course of its criminal investigations, the U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) Directorate employs the myriad of deconfliction tools available to federal, state, and local law enforcement, such as federal/state/local fusion centers, to identify investigative overlap with other law enforcement agencies. HSI also participates in numerous task forces, providing a robust environment in which case deconfliction, coordination, and cooperation occurs.

The Office of Intelligence and Analysis, DEA Intelligence Division, and FBI's Directorate of Intelligence work closely together as partners in the national homeland security enterprise. We issue Joint Intelligence Bulletins (JIBs) together addressing key intelligence issues for a growing number of customers. We share our production plans and Programs of Analysis to de-conflict efforts and to ensure we do not duplicate analytic products. In those cases where the FBI has greater expertise on a particular issue, we send their product to our state and local customers.

<b>Question#:</b>	8
<b>Topic:</b>	organization
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

Further, we work closely with the interagency on issues such as homegrown violent extremism, domestic terrorism, and various investigative operations to leverage the mission expertise and capabilities of each organization.

<b>Question#:</b>	9
<b>Topic:</b>	etrace
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Over the past few months I have sought information from your Department about a stop by Border Patrol agents of individuals related to ATF's Operation Fast and Furious. DHS staff said that Border Patrol conducted database searches on both the individuals and the weapons in their possession. Because nothing showed up in the database search, Border Patrol let them go.

Yet in a March 18, 2011, memo, Assistant U.S. Attorney Emory Hurley told U.S. Attorney Dennis Burke that the Border Patrol did not trace any of the firearms during that stop. Your staff has accounted for this fact by informing us that Border Patrol had limited access to ATF's eTrace, and thus that typical Border Patrol practice was to only run a search of the National Crime Information Center (NCIC) database on individuals and weapons. Apparently eTrace is normally only utilized by a Border Patrol intelligence officer as a follow-up in when certain conditions are present.

Does Border Patrol currently still only have limited access to eTrace?

**Response:** Yes, the Border Patrol has "External Agencies" access to eTrace which means that BP Agents are only able to view traces that fall under the Border Patrol Originating Number for eTrace. It should be noted that the eTrace system does not return immediate results when a trace is implemented and usually takes about nine days for a return. Therefore, it is not utilized for primary records checks in the field like the National Crime Information Center.

The "External Agencies" eTrace access provides a means to submit individual and batch trace requests, search for traces submitted by individual agents or others within their agency or jurisdiction, view the status of trace requests and or trace results, run analytical reports on trace data and download trace data for further analysis and to conduct specialized trace queries and report data searches relevant to their field.

**Question:** Doesn't it present a danger to the Border Patrol if they are not aware when they have encountered firearms marked as suspect guns in eTrace by the ATF?

**Response:** No, as stated in the previous response, NCIC, not eTrace, is used as a primary record check when firearms are encountered in the field. Any firearm, whether indicated in eTrace as a suspect weapon or not, has the potential to harm Border Patrol agents if it is in the hands of an individual who intends to use deadly force when encountered by law enforcement. While some record checks may be conducted during an investigative stop,

<b>Question#:</b>	9
<b>Topic:</b>	etrace
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

the vast majority of record checks for weapons, including eTrace checks, are conducted after an arrest or seizure has been made and after any weapons have been separated from the subjects in custody.

**Question:** What are each of the particular conditions that must be present before Border Patrol intelligence officers would normally conduct an eTrace search?

**Response:** If an agent has been granted access to the eTrace system and a serial number for a firearm is present, the agent can conduct an eTrace search for official purposes. System searches in eTrace are not a requirement and are conducted at the discretion of the agent. The National Crime Information Center (NCIC), accessed through the TECS system, is Border Patrol's primary system for conducting record checks on firearms encountered in the field.

<b>Question#:</b>	10
<b>Topic:</b>	F and F
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In the Senate Judiciary Committee hearing, you said that since I first asked you about Operation Fast and Furious in March 2011, you had asked ICE to look into “whether there had been any involvement there.” As you know, I informed you in March that ICE had an agent working on Operation Fast and Furious as a member of ATF’s Phoenix Group VII. Since then, I have discussed this issue with your Department over the past several months. We have been informed by your staff that although ICE Agent Layne France was detailed to Phoenix Group VII, he was only providing minimal information back to ICE through his Special Agent-in-Charge (SAC)

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

**Question:** What were the dates that Special Agent France was detailed to the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (ATF) Phoenix Group VII?

**Response:** [REDACTED]

**Question:** How frequently was Special Agent France expected to report to his ICE supervisor while he was detailed to ATF? Who was Special Agent France’s supervisor?

**Response:** [REDACTED]

**Question:** How frequently did Special Agent France actually report to his ICE supervisor while he was detailed to ATF?

**Response:** [REDACTED]

**Question:** If Special Agent France was only providing ATF with information from DHS and not in turn reporting information back up his chain of command in ICE, how is such a one-way flow of information beneficial to ICE?

<b>Question#:</b>	10
<b>Topic:</b>	F and F
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
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**Response:** [REDACTED]

[REDACTED]

**Question:** Was the ICE SAC Phoenix aware of Special Agent France's involvement in Operation Fast and Furious?

**Response:** [REDACTED]

**Question:** On what date did the ICE SAC Phoenix know about Operation Fast and Furious?

**Response:** [REDACTED]

**Question:** Does ICE have any documents pertaining to Operation Fast and Furious under the case file number PX03BB10PX0011? If so, will your agency provide these?

**Response:** [REDACTED]

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

<b>Question#:</b>	11
<b>Topic:</b>	grant programs
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In a report released in March 2010, GAO examined 13 grants for “preparedness” programs. In FY 2008, FEMA granted \$3 billion for such programs to state, local, territorial, and tribal governments and private, public, and non-profit organizations.

GAO’s review of the 13 preparedness programs found that FEMA “does not compare and coordinate grant applications across preparedness programs to mitigate potential duplications and redundancy.” For example, 11 of the 13 programs that GAO reviewed allowed grant recipients to purchase interoperable communications equipment, such as radios. GAO found that a single state agency could apply simultaneously to four of those programs and receive funding from all four. FEMA would not realize the redundancy because it has different review processes for each of the four programs.

Similarly, GAO found that the responsibility for program management of the thirteen grants is split among five organizations—two different offices within FEMA, the Transportation Security Administration, the Coast Guard, and the DHS Office of Infrastructure Protection. GAO reported that, “FEMA does not have an overarching policy to outline the roles and responsibilities for coordinating applications across grant programs.”

GAO made three recommendations and FEMA agreed with all the recommendations and stated that it was working on implementing them.

If DHS can’t guarantee there is not duplication or overlap within its own house, is it safe to say that DHS does not check to see if DHS grants overlap with DOJ law enforcement grants? If not, why not?

What can Congress do to ensure that DHS stops providing duplicative grants?

Do you support legislative changes to eliminate overlapping grant programs at DHS?

Have you made any recommendations for consolidation or elimination of specific grant programs? If so, please provide an example?

What progress has FEMA made in implementing the organizational and programmatic changes recommended in the GAO report to eliminate redundancy in preparedness grants?

<b>Question#:</b>	11
<b>Topic:</b>	grant programs
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

How can DHS be more efficient and effective in issuing grants so that there is no overlap or duplication and that taxpayer dollars are not wasted?

**Response:** FEMA continues to work with the Department to consolidate grant programs. The FY 2012 grant guidance streamlines 16 former grant programs as part of a transition to the National Preparedness Grants Program proposed in the FY 2013 Budget. In FY 2012, the FY 2010 Buffer Zone Protection Program (BZPP), FY 2010 Interoperable Emergency Communications Grant Program (IECGP), FY 2011 Citizen Corps Program (CCP), FY 2011 Driver's License Security Grant Program (DLSGP), FY 2011 Emergency Operations Center (EOC) Grant Program, and FY 2011 Metropolitan Medical Response System (MMRS) grant program are no longer funded as discrete grant programs but are allowable activities and costs under the FY 2012 Homeland Security Grant Program.

As part of the FY 2013 National Preparedness Grants Program vision, DHS/FEMA propose to consolidate current grant programs into one overarching program (excluding EMPG and fire grants). This will enable grantees to build and sustain core capabilities outlined in the National Preparedness Goal instead of requiring grantees to meet the mandates from multiple individual, often disconnected, grant programs while also reducing duplicative efforts.

GPD has developed MOUs to address joint roles and responsibilities with the following DHS components: the Office of Screening Coordination and Operations (SCO); the National Protection and Programs Directorate (NPPD); the Office of Emergency Communications (OEC); the Office of Infrastructure Protection (IP); and the Transportation Security Administration (TSA).

FEMA's operational improvements include new grants management oversight initiatives and evaluating ways to measure and assess the performance of its grants programs to achieve efficiencies and savings in administering these programs. FEMA is developing an integrated set of performance measures related to both the programmatic and financial aspects of FEMA's preparedness grant programs.

The Department of Homeland Security (DHS) does not currently have a formalized process in which both DHS and the Department of Justice (DOJ) conduct a co-review of law enforcement grants. However, DHS/Federal Emergency Management Agency (FEMA) and DOJ are holding discussions which will hopefully lead to a Memorandum of Understanding (MOU) that will strengthen our relationship and increase the coordination of our grant programs.

<b>Question#:</b>	11
<b>Topic:</b>	grant programs
<b>Hearing:</b>	Oversight of the DHS
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FEMA also continues to find ways to work with other federal agencies to develop standards for functionality and process improvements for preparedness grants and also to identify cross-program coordination and performance assessment measures. On July 18, 2011, FEMA signed a memorandum of understanding with Department of Health and Human Services Assistant Secretary for Preparedness and Response, Centers for Disease Control and Department of Transportation, National Highway Traffic Safety Administration in order to:

1. Develop policies which are consistent with national strategies and priorities;
2. Better coordinate grant administration and management;
3. Align grant cycles and timelines; and
4. Identify complementary performance metrics and coordinating reporting requirements.

FEMA grant programs specifically require that jurisdictions develop a State Homeland Security Strategy that sets goals and objectives for how they will mitigate the risks to their jurisdictions. As part of the application process, the applicant must demonstrate how they are utilizing the grant funding and building target capabilities before they are able to spend the grant dollars. Monitoring reports validate whether or not the jurisdiction met their desired outcome for the grant funding. Presidential Policy Directive 8 – National Preparedness – identifies a series of concrete requirements, or core capabilities, that will ensure response and recovery actions are driven by needs of the whole community in the event of a catastrophic disaster. These are generating the measurable national preparedness capability requirements, evaluation criteria (e.g., in terms of speed, effectiveness, efficiency, and mass), and associated plans that will provide a comprehensive framework for guiding investments and assessing readiness.

<b>Question#:</b>	12
<b>Topic:</b>	VAWA - 1
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** According to the immigration statute (INA §204(c)), related USCIS regulations, and the USCIS Adjudicator's Field Manual, if the USCIS has denied a marriage-based petition because of suspected marriage fraud, it must deny any subsequent immigrant petition by the petitioner.

Would it be possible for the Vermont Service Center (VSC) to approve a VAWA self-petition to a person whom the USCIS previously denied a petition because of suspected marriage fraud? If so, how many times has that occurred in each of the last three years?

**Response:** The INA section 204(c) prohibition against marriage fraud impacts the adjudication of the VAWA self-petition. An independent determination should be made as to whether non-conclusive evidence of marriage fraud in another immigration petition should result in the denial of the VAWA self-petition. USCIS must make an independent finding on whether there is substantial and probative evidence to indicate marriage fraud. See *Matter of Tawfik*, 20 I & N Dec. 166, 170 (BIA 1990). In addition, there are statutory limitations on what information can be used by USCIS when adjudicating a VAWA self-petition. Under 8 U.S.C. § 1367, officers of the Department of Homeland Security do not make an adverse determination on a VAWA self-petition if the adverse information was provided solely by certain specified sources, including the abuser. If the initial finding of marriage fraud resulted from information provided solely by the abuser, USCIS will not use that information or finding in adjudicating the VAWA self-petition unless it is independently corroborated by a third party or source. USCIS does not maintain statistical data on VAWA self-petitions approved notwithstanding previous denial of an immigrant petition based on marriage fraud.

**Question:** For each of the last three years, how many VAWA self-petitions have been granted to individuals who had removal proceeding pending against them prior to their filing the self-petition?

