S. HRG. 111–504

OVERSIGHT OF THE DEPARTMENT OF HOMELAND SECURITY

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

MAY 6, 2009

Serial No. J–111–20

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

56–800 WASHINGTON : 2010

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

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00001 Fmt 5011 Sfmt 5011 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

HERB KOHL, Wisconsin
DIANNE FEINSTEIN, California
RUSSELL D. FEINGOLD, Wisconsin
CHARLES E. SCHUMER, New York
RICHARD J. DURBIN, Illinois
BENJAMIN L. CARDIN, Maryland
SHELDON WHITEHOUSE, Rhode Island
RON WYDEN, Oregon
AMY KLOBUCHAR, Minnesota
EDWARD E. KAUFMAN, Delaware
ARLEN SPECTER, Pennsylvania

JEFF SESSIONS, Alabama
ORRIN G. HATCH, Utah
CHARLES E. GRASSLEY, Iowa
JON KYL, Arizona
LINDSEY O. GRAHAM, South Carolina
JOHN CORNYN, Texas
TOM COBURN, Oklahoma

BRUCE A. COHEN, *Chief Counsel and Staff Director*
MATT MINER, *Republican Chief Counsel*

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00002 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa, prepared statement	139
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	1
prepared statement	142
Sessions, Hon. Jeff, a U.S. Senator from the State of Alabama	3

WITNESSES

Napolitano, Janet, Secretary, U.S. Department of Homeland Security, Washington, D.C.	5

QUESTIONS AND ANSWERS

Responses of Janet Napolitano to questions submitted by Senator Hatch	33
Responses of Janet Napolitano to questions submitted by Senators Feingold, Feinstein, Grassley, Hatch, Kyl, Sessions and Wyden	34

SUBMISSIONS FOR THE RECORD

Napolitano, Janet, Secretary, U.S. Department of Homeland Security, Washington, D.C., statement	144

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

OVERSIGHT OF THE DEPARTMENT OF HOMELAND SECURITY

WEDNESDAY, MAY 6, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

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

Present: Senators Leahy, Kohl, Feinstein, Feingold, Durbin, Cardin, Whitehouse, Klobuchar, Kaufman, Sessions, Hatch, Grassley, and Kyl.

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

Chairman LEAHY. Good morning. I want to thank Secretary Napolitano for appearing here today with all the other things she has going on. I really appreciate this. Many of us knew her even before she had this position—of course, Senator Kyl. They are both from the same State. And Secretary Napolitano is a constituent of Senator Kyl's. I knew her first when she was Attorney General and enjoyed the time we have had.

I want to commend your competent leadership during the current threat of a flu pandemic. The response has been very good, and especially not only here in the United States, but in the coordination with the World Health Organization, and I think it gives people a lot of sense of confidence in the efforts throughout the administration. And I would note, if I might, sort of a personal thing, the State of Vermont is home to several DHS operations. We have the USCIS Service Center. We have the Law Enforcement Support Center, a Fusion Center, among others. The Law Enforcement Support Center, I remember being there late one evening when a call came in from a sheriff in Arizona who was checking on somebody they had picked up, and they got an answer right away. But it is a good Federal-State partnership, and if things ever calm down around here, Madam Secretary, I would be delighted to have you come to Vermont and see the very, very good men and women who work there, the very loyal men and women who manage these around-the-clock operations.

I commend your early attention to our interests in working closely with Mexico in its struggle against drug trafficking and against the violent cartels and gangs that pose serious threats to the people and communities, and I actually think they pose a serious threat to the Government of Mexico itself. Mexico is our neighbor,

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00005 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

and finding appropriate ways to help it prevail against these lawless influences in their own country is going to help. The Merida Initiative is a first step, but we need a comprehensive strategy that addresses the underlying causes that have enabled this drug-related culture to grow up in Mexico.

Last week, you issued new guidelines for the Immigration and Customs Enforcement agency's approach to conducting immigration worksite enforcement in order to combat the systematic unlawful exploitation of foreign workers that serve to harm them and to undercut American workers. The penalty for such lawbreaking and exploitation has to be meaningful. It has to be more than just another cost of doing business for some of these employers.

I am glad to see you take the issue of immigration detention seriously. You are reviewing past practices and procedures. We have a historically high rate of detention for asylum seekers and other non-criminal aliens, so I would hope that you are going to give careful consideration to alternatives, especially supervised release of those who pose no threat. In my view, the United States should not be in the business of incarcerating children who have violated no laws, and alternatives, if we can find them, to unnecessary incarcerations will not only be more humane but is actually going to save taxpayer dollars. And I think we all agree that we need to ensure that foreigners are not dying while they are in custody.

I saw the ceremony last week at which you and the President welcomed members of our armed services to American citizenship. I was very pleased to see that. Immigrants who risk all to defend this Nation deserve expedited citizenship consideration. And that was not the first time you have administered the oath to our soldiers. I saw you do it to a wounded soldier at Walter Reed last month. And I think that honors not only his service but all such soldiers.

I am glad you are going to take a fresh look at the REAL ID Act. I think many Americans believe that in its current form it is an onerous Federal mandate and amounts to a national ID card in the guise of a driver's license. I joined Senator Akaka and others in supporting legislation last Congress to replace the rigid requirements of the current law with a negotiated rulemaking process that actually treats the States as being partners in this. And I agree with you that "there has to be a better way than REAL ID."

I expect that the Department will support the EB–5 Regional Center program. This has resulted in billions of dollars in foreign investment but also an awful lot of jobs in this country. And we should have made it permanent before now, and I hope we will.

Senator Kyl and I provided authority during the previous administration on the question of unnecessary barriers to asylum seekers, and Senator Kyl and I wanted to allow the Secretaries of State and Homeland Security to issue waivers in this regard. Little was subsequently done, and I would hope you might look at that.

I want to say that no one who is victimized by violence and repression or who stood with the United States in opposition to an oppressive foreign government will just be blithely labeled a "terrorist" and denied our protection.

President Obama spoke again last week about the need for comprehensive immigration reform. We need to pursue that, so I welcome you.

Before I do that, I will turn to my friend from Alabama, who is the new Ranking Member on this Committee, and I appreciate him being here. He and I have worked together on many, many things over the years, and I will now turn it over to him. Jeff, I am glad to have you here.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you. Thank you, Mr. Chairman. It is a remarkable series of events that I find myself in this position. My mother, who we lost a few weeks ago, always felt the Judiciary Committee should be a higher-quality group, Mr. Chairman, and I think maybe that is good advice for all of us. People expect out of this Committee high standards of professionalism and integrity and fairness and justice, and you can be sure that we will work hard to discuss the issues that are important to America, to analyze the legal questions this Nation must face, treat nominees and witnesses fairly, to analyze legal questions fairly. And a lot of times we may agree or disagree on certain matters, but a lot of things we can agree on. And so I look forward to working together in a way that makes this great legal system in America better.

I would just say, as I shared with the President last night, having gotten back from, I guess, my sixth or seventh time to the Middle East, the rule of law is the most lacking thing in those countries. If you could have security and lawful behavior and the government had the capacity to secure people in their lives and in their business interests and they would prosper, their freedom would be preserved. We have been provided the greatest legal system the world has ever had, and all of us have a responsibility to pass it on and to ensure that every single American is provided what is on that Supreme Court building, "Equal Justice Under Law."

Madam Secretary, you have got a big job. You and I are former Attorney Generals and U.S. Attorneys, and I know when they cobbled everything together in Homeland Security, a lot of those agencies have deep histories and cultures that were not quite the same. So the challenge that you have to bring it together—and I know it is not there yet. I am sure it is not. And so I know you are working on that.

I wanted to raise some questions with you today, and I will do that and share with you some concerns I have and give you an opportunity to discuss them. You are starting out now. You are setting some policies and trends and positions that will impact the lowest agent in your Department and really impact American citizens and the whole world. What you say has a lot of difference. So I was concerned with several actions taken and statements you have made to date, and I would like to ask you about them.

I also would note that in your good letter that I received last night, you said some things that, if carried out, I think answer some of these questions, and we can talk about it as we go forward.

With regard to the question of worksite enforcement, I understand that there has been only one ICE worksite enforcement action during this administration, and rather than supporting this action, which yielded the arrest of 28 illegal aliens, you announced that you were going to "get to the bottom of this" by investigating the agents and the processes that led to that, agents and processes and actions that I think were simply doing their duty. And that has the potential to send a message to every agent in America what your policies are with regard to worksite enforcement, and I hope that is not correct.

Leadership from the top is a key issue, and the signals you send can have a chilling effect and can affect the priorities of every single officer out there and every single department under your control.

While I support your recent decision to devote resources to the criminal prosecution of employers who knowingly hire illegal aliens—and I think that is probably the primary and best path to create a situation in which we remove, as Mr. Bonner, the head of the Border Patrol union, has said, the jobs magnet, your decision to release some of those that were arrested in this raid I mentioned in Washington, I think could represent a significant shift from the policies of the previous administration. Secretary Chertoff in his policies I do not think followed that trend.

So I am concerned about that, and I also note that while our unemployment rate in America is rising now to 8.5 percent, in the days after this Yamato raid in Washington, 150 people applied for those jobs. So there are people willing to work, and sometimes I think unscrupulous employers are seeking the cheaper way out, violating the law, and not providing opportunities for American citizens who are unemployed to get good work.

I was also disappointed that in April you decided to delay implementation of Executive Order 12989, which requires all Federal contractors and subcontractors to use E-Verify, and you put it off until June 30th. I think that is the third delay. President Bush delayed it until the beginning of January, and I think this is a second delay from this administration.

Over 100,000 employers use this. I think you have supported this concept in the past. But these extensions may be sending a message that is confusing, and voluntarily, people are signing up, as much as 1,000 a week, and we need to keep that going, and I frankly was baffled that Congress did not require it to be used with regard to the stimulus package and jobs created there.

So I hope that you will clarify some of the positions you have taken with regard to people who enter at the border. Your letter is pretty clear on that. it is a misdemeanor, and I think perhaps maybe it was just a mis-speaking when you suggested it was only a civil offense to enter the country. But, again, that is a message that can have an effect of undermining the morale of our officers and the possibility of creating a lawful border.

Thank you for your testimony. I look forward to engaging in dialog. I want you to succeed. You are a highly capable person. You have got good background for this position, and we will be trying to cooperate and assist you. But we do need to use those great resources effectively, and I will be counting on you to do that.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Madam Secretary, please go ahead. And what we are going to do, there is going to be a series of votes, and I would urge Senators who are not next in line to ask questions, as soon as the vote starts, go to the floor and come right back, and we will try to keep this going. I know your time is limited, so please go ahead.

STATEMENT OF HON. JANET NAPOLITANO, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Secretary NAPOLITANO. Well, thank you, Mr. Chairman, and congratulations to you, Senator Sessions, on becoming the Ranking Member of this Committee. I will give a preliminary statement now. I do look forward, Senator Sessions, to clarifying some of the comments you had because I think it will be important that we work together to enforce the rule of law at the border and in the interior of the country, because our immigration strategy cannot just be border specific. It has to include the entire Nation, so I look forward to coming back to those specific questions on Bellingham and E-Verify.

But as you know and as you have noted, the Department of Homeland Security has a very broad mission. I categorize them in five major categories. The first is to guard against terrorism. That is why the Department was stood up. The second is to secure our borders. The third is to enforce our immigration laws in a smart and effective manner. The fourth is to prepare for and recover from disasters. This can be managing events as we are currently underway with the H1N1 virus to preparing for the upcoming hurricane season. And the fifth is unifying the Department, creating one Department of Homeland Security out of what originally was 22 separate agencies.

We are moving forward in many of these areas. Specifically with respect to this Committee, we are moving forward with respect to our borders, immigration enforcement, and secure identification. And I detail those efforts in my more elaborate written statement, which we will put in the record for you.

If I might, just to highlight a few things. We are working to protect our borders against rising drug cartel violence and other cross-border threats. We are adding more boots on the ground, technology, and equipment through a new southwest border strategy. We are expanding our cooperation with State, local, and tribal partners through Border Enforcement Teams, called "BEST Teams, and other initiatives, and we are strengthening and enhancing our cooperation with Mexico through efforts like the Merida Initiative.

In addition, we are refocusing our efforts on smart and effective immigration enforcement. We are targeting the employers that hire illegal aliens and create the demand for illegal immigration. We are making improvements to the E-Verify system. Let me pause a moment there. I believe E-Verify is very important and must be an integral part of immigration enforcement moving forward. I signed the Nation's toughest employer sanctions laws when I was Governor of Arizona, and it is no surprise that almost 25 percent of the employers currently registered on E-Verify are actually Arizona employers. So we know that with incentives and otherwise, E-

Verify can really make a difference. We are committed to making it better.

We are expanding our efforts to identify, arrest, and deport criminal and fugitive aliens. We are working on improving the 287(g) program so we continue to work effectively with proper guidance and oversight with our State and local partners. And we are doing the same with respect to detention of ICE detainees, making sure that if they are detained by force of the rule of law they are receiving appropriate treatment and health care.

Finally, we are working to strengthen and standardize travel and identity documents and improve our ability to confirm identity. We are on track to implement the Western Hemisphere Travel Initiative requirements on June 1st of this year at our land and sea ports of entry. We are doing exhaustive outreach to our border regions. We have identified a range of WHTI-compliant credentials available to citizens from passports to passport cards to Trusted Traveler cards.

We have added ID readers at 33 of our ports and will soon have them at the top 39 ports that account for, I think, roughly 80 to 85 percent of the traffic that crosses the border, and we are improving the capabilities of US–VISIT, moving from two-fingerprint identification to ten-fingerprint collection.

We are working as well with the National Governors Association to identify ways to strengthen the security of the driver's license. We need to find a workable solution that brings the States into compliance, fulfills our security goals, but does not operate as an unfunded mandate to cash-strapped States. This is a fairly full plate, and I have just mentioned several of the major items that are underway at the Department.

Let me close with this: One of the best things I have found as the new Secretary of Homeland Security is in the men and women who work for this Department. There are 218,000. They work hard every single day to meet the challenges that we have and to protect the American people, and I am proud to serve as their Secretary. I look forward to working with this Committee in these and other areas, especially as we take up the issue of comprehensive immigration reform.

And, with that, Mr. Chair, I look forward to the Committee's questions.

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

Chairman LEAHY. Thank you. Madam Secretary, we will put your full statement in the record, as well as my full statement in the record. And as I noted in the beginning of that, I appreciate and I think all Americans appreciate your leadership in the face of the swine flu threat.

I was struck by your written testimony—and you referred a little bit to it here, too—regarding REAL ID reform and reaching out to the Governors of our States to develop a better alternative. You were a Governor, and you understand the problems of a Governor in a border State, too. Legislation is currently being discussed in the Senate to reform the REAL ID law. I understand the Department has had some opportunity to review and comment on the proposed legislation.

Would you agree, at least as a basic start, that we would accomplish a lot more if we had a law that the States would support and could implement more easily? In other words, if we had something that the States could really be on board with?

Secretary NAPOLITANO. Yes, Mr. Chair. I think that our experience under the existing law, which is known as REAL ID, has been bipartisan among the States and unanimous that they do not like it and cannot meet its requirements and feel that it was an unfunded mandate at a most unfortunate time.

We have been working, since I became Secretary, with a bipartisan group of Governors as well as legislators to craft a solution that unites the goals of the REAL ID with a better way for States to be able to implement it, and I believe a bill, if it has not yet been introduced, soon will be introduced to allow us to do that.

Chairman LEAHY. Let us work together on that because we will pass legislation. We are all hearing from our—most of us are hearing from our Governors, and we want to pass something that makes the situation better, not worse. And so we will call on you on that.

When you and I met earlier this year, we talked briefly about the EB–5 Regional Center program. That is something that is important in Vermont. It is important in Alabama. It is important in a number of other States. It allows foreign investors to obtain legal permanent residency, provided they have made a substantial investment in an American development project. Billions of dollars have come into the United States since that began, the 1990s, and thousands of jobs have been created for Americans. We reauthorized it over and over again, sometimes for a short period of time—6 months and so on.

Would you support legislation to make the EB–5 Regional Center program permanent?

Secretary NAPOLITANO. Mr. Chair, I would support the principle of making it permanent. I would want to actually see the legislation, of course.

Chairman LEAHY. Of course. I understand.

Secretary NAPOLITANO. But obviously this is a way of attracting investment dollars, and it is tied directly to the creation of jobs right here in the homeland.

Chairman LEAHY. But would you agree that if everybody looks at it and says, well, you know, this thing could be turned off at the end of 6 months and all, we ought to have something that makes it a little bit more concrete than what it is today?

Secretary NAPOLITANO. It makes sense. If the goal is to attract investment dollars that lead to the creation of jobs, investment dollars requires stability. And so that approach would make sense.

Chairman LEAHY. Let me go to something that Senator Kyl and I worked long and hard on with the prior administration, and that is on the waiver authority we gave DHS and State Department for those seeking asylum or who are refugees, because we have the material support and terrorism bars in the immigration laws, which on their face seem like a good idea, but they are so broad that somebody, even somebody who has been forced into servitude in some of these terrorist groups are offered. If they escape, or seek asylum, they are suddenly barred; or people who have worked with

us, have helped us gain intelligence and all, suddenly they are barred.

Are you revisiting the interpretations of material support of terrorism and terrorist acts to find a better way to handle this?

Secretary NAPOLITANO. Yes, Mr. Chairman, we are. It is being examined by several elements within the Department of Homeland Security to see how best we can accomplish the goals of that waiver authorization.

Chairman LEAHY. Would you keep in touch with both myself, Senator Kyl, and others up here who are involved in this? Because we have got to have a better way. I just do not want people whom we have sought to help continue to be barred from seeking asylum here, having helped us, and who face prospects of execution in their home states or their home countries. And we are, after all, the country that has always been a beacon to people who have been oppressed, people who have faced death in their own country. And we want to keep that going, so please work with us on that.

Secretary NAPOLITANO. Absolutely.

Chairman LEAHY. My time is up. I yield to the Ranking Member.

Senator SESSIONS. Thank you.

Madam Secretary, you wrote that you announced new guidance for our agents in the field—you wrote in your letter to me that I received last night—"directing them to target both illegal workers and employers that create incentives for aliens to illegally cross our borders, which I think is the law and sound policy, and I appreciate that.

But, you know, this little flap over the raid that I mentioned earlier is a matter of some concern. One of the things that was disturbing to me, apparently, was that some spokesman made the comment that there was a personal commitment by the President to certain immigrant rights groups, and that this raid violated that. Are you aware of that? Could you explain what was referred to in that news article?

Secretary NAPOLITANO. No, I cannot, Senator. I do not know that article. But I can tell you that the President is very committed to the enforcement of our Nation's immigration laws, and he has charged me with that responsibility.

Let me, if I might, follow up on the Bellingham—this is the Bellingham raid that you are referring to.

Senator SESSIONS. Right.

Secretary NAPOLITANO. The reason that I said I would be looking into it was that there was an existing process within the Department of Homeland Security that pre-existed my tenure there that, before raids like that were undertaken, there was to be notice given up the chain to the head of the Department, and that communication had not occurred. So there was a breakdown in communications under existing Department policy, and obviously—and as you yourself noted, when you head a major office like this, a U.S. Attorney's Office, AG's Office, one of the important things is to have knowledge of what enforcement actions are being undertaken. Second——

Senator SESSIONS. Well, Madam Secretary, that can have a chilling effect, and your comment, I think, was, "We are going to get to the bottom of it." So you are saying that you did not intend

to signal to your agents that they should not do workplace raids in the future?

Secretary NAPOLITANO. No. I intended to signal that they should follow the protocols that were in place.

And, second, with respect to the agents, we are not investigating agents. The questions I asked were law enforcement questions. For example, what was the plan vis-a-vis the employer? Had they sought to get search warrants and had those been turned down? And if so, why? Did they have a prosecution agreement with the U.S. Attorney's Office in that district? Had they sought one? If not, why not? If they had, what was the status of that?

And that leads to the third issue I think you had there, which was the issue of some of the workers who were arrested being released and allowed to work. That was a practice under my predecessor and has been a practice in worksite enforcement actions for many years, and the purpose and what you do there is sometimes you arrest the worker, and then you give them a delayed departure in order to get their evidence, their cooperating evidence against others that you may be seeking to prosecute, particularly those for whom you have to establish an intent requirements. It is only a delayed departure. When that cooperation period is over, they are then removed from the country.

Senator SESSIONS. Well, I would just suggest that I do not think there has been another raid of that kind since, and it may be the unintentional result of your comments and actions that the agents got the message. So we will see how those go in the future, but I do agree that employers who violate the law, who knowingly do this, if they know that you are serious about this, I think most of them will comply, and there will be a fairly small number that need to be prosecuted. And I hope that you will move forward on that, and I think it could have a big positive impact on the difficulties we have been facing with the immigration policies.

Madam Secretary, the problem of the Uyghurs that are held at Guantanamo who are certified to have been trained at a terrorist camp, the U.N. has recently re-established Mr. Haq the head of their extremist organization as a terrorist organization, as has the U.N. and the United States, but it appears to me, contrary to law, the Attorney General is suggesting that those Uyghurs, since no one else wants to take them, would be released in our homeland. And under the statute, Title 8 U.S.C. 1182(a)(3)(B), it flatly prohibits people who trained in terrorist training camps from being admitted into the United States.

Congressman Wolf I believe has written you a letter about that. He is a champion of humanitarian causes worldwide, but he believes that this also raises serious legal questions, and it sort of falls in your bailiwick. The Attorney General is not before us, but I know he is wrestling with what to do.

So I would ask you: What are the plans with regard to these Uyghurs? And are you aware that, according to my reading, it is flatly prohibited for them to be released into the United States?

Secretary NAPOLITANO. Senator, several things.

First, going back to your earlier question, I know of at least one workplace action that happened after Bellingham, so we continue worksite enforcement, and we have a multi-State human smug-

gling major action going on today. So we continue all of our enforcement actions, and we will very vigorously.

With respect to the Uyghurs, this is part and parcel of the President's decision to close Guantanamo, and in addition to the statutory law, there are court orders with respect to release of the Uyghurs that are in place. The Attorney General has been directed by the President to put together a Committee on which the Department of Homeland Security sits to deal case by case with each of the individuals, including the 17 Uyghurs.

Chairman LEAHY. Senator Kohl.

Senator KOHL. Thank you, Mr. Chairman.

Madam Secretary, over the past several days, Federal officials have advised schools to close if they had probable cases of the swine flu. But, yesterday, Federal officials changed their mind and advised schools to reopen.

Is there a one-size-fits-all answer to every school? And what are you doing to assist local school officials in determining whether they should reopen?

Secretary NAPOLITANO. Senator, yes. The advice did change, and what we have done from the beginning of the H1N1 outbreak is say we are going to be guided by the advice of the doctors. What is it that we need to do to protect the safety of the American population from the spread of this new strain of flu? But we were very careful to say that that is going to change as they go through and the scientists find out more about the flu. And as we have gone through the past days, what they have learned is that some of the lethality factors that could be present in a new strain of flu did not appear to be present, and that even people who contracted this flu were not experiencing flu worse than the normal seasonal flu. Now, realize in a normal seasonal flu, 36,000 Americans will die. But, nonetheless, it was not more severe than that.

And so after that consideration and, again, the accumulation of knowledge, the CDC changed its school advice. And so that revised guidance went up at the CDC yesterday.

What we are doing is a whole host of things with respect to communication, but the number one thing we have done with respect to schools and school guidance is drive people to the CDC website and the Department of Education and worked with them.

We will continue to do that because even though this outbreak now we seem to have reached kind of "active caution," if I might use that phrase, with respect to it, we are very much aware that we could have an even more severe outbreak in the fall when our normal flu season being. And what we learned in these past weeks is the schools are a central part of how you can contain and what you have to make decisions on when you have a pandemic. So I think we need to further refine our decisionmaking about closures in the event that we do have a more serious outbreak this fall.

Senator KOHL. Madam Secretary, most people agree that our current immigration system is fundamentally broken and that the status quo is not acceptable going forward. President Obama has signaled his desire to fix the system. In your opinion, what are the basic principles that should guide the overhaul of the immigration system?

Secretary NAPOLITANO. Mr. Senator, I think there are several things. One is you have to have a strong and effective enforcement strategy that is sustained over time, and your enforcement strategy has to be a system that is not just at the border but includes the interior of the country as well.

The second is that you need to look at reform of the entire visa system—in other words, how we award visas, what are the criteria, how long, or how many are granted, particularly in certain categories. That needs to be re-examined.

And then, third, the Congress is going to need to address what do you do with the people already in the United States, many of whom have been here for a number of years, who are undocumented, who are here illegally.

Senator KOHL. Do you have an opinion on that third point?

Secretary NAPOLITANO. I would prefer to do that in the context of when the President and the Congress take up an overall approach to this immigration issue. I am focused now, as I believe my charge is, to enforce the law that we have and to do it intelligently and effectively.

Senator KOHL. Madam Secretary, last April, GAO released a report on whether the Government was prepared to evacuate vulnerable populations, such as nursing home residents, in the event of an emergency. At that time the Department of Homeland Security had not implemented GAO's recommendations to require their State and local grant recipients to plan, train, or conduct exercises on such evacuations.

What steps is DHS taking to ensure that vulnerable populations are not abandoned during emergency evacuations?

Secretary NAPOLITANO. Thank you, Senator. A number. One of them is we have gone back and are in the process of going back through a number of the GAO reports that have been issued in prior years to say, well, what has the follow-up been and where are we.

Second, we are beginning to do some exercises to identify where State and locals are in respect to evacuation of special needs populations. I cannot be sanguine here. I think that there are still issues to be worked out, and particularly in some places of the country where you are dealing with potentially enormous evacuations, logistics still have not been met. So we have some work to do here.

Senator KOHL. Have you taken note of some of the extraordinarily good things that I believe have been happening in Florida with respect to preparing for those kinds of evacuations?

Secretary NAPOLITANO. There are a number of States that have done a number of good things. I think one of the things we are concerned about right now is States that were making great progress and cities that were making great progress in their public health plans, their evacuation plans, the resources they would have in case a disaster were to strike, a lot of that has been put on hold, and a lot of the personnel that would be involved in carrying out those plans have been furloughed because of their budget situation. So the strain on the Nation from the economy is going to have and is having some impact on the preparations that were underway.

Senator KOHL. Thank you.

Mr. Chairman, thank you.

Chairman LEAHY. Thank you.

Senator Feinstein.

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

Welcome, Madam Secretary. I want to just begin by thanking you for your attention to the border. As a border State, it obviously is of substantial importance, and the cartels have been creating havoc and violence for much too long now, and it is infiltrating, as we discussed, through the border into our States.

I wanted to ask you a couple of questions. The first is—and I will ask two at one time. Has there been any appreciable reduction in violence at the border since you began? And, second, would you describe the Department's effort to trace the origins of guns seized at the border? How is ATF coordinating with your Department to investigate gun trafficking on both sides of the border?

Secretary NAPOLITANO. Thank you, Senator. Yes, we have seen a reduction in violence. I do not think it would be appropriate for me to claim credit for that. I think the number one factor in that was the decision of the President of Mexico to send the military into Juarez, which has had a very strong impact on the number of homicides that were happening in the State of Chihuahua.

Senator FEINSTEIN. So it is working.

Secretary NAPOLITANO. That is working. The question there will be how long can it be sustained, and that is why we have to continue to work with Mexico on getting at the root cause of that violence on the part of these cartels, which, as you noted, have plagued us for far too long. So we want to continue those efforts working with Mexico.

In terms of the border communities on our side of the border, I have been to many of them since I have been Secretary. We are having regular conference calls with the sheriffs and police chiefs along the border. What they report to me is they are not seeing any upswing in violence or spillover violence because of the cartel war in Mexico. It is obviously something that we want to stay on top of and be proactive about because that is the last thing any of us wants to occur. We are going to keep those efforts up.

Senator FEINSTEIN. And the guns?

Secretary NAPOLITANO. With respect to the guns, the key issue there is for Mexican law enforcement, when they find a gun that has been used in the commission of a crime, to immediately give us the information so that it can be traced, and so the source of the guns can be determined. That is in process now. We call it the E-Tracing Initiative. We are working with ATF on that. In addition, we have added a lot of resources to what we call our "southbound strategy," more inspectors, dogs, metal detectors, and the like on the southbound lanes going into Mexico where previously there had been none. In that process, we have already seized a number of weapons that were illegally going into Mexico.

Senator FEINSTEIN. Good. Let me ask you a question, if I might, about the Visa Waiver Program. I have worked for a number of years to try to mitigate the risks that I believe this program produces for our Nation. It has been expanded now to 35 countries, but DHS still does not keep track of who is entering and exiting the United States at all points of entry. And if those who enter

through the Visa Waiver Program, in fact, leave the country or overstay their visits or remain within our borders, that is still unknown.

So my question is this: What steps are you taking to track who has entered the United States through the Visa Waiver Program and if, in fact, they have left or overstayed the program? This has never been done. We do not know. And I think the time has come for it to be done—the tracking, that is.

Secretary NAPOLITANO. Yes, Senator. And there are obvious reasons to do it that way because then you know exactly who is in the country, how long they are entitled to stay, and if they are an overstay, to take appropriate action.

With respect to the Visa Waiver Program, let me say that from an air travel standpoint, ESTA is in the process of being implemented. A number of carriers are now using it, and that is being added onto almost weekly now. So that remains very effective. And through US-VISIT and other programs, we are looking at ways to enhance that.

The problem you identify is much bigger than a visa waiver problem, and that is, how do you measure who has left the country not just at the airports—and I believe that over the next years there will be a way to improve our ability to track at airports who has left. It is the land ports, because there we really do not have yet—and I hesitate to say how much it would even cost to do so—a process by which we really match who is in with who is going out. I would be happy—and really have put it on my radar. What can we do as a Nation to solve that particular problem?

Senator FEINSTEIN. It is a big problem.

Secretary NAPOLITANO. Huge.

Senator FEINSTEIN. It is the soft underbelly of this country.

Secretary NAPOLITANO. It is huge.

Senator FEINSTEIN. So thank you very much. My time is up.

Chairman LEAHY. Senator Grassley.

Senator GRASSLEY. Thank you.

Chairman LEAHY. You came in. I thank you. Good to see you here.

Senator GRASSLEY. Thank you, Mr. Chairman.

What I am going to ask you, Madam Secretary, you had nothing to do with, but you can correct it, so I want to bring this up.

[Laughter.]

Chairman LEAHY. Aren't you glad you came?

Senator GRASSLEY. Last month, the Government Accountability Office released a report that I requested analyzing cooperation between DEA and other law enforcement agencies. This report was a real eye opener for me, and the findings were even worse than I had anticipated. Chief among the findings was that the current outdated Memorandum of Understanding for narcotics investigations, referred to as Title 21, is outdated, and because of that "there is a potential for duplicative investigative effort and concerns that officer safety could be compromised," with "officer safety could be compromised" emphasized. So a serious finding.

The GAO essentially confirmed that longstanding turf wars between DEA and ICE have created an environment dangerous to our own agents. So I say that that is unacceptable.

The GAO ultimately made three major recommendations: One, that the Secretary of Homeland Security and the Attorney General show leadership and renegotiate outdated MOUs; two, that the Secretary of Homeland Security immediately order ICE to participate in the DOJ Fusion Center; and, three, that DHS and DOJ create a mechanism to review MOUs periodically so we do not end up here again like 15 years since they have been negotiated.

These recommendations are long overdue, and I wrote to you this letter April 21st, which is not so long ago compared to how long it usually takes to get answers from bureaucracies, and not necessarily your Department. I asked you to implement these recommendations. To date, I have not heard a reply. These law enforcement turf battles are unacceptable in this post-9/11 world. So several questions.

Could I expect a written reply soon from you?

Secretary NAPOLITANO. Absolutely.

