

# NOMINATION OF JOHN T. MORTON

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## HEARING

BEFORE THE

### COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

OF THE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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NOMINATION OF JOHN T. MORTON TO BE ASSISTANT SECRETARY, U.S.  
DEPARTMENT OF HOMELAND SECURITY

APRIL 22, 2009

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## NOMINATION OF JOHN T. MORTON

WEDNESDAY, APRIL 22, 2009

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to other business, at 11:26 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, McCaskill, Burris, and Collins.

### OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. The Committee is happy to reconvene now to consider the nomination of John Morton to be Assistant Secretary of Immigration and Customs Enforcement (ICE) at the Department of Homeland Security. Mr. Morton, we welcome you. We are very happy to have you before us today.

I am very pleased, I will say personally, that you have been nominated to lead ICE, which has wide-ranging responsibilities and faces some difficult, immediate, and ongoing challenges. Your extensive work experience at the Department of Justice, I think, makes you uniquely qualified to lead the agency at this pivotal period in its history. You have prosecuted civil immigration violations at the old Immigration and Naturalization Service (INS) and later participated in immigration policy initiatives that addressed detention standards, which I am very interested in; the removal process; and improving coordination among the immigration components of the Department of Justice. Your work as a criminal prosecutor also impresses me and includes cases related quite relevantly to human smuggling, large immigration frauds, money laundering, and human rights violations. In recent years, you have managed components of the Department of Justice that prosecute these and other offenses related to our national security.

Your nomination is supported enthusiastically by the Fraternal Order of Police, the Major Cities Chiefs Association, and the National Sheriffs Association, and the National Immigration Forum referred to you as “a seasoned Federal prosecutor who understands the importance of documenting the facts and ensuring government transparency.”

The Immigration and Customs Enforcement agency is the Department of Homeland Security’s largest investigative agency. Its mandate is really vast, and the agency must direct its resources

(1)

wisely by prioritizing the most serious threats to our public safety and then pursuing them.

I will say that, for one, I support the Administration's initiative to clamp down on smuggling-related crime and violence at the U.S.-Mexican border.

During a Committee field hearing that we held in Phoenix, Arizona, on Monday, April 20, 2009, we heard from a number of State and local officials who again reminded us of the enormity of the challenge they face here in the United States from the Mexican drug cartels and human-smuggling networks as they both war against themselves and carry out their criminal conduct within the United States.

ICE has a key role to play in taking down, to the best of our ability and yours, these nefarious organizations, and I promise you that I will do everything I can to ensure that you have the resources and legal authorities you need to investigate and disrupt these drug and human-smuggling organizations.

I want to take this opportunity of your confirmation hearing to share with you a concern that I developed with a little more intensity based on the field hearing and, frankly, work that our staff did in Arizona in the days before the hearing; that is, there unfortunately seems to be a need for better coordination of the Federal Government activities in the border region. The plain fact is that there are unacceptable turf wars going on between ICE, the Drug Enforcement Administration (DEA), and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). And those simply cannot be tolerated given what we have learned about the threat posed by these sophisticated and well-armed criminal networks that operate not just in the border region but in, as the Federal Bureau of Investigation (FBI) has told us, 230 metropolitan areas across America.

So I want to urge you, presuming you come into this job, working with Secretary Janet Napolitano, of course, and working with Attorney General Eric Holder in this case, to make sure that the competition between the agencies of the Federal Government that we noted there be brought to a rapid halt.

I am going to enter most of the rest of my statement in the interest of time in the record.<sup>1</sup> I just want to say, as I mentioned to you when you were good enough to come to my office, that I have been frustrated over the last few years at the Department's failure to improve what I consider to be inhuman detention policies and conditions. What I am about to say in the next sentence will probably numerically surprise anybody listening, but at any given time, the part of the Department of Homeland Security that you are going to head—Immigration and Customs Enforcement—is detaining approximately 30,000 people or more, most of them non-criminals, many of them asylum seekers, which is the group that I have been particularly concerned about, people coming here for asylum based on religious or political discrimination at home, and long-time residents. Many who have come here fleeing oppression or seeking a better life for their families are being incarcerated in county jails or other such facilities because we do not have adequate facilities,

<sup>1</sup>The prepared statement of Senator Lieberman appears in the Appendix on page 21.

and I am particularly concerned that medical care for these people under our control and in our detention has been deplorable. In fact, too many people have died while in custody, it seems to me, at least in part, if not in whole, because the physical conditions they had went untreated.

In this session, I am going to again introduce legislation, the Secure and Safe Asylum and Detention Act, to address these problems. I hope you will take a look at it and hopefully support it. The legislation promotes the extension and expansion of alternatives to detention programs. It encourages the release of detainees who represent no risk of flight or threat to public safety and requires improved conditions at detention facilities, including improved medical care. I will say that I am encouraged by some steps that Secretary Napolitano has taken thus far, including directing a review of our immigration detention and enforcement policies, and I appreciate the commitments that you made to me when we met and to the Committee to pursue such reforms.

But, bottom line and generally, you are an extraordinarily well-prepared nominee for this position. I welcome you this morning and look forward to your testimony.

Senator Collins.

#### OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Chairman, you have ably described what an important role this is, as well as the impressive background of Mr. Morton. I am going to submit my statement for the record,<sup>1</sup> but I just want to focus on two issues that I want to explore with Mr. Morton this morning.

It is essential if ICE is to accomplish its mission that it forge effective partnerships with State and local law enforcement, and I know that you saw that in the field hearing as well. You have also brought up the conflicts that often occur with other Federal agencies, including ATF with ICE, and those issues need to be resolved as well. It is vital that everyone is working together and that turf battles not impede the accomplishment of such an important mission.

The second issue that I want to explore is the appointment of a border czar by Secretary Napolitano and how that is going to work with ICE. I must say this new Administration seems to have a tendency to appoint special assistants within the White House and czars for virtually every problem that comes along. And while I understand the need to shine a spotlight on these problems, when you do that, it sets up conflict, turf battles, and confusing lines of command and control. So I will want to question Mr. Morton today on how he would anticipate working with the new border czar. I think it would have been preferable had the Secretary waited until you were confirmed to see whether that position was really necessary.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Collins. Those are good points.

<sup>1</sup>The prepared statement of Senator Collins appears in the Appendix on page 25.

Let us proceed. Mr. Morton has filed responses to a biographical and financial questionnaire, answered prehearing questions submitted by the Committee, and had his financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Mr. Morton, our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so I would ask you to please stand and raise your right hand. Do you swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MORTON. I do indeed.

Chairman LIEBERMAN. I thank you. You may now proceed with your statement, and I note the presence of what I take to be your family. We heard them briefly during the previous hearing in the back room. I will say that if anybody has doubts about your nomination, the presence of your family members will immediately erase the doubts. You have a beautiful family. Anyway, welcome and proceed with your statement now, as you will.

**TESTIMONY OF JOHN T. MORTON<sup>1</sup> TO BE ASSISTANT  
SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. MORTON. Thank you Mr. Chairman, thank you, Senator Collins. Let me begin by stating how honored I feel to be here today. As a career Federal prosecutor, I consider it a great privilege to have been nominated by the President to be the Assistant Secretary for ICE. I thank the Secretary of Homeland Security for placing her confidence in me, and I thank the Committee for taking up my nomination.

Let me also introduce to you and thank my two daughters, Olivia and the slightly more shy Lucie, who bears a vague resemblance to me, and their mother, Laura. I would also like to thank my parents, Brown and Margaret. Without their support, I would not be in this position today.

Should I be confirmed, I look forward to working with the dedicated men and women of ICE to ensure our Nation's security. I promise you that no one will be more committed than I to ensuring that ICE is an effective and valued member of the law enforcement community.

I come before you today the product of a lifelong career in Federal law enforcement, one that has been marked by a particular emphasis in the areas we now associate with homeland security.

I also come before you today the son of an immigrant. As a result, I like to think that I reflect two important and complementary American qualities: A rich immigration tradition and the rule of law.

I have spent my entire professional career in Federal law enforcement, having served in various positions at the Immigration and Naturalization Service, main Justice, and the U.S. Attorney's

<sup>1</sup>The prepared statement of Mr. Morton appears in the Appendix on page 27.

Office. As a result, I have a unique blend of enforcement, policy, and management experience related to ICE's mission.

I have prosecuted criminal cases involving national security, immigration crimes, and customs offenses. I have worked on relevant policy issues, including immigration reform and the extension Federal jurisdiction over international crime.

I have managed people and offices directly involved in the work of homeland security. I assisted then Attorney General Janet Reno and Deputy Attorney General Eric Holder with the management of the former INS, and I have supervised several offices in the Criminal Division of the Department of Justice directly involved in investigations and prosecutions within ICE's purview.

These experiences have led me here, seeking your confirmation to be the next leader of ICE. If confirmed, my priorities would include: Improving the investigation and prosecution of major customs and immigration crimes; securing our borders, both North and South; identifying and removing criminal aliens from our communities; reforming our immigration detention system; improving worksite enforcement with a greater focus on employers; and strengthening the work of the Federal Protective Service (FPS). If confirmed, I would also seek to improve morale and provide for greater accountability and transparency at the agency.

In short, I want to give the agency a greater sense of identity and purpose, improve its management, and increase its coordination with and support of its Federal, State, and local law enforcement partners.

Let me also say that, if confirmed, I would look forward to working with this Committee very closely. The issues and challenges facing ICE are considerable, and I want to continue the dialogue we have started in the confirmation process.

In closing, allow me to reiterate what an honor and weighty responsibility I feel in coming before you today. If you do confirm me, know that I will pursue my duties on the merits, with great dedication, and with an eye to innovation and excellence.

I thank you for your consideration.

Chairman LIEBERMAN. Thank you for that excellent opening statement, Mr. Morton. I am going to start my questioning with the standard questions we ask all nominees.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. MORTON. No, sir.

Chairman LIEBERMAN. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. MORTON. I do not.

Chairman LIEBERMAN. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. MORTON. I do.

Chairman LIEBERMAN. I appreciate those answers, and we are going to start now with the first round of questions limited to 7 minutes.

Let me begin with the Southwest border problems that I talked about at the beginning, and obviously this is an enormous challenge. It represents a real threat in many ways to the United States. I was impressed, being there on Monday. We tend to react to this, those of us who do not live there, in larger policy terms, numbers. But we heard from some of the law enforcement personnel and the elected officials about the human suffering, the abuse suffered by people who are smuggled into the country illegally and then held and abused in various ways, the impact on law enforcement, not to mention, of course, the billions of dollars of drugs that are sold in the country. So let me focus on this.

Despite the enormity of the challenge that the Federal Government is facing and our country is facing from these networks, we learned when we were there, but also from a Government Accountability Office (GAO) report that was issued coincidentally on Monday, that there is a real lack of coordination between ICE, ATF, and DEA—three agencies of our Federal Government that are charged with stopping the cartels' various activities.

The GAO report particularly noted that ICE was not participating in the main organized crime fusion center in our country, and Committee staff learned that ATF only participates in three of the eight Border Enforcement Security Task Forces (BESTs) run by ICE across the Southwest border and none in Arizona.

So I want to ask you generally to speak to the Committee about the extent to which you are aware of this lack of coordination, which really is intolerable in the midst of the common enemy we have here and the Mexican people have in the drug cartels, and what specific actions you will take, if confirmed, to ensure that ICE is actively coordinating with at least, and most particularly, DEA and ATF, which, for the record, are both a part of the Justice Department.

Mr. MORTON. Thank you, Senator Lieberman. Let me start by saying, as a Federal prosecutor, I am very familiar with the issues of turf wars and differences of views of responsibility and jurisdiction. I do not think they have a positive place in Federal law enforcement as a general matter, and I particularly do not think they have a place in the fight along the Southwest border, which is a central focus for us right now. It needs to have our full attention, not just as an agency but as a Department and a broader government.

I am aware of the turf issues that you describe between DEA and ICE and between ICE and ATF. I am familiar with the issue at the fusion center. I am familiar with the issue when it comes to trafficking in firearms and the participation in the various BESTs along the border and the broader question of anti-narcotics enforcement.

What I can say at this point is, first, I do not believe that these issues are insurmountable. Indeed, I intend to focus on them immediately. I have had some discussions with my colleagues at the Department of Justice, where I presently serve as the Acting Deputy Assistant Attorney General. And I know the new Acting Director of the ATF, Ken Melson. He is a long-time colleague, and I can assure you that I intend to, if confirmed, sit down with these leaders and try to resolve these issues promptly, in good faith, based on

our collective shared experience as prosecutors knowing that we have to come together on these issues.

Chairman LIEBERMAN. Well, that is a very reassuring answer, both in terms of your recognition of the problem and your willingness to make it a priority item, if confirmed, and the fact that you know the people in the Justice Department who will be involved in this. No one gains from this lack of coordination except the drug cartels and the human-smuggling networks. So we are going to follow that on the Committee and look forward to hearing from you as you go on.

Let me ask one more question. The folks at ICE, as you probably know, have repeatedly complained that the Immigration and Customs Enforcement operation is hindered in its investigations of smuggling organizations because it lacks some legal authority. Specifically, ICE lacks Title 21 authority to pursue drug-related investigations. In fact, ICE is operating under a Memorandum of Understanding (MOU) with the Drug Enforcement Administration that only grants this authority to 1,500 of your agents, which is, I believe, about a quarter of the workforce.

Given the enormous challenge posed by the Mexican cartels, it seems to me the Federal Government needs to enhance the number of agencies and personnel working to defeat them, not to place arbitrary limits on the number of investigators who can work drug cases. Obviously, the cartels are fueled by the money they launder. Its stored value cards are increasingly being used by smugglers to circumvent reporting requirements at the border because they are not legally considered financial instruments.

So let me ask you first, what legal authorities do you believe ICE needs to be given in order to better target smuggling organizations operating in the United States? And, specifically, do you think that your agents at ICE should be given Title 21 authority across the board?

Mr. MORTON. I do, Senator. In my view, one of the principal responsibilities of the agency is to secure the border, and we are facing very sustained, organized threats to the United States in terms of trafficking of drugs, money, people, guns, and it does not make sense for ICE not to have clear authority to deal with all forms of illegal contraband, particularly in the context of border enforcement and enforcement at ports of entry.

ICE, as you note, does exercise Title 21 authority in very limited circumstances now. This is one of the turf issues that I intend to address promptly, if confirmed, and the question is whether or not we can revise the MOU to make it more of a rational arrangement between the agencies to all come together and get this job done or whether legislation is needed.

I do not have a firm opinion on this at this point, but I am aware of the issue and intend to address it.

Chairman LIEBERMAN. Again, an encouraging response. Please keep in touch with that because I agree with you that there is just no sense, except for turf protection, for your agents not to have Title 21 authority.

As I understand it, you are operating under a series of Memoranda of Understanding with both DEA but also Customs and Border Protection (CBP) and ATF that were pretty much all written

prior to the creation of the Department of Homeland Security, and in fact, some of them go back to the 1970s. So I urge you please to make that a priority as well and keep us posted.

Thank you. My time is up. Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Morton, I mentioned in my opening comments my concern about this Administration's proliferation of czars and special assistants rather than relying on the people who have the statutory authority and responsibility to carry out the functions. Secretary Napolitano recently appointed a border czar who is going to report directly to the Secretary and advise her on border security and cross-border smuggling. Obviously, this position is not Senate-confirmed, but does have a direct report to the Secretary.

It seems to me that the roles and responsibility of that czar are going to conflict with your responsibilities as well as those of the Commissioner of Customs and Border Protection.

Do you have any concerns about having another individual who is a direct report to the Secretary making it more complicated as far as your ability to carry out your legal responsibilities?

Mr. MORTON. Senator, at this point I do not. My understanding of Mr. Bersin's role is that, as you say, he is an adviser. His principal responsibility is one of facilitation and coordination among the many components within the Department that have some responsibilities along the border, but that it is not an operational one, that the Secretary fully intends and expects that whoever is confirmed as the Assistant Secretary for Immigration and Customs Enforcement is going to lead and direct that agency's day-to-day operations. And if I am confirmed, I can tell you that is exactly what I plan to do.

I know Mr. Bersin from my time at the Department of Justice. He has a lot of experience along the border. I look forward to getting his perspective and advice. But I do not anticipate any difficulties in pursuing my tasks and responsibilities under the statute.

Senator COLLINS. I am glad to hear that. I would point out to you that I would hope that your role is not just as the operational manager, but I would hope that you are the primary adviser to the Secretary in this area. Do you see yourself as having an advisory role to the Secretary as well as strictly an operational role?

Mr. MORTON. Absolutely. I consider myself to be the principal policy adviser to the Secretary on those matters within the jurisdiction of the agency. I would not have accepted the nomination if I felt otherwise.

Senator COLLINS. Thank you. That is reassuring to hear, and I think you could understand from our perspective, we have oversight, we confirm you, but if another person is going to be developing policy recommendations and giving advice, that also creates confusion in terms of our ability to effectively exercise our oversight responsibility.

Let me turn to a different issue. In 2006, the *Portland Press Herald*, a major newspaper in my State, did an investigation into the H-1B visa program and discovered that there were companies that set up shop in Maine, but really did not appear to have any legitimate business operations in Maine. And it appeared that they were applying for foreign workers in the State of Maine in order to re-

ceive a Department of Labor certification to pay them at a lower prevailing wage than would be the case in a more urban setting. And the evidence suggested that the individuals were never working in Maine; once they got the certification of the lower rate, the individuals were, in fact, working elsewhere, and these companies were really just shells that did not have operations in our State.

I asked for an investigation into this area. Citizenship and Immigration Services (CIS) assessed that the amount of fraud in the H-1B visa program is almost 21 percent—clearly unacceptable, particularly in a time of high unemployment in our country.

In addition, GAO found that ICE accepted only 26 percent of the immigration benefit fraud cases that were referred. Obviously, there is a joint responsibility where CIS flags the potential fraud, but then, as I understand it, it goes to ICE for further investigation and enforcement.

First, are you aware of the problem of fraud in this program? This program, by the way, is very important to legitimate businesses, particularly those with seasonal labor needs that they are unable to meet through American workers. But that level of fraud is totally unacceptable. Are you aware of this problem?

Mr. MORTON. I am, Senator. Indeed, I have spent many years prosecuting widespread fraud in the permanent labor certification program, which is a sister program to the H-1B. And I have prosecuted a number of cases where the fraudulent submissions were literally in the thousands. And I completely share your sentiment. Here we have very important programs to the interests of the United States where we are allowing people to come here to perform specific tasks with specialized skills, and it makes no sense for those programs to be marked by a high degree of fraud. One, that undermines confidence in those programs in the first place. It detracts from the people who are trying to play by the rules. And, very importantly, it means that a great deal of resources at CIS are being spent—and at the Department of Labor—on adjudicating claims that are fraudulent or false.

I worked with the Department of Labor for several years to help them improve the integrity of their own program in the permanent labor certification program, and I look forward to working with them in the other areas.

I also note that the office that you mentioned, Citizenship and Immigration Services, the Office of Fraud Detection and National Security, they do a number of analyses periodically of the various visa categories, and I think there needs to be an even closer working relationship between ICE and that office. In my view, one of ICE's primary responsibilities is to ensure the integrity of the system—this is about keeping the system honest. The system brings lots of good people here for good reasons, but it needs to be marked by integrity, and my job is to work with the leaders at CIS to ensure that happens.

Senator COLLINS. Thank you. That answer is very reassuring to me, that you will make it a priority. I also think it speaks to a real problem within the Department that one agency is flagging so much fraud, and yet the agency that has to carry out the enforcement is only accepting 26 percent of the cases. Now, there is far too much fraud at the threshold level, and that involves the De-

partment of Labor's processes as well. But then when it is flagged, to not have it pursued is a signal to these fraudulent companies to just keep going forward, and we cannot have that. One of the problems is we need higher monetary penalties so that there is a real price to be paid, literally. Thank you. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you very much, Senator Collins. Good questions. Senator Burris, you are next.