**Response:** USCIS does not maintain this type of statistical data.

**Question:** Would it be possible for the VSC to approve a VAWA self-petition to a person where a removal order had been issued against that person? If so, how many times has that occurred in each of the last three years?

**Response:** Yes, someone in removal proceedings or with a final order of removal can receive an approval of a VAWA self-petition. The approval of the self-petition does not

<b>Question#:</b>	12
<b>Topic:</b>	VAWA - 1
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

itself grant a benefit. The approval of the self-petition gives the petitioner the ability to file an application for lawful permanent residence. In order for someone with a removal order to adjust status to that of a lawful permanent resident, the individual must be admissible to the United States. If an alien is subject to a final removal order, the removal order itself does not make the alien inadmissible until it is executed. If the alien or DHS executes the removal order, he or she may be eligible for an inadmissibility waiver. Determinations of eligibility for permanent residence are made through the adjudication of Form I-485 by USCIS or by an immigration judge in removal proceedings or following issuance of a removal order in a properly reopened proceeding. USCIS does not maintain statistical data on VAWA self-petitions granted to persons against whom a removal order has been issued.

**Question:** Would it be possible for the VSC to approve a VAWA self-petition to a person where law enforcement has concluded that the person had filed a false claim of spousal abuse? If so, how many times has that occurred in each of the last three years?

**Response:** Yes, however, information about false reporting of a domestic incident, if known to USCIS, may adversely impact eligibility for a VAWA self-petition. USCIS does not maintain statistical data on VAWA self-petitions involving a conclusion by law enforcement that the petitioner filed a false claim of spousal abuse.

**Question:** Would it be possible for the VSC to approve a VAWA self-petition to a person where a state court, as part of divorce or custody proceeding, had concluded that the person's claim of spousal abuse was a false one? If so, how many times has that occurred in each year of the last three years?

**Response:** Yes, however, if such information is known to VSC, the evidence may adversely impact eligibility for a VAWA self-petition. USCIS does not maintain statistical data on VAWA self-petitions involving a finding by a state court that the petitioner's claim to spousal abuse was false.

**Question:** Since the VSC relies entirely on documentation and does not conduct face-to-face interviews with petitioners, how does the VSC compensate for this lack of knowledge about the petitioner?

**Response:** VSC weighs the alien's credibility based on all the evidence submitted with the VAWA self-petition, all evidence in the alien's administrative file (A-file), and all other information available in electronic systems about the alien and his or her interaction with USCIS, ICE and CBP. In addition, VSC has a team of specially trained officers who only work on victim-based adjudications. This expertise in assessing and weighing

<b>Question#:</b>	12
<b>Topic:</b>	VAWA - 1
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
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probative evidence, while simultaneously assessing whether evidence is statutorily prohibited evidence under 8 U.S.C. § 1367, results in efficient and effective decisions. VSC also has a close partnership with the Fraud Detection and National Security Unit at VSC which liaises with similar units at USCIS offices across the country in identifying and determining fraud trends. Adjudications of adjustment of status applications based on approved VAWA self-petitions are conducted at USCIS field offices and those adjudications do require an interview. Where fraud is discovered during the adjustment of status adjudication, the case may be returned to VSC for review and possible revocation of the I-360 petition approval.

<b>Question#:</b>	13
<b>Topic:</b>	VAWA - 2
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Are there any special considerations or internal instructions regarding battered spouse petitions that allow VSC adjudicators to reconsider information from a previous petition indicating potential marriage fraud? If not, why not?

**Response:** VSC adjudicates the majority of VAWA self-petitions when in possession of the alien's complete A-file. The alien's prior interactions with and submissions (other petitions and claims) to DHS are documented or contained in the A-file. Any adverse information in the A-file that was part of another immigration proceeding or filing involving that alien will be reviewed and assessed as part of the adjudication of the VAWA self-petition. Section 384 of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA) of 1996 put in place prohibitions with regard to making adverse determinations on a self-petitioner's eligibility based on evidence provided by: a spouse or parent who has battered the alien or subjected the alien to extreme cruelty; and a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty.

**Question:** Are there any special considerations or internal instructions regarding battered spouse petitions that describe what type and scope of corroboration would allow the VSC adjudicators to consider information from the alleged abusive spouses indicating potential marriage fraud?

**Response:** The INA section 204(c) prohibition against marriage fraud impacts the adjudication of the VAWA self-petition. An independent determination should be made as to whether non-conclusive evidence of marriage fraud in another immigration petition should result in the denial of the VAWA self-petition. USCIS must make an independent finding on whether there is substantial and probative evidence to indicate marriage fraud. See *Matter of Tawfik*, 20 I & N Dec. 166, 170 (BIA 1990). In addition, there are statutory limitations on what information can be used by USCIS when adjudicating a VAWA self-petition. Under 8 U.S.C. § 1367, officers of the Department of Homeland Security do not make an adverse determination on a VAWA self-petition if the adverse information was provided solely by certain specified sources, including the abuser. If the initial finding of marriage fraud resulted from information provided solely by the abuser, USCIS will not use that information or finding in adjudicating the VAWA self-petition unless it is independently corroborated by a third party or source. **USCIS does make efforts to obtain independent corroboration of any evidence that might indicate potential fraud.** USCIS does not maintain statistical data on VAWA self-petitions

<b>Question#:</b>	13
<b>Topic:</b>	VAWA - 2
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

approved notwithstanding previous denial of an immigrant petition based on marriage fraud.

**Question:** Is it mandatory when reviewing a VAWA petition to review any previous case files for immigrant petitioner? If not, why not?

**Response:** USCIS makes every effort to review an alien's complete A-file containing all previous petitions and applications for status prior to issuing a decision on the VAWA self-petition. In certain limited circumstances, review of the entire A-file may not be possible. In such instances, VSC may request certified copies of the A-file, consult with local USCIS and/or ICE counsel, and/or request additional information from the VAWA self-petitioner prior to making a final decision. Additionally, when the complete A-file is unavailable, a supervisory review of the case is required prior to a final decision.

**Question:** Is it mandatory when reviewing a VAWA petition to review any previous criminal files for immigrant petitioners, including criminal complaints filed by the petitioner against a citizen spouse? If not, why not?

**Response:** It is not mandatory to review criminal complaints filed by the self-petitioner against the citizen spouse, because neither statute nor regulation requires that type of review. However, VSC does review all evidence submitted with the petition and all other evidence in the A-file.

**Question:** Is it mandatory when reviewing a VAWA petition to review the files of any divorce proceedings and/or child custody proceedings involving the immigrant petitioner? If not, why not?

**Response:** It is not mandatory to review divorce proceedings and/or child custody proceedings involving the petitioner, because neither statute nor regulation requires that type of review. However, VSC does review all evidence submitted with the petition and all other evidence in the A-file.

**Question:** What has the Office of Audits in the Office of Inspector General (OIG) of the Department of Homeland Security (DHS) done to further its FY2011 performance objective of "determining whether I-130 marriage based petitions are being adjudicated uniformly, according to established policies and procedures, and in a manner that fully addresses all fraud and national security risks"?

**Response:** The DHS OIG would be best able to answer this question regarding their FY 2011 performance objectives.

<b>Question#:</b>	13
<b>Topic:</b>	VAWA - 2
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** What is the role of the Benefits Fraud Referral Process of the Office of Fraud Detection and National Security in the USCIS, if any, with respect to the adjudication of VAWA-based petitions?

**Response:** Adjudication of VAWA-based petitions rests with Adjudications personnel and not with FDNS. As with other applications and petitions, if there is an indication(s) of fraud regarding a VAWA-based petition, the case will be referred to FDNS for further administrative investigation.

**Question:** What is the role of the Benefits Fraud Referral Process of the Office of Fraud Detection and National Security in the USCIS, if any, with respect to the administration of VAWA-based petitions?

**Response:** FDNS administratively investigates fraud in immigration applications and petitions, including VAWA-based petitions. During the course of its investigation, FDNS ensures that it adheres to the strict confidentiality and privacy restrictions as stated within 8 U.S.C. § 1367 and INA § 239(e) with regard to those individuals with a pending or approved VAWA-based petition.

<b>Question#:</b>	14
<b>Topic:</b>	VAWA - 3
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** What role does ICE play regarding the investigation and prosecution of alleged immigration fraud?

**Response:** U.S. Immigration and Customs Enforcement (ICE), through its Homeland Security Investigations (HSI) Directorate's Identity and Benefit Fraud Program works to ensure the integrity of the nation's immigration system by preventing criminal enterprises and individuals from using fraud to further the entry, stay, and movement of unauthorized aliens in and throughout the United States.

ICE HSI conducts immigration fraud investigations in close consultation with U.S. Citizenship and Immigration Services' (USCIS) Fraud Detection and National Security (FDNS) Directorate to ensure that a comprehensive approach is taken to combat immigration benefit fraud. Due to its combined unique administrative and criminal authorities, ICE is well positioned to conduct criminal investigations. In addition, ICE has the expertise of its HSI-forensic laboratory, which has been operational since 1978, and is the only federal crime laboratory dedicated primarily to the forensic examination of travel and identity documents.

Immigration fraud very often involves a range of criminal activity affecting not only the Department of Homeland Security (DHS), but federal, state, and local agencies. In recognition of the complexity of this criminal activity, in April 2006, ICE established the Document and Benefit Fraud Task Forces (DBFTF) to bring together the joint expertise of federal, state, and local law enforcement partners to formulate a comprehensive approach in targeting the criminal organizations and the beneficiaries committing immigration fraud. The HSI-led DBFTFs, directed by 18 Special Agent in Charge Offices nationwide, partner closely with USCIS FDNS; U.S. Attorneys' Offices; U.S. Department of Labor; U.S. Social Security Administration's Office of the Inspector General; U.S. Postal Inspection Service; the U.S. Department of State, Diplomatic Security Service (DSS); and various state and local law enforcement agencies. Each of these agencies has a different area of expertise and knowledge, and their contributions enable the DBFTFs to conduct more comprehensive investigations. Through collaboration and partnership, the DBFTFs eliminate duplication of efforts and maximize resources to achieve focused, high-impact criminal prosecutions. Task force investigations relate to immigration benefit fraud, other fraud schemes involving aliens (taxes, bank loans, health care, etc.), identity theft schemes, and document fraud (counterfeit immigration documents, passports, Social Security cards, state identity

<b>Question#:</b>	14
<b>Topic:</b>	VAWA - 3
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

documents, driver's licenses, etc.). Through ICE's leadership, the DBFTFs have been able to pursue investigations more efficiently and to a greater impact and effect.

**Question:** What role does ICE play regarding the investigation and prosecution of alleged immigration marriage fraud?

**Response:** Although often viewed as a crime normally committed by individuals, marriage fraud can also occur through the facilitation of large-scale criminal enterprises. Consequently, ICE's investigations of marriage fraud target not only the U.S. citizens and aliens who engage in sham marriages for immigration purposes, but also the brokers, facilitators, and fraud rings that make such activity possible. ICE Homeland Security Investigations works closely with its DBFTF partners, particularly USCIS, DSS, Department of Defense, and local government agencies to detect, deter, and prosecute marriage fraud.

**Question:** What role should ICE play regarding the investigation and prosecution of alleged immigration fraud?

**Response:** ICE has the expertise, infrastructure, knowledge, and unique combination of administrative and criminal authorities to conduct these complex investigations. As a component of DHS, ICE maintains a close working relationship with the benefit granting agency, USCIS. Further, with ICE's overseas presence, through its Visa Security Program, it is able to closely work with the Department of State to identify, detect, and prevent the trends and schemes that result in immigration fraud.

<b>Question#:</b>	15
<b>Topic:</b>	PD - 1
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, you committed to answer questions posed by several members of the Judiciary Committee about prosecutorial discretion. Attached is a list of questions provided to your Department. I would appreciate responses to these questions at this time.

Following August 19 announcement by Secretary Napolitano

On Aug. 25, staff sent an email to legislative affairs at DHS, requesting more information regarding the Administration's processing of the case-by-case reviews. Staff specifically asked for past, current and future monitoring of cases, including:

**Question:** DHS to provide (and continue to count) the number of deportation cases that the Department is reviewing.

**Response:** On November 17, 2011, the Department of Homeland Security (DHS) began reviewing the immigration cases—approximately 300,000—currently pending before the Executive Office for Immigration Review to determine whether the exercise of prosecutorial discretion is appropriate in any of the cases.