Senator GRASSLEY. Okay. Will you commit to immediate implementation of GAO recommendations—after you have had a chance to study them, obviously? If you do not know them, as I do, I would not expect you to answer if you have not studied them. But I hope that you would look at them and implement them immediately.

Secretary NAPOLITANO. Senator, the Attorney General and I have already been—before the GAO recommendations came out, we were discussing these outdated MOUs, particularly with respect to Title 21 authority. Some of those MOUs date back to—I think one of them is 1975. I mean, they are really old.

He and I served as U.S. Attorneys together, actually, and it is our commitment to update those and make sure those MOUs match the reality of law enforcement today.

Senator GRASSLEY. Have you ordered ICE to begin participating with the Fusion Center?

Secretary NAPOLITANO. ICE does participate with Fusion Centers in different ways in different parts of the country, but I would be happy to provide you more detail on that.

Senator GRASSLEY. Okay. Well, again, then I would hope that you would use GAO recommendations as a baseline for that.

Would you ensure that ICE begin participating—well, this was going to be a follow-up question. And you obviously believe then—you just told me that the MOUs should be updated immediately.

Secretary NAPOLITANO. Yes.

Senator GRASSLEY. You are in the process of doing that. Do you believe that the current cap on the number of cross-designated ICE agents who are authorized by DEA to investigate Title 21 cases should be increased?

Secretary NAPOLITANO. I think that is something that goes along with redoing the MOUs, and it makes—well, take the cross-border issue I was just discussing with Senator Feinstein where you have ICE agents really actively involved in doing cartel casework, not to have Title 21 authority, and to have to shift cases over to DEA, that is something that really needs to be thought through again, in light of the changing law enforcement needs that we have. So the Attorney General and I have committed to work together and to update those basic operating documents.

Senator GRASSLEY. Okay. And my last question then: Do you believe that ICE should be given statutory Title 21 authority? Or do you believe that this matter can be worked out administratively through the process to revise MOUs?

Secretary NAPOLITANO. Senator, I think it might be quicker to try to work this out administratively between the Department of Justice and the Department of Homeland Security. I would like to take that crack first.

Senator GRASSLEY. Well, and I will be observing how that is going, and I hope you would consult with me. I am one that has been dealing with this for so long that I think we ought to take action. But it would be faster if you could do it, and I hope you are successful.

Secretary NAPOLITANO. Thank you.

Senator GRASSLEY. Thank you, Mr. Chairman. Mr. Chairman, I am done.

Chairman LEAHY. Thank you. We have a roll call that started. Senator Durbin, why don't you start? I will go and vote and come right back. Then if there is another Republican back here at that time, he will follow you, Senator Durbin. If not, another Democrat.

Senator DURBIN. Thank you, Mr. Chairman.

Madam Secretary, thanks for being here. As a former Governor of a border State, the story I am about to tell you may sound familiar. Two weeks ago, I had a meeting in Chicago with students from one of our leading high schools. I met a young woman who was valedictorian of her class and was on a winning team in a science competition who had been accepted at an Ivy League university and was looking forward to pursuing a degree in biology, which may lead to medical research or becoming a medical doctor. But she had a problem. She came to the United States when she was 2 years old. She was brought by her parents from Mexico. Her parents sold corn on the street corners, and she grew up here. She speaks perfect English. She has never known another country in her entire life. And she is undocumented.

I have introduced a bill for 8 years now called the DREAM Act. My cosponsors this year include Senators Lugar and Menendez. And it says for young Americans—or young people living in America in her circumstance that they be given a chance through either 2 years of service in the military or the completion of 2 years of college to move toward legal status. I am hoping—praying—for so many young people who are counting on this that we will have a chance to consider and pass that this year.

Could you tell me your opinion of the DREAM Act?

Secretary NAPOLITANO. Yes, Senator. As a Governor of a border State, this is one of those areas where everyone wants the immigration law enforced, we must enforce it, it is part of our national sovereignty, among other things.

On the other hand, we have to have the ability to deal with some of the human issues that arise here, and the one that you have identified is one of the most acute.

I supported the DREAM Act when I was Governor. I support it now. One of the most moving things I have been privileged to do as Secretary is to administer the oath of citizenship to men and women in our military who have been serving in Iraq, who were

not citizens, who have elected to become citizens. In a way, it kind of mirrors what you are talking about in the DREAM Act. But it seems to me that the DREAM Act is a good piece of legislation and a good idea.

Senator DURBIN. Thank you.

The first hearing I had of the Crime Subcommittee was on the Mexican drug cartels. I am going to describe for the record a case which you are familiar with because it involves your State of Arizona.

In March, a State judge in Arizona dismissed charges against a gun dealer accused of knowingly selling about 700 weapons through intermediaries to two smugglers who shipped those weapons from the United States to a Mexico drug cartel, over 700 weapons. Several of these weapons were recovered in Mexico after shootouts with the police, including a gunfight last year in which eight Mexican police officers were killed.

This case shows how difficult it is to convict gun dealers who are knowingly supplying weapons to the Mexican drug cartels. Federal law currently does not have tough criminal statutes on the books specifically aimed at arms traffickers. In order to prosecute gun dealers and purchasers who knowingly supply guns to Mexican drug cartels, prosecutors often have to charge these individuals with paperwork violations such as making false statements on the purchase forms, and these offenses carry low penalties and can be very hard to establish.

What is your view of this situation? Is it simply a question of additional resources and personnel to deal with this exporting of guns to the Mexican drug cartels? Or do we need to make sure that our laws allow us to prosecute those who knowingly supply weapons to these Mexican drug cartels?

Secretary NAPOLITANO. Senator, where we are taking this is to more effectively enforce the laws currently on the books. For example, until we began our southbound strategy, there really was no process by which we were even finding the guns that were being exported illegally across our borders. Second, improving the intelligence gathering about who is really funneling arms to these cartels.

So my view right now and my charge is to take the laws that we currently have and to fill the gap between the law on the books and what actually should be done from an enforcement status.

Senator DURBIN. But I guess what I am asking you is whether you have an opinion—and maybe you do not at this moment—as to whether the laws are adequate. This situation I just described to you is egregious. Your Attorney General of the State of Arizona has been a leader and testified at our Crime Subcommittee hearing about the problems he has run into in trying to deal with this issue.

If you have an opinion, do you believe that we need to strengthen the laws when it comes to trafficking and smuggling firearms from the United States into any country, including Mexico?

Secretary NAPOLITANO. I do not have an informed opinion because I think that opinion needs to be informed by, when you increase your enforcement strategy, what results you can actually obtain. I would rather be given some time to really do that and report

back to you about what we are getting from our strategy with the existing laws.

Senator DURBIN. I wish you would.

Secretary NAPOLITANO. Yes.

Senator DURBIN. One last question, if I might, on H–1B visas. Senator Grassley and I have introduced legislation to correct what we consider to be clear abuses. The most outrageous abuses when it comes to H–1B visas include the fact that some major companies overseas, primarily in India, have successfully managed to marshal many of these H–1B visas and make a profit off of them. They charged the citizens of India coming to the United States on H–1B visas, and then after 3 to 6 years when they are to return to India, they charge to place them in companies which will then compete with the United States. That is certainly not the stated intent of anyone who has come to me asking for H–1B visas.

Second, there is a serious concern, a very serious concern that Senator Grassley and I share, that many of these H–1B visa holders are going to displace American workers or be placed in a position where unemployed American workers might otherwise have an opportunity. And we think this has to be carefully monitored. We feel—and I hope you share—that our first obligation is to American workers, and to encourage, if not hold accountable, those firms that are looking to fill spots to first turn to the talent pool in America, and particularly those who have lost a job.

Do you have any opinions on the H–1B visa program?

Secretary NAPOLITANO. Yes, Senator. First, I agree with you. Our top obligation is to American workers, making sure American workers have jobs. From an enforcement standpoint, my priority is to make sure that there is not fraud occurring within the H–1B program at all.

Over the last months, we have added some tools. We have added fraud prevention tactics. We have begun looking at other more standard fraud investigatory techniques that were not being used in H–1B that we are now going to employ, including things like site visits and worksite visits.

We are going to keep at this to make sure that the intent of that program is fulfilled.

Senator DURBIN. Thank you very much.

Senator CARDIN. Madam Secretary, first of all, thank you for being here. Thank you for what you have been able to do and your commitment to our national security and homeland security.

I want to start with a hearing I chaired yesterday on the Terrorism and Homeland Security Subcommittee dealing with the issuance of passports. I know that is not under your agency, but passports are very much in your portfolio as far as national security and homeland security are concerned.

It was brought to our attention through Senator Feinstein and Senator Kyl, a GAO report in which they fabricated documents in four cases, and in four out of four, they were able not only to get passports but to get boarding passes for flights.

We looked at the type of information that was used to get the passports. The driver's license I think on its face should have been determined to be a fraud, and in two cases, they used Social Security numbers that were fraudulent, and if they did the checks, it

would have shown that they were inappropriate. They did not go through the checks. Four out of four is unacceptable.

I just want to bring that to your attention. I can assure you that this Committee is going to continue to oversight that and do everything we can to make sure that passports remain the gold standard for identification. But I would hope that you would show some interest in this and follow up to make sure that from the point of view of your reliance on passports you have a right to believe that only those who are entitled to receive passports are receiving passports.

Secretary NAPOLITANO. Yes, Senator. I concur and share those concerns, and there is also the issue of the use of lost or stolen passports as well. So, yes, we are paying quite a bit of attention to this.

Senator CARDIN. Let me go to another hearing we had in our Subcommittee which dealt with sharing of information among intelligence agencies as well as with local law enforcement, and this has been a continuing battle. Former Senator Gorton pointed out that he felt that there were enough laws on the books, but that they were not being used appropriately to make sure that the right information was placed in the data bank and there was appropriate access to that information and that we had not quite got that done yet, and local law enforcement could very well stop someone and not have the information they need in order to protect our homeland security.

On the other side of that, I would bring to your attention the circumstances of the Maryland State Police where they used resources for an investigation for over a year into lawful protesters who were exercising their First Amendment right to express their opposition to the war and to the death penalty. That information was then made available to Federal agencies inappropriately, and it is still unclear whether that is in our data bank or not.

So I bring this to your attention because I know that you called for a review of how information is shared, and I was hoping that you could perhaps bring us up to date as to where we are in your review as to whether we can improve the way that we bring information into our data banks and share it with local law enforcement and protect the privacy and civil liberties of the people of our Nation.

Secretary NAPOLITANO. Yes, Senator. Our review is not yet complete, but let me share with you a few of the things that I have found.

No. 1 is our sharing of information with State, local, and tribal law enforcement is inadequate. In other words, a lot of it is not operational. It does not really inform somebody what specifically they are looking for and why. We want to improve that real-time data sharing and improve the mechanisms by which we get information back, because really from a law enforcement perspective, the vast majority of the eyes and ears out there are police officers and sheriff's deputies and tribal police officers and the like. And we do not really have a good way to collect what they are seeing.

So I look forward and hope the Senate will confirm the nominee to be the head of our Intel and Analysis Division, because one of his charges is going to be—and one of the value-added things I

think our Department can contribute—is to take all of this intel that is out there and make it more value added for State, local, and tribal law enforcement.

The second thing I have added is that we must do a careful job of what I call a privacy analysis of what we are doing. We have brought into the Department an expert on privacy law to help us and to look at things that are being done, practices that are being carried out to advise us on the privacy issues that are implicated—all the more important because once something is in a data base, it is almost impossible to take out of a data base. So we have added that as part of our own internal procedure.

Senator CARDIN. Congress has passed a law that established a Privacy and Civil Liberties Oversight Board, and it has never been appointed. Will you take a look at what your position, what the administration's position is going to be in regards to moving forward with that oversight board, which was recommended by the 9/11 Commission but has never been implemented? And if you are prepared to answer that question now, fine. If not, I would appreciate you getting back to us, letting us know whether we can look forward to that board becoming effective.

Secretary NAPOLITANO. Senator, that one I will have to get back to you on.

Senator CARDIN. I could tell by your expression, so I appreciate that and would welcome that.

Let me just last point out one other issue, and then I am going to turn it over to Senator Whitehouse, and that deals with the biological security at our labs, which is an immediate concern to me. Fort Detrick is located in the State of Maryland. It was the location where the anthrax occurred, where our security was breached. And I just want to bring that to your attention that our Subcommittee is also going to spend a good deal of effort looking at the relationship between the different agencies because there are so many agencies involved. And one of our concerns is that as we have consolidated our homeland security in one agency, there are still lots of responsibilities in other agencies. And here the FBI has a responsibility, the Department of Justice, and we need to better coordinate to make sure that we are using consistent standards, who has access to biological elements for the security of our country. And I would just urge that we work together to make sure we have a consistent policy and one that protects the security of our country.

Secretary NAPOLITANO. I could not agree more.

Senator CARDIN. Thank you.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Madam Secretary, good to be with you.

Secretary NAPOLITANO. Senator.

Senator WHITEHOUSE. You are now the Secretary of Homeland Security, but earlier in our careers, we were both United States Attorneys and Attorneys General with considerable responsibility for what I might call "hometown security." And if there is a refrain I hear more often than any other from my police chiefs in Rhode Island, it is that the budget for homeland security has ballooned in recent years to the point where they have funds at their disposal

to buy things that they, frankly, think are almost ridiculous, while at the same time, the key elements of hometown security have been whittled away at. You see repeated efforts in the previous administration to cut the COPS program, to cut Byrne grants. You see very important areas like the re-entry of folks once they have served their terms of incarceration back into society getting scarce attention. And I just want to hear your thoughts philosophically on the extent to which we have properly balanced homeland and hometown security and whether you are willing to work with Attorney General Holder to rebalance that.

I will put my opinion right out there on my sleeve. I think that homeland security was favored at the expense of hometown security, and there is, I think, a reasonable case to be made that it was done for political purposes to make America look like it was on a wartime footing with respect to the whole terror issue in order to support the notion that this is a wartime President who we all had to rally behind.

So I am not sure that the case was made in the Bush administration entirely on the merits of the physical security of the American people, and I would like your thoughts on that balance.

Secretary NAPOLITANO. Thank you, Senator. You know, it is a responsibility of the Department of Homeland Security, in my view, to provide resources that would enable hometown security, your local police departments, sheriff's offices and the like, to add onto their responsibilities the whole counterterrorism province, which previously they had not really been charged with. But everybody has a role to play here.

The initial grant process out of the Department——

Senator WHITEHOUSE. I guess the scope of that role is what my questioning is about. It really strikes me as not all that necessary for, you know, Cranston, Rhode Island, to be regularly involved in anti-terrorism planning or for folks in South Providence to see facilities being used for anti-terrorism planning when murders are happening regularly on those streets that are not getting adequate attention.

Secretary NAPOLITANO. Senator, there I would suggest that the local law enforcement role never changed, and that was always local and State obligations to pay for, with the augmentation of things like the COPS program, which I strongly support and which I think had a real benefit on those kinds of cases. What the Department of Homeland Security's function was was to add on to that.

Now, I think there were some things, as the Department was stood up, that we have grown through, for example, how grants are distributed and what will be paid for. I think too often we paid for the newest widget, law enforcement widget, you know, the fancy whatever, truck or whatever, as opposed to really looking at risk and looking at manpower and effective technology. And those are the things that I think really need to be our funding types of priorities. So as we have gone through this, I think we can become much more sophisticated, as it were, in terms of what is the real value added of a Department of Homeland Security, but that basic law enforcement function in terms of crime on the street—murders,

armed robberies and the like—remains a State and local prerogative.

Senator WHITEHOUSE. I would love to get to a place where the State and local folks who are enforcing that prerogative are doing a little bit less scratching of their heads as to why the Federal Government is putting so much money into things that they consider to be of marginal or limited utility while real and pressing problems that affect the security of homes and neighborhoods are left unaddressed. So I just want to let you know that to the extent that is the discussion that you care to have, this is where I am on it.

Secretary NAPOLITANO. All right.

Senator WHITEHOUSE. The other thing I want to discuss with you is cyber security. It is a very significant problem, and I want to share with you my concern that the classified elements of the previous administration's cyber strategy in my view put us on a collision course with very basic civil liberties questions if the trajectory is not adjusted and adjusted fairly soon. I do not know exactly what is happening at this point in the 60-day review that has been taking place that is getting near to its end. But I would encourage you to actively look at that question and be alert to that particular problem. If you extend the Bush strategy, I believe, on the trajectory that it was launched on, it drives you to a civil liberties collision that is unnecessary and I think unhelpful. It would create a whole element of drama and fighting and concern about an issue where I think if it is properly designed, we can come together, because we have a huge common interest in preventing cyber attack.

Secretary NAPOLITANO. Senator, I agree, and it has been one of my top priorities as Secretary to be engaged with that 60-day review, to be identifying people to bring in the Department who are experts in the cyber world, and to really understand the leadership role that I believe the Department of Homeland Security will need to play here, both with respect to the dot-gov sites, the civilian part of Government, but also with respect to working with the private sector. And, of course, part of that are some of the privacy issues that are implicated. So this is a keen interest of mine and a keen interest within the Department right now.

Senator WHITEHOUSE. Yes, I look forward to working with you on it because I do think that time is relatively short, and before we get to a juncture at which we have to either stop expanding the plan or continuing its trajectory into the areas of real and genuine civil liberties concern, or come up with some alternative. But where we do not want to be is in a position where we get to that point and suddenly realize, oops, we have not thought this through, we really should not do that because of civil liberties concerns, but we have not developed Plan B that gets us around that obstacle. And I think that is where we are headed.

Secretary NAPOLITANO. Fair enough.

Senator WHITEHOUSE. Thanks very much, Mr. Chairman.

Chairman LEAHY. Thank you.

Madam Secretary, I am not going to ask you at this point just what a comprehensive immigration bill might look like. We are just beginning to look at it now. But I wonder if you might tell me what we should be looking at as two or three of the most pressing problems in immigration today.

Secretary NAPOLITANO. Thank you, Senator. It seems to me—and I have dealt with this immigration issue on the ground since I was U.S. Attorney in 1993, then as an Attorney General, then as a Governor in the State where illegal immigration was actually funneled. I mean, Operation Gatekeeper went into place in the San Diego-Tijuana area. Operation Hold the Line went into place at the Federal level in the El Paso area. And illegal immigration by that was actually funneled into Arizona, and that caused a whole host of consequences. And so I have really been thinking deeply about this.

It seems to me that we have to have the confidence of the American people that the immigration law is enforced, and that it is enforced intelligently and fairly. And we need to sustain those efforts.

Chairman LEAHY. Do you think that confidence is there today?

Secretary NAPOLITANO. It depends on who you ask and when.

Chairman LEAHY. Okay.

Secretary NAPOLITANO. But I think that we are making good strides there, and I think we can show quantitatively that progress, significant progress has been made.

Second, I think we need to really look at what is the role of State and local law enforcement in that because that has evolved over the last 15 years.

Third, I think we need to revisit all of the visa programs, the various visa programs that are out there, how they are enumerated, how they are adjusted, how we make sure that we are not costing Americans their jobs; but at the same time, having that input of immigrants into our country that has been such a part of our own history.

And then, last, we are going to have to look at the issue of those who are in the country illegally and particularly those who have been here for quite a period of time.

Chairman LEAHY. Well, let us talk a little bit about them, because you saw that certainly in your own State of Arizona, and we see it even in my little State of Vermont. But nationwide you have got millions of people who are—what is the expression?—"living in the shadows," or any other expression you want. They are in an undocumented status.

I have always remembered something I saw once. I was driving in from the airport in Los Angeles, and there was a man walking down—he was in work clothes, appeared to be Hispanic, walking down the street. We were stopped at a stoplight so I could see this. Somebody walking the other way had a large dog on a leash. The dog suddenly lunged out, bit the man in the leg ripping his clothes. We could see blood spurting out. And the person with the dog just kind of looked at him and walked on, I think realizing this person was probably an undocumented alien and they are not going to be able to do a thing about this. They cannot complain. They cannot do anything about this dog biting him because they have no status here.

Now, that is just one minor thing. The rights of the people, that you and I enjoy, can be trampled on in these people because of their undocumented status. Secretary Chertoff told us, and President Bush did, too, that it is not a practical solution to simply round up and deport these millions of people. You would agree with that, would you not?

Secretary NAPOLITANO. The ability of our country to do that and the sheer logistics of doing that are overwhelming.

Chairman LEAHY. But all the more reason why I think we should try again on some kind of an immigration bill. I agreed with President Bush when he said he wanted a comprehensive bill. For a number of reasons, that fell by the wayside. This Committee will work with you on that issue.

Then in Vermont and elsewhere—this may seem parochial, but I would like to talk about H–2A and dairy workers. Vermont does get H–2A workers, certainly apple pickers in our State have been the tradition. They come up for a few months. And that is fine. You pick apples at a certain time of the year. Dairy cows have to get milked year round, as you know.

Secretary NAPOLITANO. That is right.

Chairman LEAHY. And under current regulations, dairy farmers cannot obtain H–2A workers for their farms, so you end up employing undocumented workers.

I would like you to look at the H–2A rules and see how they might be changed, whether they should be changed, to help dairy farmers who want people on a year-round basis, and also take a look at whether that can be done administratively even without a change in the law. Will you look at that?

Secretary NAPOLITANO. Mr. Chairman, I would be happy to. You are exactly right. The H–2A is for temporary or seasonal workers, and because cows have to be milked every day, dairies do not qualify.

On the other hand, it seems to me that we should be able to revisit this issue, and if we cannot do something in looking at this administratively, come back to you and say we cannot do it, Congress is going to have to act, this is what would fix the problem.

Chairman LEAHY. Thank you. And one other thing, and this is totally parochial. On Interstate 91 in Vermont—and I have raised the same question with Secretary Chertoff and with others—the Customs and Border Protection has been operating a temporary immigration checkpoint on Interstate 91—not up by the border, but some distance from the border, closer to Massachusetts. I have consistently asked what is the reason for it. Agents were actually pulled off the border to be down there. It is a pain in the neck for Vermonters and others, and if I wanted to avoid it, there are about a dozen parallel roads that go down in New Hampshire and in Vermont, that go straight down to the border that do not go on the interstate. You have got something that is sort of semi-permanent. Everybody knows it is there.

Can we at least look at this and give me some assurance that this, what I hope is a temporary aberration, does not become a permanent blight? I do not want to indicate by the nature of my question how I feel about it.

[Laughter.]

Secretary NAPOLITANO. Thank you for that very neutral question, Mr. Chairman.

Without talking about the I–91 checkpoint, we had a similar issue with the I–19 checkpoint in southern Arizona. I can give you the theory of an interior checkpoint. It is several-fold. One is that you have to have a system in border areas and into the country

from border areas because you never catch everybody at the border. And in a way, what the interior checkpoint helps you figure out is how many people are actually getting through what you have so you can adjust what you have.

Second, at least the interior checkpoints I have been involved in, they are typically not alone; in other words, you may have the interior checkpoint, but it is coupled with other things that are going on around those side roads, and because people know who are coming in illegally -the knowledge passes pretty quickly about where there is a checkpoint. But it makes it easier to identify who is intentionally trying to evade the authorities, and that is not an uncommon law enforcement purpose.

But, third, I want you to know, Mr. Chairman, that I have said I want to see what the yield on these checkpoints is and is this really the best use of the manpower and the dollars that we have for effective border enforcement, not just in Vermont but elsewhere. And so we are doing that now.

Chairman LEAHY. Okay. I appreciate that. When Secretary Chertoff was here—and I hate to pick on him in his absence, but he was saying, knowing that I would ask the question, he had a list: Well, we found X number of people doing this, X number of people doing that, and we were able to get them. And I said, Well, by that same theory, if you are coming in from Maryland or Virginia, you have to cross bridges into D.C. Hundreds of thousands of people come in every day. I am one of them. You could have checkpoints there. I guarantee you will find drugs. You will find people on which there are outstanding warrants. You will find some illegal immigrants. You will also bring the city of Washington, D.C., to a screeching halt, and you will have a traffic jam that will extend to Pennsylvania and West Virginia and North Carolina and everywhere else.

So I think there has to be some idea of what do we actually accomplish. Is the pain worth what we get? Is the pain worth the gain? And that is, I think, the question that has to be asked. Or are we better off using some of those same people and some of that same allocation of money on the border itself and so that they can check on people?

Now, we do not have a closed border between the United States and Canada. I can show you from Maine to Washington State, I can show you places where you could easily cross the border. There are huge areas, not just in Vermont, but North Dakota and everywhere else. We want to be realistic about what we do. You can imagine how you could stop traffic into Detroit, for example.

These are areas where I think we have to be realistic. I am not going to ask any further questions. I see Senator Klobuchar is back. I will yield to her. And I have just been handed a note that Senator Sessions is coming back. And, of course, we will not end this until he has a chance to ask further questions.

Please go ahead, Madam Secretary.

Secretary NAPOLITANO. Thank you, Mr. Chair. And as I said, that is exactly the analysis that we are performing internally: What is the yield for some of these techniques that we have been using?

Senator KLOBUCHAR. Thank you very much. You thought you were done, but we are back. Thank you, Madam Secretary. I wanted to again thank you and the Acting Director for FEMA for the good job that you did with the flooding in Moorhead, Minnesota, and Fargo, North Dakota, and it was much appreciated by those residents that FEMA was so present and helpful and continues to be helpful.

You and I have talked before about some of the issues with funding formulas and how you have these two communities, and we were just looking at these pictures. I think it is hard for anyone to tell which is which, but one is Moorhead and one is Fargo, and they are both flooded. And we have to make sure, I hope in this case, that the communities are treated the same for how the funding formula works and that in the future we look at areas that are across State lines and make sure that however the reimbursement, the cost-sharing formula works, that they are treated the same, because it just would seem outrageous to me that one side of a bridge the neighbors get a 75-percent reimbursement and the other side of a bridge they get 90 percent when one State has almost double the unemployment of the other. So I just wondered if you could address that.

Secretary NAPOLITANO. Yes, Senator, and we are looking at many issues with FEMA reimbursement because there are some anomalies that happen. For example, you have communities on the opposite side of the same river that flooded the same way, and yet because the calculations are done based on State populations in part, you get different results.

Part of that I have asked for what is driven by policy as opposed to actual rule that would have to be changed through the APA versus what is driven by the Stafford Act itself. We will work with you and your staff on this because it seems to me that when something is inherently illogical, we ought to be able to fix it.

Senator KLOBUCHAR. Well, that is very practical, so thank you very much for that.

The second thing I wanted to touch on, I know one of the other Senators mentioned the H1N1 virus, but being that I am from the third biggest hog-producing State in the country, just for you to clarify that this, in fact, you cannot catch it from eating bacon or any pork products would be helpful.

Secretary NAPOLITANO. Senator, that is exactly right, and I have tried to have a ham and cheese sandwich every day last week to make that point.

Senator KLOBUCHAR. That is very nice. Well, I am going to serve bacon at our Minnesota Morning where we invite all our constituents tomorrow morning just to make the point. So, of course, you are welcome to join us.

Secretary NAPOLITANO. Thank you.

Senator KLOBUCHAR. The second thing is just as it looks like we may be out of the woods—we are not certain—with this virus, but there is always—I keep hearing how when they look back at history that some of these viruses come back in the fall or at other times. Could you talk about the preparations being made in case that happens?

Secretary NAPOLITANO. Yes, Senator. With respect to the current outbreak, we are in what I call a state of "active caution," but we have been able, for example, the CDC, based on the medical evidence it now has, to ratchet back school closure guidance, that sort of thing.

However, we know that this very well could come back in the fall, and it could come back in a more virulent form. We will know better over the course of the summer because we may be able to find some things about what happens in the Southern Hemisphere during their flu season. So that will help inform decisions.

But we are not standing down any of the planning efforts, and although I think what happened over the past week, 10 days worked well, we also saw areas that we need to make more robust where things can be improved, where planning needs to be more thorough. We are going to work at that over the summer.

One concern I shared earlier with the Committee is that an awful lot of this is dependent on State and local capacity, public health officials, you know, those sorts of things, and with their budget situations, a lot of that capacity has been diminished right now. So plans that were written 2 or 3 years ago may not match what their actual resources are. I think we have to recognize that and adjust accordingly.

Senator KLOBUCHAR. Very good. I also wanted to mention I did some work when I first came in, too much work, on problems with passports, and this was about 2½ years ago. I am a brand-new Senator. We have all these idealistic young people in our State office, and literally, we had to have two people full-time helping people with their honeymoons, basically, because the previous administration had gotten so far behind on the passports so that people who had legally applied for their passports were not able to get them. I think we had—I just checked-—1,500 cases in a few months in 2007. I will report we saved 17 honeymoons and lost one.

I know there have been improvements, but that continues to be a concern. And Minnesotans cross the border to Canada all the time, so a more specific question would be what is going on with the Western Hemisphere Travel Initiative. You know, we have people that go back and forth to take ballroom dancing, and it is a big concern on the border that that go as smoothly as possible.

Secretary NAPOLITANO. Thank you, Senator. It is my intent that it go as smoothly as possible. We have been engaged in a pretty aggressive public relations campaign. We are working actually with Canada on that—television, radio. We have distributed 6 million-plus tear sheets at the border telling people that in June of this year, WHTI is actually going to happen. The State Department has—in the wake of what happened several years ago where they got that terrible backlog, they have staffed up to be able to process passports, and so we are really doing everything we can humanly think of to do to make sure that WHTI implementation goes as smoothly as possible.

That being said, I think there is a culture change that is happening, and that is more difficult to predict, because people have been used to going back and forth along that border pretty easily as if really it were not a real border. And with WHTI, it really becomes a much more formal designation as a border.

And so we will try to ease that transition, but I think it is fair to say that that is a big change for that area of the country.

Senator KLOBUCHAR. Exactly. Last, I got a little bit involved in the TSA watchlist issue because we have—I guess we have a lot of people named Johnson, I do not know, but a lot of people with common names in Minnesota. So we had people that were wrongly identified, put on the watchlist, and we were working with the previous administration last summer on this. And I know the Secure Flight Program is now being implemented, and I wondered if you could comment about what has happened with that, if you believe there is going to be some reduction in these misidentifications or what you think the best way to proceed with this is.

Secretary NAPOLITANO. Yes, Senator, and I can think of nothing more frustrating than being put on a watchlist and not being able to get off, when there is no reason for you to be on the list to begin with except your name.

So we have worked to make more efficient the process by which someone gets removed from a watchlist, but, yes, you are right, the implementation of Secure Flight will help us really mitigate that problem moving forward. I do not think we can totally eliminate it, but I think we can mitigate it.

Senator KLOBUCHAR. And the idea is to move it off of the airlines more and to have it be with TSA?

Secretary NAPOLITANO. That is correct.

Senator KLOBUCHAR. Thank you.

Chairman LEAHY. Thank you.

On the WHTI, for those of that are northern border States, this is still a major question, and we will work with you to ease it. Certainly even in my State you have so many families where part of the family -I mean, they live a mile apart or 2 miles apart, but they are in different countries, and they are just used to going back and forth. It becomes very difficult when you tell an 85-year-old Grandpere or Grandmere they are going to have to get a passport to go and see their grandchildren. It is difficult. And the names, that is—I mean, you have seen all the horror stories, a 1-year-old child, the parents could not fly with him because the name is on a watchlist, and they bought the tickets, cannot fly, they have lost their tickets, they have got to go get a passport to prove this 1-year-old child is not a 45-year-old person on the watchlist. You know, at some point there has to be some flexibility for people just to be reasonable.

I remember when Ted Kennedy, who was a member of this Committee, was stopped a dozen times—or 8 or 9 times, anyway, on a flight he had been taking forever to Boston because he was on a watchlist. President Bush actually called him and apologized, and he said, "Well, I appreciate that, but I do not want an apology. I just want to be able to get on the airplane." These are things where there has got to be some ability to think it through.

Anyway, Senator Feingold has not had his first round, so we will go to Senator Feingold, and then Senator Sessions.

Senator FEINGOLD. Thank you, Mr. Chairman.