#### OPENING STATEMENT OF SENATOR BURRIS

Senator BURRIS. Thank you, Mr. Chairman. I want to congratulate you, Mr. Morton, on your nomination. I understand that your record in the Justice Department is outstanding and impeccable, and it has been a good decision by the President to move such talent into such an important agency. So congratulations to you, and I am looking forward to your being successful at ICE.

Let us turn, however, to a major concern in my State. In my State, there is a concern with 287(g). Are you familiar with that regulation?

Mr. MORTON. I am indeed.

Senator BURRIS. And are you familiar with what is happening in the area where you have these agreements with local law enforcement to help the so-called contraband and other illegal products that are coming into the various States and what has been taking place with local law enforcement there when there are minorities involved? There is now a great deal of racial profiling. And when I was Attorney General of my State, one thing that I really moved on in two key areas of my State was racial profiling by local police officers. For instance, in one community from East Saint Louis, if they went over into the Belleville community, they were just being stopped because they were black. And what I am hearing now in terms of what ICE is doing in some of our Hispanic communities, they are just stopping individuals on unrelated or just trumped-up charges and seeking to determine whether or not they are there legitimately or illegitimately, which is not a reason for stop and seizure or a reasonable belief by the law enforcement officers that a crime has been committed. They are just stopping them because of their outward appearance.

Now, I understand that in your testimony you said you are going to certainly continue to support 287(g), but I am concerned about the agreement that goes with these local law enforcement officers, and what do you plan to do when you are in the position to stop the racial profiling?

Mr. MORTON. Senator, a few things. I am not aware of the particular concerns in your State, but I am aware generally that there have been concerns about the implementation and execution of 287(g), which is a statutory authority that Congress has provided for.

Here is what I would say generally in terms of 287(g): As a Federal prosecutor, I am very supportive of Federal efforts to coordinate and support State and local law enforcement and work together to address the challenges in their communities, and I think that also applies in the context of the work that ICE does.

That said—and this is where I think some of the specific attention needs to be placed with regard to 287(g)—that coordination

needs to be done with very careful oversight, training, and basic integrity. Particularly in the context of 287(g), you are talking about the delegation of some degree of Federal immigration enforcement authority, and we need to make sure that it is done under clear guidelines, with appropriate training, and when allegations of racial profiling or abuse are raised, there are mechanisms in place for a prompt and independent investigation of those claims; and if there are any problems, they are addressed directly and on the merits.

Senator BURRIS. If you are confirmed, would you be willing to hold a moratorium until you are sure that all of the local law enforcement officers have been properly trained and understand what the authority is under 287(g), which is not to stop people just based on the color of their skin? I am wondering whether or not you would be able to move in that direction.

Mr. MORTON. Senator, what I think I could say is, if I were confirmed, I can commit to you that I will review very carefully the program—287(g) operates in two distinct models, and one of them is a more sustained model in local, State, and county prison facilities where the Federal Government and the local authorities are coming together to identify and remove criminal—

Senator BURRIS. May I interrupt you there, Mr. Morton?

Mr. MORTON. Yes, sir.

Senator BURRIS. Because we see that, when they go into the criminal facilities, they are using that entry into criminal facilities also for ICE purposes. And so you have to look at that section of it very closely, as well as local law enforcement officers stopping people on the streets.

Mr. MORTON. Senator, I intend to look at both. I am aware now that ICE is in the process of reviewing the memorandum of agreements that are issued to make sure that they are uniform, that they have the appropriate safeguards in place, and I very much want to join that process, if confirmed, and make sure that the agreements meet the needs of the Federal Government, meet the needs of the State and local governments involved, but at the same time do so in a way that civil rights and liberties are protected and that there are clear safeguards in place in case there are abuses.

A number of these agreements are ongoing and reflect agreements in place, and I think we need to look at those as well and see if some of them either need to be modified or, if the case might be with particular abuses, restricted or terminated.

Senator BURRIS. Well, I am hoping that when you are confirmed—and you certainly will have my vote—you will be looking at this very closely because, in my few days in the U.S. Senate, I have had more complaints about local law enforcement officers in the county jails and on the streets doing racial profiling. And I am hoping that you would certainly be on top of that so that we catch the bad guys, but we do not interfere under our democratic system with people just because of the color of their skin. Thank you very much.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Burris, for a very important line of questioning.

Senator Akaka.

**OPENING STATEMENT OF SENATOR AKAKA<sup>1</sup>**

Senator AKAKA. Thank you very much, Mr. Chairman. Mr. Morton, I want to congratulate you on your nomination.

Mr. MORTON. Thank you.

Senator AKAKA. I want to also welcome your lovely family and friends here today.

As we all know, Immigration and Customs Enforcement needs strong leadership at this time, and I believe you will be someone who can lead that agency. ICE, as we all know, has struggled with poor morale and creating a cohesive culture. Additionally, ICE has a wide range of responsibilities, making it especially important to manage the agency's resources efficiently and to appropriately coordinate and prioritize its activities. ICE needs your help and your leadership with all of these issues.

But I am pleased that improving immigration detention standards, refocusing worksite enforcement on employers, and reviewing Federal Protective Service operations are your priorities as well. And these are important and challenging issues, and I look forward to seeing the changes that you will bring forth.

My concerns with ICE have been many, particularly regarding oversight of employees in the field. The standards set at headquarters must be communicated to employees in the field and effectively implemented. ICE has very few senior executives, I discovered, relative to the number of investigators and other employees in the field compared to other Federal law enforcement agencies.

What are your plans for reviewing ICE's management structures and ensuring that employees receive an appropriate amount of oversight and supervision?

Mr. MORTON. Senator, you have hit on a very important point for me, which is when we describe what my priorities would be, if confirmed, there are a number of them that are specific to the enforcement activities of the agency. But there are a separate set of very important management priorities for me.

I think the agency needs to spend more time and attention on the management of some of its major programs, some of which we have already touched on—detention—and I think that also extends to some of its basic work as a large employer: Recruiting and training, identifying and promoting the best and brightest, setting very clear expectations for the employees, the men and women of ICE, of what our priorities are, how we are going to go about them, how we expect the agency to carry out its duties, and then providing for a much greater degree of accountability and transparency at ICE.

I think the agency in the past has not been able to describe its mission and successes as well as it should have to the broader public, to the Congress, to the many people who have a very vested interest in how it carries out its duties. And I would very much like to see the agency improve its ability to account for its actions, to explain them, and to be as transparent as possible.

Senator AKAKA. As you suggested, Mr. Morton, hiring highly qualified people and providing them good training are two of the most important ingredients for promoting good performance. And this, I feel, has been lacking, and we really need to upgrade it.

<sup>1</sup>The prepared statement of Senator Akaka appears in the Appendix on page 23.

What will you do to improve recruitment and training for ICE employees?

Mr. MORTON. One of the things I want to do, Senator, if confirmed, is to build on some work I believe my predecessor, Julie Myers, started and that was to take a look at the hiring, recruiting, and promotion practices across the agency. And I think the initial work started there identified that many different parts of the agency had their own programs and that there was not a uniform and unifying theme. And I want to take a very hard look at that to make sure that we are working together as an agency following the same basic sets of principles in recruiting and promoting people.

I also want to reach out to a number of the stakeholder groups within the employee community within ICE to get their ideas on, are we going to the right places to ensure vigorous recruitment and hiring of the people that we need to make the agency a success, to ensure an appropriate level of diversity, to provide for the training and experiences and opportunities necessary for some of our best and brightest at the lower ranks to develop through the years and then become the senior managers that are going to lead the agency in the future when, I, if confirmed now, will not be there anymore.

As a lifelong Federal employee, I feel a great duty and responsibility to the institutions for which I have worked, and if confirmed, I very much want to focus on improving the management at ICE, the people that are there, the opportunities that are there for them, so that when it comes time for me to move on and do something else, I can look at the Members of this Committee and others and say, I did a lot to try to improve the management of the agency and leave it in a better place than when I found it.

Senator AKAKA. Well, I want to thank you for your plans. Let me just say that morale has been one of the problems, and I am glad to hear that you are thinking of trying to energize the workplace and improve morale by helping to reward your people, and I certainly look forward to your work there and your confirmation.

Thank you very much, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator Akaka.

Following up on Senator Akaka's questions, I want to enter into the record—they arrived late so I did not get to mention them—two letters of support for your nomination: One from David Wright, President of American Federation of Government Employees (AFGE) Local 918, representing the Federal Protective Service nationwide; and the second from Patrick Remigio, President of AFGE National Council 118, operating out of Tucson.<sup>1</sup>

I would say that the staff told me, after some time on the border areas, that just talking to ICE rank-and-file employees, there is a high sense of hopefulness about your arrival. So that is good news.

Senator McCaskill, thanks very much for being here, and we call on you now.

#### **OPENING STATEMENT OF SENATOR MCCASKILL**

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

Congratulations on your appointment. I am so pleased that you are a prosecutor, you have been in the courtroom, and you know

<sup>1</sup>The letters of support appear in the Appendix on page 82.

what makes a case and what does not make a case. I think it is an incredibly important credential for your job, which leads me to my theme, which I have been hammering for as long as I have been here, and that is, as a prosecutor, you know there are two kinds of crimes: The kind you can deter and the kind you cannot deter.

Immigrants crossing the border to try to feed their families are coming for jobs. They are not coming for vacations. As long as the jobs are here, if it is a choice of whether or not they can feed their families or not, they are going to come. And, frankly, we can do the best job possible and we need to do a much better job on the border, but the most effective way to really make a change in illegal immigration in this country is, in fact, enforcing the law as it relates to that magnet job. And that is a crime we can deter. If business people believe there is a true risk associated with hiring illegal immigrants, you will see a bold change in hiring practices in this country. But under the last Administration, there was absolutely no fear that there was ever going to be any meaningful enforcement of the law against employers who were knowingly hiring illegal immigrants.

As you are aware, I was shocked when your predecessor could not even tell me how many employers had been prosecuted for knowingly hiring illegal immigrants, and after a lot of back and forth, we finally now are beginning to get some statistics. The last year's statistics we have, which is fiscal year 2008, there were a little over a thousand worksite enforcement actions taken with criminal consequences, and only 135 of those were employers.

You and I both know that is an embarrassingly low number based on the amount of criminal activity that is occurring in this area.

What is your commitment in this regard? And, most importantly, how are you going to organize it? Are you going to have a section of your office that is, in fact, prioritizing employers who are knowingly hiring? And you and I both can probably sit around a table and come up with some pretty good ideas on how we could catch these guys. It would not be hard. This, frankly, as undercover operations go, would be a walk in the park. All you would have to do is begin to develop intelligence about where there are employers who are hiring people without any regard to their documentation, and then send some people in without documentation, see if they get hired. And then, instead of having the cameras rolling for herding up all these people and trying to have a big splash that we are really doing something about illegal immigrants, you would have the kind of headline that would strike fear in the hearts of businessmen all over this country who are not playing by the rules. And, frankly, it is fair to those businessmen who are playing by the rules, and that is the vast majority who are trying to do it right. And I would love your take on this whole issue.

Mr. MORTON. Senator, thank you. As you and I discussed when I first met you, this is an area that I intend to bring great focus to. When I first went to work as a trial attorney at the now abolished Immigration and Naturalization Service, one of my duties was worksite enforcement, and we routinely audited and brought civil fines against employers. And in 1996, there were, I think it

was, \$25 million worth of fines. That went to zero in 2005 and 2006, no fines whatsoever of employers.

That is something that I want to take a very serious look at. That is an important enforcement power provided by Congress, and it strikes me as one that should be used. Criminal investigation and prosecution are obviously critical. We need to do more of that.

I am concerned that there was an imbalance between the number of workers prosecuted and the number of employers prosecuted, and it strikes me that if we are going to make serious headway on reducing illegal immigration to this country, we have to have very serious worksite enforcement, and it has to focus on the employer and encourage people to play by the rules and punish those who do not.

There is a lot of existing authority in the statute that allows that to be done, both in the criminal context and also in the civil context, and I very much would look forward, if confirmed, to working with the many Senators who I think care about this issue and want to see a different and more robust approach. And I can assure you that it is going to be a focus for me, and I look forward to talking to you more about it.

Senator MCCASKILL. Is there a delineation in the office now in terms of investigation between investigations centered on employers versus investigations centered on the illegal immigrant?

Mr. MORTON. I am not sure if there is a formal delineation. I have received some briefings on the past approach, but I am not aware of that delineation. I do think from the agency's perspective they have undertaken a number of investigations. It is a question of whether they need to do more, and I think we do. But I am not aware of a formal delineation. There might be one; I am just not aware.

Senator MCCASKILL. Well, I know this, that we have incredible investigative tools in our government, and it would not be complicated because, frankly, there are a lot of places where you could go and you could watch them take them off the worksite in a truck, stuff them all in an apartment, and be there on Friday when they pay them all in cash, and check and realize that none of those folks has even been put on the books.

There is a huge underground economy here. It really would be like shooting fish in a barrel if there was any priority at all given to this. So I will be looking forward to seeing some of those fish float. And I am confident that you know how to do this. I am confident that you realize what the priority is, and with very little investment, we could have a huge impact. It is a great cost-saving tool in terms of investigative dollars because you are going to really shut down a lot of the illegal immigration if you can begin to make sure folks understand there are consequences when they knowingly hire people who are not supposed to be here.

Thank you. Good luck to you, and I look forward to working with you.

Mr. MORTON. Thank you.

Chairman LIEBERMAN. Thanks, Senator McCaskill. You have hammered away at that, but in the public interest. I am not prepared to call you "The Hammer" yet because we have retired that title.

Senator McCASKILL. We have.

Chairman LIEBERMAN. There was somebody in the House who had that title.

Senator COLLINS. Tom DeLay, right. [Laughter.]

Chairman LIEBERMAN. We will leave a period of time, and then we will reinstitute it. Anyway, you have done great work on this, and we look forward, Mr. Morton, to you helping Senator McCaskill in this quest, which we share with her.

I want to ask one question, and if any other Members of the Committee has another one, I will welcome them. I just want to ask you generally about the detention policies and to explain very briefly. I did not know about this until I read a report issued by the U.S. Commission on International Religious Freedom in 2005 about our Nation's treatment of asylum seekers, and it was deeply troubling because of really deplorable conditions that these folks are put under and the fact that they do not have the traditional access to immigration judges to appeal any of the conditions of their detention.

And I suppose I was being personal about it because—you mentioned you are a child of immigrants—all four of my grandparents were immigrants. They came to America in that great wave of immigrants that came mostly from Europe at the early part of the 20th Century. They came for economic opportunity and freedom, including, in their case, the kind of religious freedom that they did not have in the places from which they came.

Of course, they came at a time when, generally speaking, all you had to do was arrive and not carry one or another terrible disease, and you were an American. At least you could come into the country. So I found it deplorable that people coming here asking for asylum based on political discrimination at home, religious discrimination, or other forms are subjected to this kind of detention while their cases are being determined.

I understand that they probably, in the normal course of human events, do not have a justifiable claim to asylum here, but we are just treating them in a way that is not only inhumane but, based on the words on the base of the Statue of Liberty, un-American.

So I wanted to ask you, generally speaking, what you hope to do about it in terms of the detention, beginning with exploring a system where we make some rational determinations about whether some of these folks are simply not a risk of flight or a threat to public safety. We ought to have an adjudicative process of some kind to determine that.

Incidentally, apart from the embarrassment of the way we treat them, it costs an enormous amount of money to keep 30,000 people locked up every day—money we could spend in a lot better way. Then the second part of it is the medical facility.

So I just wanted to get on record your reaction to the status quo with regard to detainees.

Mr. MORTON. Senator, as you and I discussed when I first met you, this is an area of particular concern and focus for me. It is an enormous amount of taxpayer expenditure.

Chairman LIEBERMAN. Right.

Mr. MORTON. It is roughly 40 percent of the agency's resources going into the detention and removal system.

Chairman LIEBERMAN. What is the dollar estimate, just generally? I will not hold you to it.

Mr. MORTON. It is \$1.5 billion.

Chairman LIEBERMAN. Billion, it is astounding, just to house these people.

Mr. MORTON. And the necessary employees.

Chairman LIEBERMAN. Yes, right.

Mr. MORTON. Let me be clear. The power of detention is a very important power for carrying out the duties of the agency and to securing the border.

Chairman LIEBERMAN. I agree, right.

Mr. MORTON. The agency does need to detain people who are a risk of flight and a danger to the community or where Congress has otherwise provided for by law. But I think we need to take a hard look and make sure that the people we are detaining are being detained for those reasons and they are being detained in conditions and facilities that are commensurate with their risk of flight or danger.

Over the decades, we have developed a system that is largely dependent on using facilities designed for incarceration as opposed to civil detention, and particularly when you are talking about non-criminal respondents in the immigration system or people who have particular vulnerabilities, it does not jump out at you as that being the right answer. And so I want to take a hard look at that, and are there different conditions in which we can detain people, even if they are a risk of flight, or are there alternatives to detention that we can explore that assure their appearance and compliance without having to go through the expense to the taxpayer of detaining people.

I think, as you alluded to, providing for uniform medical care that is consistent with our obligations as the detainer is really important. The system, again, has some unevenness. Some health care is provided for certain detainees by the Division of Immigration Health Services, but for others, different providers provide for it, and that needs a lot of attention.

I think that, as I said earlier, this is not a question of whether or not the agency detains people, but it is a question of who does it detain, how does it detain them, and are there better ways to do this—and I think there are—that are a greater sense of innovation, more targeted to the populations that we are, in fact, responsible for. It is a very weighty exercise of government power, and it needs to be done carefully.

Chairman LIEBERMAN. Well, thanks for that thoughtful and encouraging answer, and, of course, I agree with you that there are people who need to be detained. The question is, obviously, do they all need to be detained? People who are arrested for illegal immigration status probably have a higher risk generally of flight than somebody who comes in as an asylum seeker, but every case has to be determined on its merits. But you are right that regardless of why they are detained, there ought to be a uniform standard of medical care for these folks. I thank you for that.

Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman. I have a few more questions, but I am going to submit them for the record, and I do want to say that I intend to support the nominee.

Chairman LIEBERMAN. Thanks very much. Thank you, Senator Collins.

Senator Akaka, do you have another question?

Senator AKAKA. Yes, Mr. Chairman. Let me ask one more.

Mr. Morton, the Federal Protective Service relies very heavily on contract security guards to protect Federal buildings, and approximately 1,100 FPS employees oversee 15,000 contract security guards. How do you plan to ensure that contract security guards are overseen effectively? And do you plan to review this ratio of contractors to Federal employees at FPS?

Mr. MORTON. I do, Senator. I think, as I mentioned in my remarks, the work of the FPS is one of the priorities that I need to attend to, if confirmed. The FPS has such important responsibilities that we just have to get it right. And I am aware of the statutory requirement to bring the number of full-time Federal employees up to 1,200, and I very much intend to see that is done.

As you note, the agency is very dependent on contractors, and a large number of contractors, and I have a fair amount of experience in my present job with contractor oversight issues. And there are many instances in which contractors provide a very useful and important function to the government. But I want to take a very close look at the ratio at FPS. Do we have such a large number of contractors because it fits an appropriate set of goals that the agency is pursuing? Or is it more a question of resources?

My sense is that it is very important when you are in the world of law enforcement to have strong oversight and direction from Federal employees. That is not to say that you cannot rely on contractors for some portion of the work, but that needs to be carefully thought through, and I am inclined, wherever possible, to see that direction and leadership is provided by Federal employees.

I am very familiar with that particular issue with regard to FPS. I am also familiar with some of the funding issues—it is a fee-based arrangement—and whether or not that is something that needs more attention. So what I can say to you at this point is I intend to focus on FPS. I think it is a very important part of what the Department does. And I think you will find that I will give it sustained attention, if confirmed.

Senator AKAKA. Mr. Chairman, if you would permit just one more short question?

Chairman LIEBERMAN. Go right ahead, Senator.

Senator AKAKA. Yes. I understand, Mr. Morton, that ICE started collective bargaining negotiations with its union nearly 2 years ago, and there still is no agreement. Will you make finalizing those collective bargaining negotiations a priority?

Mr. MORTON. Yes, in a word. I am aware that the negotiations are underway. I want to do the best I can to improve and strengthen the labor-management relationships at ICE. Obviously, right now I am not privy to what the particular issues are that are on the table for negotiations, but I intend to learn about them and see it through.