**Question:** How many are receiving deferred action?

**Response:** As part of the review of the 300,000 immigration cases pending in the Executive Office for Immigration Review Immigration Courts, the preferred mechanism for exercising prosecutorial discretion is through administrative closure. As a result, in those cases that U.S. Immigration and Customs Enforcement's (ICE) Office of the Principal Legal Advisor identifies as appropriate for an exercise of prosecutorial discretion, standard procedure calls for an offer of administrative closure.

**Question:** What their country of origin is?

**Response:** ICE is not currently tracking the grants of administrative closure by country of origin.

**Question:** What was their reason for being in deportation proceedings?

**Response:** ICE is not currently tracking grants of administrative closure by the reason the individual was placed in removal proceedings.

<b>Question#:</b>	15
<b>Topic:</b>	PD - 1
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** How many apply for EAD? How many are approved for EAD? How many are denied?

**Response:** Individuals whose cases are administratively closed as part of the case-by-case review process are not eligible to receive an Employment Authorization Document (EAD) on the basis that their case was administratively closed. Individuals whose cases are administratively closed and who are otherwise legally entitled to an EAD may receive or maintain an EAD; however, the mere fact that a case is administratively closed alone will not entitle an individual to an EAD.

**Question:** And any other biographical information?

**Response:** DHS does not track additional biographic information for deferred action cases.

<b>Question#:</b>	16
<b>Topic:</b>	PD - 2
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Meeting with John Sandweg, Counselor to the Secretary, on September 19, 2011. Staff asked John for:

Additional information on the working group, including a list of those in the group.  
 What is the long-term plan for this review? Is this policy in place indefinitely or until some backlog benchmark is reached? Is this a one-time review of the current cases?  
 The formal guidance for reviewing each case (we understand it's close to final).  
 Offices want notice when the first case will be reviewed.  
 What defined standards will be used for adjudicating cases?  
 Numbers in relation to August 19 announcement: How many will fall into discretion categories (actual and estimate)? Mr. Sandweg estimated 5-10,000 of the 300,000 cases pending before immigration judges will be eligible.  
 Numbers in relation to the June Morton Memo: How many will benefit from exercise of prosecutorial discretion?  
 Eligibility: Are those with final orders of removal eligible for discretion?  
 Eligibility: Will all those with a criminal conviction be eliminated from consideration for discretion? If not, how will they decide which individuals are exempted?  
 Eligibility: How will individuals who recently crossed the border be handled?  
 Is there a distance from the border in which individuals will no longer be considered for prosecutorial discretion?  
 If a case is administratively closed, what is that person eligible for under existing regulations? What is the rule/standard for work authorizations?  
 What will they do if there is an increase in removal proceedings because of this process?  
 What resources does the department need to process everyone under existing law?  
 What will they do if this process increases the percentage of non-detained individuals that don't show up to court?  
 What is the current EOIR process for docketing?  
 What is the process for caseworkers?

**Response:** As indicated above, these questions were presented to DHS Office of Legislative Affairs (OLA) staff after the briefing by the Secretary's Counselor. Answers have been provided to the Committee staff for all inquiries that DHS was able to provide information on by OLA staff.

<b>Question#:</b>	17
<b>Topic:</b>	cases
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Working Group: The Administration claims that sorting through 300,000 or more cases will save resources by allowing immigration judges to focus on high priority cases. What are the costs incurred by the working group and task force to sort through these cases? How many hours will be devoted to the initiative, and what projects/positions will they take a leave of absence from in order to sort through these 300,000 or more cases?

**Response:** The Department of Homeland Security (DHS) conducted a the six week pilot program from December 4, 2011, through January 14, 2012. The pilot program involved U.S. Immigration and Customs Enforcement (ICE) Offices of Chief Counsel in Denver, Colorado, and Baltimore, Maryland. DHS also conducted a review of certain immigration cases pending before the Executive Office for Immigration Review in the 24 other jurisdictions during the same period. No additional DHS resources were used for the two pilot programs in Denver and Baltimore. In the other 24 jurisdictions, DHS conducted reviews of immigration cases for prosecutorial discretion as one of its daily functions in reviewing pending cases. DHS is still reviewing immigration cases for prosecutorial discretion as part of its daily functions in all jurisdictions.

**Question:** Will DHS administratively close or terminate cases pending before EOIR? If the department plans to do both, depending on the circumstances, please explain what factors will be taken into consideration for each action.

**Response:** The default course of action is to request administrative closure of these cases.

**Question:** How many cases are administratively closed each year?

**Response:** In the past, DHS did not track this metric. ICE began tracking this metric in November 2011 as part of the new initiative.

**Question:** Of the cases administratively closed, how many are re-opened?

**Response:** The below table displays ICE cases that had previously been administratively closed but subsequently re-calendared and are under ICE docket control.

<b>Question#:</b>	17
<b>Topic:</b>	cases
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

<b>Cumulative Recalendared Administratively Closed Cases</b>	
Detained	233
Non-Detained	63,754
<b>TOTAL</b>	<b>63,987</b>
Detained information as of November 3, 2011 Non-Detained information as of November 4, 2011 Information provided by the ICE ERO Statistical Tracking Unit  *****For the purposes of this tasking, a recalendared case is defined as a function of an immigration case being put back on the immigration court's docket for adjudication*****	

**Question:** Please provide statistics for the last 8 years, including FY2011.

**Response:** Per the above explanation, the Department of Homeland Security cannot provide this information because ICE did not begin tracking this metric until November 2011.

**Question:** Does DHS have a system for tracking administratively closed cases, including tracking determining whether to re-open them?

**Response:** ICE can track those cases that have been administratively closed and subsequently recalendared and placed under docket control. However, ICE did not track the number of administratively closed cases until November 2011 when ICE began to track that metric as part of the new initiatives.

<b>Question#:</b>	18
<b>Topic:</b>	PD - 3
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Once the working group test pilot has been completed, will you give Congress details and insight into the process and parameters used in the case-by-case review before it actually begins? If not, please explain.

**Response:** For decades, the Department of Homeland Security (DHS), and before DHS was established, the U.S. Immigration and Naturalization Service, has exercised prosecutorial discretion to prioritize the use of immigration enforcement resources. While not exercising discretion on a categorical basis for large classes of aliens, DHS has used, and continues to use, discretion on a case-by-case basis when it has been appropriate and responsible to do so and when it enhances our ability to meet our priorities.

The requests for prosecutorial discretion and all supporting documentation that is provided are reviewed by U.S. Immigration and Customs Enforcement (ICE) officers, special agents, and attorneys. In determining whether to exercise prosecutorial discretion, ICE officers, special agents, and attorneys refer to the guidance provided in ICE Director John Morton's June 17, 2011 memorandum, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens." ICE officers, special agents, and attorneys consider every case that they handle individually to decide whether, based on the totality of the circumstances, it is appropriate to exercise prosecutorial discretion. At any stage of the immigration process, individuals or their representatives may submit any relevant information that they feel would assist ICE in determining whether prosecutorial discretion is warranted. ICE will continue to use prosecutorial discretion on a case-by-case basis when the totality of the circumstances would so warrant. If, after careful consideration of all available relevant documents, ICE determines that circumstances of a specific case warrant the exercise of prosecutorial discretion, ICE will notify the individual or the individual's representative.

<b>Question#:</b>	19
<b>Topic:</b>	PD - 4
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** At the hearing, I asked you if those who currently have final orders of removal will be eligible for relief under the case-by-case review process. You stated, “Absent unusual circumstances, no.” What would you define as an “unusual circumstance” that would allow them administrative relief? Please be specific as possible.

**Response:** U.S. Immigration and Customs Enforcement (ICE) officers, special agents, and attorneys review each case on its own merits in conformity with the ICE priorities described in ICE Director John Morton’s June 17, 2011 memorandum, “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens.” This review may be done at different stages of the removal process, from the arrest of an alien up to the execution of a removal order. In determining whether to exercise prosecutorial discretion, including at the stage in which a final removal order has been issued, ICE officers and special agents consider every case individually to decide whether, based on the totality of the circumstances, an exercise of prosecutorial discretion is appropriate.

Prosecutorial discretion, unlike benefits specified in the Immigration and Nationality Act, is not a form of relief from removal based on specific, established statutory criteria or exercised on a categorical basis for large classes of aliens. Therefore, individuals who have received a final order of removal or their representatives may submit any information they feel is relevant to their request for prosecutorial discretion and in their opinion would assist in the determination of whether prosecutorial discretion is warranted. The requests for prosecutorial discretion and all supporting documentation that is provided are reviewed by the appropriate ICE officers, special agents, or attorneys. If a decision is made, after careful consideration of all available relevant documents, that circumstances of a specific case warrant the exercise of prosecutorial discretion, the individual or the individual’s representative will be notified. Because there are no specific established criteria and the totality of the circumstances involved in every case are different, ICE cannot provide any specific “unusual circumstances” that would warrant the exercise of prosecutorial discretion for individuals with a final order of removal.

<b>Question#:</b>	20
<b>Topic:</b>	PD - 5
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In a response to Senator Leahy at the hearing, you stated, “What has been a bit surprising is the reaction that somehow the prosecution memo that – important issue this summer was something new. In fact, if you go back historically in the immigration area, there is U.S. Supreme Court case law, there are memos from directors in both Republican and Democratic administrations and it – and it makes common sense.” Has the use of prosecutorial discretion relating to immigration matters ever been used to the extent this Administration is currently applying it to upwards of 300,000 or more cases? If so, please detail.

**Response:** For decades, the Department of Homeland Security (DHS), and before DHS was established, the U.S. Immigration and Naturalization Service, has exercised prosecutorial discretion to prioritize the use of immigration enforcement resources. While not exercising prosecutorial discretion on a categorical basis for large classes of aliens, DHS has used prosecutorial discretion on a case-by-case basis when it has been appropriate and responsible to do so and when it enhances our ability to meet our priorities. U.S. Immigration and Customs Enforcement (ICE) Director John Morton’s June 17, 2011 memorandum and the follow-up guidance merely clarify DHS’s exercise of prosecutorial discretion. On November 17, 2011, the administration began reviewing the cases—approximately 300,000—currently pending before the Executive Office for Immigration Review to determine whether the exercise of prosecutorial discretion is appropriate in any of the cases, in order to remove cases that are not enforcement priorities and are clogging up the system from the docket of immigration courts. This review will be responsible and consistent with our legal authorities. It is necessary to allow our agents and officers to focus our limited enforcement, detention, and removal resources on enforcement priorities to best enhance public safety, national security, and border security.

<b>Question#:</b>	21
<b>Topic:</b>	interviews
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, I asked you about the State Department's attempts to exempt foreign nationals from being required to perform in-person interviews abroad to obtain visas. You stated you needed to look into this.

What have you learned since the hearing?

Will you push back on any attempts by the State Department to roll back the in-person interview requirements?

**Response:** The Department of Homeland Security (DHS) and the Department of State (DOS) have agreed to establish a two year pilot program to streamline visa and foreign visitor processing to spur economic growth in the United States while maintaining robust security measures. This initiative was announced as part of a larger Travel and Tourism announcement on January 19, 2012, and it is now in effect. The policy we are implementing gives consular officers the ability to waive interviews, in cases where they believe it is appropriate; for example, those applying to renew their visas up to four years after their prior visa expires.

Since 9/11, the United States has developed an intensive visa screening process that incorporates a multi-layered approach to security, including multiple biographic and biometric checks, all supported by a sophisticated global information technology network. These checks are completed for every visa application, whether the applicant appears for a personal interview or not and continue even after the visa has been issued.

Consular officers will always have the option to interview applicants. Interviews will not be waived when a consular officer has any concern about an individual applicant. For example, individuals in a high risk visa category or identified through security checks as a person of concern will not qualify for an interview waiver. Visa categories are designated as high-risk based on dynamic threat information, and these categories can change based on new intelligence, suspicion of fraud, or other factors. Additionally, to protect program integrity, some qualifying low-risk individuals will be selected for interview. DHS and DOS are implementing these changes as a pilot in order to assess impact and make adjustments if needed, including the ability to expand in the future.