Madam Secretary, welcome. You touched on this issue to some extent in your answer to Senator Klobuchar, but I would like to elaborate. The 2009 emergency supplemental bill drafted in the

House reportedly includes over $1.5 billion for HHS and CDC to combat pandemic flu, including money for vaccines, and $350 million to aid State and local public officials.

The GAO has reported that a lack of State and local public health professionals is actually a significant obstacle to any response to a pandemic, and this may become more of an issue as the recession further constrains the various States' budgets, as you well know.

In your view, are we allocating the appropriate level of pandemic resources to the State and local level, especially when you consider that vaccines may not always be available in time and we need State and local assistance to track the spread of a virus, disperse vaccines, and treat those who are already infected?

Secretary NAPOLITANO. Senator, I think the $1.5 billion that the President requested was a good figure to lean forward with. I do not know that any decisions have been made about how specifically that would be allocated, say, between HHS and State and locals. I think that process now we can begin to undertake in light of what we have learned with this initial outbreak.

Senator FEINGOLD. Okay. Switching to another topic, in February of last year, the Washington Post reported that customs agents had been searching the cell phones and laptops of U.S. citizens and international business travelers coming across the border and then copying the contents. And I asked then-DHS Secretary Michael Chertoff about this issue when he appeared before this Committee a little over a year ago, and a few months later I held a separate hearing on this issue in the Constitution Subcommittee.

DHS' answers to my questions and its public statements on its practices and policies in this area were often confusing and even contradictory. In September, I then introduced a bill, the Travelers' Privacy Protection Act, to require that border agents actually have a reasonable suspicion of wrongdoing before they search laptops and other electronic devices.

Madam Secretary, the current policy has caused a great deal of consternation not only among members of certain minority groups who believe they are singled out for heightened screening when they return from trips overseas, but I actually get a lot of comments of great concern from business travelers in general. In fact, testimony at the hearing I held indicated that some companies feel compelled to give their employees who travel overseas a special laptop that has been wiped clean of any confidential information because they do not want Government agents looking at and potentially making copies of it when the business traveler returns.

Do you agree with me that the current DHS policy raises legitimate privacy concerns? And what steps are you taking to review and revise the policy?

Secretary NAPOLITANO. Yes, I think clarification is needed here. And we have put together a team within the Department of Homeland Security to issue pretty firm guidance and protocol for how you conduct a laptop search.

That being said, I would say, Senator, that in the course of the very few laptop searches that actually have been done—and it has been a very small number that actually have been conducted—they

have found some fairly significant criminal activity on some laptops.

But moving forward, we are a global society, people going from country to country all the time. They are crossing the border. They need to take their laptops to do business. We need to have a better policy that takes into account some of those IP concerns, some of the privacy concerns. That is what we are drafting now.

Senator FEINGOLD. Well, Madam Secretary, I do not have any doubt that if you search laptops indiscriminately, you are going to find some good stuff. But that is not the way we do business in this country, and I know you understand that, but I have held off reintroducing my bill because I wanted to give the new Administration a chance to revisit this policy, but I cannot just wait forever. So I am wondering how soon I can expect your review to be completed and a revised policy to be put in place.

Secretary NAPOLITANO. We are working on it right now, Senator.

Senator FEINGOLD. And when do you think it will be done?

Secretary NAPOLITANO. Senator, if I give you a timeframe and do not meet it, you will be unhappy with me. But let me suggest within the next 45 days.

Senator FEINGOLD. All right. Well, I appreciate that and I understand it cannot be precise. I appreciate your willingness to say that.

On a related and somewhat broader point, I wanted to bring to your attention two reports issued this past month by civil rights organizations. The Asian Law Caucus and the Stanford Law Immigrants Rights Clinic published a study entitled, "Returning Home: How U.S. Government Practices Undermine Civil Rights at Our Nation's Doorstep." And Muslim advocates released, "Unreasonable Intrusions Investigating the Politics, Faith, and Finances of Americans Returning Home."

The personal stories in these reports of American citizens being repeatedly detained and questioned for hours at a time, having their possessions taken from them, missing flights, and having to pay for stays in cities away from home are troubling. A progress report that DHS issued on April 29th indicated that you have sent the DHS Office of Civil Rights and Civil Liberties to meet with leaders of the Muslim, Arab, and Somali communities in seven major cities. I am sure the reports from those meetings will yield similar stories.

Will you direct your staff to review these reports and get back to me with your response to the recommendations that these organizations have made for changes in DHS policies?

Secretary NAPOLITANO. Yes.

Senator FEINGOLD. I thank you, and I thank the Chair.

Chairman LEAHY. I like these lengthy answers.

[Laughter.]

Chairman LEAHY. It makes life a lot easier up here.

Senator Sessions.

Senator SESSIONS. Thank you. Mr. Chairman, I think while I was out, you made reference to comprehensive immigration reform. The need to fix our immigration system is something I support.

Let me just share with you my personal view. I think it is an accurate political analysis and reality. The American people, cor-

rectly, are dubious of a plan that gives lawfulness now to people who came in illegally, without confidence that the legal system is going to work in the future and we are not going to be back in the same situation just a few years from now and, in fact, that amnesty or that status that we provide for those who entered unlawfully, it becomes a magnet or a message abroad.

There has been some progress, even under President Bush's administration, to see. I think the numbers show a decline in illegal immigration into the country. We are on the right track. So that is why I am encouraging you to say and do things that make this trend continue, because as a manager, a concept I learned during the surge-in-crime years of the 1960's and 1970's, when the crime starts going down and your agents are going up, then you have a certain leverage and ability you did not have when you had a low number of agents and a surging number.

So the numbers are going down. This puts you in a position to execute some policies that will work, and I want to ask you about one of them. And I think when the American people realize that the broken pipe is being fixed and we are not just mopping up the water but we are fixing the leak, we can have a far better discussion about how to deal fairly and humanely with people who have been here a long time.

Looking at Operation Streamline—and this relates back to my previous questions about whether it is a crime to enter the country, and I think you—I know you know that it is a misdemeanor on your first entry and a felony on the second. In five different border sectors, I think those in Arizona, all of them, maybe all of your sectors——

Secretary NAPOLITANO. It is both the Tucson and Yuma sectors, yes, sir.

Senator SESSIONS. OK, both Tucson and Yuma. And Yuma pre-Streamline—and streamlining is where those who have been apprehended are not just taken back to the border and sent home that same day, that they are held for at least a few days and they are required to plead guilty to a misdemeanor, and then they go home. For several reasons, they have told me, this is working better than they imagined that it would. In Yuma, in 2006 there were 117,000 apprehensions. That gives some picture of the scale of what we are doing. In 2008, that had dropped to 8,000, a 93-percent decrease. I am sure there have been barriers and other things, but the prosecutions, according to anecdotal evidence I have gotten, have told people that, well, the United States has changed their policy, it is no longer an open border, they are really serious about this. When you just take them back and say come try again next week, that is not a good message.

So you have a responsibility to send the clarity of message not only to the United States but to the world who might be interested in coming illegally.

At Laredo, the numbers in 2007 were 56,000 arrests after partial implementation of Operation Streamline. In 2008, the next year, they had dropped to 43,000, a 23-percent decrease. In Del Rio, pre-Streamline there were 68,000 arrests. When Streamline had been fully implemented, in 2008 a 70-percent decrease.

Are you familiar with this program? Have you been briefed on it? And are you committed to continuing it where it is in existence? And will you expand it?

Secretary NAPOLITANO. Senator, I am very familiar with Streamline, and as you note, your first-time cross is a misdemeanor, and what Streamline does is the historical practice in these border districts has been not to use the judiciary, the Article III courts for the misdemeanors, and to handle these as departs, as civil matters. And so what Streamline did was change that decision and say we are at least going to pursue the misdemeanor there.

At the same time that Streamline was happening, other things were happening. The fences were going in or other vehicle structures. More Border Patrol agents were being placed on the ground. The National Guard had been called up. That was my suggestion, but the National Guard was being placed in these sectors.

Senator SESSIONS. Right.

Secretary NAPOLITANO. So that all happened together, and then, of course, you had the economy change, and that had an effect on overall immigration numbers in Streamline and non-Streamline jurisdictions as well.

However, I believe that these kinds of strategies that send an enforcement message are very useful, and they need to be sustained. And I want to get to the point implicit in your question, which is we need to keep these efforts up even as numbers are going down. We need to sustain them over time. And one area that is outside my lane but is in this Committee's lane is the impact on the court systems in that part of the country when you adopt these strategies, because you are talking thousands of people, literally, that now get funneled into Article III courts in very sparsely populated border districts and marshal's offices that have to help with transportation and detention and all the rest.

We are trying to provide support at least on the marshal's side, but the courts themselves are very stressed by this.

Senator SESSIONS. But I would note that when you have a 70-percent decrease from the peak of the commencement of enforcement and those numbers continue to drop each year, the stress has been high on the courts and the prosecutors, but it is moving in the right direction. They actually have fewer cases, and I think they have been provided some additional resources to handle the challenge.

Do you think—you sound like you do favor those programs. Will you consider expanding it?

Secretary NAPOLITANO. Yes, I favor them, implemented in the right way and when they are producing results that you can measure. And we will be looking at other strategies in other places as well.

Senator SESSIONS. Well, you could follow through on these programs and do some other initiatives and be able to preside over real improvement, I think, in the lawfulness of our immigration system. And I think that is your challenge. I think that is what the American people would like to see you do.

Secretary NAPOLITANO. I think the President has asked me to make sure that we have strong and vigorous enforcement of our Nation's immigration laws.

Senator SESSIONS. And we will be looking at those numbers, the best numbers we can get, and I think the American people will hold you accountable for progress. And I think we can have some.

Secretary NAPOLITANO. Thank you, sir.

Chairman LEAHY. Thank you, Senator Sessions. And, again, I welcome you here in your new role on the Judiciary Committee.

Madam Secretary, you and I have known each other for years. You were your usual unflappable and highly qualified self here. I think that this has been a very difficult time in the United States, but a lot of the issues have come before you, and I think you have done not just yourself and the President but the country great credit with the way you have handled it. Your appearances on the various television shows, the various media, have been—I know in my State—reassuring to a lot of people across the political spectrum. And I think that is a very important role that you carry, and I think that it has been reassuring because they know behind what you are saying is an extraordinarily competent person.

So I thank you very much, and we will stand in recess.

Secretary NAPOLITANO. Thank you, Mr. Chairman.

[Whereupon, at 11:55 a.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Post-Hearing Questions for the Record
Submitted to the Honorable Janet Napolitano

"Oversight of the Department of Homeland Security"
May 6, 2009, 10:00 AM

Senate Judiciary Committee

Committee Question Number: 29

Topic: RWVP

Question: Secretary Napolitano, The Special Immigrant Non-Minister portion of the Religious Worker Visa Program (RWVP) became law in 1990. Originally enacted with a sunset provision, it has bipartisan support in Congress and has been reauthorized six times since then. As you know, without congressional action, this important program is set to expire on September 30, 2009.

Under this program, up to 5,000 visas each year are available for religious workers employed by a broad range of religious denominations and organizations. Religious communities that participate in the program have found these special visas vital to carrying out their work.

A special category for non-minister religious workers is necessary because religious organizations face obstacles in using traditional employment immigration categories, which historically have not fit their unique situations. The religious community has long supported extending the Non-Minister Special Immigrant Religious Worker Program permanently. A permanent extension would remove uncertainty from year-to-year and allow religious organizations, religious denominations, and the communities that they serve to plan for the visas¿ use without fear of the disruptions that come as the program edges close to expiration.

A previous extension of the RWVP required the Department of Homeland Security Inspector General to complete a study by March 6, 2009, on the effectiveness of newly issued regulations (issued November 21, 2008) in eliminating or reducing fraud in special immigrant non-minister religious worker petitions.

It is my understanding that the report has been completed, but it has not yet been released. Therefore, I ask that you provide us with a copy of the report immediately, so that we can ensure that any recommendations contained in the report are considered, and so we can act quickly to achieve a reauthorization of this program well in advance of the sunset date in September.

Answer: The Office of Inspector General has completed its field work and expects to issue its report within 30 days.

56800.001

Question#:	1
Topic:	planning with DoD
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: Section 1815 of the 2008 defense authorization legislation required the Secretary of the Department of Defense to consult with you and determine the military-unique capabilities that the Department of Defense should provide in order to support civil authorities in an incident of national significance or a catastrophic incident. In response to written questions I submitted after his appearance before the Judiciary Committee on April 2, 2008, Secretary Chertoff stated me that there are several processes in place to coordinate DOD and DHS planning. Has DOD has provided you with a list of military-unique capabilities, and is it your understanding that that list will be regularly updated?

Response:
The Department of Defense (DOD) has been provided military unique support to domestic law enforcement agencies since 1989; in addition to the baseline of support, the Department of Homeland Security (DHS) and DOD continue to collaborate on a number of efforts that inform the potential military unique requirements issue. The scope of DHS/DOD collaboration includes:

Coordination – DHS and the Federal Emergency Management Agency (FEMA) maintain close working relations with the Office of the Secretary of Defense and the Joint Staff. These close working relations are critical to facilitating coordination and mutual cooperation in preparing for and responding to all types of disasters.

Planning – DOD assigned a full-time representative to the DHS Incident Management Planning Team (IMPT). DHS established the IMPT as a permanent interagency planning element within the National Operations Center. The IMPT supports a unified interagency planning effort for incidents requiring a coordinated national response and develops strategic guidance, concepts, and plans for both actual and potential domestic incidents. The team is currently developing plans to support the 15 National Planning Scenarios. DOD's full-time representative to the IMPT enables DOD to more fully synchronize and integrate its planning and response activities with those of DHS/FEMA. Additionally, as part of the transformation of its logistics activities, DHS/FEMA has forged a strong relationship with the Defense Logistics Agency and, as another example of close planning, established a new initiative known as the "National Logistics Coordination Forum," which includes the U.S. Northern Command (USNORTHCOM) and other major DOD components.

56800.002

Question#:	1
Topic:	planning with DoD
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Pre-Scripted Mission Assignments (PSMAs) – As required by section 653(c) of the Post-Katrina Emergency Management Reform Act of 2006 (Title VI of Public Law 109-295), DHS/FEMA, in coordination with DOD and other Federal agencies, has developed pre-scripted mission assignments to "expedite the provision of assistance" under the National Response Framework (NRF) and to describe DOD resources or capabilities routinely called upon during responses to disasters. Currently, there are 23 PSMAs in place that include DOD components covering response activities such as transportation, communications, airlift, medical, patient evacuation, aerial imagery, and mass care. 41 PSMAs have been developed with the U.S. Army Corps of Engineers—the coordinator/primary agency for NRF Emergency Support Function #3, Public Works and Engineering—specifically for the provision of water, ice, housing, roofing and an additional four address the activation of assets. Six PSMAs have been developed with the National Geo-Spatial Intelligence Agency to address geospatial intelligence and other support activities.

Disaster Response Coordination and Support – Coordination of disaster planning and response activities between military components and DHS/FEMA continues to be strengthened. For example, there are routine daily conference calls between the National Response Coordination Center Watch (NRCC/Watch), National Guard Bureau Joint Operations Center (NGB/JOC), and USNORTHCOM's Command Center to review current operational activities and share information. During disaster response operations, DOD components deploy additional staff to support NRCC response operations.

In support of each of these areas, DHS and DOD continue to build a robust interface with strategically placed liaison officers in each department. At the Departmental level, DHS hosts DOD, NGB and USNORTHCOM liaison officers in the Office of the Military Advisor to the Secretary, which promotes understanding, collaboration, and sharing of information between DOD and DHS. FEMA also hosts two DOD liaison officers at FEMA Headquarters and Defense Coordinating Officers (DCOs) in each of the ten FEMA Regions. Additionally, FEMA has a full-time liaison officer at NORTHCOM in Colorado Springs, Colorado. Ultimately, the Departments have an active and cooperative effort supporting the identification of military capabilities that may be required by DHS in support of civil authorities during major incidents.

Although DOD can best describe the process for updating the capabilities, our understanding is that this process is ongoing. With the assistance of the IMPST, PSMA, disaster response coordination, and liaison exchanges, DOD and DHS will continue to work together to support the identification of needed capabilities.

56800.003

Question#:	2
Topic:	planning
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: Sec. Chertoff also stated in his responses to written questions last year that the Incident Management Planning Team was developing plans to support the 15 National Planning Scenarios and that the Defense Department has assigned a full-time representative to the planning team. Could you please outline the status, in your view, of the Defense Department's efforts to synchronize its planning with DHS/FEMA planning? As far as you are aware, does the Defense Department have plans in place to provide all of the unique military requirements for the 15 National Planning Scenarios?

Response:

The Department of Defense (DOD) and the Department of Homeland Security (DHS) planning efforts are synchronized at multiple levels. This integration includes, but is not limited to:

- DHS Senior Liaison Officers (LNOs) are assigned to DOD (Assistant Secretary of Defense/Homeland Defense – ASD/HD) and US Northern Command (NORTHCOM); and FEMA LNO to NORTHCOM.
- Bi-monthly planning teleconferences occur between USNORTHCOM, FEMA and the Incident Management Planning Team (IMPT) during steady state planning; during crisis action planning, teleconferences occur at least every 24 hours.
- DOD Senior Liaison Officers[1] (LNOs) are assigned to Department Headquarters (e.g., Military Advisor, IMPT, Information & Analysis, etc) and FEMA (e.g. DOD LNO and NORTHCOM LNO).
- DOD (NORTHCOM) has designated a Defense Coordinating Officer (DCO) for each of the ten FEMA Regions.[2]
- Planning teams are routinely exchanged between DOD and DHS to support conferences, planning activities, and review planning products.

DOD/DHS synchronization efforts extend throughout the entire interagency to facilitate a 'whole of government' approach in leveraging the full capabilities of the entire US government. DOD provided pivotal assistance in the design of the Integrated Planning

[1] DOD LNOs include individuals from Office of Secretary of Defense (OSD), National Guard Bureau (NGB), US Army Corps of Engineers (USACE) and various Combatant Commands.
[2] The DCO acts as the liaison between FEMA and NORTHCOM, relaying capabilities available to FEMA and coordinating movement of active-duty personnel and equipment to assist as required.

56800.004

Question#:	2
Topic:	planning
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

System (IPS), including specific technical process and procedure guidance on integration and synchronization. The current status of DOD/DHS planning synchronization provides a replicable model for the entire Federal government. Additionally, DOD strategically contributed to the development of plans for the Homeland Security Council's (HSC) 15 National Planning Scenarios (NPS).[3]

[3] The HSC Deputies compressed the 15 NPS into eight Scenario Sets in October of 2007. Consistent with the requirement of Homeland Security Presidential Directive-8, Annex I, DOD has supporting plans for every interagency concept of operations plan developed by the IMPT to address the 15 National Planning Scenarios.

56800.005

Question#:	3
Topic:	response forces-DoD
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: I understand that the Defense Department is currently planning to establish three Consequence Management Response Forces by the end of 2010. These units will be charged with supporting civil authorities in the event of a chemical, biological, radiological or nuclear explosive incident. I understand that the first unit is operational and has conducted table top exercises but that previous exercises have not always included representatives from DHS or FEMA. How do you plan to coordinate training for DHS personnel and members of these response forces?

Response:

The Department of Defense (DOD) provides key support to DHS/FEMA in overall planning, coordination, and integration of Defense Support to Civil Authorities (DSCA) with local, State, and Federal agencies. In domestic disaster response, DOD focuses on providing homeland defense, supporting civil operations, and cooperating in theater security activities designed to protect the American people. The DOD's primary response element for Chemical, Biological, Radiological, Nuclear, and High Explosive (CBRNE) events is initially through the CBRNE Consequence Management Response Forces (CCMRFs) that use the USNORTHCOM command and control structure. FEMA's partnership with DOD continues to evolve and the disaster response support DOD and its components bring to FEMA is critical to enhancing our comprehensive preparedness, protection, response, recovery, and mitigation capabilities when dealing with all types of natural and man-made hazards. Through the use of liaison officers, video teleconferences, telephonic conference calls, and various meetings, DOD, DHS, and FEMA have become partners in the communication, planning, and exercise of the DSCA mission. There are multiple facets of ongoing coordination and cooperation ongoing between FEMA and DOD, and its components routinely coordinate with USNORTHCOM to facilitate a greater understanding of needs and capabilities for CBRNE incidents.

USNORTHCOM conducted two sessions of the DSCA Executive Seminars in March 2009 in Washington, DC; both sessions included participation by senior officials from DHS. These seminars provided attendees with training in the full range of available DOD civil support, including CCMRFs.

DHS/FEMA will continue to plan, train, and exercise with DOD and its components, including training and exercising CCMRF activities where possible.

56800.006

Question#:	4
Topic:	laptops
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: During our discussion of the Department's policy concerning searches of laptops and other electronic devices at the border, you said the following: That being said, I would say, Senator, that in the course of the very few laptop searches that actually have been done -- and it is been a very small number that actually have been conducted -- they have found some fairly significant criminal activity on some laptops.

What was the basis for your statement that "only a very small number have actually been conducted"? Please provide any statistics you have on the number of searches conducted and the results of those searches. When did DHS begin keeping records of these searches?

Response: DHS started reporting and tracking electronic searches on July 31, 2008. Examinations of electronic media occur in an extremely small percentage of border crossings and are dealt with by U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) in close collaboration. From October 1, 2008, to May 5, 2009, CBP encountered more than 144.4 million travelers at U.S. ports of entry. Of these travelers, approximately 3.1 million, or 2.2% of the total travelers, were referred to secondary inspection; however, only 696, or 0.022% of those referred to secondary inspection and 0.00048% of all travelers, were subject to laptop computer inspection. Further, only 23 of these 696 travelers were subject to in-depth laptop searches

Question: Please provide a narrative explanation of all examples of laptop searches yielding evidence of what you believe to be "fairly significant criminal activity." Please specify in which of these cases you believe the CBP would not have been able to meet the reasonable suspicion standard set out in the Travelers Privacy Protection Act that I introduced in the last Congress (S. 3612).

Laptop searches can be an important tool in detecting people engaged in illicit activity. During the course of recent searches, Officers have discovered video clips of improvised explosive devices being detonated, martyrdom videos, and other violent Jihadist materials. In addition, these searches have uncovered significant amounts of child pornography, including a home movie of children being sexually assaulted.

The following examples are representative of ICE investigations that are predicated upon searches of electronic media at the border:

56800.007

Question#:	4
Topic:	laptops
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

CHILD PORNOGRAPHY

- On July 3, 2006, an adult male traveler entered the Calexico, CA, West Port of Entry from the Republic of Mexico, driving a van. Accompanying the adult male traveler in the van was a five year-old boy. As the adult male traveler was unable to establish immigration and familial status of the child, CBP officers referred the adult male traveler and the child to secondary examination. During the secondary exam, a video camera and videotapes were discovered in the van. One of the videotapes contained footage of a prepubescent child being molested by a man who appeared to be the adult male traveler. The adult male traveler was subsequently arrested for violation of 18 U.S.C. § 2422(a): Transportation and Possession of Child Pornography.

- On June 12, 2007, an adult male traveler arrived at San Francisco International Airport from Manila, Philippines. The adult male traveler told CBP that he had traveled to San Isidro, Philippines to visit an orphanage named "House of Joy" (HOJ). The adult male traveler said that he entertained the orphans at HOJ through his work as a clown. CBP reviewed images on the adult male traveler's digital media devices. During a secondary inspection by CBP officers, in excess of sixty (60) images of exposed minor Filipino boys were discovered saved on the adult male traveler's laptop computer and digital camera memory card. After further review at the ICE Computer Forensic Lab, it was determined that the images of the exposed minor Filipino boys on the adult male traveler's laptop and digital camera constituted images of child pornography.

- On December 17, 2006, an adult male traveler made entry into the United States along with his father. During a secondary examination of the subjects and their vehicle, a laptop computer was observed in the back seat. An initial search of the laptop revealed thousands of images, several of which were pornographic in nature. When questioned, the adult male traveler claimed ownership of the laptop and its contents. When asked if the laptop contained images of child pornography, the adult male traveler stated that he was not sure because he had not been able to check his temporary internet files. At that point, a further examination of the laptop was conducted, which resulted in the discovery of Internet Explorer files with explicit titles referencing minors. After discovering those file titles, CBP terminated the examination of the laptop computer and notified the reporting agent of the findings.

- On September 12, 2008, an adult male traveler entered the United States at the Detroit Metropolitan Airport aboard Northwest Airlines flight # 12. The adult

56800.008

Question#:	4
Topic:	laptops
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

male traveler was selected by CBP for a secondary enforcement exam. During the examination, CBP discovered an image on the adult male traveler's laptop computer of a young female (approximately 5 yrs old) blindfolded and posing in the nude. ICE also found an image of the same child engaged in sexual acts with an adult male on the laptop.

FINANCIAL

- On November 14, 2006, CBP at the Detroit Metropolitan Airport (DMA) received information from Dutch Authorities that an identified adult male traveler would be flying into DMA from Amsterdam aboard Northwest Flight 93 with a large amount of cash. When the identified adult male traveler arrived at DMA, CBP explained the US currency reporting requirements to the identified adult male traveler who declared $18,000. A search of the identified adult male traveler's luggage yielded a total of $78,883. CBP and ICE also inspected the Toshiba laptop that was found in the identified adult male traveler's possession, which contained files regarding cyanide and nuclear materials. The U.S. Attorney's Office accepted prosecution, and the identified adult male traveler was arrested for violations of 31 U.S.C. §§ 5316, 5332 (regarding currency reporting requirements and bulk cash smuggling into the United States).

NATIONAL SECURITY

- On September 26, 2006, an adult male traveler arrived at Minneapolis-St. Paul International Airport on Northwest Flight #41 from Amsterdam. During a search of his luggage, CBP discovered a computer memory stick containing a document stating the adult male traveler's opposition to the war in Iraq. The adult male traveler voluntarily logged in to his laptop computer at the request of CBP. A review of the laptop computer revealed numerous video files depicting Improvised Explosive Devices (IED) being detonated against U.S. soldiers and vehicles, U.S. Marines under mortar attack, martyrdom training, and a possible terrorist training camp. In addition, a search of an external hard drive found in the adult male traveler's luggage revealed additional IED video files and a document written in Arabic containing the term "H_2O_2", the molecular compound for Hydrogen Peroxide. A complete translation of the document revealed instructions for producing concentrated Hydrogen Peroxide, a highly volatile explosive element that was associated with the Summer 2006 London plot to destroy airliners over the Atlantic Ocean using liquid explosives.

  On this same date, ICE agents assigned to the Joint Terrorism Task Force (JTTF) arrested an adult male traveler for providing false statements to government officials (CBP) in violation of 18 U.S.C. § 1001. Additionally, ICE agents seized

56800.009

Question#:	4
Topic:	laptops
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

the adult male traveler's laptop computer, external hard drive, and computer memory stick. A subsequent search of these items by ICE Digital Forensics Agents (DFA) revealed additional files related to IEDs, bomb-making, and terrorist recruitment. Additionally, ICE DFAs discovered that the adult male traveler had located an Iraqi Special Weapons Facility and a coalition airbase utilizing Google Earth software. The traveler subsequently plead guilty to violating 18, U.S.C. § 1546—Fraud and misuse of visas, permits, and other documents.

Question: Please specify in which of these cases you believe the CBP would not have been able to meet the reasonable suspicion standard set out in the Travelers Privacy Protection Act that I introduced in the last Congress (S. 3612).

Response:
The answer to this question is answered best by referencing an actual CBP case involving the following facts:

A 43 year old male, traveling alone, arrived in the U.S. at Los Angeles International Airport from the Philippines (a known destination for sex tourism). When asked, the traveler also appeared to be nervous and fidgety, and was evasive during questioning. When asked, the traveler advised CBP that he had been on vacation for three weeks visiting friends in the Philippines, but he did not volunteer detail about those friends. When asked about his employment, the traveler replied that he was unemployed but had worked as a math teacher and a night auditor; however, he could not recall the name of the company where he worked as a night auditor. The CBP officer decided to search the traveler's luggage, revealing a laptop computer, an external hard drive, a memory stick, and a few CDs. In the course of this luggage search, the traveler appeared fixated on the laptop and CDs. Based on the above facts and circumstances the CBP officer decided to search the traveler's laptop computer and asked him to turn it on. Once turned on the CBP officer saw two folders displayed called "Kodak Pictures" and "Kodak Memories." The Officer opened one of the folders and subsequently found numerous photographs of what the Officer believed to be child pornography.

According to the U.S. District Court Judge that heard this case, the CBP officer did not have reasonable suspicion to search the traveler's laptop. Therefore, the laptop search was found unconstitutional and the evidence suppressed at the traveler's criminal trial on various criminal charges involving child pornography. See United States v. Arnold, 454 F.Supp.2d 999 (C.D. Cal. 2006).

56800.010

Question#:	4
Topic:	laptops
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

The Government appealed the district court's decision, and the U.S. Court of Appeals for the Ninth Circuit reversed the lower court's ruling, specifically concluding that reasonable suspicion was not a requirement for this type of border search. See United States v. Arnold, 533 F.3d 1003 (9th Cir. 2008).

While CBP officers may be confronted with a variety of factors that lead them to suspect that a traveler may be hiding contraband on their laptop or other device, a court may take a narrow view of whether those factors rose to the legal standard of reasonable suspicion.

Question#:	5
Topic:	ESTA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Secretary Napolitano, during the hearing you testified that the Department of Homeland Security (DHS) is still working to implement the electronic travel authorization system (ESTA). The Bush Administration certified that ESTA was ¿fully operational¿ last year, which is a prerequisite to admitting new visa waiver program countries into the program with visa refusal rates over 3%.

Do you believe that ESTA is in fact "fully operational"? Can you provide this Committee with a report on ESTA implementation and include details on its effectiveness and initial performance experience?

Response: On October 15, 2008, the Electronic System for Travel Authorization (ESTA) attained fully operational status, meeting the statutory description of the system in the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, i.e., that it is "fully automated," "electronic," and capable of collecting "such biographical and other information as the Secretary. . . determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States." INA section 217(h)(3)(A). As part of the implementation of the ESTA program, DHS augmented the Advance Passenger Information System (APIS)/APIS Quick Query (AQQ) system to provide carriers with the ESTA status of the individual traveling. This ESTA messaging capability has been operational since October 15, 2008, and DHS continues to work with the individual carriers on interactive ESTA messaging based on their respective compliance paths for AQQ and Secure Flight. To date, 25 carriers are capable of receiving interactive ESTA messaging, and numerous others are in various stages of testing and deployment for their AQQ and interactive ESTA messaging capabilities.

DHS began accepting voluntary applications through the ESTA website on August 1, 2008. In addition to making the ESTA website available in 21 languages, DHS, in partnership with the State Department, has conducted an extensive ESTA outreach campaign with the governments of participating Visa Waiver Program (VWP) countries, the travel industry, and most importantly, the VWP travelers. Since January 12, 2009, travelers have been required to obtain an approved authorization via ESTA prior to boarding a carrier to travel to the United States under the VWP. More than 6.8 million applications have been processed to date and the overall approval rate has closely aligned

56800.012

Question#:	5
Topic:	ESTA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

with our expectations based on pre-implementation simulations and historical VWP refusal rates at our ports of entry.

ESTA has transformed the VWP from a program that addresses security threats on a country-by-country basis into one that can screen for risks on a passenger-by-passenger basis. The ESTA screening process is providing tangible security benefits, such as identifying over 370 matches to the Terrorist Screening Database maintained by the Terrorist Screening Center and more than 1,700 lost or stolen passport matches. The advance information DHS receives through the ESTA application and screening process also enables strategic targeting of subjects that are of interest to U.S. law enforcement by informing DHS of prospective travel plans. In March 2009, for example, U.S. Customs and Border Protection (CBP) personnel conducting ESTA application screening identified a citizen of the United Kingdom as the subject of an active arrest warrant out of New Jersey for conspiracy to distribute cocaine. U.S. Immigration and Customs Enforcement (ICE) had been actively seeking the applicant's extradition to the United States. After coordinating with ICE and the Immigration Advisory Program personnel in London, CBP purposefully approved the subject's ESTA application, and which enabled him to travel from London to Miami where he was arrested upon arrival.