Senator AKAKA. Thank you so much for your responses. Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thank you, Senator Akaka.

Mr. Morton, thanks for your testimony. You are really a superb nominee, and I will give you my full support.

The record, without objection, is going to be kept open until 12 noon tomorrow for the submission of any written questions or statements for the record. I hope you will do your best to answer them as rapidly as possible. And we are going to try our best to get you out of the Committee and confirmed hopefully by some time next week. So I thank you for your willingness to serve. I miss the fact that your wife made a rational decision and left the room with the children who were so pleasant to look at. [Laughter.]

I thank you. We look forward to working with you.

Mr. MORTON. Thank you.

Chairman LIEBERMAN. The hearing is adjourned.

[Whereupon, at 12:33 p.m., the Committee was adjourned.]



# A P P E N D I X

## Prepared Statement of Senator Joe Lieberman

### Nomination of John Morton Assistant Secretary of Immigration and Customs Enforcement at the Department of Homeland

April 22, 2009

The Committee now reconvenes to consider the nomination of John Morton to be Assistant Secretary of Immigration and Customs Enforcement at the Department of Homeland Security. Welcome, Mr. Morton. We're happy to have you before us today.

Mr. Morton, I am very pleased that you have been nominated to lead ICE, which has wide-ranging responsibilities and faces some difficult, immediate, and ongoing challenges. Your extensive work experience at the Department of Justice I think makes you uniquely qualified to lead the agency at this pivotal period in its history.

You have prosecuted civil immigration violations at the old INS, and later participated in immigration policy initiatives that addressed detention standards, the removal process, and improving coordination among the immigration components of the Department of Justice. Your work as a criminal prosecutor also impresses me, and includes cases related to human smuggling, large immigration frauds, money laundering, and human rights violations. In recent years you have managed components of the Department of Justice that prosecute these and other offenses related to our national security.

Your nomination is supported enthusiastically by the Fraternal Order of Police, the Major Cities Chiefs Association, and the National Sheriffs' Association. And the National Immigration Forum referred to you as "a seasoned federal prosecutor who understands the importance of documenting the facts and ensuring government transparency."

The Immigration and Customs Enforcement Agency is the Department of Homeland Security's largest investigative agency. Its mandate is vast and the agency must direct its resources wisely by prioritizing the more serious threats to our public safety.

I support the Administration's initiative to clamp down on smuggling-related crime and violence at the U.S. Mexican border region. During a Committee field hearing in Phoenix on Monday, we heard from a number of state and local officials who reminded us of the enormity of the challenge they face in the U.S. from the Mexican drug cartels and human smuggling networks as they war among themselves and carry out their criminal conduct within the United States. ICE has a key role to play in taking down, to the best of our ability, these nefarious organizations, and I am committed to ensuring you have the resources and legal authorities you need to investigate and disrupt these drug and human smuggling organizations.

I am concerned, however, that the federal government needs to better coordinate its efforts on the ground. There seems to be a need for better coordination between federal agencies in the border region. There are unacceptable turf-wars between ICE, the Drug Enforcement Administration, and Alcohol, Tobacco and Firearms. Those simply cannot be tolerated given what we have learned about the threat posed by these sophisticated and well-armed criminal networks that operate in 230 cities across the United States. I want to urge you, presuming you come into this job, that competition between agencies of the federal agencies be brought to a rapid halt.

It is also important that we develop a thoughtful enforcement strategy with respect to our civil immigration laws. There are more than ten million undocumented immigrants in this nation. Even if we increased exponentially the agency's budget we could never deport more than a small fraction of this population.

The overwhelming majority of undocumented immigrants have come to this country to earn a living and support their families. I support legislation that would offer a path to legalization for law abiding immigrants who have laid down roots in their communities.

ICE has a duty to ensure effective enforcement of our immigration laws, but the agency needs to establish clear priorities. A primary goal must be to apprehend and deport those who pose a threat to public safety or are affiliated with terrorist groups.

By comparison, large-scale raids at workplaces in recent years have resulted in deportations of workers but few arrests of their employers. People will continue to come here illegally as long as there are jobs for them. Vigorous enforcement against unscrupulous employers will attack the problem at its root causes, and I appreciate your statements to the Committee that you will place renewed focus on employers.

Finally, for years I have urged the Department to improve its inhumane detention policies and conditions. At any given time, ICE is detaining more than 30,000 people, most of them non-criminals and many of them asylum seekers and long-time residents. Many who have come here fleeing oppression or seeking a better life for their families are being incarcerated in county jails, far from their families and legal representatives. Medical care in particular has been deplorable. And too many people have died while in custody because their conditions went untreated.

This year I will again introduce legislation, the Secure and Safe Asylum and Detention Act, to address these problems. My legislation promotes the expansion of alternatives to detention programs, and it encourages the release of detainees who represent no flight risk or threat to public safety. It also requires improved conditions at detention facilities, including improved medical care.

I am encouraged by the steps Secretary Napolitano has taken thus far, including directing a review of our immigration detention and enforcement policies. And I appreciate the commitments you have already made to me, and to the Committee, to pursue reforms.

You are an extraordinary well prepared nominee for this position, and I look forward to your testimony.

**Statement of Senator Daniel K. Akaka on the Nominations of Craig Fugate to be  
Administrator of the Federal Emergency Management Agency (FEMA) and John Morton to be  
Assistant Secretary for Immigration and Customs Enforcement (ICE)**

Thank you, Mr. Chairman. Mr. Fugate and Mr. Morton, I want to congratulate you on your nominations. I also want to thank your family and loved ones for making the trip to be here today. I know how important their support is through this process.

Mr. Fugate, in the aftermath of Hurricane Katrina, this Committee worked to improve FEMA's ability to meet its preparedness and response mission. The Committee's investigation of the response to Hurricane Katrina found a critical failure of leadership. FEMA must have strong, experienced, and capable leadership.

If confirmed, you will face many challenges as FEMA Administrator. Hurricane season is around the corner, pandemic influenza continues as a serious public health threat, and man-made disasters could strike at any time. In Hawaii, we have had six disaster declarations over the past nine years due to severe storms and flooding, mudslides, and earthquakes. Major flooding in December caused the current disaster declaration, which FEMA is responding to on the islands of Oahu and Kauai. Within my home state, we also have one of the most active volcanoes in the world, the Kilauea Volcano. FEMA has done a good job of working with the State Civil Defense Office to monitor and support Hawaii when disasters hit. However, Hawaii's isolated location and unique geography require greater planning and preparation for disaster preparedness and response.

FEMA's primary role in a disaster is to provide state and local entities with critical federal support, and if confirmed you will be charged with leading those efforts. I believe that you will provide FEMA with the confident leadership and vision it needs to meet current and future challenges. As a life-long public servant, you have a depth of experience at the state and local level handling small and large-scale emergencies. You know first-hand how the federal government can work with stakeholders, and you have seen FEMA's strengths and weaknesses.

I encourage you to reach out to all the various stakeholders and engage their perspectives. I also hope you will be a strong advocate for ensuring that FEMA has the resources it needs.

Immigration and Customs Enforcement (ICE) likewise needs strong leadership that will direct the agency in a way that makes it more cohesive and effective.

Mr. Morton, many problems that were a result of the merger between the Immigration and Naturalization Service and the Customs Service still plague the agency today. ICE has struggled with poor morale and creating a cohesive ICE culture. Additionally, ICE has a wide range of responsibilities, making it especially important to manage the agency's resources efficiently and to properly coordinate and prioritize its activities. I know you will use your contacts at the Department of Justice to the agency's advantage, and I hope you also will develop close working relationships with the DHS components including Customs and Border Protection and

Citizenship and Immigration Services, as well as other agencies, to coordinate ICE's efforts and eliminate duplication.

I am pleased that improving immigration detention standards and refocusing worksite enforcement on employers are priorities of yours. As you know, ICE has been criticized for poor detainee treatment and healthcare, detaining families with children in prison-like facilities, and mistakenly detaining legal residents. I look forward to seeing the changes that you will bring forth, once you are confirmed.

Finally, I urge you to review Federal Protective Service (FPS) operations, in particular whether FPS relies too heavily on contract security guards. There are limitations to what contract security guards can do, which can weaken security at federal buildings. The challenges that FPS faces require your focused attention and support.

I look forward to working with both of you to meet these challenges.

Prepared Statement of  
Senator Susan M. Collins

Nomination of W. Craig Fugate to be  
Administrator of the Federal Emergency Management Agency and  
John Morton to be Assistant Secretary for Immigration and Customs  
Enforcement

Committee on Homeland Security and Governmental Affairs  
April 22, 2009

★ ★ ★

**I join the chairman in welcoming two nominees: Craig Fugate to head the Federal Emergency Management Agency and John Morton to lead Immigration and Customs Enforcement.**

**This Committee's comprehensive investigation into the flawed response to Hurricane Katrina revealed fundamental problems with our nation's preparedness for catastrophic disasters. As a result of our Committee's work, Congress passed the Post-Katrina Emergency Management Reform Act in 2006. Our nation's ability to prepare for and respond to all disasters has improved dramatically due to this legislation.**

**Perhaps the most significant of our reforms, however, was the requirement that the FEMA Administrator have substantial emergency management experience. Mr. Fugate brings eight years of experience as the Director of the Florida Division of Emergency Management to the office. During those eight years, Mr. Fugate oversaw the response to 11 Presidentially Declared Disasters.**

**The logical combination of all-hazards prevention, preparedness, response, and recovery underscores the need to keep FEMA within DHS. Detaching FEMA in the vain hope of recapturing mythical halcyon days would weaken its effectiveness, reduce the ability of DHS to carry out its all-hazards planning mandate, cause needless duplication of effort, and foment confusion among state and local first responders during a disaster.**

**It is my expectation that Mr. Fugate will see the clear benefit of keeping FEMA within DHS, particularly given the strong views of our nation's first responders in favor of this structure.**

Turning to our other nominee, John Morton has been nominated to head Immigration and Customs Enforcement, which is tasked with enforcing our nation's immigration and customs laws. ICE faces huge challenges, not the least of which is the fact that the United States has an estimated 12 million illegal immigrants within its borders. ICE plays a vital role in coordinating interior enforcement to detain and remove those who have violated our immigration laws.

ICE also conducts complex investigations of human, drug, weapons, and cash smuggling networks. This role has recently received significant attention because of the impact of increasingly violent Mexican drug cartels on our southwest border. The agency also combats the use of fraudulent documents and practices to obtain visas and other immigration benefits.

To accomplish its mission, ICE must forge effective partnerships with state and local law enforcement. ICE stands on the front line against numerous threats to our nation. It helps ensure that we continue to let our friends in while keeping our enemies out.

To enhance the nation's border security, Secretary Napolitano recently announced the appointment of a border czar that will focus on the cross-border flow of humans, drugs, weapons, and cash. I will be interested in hearing from Mr. Morton about how he would anticipate working with the new border czar and what authorities that czar will have over ICE policies and operations.

# # #

**Statement of John T. Morton**  
**Nominee for Assistant Secretary for**  
**Immigration and Customs Enforcement**  
**U.S. Department of Homeland Security**

\* \* \*

Thank you Mr. Chairman, Ranking Member Collins, Members of the Committee.

Let me begin by expressing how honored I feel to be here today. As a career federal prosecutor, I am an ardent believer in public service and consider it a great privilege to have been nominated by the President for the position of Assistant Secretary for Immigration and Customs Enforcement (ICE). I thank the Secretary of Homeland Security for her confidence in me and thank the Committee for taking up my nomination.

Let me also introduce to you and thank my two daughters, Olivia and Lucie, and their mother, Laura. Without their support, I would not be in this position today.

Should I be confirmed, I look forward to working with the dedicated men and women of ICE to ensure our nation's security. I promise you that no one will be more dedicated than I to ensuring that ICE is an effective and valued member of the law enforcement community.

I come before you the product of a life-long career in federal law enforcement, one that has been marked by a particular emphasis in the areas we now associate with homeland security—anti-terrorism, border control, customs and immigration enforcement, and the protection of our critical infrastructure.

I also come before you the son of an immigrant. As a result, I have a personal appreciation for our rich immigration tradition. Coupled with my experience as a prosecutor, this background serves as a constant reminder that law enforcement involves real people and must be pursued with a firm but measured hand.

I started my career in the business of homeland security fifteen years ago at the Immigration and Naturalization Service (INS), first as a trial attorney and then as Special Assistant to the General Counsel. Since that time, I have gone on to serve as Counsel to the Deputy Attorney General of the United States, Assistant United States Attorney, Chief of the Domestic Security Section, and most recently acting Deputy Assistant Attorney General for the Criminal Division.

The work I have undertaken in these positions has provided me with a blend of enforcement experiences, policy expertise, and management skills directly related to ICE's responsibilities and the mission of homeland security.

I have prosecuted or supervised criminal cases involving national security, immigration offenses, customs offenses, document fraud, international violent crime,

human rights offenses, and the protection of the nation's critical infrastructure. I have prosecuted civil worksite enforcement cases involving unscrupulous employers and civil immigration cases against criminal aliens.

I have worked on a wide variety of relevant policy issues, including immigration reform, detention standards, refugee policy, fraud prevention, and the extension of federal jurisdiction over genocide, international sex trafficking, and crime committed by U.S. contractors and employees overseas.

I have managed people and offices directly involved in the work of homeland security. As Counsel to the Deputy Attorney General, I assisted then Attorney General Janet Reno and Deputy Attorney General Eric Holder to manage the major immigration components of the Department of Justice—at the time the INS, the Executive Office for Immigration Review, and the Office of Immigration Litigation. More recently, I have supervised five offices within the Criminal Division, four of which focus on investigations and prosecutions within ICE's purview: the Domestic Security Section, the Office of Special Investigations, the Computer Crime and Intellectual Property Section, and the Child Exploitation and Obscenity Section.

These experiences have led me here; and I now seek your confirmation to be the next leader of ICE—an agency with great responsibilities to protect national security and promote public safety. Responsibilities to secure our borders; to restore integrity to our customs and immigration controls; to prevent the entry of terrorists, criminals, and

harmful contraband; and to protect many of our federal buildings and the men and women who work within them.

If confirmed, my priorities would include—

- Improving the investigation and prosecution of major crimes, including international money laundering and organized crime, weapons proliferation and export controls, sex trafficking and child exploitation, intellectual property and counterfeiting, and frauds that promote travel by terrorists, criminals, and others who pose a threat to public safety.
- Securing our borders, both North and South.
- Addressing the ongoing crime and violence on both sides of our border with Mexico, particularly with regard to the illegal movement of drugs, money, guns, and people.
- Increasing the identification and removal of criminal aliens from our communities and of those who intentionally flout a final order of deportation.
- Reforming our immigration detention system.
- Refining our worksite enforcement efforts to deter employers from the knowing use of illegal labor.
- Improving coordination with Customs and Border Protection and U.S. Citizenship and Immigration Services, as well as with our other partners in federal, state, and tribal law enforcement.

If confirmed, I also want to bring focused attention to a number of important management issues, including—

- Improving the morale of the dedicated employees of the agency.
- Reforming the immigration detention system and the provision of medical care to those detained.
- Providing for greater accountability and performance measurement.

In short, I want to give the agency a greater sense of identity and purpose, improve its management, and increase its coordination with and support of its government partners.

Let me also say that if confirmed, I would look forward to working with this Committee very closely. The issues and challenges facing ICE are considerable, and I would very much want to continue the dialogue we have started in the confirmation process.

In closing, allow me to reiterate what an honor and weighty responsibility I feel in coming before you today. If you do confirm me, I will pursue my duties on the merits, with great dedication, and with any eye to innovation and excellence.

I thank you for your consideration.

**BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES**

**A. BIOGRAPHICAL INFORMATION**

1. **Name:** (Include any former names used.)

John Templeton Morton

2. **Position to which nominated:**

Assistant Secretary for Immigration and Customs Enforcement (ICE), Department of Homeland Security

3. **Date of nomination:**

March 10, 2009

4. **Address:** (List current place of residence and office addresses.)

Residence:

Office: U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Room 2113, Washington, D.C. 20530

5. **Date and place of birth:**

July 26, 1966; Inverness, Scotland

6. **Marital status:** (Include maiden name of wife or husband's name.)

I am separated, pending final divorce, from Laura Smith Morton. Her maiden name was Laura Anderson Smith.

7. **Names and ages of children:**

**REDACTED**

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

*High Schools:*

- Loudoun Valley High School; Purcellville, Virginia; 1980-82

**REDACTED**

- The Episcopal High School; Alexandria, Virginia; 1982-84; high school diploma received in June 1984

*College:* The University of Virginia; Charlottesville, Virginia; 1984-1988; B.A. received in May 1988

*Law School:* The University of Virginia; Charlottesville, Virginia; 1991-94; J.D. received in May 1994

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

**United States Department of Justice**

*Criminal Division, Washington, D.C.*

- Deputy Assistant Attorney General (Acting): January 2009 to present
- Senior Counsel to the Assistant Attorney General: May 2008 to present
- Chief (Acting), Domestic Security Section: September 2007 to January 2009
- Deputy Chief, Domestic Security Section: August 2006 to August 2007

*United States Attorney's Office, Eastern District of Virginia, Alexandria, Virginia*

- Assistant United States Attorney, Terrorism and National Security Unit: February 2002 to August 2006
- Assistant United States Attorney, Major Crimes Unit: September 1999 to January 2002

*Office of the Deputy Attorney General, Washington, D.C.*

- Counsel to the Deputy Attorney General: October 1997 to September 1999
- Special Assistant to the Deputy Attorney General: May to September 1997

*Office of the General Counsel, Immigration and Naturalization Service, Washington, D.C.*

- Special Assistant to the General Counsel: August 1995 to April 1997

*Office of the General Counsel, Immigration and Naturalization Service, New York, N.Y.*

- Trial Attorney: September 1994 to July 1995

**McGuire, Woods, Battle & Boothe: Richmond, Virginia**

- Law Clerk: Summer 1993

**Amnesty International—Israel Section: Tel Aviv, Israel**

- Intern (funded by the University of Virginia Law School): Summer 1992

**Peace Corps: Chad, Africa**

- Peace Corps Volunteer Leader and Teacher Trainer: September 1990 to August 1991
- English Teacher: June 1989 to September 1990

**Hotel Jerome: Aspen, Colorado**

- Waiter: October 1988 to April 1989

**Powder Pandas: Aspen, Colorado**

- Ski Instructor: October 1988 to April 1989

**Brothers' Grille: Snowmass Village, Colorado**

- Waiter: October 1988 to April 1989

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.
  - Member, Budget Advisory Committee, Alexandria School Board: 2006 to present
  - Volunteer Advisory Council, Peace Corps, Chad: 1989-91
11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
 

From November 1986 through May 1987, I worked as a student intern to a French consulting firm in Paris (Bureau d'Informations et de Previsions Economiques).
12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.
  - Member, Phi Kappa Sigma fraternity, University of Virginia
  - Participant, Big Brothers Big Sisters program, University of Virginia

- Member, Students United to Promote Racial Awareness, University of Virginia
- Member and Executive Editor, Virginia Journal of International Law
- Member, National Association of Assistant United States Attorneys
- Member, Virginia Bar Association
- Admitted to practice before the United States Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

I was a member of the Alexandria Democratic Committee from 2005 to 2007. I was a full member until September 2007, when I became a non-voting member. I ceased all membership at the end of 2007.