<b>Question#:</b>	22
<b>Topic:</b>	threat
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Your written testimony was frustratingly vague about the terrorist threat the United States faces. You briefly mentioned the continuing threat from al-Qaeda and its affiliates, but for most of your discussion of the terrorist threat, you referred only to undifferentiated “terrorism” or “violent extremism.”

In its Final Report, the National Commission on Terrorist Attacks Upon the United States (the “9-11 Commission”), stated, “[T]he enemy is not just ‘terrorism,’ some generic evil. This vagueness blurs [counter-terrorism] strategy. The catastrophic threat at this moment in history is more specific. It is the threat posed by Islamist terrorism—especially the al-Qaeda networks, its affiliates, and its ideology.” (emphasis in the original.)

Do you agree with the 9-11 Commission that, “The catastrophic threat at this moment in history ... is the threat posed by Islamist terrorism?”

**Response:** The Department of Homeland Security (DHS) Office of Intelligence and Analysis (I&A) assesses that the most significant terrorist threat to the homeland is that posed by al-Qa’ida, its affiliates and allies, and domestic based violent extremists inspired by al-Qa’ida’s ideology. This long term threat stems from the violent nature of al-Qa’ida’s ideology, and individuals who adhere to this belief system as justification for violent action. However, while recognizing the seriousness of this threat, the Department also recognizes that violent extremism is not confined to one ideology. Thus, the Department’s efforts to counter violent extremism must be applicable to all forms of violent extremism.

**Question:** Do you agree with the 9-11 Commission that the “ideology” of al-Qaeda is a threat and must be countered?

**Response:** Al-Qa’ida’s goal promoting violence in Africa, the Middle East, and Asia and encouragement of groups and individuals to commit acts of violence against the United States Homeland; U.S. persons and interests overseas; and U.S. allies remains a threat. DHS seeks to use its operational capability and partnerships with other Federal, state, local entities to counter the threat posed by these groups and individuals.

**Question:** How would you define the “ideology” of al-Qaeda?

**Response:** Al-Qa’ida is an international Islamic fundamentalist organization comprised of independent and collaborative cells that profess the same cause of reducing outside

<b>Question#:</b>	22
<b>Topic:</b>	threat
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

influence upon Islamic affairs through violence. Al-Qa'ida is the vanguard of the global jihadist movement.

<b>Question#:</b>	23
<b>Topic:</b>	homegrown
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In your written testimony, you note “a conscious effort by terrorists to recruit people who are already in the United States” and refer to this as the “threat of homegrown violent extremism.”

What is your definition of “homegrown violent extremism”?

Please give examples of major attempted or successful terrorist attacks conducted by homegrown violent extremists.

Which terrorist groups are trying to recruit people in the United States?

Whom are they trying to recruit—American citizens, legal permanent residents, refugees, illegal aliens, all of the above?

With what methods and arguments are they trying to recruit people?

**Response:** The Intelligence Community, including DHS and FBI, defines a Homegrown Violent Extremist (HVE) as a person of any citizenship who has lived and/or operated primarily in the United States or its territories who advocates, is engaged in, or is preparing to engage in ideologically-motivated terrorist activities (including providing support to terrorism) in furtherance of political or social objectives promoted by a foreign terrorist organization, but is acting independently of direction by a foreign terrorist organization. HVEs are distinct from traditional domestic terrorists who engage in unlawful acts of violence to intimidate civilian populations or attempt to influence domestic policy without direction from or influence from a foreign actor.

Examples of some recent disrupted plots on U.S. soil include:

- The arrest of Naser Abdo<sup>USPER</sup> in June 2011 for allegedly plotting to attack Ft. Hood, Texas.
- The arrest by the New York Police Department in May 2011 of Mohamed Mamdouh<sup>USPER</sup> and Ahmed Ferhani after they attempted to purchase a hand grenade, guns, and ammunition to attack an unidentified synagogue.
- Mohamed Osman Mohamud’s<sup>USPER</sup> November 2010 alleged failed attempt to bomb a Christmas celebration in Portland, Oregon.

<b>Question#:</b>	23
<b>Topic:</b>	homegrown
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
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- The arrest of Farooque Ahmed<sup>USPER</sup> in October 2010 for allegedly plotting to attack the Washington, DC subway system.
- The arrest of Antonio Benjamin Martinez in December 2010 for allegedly attempting to detonate an inert explosive device at an Armed Forces recruiting station in Catonsville, Maryland.
- The arrest of Sami Samir Hassoun in September 2010 on charges of attempted use of a weapon of mass destruction in an alleged plot to detonate a bomb in the vicinity of Wrigley Field in Chicago, Illinois.

In addition to disrupted plots, 2009 saw two fatal attacks with the Ft. Hood shootings carried out by Nidal Hasan<sup>USPER</sup> and the killing of one and wounding of another military recruiter in Little Rock, Arkansas, by Carlos Bledsoe<sup>USPER</sup>.

Foreign terrorist groups affiliated with al-Qa'ida and individual violent extremists who ascribe to al-Qa'ida's ideology actively seek to inspire Westerners to carry out attacks against Western and U.S. targets. These parties seek to inspire individuals living in communities within the United States via print, video, and social media, as well as through personal interaction.

However, the threat posed by violent extremists is real and not limited to a single ideology. The threat environment constantly evolves, which is why DHS must consider all types of violent extremism. However, many of these movements also contains individuals who may be engaging in legal, constitutionally-protected behavior, such as political speech. Thus, DHS focuses its attention on individuals who are not merely inspired by specific ideologies, but are inspired to violence and/or specific criminal activity as a means of furthering their ideological objectives.

Al-Qa'ida and its affiliates increasingly have included English speaking spokespersons, ideologues, and operational planners with knowledge of Western countries and culture—particularly American citizens like the now-deceased Anwar al-Aulaqi and Samir Khan, as well as Omar Hammami<sup>USPER</sup> and Adam Gadahn<sup>USPER</sup>—to convey their message via increasingly sophisticated English-language propaganda. The availability on the Internet of propaganda advocating attacks against the United States and providing practical operational advice, combined with social networking tools that facilitate violent extremist communication, have contributed to a more diversified and challenging threat picture in the United States. Due in part to these factors, propaganda releases by even deceased

<b>Question#:</b>	23
<b>Topic:</b>	homegrown
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<b>Primary:</b>	The Honorable Charles E. Grassley
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spokespersons and operational planners such as al-Aulaqi have the potential to remain in circulation and inspire violence by individuals within the United States. For example:

- Al-Aulaqi, Khan, and Hammami have appealed to potential violent extremists through their use of colloquial English, slick presentations and the use of social networking sites such as YouTube<sup>USPER</sup> and Facebook<sup>USPER</sup>.
- These violent extremist spokespersons and operational planners spearheaded recent efforts to provide instruction to Americans and other Westerners with the ability to independently plan and execute their own terrorist attacks—without the need to travel overseas for training—through English-language propaganda.

Al-Qa'ida, its affiliates, and likeminded groups attempt to inspire anyone who has access to the United States and can further their operations. Their messages have resonated and inspired some people to carry out or plot acts of violence, including US-born and naturalized citizens and Lawful Permanent Residents.

A few examples include alleged November 2009 Ft. Hood shooter Nidal Hasan—who was then himself later featured in al-Qa'ida and AQAP propaganda as an example to emulate—Carlos Bledsoe, who shot two servicemen at a recruiting center in Arkansas in 2009; and Michael Finton,<sup>USPER</sup> who plotted to blow up a court house in Springfield, Illinois.

<b>Question#:</b>	24
<b>Topic:</b>	rank
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In your written testimony, you state that “law enforcement officials work with members of diverse communities that broadly and strongly reject violent extremism.” Please specify which communities you were referring to.

Please rank in order of threat, from highest to lowest, the types of violent extremism (e.g., violent Islamic extremism, environmental/animal rights activists, militias, white supremacist movements, etc.) that the United States faces.

**Response:** The Administration’s and DHS’ approach to countering violent extremism (CVE) emphasizes the strength of local communities. Local communities are best placed to recognize the threat and push back against violent extremists who may be targeting their families and neighbors. Our nation’s homeland security is based on the premise that we must harness local efforts to counter national threats. DHS is contributing to multiple interagency efforts, with non-federal and non-governmental partners, to engage local communities in our CVE efforts to make them safe, secure, and resilient.

As DHS discussed and devised its approach to CVE, the Department sought input from state, local, and tribal law enforcement officers, local government officials, and community groups. All of these groups strongly advised that DHS support and leverage local pre-existing partnerships and expand outreach to communities that may be targeted for recruitment by violent extremists; engage those communities on issues of common interest; promote greater awareness and understanding of Federal resources, programs, and security measures; and address community concerns.

DHS continues to work closely with state and local partners, and individual citizens, to raise awareness through initiatives such as the “If You See Something, Say Something™” public awareness campaign and the Nationwide Suspicious Activity Reporting Initiative (NSI). The “If You See Something, Say Something™” encourages members of the public to report suspicious activity to the appropriate law enforcement official. The NSI, meanwhile, leverages the power of state and local first responders to identify potential terrorist activity, providing law enforcement the opportunity to disrupt and dismantle terrorist plots. The NSI provides a standardized system for reporting suspicious activity, which is then analyzed and shared across jurisdictions and sectors. In many cases, the NSI provides a medium for sharing valuable information across the Intelligence Community that previously went unharvested and unevaluated.

<b>Question#:</b>	24
<b>Topic:</b>	rank
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

At present, we judge that threats from al-Qa'ida and its affiliates pose the greatest threat to the homeland. These groups have carried out and continue to attempt sophisticated attacks against the United States. Their recent encouragement of small scale attacks by supporters complicates the threat picture, as individuals planning violent acts may offer fewer opportunities for intelligence and law enforcement observation. Moreover, individuals exploiting publically available information on explosives and terrorist tactics potentially can carry out attacks with compressed time for training and planning.

The threat of violence from domestic violent extremists also emanates from small, clandestine cells or individuals acting independently. In just the past three years, there have been several incidents involving domestic extremists committing or attempting violent acts. For example:

- A lone white supremacist extremist attempted to bomb a Martin Luther King, Jr. Day parade in Washington State in January 2011.
- In June 2009, a lone white supremacist extremists attacked a guard at the U.S. Holocaust Museum in Washington, DC.
- In March 2010, two sovereign citizen extremists murdered two law enforcement officers in Arkansas during a traffic stop.
- A lone white supremacist extremist ambushed and murdered three officers who were answering a domestic dispute call in Pittsburgh, PA in April 2009.
- In May 2009, a lone anti-abortion extremist in Kansas murdered a doctor who provided abortions.

Lastly, animal rights extremist criminal activity in the Homeland, particularly Internet postings of animal researcher's personal identifying information with veiled threats, appears to be on the increase. For example:

- Over 2011, several Internet postings have claimed a mutual affinity between animal rights extremists and Internet hacking collectives such as Anonymous, going on to threaten those they consider responsible for abusing and exploiting animals.
- A self-proclaimed animal rights extremist in Utah was arrested and pled guilty in 2011 for attacks in 2010 in which he burned down a leather factory a restaurant, and a Colorado sheepskin factory.

<b>Question#:</b>	24
<b>Topic:</b>	rank
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
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Consequently, we focus on the possible tactics and targets of these cells or individuals, as well as violent extremist groups.

<b>Question#:</b>	25
<b>Topic:</b>	resources
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Please describe how the resources of DHS, in particular the Office of Intelligence and Analysis and the rest of the DHS Intelligence Enterprise are allocated in accordance with your ranking of priorities.

**Response:** Travel to the United States by members of al-Qa'ida, its affiliated and allied groups, and the tactics and recruiting activities in the Homeland of persons motivated by al-Qa'ida ideology remain the primary focus of DHS counterterrorism analytic efforts conducted by the Office of Intelligence and Analysis (I&A). Additionally, analysts within DHS focus on a variety of related topics and issues, to include violent extremist radicalization; terrorist tactics, techniques, and procedures; travel and immigration security; border security; chemical and biological weapons use or development by terrorist groups; threats to critical infrastructure; and the conduct of violent domestic extremist groups. I&A analysts also perform cybersecurity analysis in support of DHS's growing cybersecurity responsibilities and counterintelligence analysis in support of the entire Department.