This example, combined with the volume of applications denied due to watch list and lost or stolen passport matches, demonstrate some of the early success that DHS is having in utilizing ESTA as an enhancement to the security of the VWP. While we continue to coordinate with the carriers on their programming requirements to further augment ESTA, we are maintaining a period of "informed compliance" for both travelers and air carriers. If otherwise admissible, VWP travelers who do not have an approved travel authorization obtained via ESTA will be admitted at primary inspection. CBP officers are providing a written advisory of the ESTA requirement (a tear sheet) and are verbally advising VWP passengers of the ESTA requirement. In the future, passengers may be refused admission for failure to obtain a travel authorization via ESTA and air carriers may be subject to fines for transporting passengers who are ineligible for participation in the VWP.

Since ESTA became a requirement for VWP travel, the average daily ESTA compliance rate for all VWP travelers has been nearly 87 percent. Given the significant change ESTA represented for VWP travelers from the 27 countries that participated in the program prior to its expansion in November 2008, the compliance rates are notable. DHS continues to evaluate compliance rates and is currently assessing options for transitioning from informed to enforced compliance. We will also continue our ongoing outreach endeavors to ensure that VWP travelers and the travel industry maintain awareness of the ESTA requirement. DHS will move forward with enforcement carefully, recognizing the need to enhance security while facilitating legitimate trade and travel.

56800.013

Question#:	6
Topic:	land ports
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Ms. Secretary, you also identified the large security gap stemming from DHS's inability to track who is entering and exiting at our land ports of entry and that the technology is not yet available to do so. Given the security risks, we should not let the perfect be the enemy of the good when the tracking at our land ports could be achieved through a simple piece of paper.

What do you believe is needed to implement a workable system to track all those who enter and exit at all of our land ports? How soon can this be achieved?

Response: The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program completed a land exit planning document – a preliminary analysis of the opportunities and challenges of implementing biometric exit processes at the land border. Any decision that bears on whether or not to implement land border exit will require significant policy reviews, technology considerations, impacts to operations, and possible modifications to physical environments.

The land exit environment is complex. Each year, there are more than 300 million crossings at 170 port locations (including seasonal and other ports that are not open year-round) across 7,500 miles of land border with Canada and Mexico. At present, the majority of land ports do not have the physical infrastructure, staff, or resources that would be required to support a biometric entry or exit. The physical characteristics of individual land ports vary widely, and there are no standard facility layouts from which to model a single solution for collecting biometric and biographic entry and exit records.

Beyond accommodating the differences among port facilities, the land exit solution must resolve constraints posed by varying modes of transportation (e.g., pedestrian, bus, and train), traveler type and volume, surrounding areas and natural environments, and security requirements. Furthermore, multiple entities, including local border communities, national or more general interest groups, Federal agencies, and foreign governments, must be involved in solution planning and development. Based on the unique characteristics of each location, a solution may consist of one or more technologies, as well as operational process changes.

Pivotal to this discussion is whether the United States should build its own land border exit infrastructure or should look to fund or otherwise partner with Canadian and Mexican efforts to enhance their entry infrastructures. Data on visitors entering into Canada or Mexico from the United States could be shared with DHS for the purpose of recording the exits of in-scope travelers. The feasibility of sharing information among the participating countries requires further exploration of policy, privacy, and data protection issues; cost; and agreements with the Department of State.

56800.014

Question#:	7
Topic:	biometric exit
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Secretary Napolitano, in your testimony you stated that a critical component to protecting our nation and its people is a fully operational biometric exit system at U.S. ports of entry.

Can you provide an update on the progress made towards a functioning biometric exit system?

Do you anticipate completion of the biometric air exit system by its statutory deadline of June 30, 2009? If not, when do you expect that it will be completed?

Response: DHS is required by Congress in the Fiscal Year 2009 DHS Appropriations Bill to test and report on the collection of biometrics from most non-U.S. citizens exiting the United States in two different settings at airports – (1) air carrier collection of biometrics from passengers already subject to US-VISIT entry requirements; and (2) collection by U.S. Customs and Border Protection (CBP) of biometrics from those same passengers at the boarding gate – before funding will be released to support the deployment of biometric exit procedures at airports and seaports.

Currently, no airline has agreed to participate in a pilot. Consequently, US-VISIT is conducting two pilots – one by CBP at the boarding gate at the Detroit Metropolitan Wayne County Airport, and one by the Transportation Security Administration (TSA) at a security checkpoint at the Hartsfield-Jackson Atlanta International Airport – for a 30-45-day period which began on May 28, 2009. DHS will evaluate the exit pilot programs, including the methods and processes for collecting the required information, after the pilots are completed.

Based on the results of the pilots and comments to the Notice of Proposed Rulemaking that was published in the Federal Register on April 24, 2008, US-VISIT plans to publish a final rule, tentatively scheduled for March 2010 that will direct the implementation of new biometric exit procedures for most non-U.S. citizens departing the United States via airports and seaports. Implementation of the air/sea biometric exit system at all locations is expected to commence in 2010. Approximately $28 million remains available from prior-year dollars (for testing technological solutions in the air/sea environments with pilot scenarios) to fund the Air/Sea Biometric Exit project.

56800.015

Question#:	8
Topic:	H-2A
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: During the hearing, Senator Durbin spoke about his recent conversation with a student who moved to the United States at the age of two and how the DREAM Act would provide the student with a pathway to citizenship for the student and other hard-working, law abiding immigrants who get a college education or serve in our military. Mr. Durbin discussed his work over the past 8 years on behalf of the DREAM Act and asked for your opinion of the Act. Ms. Secretary, you responded that as a Governor of a border state you supported the DREAM Act and that you continue to support the DREAM Act today. A few seasons ago, one of the most compelling stories I heard was from Toni Scully, a pear farmer in Lake County, California. Ms. Scully experienced a devastating harvest in the fall of 2006, leaving much of her pear crop rotting on the ground, because she could not find workers in time for the harvest.

As you know, I have been working on the AgJOBS bill for many years to provide farmers with the stable, legal workforce they deserve by reforming the broken H-2A seasonal worker program and offering a pathway to citizenship for hard-working, law-abiding immigrants already employed on American farms. Ms. Secretary, what is your opinion on the AgJOBS bill?

RESPONSE: The AgJOBS is a far reaching bill involving significant changes for agricultural workers in the United States. It proposes to make a number of changes to the temporary agricultural program as well as creating an avenue for many agricultural workers and their families to remain in the United States on a permanent basis with a path to citizenship. Assisting the agricultural industry in the United States and providing protections to agricultural workers both domestic and foreign are critical components of immigration reform, and we look forward to working with Congress on legislation addressing these needs and providing adequate resources for implementation.

Question#:	9
Topic:	guns
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: The Department of Justice's FY 2010 budget, removes the restriction that limits access to federal crime gun trace data to state and local police investigations of individual crimes. That restriction prevents them from investigating the broader criminal networks that may be behind those crimes. The new language would enable state and local law enforcement to have full access to ATF's gun trace database to analyze gun trafficking patterns. However, the White House budget leaves unchanged the Tiahrt Amendment restrictions that prevent ATF from requiring gun dealers to conduct inventory inspections to detect lost and stolen guns and a requirement that the FBI destroy gun background check records within 24 hours. Both restrictions inhibit law enforcement's ability to detect illegal straw purchases and guns lost and stolen from gun stores - two of the major methods criminals use to get guns, according to the ATF:

Can you describe what role the Department of Homeland Security plays in tracking guns that are going across the southwest border into Mexico?

Response: U.S. Customs and Border Protection tracks data about the lawful export of firearms. CBP has the authority under the Arms Export Control Act to enforce the International Traffic in Arms Regulations (ITAR) and under the Export Administration Act and the International Emergency Economic Powers Act to enforce the Export Administration Regulations (EAR). For permanent exports, and temporary exports under the ITAR and EAR, CBP verifies and tracks that the exports of firearms are authorized by license from the Department of State's Directorate of Defense Trade Controls (DDTC), the Department of Commerce's Bureau of Industry and Security (BIS), or the export qualifies for an appropriate license exception. Shipments against Department of State licenses are decremented for quantity and value against the license. The license contains information on the exporter, consignee, the make, model and caliber of the firearms, plus any ammunition being authorized for export and the timeframe in which exports may be made. CBP is authorized to interdict and seize weapons being either illegally exported or in violation of the license issued by DDTC or BIS.

ICE has authority to enforce and investigate violations of law governing the illegal export, and temporary import, of arms, ammunition and implements of war pursuant to the Arms Export Control Act (AECA) and its implementing regulations, the International Traffic in Arms Regulations (ITAR). ICE is the only investigative agency expressly designated to investigate violations of the export provisions of AECA, as specifically

56800.017

Question#:	9
Topic:	guns
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

designated in 22 C.F.R. § 127.4 of the ITAR[4]. Through the Export Administration Act (EAA) and its implementing regulations, the Export Administration Regulations (EAR), ICE has the authority to investigate, detain, or seize any export or attempted export of dual-use commodities. In certain circumstances, ICE may also employ enforcement of sanctions against terrorist or drug trafficking organizations under the International Emergency Economic Powers Act (IEEPA) and its implementing regulations.

ICE also uses 18 U.S.C. § 554, smuggling of goods from the United States, to address export violations. This statute makes it a crime to fraudulently or knowingly export any article contrary to law or regulation. In addition, ICE enforces 18 U.S.C. § 545, smuggling goods into the United States, against those who smuggle or import merchandise into the U.S. contrary to law. In FY 2008, ICE launched Operation Armas Cruzadas, a multi-agency initiative targeting the illegal export of firearms from the United States to Mexico. For FY 2009 (as of June 8, 2009) Operations Armas Cruzadas has resulted in the seizure of 1,272 weapons, $5,366,742 in currency, and 290 criminal arrests.

In addition, the 2009 National Southwest Border Counternarcotics Strategy, released on June 5, includes a chapter providing recommendation to improve interagency effort to combat weapons smuggling. The Strategy, which was co-led by DHS Office of Counternarcotics Enforcement and DOJ Office of the Deputy Attorney General, recognizes the close link between firearms trafficking and drug trafficking on the Southwest Border and the increasingly powerful and sophisticated weaponry used by drug trafficking organizations.

Question:

In addition, how does DHS coordinate with the ATF at the border?

Response: ICE and ATF conduct joint investigations through joint task forces and other coordinated efforts, such as Border Enforcement Security Taskforces (BEST), the High Intensity Drug Trafficking Area (HIDTA), Joint Terrorism Task Forces (JTTF) and the Organized Crime Drug Enforcement Task Force (OCDETF).

[4] The Federal Bureau of Investigation has authority to investigate potential violations of the Arms Export Control Act, the Export Administration Act, the International Emergency Economic Powers Act, and the Trading with the Enemy Act only where the potential violation relates to any foreign counterintelligence matter. See 28 C.F.R. § 0.85.

56800.018

Question#:	9
Topic:	guns
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

ATF has agents assigned to five BEST offices: Laredo, Texas; San Diego, California; the Rio Grande Valley, Texas; Buffalo, New York; and Los Angeles/Long Beach, California. The remaining BEST offices coordinate with ATF on a case-by-case basis. Through active participation on the BEST teams, ICE and ATF work in coordination with other Federal, State, local, tribal and foreign law enforcement partners to achieve our shared investigative goals.

In addition, ICE and ATF both use the Treasury Enforcement Communications System (TECS) to query any records that would identify an ongoing investigation by either agency. TECS also identifies the precise point of contact for an ongoing investigation, which allows for further coordination between the agencies.

Further, ICE has established the Border Violence Intelligence Cell (BVIC) at the El Paso Intelligence Center (EPIC) to share operational and tactical intelligence with the ATF Gun Desk. ICE participates in ATF's e-Trace initiative and submits firearms for tracing through ATF.

Question:

Do you believe that these restrictions on gun information should be continued, particularly when it is the responsibility of State, local and tribal law enforcement to secure their communities near the southwest border?

Response: As this question relates to ATF and FBI restrictions, the Department of Homeland Security recommends this question be directed to the Department of Justice.

Question:

What is the role of State, local and tribal law enforcement in securing the border and how have DHS and DOJ coordinated with law enforcement to provide the necessary information and intelligence they need to stem the tide of illegal guns moving across the border?

Response: State, local, and tribal law enforcement agencies play an integral role in assisting ICE and DHS in securing the border. These agencies have first-hand knowledge of criminal activity, including the illegal movement of weapons, occurring within their local jurisdictions and have years of expertise working within their local communities. ICE seeks to capitalize on this knowledge and expertise by making state and local law enforcement integral partners in the Border Enforcement Security Taskforces (BESTs) in

56800.019

Question#:	9
Topic:	guns
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

order to utilize their respective skill sets to stem the flow of transnational criminal activity, including the illegal movement of guns across the border. The BESTs are uniquely positioned to address border vulnerabilities as well as the underlying crimes that fuel border violence, which include weapons smuggling across the U.S./Mexico border. Each BEST concentrates on the prevalent threat in its geographic area, including cross-border violence; weapons smuggling and trafficking; contraband smuggling; money laundering and bulk cash smuggling; human smuggling and trafficking; transnational criminal gangs; and tunnel detection.

A key element to the success of the BEST program and other task forces is the strategic co-location of all participating members; this ensures that the necessary information and intelligence is provided to all of its members, U.S. Department of Justice (DOJ), and State, local, and tribal law enforcement. The benefits of co-locating resources include real-time streamlined information sharing, immediate de-confliction of investigations by law enforcement, creation of a force multiplier by bringing different law enforcement authorities and expertise to bear against targeted organizations, a "think tank" environment, increased success rates for enforcement operations, and pooled intelligence and technical resources. The BESTs combine the resources and authorities from Federal (including DOJ agencies), State, local, and foreign law enforcement entities into co-located task forces that target transnational criminal organizations that seek to exploit weaknesses on and along U.S. borders.

Additionally, the Homeland Security Intelligence Support Team (HIST) and State and Local Fusion Centers (SLFCs) utilize their respective skill sets to stem the flow of transnational criminal activity, including the illegal movement of guns across the border. The HIST, managed by the Office of Intelligence and Analysis (I&A), first stood up in January 2008. This dedicated I&A unit, located at the El Paso Intelligence Center (EPIC), enhances intelligence support to Federal, State, and local border operators along the Southwest Border by providing these regional entities with timely tactical collection and requirements management; reporting; intelligence analysis production; information sharing; and intelligence integration related to border vulnerabilities and underlying crimes that fuel cross-border violence. The HIST not only pushes intelligence to border operators, but it also works with DHS component partners and DEA to provide them and national level analysts with daily coverage of significant border threat activity. This HIST also serves as a key mechanism to share information with State, local, and tribal law enforcement entities with Southwest Border jurisdictions. I&A also manages the Department program to support SLFCs, which was mandated by Sec. 511 of the 9/11 Act (PL 110-53). I&A deploys intelligence officers and classified and unclassified systems to SLFCs' geographic areas to assist in the tracking of cross-border violence, weapons smuggling and trafficking, contraband smuggling, money laundering and bulk cash smuggling, human smuggling and trafficking, transnational criminal gangs, and tunnel detection.

56800.020

Question#:	10
Topic:	287g
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In 1996, I authored the delegation of authority program, also known as 287g. State and local law enforcement have been screaming since then about the need for the feds to help them control their illegal alien population. We don't have enough ICE agents to be in every community. That's why this program is a useful tool. But, it's underutilized. The intent of this law was to educate local law enforcement about immigration law and allow them to enforce it, with a focus on illegal aliens, not just criminal ones.

Will your Department continue to use the 287g program?

Response:

Yes, the Department will continue the 287(g) program, which has been a successful tool in enforcing immigration law. To date, ICE has 66 active Memoranda of Agreements in 23 states. Since 2006, these programs have identified 111,880 individuals who appear to be removable. ICE is continually working to ensure that proper management and oversight of the program. ICE has developed a new MOA template, currently in the final stages of review, which will detail specific responsibilities for both the law enforcement agency (LEA) and ICE while clearly outlining ICE expectations and priorities.

Question:

Will your Department consider agreements that are not just based in jails?

Response:

Yes. There are two models for the 287(g) program, a Task Force Officer (TFO) model and a Detention model. The Department will continue to enter into agreements for both jail models and task force models. When utilizing the task force model, ICE will continue to ensure TFOs work under the close supervision of ICE Office of Investigations personnel. These TFOs will focus on criminal activity involving, but not limited to, gangs, identity and benefit fraud, and human and narcotics smuggling and trafficking. TFOs assist ICE with both long-term investigations and large-scale enforcement activities.

Question:

56800.021

Question#:	10
Topic:	287g
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Will your Department use the 287g program to focus on all illegal aliens, not just criminal aliens?

Response:

The 287(g) program focuses on criminal aliens as well as aliens present in the United States in violation of law. When finalized, the revised Memorandum of Agreement (MOA) template, will ensure that our 287(g) program partners operate consistently with ICE's risk-based approach by focusing resources on aliens who pose a threat to public safety or a danger to the community. To that end, ICE has outlined three priority levels for arrest and detention for our state and local partners to follow. These levels prioritize cases by the seriousness of the criminal history. ICE will track and utilize this information to ensure that the law enforcement agencies are fully utilizing the 287(g) program.

Question#:	11
Topic:	E-Verify
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Before leaving office, former President Bush issued a rule that would require federal contractors to use E-Verify. We've heard too many stories of contractors, especially at Department of Defense worksites, that employ illegal aliens. There's a real security concern here. But, there's a tool at every agency's disposal to verify their workforce, and they should be demanding participation by those they do business with. I'm not happy that this rule has been postponed until June 30.

Will the Obama Administration implement this rule so that those who do business with the taxpayers are using the system and abiding by the law?

Do you, Madame Secretary, support a permanent extension of the E-Verify program? IF legislation to overhaul our immigration policies is not accomplished this year, will you support a simple extension of E-Verify since its set to expire in September?

RESPONSE: This new rule requires federal contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term as well as the employment eligibility of federal contractors' current employees who perform contract services for the federal government within the United States.

DHS supports E-Verify reauthorization. The E-Verify program has been extremely successful over the past few years; employer participation has expanded to over 126,000 nationwide, and an average of 1,000 new employers enroll each week. The Department will support E-Verify and will reach out to and register as many employers as possible. The E-Verify program also has substantially increased its accuracy and efficiency, with over 97 percent of all queries now verified automatically as "Employment Authorized." The majority of remaining queries that are not automatically verified indicate that the program is doing what it is intended to do: detect unauthorized workers trying to work unlawfully. The Department strongly believes E-Verify to be an essential tool for enforcing the immigration laws of the United States by preventing and deterring the hiring of persons who are not authorized to work in the United States, thereby protecting employment opportunities for the Nation's lawful workforce.

56800.023

Question#:	12
Topic:	worksite enforcement
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Last week, ICE issued a new document entitled "Worksite Enforcement Strategy' which detailed a shift in the Administration's strategy for worksite enforcement. The document stated that: "Of the more than 6,000 arrests related to worksite enforcement in 2008, only 135 were of employers." The guidelines imply that ICE will go after more employers, as if the previous Administration did not.

Will your department focus more on employers rather than individuals illegally present in the United States? If so, how do you plan to do this given that most worksite enforcement actions involve hundreds of workers for a handful of managers?

Will the department pursue large and small businesses alike, or will you only focus on smaller businesses where the ratio of workers to managers is somewhat equivalent?

Response:

On April 30, 2009, ICE announced a new worksite enforcement strategy targeting employers who knowingly hire illegal labor, while continuing to arrest and remove illegal workers. Pursuant to this strategy, ICE will do the following: 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to hire illegal workers; and 3) encourage all employers to take advantage of well-crafted compliance tools and best practices. Arresting and removing unlawful workers alone is not sufficient to deter employers from knowingly hiring unauthorized workers.

In addition to prosecuting employers and seizing illegal profits through asset forfeiture, ICE will use more tools to penalize, deter, and improve compliance among employers. In particular, ICE will increase Form I-9 inspections and pursue civil fines. Further, ICE will continue to refer businesses that have violated the employment provisions of the Immigration and Nationality Act to the ICE debarring official (the head of contracting activity) for possible debarment. Finally, ICE will continue to provide training, tools, and information to assist employers who want to comply with the law and maintain a legal workforce.

Worksite enforcement operations will continue, administrative arrests of illegal aliens will occur, and ICE will conduct worksite enforcement investigations of any business—regardless of size—that is suspected of knowingly employing unauthorized workers.

56800.024

Question#:	13
Topic:	Washington State case
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Twenty- seven illegal aliens were detained as a result of the February worksite enforcement action of Yamato Engine Specialists in Bellingham, Washington. According to media reports, these illegal aliens were released from custody after a brief detention and given authorization to work in the United States.

Who was involved in the decision to provide these illegal aliens with work authorization? Who ultimately made the final decision to provide these illegal aliens with work authorization?

The unemployment rate in Bellingham, WA is 8.8% which is higher than the national average. Is it appropriate for DHS to give work authorization to illegal aliens when millions of Americans are having trouble finding work and the city these illegal aliens in has an unemployment rate higher than the national average?

Response:

ICE seeks to use every tool available to gather and preserve evidence for prosecution of those persons who violate our laws. In many instances, unauthorized aliens encountered during the course of an ICE investigation provide information and evidence critical to prosecution of the defendants. ICE may seek to retain these individuals in the U.S. using authority granted by law and regulation.

In the Bellingham case, ICE, in consultation with the United States Attorney's Office in Seattle, Washington, placed the illegal aliens originally arrested on February 24, 2009, into an immigration status known as Deferred Action in order to further a Federal criminal investigation. Deferred Action is a temporary, discretionary measure granted by ICE regarding removal proceedings, but does not convey permanent right to remain in the United States. The Immigration and Nationality Act's implementing regulations permit aliens placed into deferred action status to apply for work authorization.

56800.025

Question#:	14
Topic:	identity theft
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Just this week the Supreme Court issued an opinion in a case interpreting the federal statute outlawing aggravated identity theft. That case, Flores-Figueroa v. United States, was a unanimous 9-0 opinion that found that the Government must show that the defendant knew that the means of identification at issue belonged to another person and wasn't just a random false identification, in order to sustain a conviction. This decision appears to deal a major blow to prosecutors seeking to put criminal illegal aliens behind bars.

Do you believe this decision will have an impact on the enforcement actions taken by ICE against individuals who use false identification, including fraudulently obtained Social Security Numbers? Why or why not?

Response:

The impact will vary depending upon the facts of each individual case. As charging decisions are made by the Department of Justice, ICE will work with its U.S. Attorney's Offices to ensure identity theft and immigration fraud crimes are investigated and prosecuted.

Question:

Do you support criminal penalties for individuals that have stolen the identity of another individual though the fraudulent use of Social Security numbers? Why or why not?

Response:

I support criminal penalties for individuals that have stolen the identity (including Social Security numbers) of another person. This type of fraud poses a threat to national security and public safety.

Question:

56800.026

Question#:	14
Topic:	identity theft
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Do you believe that criminal sanctions are an effective tool that prosecutors should have available to them when an investigation uncovers the fraudulent use of actual Social Security numbers? Why or why not?

Response:

Criminal sanctions are an effective tool that prosecutors should have available to them when an investigation uncovers the fraudulent use of a Social Security number or any other means of identification. Whether done intentionally or through willful negligence, individuals who commit identity theft should be subject to criminal sanctions.

Question:

Do you think this decision will restrict the use of criminal charges against illegal aliens who claim they lacked knowledge that the false documents they used were those of a real individual? Why or why not?

Response:

The Flores-Figueroa decision impacted the government's ability to seek a mandatory two year sentencing enhancement; however, the government retains the ability to charge all other related statutes. For example, in certain cases rather than charging the individual with aggravated identity theft (18 U.S.C. §1028A), the government may charge fraud and misuse of visas, permits, and other documents (18 U.S.C. § 1546), which carries a possible sentence of up to 5 years.

Question:

Do you think the law should be changed to overturn or clarify the Flores-Figueroa decision? Would you support such an effort? Why or why not.

Response:

DHS is still in the process of assessing the impact on operations. As such, DHS is not yet able to propose alternatives or suggest legislative changes.

Question#:	15
Topic:	money laundering
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: When we met privately following your confirmation, you pledged to look into the outdated Memorandum of Understanding on money laundering investigations that is over 20 years old. We've seen the problems the GAO found with turf wars developing because of outdated MOUs with narcotics investigations and I don't want these other MOUs to cause future problems. The money laundering MOU needs to be updated and negotiated with DOJ, FBI, DHS, IRS, and Secret Service-all the entities that currently play a role in investigating criminal money laundering.

Can you give me an update as to where you are in the process of updating this MOU?

How long do you think it would take to complete this process?

Response:

The Memorandum of Understanding among the Secretary of the Treasury, the Attorney General, and the Postmaster General regarding money laundering investigations, dated July 31, 1990, will remain in effect until terminated by the Attorney General, the Secretary of the Treasury or the Postmaster General upon thirty days written notice, according Section XII of the MOU. It is the understanding of the U.S. Secret Service, that to date this MOU has not been terminated. ICE continues to work with the above entities to address and work on changes to the MOU.

56800.028

Question#:	16
Topic:	firearms
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: ATF and ICE have overlapping programs to combat illegal weapons smuggling to Mexico. This is causing an increased burden on federally license firearms dealers and may lead to duplication of efforts and impact law abiding citizens and firearms dealers. Cooperation needs to be coordinated between ATF and ICE to ensure that lawful citizens exercising their Second Amendment rights are not impacted.

Question:

What are you doing to ensure that cooperation between the ATF and ICE is not resulting in unfair treatment of law abiding gun owners?

Response:

ATF is responsible for the regulation of the firearms industry, including the inspection of Federal Firearms Licensees (FFLs) records and inventory, as well as investigating the possession, licensing, transporting, shipping and receipt of firearms in interstate commerce. ICE is the investigative agency responsible for investigating illegal export and cross-border smuggling of arms, ammunition, and other munitions. ICE's investigations focus on those individuals who illegally export, or conspire to export, United States munitions, including firearms. The statutes that govern these export violations contain very specific elements relating to the international transfer of munitions that do not affect domestic gun owners.

Question:

Will you pledge to work on updating the outdated MOU between ATF and ICE on weapons investigations? Why or why not?

Response:

Yes. ICE and ATF have met numerous times over the past eight months to negotiate the MOU. A draft document is currently being reviewed by senior management in both agencies, and we are working to have a finalized MOU complete in the near future.

56800.029

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Increasing threats from computer viruses and network intrusions that compromise computer networks in both the public and private sectors pose a serious threat to our Nation's infrastructure. The recently released 2010 budget proposed by President Obama lists $177 million for DHS to expand its role in overseeing cybersecurity. As you know, DHS efforts in this area are routed through the Office of Cybersecurity and Communications (CS&C). DHS states that CS&C "is responsible for enhancing the security, resiliency, and reliability of the nation's cyber and communications infrastructure. CS&C actively engages the public and private sectors, as well as international partners, to prepare for, prevent, and respond to catastrophic incidents that could degrade or overwhelm these strategic assets."

How much of the current DHS budget is devoted to cyber security programs?

Response:

Per Public Law 110-329, Congress appropriated $313,500,000 for FY 2009 to the Department of Homeland Security (DHS) National Cyber Security Division (NCSD). This appropriation includes Comprehensive National Cybersecurity Initiative (CNCI) funding of $254,924,000 and non-CNCI funding of $58,576,000 to support critical aspects of securing cyber space and contributing to the protection our critical cyber infrastructure and key resources. The DHS Science and Technology (S&T) was appropriated $30,652,250 in FY 2009 to pursue future technologies research and development (R&D) in cybersecurity.

The CNCI funding supports programs under the United States Computer Emergency Readiness Team Operations (US-CERT), Federal Network Security (FNS), Network Security Deployment (NSD), Global Cyber Security Management (GCSM), and Plans, Programs, Policies and Administration (PPPA) branches. The non-CNCI funding supports programs under the FNS, GCSM, Critical Infrastructure Cyber Protection and Awareness (CICPA), and PPPA branches. Key activities include: software assurance; standards and best practices; training and education; outreach and awareness; control system security; cyber exercises; and critical infrastructure protection of cyber security.

In FY 2010, the President's Budget request is $400,654,000 for the DHS NCSD. This request includes CNCI funding of $333,629,000 and non-CNCI funding of $67,025,000 to support critical aspects of securing cyber space and contributing to the protection our

56800.030

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

critical cyber infrastructure and key resources. The President's Budget request also includes $37,224,075 in FY 2010 for cybersecurity R&D in the Science and Technology Directorate.

Question:

As of May 2009, is DHS capable to mitigate or prevent cyber attacks on government networks?

Response:

US-CERT works with Federal departments and agencies including Department of Defense, Intelligence community, Information Technology Information Sharing and Analysis Center (IT-SAC), Communications ISAC, security and software vendors, and/or the international community to identify vulnerabilities and provide recommended mitigation strategies to execute on their respective networks. US-CERT also develops and deploys, in accordance with its procedures and based on circumstance, signatures for use on the Einstein 2 system to detect known malicious activity. Other services provided by US-CERT include: developing of Critical Information Infrastructure Notices that detail the specifics of a vulnerability, threat, or incident; providing applicable mitigation actions to the Critical Infrastructure owner and operator community; updating the National Cyber Alert System on the US-CERT website (https://www.us-cert.gov/) with applicable information on how users (both public and private) could protect their systems and, as in the Conficker incident, detect variants of the virus on their system.

Question:

What about coordination to protect private networks?

Response:

DHS has enhanced its ability to coordinate with private sector partners in support of protecting critical information infrastructure. Working with US-CERT, NCSD's Critical Infrastructure Protection Cyber Security (CIP CS) program and Control Systems Security Program (CSSP) have partnered with members of critical infrastructure and key resources (CIKR) sectors to improve the support and services available to the private sector for securing its networks and industrial control systems. As the National Infrastructure Protection Plan (NIPP) Partnership Framework has matured, DHS has utilized NIPP and its system of sector-specific agencies (SSAs), government coordinating councils (GCCs),

56800.031

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

and sector coordinating councils (SCCs) to coordinate cybersecurity with the information technology (IT) sector and the other 17 CIKR sectors.

Under the information sharing protocols established in the NIPP, DHS Office of Intelligence and Analysis (I&A) also has a role in helping the private sector protect its computer networks. I&A indentifies, monitors, and evaluates cyber threats to Federal civilian government departments and agencies, State and local governments, and Homeland CIKR owners and operators in order to provide timely, accurate, and actionable intelligence that assists private sector owners and operators and Federal, State, and local tribal authorities in protecting and securing their cyber assets.

Partnerships under the NIPP are enhanced in a number of ways. For example, NIPP partners participate in working groups such as the Cross-Sector Cyber Security Working Group (CSCSWG), which is a principal forum for the regular exchange of information on common cybersecurity challenges and issues (e.g., control systems security, Internet reliance, and software assurance); further, the CSCWG enhances the understanding across sectors of mutual dependencies and interdependencies. The CSCSWG was established under the Critical Infrastructure Partnership Advisory Council to further facilitate the identification of systemic cyber risks and mitigation strategies for the Nation's CIKR sectors. The CSCSWG, co-chaired by NCSD and private sector partners, meets on a monthly basis and includes public and private sector security partners with cybersecurity expertise from each of the 18 CIKR sectors and their SSAs. Much of the policy coordination to protect private networks occurs under the NIPP Partnership Framework and uses the CSCSWG to assemble cross-sector expertise. NCSD used the CSCSWG to inform the recommendations contained in CNCI's report, *Improving Protection of Privately Owned Critical Network Infrastructure Through Public-Private Partnerships* (Project 12). The CSCSWG is also used to assist in implementation of the Project 12 report recommendations.