I also participated in a few meetings and conference calls of two informal policy groups seeking to advise the Kerry Presidential campaign in 2004 on criminal justice and homeland security issues.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

To the best of my recollection, I have given the following political contributions over the past five years:

- Obama for America: \$250 (2008)
- Obama for America: \$750 (2008)
- Virginians for Brian Moran: \$75 (2008)
- Clinton for President: \$500 (2007)
- DNC: \$50 (2007)
- Kerry for President: \$500 (2004)
- DNC: \$250 (2004)
- Socas for Congress: \$250 (2004)

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

- Criminal Division Special Act Awards (2007, 2008, 2009)

- Assistant Attorney General's Award for Inter-Departmental Cooperation (2007)
- Criminal Division Performance Award (2006)
- National Counterterrorism Center Meritorious Unit Citation (2006)
- President's Council on Integrity and Efficiency's Award for Excellence (2006)
- Secretary of Labor's Exceptional Achievement Award (2004)
- Social Security Administration Anti-Fraud Awards (2002, 2004)
- United States Attorney's Office Special Act Awards (2003, 2004, 2005)
- United States Attorney's Office Performance Awards (2001, 2002)
- Special Recognitions from the Executive Office for Immigration Review (1999), the Diplomatic Security Service (2001), the Office of the Inspector General of the Department of Transportation (2002), and the Office of the Inspector General of the Social Security Administration (2005)
- INS Superior Accomplishment Award (1995)
- INS Commissioner's Award for the best new trial attorney of the year (1994)
- Caplin Public Service Award for the graduate with the strongest academic record entering federal service (University of Virginia; 1994)
- Ritter Prize for character, honor, and integrity (University of Virginia; 1991)

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

I have written two published writings (copies attached). The first was an article opposing cultural defenses of female genital mutilation. This article was published in 1994 in "In Other Words"—a publication of the University of Virginia's Women's Center. The citation for the article is *Female Excision: A Matter of Cultural or Human Rights?* In *Other Words*, p. 10, University of Virginia Women's Center, Spring 1994.

The second was a law school note published in the *Virginia Journal of International Law* in 1992. The citation for the note is 32 *Va. J. Int'l L.* 1015 (1991-1992).

16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.
- Remarks before a meeting of the United States Sentencing Commission concerning possible reforms to the Sentencing Guidelines for immigration fraud (February 2007). Minutes of the meeting are attached.
  - Remarks at a Migration Policy Institute panel discussion on immigration enforcement featuring then DHS Assistant Secretary of Policy and Planning Stewart Verdery (September 2004). A summary of the remarks is attached.

- Remarks at a panel discussion hosted by the American Immigration Lawyers Association concerning the representation of criminal defendants who are immigrants (March 2004). An outline of the remarks is attached.
- Remarks before various meetings hosted by the American Immigration Lawyers Association (November 2005; February 2006; March 2006; June 2007) concerning the dividing line between zealous advocacy and unethical or criminal behavior. An outline of the remarks is attached.
- Remarks before a meeting of Scottish prosecutors concerning the authorities and practices of federal prosecutors in the United States (July 2006).

Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

None other than those noted above.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I believe I was nominated because I possess the blend of policy expertise, enforcement experience, and management skills necessary to lead Immigration and Customs Enforcement. I believe the President and Secretary sought a nominee who could lead the agency with energy and innovation while simultaneously addressing the complex immigration and border security issues facing it. I further believe the President and Secretary felt that the nominee should have a demonstrated commitment to public service and a deep knowledge of the agency.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

As a career federal prosecutor in the Department of Justice, I have held a variety of prosecutorial and management positions that affirmatively qualify me to be the Assistant Secretary for Immigration and Customs Enforcement. Indeed, nearly my entire professional career has involved matters within ICE's purview, and as a result I have developed a deep knowledge of and expertise in the agency's affairs.

**Administrative Immigration Enforcement:** I started my federal career in 1994 as an Immigration and Naturalization Service (INS) trial attorney. In that job, I prosecuted a wide variety of administrative violations of the Immigration and Nationality Act with an emphasis on employer violations, the removal of aliens with criminal records, and the removal of aliens detained for exclusion. I went on

to become the Special Assistant to the General Counsel of the INS, assisting him with various management and policy initiatives, including the improvement of the removal process for aliens with criminal records or outstanding final orders.

**Criminal Prosecution.** I have spent nearly ten years investigating and prosecuting criminal offenses within ICE's jurisdiction—seven as an Assistant United States Attorney and more than two and a half as a prosecutor in the Criminal Division. In the United States Attorney's Office, I prosecuted cases of human smuggling, sex trafficking and tourism, immigration fraud, passport and visa fraud, illegal reentry, child pornography and molestation, money laundering, criminal forfeiture, export control violations, financial crimes, firearms offenses, and identification document fraud.

In the Criminal Division, I first supervised the investigation and prosecution of international human smuggling cases, large immigration frauds, and major human rights offenses such as torture. I have since added responsibilities for child exploitation and obscenity, computer crimes, intellectual property, and the denaturalization of human rights offenders.

**Management Experience.** I have had significant management experience during my time in the Department of Justice. From 1997 to 1999, I served as counsel to the Deputy Attorney General of the United States. In that capacity, I assisted the Deputy Attorney General and the Attorney General to oversee and set policy for the major immigration components of the Department of Justice, which at the time included the INS, the Executive Office for Immigration Review, and the Office of Immigration Litigation.

While at the United States Attorney's Office, I chaired two task forces made up of special agents from a variety of federal and state law enforcement agencies. The first was the Airport Security Task Force created after September 11, 2001, to investigate the fraudulent procurement of airport security badges at Reagan National and Dulles Airports. The second was the Immigration and Identification Document Fraud Task Force created in 2003 to investigate and prosecute large-scale immigration and identification document frauds. ICE subsequently adopted this task force as a model and replicated it throughout the country.

From 2006 to 2008, I managed the Domestic Security Section of the Criminal Division, first as deputy chief and then as acting chief. In these roles, I was responsible for the supervision of the section's prosecutors, budget, and cases, and developed Department policy in the areas of—

- immigration crime, particularly human smuggling and complex passport and visa frauds;
- human rights offenses, particularly torture, war crimes, genocide, and the use of child soldiers; and
- international violent crime, particularly violent crime under the Military

**Extraterritorial Jurisdiction Act.**

In January 2009, I became an acting Deputy Assistant Attorney General for the Criminal Division, the position I currently hold. In this position, I supervise five offices within the Criminal Division—

- the Domestic Security Section;
- the Child Exploitation and Obscenity Section;
- the Computer Crime and Intellectual Property Section;
- the Office of Special Investigations; and
- the Obscenity Prosecution Task Force.

**B. EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes, except that I will continue to be employed in a general sense by the United States government.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

I am a citizen member of the Budget Advisory Committee of the Alexandria School Board. As such, I seek to assist the School Board to shape sound budgetary policies for the Alexandria public schools. I will resign from this volunteer position if confirmed by the Senate.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

Yes. I received a citation for carrying an open container of beer in Richmond, Virginia, in 1985. This citation was resolved when I paid a fine by mail.

- 3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

- 4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None.

- 5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I believe that my resume and the information in this questionnaire provide the relevant information about my background. I would be happy to work with the Committee if any additional information is desired.

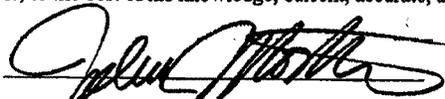
**E. FINANCIAL DATA**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**AFFIDAVIT**

John T. Morton, being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

  
 Subscribed and sworn before me this 19<sup>th</sup> day of March, 2009.

  
 Notary Public  
 Comm. exp. 8-14-2011

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of John T. Morton to be  
Assistant Secretary, Department of Homeland Security**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as Assistant Secretary of the Department of Homeland Security (“DHS” or “the Department”)?

*I believe the President nominated me because I possess the blend of policy expertise, enforcement experience, and management skills necessary to lead Immigration and Customs Enforcement (ICE). I believe the President and Secretary sought a nominee who could lead the agency with energy and innovation while simultaneously addressing the complex immigration and border security issues facing it. I further believe the President and Secretary felt that the nominee should have a demonstrated commitment to public service, deep knowledge of the agency, and lengthy experience in federal law enforcement.*

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

*No.*

3. What specific background and experience affirmatively qualifies you to be Assistant Secretary of DHS?

*As a career federal prosecutor in the Department of Justice, I have held a variety of prosecutorial and management positions that affirmatively qualify me to be the Assistant Secretary for Immigration and Customs Enforcement. Indeed, nearly my entire professional career has involved matters now within ICE's purview, and as a result I have developed a deep knowledge of and expertise in the agency's affairs.*

*Administrative Immigration Enforcement. I started my federal career in 1994 as an Immigration and Naturalization Service (INS) trial attorney. In that job, I prosecuted a wide variety of administrative violations of the Immigration and Nationality Act with an emphasis on employer violations, the removal of aliens with criminal records, and the removal of aliens detained for exclusion. I went on to become the Special Assistant to the General Counsel of the INS, assisting him with various management and policy initiatives, including the improvement of the removal process for aliens with criminal records or outstanding final orders.*

*Criminal Prosecution. I have spent nearly ten years investigating and prosecuting criminal offenses within ICE's jurisdiction—seven as an Assistant United States Attorney and more than two and a half as a manager and prosecutor in the Criminal Division. In*

*the United States Attorney's Office, I prosecuted cases of human smuggling, sex trafficking and tourism, immigration fraud, passport and visa fraud, illegal reentry, child pornography and molestation, money laundering, criminal forfeiture, export control violations, financial crimes, firearms offenses, and identification document fraud.*

*In the Criminal Division, I first supervised the investigation and prosecution of international human smuggling cases, large immigration frauds, and major human rights offenses such as torture. I have since added responsibilities for child exploitation and obscenity, computer crimes, intellectual property, and the denaturalization of human rights offenders.*

*Management Experience. As will be further described in response to question 9, I have had significant management experience during my time in the Department of Justice. From 1997 to 1999, I served as Counsel to the Deputy Attorney General of the United States. In that capacity, I assisted the Deputy Attorney General and the Attorney General to set policy for and oversee the major immigration components of the Department of Justice, which at the time included the INS, the Executive Office for Immigration Review (EOIR), and the Office of Immigration Litigation (OIL).*

*While at the United States Attorney's Office, I chaired and managed two task forces made up of special agents from a variety of federal and state law enforcement agencies. The first was the Airport Security Task Force created after September 11, 2001, to investigate the fraudulent procurement of airport security badges at Reagan National and Dulles Airports. The second was the Immigration and Identification Document Fraud Task Force created in 2003 to investigate and prosecute large-scale immigration and identification document frauds. ICE subsequently adopted this task force as a model and replicated it throughout the country.*

*From 2006 to 2008, I managed the Domestic Security Section of the Criminal Division, first as Deputy Chief and then as acting Chief. In these roles, I was responsible for the supervision and management of the section's prosecutors, budget, and cases, and developed Department policy in the areas of—*

- *immigration crime, particularly human smuggling and complex passport and visa frauds;*
- *human rights offenses, particularly torture, war crimes, genocide, and the use of child soldiers; and*
- *international violent crime, particularly violent crime under the Military Extraterritorial Jurisdiction Act.*

*In January 2009, I became an acting Deputy Assistant Attorney General for the Criminal Division, the position I currently hold. In this position, I supervise and manage five offices within the Criminal Division—*

- *the Domestic Security Section;*
- *the Child Exploitation and Obscenity Section;*

- *the Computer Crime and Intellectual Property Section;*
- *the Office of Special Investigations; and*
- *the Obscenity Prosecution Task Force.*

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Assistant Secretary of DHS? If so, what are they, and to whom were the commitments made?

*I have not.*

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures and/or criteria that you will use to carry out such a recusal or disqualification.

*In connection with the nomination process, I have consulted with the Department's Designated Agency Ethics Official and the U.S. Office of Government Ethics to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement, dated March 13, 2009, that I have entered into with the Department's Designated Agency Ethics Official, a copy of which agreement has been provided to the Committee.*

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

*No.*

**II. Role and Responsibilities of the Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security**

7. In your view, what are the major internal and external challenges facing DHS and Immigration and Customs Enforcement (ICE)? If confirmed, how will you address these challenges?

*In my view, ICE faces several major challenges. The agency is in its formative years and more work needs to be done to consolidate its constituent parts. Particular attention needs to be given to raising morale, improving the management of major programs, and setting clear enforcement priorities. Further, the agency faces resilient challenges from organized criminal networks—specifically those trafficking in drugs, contraband, guns, people, and money—whose size and sophistication require a more sustained and aggressive focus if the networks are to be deterred.*

8. What is your view of the role of the Assistant Secretary of Homeland Security?

*In my view, the role of the Assistant Secretary for Immigration and Customs Enforcement is to manage the agency; set its priorities and policies; ensure the efficient, principled,*

*and professional execution of its customs, immigration, and protection authorities; and to assist the Secretary to carry out the Department's and Administration's broader mission to secure the nation's borders and promote national security.*

9. Section 442(a)(2) of the Homeland Security Act required the Assistant Secretary of the Bureau of Border Security to have a minimum of 5 years of professional experience in law enforcement and 5 years of management experience. A subsequent reorganization of the Department established the position of Assistant Secretary for ICE, with the interior enforcement responsibilities of the original Assistant Secretary of the Bureau of Border Security.

a. Do you have five years of professional experience in law enforcement?

*Yes. My entire professional career of nearly fifteen years has been in federal law enforcement.*

- i. If so, in each of the five years where you had the most professional experience in law enforcement, what positions did you hold and during which time periods?

*From a non-managerial perspective, the five years in which I had the most professional experience in law enforcement were the years I spent as a trial attorney at the Immigration and Naturalization Service (September 1994 to July 1995) and the years I spent as an Assistant United States Attorney at the United States Attorney's Office for the Eastern District of Virginia (September 1999 to August 2006).*

- ii. What were your responsibilities in each of those positions?

*As an Immigration and Naturalization Service trial attorney, I represented the government in immigration proceedings involving a wide variety of deportable and excludable aliens. In many instances, these proceedings involved detained aliens with criminal records or individuals seeking entry by fraud. I also prosecuted a large number of civil enforcement cases against employers who knowingly hired unauthorized workers.*

*As an Assistant United States Attorney, I represented the United States in criminal cases prosecuted in federal district court. I was first assigned to the Major Crimes Unit and then to the Terrorism and National Security Unit. In both units, I prosecuted a wide variety of criminal cases, including bank robbery, murder, sex trafficking, sexual abuse, child pornography, immigration offenses, money laundering, passport and document fraud, counterfeiting, and bank fraud. I developed a particular expertise in the prosecution of immigration offenses involving large-scale fraud, money laundering, or national security concerns. I also served as the office's Immigration Crimes Coordinator, a position that required me to review and approve all major immigration cases for prosecution and to act as the office's principal liaison with ICE and Diplomatic Security officials.*

- iii. How many people did you manage in each of those positions?

*During my time as an Assistant United States Attorney, I managed two standing task forces made up of special agents from a variety of federal and state law enforcement agencies. The first was the Airport Security Task Force created after September 11, 2001, to investigate the fraudulent procurement of airport security badges at Reagan National and Dulles Airports. The second was the Immigration and Identification Document Fraud Task Force created in 2003 to investigate and prosecute large-scale immigration and identification document frauds. Both task forces typically had a dozen or so agents on them, although they would swell considerably in size to meet the needs of particular operations. In addition, as the Criminal Immigration Coordinator, I approved the prosecution of the district's major immigration cases and provided direction to the many Special Assistant United States Attorneys who handled a portion of the criminal immigration docket.*

b. Do you have five years of management experience?

*Yes. I have held a variety of management positions during my time at the Department of Justice.*

i. If so, in each of the five years where you had the most management responsibilities, what positions did you hold and during which time periods?

*The five years in which I had the most management responsibilities were the years I worked for the Deputy Attorney General of the United States and as a manager in the Criminal Division. From May 1997 to September 1999, I served as Special Assistant and then Counsel to then Deputy Attorney General Eric Holder. From August 2006 to August 2007, I was the Deputy Chief of the Domestic Security Section of the Criminal Division. From September 2007 to January 2009, I was the acting Chief of the same section. From January 2009 to the present, I have served as acting Deputy Assistant Attorney General of the Criminal Division.*

ii. What were your responsibilities in each of those positions?

*As Special Assistant and then Counsel to the Deputy Attorney General, I assisted the Deputy Attorney General and the Attorney General to carry out their management and policy responsibilities for the principal immigration components of the Department of Justice, namely the Immigration and Naturalization Service, the Office of Immigration Litigation, and the Executive Office for Immigration Review. In practice, this meant advising the Deputy Attorney General and Attorney General on major policy, legal, and operational issues; coordinating the activities and policies of the components; resolving operational or policy disputes between the components or with other agencies; and representing the Department at meetings with the President's staff, other federal agencies, international bodies, and non-governmental organizations.*

*As Deputy Chief and then acting Chief of the Domestic Security Section, I was responsible for the supervision and management of the section's prosecutors, budget, and*

cases, and developed Department policy in the areas of—

- immigration crime, particularly human smuggling and complex passport and visa frauds;
- human rights offenses, particularly torture, war crimes, genocide, and the use of child soldiers; and
- international violent crime, particularly violent crime under the Military Extraterritorial Jurisdiction Act.

In my present duties as acting Deputy Assistant Attorney General for the Criminal Division, I supervise and manage five offices within the Criminal Division—

- the Domestic Security Section;
- the Child Exploitation and Obscenity Section;
- the Computer Crime and Intellectual Property Section;
- the Office of Special Investigations; and
- the Obscenity Prosecution Task Force.

Four of these offices—the Domestic Security Section, the Child Exploitation and Obscenity Section, the Computer Crime and Intellectual Property Section, and the Office of Special Investigations—coordinate routinely with ICE and have responsibility for prosecuting a wide variety of the cases ICE investigates.

iii. How many people did you manage in each of those positions?

It is hard to quantify the number of people I managed as I carried out my duties in the Deputy Attorney General's Office on behalf of and in support of the Deputy Attorney General and the Attorney General. At the time, the Immigration and Naturalization Service had approximately 21,700 employees and a budget of 2.6 billion dollars; EOIR had approximately 1,100 employees and a budget of 133 million dollars; and OIL had approximately 125 employees and a budget of 15.1 million dollars. While all of these individuals were subject to the Deputy Attorney General and the Attorney General's supervision and control, in practice I primarily dealt with the senior leadership and staff of each component.

During the time I managed the Domestic Security Section, it had approximately 18 employees and a budget of 3.3 million dollars. At present, the five offices I manage as acting Deputy Assistant Attorney General have approximately 150 employees and a combined budget of 30 million dollars.

10. Do you have experience prosecuting violations of U.S. customs laws? If so, please describe this experience.

I do. As an Assistant United States Attorney, I handled several cases falling within the authorities of the former U.S. Customs Service. These include investigations or prosecutions involving export violations, counterfeit goods, child pornography, currency

*structuring, and money laundering. In my present job of acting Deputy Assistant Attorney General in the Criminal Division, I oversee the activities of two litigating sections involved in the prosecution of intellectual property violations, counterfeiting offenses, international financial frauds, and international child pornography cases. I also review and approve applications for wiretap authority for a wide variety of cases involving the authorities of the former Customs Service, including cases of international narcotics smuggling, international financial frauds, and export control violations.*

11. What do you see as the principal mission(s) and primary responsibilities of ICE?

*I believe ICE's principal mission is to protect national security and promote public safety through the use of its criminal and administrative enforcement authorities. In pursuit of this mission, ICE has the responsibility to deter the illegal entry of contraband and people to the United States consistent with civil rights and liberties; to defend the integrity of our nation's customs, border, and immigration controls while promoting legitimate commerce, travel, and immigration; and to protect an array of federal buildings and their occupants.*

12. What do you see as the ICE's principal strengths and weaknesses in its ability to accomplish those mission(s)?

*ICE's principal strengths are the deep investigative experience of its employees and the breadth of its statutory authorities—criminal and administrative. For instance, ICE has broad border search and inspection authority, the authority to arrest dangerous criminals for immigration status violations, and authority to enforce a wide range of criminal customs and immigration laws. This blend of criminal and administrative authority renders ICE unique among federal law enforcement agencies. Similarly, ICE has preeminent investigative expertise in many areas such as customs enforcement, money laundering, human trafficking and smuggling, and facilities protection.*

*In my view, the principal weaknesses ICE faces are its relatively young age and underdeveloped management controls over some of its programs. While the agency has come a long way since its creation in 2003, more work needs to be done to complete the merger of its constituent parts, develop sound management of its major programs, and set clear agency priorities.*

13. What would be your process for allocating resources based upon the priorities you identify and for ensuring resources are spent consistent with these priorities?