I&A works closely with the DHS Intelligence Enterprise and larger Intelligence Community to support our understanding of developing threats that may need to be shared with our state and local partners. I&A also dedicates significant resources to support major urban area fusion centers including: 75 Intelligence Officers and Regional Directors; 15 personnel at DHS Headquarters; Homeland Secure Data Network terminals at 65 locations (as of January 3, 2012) nationwide; security clearances for state and local personnel; and training workshops on analytic techniques, Suspicious Activity Reporting, and Privacy/Civil Rights and Civil Liberties.

<b>Question#:</b>	26
<b>Topic:</b>	extreme hardship
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** During the hearing, I asked you about lessening the standard for extreme hardship. This was a proposal outlined in the “Administrative Alternatives to Comprehensive Immigration Reform” memo written by officials within USCIS. Because you failed to answer my question during the hearing, allow me to ask again: Are you aware of any discussions to change or lessen the definition of extreme hardship?

**Response:** The Immigration and Nationality Act (INA) does not define extreme hardship. Relevant case law on the term, as it is used in the context of a waiver of inadmissibility under INA § 212(a)(9), has noted that “Congress provided this waiver but limited its application. By such limitation it is evident that [Congress] did not intend that a waiver be granted merely due to the fact that a qualifying relationship existed. The key term in the provision is ‘extreme’ and thus only in cases of great actual or prospective injury to the United States [citizen or lawfully resident spouse or parent] will the bar be removed. Common results of [certain of] the [INA’s inadmissibility grounds], such as separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984) (citing *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); *Matter of W-*, 9 I&N Dec. 1 (BIA 1960)). DHS’s components apply this existing case law to their review and evaluation of applications for waivers of inadmissibility under INA § 212(a)(9).

<b>Question#:</b>	27
<b>Topic:</b>	fraud
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Charles E. Grassley
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Please list and explain what activities and investigations the Fraud Detection and National Security Office is currently undertaking, and what activities and investigations they plan to undertake in the coming year.

**Response:** In the coming year, FDNS will continue to provide anti-fraud program support for officers and staff in Service Centers, Regional, District, Field and Asylum Offices, and other USCIS HQ components. In an effort to enhance USCIS's anti-fraud mission of strengthening the integrity of the immigration system, FDNS officers and intelligence research specialists will continue to provide support to our law enforcement and intelligence counterparts in the areas of administrative investigation, research, and analysis. Furthermore, FDNS will expand upon its efforts in conducting site visits to verify information provided by applicants and petitioners through its Administrative Site Visit and Verification Program (ASVVP) and through targeted site visits of applicants, petitioners, and beneficiaries suspected of committing immigration fraud. Recognizing the value of a reliable overseas verification capability in fraud detection efforts, FDNS will explore expansion or enhancement of such capabilities.

**Question:** Please also provide an update on the status of the L visa Benefit Fraud and Compliance Assessment.

**Response:** In late September 2011, USCIS awarded a contract to an outside firm, Booz Allen Hamilton, to provide an independent scientific review of the L visa Benefit Fraud and Compliance Assessment (BFCA). As part of USCIS ongoing process improvement initiative, they will design a methodology for performing future fraud studies in a scientifically sound manner. The firm is continuing its efforts to evaluate the previous draft of the L visa BFCA. USCIS currently expects delivery of the firm's evaluation of the L visa BFCA in the summer of 2012. The findings and evaluation of the contract firm will influence USCIS's decision related to the handling of the L visa BFCA and the performing of future studies for that type of filing category.

<b>Question#:</b>	28
<b>Topic:</b>	DNA
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jon Kyl
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** When Congress passed the DNA Fingerprint Act in 2005, the FBI originally projected that it would receive up to one million DNA samples annually under provisions requiring DNA samples from non-U.S. citizens who have been detained in immigration proceedings. At your confirmation hearing in 2009 I asked if you would “see to it that the alien-deportee DNA testing regulations are fully and promptly implemented by the Department,” to which you responded “DHS will fully comply with the applicable statutory and regulatory framework, and we are currently working to finalize implementation plans and associated procedural guidance.” It is now more than two years later, and a recent OIG audit of the FBI’s CODIS program expressed concern that the FBI was not receiving the estimated volume of DNA samples from DHS. In fact, I understand that to-date the FBI has fewer than 3,000 such DNA profiles for detainees. I am aware that US DOJ is stepping up its efforts to coordinate with DHS on these collections, but can you tell me what DHS is doing to ensure this law is finally implemented?

Other than just simple lack of communication, coordination, and training, are you aware of any other obstacles to DHS’s full implementation of this law?

The FBI now reports that it anticipates receiving somewhere between 120,000 to 240,000 immigration-detainee samples in 2012. Will DHS fulfill its role in implementing the law?

**Response:** DHS continues to work toward full implementation consistent with the applicable statutory and regulatory requirements in this area. Over the course of the last two years, the Department has been in communication with the Department of Justice (DOJ) regarding specific aspects of the DNA sampling requirements. Some DHS operational components such as the Federal Protective Service, the U.S. Secret Service, the U.S. Coast Guard/U.S. Coast Guard Investigative Service, and the Transportation Security Administration/Federal Air Marshal Service are fully engaged in DNA sample collection consistent with applicable requirements. Other DHS operational components are continuing to work toward full implementation, including the initiation of pilot programs in some instances, while also addressing associated administrative and operational obstacles to include the training of law enforcement officers and negotiations with relevant collective bargaining units. DHS continues to be actively engaged with our partners at DOJ and the Federal Bureau of Investigation (FBI) in coordinating all of the issues involved in DNA sample collection and have benefited greatly from their experience and assistance. DNA sample collection is a very important tool for law

<b>Question#:</b>	28
<b>Topic:</b>	DNA
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jon Kyl
<b>Committee:</b>	JUDICIARY (SENATE)

enforcement and the criminal justice system and the Department is committed to full implementation of this vital program consistent with the applicable statutory and regulatory requirements.

<b>Question#:</b>	29
<b>Topic:</b>	analysis
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You testified that illegal aliens who receive deferred action according the prosecutorial discretion policy will also be eligible for work authorizations. Did the Department of Homeland Security conduct an analysis of how this policy will affect the job market and American workers? If so, what did that analysis show?

**Response:** Individuals whose cases are administratively closed, the preferred mechanism for exercising prosecutorial discretion in the case-by-case review initiative, are not eligible to receive employment authorization on the basis of the administrative closure alone.

<b>Question#:</b>	30
<b>Topic:</b>	working group
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You testified that a working group will review pending cases to determine if they should be pursued according to your priorities under the new prosecutorial discretion policy. Please identify the members of this group and explain how long you expect this review to take and how much it will cost the Department.

**Response:** The interagency working group tasked with implementing the policy consisted of representatives from DHS and the Department of Justice (DOJ) with significant experience in immigration enforcement matters. U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and two DOJ offices—the Executive Office for Immigration Review (EOIR) and the Office of Immigration Litigation (OIL)—were all represented. As a result of the efforts initiated by the working group, ICE launched two initiatives. First, ICE attorneys nationwide began reviewing all incoming cases in immigration court, as well as certain pending cases. ICE Principal Legal Advisor Peter Vincent issued a memorandum to all Offices of the Chief Counsel to guide this review. Second, on December 4, 2011, DHS, in cooperation with DOJ, launched pilot programs in two jurisdictions to test run the process for reviewing all cases pending in immigration court. Both types of review are based on the June 17, 2011 Prosecutorial Discretion Memorandum and guided by a set of more focused criteria that ICE released on November 17, 2011. The implementation of the pilot programs lasted for approximately two months, until January 13, 2012. Beginning on April 23, 2012, EOIR will suspend the non-detained dockets in four additional jurisdictions for two weeks. The four jurisdictions are Detroit, New Orleans, Orlando, and Seattle. During those two weeks, the immigration judges assigned to the non-detained dockets in those locations will be re-assigned to hear detained cases. ICE attorneys assigned to the non-detained dockets in those locations will dedicate their time to reviewing pending cases for the potential exercise of prosecutorial discretion. Next, in May, EOIR will partially suspend the non-detained docket in New York City, during which time its non-detained immigration judges will be re-assigned to hear detained dockets at other locations, and ICE attorneys will devote their time to the review of the remaining cases in New York. EOIR and ICE will implement the same procedures in San Francisco in June and Los Angeles in July.

<b>Question#:</b>	31
<b>Topic:</b>	inspections
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You and ICE Director John Morton have testified to the fines issued and arrests made as a result of work place inspections. Please provide the number of employers that were convicted in 2010 and 2011 of hiring illegal aliens as a result of workplace inspections; the number of employers that were fined in 2010 and 2011 for hiring illegal aliens as a result of workplace inspections; and the number of illegal aliens discovered but not arrested during workplace investigations in 2010 and 2011.

**Response:** The number of employers that were convicted of hiring illegal aliens as a result of workplace inspections in fiscal year (FY) 2010 is 196, and 221 in FY 2011.

The number of employers that were fined for hiring illegal aliens as a result of workplace inspections in FY 2010 is 237, and 385 for FY 2011.

ICE does not track the number of illegal aliens “discovered” but not arrested during workplace investigations and therefore cannot provide this statistic.

<b>Question#:</b>	32
<b>Topic:</b>	funding
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You testified that your Department’s failure to implement mandatory exit procedures using biometric identification was due to a lack of appropriate funding. In Fiscal Year 2010, Congress set aside a total of \$50 million in appropriated funding for the implementation of biometric air exit capability. Although the Fiscal Year 2011 Continuing Resolution rescinded \$32 million of the \$50 million, the President, Speaker of the House, and Senate Majority Leader agreed to retain \$18 million of the FY 2010 funds. The Administration’s FY 2012 budget request “include[s] a cancellation of \$25.6 million in prior-year funds for biometric air exist to fund immediate operational needs. . . . the request realigns the remaining \$24.4 million to eliminate the existing 1.5 million unvetted overstay records.” It appears that any lack of funding for the establishment of these procedures is self-inflicted. Why are the funds that are appropriated for biometric exit procedures not being allocated to that purpose?

**Response:** Congress directed DHS to enhance the security of our border and immigration system through the development of a Biometric Air Entry and Exit System. The Department established the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) to develop and implement a program to collect entry and exit data (both biometric and biographic) of most foreign nationals traveling to the United States by air, land, and sea. The Department successfully completed a biometric entry system that has been deployed to 119 airports, 19 seaports, and 154 land ports of entry.

Establishing a biometric exit program has proven more challenging for DHS, largely because the infrastructure present at ports of entry is completely absent on departure. In an effort to meet the legislative requirements and secure our borders, DHS has undertaken several initiatives to examine the feasibility of and costs associated with implementing biometric exit using current technologies. In 2009, DHS launched two pilot locations for air biometric exit, at Hartsfield Jackson Atlanta International Airport and at Detroit Metropolitan Wayne County Airport. The Department also piloted a biometric collection program at 12 U.S. international airports and two seaports from 2004-2007. Through these demonstrations, DHS tested different configurations of biometric collection, technologies, and exit check locations.

After nearly a decade of effort, the Department has determined that implementation and operation of a comprehensive biometric air exit system, as contemplated in these pilots, faces significant cost and logistical challenges based on the technology available 3-5 years ago. According to our analysis, development of such a system will cost the government a minimum of approximately \$3 billion over the next 10 years. In the

<b>Question#:</b>	32
<b>Topic:</b>	funding
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

current fiscal climate, one in which DHS faces declining resources, the costs of operating an effective system using today's technology are prohibitive.

Given the enormity of the costs for developing and deploying a comprehensive biometric air exit system, the FY 2012 President's Budget included a proposal to rescind funds previously withheld only for the biometric system to permit the Department to focus resources on immediate frontline operating needs. Subsequently, as part of P.L. 112-74, Congress rescinded funding previously withheld for a biometric air exit program, but appropriated funds to the Department to support implementation of an enhanced biographic system and eliminating the backlog of "unvetted" overstays.

DHS remains committed to introducing a biometric component to the exit process and has directed its Science and Technology Directorate to establish criteria and promote research for emerging technologies that would provide the ability to capture biometrics at a significantly lower operational cost.