Since control systems present a special and significant risk because of the potential for a cyber attack to result in physical consequences, CSSP works closely with other NCSD branches and programs to focus on this subset of cyber matters. These include the control systems used to monitor, control, and safeguard processes within sectors such as Energy, Chemical, Banking and Finance, Dams, Water Treatment Systems, Postal and Shipping, Information Technology Telecommunications, and Commercial Nuclear Reactors. CSSP provides guidance and reduces risk to critical infrastructure and key resources control systems by:

56800.032

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

- Operating the Industrial Control Systems Cyber Emergency Response Team (ICS-CERT) in coordination with US-CERT for control systems related incidents and cybersecurity situational awareness activities.
- Maintaining and operating a technical support center to conduct vulnerability assessments of control systems used within CIKR.
- Creating informational products and self-assessment tools to assist owners, operators, and other CIKR stakeholders in reducing risk to and operating secure controls systems.
- Leading the Industrial Control Systems Joint Working Group (ICSJWG) to foster information sharing and coordination of activities and programs across government and private sector stakeholders involved in protecting CIKR.
- Providing detailed training (lecture-based and hands-on) to various stakeholders (federal partners, asset owners and operators, the vendor community, international, etc.) on control systems cyber security threats, vulnerabilities, and consequences, including methods for mitigating security risks and improving their cyber security posture.
- Leading the development of roadmaps for securing control systems across the various CIKR sectors.

Additional information on the Control Systems Security Program is available at http://www.us-cert.gov/control_systems/.

In addition, NCSD's Cyber Exercise Program (CEP) plans and conducts exercises to address the nation's cyber security readiness, protection, and incident response capabilities by developing, designing, and conducting cyber exercises and workshops with the full spectrum of cyber security partners, including Federal, State, local, and international government as well as the private sector. The biennial Cyber Storm exercise series is CEP's capstone activity. The Cyber Storm series includes planning and execution participation from a large number of private CIKR sectors and constituents. These exercises offer an opportunity to test and validate operating procedures and information sharing relationships that have cultivated throughout the other activities NCSD sponsors. Cyber Storm III is set to be executed September 2010. Coordination with private sector entities across various critical sectors is currently taking place.

Question:

Since you were confirmed, what progress has DHS made to working with private industry to permit DHS to have a greater role in securing and protecting non-government cyberspace?

56800.033

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response:

Since January 2009, DHS has continued its work with the private sector to improve the protection of private sector critical information infrastructure. DHS released the updated NIPP Partnership Framework, which includes enhanced cybersecurity sections. Under the NIPP Partnership Framework, NCSD continues to work with the IT sector as it implements the IT SSP. NCSD also assists the other 17 CIKR sectors in the development and implementation of the cyber aspects of their SSPs. Furthermore, NCSD reviews and provides cybersecurity input to the Sector CIKR Protection Annual Reports. Working with the IT SCC, DHS developed the IT Sector Baseline Risk Assessment, which will be released following the completion of internal DHS review.

I&A produces finished intelligence products that are provided to private sector customers; provides briefings at private sector conferences; and actively engages with private sector customers in many NIPP framework working groups. The intelligence I&A provides to the private sector on the intent and capabilities of cyber threat actors is intended to educate, inform, and warn the private sector information network managers of potential and emerging cyber threats to critical network systems so they can appropriately adjust and apply their computer network defenses.

I&A provides cyber threat briefings on a regular basis to the private sector through the auspices of the Sector Coordinating Council. Recently, I&A provided a cyber threat briefing at the headquarters of the Nuclear Regulatory Commission to over 30 private sector representatives from the nuclear sector. In response to the recent news report regarding malware found in the computer networks of electric power suppliers, I&A participated in a teleconference with electric sector representatives from across the nation and gave a classified cyber threat briefing providing context to news reports to cleared representatives from the electric sector.

DHS continues to host monthly CSCSWG meetings. Two CSCSWG sub-groups are exploring cybersecurity metrics across CIKR sectors and incentives for increased cybersecurity within the private sector. These and other efforts were recommended by the Project 12 (P12) Report. Since January, DHS has continued to implement recommendations from that report. NCSD sponsors bi-directional information sharing pilot programs with three CIKR sectors. It is also working with the Department of Defense to explore sharing cybersecurity products developed for the Defense Industrial Base Sector with other CIKR sectors. To address another P12 Report recommendation, NCSD is working with Departmental, Federal, State, and local government partners to develop a plan for vetted, private-sector partners to have increased access to secure

56800.034

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

communications at government facilities geographically located in close proximity to the private-sector partners' places of business.

With respect to control systems, NCSD's CSSP is finalizing an overarching control systems security strategy, established to coordinate federal, state, and private sector initiatives, which will have two principal components: (1) the CIPAC-approved entity known as the ICSJWG; and (2) an expanded ICS-CERT.

The ICSJWG expands and formalizes directed control systems security coordination efforts with sponsorship from GCCs and SCCs. This forum includes the Department of Energy as well as other industry and government partners with an interest in control systems.

Question:

How does DHS currently coordinate with the DOD or DOJ to eliminate or minimize the duplication of efforts in regards cyber attacks to private industry?

Response:

Although DHS, DoD and DoJ work closely with each other, their assigned cybersecurity missions are largely distinct and complementary. DHS's core cybersecurity mission focuses on working with Federal Civil Executive Branch departments and agencies to secure their networks and information systems as well as coordinating activities focused on securing portions of the Nation's CIKR sectors. As discussed below, certain DHS components also play a law enforcement role in fighting cyber crime. DoD's mission focuses on securing the Nation's national security and military systems. As the Defense Industrial Base's (DIB) Sector-Specific Agency under the NIPP Partnership Framework, DoD is also responsible for working with DIB private sector partners on cyber and physical security matters. Two DHS components, the U.S. Secret Service and U.S. Immigration and Customs Enforcement, investigate computer fraud, identity fraud, and internet crimes that have a cross-border and international nexus.

NCSD serves as the national focal point for cybersecurity on behalf of the Department. It works with the private sector and Federal, State, local, tribal and international governments to assess and mitigate cyber risk and prepare for, prevent, and respond to cyber incidents. Coordination mechanisms are in place and used by DHS and its interagency partners to eliminate or minimize redundancies in pursuing these efforts with

56800.035

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

respect to CIKR sectors. These mechanisms include policy and planning frameworks as well as operational efforts.

Policy and Planning Coordination

One mechanism is the NIPP Partnership Framework. Under this framework, NCSD represents DHS as the IT SSA and as chair of the IT GCC. DoD, DoJ and other departments and agencies are also members of the IT GCC. NCSD, on behalf of the GCC, collaborates with the IT Sector Coordinating Council, which includes representatives from various IT sector organizations, and the IT sector's ISAC. Due to the cross-cutting nature of IT within the other CIKR sectors, NCSD and the IT GCC also provide cyber expertise, tools, training and support to the other 17 CIKR sectors in coordination with their SSAs. Additionally, NCSD supports their efforts to develop and implement the cyber components of their SSPs. NCSD reviews and provides feedback to the SSAs on each sector's SSP and Sector Critical Infrastructure and Key Resources Protection Annual Report (SAR) to enhance cyber planning and reporting. NCSD engages DoD, which is the SSA for the DIB sector, to enhance access to critical cybersecurity information. In addition, NCSD is working with DoD and DoJ to identify and leverage successes with the DIB sector that can be used to improve the security of other CIKR sectors.

A second mechanism is participation in the CSCSWG, which includes representatives from DoD, DoJ, the Intelligence Community, and many other Federal government agencies as members. In addition to its role as a forum for information exchange, the CSCSWG was tasked with developing and then implementing recommendations under the CNCI's Project 12 report, *Improving Protection of Privately Owned Critical Network Infrastructure Through Public-Private Partnerships*. DHS, with cooperation from government and industry partners within the CSCSWG, facilitates working groups on information sharing, cybersecurity incentives and cybersecurity metrics with the overall goal of improving the security and resilience of the nation's cyber assets, systems, networks and functions.

A third mechanism is the use of exercises to identify roles and responsibilities. NCSD elements participate in DoD-sponsored exercises. NCSD's CEP addresses the nation's cybersecurity readiness, protection, and incident response capabilities by developing, designing, and conducting cyber exercises and workshops with the full spectrum of cybersecurity partners, including DoD and DoJ and CIKR sector partners. CEP sponsors the Cyber Storm National Exercise series, provides cyber engagement and stakeholder coordination for other national level exercises, and provides assistance in connection with table top and smaller scale exercises with State and CIKR sector partners. Cyber Storm

56800.036

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

II, conducted in March 2008, included participation by 18 Federal agencies including DoD and DoJ. These agencies were closely involved in the full exercise life cycle of planning, execution and after-action reporting, and they integrated with the exercise's other Federal, regional, State, private sector, and international aspects. Cyber Storm III is tentatively scheduled for September 2010 and is expected to include broader and increased Federal agency and private sector involvement.

Operational Coordination

CS&C and NCSD maintain strong and positive relationships with DoD's U.S. Strategic Command, its Joint Task Force-Global Network Operations (JTF-GNO), the National Security Agency (NSA), DoJ and the Federal Bureau of Investigation. US-CERT holds regular calls with JTF-GNO, and NSA has provided a number of senior level detailees to CS&C and NCSD. These personnel assist in the execution of the CNCI and provide integral technical and operational expertise to DHS as it builds its capacity and capabilities. US-CERT also details personnel to the NSA. The FBI details a representative to US-CERT and DoJ's Computer Hacking and Intellectual Property Units are invited to attend the annual US-CERT-hosted GFIRST conference.

In the event of a cyber incident, DHS, DoD and DoJ co-chair the National Cyber Response Coordination Group (NCRCG), which convenes to advise senior government leadership regarding response options and to coordinate the response across Federal departments and agencies. US-CERT also maintains ongoing communications with DoD's U.S. Strategic Command and U.S. Northern Command regarding support in the event of a cyber incident.

Question:

Can you describe some of specific case successes that DHS has attained from participating in the FBI's Joint Cyber Task Force?

Response:

US-CERT has on-site liaisons from both JTF-GNO and DOJ's FBI. US-CERT also has a US-CERT liaison on site at JTF-GNO to aid with de-confliction of incidents. US-CERT holds a daily briefing with the liaisons on the latest cyber incidents, threats, and vulnerabilities that US-CERT is working for situational awareness. We also coordinate on a continual basis with our FBI liaison to determine if there are any open FBI cases on significant incidents US-CERT is working. US-CERT meets weekly with JTF-GNO and

56800.037

Question#:	17
Topic:	cybersecurity
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

monthly and as needed with the NCIJTF for classified situational awareness on cyber incidents, threats, vulnerabilities, and other pertinent information. US-CERT coordinates with NCIJTF on incidents affecting the ".gov" space as well as the Defense Information Base. More particularly, US-CERT frequently shares technical details on spearphishing campaigns targeting federal information systems, provides feedback on NCIJTF's daily products, and requests additional details from NCIJTF on their reporting when necessary. The continual coordination and feedback between and among these groups helps to de-conflict activities and maximize effectiveness of research and analysis activities. Also, US-CERT, as part of the CNCI, continues to improve coordination with the NCIJTF and FBI.

Question#:	18
Topic:	cyber plan
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The 2003 National Strategy to Secure Cyberspace states, "America's cyberspace links the United States to the rest of the world. Cyber attacks cross borders at light speed, and discerning the source of malicious activity is difficult." You recently stated that DHS, "will become, in effect, the non-DoD locus for cyber security. It makes sense to have a DoD focus and a non-DoD focus, and I think that's functionally where it's going."

How will DHS foster better relationships with Federal partners to quickly and effectively stop malicious attacks on our networks?

Response:

The Department of Homeland Security's (DHS's) National Cyber Security Division (NCSD) created the United States Computer Emergency Readiness Team (US¬CERT) in September 2003 to protect the Nation's Internet infrastructure by coordinating defensive measures and response actions to cyber attacks. US-CERT collaborates with Federal agencies, the private sector, the research community, State, local, and tribal governments, and international entities.

US-CERT has built strong relationships with Federal partners through a variety of programs and initiatives, such as the 24x7x365 Watch Center to which agencies report cybersecurity incidents, and the Government Forum of Incident Response and Security Teams (GFIRST) – a community of more than 50 incident response teams from various Federal, State, and local agencies working together.

US-CERT will continue to innovate and expand government partnerships to improve national cybersecurity. For instance, the Joint Agency Cyber Knowledge Exchange was developed as a series of ongoing meetings between US-CERT and agencies for the formal and informal exchange of cyber threat information and cyber defense-in-depth mitigation techniques at a classified level. US-CERT will also strengthen operational bonds further through the Einstein program, as sensors are deployed to an agency's Trusted Internet Connection, providing the capability for US-CERT to correlate malicious activity across the Federal government and coordinate responses with impacted agencies.

In addition, NCSD co-chairs the National Cyber Response Coordination Group (NCRCG), which is intended to act as an interagency mechanism for providing subject-matter expertise, recommendations, coordination, and strategic policy support to the Secretary of Homeland Security. The NCRCG is co-chaired by DHS, the Department of

56800.039

Question#:	18
Topic:	cyber plan
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Defense, and the Department of Justice. It includes representation from nearly 20 Federal agencies and entities, including from the Departments of Treasury, Energy, and Transportation, as well as the Central Intelligence Agency and the National Security Agency. The NCRCG is intended to provide the Secretary with an incident-driven mechanism for ensuring that strategic interagency decision-making accompanies the Federal Government's cohesive management of a cyber incident.

Question:

What is your Department's definition of cyber terrorism? Under your definition, is cyber terrorism a non-DoD or DoD cyberspace responsibility? Is DHS responsible for investigating cyber terrorist attacks?

Response:

The Homeland Security Act of 2002 (6 USC sec 101(15)) defines the term "terrorism" as meaning any activity that:

(A) Involves an act that—
  i. Is dangerous to human life or potentially destructive of critical infrastructure or key resources; and
  ii. Is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—
  i. to intimidate or coerce a civilian population;
  ii. to influence the policy of a government by intimidation or coercion; or
  iii. to affect the conduct of a government by mass destruction, assassination, or kidnapping.

The Act goes on to state in 6 U.S.C. sec 111(b)(1), that
The primary mission of the Department is to--

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States.

Both the Department of Homeland Security (DHS) and the Department of Defense (DoD), as well as other agencies, have responsibilities regarding cyberterrorism. DHS's

56800.040

Question#:	18
Topic:	cyber plan
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

cybersecurity mission focuses on securing the Federal Civil Executive Branch networks and information systems, coordinating activities focused on securing portions of the Nation's Critical Infrastructure and Key Resources sectors, and fighting cyber crime, whereas DoD's cybersecurity mission focuses on securing the Nation's national security systems. DHS is also responsible for partnering with private-sector owners of the Nation's critical infrastructure and State and local governments to improve the security of their networks. As the Department builds these capabilities and executes on strategies to build the ".gov" defense in 2010, DHS must also continue its collaboration and engagement with the private sector.

Two DHS components – the U.S. Secret Service and U.S. Immigration and Customs Enforcement – support the Department of Justice by investigating computer fraud, identity fraud, and Internet crimes that have a cross-border nexus. DoD investigates cyber-related incidents for the .mil domain.

56800.041

Question#:	19
Topic:	stored value cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: At a recent Judiciary Subcommittee hearing we heard testimony that drug cartels and criminals are using stored value cards to evade currency reporting requirements at our borders. They do this as part of schemes to launder illicit funds out of the country. I have previously introduced legislation to give law enforcement and prosecutors the tools they need to apprehend criminals who used stored value cards to further illegal activities. My legislation amended the requirements under 31 U.S.C. §5312 to include funds stored in some form of digital format. This amendment would make these stored value instruments subject to the reporting requirements set forth in 31 U.S.C. §§5316 and 5531.

What is your position on my proposal to amend the currency reporting requirement to permit ICE personnel at our borders to better stop the flow of ill-gotten funds?

There are numerous federal law enforcement agencies that investigative stored value cards crimes. The FBI, ICE and Secret Service all have investigate authority over these violations. What is DHS doing to identify and coordinate investigations at the federal level to ensure the arrest and prosecution of criminal organizations who stored value cards as part of their criminal enterprise?

Response:

Tools for halting the flow of illegal proceeds and preventing criminals from using their financial gains to advance their illegal activities are valuable to law enforcement. Depriving drug traffickers and other criminal organizations the use of stored value cards would be an important tool for law enforcement. On May 22, 2009, the President signed HR 627 (Public Law 111-24) into law, which among other things, includes language requiring the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, to issue final regulations within 270 days of enactment of the Act implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value devices, including stored value cards. The bill contemplates that the regulations may include reporting requirements pursuant to 31 U.S.C. § 5316. DHS is committed to working with the Department of the Treasury to formulate regulations for stored value devices. Until the regulations are implemented, stored value cards (SVCs) cannot be specifically targeted for investigation in the context of a violation of a reporting requirement. The movement of funds using these cards, however, can still be investigated as potential money laundering violations. These investigations are

56800.042

Question#:	19
Topic:	stored value cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

coordinated according to established investigative procedures. Intelligence gathered as a result of investigations where SVCs are utilized is regularly shared with inter-agency working groups that have been established to track SVC use; such intelligence is also shared through several international forums like the Financial Action Task Force (FATF), a forum through which law enforcement can share experiences with counterparts around the world. In addition, DHS is working with our federal partners, particularly in the Department of Justice, to promote seamless coordination and increased cooperation. Our efforts extend to coordinating financial investigations, which we look forward to continuing once regulations are promulgated.

Question#:	20
Topic:	law enforcement
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Mexico shares an equal burden on our Southern border in stopping the international flow of bulk cash, drugs, and weapons.

I understand Mexican Customs has implemented a program to intercept illegal guns and cash at one of their ports of entry. Is DHS directly collaborating with the Government of Mexico on any southbound initiatives? If so, have there been any successes?

Response:

The Government of Mexico (GOM) implemented a Passenger Vehicle Customs Control System (SIAVE) or "Aforos Project" in the port of Matamoros, Mexico in February 2009. The Aforos Project is a customs control mechanism that requires all inbound passenger vehicle traffic entering along its northern border with the US and its southern borders with Guatemala and Belize to pass through the technology. Under the Aforos, the vehicle is required to come to a complete stop after which the technologies weigh and scan the vehicle, capture the license plate information and a digital photograph of the driver. The Aforos then performs an analysis of the images and data using risk analysis tools. The goals of the Aforos Project include enhancing the targeting capabilities of customs as well as increasing interdictions of smuggling of firearms, drugs, and bulk cash. Mexico Customs plans to have the Aforos systems installed at all ports along its northern border with the United States by late 2009.

DHS is collaborating with the GOM: Customs and Border Protection is coordinating with Mexico Customs to align U.S. outbound operations with Mexico inbound operations in order to leverage resources and operational capabilities. The plans will also provide for communications coordination and guidance protocols to the respective Mexican and U.S. field locations along the border. Additionally, under the Merida Initiative, DHS-CBP plays a key role in supporting the Department of State (DOS) in implementing projects related to deploying non-intrusive inspection equipment (NII) and canines.

In addition, DHS will be working with the Government of Mexico to advance certain recommended actions included in the 2009 National Southwest Border Counternarcotics Strategy. The Strategy provides targeted actions to improve efforts to combat bulk cash and weapons smuggling. The Strategy also compliments the Meridia Initiative, as the United States supports Mexico's efforts and helps to strengthen law enforcement and judicial capacities in the region.

56800.044

Question#:	20
Topic:	law enforcement
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question:

Do you know how many inbound shipments the Mexican Government searches annually? Is it a significant number? Do you think the Government of Mexico can do more on their end to help stop the flow of illegal proceeds into their country?

How many additional federal agents have been assigned to the Southwest border in 2009? Please include agents from Immigration and Customs Enforcement, Customs and Border Protection, U.S. Coast Guard, and any other federal agents that were sent by the Department of Homeland Security.

Response:

Office of Border Patrol
As of May 9, 2009, the Office of Border Patrol (OBP) has shown an 8.59% increase of Border Patrol Agent personnel (FY09 - 16,769) assigned to the southwest border compared to the previous year (FY08 - 15,442).

As it pertains to violence and weapon smuggling on the southwest border, OBP, in coordination with the Office of Field Operations (OFO), implemented a national strategy to support outbound operations at key ports of entry that, while targeting all threats, specifically focused on weapons and bulk cash smuggling.

The OBP has augmented OFO's capacity to conduct "pulse and surge" operations and combined outbound inspections by deploying approximately 100 Border Patrol Agents that are currently assigned to southwest border sectors, to various ports of entry across the southwest border.

Office of Field Operations
In response to the on-going issues pertaining to violence and weapons smuggling on the Southwest Border (SWB), the OFO has augmented outbound operations through both temporary details to the southern border ports and through the allocation of existing personnel resources to outbound "pulse and surge" activities. These additional personnel resources assigned to address SWB border violence include:

Seven currency/firearms canine teams have been temporarily assigned to SWB locations to augment the five permanent currency/firearms teams. Additional currency/firearms detector dogs are in training and there will be a total of 19 teams permanently assigned to SWB locations by the end of Fiscal Year 2009.

56800.045

Question#:	20
Topic:	law enforcement
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Two additional low-energy mobile x-ray units were deployed to the SWB. These systems are well suited to identify anomalies in passenger vehicles. Existing port personnel were trained on the operation and utilization of this technology to interdict outbound unreported/bulk currency and weapons/ammunition in conveyances. Future steps are to increase SWB capability by increasing number of low-energy mobile x-ray units deployed from 9 to 22 units within a year's time.

All eight railroad crossings on the U.S.-Mexico border are conducting 100 percent scanning of outbound rail cars. Existing personnel are utilizing this technology to scan departing rail cars for unreported/bulk currency and weapons/ammunition. Notification protocols have been developed with Mexican Customs for the inspection of suspect rail cars, since the cars themselves are on Mexican soil immediately after the scan.

Personnel from the National Targeting Center – Cargo (NTC-C) are conducting National level data sweeps to target precursor chemicals, dual use commodities, and weapons that originate or transship the United States. They are utilizing real time transmission of Mexican 24 Hour Rule information. NTC-C personnel research routine weapons shipments exported from select U.S. manufacturers to Mexican military and police departments. These officers identify the shipment and request that port personnel examine these shipments at the U.S. port of export to verify contents and quantities. Confirmation is obtained from Mexican authorities regarding the shipments, orders, and expected delivery. These efforts help ensure the legitimacy of the shipments and reduce the possibility of diversion.

CBP's OFO Tactical Operations has developed and coordinated National level special operations that include the deployment of Mobile Response Team (MRT) members to identified Field Offices to participate in short duration outbound pulse and surge operations. OFO and Office of Border Patrol are conducting combined outbound inspections at various ports of entry. Immigration and Customs Enforcement is also participating in these operations when available.

Question:

Have these additional agents made an impact on the border's security? Specifically, how many additional seizures or interceptions have been made because of the additional agents assigned at the border, compared to years past?

Response:

Since increasing enforcement activity along the SWB on March 12, 2009, CBP and ICE have seized nearly $26.4 million dollars, 243 weapons, and over 17,400 rounds of ammunition.

56800.046

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

Question: It is my understanding that the Pentagon and the Department of Homeland Security are conducting an "initial assessment and planning" for deploying National Guard troops to the Southwest Border. In addition, the House version of the Emergency Supplemental Appropriations Bill includes $350 million in funding for the Department of Defense for Counternarcotics activities on the Southwest Border.

When will the assessment and plan for deploying National Guard troops to the Southwest Border be available to Congress?

How much of the $350 million in the Emergency Supplemental is being considered as funding for National Guard deployment to the Southwest Border?

Response: While the recent supplemental did not provide resources for the National Guard deployment to the southwest border, DHS and DOD are continuing to cooperate in planning for potential deployment of DOD forces to supplement DHS counter drug operations along the Southwest Border. DHS and DOD have reached agreement upon missions where the unique military capabilities could be employed in support of federal law enforcement. When and if these missions are approved and resourced; the plans would be released.

Question#:	22
Topic:	287g
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Secretary Napolitano, last Congress I worked closely with U.S. Immigration and Customs Enforcement officials to bring the 287(g) program to two counties in Utah. As you know, the 287(g) program cross-designates state and local law enforcement officers to enforce immigration law as authorized by section 287(g) of the Immigration and Nationality Act. So far, local Utah officials have confirmed that the 287(g) program has been helpful in finding solutions to the illegal immigration problems in their counties. I continue to follow this program very carefully and would appreciate an update on the program's wider status. Specifically:

Question:

How many 287(g) applications are currently pending with DHS?

Response:

As of May 27, 2009, DHS has 42 pending requests from law enforcement agencies for participation in the 287(g) Delegation of Authority program. These requests are under active consideration but will not receive final adjudication until the new Memorandum of Agreement (MOA) template is finalized.

Question:

Do you have any concerns about funding this program?

Response:

No, I do not have any concerns. Based on the fiscal year 2010 budget request, DHS expects to have adequate funding for the program in 2010.

Question:

How difficult is it for state agencies to participate in the 287(g) program?

Response:

56800.048

Question#:	22
Topic:	287g
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

In order for a state or local law enforcement agency to participate in the 287(g) program, the agency must submit an official request to ICE. Once a request is received, ICE conducts a formal review of the request. Some of the areas addressed during the formal review process include the potential benefits a 287(g) program in the particular area; other considerations include ICE's presence in the area to supervise and manage the potential agreement.

If a 287(g) request is approved, ICE will then begin the process for completing the MOA, which is finalized when it is signed by ICE and the state or local law enforcement agency.

Question:

Are there any other issues related to this program that you would like to address?

Response:

I have no further issues to address, other than to note the steps ICE has taken to increase oversight and monitoring of the program. Revisions to the MOA template will allow ICE to ensure the program is better targeted to improving public safety.

56800.049

Question#:	23
Topic:	green cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: A few years ago, my office worked closely with Federal immigration agents to break up one of the largest marriage visa fraud rings in the country. As a result of the 18-month investigation, called "Operation Morning Glory," 24 individuals were indicted on 79 counts including: conspiracy, alien smuggling, marriage fraud, and aggravated identity theft. Utah's U.S. Attorney, Brett Tolman, correctly stated that those charged "exploited a process intended to assist families."

For some time, I have been very concerned about the prevalent abuses in our country's marriage-based green card program. A foreigner who marries a U.S. citizen can apply to remove their conditional resident status after two years of marriage. Once their temporary status is legally changed, however, some disappear - often leaving their spouses with serious financial and familial obligations.

Since spouses of American citizens have priority over most other immigration categories, I would like to know what is currently being done to stop this practice. Specifically, what are your thoughts on the following ideas:

Should USCIS officers be required to seek the assistance of overseas consular officers when conducting investigations on suspect cases?

Should American spouses be provided with all immigration-related documents that the interviewing officer has access to, such as: previous tourist visa applications, case notes, criminal histories, etc?

In addition, what more can the Department do to investigate marriage fraud when an American later believes that their alien spouse was only "in it for the green card."

RESPONSE: By way of background, when a USC files an I-130 (*Petition for Alien Relative*) for an alien spouse in the United States, the petition and adjustment application are concurrently filed with U.S. Citizenship and Immigration Services (USCIS) and sent to a field office for interview. The couple appears together and the officer scrutinizes the bona fides of the marriage by ensuring the accuracy of basic biographic and eligibility information, obtaining testimony from the couple under oath, and reviewing documentary evidence of the couple's shared life.

56800.050

Question#:	23
Topic:	green cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

The officer may interview the couple separately or together in order to corroborate the testimony of each partner. Documentary evidence of shared life may include, but is not limited to: bank accounts, loans, credit cards, mortgages, other joint property, leases, insurance, photographs, affidavits, birth certificates of children, etc.

There is no litmus test for determining a bona fide marriage, as no single item proves or disproves the bona fides of a marriage. Rather, the officer weighs the totality of both the evidence and testimony and decides whether the couple has met the burden of proof. If the couple fails to meet their burden, the officer may request additional evidence, schedule additional interview(s), issue a notice of intent to deny, or request further scrutiny from the USCIS Fraud Detection and National Security Division.

There is a perception that marriage fraud is a rampant problem in the immigration system, but most marriages coming before USCIS are bona fide. The Department of Homeland Security has observed different types of fraud, including some types that are extraordinarily difficult to detect. Situations where a U.S. citizen is paid to marry an alien or is doing a favor for a friend, family member, or in-law are often easier for officers to detect, however. In these situations, the spouses are likely not living together and do not know each other well, even if they have documentary evidence of shared life.

On the other hand, "one-way fraud," when the alien is using a U.S. citizen without the U.S. citizen's knowledge, is very difficult to detect, because the alien spouse is going through all the motions of a marital relationship.

Where a fraud ring is discovered, USCIS Fraud Detection and National Security (FDNS), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Attorney's office are mobilized to investigate and prosecute.

Many fraud cases, however, occur on a much smaller scale. In some cases, the adjudicating officer can get the U.S. citizen or alien spouse to acknowledge the fraud during the interview. While, in other cases the adjudicating officer may be able to deny if there is sufficient evidence in the record or may refer the petition for further investigation. In addition adjudications officers processing Forms I-130 are required to check all available systems. These systems are used to prevent multiple petition filings and confirm valid addresses.

56800.051

Question#:	23
Topic:	green cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question:

Should USCIS officers be required to seek the assistance of overseas consular officers when conducting investigations on suspect cases?

RESPONSE: We do not believe that USCIS officers should be *required* to seek the assistance of overseas consular officers when conducting investigations on suspect cases. DHS recently issued interim guidance on overseas verification requests; the guidance states that USCIS officers should only submit requests if the overseas verification results are material to a decision on an application or petition and that fraud indicators exist that cannot otherwise be resolved. Presently, the overseas field offices assist with the verification of supporting documentation and claims in immigration benefit applications. Referrals for verification are accepted at the request of a domestic field office when the authenticity of the information is critical to the decision and the information is not domestically available.

Question:

Should American spouses be provided with all immigration-related documents that the interviewing officer has access to, such as: previous tourist visa applications, case notes, criminal histories, etc?

RESPONSE: American spouses should not be provided with all immigration-related documents that the interviewing officer has access to. The Privacy Act of 1974, 5 USC 552a, provides protection to individuals by ensuring that personal information collected by Federal agencies is limited to those persons and entities that are authorized and necessary and is maintained in a manner which precludes unwarranted invasion upon individual privacy. Spouses in bona fide marriage may not wish to disclose every detail of their lives and USCIS should honor these concerns. Further, some of the types of information you mentioned are designated For Official Use Only (FOUO) and are not permitted for use outside the Department.

In addition, information can be requested through a Freedom of Information Act (FOIA) request.

Question:

In addition, what more can the Department do to investigate marriage fraud when an American later believes that their alien spouse was only in it for the green card.

56800.052

Question#:	23
Topic:	green cards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

RESPONSE: When an American later believes that his or her alien spouse entered into marriage solely to obtain a green card, the Department is able to investigate suspicious cases at the time of adjustment of status and/or of the removal of conditions for permanent residency.

In instances when marriage fraud is established, the alien may be put in proceedings at any time pursuant to section 237 of the Immigration and Nationality Act. Field manuals, standard operating procedures, and policy memos provide substantial guidance to officers in initiating removal proceedings. Additionally, in instances where fraud is suspected, officers may place lookouts in the Marriage Fraud Amendment System (MFAS) or the Treasury Enforcement Communication System (TECS) to alert other officers that fraud is suspected.