*If confirmed, I intend to engage in a thorough review of the agency's spending practices to ensure that they reflect the purposes provided by Congress upon appropriation and the priorities that I would establish in consultation with the Secretary. I would expect this process to involve regular planning sessions with senior operations and budget staff, as well as careful and timely accounting by the chief financial officer. If confirmed, I would work with the Secretary and her senior staff to develop future budget requests that are*

*based on multi-year planning, clearly reflect the priorities of the agency and the Department, and promote fiscal accountability.*

14. What do you hope to have accomplished at the end of your tenure?

*In broad terms, I hope to have brought the agency a greater sense of purpose, clear enforcement priorities, improved morale, and heightened expertise. I further hope to improve the agency's standing to a point where even its policy critics acknowledge its importance to the integrity of our border, customs, and immigration controls. In more specific terms, I hope to have helped stem the violence and crime along the Southwest border; brought significant improvement to the detention system and medical care provided to detainees; developed a strong focus on the removal of criminal aliens and the employment of illegal labor; bolstered the quality and number of ICE's criminal investigations; and strengthened the management and work of the Federal Protective Service.*

### III. Policy Questions

#### *General Management*

15. It has been widely reported that ICE suffered from very low morale of its workforce during the early years of DHS.

- a. Why do you believe that this occurred?

*I believe morale suffered in ICE's early years due to the challenges of merging its predecessor parts into a cohesive whole. In particular, the merger required the agency to redefine its purpose, develop a unified management structure and professional culture, and address many very important enforcement responsibilities with limited resources.*

- b. What is your assessment of the current morale of the ICE workforce?

*My sense is that morale is improved, but that more work needs to be done.*

- c. What specific actions will you take to improve morale at ICE?

*If confirmed, I intend to devote my energies to making ICE a model of good law enforcement and an exciting and rewarding place to work. I intend to set clear priorities, encourage innovation, and pursue the important work of the agency based on principles of merit, accountability, and respect for the law. I further intend to be a strong, public proponent of the agency, its employees, and its mission.*

16. ICE has within its purview responsibility for a broad range of enforcement and investigative activities. These activities fall under two broad umbrellas: identifying, apprehending, and removing aliens that are in the country unlawfully, including possible terrorists and other criminal aliens; and investigating violations of immigration and

customs laws including human smuggling, terrorist financing, cyber-crimes, and money laundering, firearms trafficking, as well as collecting, analyzing and disseminating intelligence concerning criminal enterprises to field staff.

- a. Given this broad range of activities that ICE is responsible for and the fact that its resources are limited how would you prioritize its responsibilities?

*Although ICE's resources are finite and its responsibilities are many, I believe that ICE must give sustained attention to all of its principal responsibilities while prioritizing those activities vital to national security and public safety.*

*Within the first area of immigration enforcement responsibilities you mention, I would place particular focus on maintaining strong border control; removing aliens who may pose a threat to national security or public safety, namely terrorists, criminals, and members of violent street gangs; and removing those who abscond in the face of a final order of removal.*

*Within the second broad category, I would strive to ensure ICE excels in and bolsters its investigation of customs and immigration crimes. Investigating and prosecuting major violators of our customs and immigration laws is critical if we are to secure our border and restore integrity to our immigration controls. I would bring particular emphasis to major border crimes, such as the trafficking of guns, money, drugs, and people; weapons proliferation and export controls; sex trafficking and child exploitation; cross-border financial frauds; and intellectual property and counterfeiting violations.*

- b. If confirmed, what specific actions would you take to ensure that ICE is coordinating its various enforcement and investigative functions?

*If confirmed, I plan to play an active role, working alongside a well-developed management team, to coordinate the functions of the agency, both with respect to its internal operations and to those that involve other agencies within the Department and the broader law enforcement community. I will draw from my experience in the Office of the Deputy Attorney General coordinating the activities of the then immigration components of the Department of Justice and from my experience as the acting Deputy Assistant Attorney General managing five components of the Criminal Division with diverse and important missions.*

17. ICE is an important participant in the Merida Initiative, which aims to provide support for the Mexican government to vet, train, and equip its law enforcement and military personnel. ICE has been largely shut out in the Merida process, as none of its 10 recommendations for projects were accepted by the State Department in FY2008.

- a. What is your assessment of ICE's participation in the Merida Initiative to date?

*I understand ICE proposed 10 projects as part of the Merida Initiative that were not adopted as part of the plan to implement the initiative. As I was not involved in this*

*process or the dialogue with the Department of State, I cannot presently assess why the ICE proposals were rejected. That said, I understand ICE has continued to participate in intra- and inter-agency meetings about the Merida Initiative and remains interested in supporting the initiative as much as possible.*

- b. What specific actions will you take if confirmed to ensure, as the Merida Initiative progresses, that ICE is a full-fledged participant?

*If confirmed, I will work closely with the Secretary and our partners at the Departments of Justice and State to ensure full ICE participation in the Merida Initiative. I understand the Departments of Homeland Security, Justice, and State to be actively coordinating their efforts to implement the initiative and to increase complementary enforcement on the U.S. side of the border. In my view, ICE can and should play a very important role in both these efforts, particularly with regard to arms smuggling, narcotics trafficking, money laundering, and human trafficking and smuggling.*

18. An April 2007 report by the DHS Office of the Inspector General (OIG) (OIG 07-38) concluded that Customs and Border Protection (CBP) and ICE have made progress on coordination, but still need to (1) improve communication between ICE and CBP headquarters elements and all levels of field personnel; (2) improve intelligence and information sharing; (3) strengthen performance measures; and (4) address ongoing relational issues among some elements of the two components. What are your views on any progress that has been made since that report was released, and what actions do you plan to take to ensure adequate coordination between ICE and CBP?

*I believe that a close and coordinated working relationship between CBP and ICE is critical to the success of both agencies and the Department as a whole. Indeed, I think the same is true of ICE and U.S. Citizenship and Immigration Services (USCIS). I know that both ICE and CBP have been working to address the issues in the Inspector General's 2007 report and that important strides have been made to improve cooperation and communication. For example, the two agencies have been working very closely to apprehend and remove aliens encountered along the border with much success, and they are presently working with the Secretary and in partnership with the Government of Mexico and others to develop and implement enhanced criminal enforcement along the Southwest border.*

*Notwithstanding these successes, I believe that more work needs to be done, and if confirmed I intend to make improved coordination and communication between ICE, CBP, and USCIS a focus of mine. Wherever possible, ICE should complement and support CBP's interdiction and inspection authorities with its criminal investigative and removal authorities, and vice versa. There is simply no question that the Department and country are best served by close and efficient coordination among the Department's immigration components.*

*Immigration Enforcement*

19. Congress is divided on whether to permanently authorize E-Verify; some critics of the program argue that the system is still subject to an unacceptably high error rate, and the Chamber of Commerce and other representatives of industry claim it imposes an undue burden on employers. Supporters contend that E-Verify is an effective tool to create a verification program that will help to dissuade unlawful employment.

a. What do you believe is the optimal approach to worksite verification?

*I believe that the optimal approach to worksite verification involves a combination of verification conducted by the employer and enforcement by the government to promote compliance and maintain the integrity of the system. E-Verify is an important tool in worksite verification and holds much potential as a means of quick, convenient, and accurate verification. I understand USCIS has significantly improved the accuracy of the system, resulting in a very low error rate.*

b. Do you believe E-Verify should be permanently authorized?

*E-Verify holds promise for verifying work eligibility, particularly in light of the technical improvements USCIS has made. Longer-term authorization (rather than the recent extensions of one year or less) would facilitate long-term planning and further improvement.*

c. Do you believe it should be made mandatory for a larger number of employers?

*In the context of immigration reform, and with sufficient system improvements to guard against false negatives and false positives, I agree with the Secretary's support of proposals to require the use of E-Verify by employers throughout the United States.*

20. In October 2008, DHS issued additional regulations on what actions an employer should take when they receive a no-match letter from the Social Security Administration (SSA) notifying them of mismatches between names and social security numbers provided by their employees and the information in SSA's database. Do you support the no-match rule outlined by DHS in its regulations? If not, explain how you would recommend the policy be modified.

*I understand the Administration is currently reviewing the no-match regulation, which is the subject of pending litigation. Because the regulation is the subject of litigation, I believe I should not comment on the merits.*

21. The role of state and local law enforcement entities in the enforcement of immigration laws has received a significant amount of attention in recent years. In your opinion, what is the appropriate role of state and local law enforcement in enforcing civil immigration laws?

*As a general matter, I am a strong proponent of federal coordination and cooperation with state and local law enforcement. Under the right circumstances, I also believe such coordination and cooperation can play an important role in the enforcement of our civil immigration laws. For example, I support existing ICE programs, such as the Secure Communities Program, to partner with state and local law enforcement officials to identify and remove criminal aliens in state and local jails. The technology-based Secure Communities Program appears to have great potential and has identified aliens convicted of the most serious category of violent crimes, including murder, rape, and sexual abuse of children.*

*Because immigration enforcement is principally a federal responsibility, however, I do think that state and local law enforcement involvement in civil immigration enforcement should only be pursued in close partnership with ICE and in support of existing federal priorities. I further believe that ICE must carefully supervise any cooperative efforts and create safeguards to protect civil rights and civil liberties.*

22. Many state and local governments have entered into agreements with DHS allowing certain of its officers to perform specified immigration enforcement functions under section 287(g) of the Immigration and Nationality Act. A recent report by the Government Accountability Office (GAO) found that the program lacks key management controls, and that program participants it reviewed had misused their 287(g) authority.

- a. What would be your policy on the 287(g) program? Under what circumstances do you think state or local officers should be allowed to perform immigration officer functions?

*I believe the 287(g) program can be a valuable platform for cooperation between ICE and state and local authorities. I also believe the program requires well-defined goals, uniform management, and strong oversight. To that end, if confirmed, I will review the program to make certain it is being used effectively and has sufficient supervisory controls and reporting requirements.*

- b. Given the rapid growth in the program, what steps would you take to ensure that key management controls are in place for the program going forward?

*I understand that the 287(g) program did grow very rapidly. Of the participating jurisdictions, 90 percent entered into the 287(g) program in 2007-2008. I also understand that the terms of the Memoranda of Agreement were not uniform. If confirmed, I will support the effort to draft a standard agreement so the same terms for supervision and reporting apply to all participating jurisdictions.*

- c. What steps would you take to investigate and address alleged abuses of the program by participants?

*If confirmed, I will work with ICE's Office of Professional Responsibility and the Department's Office of the Inspector General to ensure timely and thorough*

*investigations of alleged abuses. If abuses are identified with any particular 287(g) agreement, I would not hesitate to restrict or terminate the agreement. I also will coordinate as appropriate with the Civil Rights Division within the Department of Justice.*

23. In 2003, ICE created Fugitive Operations Teams (FOTs) to expand the agency's efforts to locate, arrest, and remove fugitive aliens from the United States. FOTs are supposed to give top priority to cases involving aliens who pose a threat to national security and community safety. Although there has been some progress in reducing the fugitive alien backlog – according to ICE, at the end of FY 2008, there were approximately 560,000 fugitive alien cases, a decrease of nearly 37,000 since the beginning of the fiscal year – there has been criticism lodged against the program.

The Migration Policy Institute (MPI), in a recent report on ICE's National Fugitive Operations Program (NFOP), argued that ICE has failed to focus NFOP's resources on its primary mission of apprehending dangerous fugitive aliens. According to the report, as the program has expanded dramatically, the percentage of apprehended aliens with criminal convictions has steadily decreased from 32 percent in FY 2003 (613 out of 1,901 total arrests) to 9 percent in FY 2007 (2,677 out of 30,407 total arrests). The report also states that in FY 2006, after the fugitive apprehension goal was changed to 1,000 arrests per team but with priority still given to dangerous fugitive aliens, arrests of non-fugitive aliens grew from 18 percent in 2003 to 40 percent of total arrests in FY 2007. ICE counters by saying that though the apprehension of dangerous fugitives is the priority, it is only one element of an overall interior enforcement strategy to identify, locate, arrest, and remove criminal aliens, fugitives, and other immigration violators from the United States. According to a 2006 ICE memorandum, non-fugitive alien arrests may be included in up to half of the 1,000 arrest total, but only where these arrests are made as part of a Detention and Removal Headquarters-approved operation.

In addition, some groups have accused ICE Fugitive Operations Teams of profiling by individuals' race instead of relying on other evidence in determining which aliens they should seek to apprehend.

In her first week on the job, Secretary Napolitano ordered a review of the Fugitive Operations Teams.

- a. What should be the priorities of ICE's Fugitive Operations Teams?

*I believe that the Fugitive Operations Teams should first focus on locating and removing individuals with a criminal record, gang members, and those who pose a risk to national security or public safety. To ensure the integrity of our nation's immigration system and the rule of law, final orders of removal must not be meaningless.*

- b. How would you dedicate resources to match these priorities?

*If confirmed, I will review the present priorities and results to ensure that the resources*

*devoted to the teams are truly focused on fugitives and that appropriate priority is being given to criminals and others who pose a risk to national security or public safety.*

- c. Do you believe ICE should maintain measureable field goals for the apprehension of aliens by the Fugitive Operations Teams? If so, what should be the purpose of such a system and how should it be structured?

*As a general matter, I do not support the use of quotas to drive federal law enforcement initiatives. In contrast, however, I do see great management and supervisory value in tracking statistics to ensure that the resources devoted to the teams are well spent and achieve the agency's objectives and priorities.*

- d. What safeguards and oversight should be in place to ensure that agents' apprehension of non-fugitive aliens during raids do not involve inappropriate procedures or illegal profiling?

*In my view, there are several necessary safeguards and oversight: regular training on the law and good practice; close operational supervision; accurate record keeping and metrics; community outreach; and strong audit and investigative review of alleged or actual abuses.*

24. Over the last several years, ICE has dramatically increased worksite raids. Immigration enforcement raids, however, have engendered criticism, including from some in Congress, because of claims of harsh treatment of apprehended aliens, that many of those apprehended were not wanted as criminals or absconders from final deportation orders, and that ICE did not focus sufficiently on prosecuting employers for hiring undocumented workers. Some employers may hire undocumented immigrants because they may be less likely to report violations of wage and hour, child labor, health and safety, and other laws protecting workers:

- a. What is your view of the worksite enforcement operations conducted by ICE?

*I believe that worksite enforcement should be an important part of ICE's national enforcement strategy. In my view, we cannot make sustained reductions in illegal immigration without deterring employment of unauthorized labor. Moreover, I believe lax worksite enforcement harms the interests of U.S. workers and leaves unauthorized workers vulnerable to abusive wages and working conditions.*

*I support using all available tools as part of a coherent worksite enforcement strategy. In particular, I believe we need to place renewed focus on employers to ensure that they are playing by the rules, while continuing to allow for civil enforcement against unauthorized workers encountered at the worksite. This focus should include criminal prosecution for serious violations and more routine use of the civil sanctions already provided for by law. I also believe we should continue to develop programs such as E-Verify to encourage compliance with the law.*

b. If confirmed, what changes, if any, would you implement?

*If confirmed, I would work with the Department of Justice to investigate and prosecute employers committing serious violations of the law. I would place particular emphasis on those employers who knowingly engage in illegal hiring on a grand scale or who knowingly aid unauthorized workers to circumvent verification by the use of false documents or other fraud. Similarly, I also would focus attention on employers who, in violating the law, knowingly force workers to accept depressed wages or work in abusive conditions.*

*In addition, I would more vigorously pursue civil fines to deter employers acting in bad faith, a practice I am personally familiar with as a former INS trial attorney. Civil fines, in my view, have been underutilized. In 1996, at the height of the use of civil fines, the former INS imposed fines totaling approximately \$25 million. Civil fines then decreased dramatically in the next decade. Indeed, in 2005 and 2006, ICE imposed no fines on employers at all. In 2009, the use of civil fines has begun to rebound, and ICE has so far issued notices of intent to fine totaling more than \$2.3 million. I would encourage this trend and work with the Secretary and Congress to dedicate more auditors to the civil fines program.*

*Finally, I would work with USCIS and the employer community to develop and promote compliance programs for the overwhelming majority of employers seeking to comply with the law. These efforts would include training, outreach, and continued development of E-Verify.*

c. If confirmed, how would you coordinate with the Department of Labor and the Department of Justice (DOJ) to establish a more comprehensive approach to the inter-related problems of hiring undocumented aliens and addressing other employer workplace violations?

*If confirmed, I would look forward to working with the Departments of Labor, Justice, and Commerce to develop a more comprehensive approach to worksite violations and abuses. These Departments have important, relevant authorities that complement those possessed by ICE. Moreover, as a career prosecutor I am confident I can forge the relationships necessary for greater coordination. I understand well the role of the prosecutor and the challenges prosecutors face when bringing a criminal case. Similarly, I worked with the Department of Labor for many years to investigate and prosecute fraud in the labor certification program, and then participated in the Department's subsequent efforts to reform the program to reduce fraud and the abuse of U.S. workers.*

*Immigration Detention*

25. The immigration detention system has expanded substantially over recent years resulting in the prolonged detention of thousands of non-criminal aliens, including vulnerable populations such as survivors of torture, families with small children and those with serious illnesses. To alleviate over-crowding and the high cost of detention, many have requested that DHS pursue alternatives to detention programs. Congress has appropriated funds to DHS for this purpose and the Department has initiated new programs. However, there is criticism that DHS has focused primarily on populations who are already eligible for release, relied too heavily on the most restrictive methods available, and has failed to take advantage of community-based alternative programs run by non-governmental, state or local agencies.

- a. What do you see as the benefits and drawbacks of alternatives to detention programs?

*I strongly support the development of effective alternatives to detention (ATD). Properly structured, ATD programs offer clear benefits to the integrity of the immigration system, to taxpayers, and to the aliens in proceedings. In particular, they promote an alien's appearance for hearings and compliance with a final order of removal, save taxpayers the considerable expense of detention, and spare the alien from more restrictive conditions of detention.*

*As they currently exist, however, ATD programs are not without drawbacks. Notably, aliens in ATD programs are not ordinarily placed on an expedited docket before the immigration judges and the Board of Immigration Appeals. Thus, although electronic monitoring or some other ATD program may cost less than detention per day, the overall cost of an ATD may be substantially higher as the length of the alien's proceedings may be significantly longer. If confirmed, I would work with the Executive Office for Immigration Review to address this problem. In addition, more analysis is needed to determine if ATD programs offer a sufficiently high rate of compliance with removal orders. No ATD program can succeed if it is marked by significant non-compliance.*

- b. What is your assessment of current alternatives to detention programs?

*I believe that the current ATD programs are a promising start but need further study and development. At present, the programs are relatively narrow, not widely available, and not clearly cost effective when cases are continued for lengthy periods.*

- c. If confirmed, will you review whether alternatives to detention programs can be expanded nationwide?

*Yes.*

26. In February 2005, the U.S. Commission for International Religious Freedom (USCIRF) issued a congressionally mandated Report on Asylum Seekers in Expedited Removal. Among other things the 2005 USCIRF study called for the promulgation of regulations

“to ensure that asylum seekers with a credible fear of persecution – who establish identity and that they pose neither a flight nor a security risk – are released from detention.”

On November 6, 2007, DHS issued a directive regarding parole of arriving aliens found to have a credible fear of persecution or torture. In a letter to then-DHS Assistant Secretary Stewart Baker dated January 9, 2009, the Chair of USCIRF wrote that the November 7<sup>th</sup> parole criteria “contradicts our recommendation that asylum seekers with a credible fear of persecution and who pose neither a flight nor security risk are released from detention” and that the directive instead “requires that additional hurdles be met for the parole of asylum seekers with a credible fear of persecution and who pose no danger to society.”

- a. What is your opinion of the recommendation that asylum seekers found to have a credible fear of persecution should be entitled to parole if it is determined they do not represent a flight risk or a threat to public safety or national security?

*The United States has a proud tradition of refugee protection—a tradition I greatly value. In 2005, when USCIRF issued its report, conflicting guidance existed within ICE about what effect, if any, a positive credible fear determination should have on the decision about whether to grant parole to arriving aliens. DHS issued a policy directive in 2007 seeking to standardize parole practices and provide greater transparency to the parole process. I will examine the effect of that 2007 directive and determine whether there is room to strike a different balance between detention and parole while still protecting the integrity of the asylum process from fraud and abuse.*

- b. If confirmed, would you review the parole criteria promulgated in 2007 and consider possible changes?