In the meantime, the Department is taking action to secure our borders today, by making strategic security investment decisions that prioritize those capabilities needed for the implementation of a future biometric exit system while providing security value now. For this reason, in my October 17, 2011, letters to the Chairman and the Ranking Member of the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs, I requested the authority to utilize funds allocated to the biometric exit program to implement an automated vetting and enhanced biographic exit capability. This strategy will allow the Department to:

1. Significantly enhance our existing capability to identify and target for enforcement action those who have overstayed their period of admission and who represent a public safety and/or national security threat by incorporating data contained within law enforcement, military, and intelligence repositories.
2. Establish an automated entry-exit capability that will produce information on individual overstays and determine overstay percentages by country.
3. Take administrative action against confirmed overstays by providing the State Department with information to support visa revocation, prohibiting Visa Waiver Program travel, and placing individuals on lookout lists, in accordance with existing Federal laws.
4. Establish greater efficiencies to our Visa Security Program, allowing for research and analytic activities to be carried out in the United States and investigative and law enforcement liaison work overseas.

<b>Question#:</b>	32
<b>Topic:</b>	funding
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

5. Provide the core components of an entry-exit and overstay program that will incorporate and use biometric information, as technologies mature and DHS can implement an affordable biometric air exit system.

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

In May 2011, the Department began a coordinated effort to vet all potential overstay records against intelligence community and DHS holdings for national security and public safety concerns. In total, the Department reviewed the backlog of 1.6 million unvetted potential overstay indicators leads within US-VISIT and referred leads based on against national security and public safety priorities. The resulting confirmed overstays were forwarded to U.S. Immigration and Customs Enforcement for further investigation. The remaining records are being manually reviewed to determine overstay status.

A beneficial by-product of this effort was the identification of efficiencies gained through automation, as well as other enhancements. Through this new automated approach, we will be able to enrich data sources, enhance automated matching, eliminate gaps in travel history, and aggregate information from multiple systems into a unified electronic dossier. As a result, DHS will be able to quickly and accurately identify overstays, and prioritize those who constitute a threat to national security or public safety.

Taken together, these improvements will strengthen the Department's exit and overstay program immediately, while investing in capabilities and processes needed for a successful biometric exit capability in the future. The enhanced biographic exit plan also incorporates biometric elements, allowing DHS personnel to more efficiently connect biometric identifiers (fingerprints and photographs) with biographic information residing within intelligence community and law enforcement databases.

This plan enhances the security and integrity of our immigration system, while fully leveraging existing Federal Government identity screening capabilities. Furthermore, it serves as a strong foundation for our plans for a full biometric exit system.

<b>Question#:</b>	33
<b>Topic:</b>	removals
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** You testified that ICE carried over 19,000 removals that occurred in 2009, and reported them in the numbers for 2010. Of the 396,906 illegal immigrants that you announced were deported in 2011, how many were similarly carried over from 2010? How does total number of removals in 2011 that you estimate differ from the numbers reported by the DHS Office of Immigration Statistics?

**Response:** Starting in fiscal year (FY) 2009, U.S. Immigration and Customs Enforcement (ICE) began to “lock” removal statistics on October 5th at the end of each fiscal year and counted only the aliens whose removals or returns were already confirmed. Aliens removed or returned in that fiscal year but not confirmed until after October 5th were excluded from the locked data and thus from ICE statistics. To ensure an accurate and complete representation of all removals and returns, ICE includes in the next fiscal year the removals and returns confirmed after October 5th. Under this methodology, there is no ‘double-counting’ of removals. Of the 396,906 removed in FY 2011, 11,761 departed in FY 2010 and were confirmed in FY 2011.

ICE total removals differ from those provided by the DHS Office of Immigration Statistics (OIS) for several reasons:

- DHS OIS is responsible for reporting on all DHS removals, and ICE reports only ICE removals;
- ICE total removals include removals and returns. DHS OIS reports returns separately;
- Although both DHS OIS and ICE use the same requirement—that is, in order for an alien to be reported as “removed,” the alien must have a departure date and a case closure date—ICE typically provides year-end removal numbers approximately five days after the end of a fiscal year, whereas DHS OIS reports year-end numbers up to nine months after the end of the fiscal year;
- In accordance with the definition of “locked” data provided above, to ensure an accurate and complete representation of all removals and returns, ICE includes into the next fiscal year the removals and returns confirmed after October 5. OIS does not lock their data, and experiences a much smaller amount of data lag due to the fact that their report is generated months after the end of the fiscal year.

<b>Question#:</b>	34
<b>Topic:</b>	statement
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On October 5th, you stated:

“We cannot on the one hand, be on the verge of removing for the third consecutive year, a record-breaking number of unlawful individuals from this country, with the highest number of criminal removals in American history and, at the same time, be abrogating our law enforcement responsibilities.”

It is clear from this statement that you rely on the number of removals achieved by ICE to combat assertions that DHS is neglecting enforcement. To that end, you said: “In 2010, ICE removed over 195,000 convicted criminals, more than had ever been previously removed by ICE.” However, the DHS Office of Immigration Statistics reported that only 168,532 convicted criminal aliens were removed. You also announced, in a press release that: “In fiscal year 2010, ICE set a record for overall removals of illegal aliens, with more than 392,000 removals nationwide.” Yet, your Office of Immigration Statistics reported only 387,242 removals.

Which numbers are correct?

**Response:** Both sets of numbers are correct, but report different statistics. The Office of Immigration Statistics (OIS) reports the number of convicted criminals who are apprehended by U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) and removed pursuant to a final order of removal. OIS does not report on those convicted criminals returned by ICE and CBP.

ICE reports the number of individuals who are removed or returned by ICE, regardless of whether the individual has a final order of removal. This practice is consistent with longstanding ICE reporting methodology.

ICE’s official removal numbers for FY 2010 are 392,862. Of that group, 195,772 had criminal convictions.

**Question:** The Office of Immigration Statistics’ (OIS) stated mission and sole purpose is to provide accurate and reliable statistics concerning immigration actions. According to their numbers, removals in 2010 mark a decrease of almost 8,000. Yet, your statistics reflect record breaking numbers. What does ICE do differently from your OIS to calculate their numbers?

<b>Question#:</b>	34
<b>Topic:</b>	statement
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Response:** Per longstanding practice, ICE’s total departures include removals and returns (e.g., voluntary returns). The Department of Homeland Security (DHS) Office of Immigration Statistics (OIS) reports returns separately from removals and combines the number of individuals removed by both CBP and ICE pursuant to a final order of removal. As such, the OIS statistics reflect the decreased number of removals effectuated by CBP along the Southwest border.

**Question:** During an “online roundtable” on September 28, 2011, President Obama said:

“[T]he statistics are actually a little deceptive because what we’ve been doing is...apprehending folks at the borders and sending them back. That is counted as a deportation, even though they may have only been held for a day or 48 hours.”

Do you agree with President Obama that the statistics are deceptive?

**Response:** The population referred to by President Obama are aliens apprehended by U.S. Customs and Border Protection (CBP) while attempting to unlawfully enter the United States and turned over to ICE for removal proceedings. If and when these aliens are removed or returned, they are removed or returned by ICE and counted as an ICE removal in our end-of-year removal statistics. ICE only counts removals for aliens who have an ICE detention record. Such removals are key to securing our borders and protecting the integrity of our immigration system.

**Question:** Do you agree that, when comparing statistical information over multiple years it is important to maintain a consistent methodology in calculating the numbers?

**Response:** In general, it is important to maintain consistent methodologies and ICE strives to do just that. However, as new technology enables better data collection in current and future years, changes may be made to methodologies to add accuracy, value, and additional analytics.

**Question:** Do you agree that by not using the numbers from your OIS it gives the deceptive impression that enforcement is increasing?

**Response:** Not at all. ICE is responsible for reporting its own data to Congress in accordance with established agency policies and priorities. ICE data accurately reflects ICE removal and return statistics and gives a more accurate picture of the enforcement of immigration law than does simple reporting of the removal of only those with a final order of removal.

<b>Question#:</b>	35
<b>Topic:</b>	release
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Administration has spent a large amount of resources trying to prevent enforcement of immigration laws through lawsuits, including against my state of Alabama. Recently, the National Immigrant Justice Center sued your Department claiming that ICE is violating illegal aliens' Fifth Amendment rights and infringing on the state's rights by asking the local police to hold the aliens pending transfer to federal custody. Then, the Cook County Commission in Illinois released over 40 suspected illegal aliens who were being held until they could be taken into federal custody. This is an example of a locality that is deliberately undermining the enforcement of immigration laws by your Department.

What action do you plan to take to ensure that other state and local governments will not follow suit?

When a state or local jail has custody of an illegal alien and asks ICE whether they should detain the alien until taken into federal custody, how often does ICE request that the alien be detained? How often are those aliens simply released back into society?

**Response:** The Department of Homeland Security (DHS) and the Administration have worked diligently to direct a course of targeted immigration enforcement, focusing on the removal of priority aliens, including, among others, criminal aliens and those that pose a threat to our national security.

Alabama and several other states have enacted mandatory and systemic schemes contradicting the authority of the federal government to set national immigration policy set forth in the Immigration and Nationality Act (INA) and reflected in the U.S. Government's immigration enforcement practices and policies. In order to restore Congress' intent for federal supremacy in immigration enforcement, the U.S. Government has been required to expend resources and initiate legal actions to preserve its authority to enforce the INA and set immigration policy and practice. While the U.S. Government has not yet currently determined the most effective way to work with localities like Cook County on detainer issues, it is considering the matter carefully.

As noted above, U.S. Immigration and Customs Enforcement (ICE), with its limited resources, prioritizes its enforcement efforts based on its highest enforcement priorities, namely national security, public safety, and border security and does not take custody of every individual who local authorities report as a possible illegal alien. Instead, ICE conducts investigations on such individuals and, where appropriate, lodges a detainer

<b>Question#:</b>	35
<b>Topic:</b>	release
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

against them and takes them into custody in accordance with its immigration enforcement priorities.

<b>Question#:</b>	36
<b>Topic:</b>	structure
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In 2010, the Office of the Inspector General said: “Although the department has taken steps to become ‘One DHS,’ much more remains to be done to establish a cohesive, efficient, and effective organization.” In March, GAO also found many instances of inefficient and ineffective organization. For example, GAO found that there are more than two dozen presidentially appointed individuals with some responsibility for biodefense. However, there is no individual or entity with responsibility, authority, and accountability for overseeing the entire biodefense enterprise.

Do you agree with the Inspector General and GAO that the current bureaucratic system within the Department of Homeland Security is not cohesive, efficient, or effective?

Do you have suggestions for improvements in biodefense accountability or are you satisfied with the current organization?

Clearly, a merger that creates an entity as large as DHS will have problems. I believe Congress would be supportive if you made suggestions for improved organization and efficiency. Do you have any?

**Response:** The Department has implemented a variety of initiatives to cut costs, share resources across Components, and consolidate and streamline operations wherever possible. To preserve core frontline priorities in the FY 2013 budget, we have redirected over \$850 million in base resources from administrative and mission support areas, including contracts, personnel (through attrition), information technology, travel, personnel moves, overtime, directed purchasing, professional services, and vehicle management. Through the Department-wide Efficiency Review (ER), which began in 2009, as well as other cost-saving initiatives, DHS has identified over \$3 billion in cost avoidances and reductions, and redeployed those funds to mission-critical initiatives across the Department.

At the same time, the Department challenged its workforce to fundamentally rethink how it does business – from the largest to smallest investments. In 2011, DHS conducted its first-ever formal base budget review for FY 2013, looking at all aspects of the Department’s budget to find savings within our current resources and to better align those with operational needs. Through its annual “Think Efficiency Campaign,” DHS solicited employee input on creative cost-saving measures and will implement six new employee-generated initiatives in early 2012.

<b>Question#:</b>	36
<b>Topic:</b>	structure
<b>Hearing:</b>	Oversight of the DHS
<b>Primary:</b>	The Honorable Jeff Sessions
<b>Committee:</b>	JUDICIARY (SENATE)

In FY 2011, DHS achieved a milestone that is a pivotal step towards increasing transparency and accountability for the Department's resources. For the first time since FY 2003, DHS earned a qualified audit opinion on its Balance Sheet – highlighting the significant progress we have made in improving our financial management in the 8 years since DHS was founded. Through these and other efforts across the Department, we will continue to ensure taxpayer dollars are managed with integrity, diligence, and accuracy and that the systems and processes used for all aspects of financial management demonstrate the highest level of accountability and transparency.