56800.053

Question#:	24
Topic:	risk management approach
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Madam Secretary, in April, the Government Accountability Office issued a report that concluded the Transportation Security Administration was not efficiently implementing a risk management approach for securing our transportation sector. As you know, in 2006, the risk management approach was adopted by DHS as part of the National Infrastructure Protection Plan. According to the GAO report, TSA officials stated that they do not believe traditional risk assessment methodology is a reliable method for determining the likelihood of a terrorist attack. This is an important matter since many forget the TSA does more than just screen passengers at 500 airports. They are responsible for coordinating critical infrastructure protection of waterways, pipelines and railways. In light of the history of attacks on commuter rail stations in Madrid and London, why is TSA not more effectively implementing this policy? The attacks I just referenced demonstrate that these modes of transportation are significant targets. What action do you intend to take based on the report's findings which will secure our entire transportation grid and not just commercial air travel?

Response: The Transportation Security Administration (TSA) fully understands and accepts the need to have a robust risk management process and a risk methodology in place that will enable the Department of Homeland Security to allocate security resources effectively and efficiently. TSA has taken aggressive measures to enhance the security priorities across all modes of transportation and has numerous security initiatives and plans in place that focus on surface transportation. These include Surface Transportation Security Inspectors, various transportation security grant programs, Visible Intermodal Prevention and Response (VIPR) team deployments, explosives detection canine teams, security training initiatives for surface transportation frontline employees, and technology for securing tunnels and other transit facilities from acts of terrorism.

TSA has already taken aggressive action to incorporate all of the recommendations highlighted in the Government Accountability Office (GAO) report "GAO-09-492"; specifically, TSA has conducted a comprehensive risk assessment within and across all modes of transportation. This cross-modal risk assessment, known as the Transportation Sector Security Risk Assessment (TSSRA), is a scenario-based assessment that fully comports and aligns with the National Infrastructure Protection Plan (NIPP) risk doctrine of applying Threat, Vulnerability, and Consequence (TVC) information. Additionally, TSA leadership has established an Executive Risk Steering Committee (ERSC) that is chartered with the mission of overseeing, monitoring, and implementing all of TSA's risk efforts. Furthermore, TSA is in the process of updating the Transportation Systems Sector Specific Plan (TSSSP) to include separate strategic annexes for each mode of

56800.054

Question#:	24
Topic:	risk management approach
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

transportation. The TSSSP will outline in detail TSA's TVC-based risk methodology process and how each mode of transportation will align to this risk process. Ultimately, the TSSRA, combined with TSA's current tactical risk efforts and emerging threat/intelligence information, will enhance our ability to provide risk-based information to identify the security priorities across all modes as well as improve TSA's resource allocation security decisions.

TSA expects to have both the results of the TSSRA and the update to the TSSSP by December 2009.

Question#:	25
Topic:	cyber attacks
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Madam Secretary, as you are well aware, DHS is charged with the mission of ensuring our critical civilian infrastructure is protected from cyber attacks. I have been informed, that bureaucratic infighting has reduced our nation's effectiveness in preparing to defend against cyber attacks.

Currently, there is legislation before the Senate which would establish a position inside the White House to coordinate our nation's cybersecurity initiatives. A second bill would allocate this role to an individual in the National Security Council. Does DHS endorse relinquishing its role in leading our cybersecurity effort?

Response: The Department of Homeland Security (DHS) worked closely with the Homeland Security Council and National Security Council leadership and staff in the development, tracking, and coordination of the Comprehensive National Cybersecurity Initiative. DHS welcomes the creation of a senior-level cyber position within the White House to ensure coordination and collaboration across government agencies. No single agency controls cyberspace; as such, the many government players with complementary roles – including DHS, the Intelligence Community, the Department of Defense, the Department of Justice, the Law Enforcement community, and other Federal agencies – will require coordination and leadership to ensure effective and efficient execution of the overall cyber mission.

56800.056

Question#:	26
Topic:	HSC/NSC
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Madam Secretary, the President has proposed eliminating the Homeland Security Council and merging its responsibilities into the National Security Council. The Administration argues combining these groups will make the nation safer and better prepared to respond to a crisis. Critics of this consolidation say, as a result, DHS's mission and requirements will take a backseat to the NSC. Others are concerned that a merger of the HSC and NSC will result in an organization that is too big to respond quickly and decisively in a crisis. What is your position on consolidation? Do you endorse the merging of these two bodies?

Response:

I support the President's decision to preserve both the National Security and Homeland Security Councils while merging the staffs into an integrated National Security Staff. The new "National Security Staff" will support all White House policymaking activities related to international, transnational, and homeland security matters. The Homeland Security Council will remain the principle venue for interagency deliberations on homeland security issues (such as terrorism, weapons of mass destruction, natural disasters, and pandemic influenza), and the Homeland Security Advisor will retain a direct line to the President.

Question#:	27
Topic:	Mexican USCIS office
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Over the past few years the number of foreign nationals who are married to U.S. citizens, but who are required to complete Consular processing, has increased. If foreign nationals had an undocumented entrance, and do not qualify under the 245i provision, they must complete Consular processing before they obtain legalized status in the United States. Many U.S. families are separated for long periods of time as they wait for their visas and waivers to be processed. In particular, the waiver process can take 12 to 18 months to be completed at the U.S. Citizenship and Immigration Services (USCIS) Office in Juarez, Mexico.

What suggestions do you have to address the serious issues associated with the delays at the Juarez, Mexico USCIS office?

RESPONSE: The number of immigrant waiver petitions (Forms I-601) filed in the USCIS office in Juarez grew from 3,280 applications in fiscal year 2005 to almost 22,000 applications in 2008, an increase of 670% that has exceeded the office's capacity and resulting in a significant backlog. To address this significant increase, USCIS and the Department of State partnered to develop a streamlined, "same-day" processing protocol for readily-approvable waiver requests filed in Juarez. Since this process was established in March 2007, USCIS has approved approximately 50-55% of applicants seeking immigrant waivers in Juarez on the day they submitted their applications. Those applicants have been able to take their approvals the same day to a Department of State consular officer for immediate issuance of the immigrant visa. As such, a significant number have been able to enter the United States as immigrants on the day they filed their application.

As of the beginning of May 2009, approximately 9,035 Forms I-601 filed in Juarez were pending. USCIS has developed a backlog reduction plan that aggressively addresses this issue by drawing on domestic resources, in a cost-effective way:

1. To maximize case completions, USCIS staff in Juarez continues to focus on those Form I-601 cases that are eligible for same-day approvals; it transfers both backlog and the majority of receipts that cannot be immediately approved to other offices.
2. USCIS also recently established an International Adjudication Support Branch in Anaheim, California, which is expected to be fully operational in June 2009. Adjudication officers in that office will focus primarily on completing Juarez

56800.058

Question#:	27
Topic:	Mexican USCIS office
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

backlog cases and are projected to complete almost 2,500 cases by the end of the fiscal year.

3. A team of Asylum Officers at the Miami Asylum Office were trained in May and will be assigned to process over 5,000 Forms I-601 being transferred to their office from Juarez; the team is projected to complete these forms by the end of September.
4. USCIS offices in Mexico City and Monterrey will complete an additional 200 cases per month to further assist in reducing the Juarez backlog.

All offices working on the backlog will process cases based on the filing dates, beginning with the oldest, to the extent possible. With the assistance of these offices, USCIS expects to reduce the pending caseload to 6,000 or fewer cases by the end of FY2009, the oldest pending about seven and a half months. In FY2010 we will continue to decrease the processing time for all requests for immigrant waivers filed in Juarez that are not approved on the day of filing.

56800.059

Question#:	28
Topic:	wording
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Madam Secretary, in your testimony you identified five critical mission areas DHS must achieve. The first of these is guarding against terrorism. However, in February, in your testimony before the House Homeland Security Committee you didn't mention terrorism. In later discussions with the press you used the term "man-caused" disaster. You were also asked why didn't use the phrase "War on Terror" or mention terror as had your predecessors. You replied that this was a shift from the "politics of fear toward a policy of being prepared."

In your prepared statement you cite the successes of several initiatives that were created and implemented by DHS since its creation in 2003. These include securing our borders and preventing persons and substances that could harm this nation from entering our country. In a recent speech before the Anti-Defamation League, you stated that terrorism fueled the creation of DHS and that it is the number one mission of the Department. Do you actually believe that up until your stewardship of DHS the policies of the Department were based on "the politics of fear?" Also, please clarify for me as why you now choose to openly declare terrorism as our primary mission when you failed to even mention it during your recent testimony before the House.

Response:

Protecting the Nation from acts of terrorism has been among the primary missions of the Department of Homeland Security (DHS) since its founding on March 1, 2003; this mission continues unabated under my leadership.

Although I did not specifically use the word "terrorism" in my testimony before the House Homeland Security Committee in February, I used the term "man-caused disaster" – much as former Secretary Chertoff said "man-made disaster" publicly dozens of times during his tenure, including his speech on the fifth anniversary of 9/11 in 2006. I have used, and continue to use, the term "terrorism," including in my confirmation hearing in January as well as at many speeches and public comments both before and since.

DHS will continue to work to protect the United States and the American people—from all threats, including terrorism. The public conversation about this department's mission has always been dynamic and constantly evolving, which in no way contradicts the fact that both President Obama and I are continually focused on keeping Americans safe.

56800.060

Question#:	29
Topic:	RWVP
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Secretary Napolitano, The Special Immigrant Non-Minister portion of the Religious Worker Visa Program (RWVP) became law in 1990. Originally enacted with a sunset provision, it has bipartisan support in Congress and has been reauthorized six times since then. As you know, without congressional action, this important program is set to expire on September 30, 2009.

Under this program, up to 5,000 visas each year are available for religious workers employed by a broad range of religious denominations and organizations. Religious communities that participate in the program have found these special visas vital to carrying out their work.

A special category for non-minister religious workers is necessary because religious organizations face obstacles in using traditional employment immigration categories, which historically have not fit their unique situations. The religious community has long supported extending the Non-Minister Special Immigrant Religious Worker Program permanently. A permanent extension would remove uncertainty from year-to-year and allow religious organizations, religious denominations, and the communities that they serve to plan for the visas use without fear of the disruptions that come as the program edges close to expiration.

A previous extension of the RWVP required the Department of Homeland Security Inspector General to complete a study by March 6, 2009, on the effectiveness of newly issued regulations (issued November 21, 2008) in eliminating or reducing fraud in special immigrant non-minister religious worker petitions.

It is my understanding that the report has been completed, but it has not yet been released. Therefore, I ask that you provide us with a copy of the report immediately, so that we can ensure that any recommendations contained in the report are considered, and so we can act quickly to achieve a reauthorization of this program well in advance of the sunset date in September.

Response:

The Office of Inspector General (OIG) will respond directly to your inquiry; DHS does not edit or review responses to Congress from the OIG.

56800.061

Question#:	30
Topic:	operation streamline - 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Operation Streamline, an expedited prosecutorial program in place in a few sectors along the southwestern border, has been facilitating the prosecution of those who cross the border illegally by charging them with a misdemeanor offense under Section 275 of the Immigration and Nationality Act. Section 275, as you know, provides that the first time someone is picked up for crossing illegally they may be imprisoned for up to 6 months (this is by definition, a misdemeanor; for a second and subsequent crossing, the violator can be imprisoned up to 2 years, a felony).
In 2008, your predecessor, Michael Chertoff, discussed the effectiveness of Operation Streamline, stating that:
¿in areas where the Border Patrol has implemented Operation Streamline, a program where illegal immigrants are prosecuted and face jail time for crossing the border, even greater reductions have occurred. In Yuma, Arizona, apprehensions have fallen 68 percent. In Del Rio, Texas, they have dropped 46 percent. These are not seasonal anomalies. They reflect increased border security and the deterrence that comes with the prospect of spending time in a federal detention facility.¿
The 2009 statistics about Operation Streamline are even more encouraging: In the Yuma Border Patrol Sector, Operation Streamline (also known as Zero Tolerance) has helped to decrease violence and illegal crossings because most individuals apprehended there are prosecuted and jailed. In the year before Operation Streamline started, 118,549 illegal immigrants were apprehended in the Yuma sector. But in the last fiscal year, only 8,363 illegal immigrants were apprehended there. That's a 93 percent decrease, and Border Patrol attributes most of the decrease to the new operational policy. In Tucson, where Operation Streamline started in 2008, the Border Patrol is also seeing success. In the Tucson sector, 317,696 illegal immigrants were apprehended for the entire fiscal year, down from 378,239 there in FY07. That's a 16 percent decrease.

What methodology does DHS use when determining which individuals to turn over for prosecution through Operation Streamline? Of those apprehended, how many are never turned over for prosecution by DHS for crossing the border illegally and, if they aren't chosen for prosecution, what does DHS do at that point? Obviously, DHS has credited Operation Streamline with significant decreases in apprehensions in the Yuma and Del Rio sectors. Do you expect the same kinds of results in the Tucson sector? Does DHS have any plans to expand Operation Streamline to other border sectors and, in sectors where Operation Streamline already exists, does DHS have any plans to increase the number of individuals it turns over for prosecution on a daily basis? What resources do you need to effectuate an expansion of Operation Streamline?

56800.082

Question#:	30
Topic:	operation streamline - 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

At the end 2008, you and I discussed how important it is to consult with the Attorney General about the resources needed to provide for complete Operation Streamline sector activities, including such resources as apprehension, detention, court hearings, jail, and release resources. I met with Attorney General Holder recently and am somewhat disappointed that a full implementation plan and cost estimate for Operation Streamline hasn't been completed (or given to me in any event). Will you discuss this with the Attorney General and provide such estimates to me, and request the funding for these Operation Streamline priorities?

Response: The Streamline Program uses an area-targeted approach that creates enforcement zones within sectors. For instance, if the Streamline partner agencies can handle the volume, the Sector Chief may prosecute all the persons who commit an illegal entry within his or her area of responsibility. However, if the partner agencies cannot handle the volume, then the Sector Chief targets the high-risk zones within his or her area of responsibility and prosecutes those persons who commit an illegal entry in those specific zones. The only exceptions to prosecution and removal under Operation Streamline are those who are eligible for relief for humanitarian reasons (juveniles, family units, pregnant females, and persons who are physically or mentally distressed). Subjects who are not prosecuted under the auspices of Operation Streamline may still be subject to other immigration-related actions.

The historical data and current trend in the Tucson Sector indicate that the Sector Chief's ability to maintain effective control of his area of responsibility has increased. The enhanced prosecution effort is only one component of an enforcement model aimed at reducing illegal cross-border activity through both consequences for and deterrence to illegal entry.

56800.063

Question#:	31
Topic:	operation streamline - 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: My office has learned from multiple sources that many individuals prosecuted through Operation Streamline are not being sentenced for any substantive period of time. In most cases, my office was told that they are only being sentenced for time served due to overcrowding in our federal prisons. My office has also heard that CBP has detention space in its facilities, which could possibly be used following their prosecutions in order to detain such individuals. Could you please provide some detail about what the detention capacity is for CBP facilitates in the Yuma and Tucson sectors and, of that capacity, how much is currently occupied? If there is unoccupied detention space in CBP facilitates, would you support utilizing that space in an expansion of Operation Streamline or help ensure that those convicted through Streamline are serving their sentences? What are your other ideas?

Response: CBP does not operate detention facilities. The persons prosecuted through Operation Streamline are transferred to the custody of the U.S. Marshals Service (USMS). The USMS places the individuals in approved detention centers to complete their sentences while a removal action is processed by Immigration & Customs Enforcement's (ICE) Detention & Removal Operations (DRO) and would be in the best position to answer questions with regard to Streamline detention space.

56800.064

Question#:	32
Topic:	catch and release
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Will you maintain the policy that ended "catch and release," the old policy of simply releasing removable other-than-Mexican (OTM) illegal aliens apprehended along the Southwest border?

Response:

Yes. This Administration does not foresee the return of "catch and release."

Question:

What is your position on policies that will clarify, or overturn, decisions or injunctions that make it difficult to detain and remove OTM's such as the "Zadvydas fix," which would clarify that a removable alien can be detained until removal, and others.

Response:

I understand the significance of the end to the catch and release policy, and I do not plan to undo the progress ICE has made. I will work with DHS partners at the Departments of State and Justice to ensure that removal orders are effectively executed. Further, I am also committed to working with all of DHS partners to close gaps in authority in order to detain aliens for a period of time sufficient to remove them from the United States.

DHS will continue to review and comply with any policies, laws, or court decisions clarifying issues related to detainees not easily removable from the United States. While detention space requirements may increase should the Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001) be superseded by a legislative fix, ICE would prioritize available bed space through appropriate custody determinations to ensure the continued detention of those individuals who pose the greatest threat to the public.

56800.065

Question#:	33
Topic:	DNA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Earlier this year the Justice Department published regulations that require federal agencies to collect DNA samples from individuals who are arrested under federal authority and from illegal immigrants who are being deported. The regulations require these agencies to collect DNA samples at the same time that they take fingerprints and mug shots.
One illustration of the need for these regulations is the case of Angel Resendiz, the so-called "Railway killer." Resendiz murdered at least 15 people in the United States and untold numbers in Mexico. He was deported numerous times during these years. If his DNA had been taken at one of those deportations, Resendiz would have been identified as soon as that sample was tested, and it is likely that all but one of the murders and rapes that Resendiz committed in the United States would have been prevented.
Another example of the need for these regulations involves Santana Aceves, the so-called "Chandler rapist.' Aceves was arrested in January 2007 and linked by DNA to the sexual assaults of half a dozen young girls in city of Chandler, Arizona. The Chandler rapist targeted the school-age daughters of single mothers, stalking them to learn the family's schedule and then attacking the girls in their homes when their mothers were at work. Aceves was in the United States illegally and had been deported several times, most recently in 2003. If Aceves's DNA had been collected at his deportation at that time, he would have been identified by National DNA Index System as the perpetrator of the first rape that he committed in 2005, and it is likely that the subsequent sexual assaults that he committed would have been prevented.
While the Justice Department bears primary responsibility for implementing these DNA testing regulations, their full implementation with regard to illegal-immigrant deportees obviously will require the cooperation of the Department of Homeland Security. During his confirmation hearing last January, Attorney General Holder stated that he will 'support [the DNA] regulations,' and he noted that they are "a very important crime-fighting tool."

As Secretary of the Department of Homeland Security, will you extend your full cooperation to the Justice Department, and see to it that the alien-deportee DNA testing regulations are fully and promptly implemented by the Department?

Response:

DHS has been working closely with the Department of Justice (DOJ) and the FBI regarding the implementation of the DNA sampling regulations. DHS agrees that expanding DNA collection can be an effective enhancement to U.S. law enforcement

56800.086

Question#:	33
Topic:	DNA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

capabilities. Collecting DNA samples from detained aliens provides an opportunity to identify and to hold accountable individuals who have committed crimes in the U.S. before they are deported.

Further, DHS has been working with DOJ and the FBI to resolve outstanding operational questions. For example, from May 19-21, 2009, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) conducted site visits to ICE and CBP field locations on behalf of FBI laboratory personnel to gather more information about DHS processes and information technology systems. DHS will fully comply with the applicable statutory and regulatory framework, and we are currently working to finalize implementation plans and associated procedural guidance.

Question#:	34
Topic:	fence
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: My office has learned a total of 611 or 621 miles of fence (we have been given both numbers by DHS) have been built, including 310 miles of pedestrian fence and 301 miles of vehicle fence. How many miles of fencing total will the Obama Administration complete this year? How many miles of double fencing has been built, how many additional miles of double fencing will be built?

Response: As of May 15, 2009, DHS has constructed 626 miles of fence (324 miles of primary pedestrian fence and 302 miles of vehicle fence) along the Southwest Border. The 611 and 621 miles reported (referenced above) are from the SBI Executive Summaries provided with data as of March 6th and April 10th 2009. DHS currently has plans to complete approximately 670 miles of fence with an expected completion date of October 2009. Any additional tactical infrastructure projects are currently in the initial planning stages.

As of May 8, 2009, there are 34 miles of secondary fence along the Southwest Border. This pedestrian fence is located in San Diego, Yuma, Tucson, and El Paso Border Patrol Sectors.

56800.088

Question#:	35
Topic:	agents
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Will you continue to increase the number of Border Patrol agents on the line this year? How many are expected to be on the line by the end of the fiscal year? (At the end of the Bush Administration, 20,000 were projected to be hired by the end of FY 2009.)

Response:
The FY 2009 Appropriations provided funding for an additional 2,200 Border Patrol Agents, which CBP expects to have on board by the end of this fiscal year. That would bring the total Agent staffing level to 20,019 Border Patrol Agents on board by the end of the FY 2009.

56800.089

Question#:	36
Topic:	funding
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: It is estimated that 40 percent of illegal immigrants came to the U.S. legally, but have stayed beyond their authorized stay. Beyond what you have commented on in your statement, will you request funding to develop systems to track and remove visa overstayers, including funding for the exit portion (including infrastructure) of US-VISIT? (A requirement for an automated exit system, to track the exit or non-exit of all noncitizens who have entered the U.S., was first established in 1996, to be completed by 1998. Subsequent legislation extended the deadline for implementation of a biometric exit system at all land, sea, and airports to December 31, 2005 (P.L. 106-215). Developing cost estimates and designing and implementing the system, as required by law, will be a tremendous challenge, but will be a critical component of DHS¿ efforts to reduce the very large overstay problem in the U.S.)

Response: US-VISIT provides the capability to identify foreign nationals who have overstayed their authorized periods of admission. US-VISIT analyzes entry records to help U.S. Immigration and Customs Enforcement apprehend those who remain illegally in the United States, enables CBP to deny admission to those ineligible to enter the United States, and assists the Department of State in denying visas to those who may have overstayed but are no longer in the United States. Since September 2004, US-VISIT has provided immigration and border management officials with records of the entries and exits of individual foreign nationals.

On April 24, 2008, DHS published a notice of proposed rulemaking (NPRM) in the Federal Register proposing to establish biometric exit procedures at airports and seaports of departure from the United States. The NPRM proposed that commercial air carriers and vessel carriers be required to collect and transmit biometric exit information to DHS, in conjunction with the passenger manifest information they already collect and submit to DHS. In the Fiscal Year 2009 DHS Appropriations Act, Congress required DHS to test and report on the collection of biometrics from most non-U.S. citizens exiting the United States in two different settings at airports: (1) air carrier collection of biometrics from passengers already subject to US-VISIT entry requirements; and (2) U.S. Customs and Border Protection (CBP) collection of biometrics from those passengers at the boarding gate. Currently, no airline has agreed to participate in a pilot. Consequently, DHS is conducting two pilots – one by CBP at the boarding gate at the Detroit Metropolitan Wayne County Airport, and one by the Transportation Security Administration (TSA) at a security checkpoint at the Hartsfield-Jackson Atlanta International Airport – for a 30-45 day period which began on May 28, 2009.

56800.070

Question#:	36
Topic:	funding
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Based on the results of the pilots, and comments to the NPRM, DHS plans to publish a final rule – tentatively scheduled for March 2010 – that will direct the implementation of new biometric exit procedures for most non-U.S. citizens departing the United States via airports and seaports. Implementation of the air/sea biometric exit system at all locations is expected to commence in 2010. Approximately 28 million dollars remains available from prior-year dollars (for testing technological solutions in the air/sea environments with pilot scenarios) to fund the Air/Sea Biometric Exit project.

US-VISIT currently tracks overstay violator records based on departure manifests, departure form I-94 data, and exit database records. Biometric exit records definitively confirm the identities of individuals, which will assist subsequent law enforcement actions.

Question#:	37
Topic:	native americans
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: According to Tohono O'odham Chairman Ned Norris' testimony at the recent Senate Committee on Homeland Security hearing on border violence in Phoenix, "More and more of the Nation's members are getting involved in the illegal operations... 30% of the total federal prosecutions for drug smuggling and or transport of illegal immigrants are Tribal Members. "Chairman Norris also stated, "The victims of kidnapping that the city of Phoenix has been experiencing had likely travelled through the Tohono O'odham Nation."

Question: What is DHS doing to secure the border of the Tohono O'odham Nation?

Response:

U.S. Customs and Border Protection (CBP), Office of Border Patrol (OBP) has a National Strategy to gain operational control of our nation's border which also applies to the border within the Tohono O'odham Nation (TON). The strategy is based on an Enforcement Model that deploys personnel, technology, and infrastructure to secure the border.

Infrastructure: OBP currently maintains Forward Operating Bases (FOB) on the TON. The FOBs are a key component used to secure the Nation's border because it allows the Border Patrol to maintain a 24-7 presence in the remote areas on the TON.

Permanent Vehicle Barriers (PVBs) have been constructed along the entire TON's border with Mexico (with the exception of 1.5 miles to the east of Sierra de la Nariz; negotiations are ongoing to complete construction in this area). The completion of the PVBs has reduced the number of drive throughs on the TON.

Manpower: OBP currently deploys significant manpower resources to TON within the Ajo and Casa Grande Stations' Area of Responsibility (AOR). Horse Patrol and All Terrain Vehicle units are invaluable tools that are also deployed on the TON.

Technology: OBP deploys Mobile Surveillance Systems (MSS), day/night capable surveillance technology, and remote sensing technology on the TON.

State and local Partnerships:

56800.072

Question#:	37
Topic:	native americans
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

OBP works in conjunction with its State, Local, and Tribal law enforcement partners to impact criminal activity on the TON. These local partnerships include the TON Police Department, Pinal County Sheriff's office, Bureau of Land Management, seven different major city police departments, Arizona Department of Public Safety, Gila River Police Department, Phoenix Metro Police Department, Pima County Sheriff's Office, United States Fish and Wildlife, and several other law enforcement agencies. OBP also collaborates with four Operation Stonegarden partners to impact criminal activity on the TON.

The TON Police Department was allocated $300,000 for overtime under Operation Stonegarden. Since November 1, 2008, TON Police Department has stopped 93 vehicles, recovered six stolen vehicles, and seized 1,525 lbs of marijuana.

Since the employment of our national strategy and the enforcement model the illegal activity has decreased by 23% over the last fiscal year within the TON.

Tucson Sector Apprehensions in Grids Containing
Areas of Tohono O'odham Nation Indian Reservation
FY2008 - FY2009 To date(TD)
Data Source: EID (unofficial) as of 6/12/09

		Oct 1 - Jun 10		
	FY2008	**FY2008TD**	**FY2009TD**	**% Change**
Apprehensions	62,312	50,664	38,995	-23%

Question: What obstacles do you face in your efforts to secure the Nation's border?

Response:

The largest obstacle we face is gaining approval from the independent districts within the TON for establishing deployment sites for our surveillance equipment and other enforcement efforts. Another issue is the lack of adequate patrol roads on the TON; patrol roads will allow the OBP to gain operational control of the border within the TON with minimal disturbance of Nation lands.

56800.073

Question#:	37
Topic:	native americans
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Are there any policies or actions of the Nation that inhibit DHS's efforts?

Response:

The largest obstacle OBP faces is gaining approval from the independent districts within the TON to establish deployment sites for our surveillance equipment and to conduct other enforcement efforts. CBP must negotiate with each district for permission to locate towers, etc.

Question: Do you believe the decrease in traffic is directly related to the installation of vehicle barriers across the Nation?

Response:

Yes, physical barriers are part of the overall national strategy, which includes Tactical Infrastructure, Technology, and Personnel. Improved situational awareness, cooperative processes, focused prosecution initiatives and removal programs also greatly contribute to the decrease in illegal activity.

Question: How does DHS plan to address the remaining foot traffic across the Nation?

Response:

OBP will continue to employ its national strategy which deploys personnel, infrastructure, and technology as the method to gain control of the border. OBP will continue to focus our enforcement efforts on the TON and its surrounding communities until levels of operational control have been sufficiently achieved.

Question#:	38
Topic:	Mexican cartels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: At the hearing in Phoenix involving Senators McCain, Lieberman, and me, Arizona Attorney General Terry Goddard (as well as ICE Director of Investigations Marcy Foreman) said that the drug cartels are using prepaid debit cards to smuggle drug money across the border unencumbered.

What resources and changes to law are needed to disrupt the flow of money in this form to the cartels?

Response:

On May 22, 2009, the President signed HR 627 (the Credit Card Accountability Responsibility and Disclosure Act of 2009) into law (Public Law 111-24). Among other things, the bill includes language requiring the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, to issue final regulations within 270 days of enactment of the Act implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value devices, including stored value cards. The bill contemplates that the regulations may include reporting requirements pursuant to 31 U.S.C. § 5316. DHS is committed to working with the Department of the Treasury to formulate regulations for stored value devices.

Pursuant to HR 627, the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, is in the process of promulgating final regulation as required by law to best address and disrupt the cross-border flow of money through the use of stored value devices.

Question#:	39
Topic:	SCAAP
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: The Obama Administration provided no funding in its FY 2010 budget for the State Criminal Alien Assistance Program. As you stated in your October 1, 2008 letter to me, as you know, the federal government is required by law to pay these costs under the State Criminal Alien Assistance Program (SCAAP). You also wrote as you are well aware, by refusing to fully reimburse Arizona for its SCAAP costs, the federal government has unfairly forced Arizona to bear the cost of its failure to adequately secure its borders. Madam Secretary, I agree with you, and am asking you to work with the Obama Administration (and, in particular, Attorney General Holder) to help amend the Administration's budget. The program is authorized to receive $975 million for FY 2010 (as a result of an authorization bill Senator Dianne Feinstein and I authored that is now law). I am requesting that the Obama Administration resubmit its Department of Justice budget and ask for the authorized funding level. Otherwise, it truly will continue to be, as you said in your letter to me, payment of pennies on the dollar for the estimated costs to states and localities. Will you also work with the Attorney General to initiate other locality and state funding reimbursement programs associated with illegal immigration, including smuggling, drug prosecution, defense, court, prosecution, autopsy, and other costs?

Response:

Although no funding for SCAAP was included in the President's FY 2010 budget request, the Department of Homeland Security recognizes the financial burden that the current immigration system places on States and localities and is committed to working with State and local law enforcement authorities to effectively deter and reduce illegal immigration. The Administration has proposed a comprehensive border enforcement strategy that supports resources for a comprehensive approach to enforcement along the Nation's borders that combines law enforcement and prosecutorial efforts to investigate arrest, detain, and prosecute illegal immigrants and other criminals. The initiative also enhances the government's ability to track fugitives from justice as well as combat gunrunners and illegal drug traffickers. The FY 2010 Budget would provide over $1.4 billion for Immigration and Customs Enforcement programs to support expeditious identification and removal of illegal aliens who commit crimes from the United States. It also provides funding to support 20,000 Border Patrol agents protecting nearly 6,000 miles of U.S. borders. In addition, as part of the comprehensive U.S.-Mexico Border Security Policy announced by the Administration on March 24, 2009, the Department of Homeland Security is developing a plan to supplement resources on the Southwest Border. This plan would double the Violent Criminal Alien teams located in Southwest Border Field Offices and increases engagement with State and local law enforcement.

56800.076

Question#:	40
Topic:	Real ID
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Last week I co-chaired a hearing with Senators Cardin and Feinstein on the vulnerability of the U.S. passport. Both the GAO and the State Department officials who testified at the hearing said that any step backward in the security requirements for driver's licenses (therefore, any repealing of REAL ID requirements) will make it easier for criminals and terrorists to obtain U.S. passports (passports have always been thought to be the "gold standard" of U.S. identification documents). You discussed REAL ID in your opening statement and said, effectively, "there has to be a better way."

Please explain what a better way than REAL ID is. I would note that the FY 2009 DHS appropriations bill provided $100 million for the states to address REAL ID costs, which are substantial. Few states disagree that stronger drivers¿ license security is critically important to both immigration and employment and other security efforts. Rather than repeal or weaken security standards, will the Obama Administration adjust its budget and resubmit it to Congress in order to fund state driver¿' license security efforts?

Answer: The majority of states recognize the need to improve their driver's license and identification card issuance processes and the security of their driver's license and identification cards from fraud and theft by potential terrorists, organized crime, and independent criminal activity.

DHS is focused on assisting states in improving the security of driver's licenses, consistent with the recommendations of the 9/11 Commission. Since January, the Department has been working closely with the National Governors' Association to develop an alternative to REAL ID that accomplishes its security goals, provides additional privacy provisions, and protects against the creation of a Federal database of personal information on driver's license holders while striving to avoid many of the cost concerns articulates by the states..