*Yes. Although I believe that the 2007 policy directive was a step in the right direction to promote accountability and consistency in parole decisions, I am concerned that so many stakeholders view it as unacceptably restrictive. As such, I would welcome concrete recommendations from Congress, the Commission, the U.N. High Commissioner for Refugees (UNHCR), and the NGO community concerning how ICE could best identify and parole bona fide asylum applicants from custody. Indeed, I understand that UNHCR has recently met with DHS officials to discuss the parole policy, and look forward to joining those discussions, if confirmed.*

27. Reports by USCIRF, the DHS Inspector General (IG), numerous NGOs, the UN High Commissioner for Refugees, and the media have repeatedly documented harsh conditions in the facilities where asylum seekers and other aliens are detained. The facilities are built and run according to the model and standards of correctional facilities, despite the fact that the majority of ICE detainees have no criminal record. In 2008, ICE issued Performance Based National Detention Standards, but the agency’s ability to effectively oversee the enforcement of its standards at all the facilities has been questioned, especially at Intergovernmental Service Agreement (IGSA) facilities. In addition,

detainees are often transferred to locations far from their attorneys and families, making it difficult for their counsel to effectively represent them and their families to visit them.

- a. What steps would you take to review the conditions at detention facilities and implement necessary improvements?

*The Secretary and I share a strong interest in the improvement of the detention system, and, if I am confirmed by the Senate, detention reform will be one of my immediate priorities. I will visit detention facilities and work diligently to ensure that those in immigration custody are provided the care and treatment we all expect. The Secretary has ordered an initial review of the system, to include conditions of detention and medical care for immigration detainees. I will rely heavily on the review and seriously consider any recommendations for improving the conditions and use of detention.*

- b. Do you believe ICE should attempt to limit the transfer of detainees from the location of their counsel and families? What steps would you take to limit the need to transfer detainees? If it is necessary to transfer a detainee, how would you address the concerns that arise when a detainee is transferred?

*I support limiting unnecessary transfers. The location of a detained alien's family and attorney are appropriate considerations when ICE has the ability to select among multiple facilities. I also understand that, in some instances, ICE cannot house a detained individual in the same location the individual was arrested. Doing so would require ICE to have even more contracts with local facilities. As the number of facilities increases, so too does the challenge of standardizing and supervising the conditions of confinement for the detained population. If confirmed, I intend to examine ICE's present transfer policies closely to determine how the agency might limit transfers and better inform family members and attorneys when transfer is required in order to ensure continued communication.*

- c. What steps can ICE take to ensure effective oversight and implementation of remedial actions at both ICE and IGSA facilities?

*If confirmed, I will ensure effective oversight and create the capacity within ICE to review the conditions at facilities and investigate and assess complaints. If problems are identified at a particular facility, and those problems are not immediately addressed or later recur, I would not hesitate to terminate the contract or remove immigration detainees from the facility.*

- d. Some groups have argued for ICE to initiate rulemaking proceedings to promulgate regulations governing detention standards for immigration detainees. In your opinion, what are the benefits and drawbacks of promulgating detention standards as binding regulations?

*I understand the appeal of regulations in light of the current need for reform. Regulations would codify expectations about how aliens in ICE custody must be treated.*

*On the other hand, in my experience at the Department of Justice, regulations can be inflexible and create unintended consequences as circumstances change over time. This issue calls for immediate action. If confirmed, I intend to review this issue and use the existing power of the office to make some immediate and necessary improvements, while more carefully studying whether regulatory action is needed in the long-term.*

28. Inadequate medical care at detention facilities has been described in media reports, Congressional hearings, and ICE documents retrieved through FOIA requests. The Division of Immigration Health Services (DIHS) has suffered from understaffing, and administrators of detention facilities have complained of the difficulties of gaining authorization from DIHS for necessary medical procedures. Media accounts and government investigations have documented instances where detainees died after numerous requests for treatment were discounted.

- a. What steps will you take to review the medical care provided to detainees?

*As noted above, the review and reform of the detention system will be one of my highest priorities if I am confirmed by the Senate. I plan to take an active and direct role in reviewing and reforming the detention system, guided by the results of the comprehensive review currently underway. The work and structure of DIHS will be a central part of my review, and I will consider whether DIHS is sufficiently equipped to oversee the medical care of our detained population. I also will take steps to immediately increase oversight of the medical care provided to aliens in contract facilities, where DIHS is not involved.*

- b. What initial steps will you take to address the concerns?

*If confirmed, I will work to establish a medical classification system to identify the needs of the detained population and make certain they are in an appropriate facility given their condition. As part of that effort, I will assess whether and when an alien's medical condition may render detention inappropriate or require specialized care. I also will establish a standardized medical grievance procedure. If confirmed, I will elevate the attention this issue receives.*

- c. What do steps will you take in the long term to improve medical care provided to detainees?

*If confirmed, my goal will be to create a more uniform, professional system of medical care that delivers competent, timely medical care to all aliens in ICE custody. In addition, I would examine whether the current reliance on contractors is appropriate and whether DIHS has the capacity required to fulfill its oversight mission. I am committed to ensuring the aliens in ICE custody receive the medical attention they require and deserve.*

- d. How can ICE coordinate more effectively with DIHS and other relevant agencies to address the problem?

*In my view, better coordination is essential. If confirmed, I will make certain ICE has a high-ranking subject matter expert to work with DHS and any contractors who monitor medical care and conditions of detention. If confirmed, I look forward to working with experts in the field and governmental and non-governmental organizations concerned with this issue to make certain the medical care provided to the detained population meets the high expectations of this nation, the Secretary, and the Administration.*

- e. In your opinion, who is ultimately responsible for ensuring that detainees receive necessary medical care?

*In my opinion, the Assistant Secretary for Immigration and Customs Enforcement is ultimately responsible. Although ICE may need to engage contractors to perform certain duties, the responsibility for ensuring that detainees receive necessary medical care rests squarely with the agency.*

29. Human rights groups and Congress have been critical of the practice of detaining families with children at detention facilities. It has also received significant media scrutiny. DHS currently has two facilities to accommodate alien families in ICE custody: the T. Don Hutto facility in Texas, which was originally constructed to be a medium security prison, and a detention facility in Berks County, Pennsylvania. In 2007, DHS settled litigation with the American Civil Liberties Union on behalf of 26 immigrant children detained with their parents at Hutto and committed to improved standards and conditions at the facility.

In April of last year, DHS issued a Request for Procurement (RFP) for the construction of up to three family detention facilities with a maximum population of 200 residents each, and contract awards are expected this year. Advocacy groups have expressed concerns that the new facilities will only increase the numbers of detained families and reinforce the notion that families should be confined in a harsh and restrictive environment.

- a. Under what circumstances do you believe families with children should be detained?

*I believe detention is appropriate (1) when mandated by law or (2) when release would pose a danger to the community or a particularly serious risk of flight.*

*For example, I understand that family detention originally developed in part because of the interplay between the mandatory detention provisions found in the Immigration and Nationality Act for aliens processed under expedited removal and the provision in the Homeland Security Act which requires that all Unaccompanied Alien Children (UAC) be transferred to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). In these circumstances, where detention is mandated by statute, I believe it preferable to detain a family unit together during their immigration proceedings rather than to separate the family, where the adults are detained by ICE and the children transferred to the care of HHS ORR.*

- b. What steps do you believe can and should be taken to limit the use of detention?

*I believe there is room for the expanded use of alternatives to detention. I also believe ICE should consider whether facilities other than prisons or jails could be used to detain non-criminals.*

- c. What sort of facility would you consider appropriate for families with children?

*Assuming no one in the family poses a danger of harm to others or to himself or herself, I would consider appropriate a facility that fostered a high degree of family unity with those restrictions necessary to prevent flight.*

- d. If confirmed, do you plan to review ICE's ongoing procurement for up to three new family detention facilities?

*Yes.*

#### *Customs Investigations*

30. ICE investigators do not have the authority to pursue drug trafficking investigations that do not have a nexus with the border. Instead, this authority, also known as Title 21 authority, rests with the Department of Justice's Drug Enforcement Administration (DEA). ICE is currently using Memorandum of Agreements (MOA) signed during the legacy INS era to pursue Title 21 investigations. Former Assistant Secretary Myers recently wrote that "not only do DHS agencies have to seek DEA's advance permission to investigate transnational drug cases, DEA arbitrarily limits the total numbers of DHS agents that can work drug cases. DEA permits less than 1500 special agents from Immigration and Customs Enforcement to have Title 21 authority. That means more than 5000 other special agents – fully trained in all aspects of cross-border crime – are prevented from participating in these investigations."<sup>1</sup>

- a. Do you believe that Title 21 authority is needed for ICE?

*I support ICE's exercise of Title 21 authority, particularly in terms of violations involving the border and ports of entry. Investigating narcotics violations is a critical facet of basic border and customs control, and ICE and its predecessor U.S. Customs Service have a long and successful record of pursuing such cases. In addition, ICE officers have unique tools of administrative arrest of unlawful aliens and extended border search authority to complement the tools of the Drug Enforcement Agency (DEA). I further believe, however, that ICE's investigations of Title 21 should be closely coordinated with the DEA and recognize DEA's broad responsibilities and authorities in this area.*

- b. If confirmed, what specific actions would you take to pursue gaining Title 21 authority for ICE?

<sup>1</sup> July Myers, Counternarcotics Turf Wars—The Need for Title 21 Authority Reform, Security Debrief, available at <http://securitydebrief.adfero.com/counternarcotics-turf-wars-the-need-for-title-21-authority-reform>

*I would meet with officials in the Department of Justice to explore legislation or revisions to the existing Memorandum of Agreement (MOA) with an eye to improving coordination, increasing the number of authorized ICE agents, and better delineating those areas in which focus by ICE is most appropriate.*

- c. What do you believe is the best way to gain this authority, through expansion of the existing MOA with DOJ or through legislation?

*I believe a revision of the MOA would be an appropriate means to address the issue. I am not opposed, however, to a legislative solution.*

31. ICE has a program, Armas Cruzadas, that aims to interdict the southbound illegal flow of guns out of the United States that are smuggled into the hands of drug cartels in Mexico. However, ICE has limited resources for this program and is hindered by having to link these investigations directly to the border.
- a. If confirmed, what specific actions would you take to interdict the southbound illegal flow of firearms out of the United States?

*The illegal flow of firearms from the United States to Mexico and other countries in Central and South America is a major concern. If confirmed, I would work within ICE and DHS to ensure that Armas Cruzadas is fully developed and that ICE strengthens its coordination with Mexican and other concerned foreign officials. I also would work with the leadership at ATF to coordinate our activities and improve our respective initiatives and programs.*

- b. How would you coordinate with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to ensure that the agencies are working together in their arms trafficking investigations?

*ICE and ATF have complementary roles in investigating firearms-related offenses, and I see little reason for anything other than close coordination. If confirmed, I intend to meet with senior ATF officials, including the acting Director with whom I have worked for many years, to ensure the two agencies are working together and avoiding unnecessary conflict.*

32. We have learned that the cartels are increasingly turning to stored value cards, or gift cards, to smuggle their profits out of the United States. These cards are attractive to the cartels because they are not legally considered monetary instruments, which means that the issuing banks do not have to report suspicious purchases, and individuals transporting more than \$10,000 in value on them across the border do not have to report them as money. The end result of this is that ICE investigators and CBP officers at the ports are hindered in their efforts to uncover money laundering by the cartels. What do you believe can be done about this problem?

*I am concerned about any means used by drug traffickers or other criminals to transport their illicit gains across our nation's borders. While stored value cards and gift cards*

*are very useful to consumers, we must work to ensure that they are not used to advance the interests of drug cartels and other organized criminals.*

*If confirmed, I would work with other concerned agencies, including the Department of Treasury's Financial Crimes Enforcement Network, to identify any appropriate changes to law or existing regulation to ensure that banks appropriately report suspicious patterns of stored value card purchases, and that ICE and CBP are appropriately advised when individuals transport large sums on such cards across our borders. I would also work, together with other federal agencies, with the payment card industry to identify ways in which the industry could preserve the beneficial legal uses of these tools while making them less attractive as conduits for money laundering.*

33. Globally, alien smuggling generates illicit revenues totaling billions of dollars annually and is recognized as a significant and growing problem that can pose a serious threat to the security of the United States, a primary destination country. ICE has an opportunity to use financial investigative techniques to follow the money trail from smuggling fees as an effective means of dismantling alien smuggling organizations. ICE officials have said that much of the U.S.-related smuggling revenues may not be paid in this country or, if paid here, may be transported or transmitted abroad quickly. As such, federal efforts to combat alien smuggling by following the money trail frequently may present investigators and prosecutors with opportunities and challenges related to identifying and seizing funds or assets not located in the United States.

- a. What would you do to increase ICE's effectiveness in seizing alien smuggling fees and related monetary assets of alien smugglers to dismantle their organizations?

*I am deeply concerned by the ever growing threat organized alien smuggling poses to the United States. Not only does such smuggling represent a direct threat to the nation's border control, it creates opportunities for illegal entry by terrorists and other criminals; fosters corruption of government officials; and places the migrants involved at risk of abuse, death, and extortion. In my view, federal law enforcement has not kept pace with the increasing sophistication and profits of alien smuggling rings, and much more needs to be done to deter their activities.*

*If confirmed, I would place a renewed emphasis on identifying, investigating, and disrupting the activities of organized human smugglers and traffickers. As the question notes, however, prosecuting the criminals involved and seizing their assets is complicated by the fact that much of their illegal activity and profit taking occurs overseas. To address this complication, I would work with the Secretary and the Department of Justice to explore whether the asset forfeiture and seizure provisions in present law are sufficient.*

- b. What mechanisms are in place or would you implement to seize U.S.-related alien smuggling fees that are located or transferred abroad?

*While existing federal law does provide for the seizure and forfeiture of certain proceeds and assets involved in international alien smuggling, extraterritorial enforcement is very difficult. Although I do not think there is an easy solution to the problem, I believe the Departments of Homeland Security and Justice should explore whether expansion of existing law could be used to thwart or penalize transfers of illegal proceeds out of the United States.*

*Human Smuggling and Trafficking Center*

34. The Human Smuggling and Trafficking Center (HSTC) serves as the federal government's interagency information clearinghouse and intelligence fusion center for all federal agencies addressing human smuggling, human trafficking, and the potential use of human smuggling routes, networks, and organizations by known or suspected terrorists. Some believe that the HSTC has been underfunded and understaffed, lacking subject matter experts on a variety of the areas it supports. It appears that departments, other than DHS, may not have made the same commitment to the success of the Center.

- a. What is your assessment of how the HSTC has operated to date?

*I believe that the HSTC has not achieved its full potential and has not operated with efficiency. I believe that the basic concept of an information clearinghouse and intelligence fusion center was sound, but that the tripartite governing structure has slowed the center's work.*

- b. Would you change the HSTC's operations or staffing structure to ensure that it is achieving its goals?

*If confirmed, I will review the center's structure and staffing, and look forward to working with the Congress and the center's constituent agencies to determine if changes are needed.*

- c. If confirmed, what specific actions would you take to ensure that the HSTC receives support from and is incorporated into the operations of all its constituent agencies?

*If confirmed, I would review the center's present governing agreements, examine the level of staffing commitments from its constituent agencies, and explore whether changes are needed to the center's legislative charter to improve its daily administration.*

*Federal Protective Service*

35. The Federal Protective Service (FPS) is responsible for providing security for more than 8,000 federal buildings around the country, and the more than 12 million federal employees working in them. Unfortunately, it is an agency that has been chronically overlooked by the Department. A 2008 GAO report (GAO 08-683) on the Federal Protective Service revealed that since FPS was transferred from the General Services Administration to ICE, budget shortfalls had forced FPS to cut its workforce by 20

percent, restrict training, postpone the purchase and repair of necessary security equipment, and restrict travel, making it difficult for FPS personnel to oversee the contract security guards they are supposed to supervise. Worse, in each of the past two years, the previous Administration proposed further reducing existing uniformed security personnel within the agency by another 25 percent. In response, Congress required FPS to maintain no fewer than 1,200 full-time equivalent staff (FTEs), including at least 900 law enforcement officers. Congress also required that the FPS adjust the fee it collects from the agencies it serves in order to meet the FTE requirement and maintain an appropriate level of security for federal employees and buildings. The DHS authorization bill introduced in the Senate last Congress (S. 3623) authorized additional full-time law enforcement personnel for the Federal Protective Service to boost the capabilities of this important agency, and requires that DHS undertake a number of actions to improve operations in the FPS, including looking at how DHS funds and staffs the agency.

- a. Do you support adding FPS officers (which includes police officers, inspectors or criminal investigators) to boost FPS's capabilities in protecting our federal buildings and the people that work and visit them every day?

*I have spent the vast majority of my career in federal buildings. As a result, I value the role of FPS and understand the importance of protecting our federal buildings and their occupants. I support providing FPS with the resources needed to fulfill its mission and am personally committed to making the FPS an integral and successful part of the Department.*

- b. What further actions do you believe are needed to address the serious concerns highlighted by the GAO report?

*I have read the recommendations made by the GAO in its 2008 report. If confirmed, I intend to review the recommendations with the senior staff at ICE and FPS to determine if the concerns have been addressed and, if not, what more needs to be done.*

- c. Do you plan to review FPS staffing, its model for reliance on contract security guards for initial response in most cases, and its fee structure, to ensure that federal buildings are adequately protected?

*Yes, if confirmed.*

- d. If confirmed, will you ensure FPS receives the attention it needs from the Department?

*Yes. If confirmed, I intend to give it my personal and sustained attention as Assistant Secretary and would look forward to working with all those interested in making the agency a full success.*

*Intelligence*

36. What do you believe are ICE's top intelligence priorities today, and how can ICE improve its efforts to address them?

*In light of my experiences as a prosecutor focused on large-scale, proactive investigations, I fully recognize the need for good intelligence gathering and analysis. I think intelligence gathering and analysis is particularly important if we are to address meaningfully the dangers posed by international organized crime. Particular areas of importance for ICE in this regard include preventing terrorist attacks and travel; targeting organized drug, contraband, and human smuggling rings; and combating the proliferation of illegal arms, including the Southbound flow of weapons and ammunition and the flow of sensitive technology and weapons components overseas.*

*If confirmed, I intend to review the intelligence program at ICE with an eye to improvement. Some areas I anticipate exploring are whether all the ICE field offices are capable of sharing classified intelligence; whether the program has a sufficient number of trained agents and analysts; and whether the agency is working closely with its counterparts in the broader intelligence and law enforcement communities.*

37. The ICE Office of Intelligence is considered an intelligence component of the DHS under Sec. 207 of the Homeland Security Act, and under the requirements of that section, the head of that office is responsible for supporting and integrating into the broader intelligence mission of DHS as led by the Under Secretary for Intelligence and Analysis. If confirmed, how would you ensure that the ICE Office of Intelligence is integrated into the DHS intelligence enterprise, and that ICE cooperates fully with the DHS Office of Intelligence and Analysis?

*As a former national security prosecutor, I am firm believer in coordination and intelligence sharing within DHS and the larger intelligence community. If confirmed, I intend to improve ICE's intelligence gathering and analytic capabilities and to ensure that it supports the broader mission of the Department and coordinates with other members of the intelligence community.*

#### **IV. Relations with Congress**

38. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

*Yes.*

39. Do you agree, without reservation, to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

*Yes.*

V. Assistance

- 40. Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate which entities.

*Yes. I have consulted with and received assistance from ICE officials on certain questions in an effort to be as responsive and specific as I can be. In all instances, the answers are mine.*

**AFFIDAVIT**

I, John T. Morton, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



Subscribed and sworn before me this 10<sup>th</sup> day of April, 2009.