The FY 2013 budget request supports these significant efforts to increase transparency, accountability, and efficiency.

Regarding the Department's biodefense capabilities, the President, through the National Security Staff, holds accountable the Cabinet Secretaries and Departments with Biodefense responsibilities. Homeland Security Presidential Directive-10 apportions roles and responsibilities consistent with each Department's mission. DHS has both day-to-day biodefense preparedness responsibilities and national-level biodefense responsibilities. DHS on a daily basis incorporates biodefense protections into our main mission areas such as our work in microbial forensics and the Biowatch alert system. These are important collaborative efforts which are not duplicative.

In addition, the Department self-initiated a strategic biodefense review in order to improve the efficiency and effectiveness of its Biodefense activities. This review includes representatives from the Federal Emergency Management Agency, the Office of Operations Coordination and Planning, the Science and Technology Directorate, the Office of Health Affairs, the Office of Infrastructure Protection, the Office of Intelligence and Analysis, the Office of the General Counsel and the Office of Policy. The scope of the effort is twofold: 1) to ascertain and evaluate those capabilities DHS brings to the table as part of a national effort, and 2) to determine what biodefense capabilities DHS should have to adequately respond to this challenge. It is not designed to be a formal strategy or report, but a way to see how we can leverage resources more effectively with an eye towards potential collaborations in the future.

U.S. Citizenship and Immigration Services Total Number of Employment Authorization Applications (I-765) Approved and Denied with Class Preference C14 Fiscal Year 2006 - 2011										
Fiscal Year	Class Preference - C14, Adjudicated at NBC*			Class Preference - C14 Total**						
	Received	Approved	Denied_Fraud	Denied_Other	Received	Approved	Denied_Fraud	Denied_Other		
2006	669	372	-	297	14,768	13,885	-	883		
2007	1,842	1,277	-	565	19,186	17,059	-	2,127		
2008	2,149	1,605	-	544	19,319	18,092	-	1,227		
2009	2,149	1,771	-	378	16,458	15,525	2	931		
2010	2,117	1,831	-	286	14,169	12,021	-	2,148		
2011	2,598	2,288	-	310	11,100	9,162	-	1,938		
<b>Total</b>	<b>11,524</b>	<b>9,144</b>	<b>-</b>	<b>2,380</b>	<b>95,000</b>	<b>85,744</b>	<b>2</b>	<b>9,254</b>		

\*C14 - Deferred Action, adjudicated at the National Benefits Center

\*\* C14 - Deferred Action, adjudicated at other Service Centers and the NBC

Report Created: October 31, 2011

System: CIS Consolidated Operational Repository (CISCOR)

By: Office of Performance and Quality (OPQ), Data Analysis and Reporting Branch (DARB), ST

Parameter

Date: Update with FY2011data

Form Type: I-765

Class: C-14

Data Type: Receipts, Approved, Denied\_Fraud, and Denied\_Other

SUBMISSIONS FOR THE RECORD  
**U.S. SENATOR PATRICK LEAHY**  
VERMONT

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**Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Oversight Of The Department Of Homeland Security  
October 19, 2011**

It has been another good week for the Nation and our Federal law enforcement efforts. Last Tuesday, we learned of the foiled assassination attempt in the United States of the Saudi Ambassador to the United States. This case involved the Department of Justice, the FBI, and the DEA in a coordinated effort to prevent an act of terrorism on U.S. soil. I commend the agencies involved in the investigation. I was also pleased to see that, in this instance, members of Congress did not re-engage in armchair quarterbacking over whether the suspect should be transferred to military custody or sent to Guantanamo.

Nearly two years ago, when a terrorist attempted to blow up an airplane on Christmas Day, some politicians used the occasion to criticize the Attorney General after the suspect was arrested. They made all kinds of claims, none of which came true. In fact, after obtaining useful intelligence from the suspect, that case proceeded without incident in Federal court where, last Wednesday, the defendant pleaded guilty. He now faces a potential life sentence. That successful prosecution adds to the more than 400 terrorism cases prosecuted by the Department of Justice since September 11, 2001.

Over the last two and one half years, the President and his national security team have done a tremendous job protecting America and taking the fight to our enemies. Earlier this year, the President ordered a successful strike against Osama bin Laden and has stayed focused on destroying al Qaeda from his first days in office. Last month, the administration was also able to locate Anwar al Awlaki, a terrorist operative in Yemen who was recruiting Americans to attack within the United States. During the past two and one half years, the President and his national security team have developed a counterterrorism framework that has protected the American people while taking on al Qaeda and its affiliates. As the President's assistant for Homeland Security and Counterterrorism John Brennan noted last month: "[T]he results . . . under this approach are undeniable." Al Qaeda has been "severely crippled" and the death of Osama bin Laden was a "strategic milestone" in that effort.

We must remain vigilant, but no one can deny the progress that has been made. As Mr. Brennan emphasized, the approach is "a practical, flexible, result-driven approach to counter terrorism that is consistent with our laws, and in line with the very values upon which this nation was founded." He noted: "Where terrorists offer injustice, disorder, and destruction, the United States and its allies stand for freedom, fairness, equality, and hope."

In the aftermath of 9/11, the country spent trillions of dollars trying to shore up our security. Some of the efforts, especially those undertaken in the early years, were wasteful and ineffective. In addition, President Bush and Vice President Cheney insisted on shifting our focus from bin Laden to Saddam Hussein in Iraq at the cost of thousands of American lives and hundreds of billions of dollars added to the debt. We continue to take money from programs in the United States -- including education, medical research, infrastructure, and housing -- and dump it in Iraq. I hope that the Nation and the Congress are now ready for a new discussion about the next chapter in our efforts.

Secretary Napolitano, I thank you for joining us this morning. I look forward to hearing from you what you believe have been the successes of the past few years and what our priorities should be moving forward. I

hope that your Department can strengthen its effort to provide help to Vermonters and others across the country so devastated by recent natural disasters. That has been an important and necessary role for the Federal Government that is now much needed.

I appreciate all of the Department's efforts to help Vermonters begin rebuilding after the devastating floods we experienced this spring and summer. These emergencies are difficult enough for the Americans living through them. We must not complicate the situation with the added uncertainty that comes from ideological opposition to this fundamental Federal role, and that results in Congressional inaction on desperately needed funding for disaster relief. The American people waiting for disaster assistance should not be victimized again. Rather, Americans should help other Americans as we have for generations.

As I have been recounting to the Senate for six weeks now, Vermont bore the full brunt of Irene. Roads, bridges, homes, farms, and businesses were all destroyed when gentle rivers and streams became torrents of destruction. It is devastation like I have never seen before in our small state. I want to compliment Craig Fugate, the Administrator for FEMA, and all of his staff, for their efforts in Vermont.

This last weekend, the national memorial to Dr. Martin Luther King, Jr., was officially dedicated. President Obama spoke eloquently of Dr. King's legacy and how the American people, black and white, east and west, north and south, came together "through countless acts of quiet heroism" to "bring about changes few thought were even possible." When we enact the DREAM Act and come together for comprehensive immigration reform we will, again, be taking action toward an American that is, in the words of President Obama, "more fair, more just, and more equal."

Border security is another area in which the Secretary has progress to report. I trust it is finally time to renew a discussion of comprehensive immigration reform, a discussion that went off track after the Senate passed a bipartisan bill in 2006. I look forward to your involvement in these important efforts. Our work is not done, and change has never been quick or simple. The kind of change brought about by comprehensive immigration reform depends on persistence and determination. I look forward to a day when, to paraphrase President Obama, barricades begin to fall and bigotry begins to fade. Then, not only laws, but hearts and minds, will change, and new doors of opportunity will swing open for immigrants who want only to live the American dream. Our Nation will be stronger, better, and more productive on that day.

I would like to commend you and your Department for announcing that you would review over 300,000 pending deportation cases to determine which cases do not need to be aggressively pursued. These are difficult economic times, and we have to make choices about how we spend Federal dollars. We can all agree that dangerous criminals should remain at the top of your list, but we do not need to expend significant resources detaining and deporting non-citizens who have no criminal record and pose no threat. This is true of the inspiring young students and soldiers who advocate for enactment of the DREAM Act. And it will be true of many other immigrants at risk of deportation, from meat packing workers in Iowa to dairy farm workers in Vermont.

Finally, I note that last week I worked with the Ranking Republican to have this Committee report the bipartisan Trafficking Victims Protection Reauthorization Act. This bill provides law enforcement, including officers within the Department of Homeland Security, with important tools to investigate and prosecute human trafficking. The bill reauthorizes critical victim service programs. I want to thank you for your personal commitment to this issue, and for the assistance the Department provided to the Committee as we considered this bill. We should be able to cooperate across the aisle to protect the victims of these heinous crimes, and to give law enforcement the tools it needs to put traffickers behind bars.

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**Comment of Chairman Leahy  
Fallen Department of Homeland Security Law Enforcement Officers 2009-2011**

I thank Senator Grassley for reminding us of the risks that our Federal law enforcement officials often face.

Since the beginning of 2009, 12 Department of Homeland Security law enforcement officers have lost their lives in the line of duty. All of these officers made the ultimate sacrifice and I would like acknowledge them and their service by asking consent to place their names in the record.

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**Department of Homeland Security law enforcement officers  
who lost their lives in the line of duty: 2009-2011**

**2009**

Nathaniel A. Afolayan – U.S. Customs and Border Protection

Cruz C. McGuire-- U.S. – Customs and Border Protection

Robert Wimer Rosas, Jr. – U.S. Customs and Border Protection

Trena Renee McLaughlin – U.S. Customs and Border Protection

**2010**

Mark F. Van Doren – U.S. Customs and Border Protection

Charles F. Collins II – U.S. Customs and Border Protection

Michael V. Gallagher – U.S. Customs and Border Protection

John R. Zykas – U.S. Customs and Border Protection

Brian A. Terry – U.S. Customs and Border Protection

**2011**

Jaime Zapata – U.S. Immigration and Customs Enforcement

Hector R. Clark – U.S. Customs and Border Protection

Eduardo Rojas, Jr. – U.S. Customs and Border Protection



**Testimony of  
Secretary Janet Napolitano  
U.S. Department of Homeland Security**

**Before the  
United States Senate  
Committee on the Judiciary  
October 19, 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 secure our Nation from the many threats we face.

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

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

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

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

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

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

**Preventing Terrorism and Enhancing Security**

**Response to a Changing Threat**

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

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

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

international borders. Today, we must address threats that are homegrown as well as those that originate abroad.

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

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

#### DHS Efforts against Terrorism

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

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

Second, we are focused on getting resources and information out of Washington, D.C. and into the hands of state and local law enforcement, to provide them with the tools they need to combat threats in their communities. Because state and local law enforcement are often well-positioned to notice the early signs of a planned attack, our homeland security efforts must be

interwoven in the police work that state, local, and tribal officers do every day. We must make sure that officers everywhere have a clear understanding of the tactics, behaviors, and other indicators that could point to terrorist activity.

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

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

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

We participate in the FBI's Joint Terrorism Task Forces (JTTF), provide support for state and local fusion centers, and work with our partners at DOJ on the Nationwide Suspicious Activity Reporting Initiative, which trains state and local law enforcement to recognize behaviors and indicators related to terrorism, crime and other threats; standardize how those

observations are documented and analyzed; and expand and enhance the sharing of those reports with the Federal Bureau of Investigation (FBI) and DHS.

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

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

Taken together, these steps provide a strong foundation that DHS; the public; federal, state, local, tribal, territorial and private sector partners across the country; and international partners can all use to protect communities from terrorism and other threats. This homeland security architecture will be paired with continuing efforts to better understand the risk

confronting the homeland, to engage and partner with the international community, and to protect the privacy rights, civil rights and civil liberties of all Americans.