The draft legislative proposal would fulfill the 9/11 Commission recommendation that the "federal government should set standards for sources of identification, such as driver's licenses." It would establish national performance standards to enhance the security and integrity of all licenses and identification cards, while retaining state flexibility to meet and exceed the standards as they are incorporated into each state's unique operations. Moreover, this proposal would increase security by facilitating participation of all jurisdictions, and it would not undo the pro-security measures that states have already taken under REAL ID. Additionally, the proposed legislation would allow states with legislation that prohibits compliance with REAL ID to rejoin

Question#:	40
Topic:	Real ID
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

cooperation in security efforts under a more state-friendly system that would implement important privacy safeguards to protect personally identifiable information.

The President's budget request included $50 million for grants to States to improve the security, privacy protections, and integrity of State driver's license issuance processes consistent with REAL ID requirements. In addition, the request proposed $25 million for further development of system capabilities to verify data against Federal databases which remain a critical component to prevent driver's license and identification card theft and fraud.

Question#:	41
Topic:	E-Verify
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: I appreciate the comments in your committee statement about EVerify and applaud the Administration's decision to fund EVerify at $112 million for FY 2010. As you said in your committee statement, the E-Verify program is considered to be 96 percent (or more) accurate.

Will you support, and work toward, the reauthorization of E-Verify for more than one year (the program expires at the end of FY 2009)?

RESPONSE: The Department supports E-Verify reauthorization and will continue to work to improve the automatic verification rate, strengthen employer and employee education on rights and responsibilities, and protect system integrity. We believe that E-Verify is the best available tool to help employers comply with immigration law; recently, E-Verify received the high customer satisfaction rating of 83 out of 100 in an American Customer Satisfaction Index survey. We have planned a number of enhancements for FY 2010, including:

- Enhancements to the Verification Information System (VIS) - The program will continue to enhance its technology, including a focus on identity management and assurance for the employer and employee, enhancing the photo screening tool for document assurance, expanding the data sources the program uses, and ensuring aging hardware is replaced.

- The Data Matching Initiative - E-Verify will continue exploring several developments aimed at reducing false negatives, including incorporation of the updated Immigration and Customs Enforcement (ICE) database that houses student visa data.

- Additional Staffing - E-Verify is requesting additional positions, to be located in a new regional site, in order to: a) assist in detecting and deterring system misuse and/or discrimination, b) support secondary verification, quality assurance and case resolution operations, c) increase outreach and education efforts, and d) provide mission support.

56800.079

Question#:	42
Topic:	rightwing extremism
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: News reports brought to light the recent DHS Assessment "Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment." One of the most disturbing things about this report is that it includes no evidence to back up the many very serious allegations that are made within it. There are no footnotes to any scientific studies or law enforcement data reports. The arguments are baseless, offensive, and unnecessary. In response to the criticisms of the report, you stated in a Fox News interview:

To the extent veterans read it as an accusation ... an apology is owed . . . This was an assessment, not an accusation. It was limited to extremists those who seek to commit violence within the United States. And all this was meant to do was to give law enforcement what we call 'situational awareness. . . . The last thing I want to do is offend or castigate all veterans. To the contrary, let's meet and clear the air."

In addition, you stated, "If there's one part of this report that I would rewrite ... it would be [the first] footnote." find that to be an inadequate response. The way that this entire report treats Americans, particularly our returning veterans, social conservatives, and law-abiding gun-owners, is unacceptable. In this case, framing the report as an "assessment" does not make it any better. An assessment means that you reviewed the evidence and came to a logical conclusion.

Secretary Napolitano, where is the evidence? What current evidence, aside from anecdote and conjecture, is this assessment based on?

If you can cite to no evidence other than anecdote and conjecture, why will you not reject this report and order that it be revoked?

Response:

This risk assessment was intended to provide situational awareness of criminal and violent extremist groups. Work on this assessment began last year and was drafted by analysts in the Office of Intelligence and Analysis. As I have previously mentioned, it was a poorly written report and was released despite nonoccurrence by the Office for Civil Rights and Civil Liberties. There was a breakdown in the process, which the Department has since addressed. The assessment has been removed from all DHS intelligence-related web-sites and is not being distributed by the agency. The documents that were used to draft the report have been provided to the Senate Homeland Security

56800.080

Question#:	42
Topic:	rightwing extremism
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Committee as well as the Senate Select Committee on Intelligence. These documents include finished intelligence products from other intelligence agencies, original research and references to information obtained by organizations that study violent domestic groups. I encourage you to review those documents

56800.081

Question#:	43
Topic:	prosecutions
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Secretary Napolitano, I am very concerned by some of the statements which you made in your prepared testimony today - and the way that it reflects the loosening of law enforcement policy at DHS. You stated:

"With limited exceptions involving exigent circumstances or security-sensitive worksites, ICE offices will work with federal interagency partners to obtain indictments, criminal arrest or search warrants, or a commitment from a U.S. Attorney's Office (USAO) to prosecute the targeted employer before initiating a worksite enforcement operation." (p. 7)

This obviously puts the cart before the horse. U.S. Attorneys will be unable to determine whether they can prosecute an employer ¿ who must have 'knowingly' employed illegal aliens - if no worksite enforcement action is taken to gather the necessary evidence. As such, they will not be able to (nor should they) give a commitment to prosecute the targeted employer.

As a former U.S. Attorney, don't you agree with me that it is necessary to see the evidence before you commit to prosecute?

Don't you agree that it would be poor law enforcement policy to require U.S. Attorneys to commit to a prosecution before evidence can be gathered in a worksite enforcement action?

Won't this policy preclude ICE from building a case against employers unless it blows the cover on the investigation?

Won't this shift enforcement priorities too far from career investigators to politically appointed U.S. Attorneys?

Response:

ICE Special Agents conduct investigations in accordance with U.S. law and agency policy. As criminal investigators, ICE Special Agents use all of the tools at their disposal—including confidential informants, electronic surveillance, and witness interviews—to evaluate allegations of criminal misconduct, including the illegal hiring of alien workers. ICE agents' investigative results are presented to the U.S. Attorney's

56800.082

Question#:	43
Topic:	prosecutions
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Offices, who are responsible for determinations regarding the legal sufficiency and evidentiary issues attendant to a proposed prosecution.

The new worksite enforcement strategy encourages the use of all investigative tools to gather available evidence of a crime prior to the investigation becoming overt. This strategy encourages agents to develop strong evidence of criminal violations before presenting the case to an assistant United States attorney for prosecution and prior to committing agency resources.

While an advance commitment from the U.S. Attorney's Office to prosecute a case based upon evidence available at the time the case is presented for prosecution is an option under this new strategy, the option to execute a criminal search warrant to gather evidence would apply in cases where additional evidence is required before making a criminal arrest. It should be noted, however, that as a warrant application requires probable cause that a crime has or is occurring, evidence of criminal activity will already exist before the investigation becomes overt.

Question#:	44
Topic:	raids
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: At the hearing I asked about the Bellingham, Washington raid and whether the Obama Administration was determined to end worksite enforcement raids. You responded that "I know of at least one workplace action that happened after Bellingham. So, we continue worksite enforcement." You further suggested that there may be others.

Please provide details of all workplace actions that have happened after the Bellingham raid.

Response:

All worksite enforcement operations and activities that have been conducted since February 24, 2009, are still part of ongoing investigations. Accordingly, ICE cannot provide further details for the record at this time. ICE can, however, provide you and your staff with a law enforcement sensitive briefing. Worksite enforcement is a critical investigative responsibility at ICE.

Question:

I am concerned that the release of most of the 28 illegal aliens caught in the Bellingham raids is a dangerous shift in policy from the previous Administration. Furthermore, giving work authorization to some of those aliens sends the message that this Administration is going to reward those who entered the country illegally.

Since the Administration has decided to shift its focus to employers, how will the Department handle those illegal aliens encountered while enforcing employer related sanctions?

Response:

ICE will continue to fulfill its responsibility to arrest and process for removal unauthorized workers encountered during worksite operations. Further, ICE seeks to use every tool available to gather and preserve evidence against those persons who violate our laws. In many instances, unauthorized aliens encountered during the course of an ICE investigation provide information and evidence critical to the prosecution of the

56800.084

Question#:	44
Topic:	raids
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

defendants. ICE may seek to retain these individuals in the U.S. using authority granted by law and regulation.

In the Bellingham case, ICE, in consultation with the United States Attorney's Office in Seattle, Washington, placed the illegal aliens originally arrested on February 24, 2009, into an immigration status known as Deferred Action in order to further a Federal criminal investigation. Deferred Action is a temporary, discretionary measure granted by ICE regarding removal proceedings, but does not convey permanent right to remain in the United States. The Immigration and Nationality Act's implementing regulations permit aliens placed into deferred action status to apply for work authorization.

Question:

What assurance can you give the Committee that you have not reinstated the policy of catch and release?

Response:

I understand the significance of the end to the catch and release policy, and I do not plan to undo the progress ICE has made. I will work with DHS partners at the Departments of State and Justice to ensure that removal orders are effectively executed. This Administration does not foresee the return of catch and release.

DHS has implemented a number of programs to reduce the flow of undocumented aliens into the United States and will not reinstate the policy of catch and release.

Since the implementation of the Secure Border Initiative (SBI) in November 2005, U.S. Immigration and Customs Enforcement (ICE) has effectively ended "catch and release" for all nationalities along the southern (U.S./Mexico) and northern (U.S./Canada) borders. This was accomplished by increasing efficiencies within the immigration removal process by:

- Rapidly expanding detention facility capacity;
- Reducing the time required to remove aliens; and
- Increasing use of DRO air transportation provided via ICE leases, charters, and the Justice Prisoner and Alien Transportation System (JPATS).

56800.085

Question#:	44
Topic:	raids
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Efforts to maximize detention capacity have included working closely with the Department of State and foreign governments to streamline ICE repatriation efforts. ICE has made technological advances, such as Video Teleconferencing (VTC) and the Electronic Travel Document (*e*TD) program, which is available to foreign governments to facilitate their issuance of travel document. Ready access to travel documents increases the efficiency of the removal process by minimizing the length of stay in detention.

Additionally, ICE has created the Detention Operations Coordination Center (DOCC). The DOCC transfers detainees from field office jurisdictions with detention capacity shortages to jurisdictions with surplus capacity, thus ensuring that aliens subject to removal proceedings are not released solely due to lack of bed space.

Question:

What authority will ICE given to conduct worksite raids and prosecute illegal aliens who are caught working in the country illegally?

Response:

The authority to conduct worksite enforcement investigations is found in the Immigration and Nationality Act, which contains the employment verification requirements and criminalizes the hiring of unauthorized alien workers. Further, illegal aliens encountered during a worksite enforcement action may face prosecution for such offenses as aggravated identity theft under 18 U.S.C. § 1028, fraudulent use of documents under 18 U.S.C. § 1546.

Question:

In an April 30, 2009, New York Times article, "Immigration Agents to Turn Focus to Employers" an unnamed "senior" DHS official characterized worksite enforcement cases under the prior administration as focusing on "low-hanging fruit...rather than [focused] on both the employers and the illegal workers..."

Given that high profile cases, such as the one in Postville, Iowa, was a long-term criminal investigation that resulted in numerous criminal charges against multiple managers, and criminal and administrative charges against illegal immigrant employees --- do you agree with the characterization?

56800.086

Question#:	44
Topic:	raids
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Response:

The dedicated agents at ICE will continue to conduct complex worksite enforcement criminal investigations. Worksite investigations, which often include sophisticated financial analysis, a detailed knowledge of immigration law, and use of advanced criminal investigative tools such as electronic surveillance and undercover officers, are by their nature complex and long term. The new worksite enforcement strategy clarifies the goals and priorities of worksite investigations. The strategy targets employers who knowingly hire illegal labor, while continuing to arrest and remove illegal workers. As noted in my testimony, we will continue to arrest and process for removal any illegal workers who are found in the course of these worksite enforcement actions in a manner consistent with immigration law and DHS priorities.

Question:

If not, will you pledge to pursue more cases like the one in Pottsville, Iowa?

Response:

ICE will pursue cases targeting employers who knowingly hire unauthorized workers or commit other related crimes. The cases will be conducted in accordance with the new strategy, which intends to 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to hire illegal workers; and 3) encourage employers to take advantage of compliance tools. In conducting investigations, ICE will utilize all of its authorities, tools, and expertise to ensure that investigations are complete and comprehensive. ICE will continue to conduct investigations of business of all sizes and from all industries where there is evidence of criminal activity.

56800.087

Question#:	45
Topic:	287g
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Under the 287(g) Program, immigration officers cross-deputize local law enforcement officers to perform certain immigration functions pursuant to a Memorandum of Agreement. This program continues to be greatly scrutinized by the media. Since 2002, ICE has partnered with local law enforcement agencies through Section 287(g). Currently, ICE has 67 active MOAs and has received many additional requests for 287(g) partnerships. Americans trust law enforcement officers to do their jobs enforcing U.S. criminal laws-and so they also trust law enforcement to enforce U.S. immigration laws.

In the last four months, Obama Administration officials have made comments that appear to question the importance of and use of state and local law enforcement to help reduce America's illegal immigration problem. Does the Obama Administration fully support the use of section 287(g) and does it remain committed to other ICE Access programs?

Response:

Yes, the Administration fully supports the 287(g) program and the ICE ACCESS program, also known as Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS). While we will continue to enter into 287(g) agreements under the Detention and Task Force Officer (TFO) models, ICE will focus more heavily on the jail model, which has identified a larger number of criminal aliens than the TFO model. Additionally, in FY 2010, the ICE Office of State and Local Coordination expects to receive funding to enhance oversight and outreach of the 287(g) and ICE ACCESS programs. Promotion of the 287g and ICE ACCESS programs will continue to better coordinate partnership efforts with state, local, and tribal law enforcement agencies.

56800.088

Question#:	46
Topic:	E-Verify
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Given the state of our economy, the need for Americans to have priority in finding employment is paramount. Today, in your prepared testimony I'm pleased that you spent a significant amount of time praising E-Verify. Indeed, I agree with your testimony that "E-Verify is an essential tool for employers to maintain a legal workforce." (Napolitano Prepared Testimony, p. 7). We know that over 112,000 employers are enrolled in this free, voluntary program and that new employers continue to sign up at a rate close to 1,000 per week. According to DHS, 96.1% of employees are cleared automatically. Despite this success, in April 2009, you decided to yet again further delay the implementation date for Executive Order 12989, which requires all federal contractors and subcontractors to use E-Verify, to June 30th of this year (from May 21).

Why have you pushed back the implementation of Executive Order 12989?

Will you make a firm commitment to insure that EO 12989 is implemented on June 30, 2009?

Rather than continue the uncertainty of whether E-Verify will be a permanent tool of the federal government, the Obama Administration should support permanent authorization and funding the use and expansion of E-Verify. E-Verify is a common-sense piece of legislation that ensures that American citizens do not lose job opportunities to those that have broken our laws. It is especially crucial in this time of economic downturn. I have tried several times to have this legislation enacted, but the legislation has not been given the vote that it deserves.

Does the Obama Administration unequivocally support E-Verify? How will the Obama Administration help to push this legislation forward in order to ensure that American citizens who are unemployed are not unfairly passed over for those here illegally?

The state of Arizona passed the Legal Arizona Workers Act which sanctions businesses found guilty of knowingly or intentionally hiring illegal aliens and requires employers to check the employee's work authorization status using the federal E-Verify system. This Act was legally challenged and upheld by the Ninth Circuit Court of Appeals.

Would you support the Arizona Act as a national model?

56800.089

Question#:	46
Topic:	E-Verify
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

RESPONSE: When the rule requiring federal contractors to use E-Verify was being promulgated, it was made available for public comment. The regulation was originally scheduled with an effective date of January 15th, 2009 but has been delayed for review by the Administration. The rule will affect federal contractors who are awarded a new contract (on or after September 8th, 2009) that includes the Federal Acquisition Regulation E-Verify clause.

The Administration strongly supports E-Verify as a cornerstone of worksite enforcement and will work to continually improve the program to ensure it is the best tool available to prevent and deter the hiring of persons who are not authorized to work in the United States.

Regarding E-Verify legislation, employer participation in the program is currently voluntary. However, states are permitted to enact legislation that requires use of E-Verify, and many, including Arizona, have. Ten states require certain employers, such as state agencies or public contractors, to use E-Verify, and twenty states have pending legislation that would require some or all employers to use E-Verify.

56800.090

Question#:	47
Topic:	H1B
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: The H1B program allows 65,000 foreigners with at least a bachelor's degree and specific skills to work for a U.S. company for a six-year period. Additionally, 20,000 foreign nationals with advanced degrees from U.S. universities are given H1B visas outside the annual cap.

In 2007, the U.S. government received over 124,000 applications for H-1B visas, nearly double the congressionally mandated cap of 65,000. The visas were awarded by lottery. This year, visas will be granted to 65,000 individuals randomly chosen from a pool of petitions filed in the first five business days in April.

Instead of a lottery, wouldn't it make more sense to evaluate the entire pool of annual applicants and give the limited 65,000 visas (85,000 if you count U.S. University graduate visas) to the applicants with the best overall qualifications?

An advantage could be given for the type of job offered to the applicant, salary level offered to the applicant, the education level of the applicant and English proficiency.

Other countries - Canada, Australia, and Great Britain - use these type of point systems to select among immigrant applicants.

What is your view of this type of selection system? Would you recommend that Congress implement a system to more fairly choose among the extremely large numbers of individuals that want to immigrate to the United States?

RESPONSE: Since the Department created the random selection process in 2005, the H-1B "lottery" has twice been run on all H-1B petitions received up to the final receipt date for a given fiscal year (FY2008 and FY2009). USCIS began receiving H-1B petitions for the 2010 fiscal year on April 1, 2009, and has not needed to randomly select from petitions filed to date. As of May 18, 2009, the agency continues to accept petitions subject to the general cap.

USCIS is amenable to considering new ways to administer the H-1B program, including the type of legislative proposals you describe.

The Department is open to any suggestions that will benefit the economy and national interests of the United States as well as protect U.S. workers from adverse effect on their

56800.091

Question#:	47
Topic:	H1B
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

working conditions and eliminate any economic incentive or advantage in hiring temporary foreign workers. DHS, in coordination with the Department of Labor, would like the opportunity to engage in discussions with Congress and our stakeholders on how to improve the H-1B category as well as the other immigrant and nonimmigrant categories currently defined in the Immigration and Nationality Act.

Question#:	48
Topic:	fencing
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: The Secure Fence Act of 2006, which passed the House 283-138 and the Senate 80-19, mandated the construction of roughly 700 miles of double-layered border fence.

So far, your Department has constructed only 322 miles of new pedestrian fence. Of those miles, only 34 are double-layered, even though experience in San Diego demonstrated that double layered-fencing is unquestionable effective. According to reports, the Department only plans to construct another 50 miles of pedestrian fence (for a total of 370 miles of fencing along the southern border), 330 miles short of the Secure Fence Act's requirement.

Additionally, DHS has completed approximately 302 miles of vehicle barriers. I am told you are planning on counting the miles of vehicle barriers - which your Department's documents call "vehicle fencing" - toward the 700 miles of fencing requirement contained in the Secure Fence Act.

Is this correct?

Is it your interpretation that miles of "vehicle barriers' count toward the 700 miles of fencing required by the Secure Fence Act of 2006?

How much has been budgeted for completion of the double-layered fence? How much has been budgeted for other border infrastructure in 2010? Please outline where that money has been budgeted.

Response: In December of 2007, when Congress passed the Consolidated Appropriations Act, 2008, it struck the provisions in the Secure Fence Act (SFA) that mandated approximately 700 miles of two-layer reinforced in very specific locations along the Southwest Border. Congress replaced the SFA provisions with a more flexible statutory framework that gives the Secretary of Homeland Security the discretion to determine both where and what type of fencing and other infrastructure should be constructed in order to achieve and maintain operational control of the border. The current and projected mileage totals for both pedestrian and vehicle fence are the result of an extensive assessment of alternatives by the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), and the United States Border Patrol (USBP). They reflect DHS, CBP, and the USBP's operational assessment as to the

56800.093

Question#:	48
Topic:	fencing
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

location and type of infrastructure that will be most practical and effective in deterring illegal entry into the United States. As discussed more fully below, they are also consistent with the statutory framework set forth by Congress regarding the construction of fencing and other infrastructure on Southwest Border.

As you note, the Secure Fence Act of 2006 (SFA) mandated the construction of approximately 700 miles fencing along the Southwest Border. More specifically, in Section 3 of the SFA, Congress amended Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to require that the Secretary construct "at least 2 layers of reinforced fencing." In addition, the precise locations where such fencing was to be constructed were specifically enumerated in the text of the statute. *See* IIRIRA § 102(b)(1)(A)(i)-(v) (codified as amended by the SFA at 8 U.S.C. § 1103 note (2006)). With the Consolidated Appropriations Act, 2008, however, Congress amended Section 102(b) of IIRIRA again and struck the specific fencing requirements that were previously imposed by the SFA.

In the Consolidated Appropriations Act, 2008, Congress struck the SFA amendments to Section 102(b) and replaced them with a more flexible statutory framework that gives the Secretary the discretion to determine where and what type of infrastructure should be constructed in order to deter and prevent illegal entry. *See* § IIRIRA § 102(b) (codified as amended by the Consolidated Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090, at 8 U.S.C. 1103 note). While Section 102(b)(1)(A) of IIRIRA still calls for the construction of "not less than 700 miles" of fencing along the Southwest Border—including certain priority miles to be completed by December 31, 2008—Congress gave the Secretary the discretion to build fencing in those locations on the Southwest Border where the Secretary determines that fencing would be "most practical and effective." IIRIRA § 102(b)(1)(A). To this same end, Section 102(b)(1)(D) provides that, notwithstanding Congress' call for 700 miles of fencing, the Secretary is not required to install fencing, physical barriers, roads, lighting, or cameras in any particular location "if the Secretary determines that the use or placement of such resources is not the most appropriate means to achieve and maintain operational control" of the border. IIRIRA § 102(b)(1)(D) (codified as amended at 8 U.S.C. 1103 note).

As alluded to above, consistent with the discretion given to the Secretary by Congress in Section 102(b) of IIRIRA, DHS, CBP, and USBP undertook an extensive assessment of alternatives. The aim of this assessment was to identify both the location and type of fencing that would be most effective in achieving and maintaining operational control of the border. Based on that assessment, former Secretary Chertoff made a commitment to construct approximately 670 miles of pedestrian and vehicle fence on the Southwest Border by the end of 2008. This commitment was consistent with Congress's

56800.094

Question#:	48
Topic:	fencing
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

requirement, as set forth in Section 102(b)(1)(B) of IRRIRA, that the Secretary identify certain priority areas and complete construction in those areas by December 31, 2008. As you note, DHS has now completed the vast majority of those 670 miles of fencing. DHS will continue to work towards completion of the remaining miles; however, as it stands now there are no plans to fund completion of double-layered fence from the Tactical Infrastructure ("TI") budget. As discussed above, DHS believes its approach to the construction of fencing and other infrastructure on the Southwest Border is consistent with the statutory requirements put forth by Congress in Section 102 of IIRIRA.

Regarding budgeting for other border infrastructure in 2010, the President's budget submission for the Border Security, Fencing, Infrastructure, and Technology (BSFIT) appropriation includes $110 million for new TI projects. Currently these funds are planned for the highest priority operational requirements as determined by the Border Patrol including:

- Replacing portions of the surf fence in San Diego Sector;
- All weather road construction in San Diego Sector;
- Brush clearing in Yuma Sector;
- Bridge construction in El Centro and Tucson Sectors;
- Lighting in San Diego, El Centro, Tucson, and Rio Grande Valley Sectors; and
- Tertiary pedestrian fence in El Centro Sector.

56800.095

Question#:	49
Topic:	operation streamline - 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Under 8 U.S.C. § 1325, 'improper entry by an alien' on the first commission of the offense is a misdemeanor, punishable with up to 6 months in prison and/or a fine. Second and subsequent illegal entries are felonies, punishable by up to 2 years in prison and/or a fine. Though these penalties sound serious, they have not deterred illegally entries in the past because no jail time was routinely imposed or statutorily required.

Before the implementation of "Operation Streamline" only the most serious illegal entries were ever prosecuted. Routine offenders caught by the border patrol were processed in a matter of hours and simply returned across the border to Mexico.

Under Operation Streamline, however, illegal aliens caught at the border are detained and prosecuted prior to removal. Operation Streamline is now operational in 5 of the 9 southern border sectors, all of which have seen dramatic decreases in apprehensions since implementation of the program. In fact, both Arizona sectors have implemented Operation Streamline. Apprehensions in the Yuma sector decreased by 93% from 2006 to 2008, with another 57% decrease this year (from same time period in 2008). The Tuscon Sector has seen a 31% decrease in apprehensions this year.

By reducing the volume of illegal entries, DHS has greater flexibility to focus resources on apprehending terrorists, terrorist weapons, and smugglers of humans, drugs, and other contraband illegally entering the United States.

During the hearing I asked you whether you favored programs like Operation Streamline and whether you would consider expanding it to the remaining border sectors. You answered generally that "I favor them implemented in the right way and when they are producing results that you can measure. And we're looking at other strategies in other places as well.'

Given the program's unquestionable success, I believe Operation Streamline is producing results that can be measured. Will you commit to expanding Operation Streamline to all 9 southern border sectors by the end of 2009?

What other strategies are you looking at implementing?

Response: Operation Streamline is a multi-agency federal effort which includes the U.S. Border Patrol, the U.S. Attorney's Office, the U.S. Marshals Service, the Immigration

56800.096

Question#:	49
Topic:	operation streamline - 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

and Customs Enforcement's Office of Detention and Removal, and the U.S. Federal Courts. Expansion of the prosecution program is contingent upon each participating agency having the proper amount of personnel, resources, and infrastructure in order to implement the program at all of the Border Patrol's 9 southern border sectors.

Question#:	50
Topic:	criminal aliens
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: In February 2009, the Migrant Policy Institute released a report DHS and Immigration: Taking Stock and Correcting Course in which it describes the collapse of the Institutional Removal Program into CAP and DHS's plan to screen all foreign-born inmates in every federal, state, and local prison and jail. The report stated that less than one-third of noncitizens removed in fiscal year 2007 were removed on criminal grounds.

What will you do to prioritize the removal of criminal aliens who pose the greatest risk to national security and public safety?

Response:

As part of prioritizing the removal of criminal aliens, ICE is focusing on accurately and quickly identifying criminal aliens in federal, state, and local custody.

To identify criminal aliens in federal, state, and local custody, ICE is implementing biometric identification technology in a new and powerful way known as Interoperability. Specifically, we are providing state and local law enforcement with the ability to search a subject's criminal history and immigration identifying information automatically using FBI and DHS fingerprint databases. The results of this search will be shared with local law enforcement as well as the local ICE office. ICE can use this technology to identify criminal aliens biometrically as opposed to biographically. Biometric identification will save time, significantly improve the accuracy of criminal alien identification, and allow ICE and state and local law enforcement to identify criminal aliens early in the criminal justice process.

ICE will also be able to identify a larger number of criminal aliens by moving identification earlier in the criminal justice process. Currently, we identify the majority of those aliens through the Criminal Alien Program (CAP) while they are incarcerated. Under CAP, teams of ICE personnel work with local law enforcement agencies to identify, interview, and process for removal criminal aliens detained in prisons and jails. In some cases, criminals with a violent criminal history and who have been previously removed may be presented for federal prosecution for illegal reentry.

ICE's risk-based strategy includes classification levels for all criminal aliens based on the seriousness of their crimes and their entire criminal history. ICE has categorized these criminal aliens into three levels. The highest risk category of offenses includes those individuals who have been convicted of violent crimes such as murder, manslaughter,

56800.098

Question#:	50
Topic:	criminal aliens
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

rape, robbery, kidnapping, or major drug offenses. This category is our highest priority and the main focus of our efforts. In line with Congressional funding, ICE focuses on these aliens who have committed violent crimes or major drug offenses.

As ICE deploys biometric identification technology across the country, DHS' databases will develop the most complete data set related to criminal aliens to date. With this data, we will be able to predict and forecast the locations where we may encounter the greatest numbers of current and future criminal alien populations based on past experience and an examination of trends over time. ICE will then allocate resources and services to ensure the most violent criminal aliens are detained and removed from the United States.

To ensure ICE can support the increased numbers of criminal aliens identified, in areas where we have deployed this technology, we have also deployed personnel, detention beds, and the transportation infrastructure to support the anticipated increase of identified criminal aliens. We will ensure that we allocate these resources in support of new deployments.

Question:

What specific steps will you take to address the challenges faced with integrating the Federal Bureau of Investigation's database with DHS's database in order to quickly identify such aliens prior to their release from prison or jail?

Response:

FBI and DHS worked together to successfully overcome early technical challenges in integrating the databases. Currently, the remaining challenges are logistical and are centered on the ability to conduct joint outreach to the large volume of local law enforcement agencies where DHS plans to deploy biometric identification.

Question:

What specific steps, other than possible sanctions, will you take in removing criminal aliens to countries who traditionally do not cooperate with such repatriation?

Response:

56800.099

Question#:	50
Topic:	criminal aliens
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

When developing solutions to facilitate the repatriation of criminal aliens, ICE takes into account the individual factors that have traditionally hindered repatriation efforts in each country. For example, on January 22, 2008, ICE entered into a Memorandum of Understanding (MOU) on the Acceptance of the Return of Vietnamese Nationals. As part of this MOU, ICE provides the Government of Vietnam with $140 per person for administrative expenses related to verification of citizenship. ICE also provides each deportee to Vietnam with a $10 transportation fee to cover the transportation cost from the airport to their residence. El Salvador and Honduras also require administrative process fees for the issuance of each travel document required for removal. The countries have then used this funding fee to build reception centers at the airports to receive repatriated citizens and nationals.

In order to further develop international agreements on repatriation and to support repatriation and removal efforts, the ICE Office of International Affairs (OIA) has established a Repatriation and International Agreements Unit (RIAU) to maintain removal agreements and improve cooperation with foreign countries.

56800.100

Question#:	51
Topic:	Jones Act
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Atlantic Marine in Mobile, Alabama, is building three Jones Act compliant ships and intends to move its dry dock Alabama a short distance (less than 100 yards) to launch the ships. The dry dock was purchased by Atlantic Marine from another shipyard 15 years ago. That U.S. shipyard had acquired it twenty-five years before from a foreign manufacturer. On June 30, 2008, Atlantic Marine submitted a ruling request to CBP for confirmation that this isolated movement of the dry dock would not render the Alabama a vessel for the purposes of the Jones Act. However, using this dry dock to launch these three ships has been ruled by the Customs and Border Patrol as a violation of the Jones Act.

Will you please review this ruling of CBP and work with Atlantic Marine to allow the dry-dock Alabama to launch these three ships?

Response: This topic involves the Jones Act (46 U.S.C. 55102) which prohibits the transportation of merchandise (defined in 19 U.S.C. 1401(c) as "goods, wares, and chattels of every description,...") between U.S. points in any vessel that is not U.S.-built, owned and documented by the U.S. Coast Guard with a coastwise endorsement. The dry dock in question (the "ALABAMA") is foreign-built. It is proposed to use it to load hull sections for the construction of a vessel, then transport them a distance of approximately 100 yards where the hull sections will subsequently be unloaded.

The ALABAMA meets the legal definition of a vessel (19 U.S.C. 1401(a) "...every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water."). It is registered with the U.S. Coast Guard as a vessel. Its proposed use is the transportation of merchandise between U.S. coastwise points. There is no *de minimis* rule with respect to distance. (See 19 CFR 4.80(a) which provides that the Jones Act applies even to "points within a harbor.")