Notary Public  
Comm. exp. 8-14-2011



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

March 16, 2009

The Honorable Joseph I. Lieberman  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by John T. Morton, who has been nominated by President Obama for the position of Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated March 13, 2009 from Mr. Morton to the agency's ethics official, outlining the steps Mr. Morton will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Morton is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert I. Cusick".

Robert I. Cusick  
Director

Enclosures

**REDACTED**

**Senator Carl Levin  
Questions for the Record  
Nomination Hearing of John Morton  
April 22, 2009**

***Incorporation Practices***

- 1) In 2006, the international Financial Action Task Force on Money Laundering (FATF) criticized the United States for forming nearly two million corporations and limited liability companies each year without identifying their beneficial owners, in violation of FATF's international anti-money laundering standards. FATF asked the United States to correct this deficiency by July 2008, but the United States missed that deadline, in part because the states have been unable to agree on beneficial ownership disclosure rules that would meet the FATF standards. Former DHS Secretary Chertoff commented on the risk posed by a lack of transparency in corporate formation and stated that "...in countless investigations, where the criminal targets utilize shell corporations, the lack of law enforcement's ability to gain access to true beneficial ownership information slows, confuses or impedes the efforts by investigators to follow criminal proceeds."<sup>1</sup> Furthermore, Secretary Napolitano stated that "My predecessor viewed the misuse and lack of readily available information about beneficial ownership to be a problem in pursuing certain criminal investigations. I share this concern, and if confirmed, I will work with the Executive Office of the President, the Department of Justice, and the leaders of DHS's law enforcement agencies to evaluate thoroughly the risks involved and determine whether legislative changes are necessary."<sup>2</sup> What is your assessment of this risk; and if confirmed, would you support legislation to strengthen U.S. incorporation practices and meet FATF standards?

*If confirmed, I plan to review the FATF standards and with any legislative proposals outlined by the Department, whether under the leadership of Secretary Chertoff or Secretary Napolitano. I am committed to building the strongest criminal investigative program possible. If legal loopholes exist to the benefit of criminals and to the detriment of the rule of law, I will press for legislative amendments and will work with the relevant components of the Departments of Justice and Homeland Security to craft legislative proposals and review draft legislation.*

***Money Laundering / Foreign Corruption / Kleptocracy***

- 2) ICE plays a key role in combating international money laundering which fuels terrorism, foreign corruption, and other crimes. How high a priority would you place on this function compared to other ICE missions?

*ICE and its predecessor component, the United States Customs Service, have a proud tradition of investigating financial crimes. As a former prosecutor in the Terrorism and National Security Unit, I handled many cases involving money laundering and understand the importance of targeting criminals' financial tools. If confirmed, I plan to place significant emphasis on financial crime and foreign corruption, including trade-based money laundering, bulk cash*

<sup>1</sup> Michael Chertoff, Questions for the Record, Senate Homeland Security and Government Affairs Committee, April 22, 2008.

<sup>2</sup> Janet Napolitano, Questions for the Record, Senate Homeland Security and Government Affairs Committee, January 15, 2009.

*smuggling, and the Black Market Peso Exchange. The threats to homeland security associated with those crimes should be among ICE's highest investigative priorities.*

- a. What is your view of ICE's role in the National Strategy to Combat Kleptocracy<sup>3</sup>, and what will you do to ensure that this strategy is pursued by ICE under your leadership?

*In my view, ICE has an important role in combating kleptocracy. In particular, I believe ICE's expertise in investigating financial crimes should play an important part in broader government efforts to combat kleptocracy and its accompanying culture of organized international crime. If confirmed, I look forward to reviewing the National Strategy and assessing ICE's role.*

- b. The ICE Office of Investigations - Foreign Corruption Unit, located in Miami, Florida, conducts investigations involving kleptocrats who use the U.S. as a financial safe haven, an important mission for the U.S. government. These investigations are extremely complex and often require a multi-year commitment of agents and analysts. I am concerned that agent turnover and inadequate support has limited this unit's abilities. What are the Foreign Corruption Unit's top priorities and does it need additional staffing and resources?

*If confirmed, I look forward to meeting with the special agents working in the Foreign Corruption Unit and the rest of the agents working on financial crimes in the Miami SAC office. Having handled a great number of complex, multi-year criminal investigations myself, I know how important sustained resources and attention are. I intend to ask them directly about the challenges of their position and how I can best enhance their efforts. As part of this effort, I will address whether the unit has the stability and resources it needs to get the job done.*

#### **Northern Border**

- 3) ICE has successfully applied the Border Enforcement Security Task Force (BEST) model to the Southwestern Border and achieved significant enforcement results through the incorporation of federal law enforcement such as ICE, Customs and Border Protection, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Federal Bureau of Investigation, the U.S. Coast Guard, and the U.S. Attorney's Office along with other key federal, state, local and foreign law enforcement agencies. Recently, ICE opened its first Northern Border BEST in Blaine, Washington and secured participation of the Canadian Border Services Agency and the Royal Canadian Mounted Police.

Michigan is one of the most significant locations for trade and commerce along the Northern Border. More than 40 percent of all U.S./Canada trade passes through the Michigan/Ontario border. The Ambassador Bridge, which connects Detroit with Windsor, Ontario, is the

<sup>3</sup> U.S. Department of State, National Strategy Against High Level Corruption: Coordinating International Efforts to Combat Kleptocracy, available at <http://www.state.gov/documents/organization/70333.pdf>.

busiest commercial crossing in North America and the Detroit-Windsor Tunnel is the busiest passenger vehicle tunnel on the northern border. The bridge facilitates approximately 25 percent of all trade between the U.S. and Canada. If confirmed, will you give consideration to the establishment of a BEST task force, similar to that established in Blaine, which would address the unique cross-border criminal activity that occurs at the U.S. border in Michigan?

*Yes. I understand the importance and expanse of the Northern border and, if confirmed, will pay appropriate attention to both borders. Resources permitting, I am open to adding to the existing BESTs on the Northern border and would consider Detroit in light of the trade and commercial traffic you note.*

***Worksite Enforcement / Detention***

- 4) If confirmed, will you give consideration to the humanitarian concerns of detained aliens who are caretakers of U.S. Citizen or Legal Permanent Resident relatives?

*If confirmed, I plan to do so. I understand ICE issued humanitarian guidelines applicable in worksite enforcement actions. Those guidelines direct ICE agents to consider whether an arrested alien is the sole caretaker of a family member with special needs. In my view, ICE should consider such humanitarian issues, along with many others, when making detention decisions.*

**Senator Susan M. Collins**  
**Additional Questions for the Record**  
**Nomination Hearing of John T. Morton**  
**April 22, 2009**

1. The drug cartels in Mexico combine the smuggling of drugs, weapons, humans, and cash into integrated criminal enterprises. The federal government, however, is not organized in the same fashion to address these crimes. DHS and DOJ have overlapping and shared federal law enforcement authorities.

For example, ICE and ATF both investigate gun trafficking. However, ICE is the only federal agency with the authority to prosecute arms exportation cases, while ATF has domestic authority over weapons being illegally sold and transported within the U.S. Some experts have expressed concern about the effectiveness of the coordination and information sharing between these agencies.

With your 15 years of experience at the Justice Department, working with both ATF and ICE, how would you increase the cooperation between ICE and ATF and even the DEA to ensure that the federal government effectively addresses the smuggling crimes of these violent cartels?

*In my view, turf battles between agencies have little place in effective law enforcement, particularly when it comes to the Southwest border. If confirmed, I will commit to improving coordination between ICE and both ATF and DEA. I will meet with the acting directors of both agencies without delay and place an immediate emphasis on improving coordination and addressing any disputes. I will work to revise the outdated memoranda of agreements with both agencies and seek to enter into further agreements promoting a routine exchange of information. I will make clear that success against the cartels is a success for ICE and all of our federal partners –no matter which agency is the lead in any particular case. In short, my goal will be to foster a commitment to coordination and information sharing that will outlast my tenure.*

**Senator Tom Coburn**  
**Additional Questions for the Record**  
**Nomination Hearing of John T. Morton**  
**April 22, 2009**

**Criminal Aliens**

1. It has been estimated that at least 304,000 criminal aliens are currently eligible for deportation or removal and that 10% of the U.S. prison population would qualify as removable criminal aliens. The problem has exploded in recent years. In 1980, there were fewer than 9,000 criminal aliens in Federal and state prisons. By 2007, there were approximately 50,000 in federal custody alone, accounting for 27% of the federal prison population. In that same year, according to government reports, 300,000 criminal aliens entered state and local facilities and by law should be deported after serving their sentence. The federal government's Criminal Alien Program (CAP) is designed to identify and deport removable criminal aliens incarcerated in local, state, and federal facilities once they have completed their sentence. In 2007, the program identified and began proceedings against 164,000 criminal aliens, over double the 2006 number.

Do you support this function of ICE, and if confirmed, would you continue the program?

*I do support this function of ICE and intend to continue it and other programs that focus on identifying and removing criminal aliens from the country.*

2. Thousands of criminal aliens have been ordered removed, but cannot be because their countries of origin refuse to accept them. Many other aliens cannot be removed because their countries of origin lack a functioning government, and therefore cannot affirmatively accept them. As a result, the aliens are either held for long periods of time or released into the community.
  - a. What would be your policy regarding the use of this tool in response to the refusal of foreign countries to accept the return of their citizens, subjects?

*If confirmed, I plan to give these issues sustained attention, although I do not believe complete solutions will be easy to find. With regard to functioning governments that refuse or delay the return of their citizens, I believe ICE needs to work aggressively with the Department of State to encourage greater cooperation from those governments. With regard to countries without a functioning government, the focus should be on detaining, to the extent permitted by law, those who pose a particular danger to the community and on working with the State Department to explore other options for removal.*

- b. Do you feel it is appropriate to impose sanctions upon a nation that refuses to repatriate its citizens?

*The Immigration and Nationality Act currently allows the government to restrict the issuance of visas to countries who refuse to repatriate their citizens. In light of the clear foreign policy implications of this issue, the authority to invoke this law rests largely with the Department of State. If confirmed, I would work with the Department of State to explore every avenue to encourage greater cooperation from the countries at issue.*

### **Worksite Enforcement**

3. Recently, ICE has increased its worksite enforcement actions. In fiscal year 2007, ICE conducted 1,093 worksite enforcement actions, which resulted in 863 criminal arrests and 4,077 administrative arrests (mainly immigration violations).[1] According to ICE, “worksite enforcement investigations focus on egregious employers involved in criminal activity or worker exploitation. This type of employer violation will often involve alien smuggling, document fraud, human rights abuses and/or other criminal or substantive administrative immigration or customs violations having a direct nexus to the employment of unauthorized workers. Worksite investigations also encompass employers who are subjecting unauthorized alien workers to substandard or abusive working conditions.”[2] The results of ICE’s recent worksite enforcement actions are more jobs and higher wages for American and legal workers. Some companies who lost access to illegal immigrant employees have significantly raised wages in order to attract a legal workforce. Nevertheless, this program has been criticized by some, who charge that the process is in violates civil rights.
- a. If confirmed, how would you proceed with worksite enforcement policy and deter unlawful employment?

*I believe that worksite enforcement should be an important part of ICE's national enforcement strategy. In my view, we cannot make sustained reductions in illegal immigration without deterring employment of unauthorized labor. Moreover, I believe lax worksite enforcement harms the interests of U.S. workers and leaves unauthorized workers vulnerable to abusive wages and working conditions.*

*I support using all available tools as part of a coherent worksite enforcement strategy. In particular, I believe we need to place renewed focus on employers to ensure that they are playing by the rules, while continuing to allow for civil enforcement against unauthorized workers encountered at the*

[1] U.S. Immigration and Customs Enforcement, FY 2009 President’s Budget Request: 2007 Highlights 3 (2008).

[2] U.S. Immigration And Customs Enforcement, <http://www.ice.gov/pi/worksite/index.htm>.

*worksite. This focus should include criminal prosecution for serious violations and more routine use of the civil sanctions already provided for by law. I also support the Department of Homeland Security and U.S. Citizenship and Immigration Services' development of programs such as E-Verify to encourage compliance with the law.*

- b. Will you support and continue with ICE's current worksite enforcement actions?

*If confirmed, I would support continued worksite enforcement. In particular, I would seek to increase the investigation and prosecution of employers who knowingly violate the law.*

4. It was recently reported that after ICE officials arrested 28 illegal immigrant workers in February at a car engine repair plant in Bellingham, Washington, the individuals were given work authorization permits for cooperating in the investigating into the plant. Earlier this month, an ICE official testifying before the House Appropriations subcommittee on homeland security, defended the policy, suggesting it allows the government to pursue criminal cases against companies that knowingly employ illegal immigrants.

Although you cannot comment on the ongoing investigation, do you support an enforcement policy that allows illegal immigrants arrested during work-site raids to be issued work permits in exchange for testimony against their employers?

*I am not privy to the details of the Bellingham operation or the investigation. However, as a federal prosecutor, I have used many tools to ensure the presence of witnesses for trial. Those tools include deferred action, material witness warrants, and parole. In my experience, whether such tools should be used is best determined based on the facts and circumstance of the case at hand. Some tools may be appropriate in some cases, but not others.*

#### **Sanctuary Cities**

5. "Sanctuary cities" are municipalities that prohibit or inhibit communications between their employees and federal authorities in the enforcement of immigration law. Such policies are in direct violation of federal law. Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provides that no federal, state, or local government entity or official may prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, DHS information regarding the citizenship or immigration status, lawful or unlawful, of any individual. Both the House and Senate have considered measures to prohibit funds appropriated for DHS from being distributed to states and localities that have sanctuary policies in place.

Will you support withholding grant funding from so-called sanctuary cities that do not enforce federal immigration laws?

*Although I have not studied this issue, I do not believe ICE distributes grant money. If confirmed, I would want to consider this question closely to determine if in fact there are cities or municipalities that actively restrict ICE's activities while simultaneously receiving federal grants or reimbursements related to immigration enforcement. Any such restrictions would concern me.*

### **Detention**

6. Because of a lack of immigration detention space and years of ineffective enforcement of immigration laws, the number of fugitive aliens who had been ordered deported rose from 331,000 in 2001 to a record 632,000 by the end of fiscal year 2006 – with an estimated 80,000 of those being criminal aliens.[3] Through the increased use and funding of ICE fugitive operations teams, the number of immigration fugitives actually decreased (for the first time ever) by the end of last year to 594,000.[4] However, the success of the fugitive operations teams is still limited by a lack of detention space. The DHS Inspector General reported last year that the lack of adequate detention space limits the effectiveness of the fugitive operations teams.[5] In fact, “a field office director reported ceasing fugitive operations for six weeks because of insufficient bed space and another manager reported slowing team operations for the same reason... Another supervisor indicated that a lack of adequate detention space is the team’s biggest limitation.[6]”
- a. Do you support increasing detention space to detain fugitive aliens who have been ordered deported?

*If confirmed, I plan to review the entire detention system and determine how to best use available bed space. I will meet with ICE officials in the Office of Detention and Removal Operations to discuss the availability and allocation of resources. Within this review, the detention and removal of those who intentionally ignore final orders of removal would be a high priority.*

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[3] U.S. Department of Homeland Security, Office of the Inspector General, [An Assessment of U.S. Immigration and Customs Enforcement's Fugitive Operations Teams](#) 12 (2007); U.S. Immigration and Customs Enforcement, [ICE: Fiscal Year 2007 Annual Report](#) at 5.

[4] [ICE: Fiscal Year 2007 Annual Report](#) at 5.

[5] [An Assessment of U.S. Immigration and Customs Enforcement's Fugitive Operations Teams](#) \_

[6] [Id.](#)

- b. Are there other strategies that you believe should be employed to solve this problem?

*The present level of non-compliance with final orders of removal is a major concern to me. If final orders of removal are easily ignored, the integrity of the entire immigration system is undermined. If confirmed, I intend to explore whether there are means in addition to detention to foster greater compliance. Possibilities include supervision programs and regulatory or legislative provisions that induce much greater voluntary compliance.*

**Senator George V. Voinovich**  
**Additional Questions for the Record**  
**Nomination Hearing of John T. Morton**  
**April 22, 2009**

1. The Federal Protective Service (FPS) is responsible for the safety and security of federal buildings, as well as the employees and visitors in those buildings. According to a 2008 report by the Government Accountability Office (GAO), management, funding, and operational challenges have increased for FPS since its transfer from the General Services Administration (GSA) in 2003.

- a. How will your background and previous experience enable you to address the management challenges facing FPS?

*I have spent my entire career in federal law enforcement, and have worked on a number of issues relating to the mission of FPS. For example, I am very familiar with the issues surrounding the use and oversight of contractors who support government functions, having been intimately involved in the investigation and prosecution of federal contractors engaged in misconduct overseas—particularly in Iraq and Afghanistan. Many of these contractors carry out duties similar to those at FPS, namely the armed protection of buildings and people. I am also quite familiar with the issues surrounding the law enforcement authorities of the FPS, as I regularly work on federal firearms, investigative, and arrest authorities as part of my duties at the Department of Justice. Indeed, I have recently been leading efforts to examine whether there is a need for additional statutory authorities to govern the protection of federal officials. Finally, I have a great deal of management experience in the Department of Justice, all of it in the area of law enforcement.*

- b. If confirmed, would you commit to examining the human capital and operational challenges at FPS, and report the results of your examination to the Subcommittee on Oversight of Government, the Federal Workforce, and District of Columbia?

*If confirmed, I intend to examine the staffing, funding, and operational challenges facing FPS. I would be happy to work with the relevant subcommittees of Congress during this process with an eye to improving the work and efficiency of the Service.*

- c. Do you believe ICE is the appropriate parent agency for FPS?

*ICE's mission includes protecting places of critical infrastructure. FPS's mission includes protecting our nation's buildings and people in those buildings. These missions, in my view, are consistent. That said, if FPS is to remain in ICE, I believe more needs to be done to ensure that FPS has the authorities and resources it needs to play a more integrated role within the agency.*

2. Ohio has an insufficient number of FPS personnel to meet short and long term operational requirements, threatening the safety and security of the federal employees and visitors to federal buildings. What steps can and will you take to increase FPS' capacity to meet mission requirements in Ohio?

*If confirmed, I will work with FPS to identify needs nationally and in particular states. I will take appropriate steps to increase FPS assets to close any gaps that may exist.*

3. Recently, a number of my constituents have contacted me to raise significant concerns about the closing of the Cincinnati Hearing Location on April 6, 2009. As you know, this location allowed individuals with matters before the Executive Office for Immigration Review (EOIR) and the Immigration Court to participate in hearings by video teleconference (VTC). Respondents have been directed to the Cleveland court.

- a. Can you describe the timeline of the decision-making process that was undertaken with regarding to the closure of the Cincinnati Hearing Location?

*I only just learned of this closure and do not have any knowledge of the decision-making process that led to it. If confirmed, I would be happy to discuss with EOIR and ICE officials any concerns you and your constituents have about the closure.*

- b. Please provide a timeline relating to and a description of the outreach and communications to stakeholders, both prior to and following the closure of the Cincinnati Hearing Location.

*As noted above, I have no knowledge of the process that led to or followed the closure of the Cincinnati Hearing Location, but would be happy to review it if confirmed.*

- c. Given the length of time that respondents may have to travel to reach the Cleveland court, are you aware of other states in which respondents travel similar distances to participate in EOIR cases?

*I do not know whether there are other states in which respondents travel similar distances to participate in EOIR cases. If confirmed, I intend to work with EOIR to determine whether hearing locations are appropriately located in areas with the highest volume of immigration respondents. To that end, I pledge to work closely with EOIR to ensure the wisest use of resources with an eye to locating courts and video hearing locations in the places of greatest need.*

- d. Are you aware of any programs, either public or private, that would assist respondents in meeting the additional burdens of attending a live hearing?

*I am not. If confirmed, I look forward to working with this Committee, EOIR, immigration service providers, and other stakeholders to explore ideas.*

4. What steps will you take to ensure regular communication with field acquisition professionals at ICE's detention facilities?