**Strong, Strategic Enforcement of Our Immigration Laws**

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

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

Our interior enforcement efforts are achieving unprecedented results, underscoring the Department's ongoing focus on removing individuals from the country that fall into the Administration's priority areas for enforcement. Overall, in FY 2011, ICE's Office of Enforcement and Removal Operations removed 396,906 individuals – the largest number in the agency's history. Of these, 55 percent or 216,698 of the people removed were convicted criminal aliens – an 89 percent increase in the removal of criminals since FY 2008. This includes 1,119 aliens convicted of homicide; 5,848 aliens convicted of sexual offenses; 44,653

aliens convicted of dangerous drugs; and 35,927 aliens convicted of driving under the influence. ICE achieved similar results with regard to other categories prioritized for removal. Ninety percent of all ICE's removals fell into a priority category and more than two-thirds of the other removals in 2011 were either recent border crossers or repeat immigration violators.

#### Secure Communities

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

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

As they have for decades, local jails share fingerprint data with the FBI to run against FBI criminal databases. FBI, in line with Congressional mandates, then shares this information with DHS to run against its immigration databases.<sup>1</sup> Since 2008, ICE has expanded Secure Communities from 14 jurisdictions to more than 1,595 today, including every jurisdiction along

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<sup>1</sup> 8 U.S.C. § 1722

the Southwest border. As a result of ICE's use of this enhanced information-sharing capability which began in October 2008, ICE has removed more than 105,000 criminal aliens — more than 37,000 of whom were convicted of felonies such as murder, rape, kidnapping and the sexual abuse of children through the end of FY 2011. ICE continues to work with its law enforcement partners across the country to responsibly and effectively implement this federal information sharing capability and plans to reach complete nationwide activation by 2013.

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

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

In addition, ICE and CRCL are developing a new series of training tools, including written materials and videos for state and local law enforcement agencies in jurisdictions where Secure Communities is activated. These training materials will provide information for state and local law enforcement about how Secure Communities works and related civil rights issues. The first set of training materials was released in June 2011 with more to follow.

ICE has created a new complaint process for Secure Communities, and will jointly run an intake center with CRCL to investigate allegations with local jurisdictions. ICE also launched a

new public website that answers questions about Secure Communities and provides a complete and accurate statistical overview of the program.

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

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

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

#### Prosecutorial Discretion

There have never been, nor will there be in tight fiscal times, sufficient resources to remove all of those unlawfully in the United States or who are otherwise removable. At DHS, we work to ensure our immigration enforcement resources are focused on the removal of those who constitute our highest priorities, specifically individuals who pose threats to public safety

such as criminal aliens and national security threats, as well as repeat immigration law violators, recent border entrants, and immigration fugitives. There are hundreds of thousands of cases currently pending before DOJ immigration courts, many of which could take years to resolve. Tens of thousands more are pending review in federal courts. Each of these cases costs considerable taxpayer dollars, and those involving low priority individuals divert resources away from and delay the removal of higher priority individuals. The expenditure of significant resources on cases that fall outside of DHS enforcement priorities hinders our public safety mission by consuming litigation resources and diverting resources away from higher-priority individuals.

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

This interagency working group will allow immigration judges, the Board of Immigration Appeals, and the federal courts to focus on adjudicating high priority removal cases more swiftly. In part, the process designed by the working group will identify low priority cases and on a case-by-case basis, set those cases aside. This will permit additional DHS resources to focus on the identification and removal of those individuals who pose greater threats. As a result, this process will accelerate the removal of high priority aliens from the United States. At no point will any individuals be granted any form of “amnesty.” There will be no reduction in the overall levels of enforcement and removals – only a more effective way of marshaling our

resources towards our highest-priority cases and thus, increasing the number of criminal aliens, recent border crossers, and repeat immigration violators who are removed.

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

#### Worksite Enforcement and E-Verify

DHS has implemented a smart and effective approach to worksite enforcement. By focusing on employers who knowingly and repeatedly hire illegal labor, we are targeting the root cause of illegal immigration, utilizing robust Form I-9 inspections, civil fines, and debarment, and enhancing compliance tools like E-Verify. Since Fiscal Year 2009, ICE has audited more than 6,000 employers suspected of hiring illegal labor, debarred 441 companies and individuals, and imposed more than \$76 million in financial sanctions—more than the total amount of audits and debarments during the entire previous administration. In Fiscal Year 2011, ICE also criminally arrested 221 employers accused of violations related to employment, an agency record. In short, our approach to worksite enforcement has been working, and has been successful at bringing employers into compliance with the law.

As a corollary, we have strengthened the efficiency and accuracy of E-Verify – our web-based employment verification system managed by U.S. Citizenship and Immigration Services

(USCIS) and designed to assist employers in complying with the law. As of Fiscal Year 2011, more than 292,000 employers have enrolled in E-Verify, representing more than 898,000 locations. More than 1,000 new employers enroll each week and the number of employers enrolled in E-Verify has more than doubled each fiscal year since 2007. In Fiscal Year 2011 alone, E-Verify processed 17.4 million employment queries.

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

USCIS has continued to improve E-Verify's accuracy and efficiency, enhance customer service, and reduce fraud and misuse in a number of additional ways. To improve E-Verify's accuracy, USCIS reduced mismatches for naturalized and derivative U.S. citizens by adding naturalization data and U.S. passport data to E-Verify. Because of this enhancement, in Fiscal Year 2011, more than 80,000 queries that previously would have received an initial mismatch requiring correction at the secondary verification stage were automatically verified as employment authorized. In June 2010, E-Verify launched improved navigational tools to enhance ease-of-use, minimize errors, and bolster compliance with clear terms of use. USCIS also has increased its staff dedicated to E-Verify monitoring and compliance, adding 80 staff

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

positions to support monitoring and compliance since the beginning of Fiscal Year 2010. Finally, to more effectively address identity theft, USCIS now allows for the verification of passport photos through the E-Verify system.

#### Identifying Visa Overstays

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

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

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

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

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

#### Human Trafficking and Human Smuggling Investigations

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

To support this effort, we have trained officers, prioritized the identification of traffickers and their victims, and coordinated enforcement action against traffickers. DHS continues to

educate its personnel, as well as state and local law enforcement agencies and citizens, to identify and report indicators of human trafficking. Through our education and outreach efforts, we are able to help citizens and state and local law enforcement agencies to identify victims of human trafficking in the United States. For example, in 2010, investigations led to the arrest of 29 individuals in Nashville, TN, for the sex trafficking of juveniles, and the conviction and sentencing of a woman in New Jersey for trafficking women and girls for forced labor.

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

In addition, ICE works closely with our interagency and international partners to disrupt and dismantle international human smuggling and trafficking networks and organizations. ICE's "Operation Predator" targets and investigates human smugglers and traffickers of minors, as well as child pornographers, child sex tourists and facilitators, criminal aliens convicted of offenses against minors, and those deported for child exploitation offenses who have returned illegally. Since its launch in 2003, Operation Predator has resulted in the arrest of over 13,594 sexual predators, of which 10,975 were non-citizens. In Fiscal Year 2012, ICE will expand its Child Exploitation Section by establishing the Child Exploitation Center and deploying Child Sex Tourism Traveler Jump Teams to conduct investigations of U.S. citizens traveling in foreign countries for the purpose of exploiting minors.

The Department of Homeland Security is also re-energizing the Human Smuggling and Trafficking Center (HSTC), an interagency information and intelligence fusion center and

clearinghouse that helps in coordinating the U.S. Government's efforts against human smuggling, human trafficking, and criminal smuggler facilitation of terrorist travel. Besides facilitating the broad dissemination of information and producing strategic assessments, the HSTC is also supporting efforts against smuggling and trafficking networks.

#### Refugee Screening Efforts

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

Today, ICE is handling more than 1,900 human rights-related cases. These cases are at various stages of investigation and litigation, including removal proceedings. They involve suspects from approximately 95 countries, primarily in Central and South America, the Balkans, and Africa. ICE currently has more than 200 active human rights investigations, which could ultimately support criminal charges or removal proceedings. Since Fiscal Year 2004, ICE has successfully removed more than 400 known or suspected human rights violators and more than 75 suspected human rights violators have been prevented from entering the United States either by visa revocations or refusals by the Department of State or by stops at ports of entry by CBP officers.

#### Southwest Border Enforcement

In March 2009, the Obama Administration launched the Southwest Border Initiative to bring focus and intensity to Southwest border security, coupled with a reinvigorated, smart and

effective approach to enforcing immigration laws in the interior of our country. We are now more than two years into this strategy, and based on previous benchmarks set by Congress, it is clear that this approach is working.

Unprecedented Resources at the Southwest Border

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

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

We are also improving our tactical communications systems, adding two new Border Patrol forward operating bases and three more CBP unmanned aircraft systems. For the first

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

The DHS Science and Technology Directorate (S&T) also has multiple ongoing efforts to develop, test, and implement new technology for use at the border. These efforts include Tunnel Activity Monitoring (TAM) sensors, technology evaluation for the detection of clandestine tunnels, enhanced sensor capabilities for Mobile System Surveillance units, advanced Unattended Ground Sensor (UGS) features, a border buried cable tripwire, and airborne wide area surveillance. The S&T Directorate also has supported CBP by providing comparative testing of state-of-the-art radars and UGS, the results of which will provide an independent assessment of their performance and help define future requirements for technology procurement.

Further, President Obama authorized the temporary deployment of up to 1,200 National Guard personnel as a bridge to longer-term enhancements in border protection and law enforcement personnel from DHS to target illicit networks' trafficking in people, drugs, illegal weapons, money, and the violence associated with these illegal activities. That support has allowed DHS to bridge the gap and to hire the additional agents funded in the FY 2010 Border Security Supplemental to support efforts along the Southwest border.

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

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

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

aliens denied entry to the U.S. at Arizona ports of entry due to criminal background or other disqualifying factors; and approximately 342,000 apprehensions between ports of entry.

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

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

#### Northern Border Security

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

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

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

Finally, in February 2011, President Obama and Canadian Prime Minister Harper announced a landmark "Shared Vision for Perimeter Security and Economic Competitiveness" that sets forth how the two countries will manage shared homeland and economic security in the 21st century. This "Shared Vision" focuses on addressing threats at the earliest point possible; facilitating trade, economic growth, and jobs; collaborating on integrated cross-border law enforcement; and partnering to secure and strengthen the resilience of critical infrastructure.

#### Results

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

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

#### Developing Measures for Progress at the Border

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

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

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

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

In developing these border metrics, it is important to keep in mind our ultimate goals. Combating transnational crime, while promoting legal travel and trade, makes border communities more secure, which in turn provides a basis for economic prosperity and an improved quality of life. Illegal traffic diminishes quality of life in a number of ways, such as increased property crime. The “success stories” in border security are the communities where enforcement efforts have supported and enhanced the quality of life.

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

Defining success at the border is critical to how we move forward, and how we define success must follow a few guidelines: it must be based on reliable, validated numbers and processes, tell a transparent statistical story, and draw heavily upon the values and priorities of

border communities. The approach currently underway is designed to meet all of these criteria. We expect to finalize the index during the second quarter of Fiscal Year 2012.

**Improvements to Legal Immigration Programs**

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

Over the past two years, USCIS has taken a number of actions to improve its ability to meet these goals. By streamlining and modernizing operations, USCIS is now processing applications for naturalization and other critical immigration benefits more rapidly, exceeding its goals.

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

USCIS has made security enhancements to some of its key identity documents to prevent counterfeiting, obstruct tampering, and facilitate quick and accurate authentication. The Permanent Resident Card, commonly known as the "green card," now contains several major new security features, and USCIS redesigned the Certificate of Naturalization to more effectively detect document tampering, validate identity, reduce fraud, and decrease overall expenses. DHS

also has joined with the Department of Justice and the Federal Trade Commission in a nationwide initiative to combat immigration scams involving the unauthorized practice of law. This initiative seeks to protect vulnerable immigrant populations from those who seek to exploit them.

USCIS also has continued to naturalize hundreds of thousands of new Americans each year, including record numbers of members of our nation's armed forces. In Fiscal Year 2010, USCIS granted citizenship to 11,146 members of the U.S. Armed Forces at ceremonies in the United States and abroad. This figure represents the highest number of service members naturalized in any year since 1955. In Fiscal Year 2011 (as of August 2011), USCIS has granted citizenship to 9,530 members of the U.S. Armed Forces. Since Fiscal Year 2005, USCIS has naturalized U.S. military personnel during ceremonies abroad in 25 different countries. Indeed, since September 2001, USCIS has naturalized more than 74,000 service men and women, including those serving in Iraq and Afghanistan.

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

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

**Conclusion**

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