*Pursuant to the Secretary's directive, a full review of the detention program is underway. I anticipate the review will conclude that greater oversight of the acquisition process is needed. I intend, if confirmed, to focus on improving the oversight and management of every aspect of the detention program, including acquisitions.*

5. In recent years, ICE has worked hard to end "catch and release" practices, but the fact that DHS has now given work authorization to several illegal workers who were arrested in February in Washington state makes me wonder whether the new Administration intends to reinstate a catch and release policy. What do you believe should be done with individuals who are found by ICE to be illegally living and working in the United States?

*I believe ICE must enforce the law with regard to those who enter or remain in the United States unlawfully. While I also believe that ICE should place an emphasis on securing the border and removing criminals and those who flout a final order of removal, I do not believe that ICE should reverse policies designed to address those who pose an unacceptable risk of flight if released.*



**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**  
**AFGE LOCAL 918 - FEDERAL PROTECTIVE SERVICE**  
Representing Employees of the Federal Protective Service Nationwide



April 21, 2009

Senator Joe Lieberman, Chairman  
Senate Homeland Security and Governmental  
Affairs Committee  
Room 340, Dirksen Senate Office Building  
Washington, D.C. 20510

Senator Susan Collins, Ranking Member  
Senate Homeland Security and Governmental  
Affairs Committee  
Room 344, Dirksen Senate Office Building  
Washington, D.C. 20510

Subject: AFGE Local 918 Support of ICE Assistant Secretary Nominee John Morton

Dear Senators Lieberman and Collins:

The National FPS Union, representing police officers, inspectors, investigators and other employees of the Federal Protective Service supports the nomination of John Morton to be the next Assistant Secretary of U.S. Immigration and Customs Enforcement. His background and experience give him the qualifications necessary to lead this troubled agency into the future. Furthermore, his willingness to reach out to our union in order to solicit our views on critical issues is evidence of his inclusiveness and vision for the agency.

I hope you will support the nomination and that he will be approved quickly as the agency needs new leadership as soon as possible. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'David L. Wright', is written over a faint, larger signature.

David L. Wright  
President, AFGE Local 918-FPS  
2109 Larkspur  
Excelsior Springs, MO. 64024

AFGE National Council 118 – ICE, Senators Joe Lieberman and Susan Collins; End. AS JM

American Federation of Government Employees (AFL-CIO)  
National Council 118 – Immigration and Customs Enforcement  
8600 E. Pima St., Tucson, Arizona 85715



*In reply please refer to:*  
Patrick Remigio, BSB/MBA  
President  
AFGE National Council 118-ICE  
(520) 971-8795 Cell  
(866) 323-8046 Fax  
Email: [Patrick.Remigio@afge2859.org](mailto:Patrick.Remigio@afge2859.org)

April 21, 2009

Senator Joe Lieberman, Chairman  
Senate Homeland Security and Government Affairs Committee  
Room 340 Dirksen Senate Office Building  
Washington, D.C. 20510

Senator Susan Collins, Ranking Member  
Senate Homeland Security and Government Affairs Committee  
Room 344 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Lieberman and Collins:

On behalf of the American Federation of Government Employees (AFGE) National ICE Council 118, the Union representing all bargaining unit employees at the United States Immigration and Customs Enforcement Agency, I would like to add our voice in support of Mr. John Morton as Assistant Secretary. Although we have not known him long, in our recent discussions we have found him to be open and honest about his views on the Agency and the importance of its mission. His interest in hearing the Council's views on these issues and our priorities is unique and appreciated by our members.

We look forward to Mr. Morton's confirmation by the Senate Homeland Security and Government Affairs Committee and to working with him on issues of mutual concern in the future.

Sincerely,

PATRICK REMIGIO  
President  
AFGE National Council 118-ICE



FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

P.O. Box 326 Lewisberry, PA 17339

[www.fleoa.org](http://www.fleoa.org)

(717) 938-2300

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AGENCY for INTERNATIONAL DEVELOPMENT  
AGRICULTURE-ORG and FOREST SERVICE  
CONSUMER

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& NOAA Fisheries Law Enforcement  
DEFENSE  
Air Force - OIG  
Army - CHD  
Defense Criminal Investigative Service  
Naval Criminal Investigative Service  
(OIG)  
EDUCATION - OIG  
ENERGY -OIG  
ENVIRONMENTAL PROTECTION AGENCY - CID & OIG  
FEDERAL DEPOSIT INSURANCE CORPORATION - OIG  
GENERAL SERVICES ADMIN. OIG  
HEALTH & HUMAN SERVICES  
Food & Drug Administration & OIG  
HOMELAND SECURITY  
Border Patrol  
Coast Guard Investigative Service  
Immigration & Customs Enforcement  
Federal Air Marshal  
Federal Emergency Management Agency  
Federal Protective Service  
INS-Secret Service  
Transportation Security Administration  
HOUSING & URBAN DEVELOPMENT - OIG  
INTERIOR  
Bureau of Indian Affairs  
Bureau of Land Management  
Fish & Wildlife Service  
National Park Service  
OIG  
U.S. Park Police  
JUSTICE  
Bureau of Alcohol, Tobacco, Firearms & Explosives  
Drug Enforcement Administration  
Federal Bureau of Investigation  
U.S. Marshals Service  
OIG  
U.S. Attorney's Office-CI  
LABOR-ORG & Racketeering  
NATIONAL AERONAUTICS & SPACE ADMIN. - OIG  
NUCLEAR REGULATORY COMMISSION - OIG  
POSTAL SERVICE-OIG & Inspection  
RAILROAD RETIREMENT BOARD - OIG  
SECURITIES & EXCHANGE COMMISSION - OIG  
SMALL BUSINESS ADMINISTRATION - OIG  
SOCIAL SECURITY ADMINISTRATION - OIG  
STATE DEPARTMENT  
Bureau of Diplomatic Security & OIG  
TRANSPORTATION-OIG  
TREASURY  
FINANCIAL OIG  
Internal Revenue Service - CI  
TIGTA  
U.S. COURTS (JUDICIAL)  
Probation, Parole- & Pretrial Services  
VETERANS AFFAIRS -OIG  
NATIONAL OFFICERS  
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JON ADLER  
Executive Vice-President  
NAT CAYLOR  
Vice President - Operations  
LARRY COFFE  
Vice President Agency Affairs  
CHRIS SCHOPPEMEYER  
Vice President - Membership Benefits  
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ART GORDON  
Legislative Counsel  
JAMES & JOSEPH  
EDGAR N. JAMES  
MARIE CHORBA

April 14th, 2009

The Honorable Joseph I. Lieberman, Chairman  
The Honorable Susan M. Collins, Ranking Member  
Senate Homeland Security and Governmental Affairs Comm.  
Washington, D.C. 20210

Dear Chairman Lieberman and Ranking Member Collins:

I am writing to you regarding the nomination of John Morton for the position of Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security. As you may know, FLEOA'S large membership includes criminal investigators from ICE. This also includes the criminal investigators working for the Federal Protection Service.

After discussing Mr. Morton's candidacy with our membership, as well as conducting an extensive review of his background, we are confident that Mr. Morton possesses the requisite leadership ability and experience to serve as the next Assistant Secretary. During his tenure with the Department of Justice, Mr. Morton was very receptive to the stakeholder concerns of the FLEOA membership. His impressive background in immigration enforcement speaks for itself and would be a great asset to ICE.

In addition to his wealth of experience in immigration enforcement, Mr. Morton also has a strong background working on the traditional Customs statutes, such as money laundering and structuring investigations. During his tenure with the United States Attorney's Office, Major Crimes Unit, Mr. Morton worked closely with legacy Customs and Immigration Special Agents on large scale, complex criminal investigations. He has a strong grasp of how things are done at the field level, and he combines this with his impressive executive experience.

Please do not hesitate to contact me should you have any questions regarding FLEOA'S position on Mr. Morton's candidacy.

Respectfully submitted,

*Jon Adler*  
Jon Adler  
National President



**NATIONAL  
FRATERNAL ORDER OF POLICE®**

309 MASSACHUSETTS AVE., N. E.  
WASHINGTON, DC 20002  
PHONE 202-547-8189 • FAX 202-547-8180

CHUCK CANTERBURY  
NATIONAL PRESIDENT

JAMES O. PASCO, JR.  
EXECUTIVE DIRECTOR

10 April 2009

The Honorable Joseph I. Lieberman  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, D.C. 20510

The Honorable Susan M. Collins  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman and Senator Specter,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for John T. Morton to be the next Assistant Secretary for Immigration and Customs Enforcement at the U.S. Department of Homeland Security.

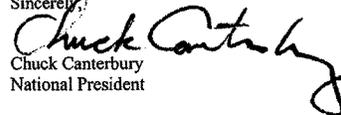
Mr. Morton began his career of public service in the Peace Corps before earning his law degree at the University of Virginia School of Law. He joined the U.S. Department of Justice as General Counsel for the Immigration and Naturalization Service (INS) in 1995 and remained there until he was appointed as Special Assistant to, and then General Counsel for, the Deputy Attorney General of the United States in 1997.

In 1999, he became an Assistant U.S. Attorney for the Eastern District of Virginia and spent the next seven years successfully prosecuting major cases while assigned to the Major Crimes and Terrorism and National Security Units. As a Federal prosecutor, he worked extremely well with law enforcement, earning their respect as a tough and effective representative of the Federal government.

Mr. Morton left the U.S. Attorney's office in 2006 to become the Deputy Chief of the Domestic Security Section and, within a year, made the Senior Executive Service. He was made Acting Chief of that section and Senior Counsel to the Assistant Attorney General in 2007, where he served until he was named as Acting Deputy Assistant Attorney General at the Justice Department.

I believe that President Obama has made a fine choice in John T. Morton to lead Immigration and Customs Enforcement. On behalf of the more than 327,000 members of the Fraternal Order of Police, I urge you and the Committee to expeditiously confirm his nomination. If I can be of any further assistance in this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

  
Chuck Canterbury  
National President

cc: The Honorable Harry M. Reid, Majority Leader, United States Senate  
The Honorable Mitch McConnell, Minority Leader, United States Senate

— BUILDING ON A PROUD TRADITION —





**U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT  
HISPANIC AGENTS ASSOCIATION**

April 22, 2009

**IMMIGRATION  
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CUSTOMS  
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Chairman Joseph Lieberman, I/D-Connecticut  
Ranking Member Susan Collins, R-Maine  
Senate Homeland Security and Governmental Affairs Committee

The United States Department of Homeland Security, Immigration and Customs Enforcement Hispanic Agents Association (ICEHAA) takes pleasure in writing a letter in support of the nomination of Mr. John Morton for the Assistant Secretary of the U.S. Immigration and Customs Enforcement (ICE). The ICEHAA, a Non-Profit Organization, promotes the general welfare of ICE employees, by fostering a better employee/management relationship, as well as nurturing and improving the relationship of ICE and the community, particularly the Hispanic community and assure the equitable hiring, training, assignment, development, promotion and fair treatment of all employees, particularly Hispanic employees. The association feels that with Mr. Morton's background in law enforcement, specifically his experience in prosecuting crimes within the purview of ICE, as well as his experience in dealing with issues regarding Customs and Immigration, he will be an excellent fit for Assistant Secretary of ICE. Mr. Morton's willingness to work with the diverse workforce groups within ICE is essential in promoting morale and public perception.

In conclusion, we fully support the efforts of the Secretary of Homeland Security in her nomination of Mr. Morton. Additionally, we fully support your confirmation of Mr. Morton if this be your decision.

Thank you in advance for your interest and support. If you, your members or staff require additional information regarding this letter of support or the ICEHAA, please feel free to contact me at (602) 721-3077. The ICEHAA website, [www.icehaa.org](http://www.icehaa.org) also contains general information regarding our association.

Sincerely,  
*Vicente M. Garcia*  
Vicente M. Garcia  
President, ICEHAA



## MAJOR CITIES CHIEFS ASSOCIATION

Atlanta, Georgia  
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 Baltimore Co., Maryland  
 Boston, Massachusetts  
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 Calgary, Alberta  
 Charlotte-Mecklenburg, North Carolina  
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 Cleveland, Ohio  
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 Fort Worth, Texas  
 Honolulu, Hawaii  
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 Jacksonville, Florida  
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 Miami-Dade, Florida  
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 St. Louis, Missouri  
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 Toronto, Ontario  
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 Tulsa, Oklahoma  
 Vancouver, British Columbia  
 Virginia Beach, Virginia  
 Washington, DC  
 Winnipeg, Manitoba

April 14, 2009

The Honorable Joseph Lieberman  
 Chairman  
 Committee on Homeland Security  
 and Governmental Affairs  
 U.S. Senate  
 Washington, DC 20510

The Honorable Susan M. Collins  
 Ranking Member  
 Committee on Homeland Security  
 and Governmental Affairs  
 U.S. Senate  
 Washington, DC 20510

Dear Senators Lieberman and Collins:

On behalf of the Major Cities Chiefs, representing the 56 largest jurisdictions across the Nation, I am writing to support the nomination of John Morton to become Assistant Secretary of Immigration and Customs Enforcement (ICE); he deserves swift confirmation by the Senate.

After meeting with Mr. Morton, we came away impressed by his knowledge and credentials. Mr. Morton has been involved with the immigration enforcement issue for most of his career working first at the former Immigration and Naturalization Service (INS) and later as an Assistant US Attorney in Northern Virginia where he successfully prosecuted many immigration related cases. In his current post as a senior leader in Justice Department's Domestic Security Section, Mr. Morton has continued to hone his skills in this complex area.

We also appreciate Mr. Morton's willingness to work with local law enforcement to address the difficult issues surrounding immigration enforcement. During our meeting, we discussed several areas where ICE and local law enforcement work together and Mr. Morton's vision for this relationship. We are confident that his priorities are our priorities and we look forward to working with him at ICE.

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of John Morton quickly through the confirmation process.

Sincerely,

Robert Davis  
 Chief of Police  
 San Jose, California  
 Vice President



**The National Native American Law Enforcement Association**  
 Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Suite 700, Washington, DC 20004

April 14, 2009

The Honorable Joseph I. Lieberman  
 Chairman  
 Committee on Homeland Security and  
 Governmental Affairs  
 United States Senate  
 Washington, D.C. 20510

Dear Chairman Lieberman:

On behalf of the National Native American Law Enforcement Association (NNALEA), I am writing you to express our endorsement and support of John T. Morton for Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement (ICE).

In his career with the Department of Justice, Mr. Morton has shown expertise in legal, technical, and enforcement policies and regulations that are necessary to sustain a fair and effective immigration and customs program for the United States government.

John Morton is very supportive of Tribal citizens and governments, Tribal law enforcement, and Tribal border and immigration issues. NNALEA has confidence that Mr. Morton, when confirmed as Assistant Secretary for ICE, will work faithfully on behalf of Tribal communities to preserve life, protect property and critical infrastructure, and will lead in the development of fair and equitable policies for Tribal citizens.

Mr. Morton has the experience, integrity and knowledge necessary to lead ICE into a new era of immigration and customs enforcement in which federal, tribal, state and local law enforcement work together to protect our nation's security. John Morton has the right leadership abilities, legislative and legal expertise to bring about the transformative improvements we all seek for Indian Country and our Nation. He is a dedicated public servant and an excellent choice for Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement.

Sincerely,

Gary L. Edwards  
 Chief Executive Officer  
 National Native American Law Enforcement Association



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*Boston Police  
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**MICHAEL J. MADONNA**  
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 Sergeant-at-Arms  
*Florida Police  
 Benevolent Association*

**CHRIS COLLINS**  
 Executive Secretary  
*Las Vegas Police  
 Protective Association*

April 8, 2009

The Honorable Joseph I. Lieberman  
 Chairman  
 Committee on Homeland Security and  
 Governmental Affairs  
 United States Senate  
 Washington, D.C. 20510

The Honorable Susan Collins  
 Ranking Member  
 Committee on Homeland Security and  
 Governmental Affairs  
 United States Senate  
 Washington, D.C. 20510

Dear Chairman Lieberman and Ranking Member Collins:

On behalf of the National Association of Police Organizations (NAPO), representing more than 241,000 law enforcement officers throughout the United States, I am writing to advise you of our endorsement of John T. Morton for Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement (ICE). As Assistant Secretary for ICE, Mr. Morton would lead the largest investigative agency in the federal government.

During the course of his long, distinguished career with the Department of Justice (DOJ), Mr. Morton has committed himself to the enforcement and development of U.S. immigration policies and laws. He not only advised then-Deputy Attorney General Eric Holder and Attorney General Janet Reno on immigration matters, but he also was on the front line, investigating and prosecuting immigration offenses with the U.S. Attorney's Office, Eastern District of Virginia, and later with the Domestic Security Section of the Criminal Division within the DOJ.

NAPO had the opportunity to meet with Mr. Morton to discuss his priorities for ICE and NAPO's perspective on the current needs of state and local law enforcement in regards to immigration enforcement. As a federal prosecutor, Mr. Morton knows the valuable roles state and local law enforcement play when it comes to investigations and the importance of a strong, collaborative relationship between federal, state and local law enforcement. He exhibited this understanding in our meeting and assured NAPO that the lines of communication and cooperation would be open between ICE and state and local law enforcement.

NAPO believes Mr. Morton has the experience, integrity and knowledge necessary to lead ICE into a new era of immigration enforcement in which federal, state and local law enforcement play key roles in protecting our nation's security. Therefore, we urge you to confirm the nomination of John T. Morton for Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. If you have any questions, please feel free to contact me, or NAPO's Director of Governmental Affairs, Andrea Mournighan, at (703) 549-0775.

Sincerely,

  
 William J. Johnson  
 Executive Director

NATIONAL HEADQUARTERS

**WILLIAM J. JOHNSON**  
 Executive Director



## NATIONAL SHERIFFS' ASSOCIATION

1450 Duke Street • Alexandria, VA 22314-3490 • 703-836-7827 • Fax 703-683-6541  
WWW.SHERIFFS.ORG • NSAMAIL@SHERIFFS.ORG

April 13, 2009

The Honorable Joseph I. Lieberman, Chair  
The Honorable Susan M. Collins, Ranking Member  
Senate Committee on Homeland Security and Governmental Affairs  
Washington, D.C. 20510

Dear Chairman Lieberman and Ranking Member Collins:

On behalf of the National Sheriffs' Association (NSA), we are writing to express our strong support for the nomination of John Morton to become the Assistant Secretary of the United States Immigration and Customs Enforcement (ICE), United States Department of Homeland Security (DHS). We respectfully urge the Senate to confirm his nomination without delay.

As you may know, ICE plays a critical role in providing state and local law enforcement agencies with the training and resources necessary to assist the federal government with the apprehension of criminal aliens. As sheriffs, particularly along the Southwest Border, have primarily undertaken the apprehension and detention of criminal aliens, the individual selected to lead ICE must understand the critical partnership which exists between the agency and sheriffs. Mr. Morton's vast qualifications and experience make him the ideal candidate to serve as the Assistant Secretary of ICE.

Throughout his distinguished career, Mr. Morton has served in positions where he gained essential knowledge in immigration law in both the federal prosecutorial and federal policy arenas. As Special Assistant to the General Counsel at the former Immigration and Naturalization Service, now ICE, he oversaw the initiative to reform and improve the removal process of criminal aliens from the United States. Furthermore, during his tenure with the Department of Justice, Mr. Morton successfully collaborated with federal agencies, including ICE and DHS, to develop legislative proposals pertaining to federal immigration enforcement.

Recently, NSA had the opportunity to meet with Mr. Morton and discuss the partnership among sheriffs and ICE. We were extraordinarily pleased with his understanding of the burdens faced by sheriffs in regards to the apprehension and detention of criminal aliens, the need to relieve sheriffs of the financial burdens associated with the apprehension and detention of criminal aliens, and his strong desire to strengthen the relationship between sheriffs and ICE. NSA looks forward to working with Mr. Morton to enhance the relationship between the federal government and state and local law enforcement, creating a safer nation for all citizens.

*Serving Our Nation's Sheriffs Since 1940*

As one of the largest law enforcement associations in the United States, the National Sheriffs' Association is calling upon the United States Senate to swiftly confirm John Morton as the Assistant Secretary of the United States Immigration and Customs Enforcement.

Respectfully,



Sheriff David A. Goad  
President



Aaron D. Kennard  
Executive Director

*Serving Our Nation's Sheriffs Since 1940*