Accordingly, in response to a request for a ruling on this matter, CBP issued ruling letter H032257, dated August 1, 2008, which held that the proposed use of the ALABAMA as described above would violate the Jones Act. CBP does not believe there is any legal basis upon which to overturn this ruling. To do so would run against the legislative intent, as well as the express language, of the Jones Act and the CBP regulations promulgated pursuant to that statute. The only way a waiver may be obtained is pursuant to statute (46 U.S.C. 501) based on either a request from the Department of Defense that the Secretary of Homeland Security waive the laws "to the extent the Secretary [of

Defense] considers necessary in the interest of national defense" or a determination by the Secretary of the Department of Homeland Security that such a waiver is "in the interest of national defense."

Defense] considers necessary in the interest of national defense" or a determination by the Secretary of the Department of Homeland Security that such a waiver is "in the interest of national defense."

56800.101

Question#:	52
Topic:	utility tools
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Ron Wyden
Committee:	JUDICIARY (SENATE)

Question: As you know, the International Civil Aviation Organization revised its guidelines and now recommends allowing passengers to carry small pocket utility tools with blades less than six centimeters long. According to TSA, the United States supported this proposal. That makes a lot of sense. After all, these items do not pose a threat to the security of the cockpit, and are no more dangerous to fellow passengers than some of the items already allowed on planes.

In addition, from August 2007 to August 2008, 68% of the items confiscated by Transportation Security Officers were very small blades. That is a lot of time spent looking for and confiscating items that appear to pose no real threat to security. It would appear that Transportation Security Officers¿ time would be better spent focusing on immediate threats, like explosives.

In your view, should TSA adopt these international standards and allow very small pocket utility tools on board planes?

What is your department doing to harmonize TSA's safety standards with the international standards?

Response: The Transportation Security Administration (TSA) collaborated with its international partners, namely Australia, Canada, and the European Commission, on the prohibited items list that was presented to the International Civil Aviation Organization's (ICAO) Aviation Security Panel in May 2008. TSA understands that consideration of adopting the new ICAO guidance material on blade length in the United States must be made with the full input of our security partners and security stakeholders, so that course of action is being pursued.

TSA is working proactively with ICAO in determining security standards and continues to work both bilaterally and multilaterally with international partners to harmonize procedures that have been implemented to meet those standards. This is being done by leveraging TSA's expertise globally through Transportation Security Administration Representatives (TSARs) overseas as well as promoting best practices, capacity building, and information-sharing through other international organizations such as the Group of Eight, European Community, the Asia-Pacific Economic Conference; and numerous ICAO regional groupings in Europe, Asia, Latin America, Africa and the Middle East.

Question#:	53
Topic:	drug cartels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Ron Wyden
Committee:	JUDICIARY (SENATE)

Question: Mexican drug cartels are responsible for trafficking much of the drug supply into Oregon, and have also engaged in marijuana growing operations on federal forest land within Oregon. What actions are being taken by the Department to help control Mexican drug cartel activity away from the border, and in particular in Oregon and along the I-5 corridor?

Do you believe HIDTA is working effectively, and do you have any recommendations to improve HIDTA or other efforts in which the Department participates to combat drug trafficking?

Does the Department need additional authority or resources to effectively confront the challenges posed by Mexican drug cartels?

Response:

The Department of Homeland Security (DHS) is actively involved in combating the flow of narcotics into the United States, not just along the border regions, but in areas away from the borders as well. While narcotics trafficking along the border regions receives heightened attention, states located away from the United States' borders also contend with the flow of illegal drugs and the actions of Mexican drug cartels. For example, Mexican drug cartels are responsible for trafficking much of the illicit drug supply into Oregon and have also engaged in marijuana growing operations on federal forest lands within Oregon.

The Department takes a proactive approach to help control Mexican cartel activity away from the border in Oregon and along the Interstate 5 (I-5) corridor. For example, Immigration and Customs Enforcement (ICE) Assistant Special Agent in Charge (ASAC) Portland agents are assigned to the High Intensity Drug Trafficking Area (HIDTA) Interdiction Team (HIT), a HIDTA Federally-funded task force composed of Oregon State Police (OSP) Troopers, Portland Police Bureau Detectives, and ICE agents. One of the primary goals of the task force is to exploit narcotics and bulk cash currency seizures made by OSP Troopers, both on I-5 and other major highways in Oregon. This program is quite successful, and in calendar year 2008, ICE agents and local officers assigned to HIT seized in excess of 90 kilograms of cocaine, approximately 20 kilograms of methamphetamine, 1 kilogram of heroin, more than 200 kilograms of marijuana, and over 1 million dollars in cash.

56800.103

Question#:	53
Topic:	drug cartels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Ron Wyden
Committee:	JUDICIARY (SENATE)

In addition, ASAC Portland agents routinely investigate drug trafficking organizations (DTO's), which utilize Oregon's highway system to smuggle both narcotics and currency into and out of the United States. Investigations focus primarily on cocaine and methamphetamine originating from Mexico, as well as high grade marijuana and ecstasy originating in Canada. DTO's also utilize I-5 and other alternative routes through Oregon to smuggle currency out of the United States into both countries.

I-5, a well-traveled route by DTOs, receives great attention from law enforcement officials. Recent ICE investigations have provided actionable intelligence that I-5 is a common corridor used by DTOs to transport narcotics up and down the west coast. Intelligence has shown that both passenger vehicles and commercial trucks are utilized to transport drugs. For example, officials in Oregon recently seized approximately 360 pounds of high grade Canadian marijuana, which was destined for shipment to California. In addition, 96 kilograms of Ecstasy and approximately $435,000 in U.S. currency was seized when investigators followed a vehicle from Canada through Oregon on I-5 down to the Los Angeles area.

The High Intensity Drug Trafficking Areas (HIDTAs) are an effective mechanism to bring state, local, and Federal resources together to reduce drug trafficking. They also provide a forum for the prevention and treatment sector to interact with criminal justice decision-makers. The HIDTA Program is designed to significantly disrupt the market for the illegal drug trade and related activities by identifying the threat, developing a comprehensive enforcement strategy to address the identified threat, and then effectively implementing that strategy.

The HIDTA in Oregon has been successful in addressing the threat within the eight HIDTA-designated counties. The Oregon HIDTA Program funds law enforcement initiatives, which promote and facilitate cooperative sharing of case information, leveraging of available resources, and maintenance of effective working relationships between Federal, state, local, and tribal law enforcement agencies. In calendar year 2008, drug enforcement task forces, funded by the Oregon HIDTA Program, were responsible for seizing over $5 million in illicit drug-related assets, removing $141 million in illegal drugs destined for the streets and neighborhoods of Oregon as well as other parts of the country, and disrupting 42 targeted drug trafficking and money laundering organizations. In addition, the HIDTA in Oregon dismantled eleven Drug Trafficking Organizations, effectively removing their presence and negative influence on the streets and neighborhoods of Oregon. For every HIDTA dollar spent, there was a return on investment of $61.28 in the seizure of illicit drugs and smuggled currency.

56800.104

Question#:	53
Topic:	drug cartels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Ron Wyden
Committee:	JUDICIARY (SENATE)

The accomplishments of the HIDTA model in Oregon have been widely recognized as a benchmark of success. In fact, the Police Chief of the Warm Springs Police Department (an American Indian Reservation) put together an inter-tribal law enforcement mutual aid program, which is modeled after the HIDTA Program, and is developing performance measures to apply against the program.

The Department remains actively engaged in securing this nation's borders from the violence waged by drug cartels in Mexico and the general threat illicit narcotics poses to this country. The violence in Mexico is not only an international threat, but it is a homeland security issue in which all Americans have a stake. The Department of Homeland Security, though its organizations and components, is leveraging its authorities and resources to confront these challenges. The Department of Homeland Security's FY 2010 budget request will strengthen current efforts that are vital to the nation's security, bolster DHS' ability to respond to emerging and evolving threats, and allow DHS to embrace new responsibilities in order to secure the nation. Approving the President's FY 2010 Budget Request will ensure DHS receives the critical investments it needs to protect the American people and fulfill its broad mandate to conduct many different activities within a single, unified security mission.

56800.105

Question#:	54
Topic:	article 4
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Ron Wyden
Committee:	JUDICIARY (SENATE)

Question: Your written testimony discussed initiatives to deal with criminal and fugitive aliens. I am crafting legislation to provide federal support for the work of states such as Oregon, Arizona, Texas, California, and others to investigate and prosecute foreign fugitives using Article 4 of the Mexican Federal Penal Code. As a former U.S. Attorney, Attorney General, and Governor of Arizona, I expect that you have worked with Article 4.

Do you believe Article 4 can be a useful tool in combating criminal activity by Mexican drug cartels?

Do you believe that a federal program to provide coordination, training, and resources for Article 4 cases would be useful for expanding and advancing the ability of state and local prosecutors to pursue Article 4 investigations and prosecutions?

Response: I would defer to the Department of Justice, which has extensive experience working with Mexico on Article 4 prosecutions in Mexico of Mexican citizens who commit crimes in the United States. As you know, however, with regard to serious crimes including drug-related crimes, the U.S. has a strong preference for extradition rather than domestic prosecution; in most instances it is far more effective for the accused to be tried where the crime occurred, the victims and witnesses are located, and there is a community interest in ensuring that justice is done.

56800.106

SUBMISSIONS FOR THE RECORD

STATEMENT FOR THE RECORD

Department of Homeland Security Oversight Hearing

WEDNESDAY, MAY 6, 2009

U.S. SENATE, COMMITTEE ON THE JUDICIARY
Washington, DC
Room 226 Dirksen Senate Office Building

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Chairman Leahy, thank you for calling this important hearing on oversight of the Department of Homeland Security (DHS). It's been a little over a year since the Committee last held an oversight hearing with DHS and it's the first time we've had Secretary Napolitano before us. I believe that these oversight hearings are an essential part of our duty to oversee the Executive Branch. I welcome the opportunity to ask Secretary Napolitano some tough questions about immigration, law enforcement cooperation, and some other outstanding issues I have with DHS.

During our last hearing I stated that oversight of DHS is of the utmost importance. I'm concerned that nearly seven years after the creation of the Department, difficult issues still remain in coordinating the various agencies merged into one Department. This coordination is more complicated given the challenging issues the Department faces, be it the tough task of enforcing our Nation's immigration laws, securing our borders and ports, and ensuring that our Nation's infrastructure is protected to name a few.

First off, I'd like to talk to the Secretary about immigration. As a Senator from an interior state, I take enforcement of our immigration laws very serious. That includes apprehending, detaining, and deporting aliens who are living and working illegally in the United States. Interior enforcement of our immigration laws is just as important as border security. We cannot ignore those who successfully evaded our border agents, bypassed the inspection process, or overstayed a visa. We must deal with these individuals, and I'd like to see the Department of Homeland Security use the tools at their disposal to get the job done.

I'm very interested in hearing from Secretary Napolitano about the worksite enforcement guidelines, particularly a commitment to deal with illegal aliens as well as employers. I'd like to hear from the Secretary about the Department's plans for E-Verify, including a commitment to enforce a rule requiring contractors of the federal government to use the program. I hope Secretary Napolitano will consider the needs of state and local law enforcement and continue to use the 287g program. Lastly, on immigration, I'd like to see efforts from the Administration to reduce fraud and abuse in our visa programs, particularly the H-1b and L visa programs.

Another issue I'd like to discuss relates to my long standing interest in ensuring that federal law enforcement agencies are working in a cooperative manner. It's hard to believe that nearly 8 years after the tragic events of 9/11 we even need to talk about law enforcement cooperation and information sharing. In fact, the creation of the Department was viewed by

56800.107

STATEMENT FOR THE RECORD

many of us as a step toward solving the problem of compartmentalization and turf wars by law enforcement agencies. However, a recently released GAO report that I requested in my capacity as the Co-Chairman of the Caucus on International Narcotics Control paints a different picture of federal law enforcement coordination—that of the pre 9/11 mentality of turf wars and information hoarding. I find this wholly unacceptable and will ask some tough questions about what Secretary Napolitano is doing to fix this problem.

I want to point out this GAO report to my colleagues and to Secretary Napolitano because I find the results of the GAO report to be shocking. Specifically, GAO noted that since 9/11 the Drug Enforcement Administration (DEA) has improved its coordination with component Department of Justice law enforcement agencies. However, the DEA has less defined partnerships with DHS entities—specifically ICE and CBP. GAO noted that long-standing jurisdictional disputes involving ICE's drug enforcement role and DEA's oversight of ICE's drug related investigations. This authority to investigate drug cases, commonly referred to by its section of the US Code "Title 21", has become a serious problem.

Currently, DEA has the statutory authority to investigate all narcotics investigations. ICE has been delegated some authority to investigate drug related crimes provided they work under the DEA. For this purpose, DEA cross-designates ICE agents with "Title 21" authority. The number of cross-designated ICE agents is capped by agreement around 1,400 agents. However, the controlling MOU on this matter was signed in 1994 and this outdated process has led to significant problems in coordinating Title 21 investigations. One specific example of this problem relates to the law enforcement "Fusion Center" operated by the Department of Justice. DOJ has the participation of virtually every federal law enforcement agency with the exception of ICE. ICE believes that DOJ has asked for information above and beyond what it asks of other agencies. Because of that, ICE has refused to participate. This is just one example of the many little turf battles that have been continuing for nearly 30 years. Unfortunately, these disputes could lead to dire consequences.

The most shocking result of the GAO report is that absent an updated MOU between DEA and ICE, there is "potential for duplicative investigative efforts and concern that officer safety could be compromised". This is simply unbelievable. Essentially, the GAO has found that the relationship between ICE and DEA is so bad that agents could be unnecessarily hurt or killed. This needs to be addressed right away.

To that end, I wrote to Secretary Napolitano and Attorney General Holder on April 21, asking for them to immediately implement the recommendations GAO made to help resolve this long standing jurisdictional dispute. These recommendations are simple, rework the MOUs, have ICE begin participating in the Fusion Center, and set up a process to periodically review the MOUs. This isn't rocket science, its simple leadership and agency management. Sadly, I need to report to the Committee that to date I have not received a response to my letter from either office. I want to see commonsense leadership from both Secretary Napolitano and Attorney General Holder on this issue immediately.

I asked similar questions to representatives from ICE and DEA at a hearing before the Crime and Drug Subcommittee a few months back and I've yet to hear a good answer to how to

56800.108

STATEMENT FOR THE RECORD

solve this. I'm not going to stop fighting to get this fixed and I really want some answers. I expect Secretary Napolitano to provide some answers on how to fix this in short order. I expect the same of Attorney General Holder and will bring it up whenever I see him next. The American taxpayers deserve law enforcement agencies that work cooperatively and efficiently, not those that continue unproductive turf battles that could threaten the safety of law enforcement officers and impact the security of our country.

I hope that Secretary Napolitano will provide answers to these important questions and commit to getting me the answers I'm seeking.

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
May 6, 2009

Statement Of Chairman Patrick Leahy (D-Vt.),
Senate Judiciary Committee,
Oversight Of The Department Of Homeland Security
May 6, 2009

I thank Secretary Napolitano for appearing here today while managing so many responsibilities, not the least of which is a public health emergency. I commend her competent leadership during the current flu pandemic. The Obama administration's immediate actions and preparations stand in stark contrast to those of its predecessor following Hurricane Katrina. I appreciate the administration's efforts to keep the American public informed and reassured, and their efforts to convey common-sense ways we can all minimize the spread of this flu.

I also commend her early attention to our interests in working closely with Mexico in its struggle against drug trafficking, and against the violent cartels and gangs that pose serious threats to the people, communities, and Government of Mexico. Mexico is our neighbor, and finding appropriate ways to help it prevail against these lawless influences is in the interests of both of our countries. The Merida Initiative is a first step, but we need a comprehensive strategy that addresses the underlying causes that have enabled drug-related violence in Mexico and Central America to flourish.

Just last week, Secretary Napolitano issued new guidelines for the Immigration and Customs Enforcement agency's approach to conducting immigration worksite enforcement in order to combat the systematic unlawful exploitation of foreign workers that serve to harm them and to undercut American workers. The penalty for such lawbreaking and exploitation must be meaningful, and more than another cost of doing business.

I am also pleased that the Secretary is taking the issue of immigration detention very seriously, and that she is carefully reviewing past practices and procedures. In light of historically high rates of detention for asylum seekers and other non-criminal aliens, I hope the Department is giving careful consideration to the increased use of alternatives to detention, such as supervised release for those who pose no risk of harm to society. In my view, the United States should not be in the business of incarcerating children who have violated no laws. Alternatives to unnecessary incarcerations will save taxpayer dollars, and are far more appropriate for many who are currently in detention.

In addition, I think we can all agree that we need to ensure that foreigners are not dying while in custody. This is a blot on American principles, and has no place in American justice.

I saw the ceremony last week at which Secretary Napolitano and President Obama welcomed members of our armed services to American citizenship. Immigrants who risk all to defend this Nation deserve expedited citizenship consideration. Nor was this the first time Secretary Napolitano administered the oath to our soldiers. When she did so to a soldier at Walter Reed Army hospital last month, she recognized his service and honored his work to protect all Americans.

The new direction that the Department is taking can also be seen in the Secretary's willingness to take a fresh look at the REAL ID Act. Many states and many Americans believe that in its current form it is an onerous Federal mandate, and amounts to a national ID card in the guise of a driver's license. I joined Senator Akaka and others in supporting legislation last Congress to replace the rigid requirements of the current law with a negotiated rulemaking process that treated the states as equal partners in our efforts to improve identification security. I look forward to hearing the Secretary's views on this, and how legislation currently being discussed in the Senate might be a significant improvement. I agree with Secretary Napolitano that "there has got to be a better way than REAL ID."

I expect that the Department of Homeland Security will support the EB-5 Regional Center program. This program has resulted in billions of dollars in foreign investment and the creation of thousands of American jobs in communities across the country. I have long believed in the potential of this program. I encourage the Department to embrace it as a component of our economic recovery and to support it in such a way that makes the process as secure and as efficient as possible for American entrepreneurs and foreign investors. This is a program Congress should have made permanent before now. Having the Department's active engagement and support in this effort will be a tremendous help.

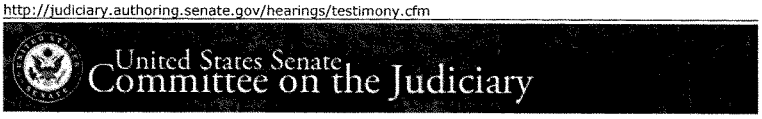
I continue to have concerns about the effects of unnecessary barriers to asylum seekers and refugees in need of our protection. Senator Kyl and I provided authority during the previous administration so that the Secretaries of State and Homeland Security could alleviate injustices through the provision of waivers. Little was subsequently done and some asylum seekers continue to sit in immigration detention despite meritorious claims. It may be the time to consider legislative changes to this law so that no one victimized by violence and repression, or who stood with the United States in opposition to an oppressive foreign government is blithely branded a 'terrorist' and denied our protection. As I have said before, the effect of these laws is contrary to our values as a Nation that respects human rights.

President Obama spoke again last week about the need for comprehensive immigration reform. We need to pursue that important goal together.

With that introduction, I welcome Secretary Napolitano to her first appearance before the Senate Judiciary Committee.

56800.111

http://judiciary.authoring.senate.gov/hearings/testimony.cfm



< Return To Hearing

Testimony of

Secretary Janet Napolitano

May 6, 2009

The Honorable Janet Napolitano

Secretary
United States Department of Homeland Security

Before the
United States Senate
Committee on the Judiciary

May 6, 2009
Chairman Leahy and members of the Committee: Thank you for this opportunity to discuss the many efforts the Department of Homeland Security is undertaking to secure our nation.

Since January 20, we have taken steps on all fronts to advance the Department's mission to protect Americans from the myriad threats the nation faces. We are moving forward in each of the five major mission areas that I see as critical to achieving the Department's security mission: guarding against terrorism; securing the border; enforcing our immigration laws in a tough, smart and effective manner; improving our preparedness for, response to, and recovery from natural disasters; and unifying the Department so it can become more cohesive and effective.

In the past several months, DHS has announced new protocols to ensure smart, effective enforcement of our immigration laws, ramped up our efforts on the southwest border to prevent the weapons and cash smuggling that feeds cartel violence in Mexico, signed new agreements with international allies to combat terrorism, and responded effectively to severe ice storms in the Midwest and record flooding in North Dakota and Minnesota. Currently, we are working with federal partners and across levels of government to actively respond to the threat of the current outbreak of the 2009 H1N1 virus.

I look forward to discussing our progress on each of these fronts with you. Before answering your questions, I will focus my prepared remarks on immigration and border-related issues.

I. PROTECTING OUR BORDERS

Southwest Border Strategy

The campaign of violence being waged by drug cartels in Mexico remains a major concern to our Department, and indeed, to the entire Obama Administration. America has a significant security stake in the success of Mexico's fight against the drug cartels. These cartels are the same criminal organizations that put drugs on our streets and use violence as a tool of their trade. Illegal drugs, money, and weapons flow both ways across our border and inextricably link the United States and Mexico in this battle.

In response to this threat, we have implemented a southwest border strategy that will strengthen our efforts at the border through additional manpower, equipment, and technology; prevent the southbound flow of weapons and cash into Mexico; and increase support and collaboration with our Mexican

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00148 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.112

counterparts. As part of this strategy, we are also deepening and expanding our engagement with federal partners such as the Departments of State, Justice, and Defense, as well as state, local, and tribal governments and border communities, all of which play a vital role in protecting the border.

In March, I testified before the Senate Committee on Homeland Security on the full extent of our southwest border strategy. Today I will summarize its core elements, which fall into three major categories: partnerships with state, local, and tribal law enforcement; support to Mexico; and the southbound strategy.

Partnerships with State and Local Law Enforcement

The partnership of state, local, and tribal law enforcement in the border region is essential to securing our nation against the threat of cartel violence and other threats to our border, including human smuggling and trafficking, and the illegal drug trade. State, local, and tribal law enforcement have significant roles to play both in addressing these threats and preparing for scenarios where violence in Mexico could further strain the United States.

DHS, along with its federal government partners, works collaboratively with state, local, and tribal governments in a number of ways - though more remains to be done. The Department created the Homeland Security Intelligence Support Team at the El Paso Intelligence Center in 2007 to improve information sharing among federal agencies and with state, local, and tribal partners. Immigration and Customs Enforcement (ICE) is also a member agency of the Organized Crime Drug Enforcement Task Force (OCDETF) Program, and actively participates in multi-agency OCDETF investigations of Mexican drug trafficking and money laundering organizations.

In 2006, DHS also created Border Enforcement Security Taskforces (BEST), which are led by ICE. BEST is not just a program; it is an innovative model for collaborative law enforcement. The 12 BESTs that currently exist (of which eight are on our southwest border) include the participation of ICE, Customs and Border Protection (CBP), the U.S. Coast Guard, and the DHS office of Intelligence and Analysis (I&A) on the DHS level; the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Federal Bureau of Investigation (FBI), and U.S. Attorney's offices on the Justice Department level; and state, local, and tribal enforcement agencies. Mexican law enforcement agencies also participate in BEST, and the government of Mexico has agreed to provide representatives to every BEST team on the southwest border.

The BEST model has been successful: DHS and its partners have cracked down on arms trafficking, human smuggling, bulk cash smuggling, and narcotics smuggling organizations. Since their creation, the BEST teams, working in coordination with the Department of Justice and other law enforcement partners, have facilitated 2,166 criminal arrests, 2,900 administrative arrests, 924 indictments, and 763 convictions. In addition, BESTs have seized approximately 8,000 pounds of cocaine, 173,212 pounds of marijuana, 1,089 weapons and explosives, 1,224 vehicles, and $25 million in U.S. currency and monetary instruments.

The successes of the BEST model demonstrate that we should be doing more to use this collaborative approach to tackle border crime. On this front, DHS will shift investigators to the taskforces and double its efforts and increase the number of agents working on BESTs from 95 to 190. This will greatly expand our ability to work with local law enforcement on cartel-related crime occurring on our side of the border.

In addition to BESTs, CBP has also overseen and developed the implementation of Border Violence Protocols. On a local level, the protocols have led CBP to institute monthly meetings with CBP, the Mexican government, and local and state officials to foster cooperation. Additionally, the DHS Office of Counternarcotics Enforcement is co-leading, along with the Department of Justice, an interagency effort to update the Southwest Border Counternarcotics Strategy. That strategy directs the coordination of counter-drug and border security initiatives to address the drug trafficking threat while enhancing overall border security. The Strategy includes efforts to improve coordination and support among federal, state, local, and tribal authorities.

In addition, DHS will make up to $59 million available in Operation Stonegarden funding to enhance state, local and tribal law enforcement operations along the border. Changes include expanding the scope of current Operation Stonegarden funds to pay for additional law enforcement personnel, operational overtime expenses, and travel or lodging for deployment to the southwest border.

Working with Mexican Authorities

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00149 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.113

Assisting Mexico in its battle against drug violence requires strong coordination with Mexican law enforcement to ensure that Mexico and the U.S. are operating together to combat this transnational threat. DHS is engaging with Mexican authorities on a number of levels that are making our efforts more successful.

The cornerstone of U.S.-Mexico security cooperation is the Mérida Initiative, led by the Department of State. DHS is an enthusiastic partner in the Mérida Initiative. From the DHS perspective, Mérida is a platform to work more cooperatively with regional partners on addressing security threats and to make America safer by developing regional security partnerships. DHS has a strong relationship with the State Department, and we look forward to building that relationship further and discussing with them, the Department of Justice, and other stakeholders ways that the Mérida Initiative could be strengthened.

DHS components such as CBP, ICE, and the U.S. Coast Guard also have relationships with their Mexican counterparts and work with them to interdict drugs and, in coordination with the Drug Enforcement Administration, disrupt trafficking organizations. Mérida's support for bilateral information sharing, law enforcement training, and interdiction efforts will strengthen these relationships.

In addition, ICE's Border Liaison Officer (BLO) program allows ICE to more effectively identify and combat cross-border criminal organizations by providing a streamlined information- and intelligence-sharing mechanism. The BLO program creates an open and cooperative working relationship between the U.S. and Mexican law enforcement entities.

The ICE Attaché office in Mexico City also has coordinated the establishment of vetted Special Investigative Units of Mexican officers that work with ICE special agents in Mexico to investigate and prosecute border crimes such as smuggling. Mexican agents are involved in DHS's Border Enforcement Security Taskforces on the southwest border, to great effect. Since August 2005, CBP has worked closely with Mexican officials on Operation Against Smugglers Initiative on Safety and Security (OASISS), a bilateral alien smuggler prosecution program which enables both governments to share information and prosecute smugglers for crimes committed in the border region. We expect OASISS will be further strengthened by the Mérida Initiative. DHS and the government of Mexico also have a government-to-government agreement on science and technology for homeland security.

DHS is also strengthening its coordination with Mexico by reassigning on-board agents to immediately increase ICE Attaché personnel in Mexico by 50 percent. At present, there are 24 special agents in Mexico, and DHS is currently deploying 12 more to Mexico City, Tijuana, Hermosillo, Ciudad Juarez, and Monterrey. Through its attaché in Mexico City and associated sub-offices, ICE assists in efforts against transnational drug trafficking, weapons smuggling, human smuggling, and money laundering syndicates in Mexico.

We have also quadrupled the number of ICE officers in the Border Liaison Office by redeploying agents to support this important program. Currently, there are 10 border liaison officers in California, 9 in Arizona and 31 in Texas – this boost to the ICE Attaché office and the Border Liaison Office will bolster our ability to fight border crime effectively and coordinate with Mexican enforcement efforts.

Stopping Illegal Weapons and Bulk Cash Smuggling into Mexico

A large number of weapons recovered in Mexico's drug war are smuggled illegally into Mexico from the United States. Clearly, stopping this flow must be an urgent priority.

Notably, ICE has launched Operation Armas Cruzadas, a partnership with the government of Mexico to fight cross-border arms smuggling. Under Armas Cruzadas, ICE has taken an intelligence-driven, systematic approach to arms trafficking investigations. ICE also created a U.S.-vetted Arms Trafficking Group of Mexican officers. Since inception, Operation Armas Cruzadas has resulted in 112 criminal arrests and the seizure of 116,478 rounds of ammunition, 1,417 weapons seizures, and $3,341,388 in monetary instrument seizures.

Currently, ICE and CBP also partner in the eTrace initiative, led by ATF, an innovative partnership that aids Mexican officials in the forensic tracking of weapons used in drug cartel violence. CBP is also partnering with the DEA and High Intensity Drug Trafficking Area centers to increase the deployment of License Plate Readers, which will lead to better intelligence on trafficking organizations. CBP and ICE, along with ATF and the DEA, have jointly developed the Southwest Border Trafficking Initiative to identify and disrupt weapons and ammunition smuggling. Discussions are ongoing within that initiative to build into more detailed procedures regarding the coordination of multi-agency operations and information sharing.

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00150 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.114

We clearly need to do more, however. These successful seizures account for only a fraction of the weapons being smuggled into Mexico. That is why DHS is tripling the number of intelligence analysts from DHS Office of Intelligence and Analysis on the southwest border. These analysts will provide the strategic, intelligence-driven guidance that will be a driving force behind the efforts of ICE and CBP to secure our borders and stop the flow of illegal weapons into Mexico.

Further, CBP is now screening 100 percent of southbound rail on the southwest border. There are eight rail crossings along the southwest border. Previously, CBP focused primarily on inbound cargo. We are now using existing non-intrusive inspection equipment to screen all outgoing cars for anomalies that could be weapons. Beyond rail inspections, we have also redeployed new mobile X-ray technology to select ports of entry, 100 Border Patrol agents to augment outbound inspections, and additional Mobile Response Teams, which are prepared to deploy to the southwest border to augment port of entry operations.

Coupled with screening for weapons smuggling, DHS is also combating the illegal movement of cash across the southwest border. Operation Firewall, led by ICE, addresses the threat of bulk cash smuggling. ICE and CBP have conducted various Operation Firewall operations with Mexican counterparts. ICE has also recently established a Trade Transparency Unit with Mexico to identify cross-border trade anomalies, which are often indicative of trade-based money laundering. Under this initiative, ICE and law enforcement agencies in cooperating countries work to facilitate the exchange of import and export data and financial information. ICE's efforts led to more than $50 million in cash seizures in fiscal year 2008.

Furthermore, CBP currently has 12 dual-detection canine teams, trained to detect both weapons and currency, which are being deployed as a part of a strategy to catch outbound smuggling.

II. INTERIOR ENFORCEMENT

Smart, Tough Immigration Enforcement Protocols

The Department of Homeland Security has the vital mission of enforcing our nation's immigration laws. We must engage in effective worksite enforcement to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce.

In advance of any comprehensive immigration reform that may come, DHS is focused on smart, tough, and effective enforcement of the laws we currently have. Active enforcement of our immigration laws must address not just the illegal workers themselves, but also the employers who hire illegal labor and fuel the phenomenon of illegal immigration into the United States. Last year, the Department made more than 6,000 arrests related to workplace enforcement; only 135 of these arrests were of employers.

Last week, the Department issued new protocols that will refocus the efforts of Immigration and Customs Enforcement (ICE) agents on the ground to pursue a more effective strategy on immigration and worksite enforcement. These new protocols reflect a renewed Department-wide focus on two different emphases for our immigration enforcement efforts: first, targeting criminal aliens, and second targeting employers who cultivate illegal workplaces by breaking the country's laws and knowingly hiring illegal workers.

ICE will focus its resources within the worksite enforcement program on the criminal prosecution of employers who knowingly hire illegal workers in order to target the root cause of illegal immigration. ICE will continue to arrest and process for removal any illegal workers who are found in the course of these worksite enforcement actions in a manner consistent with immigration law and DHS priorities. Furthermore, ICE will use all available civil and administrative tools, including civil fines and debarment, to penalize and deter illegal employment.

In identifying individuals for removal, DHS will prioritize those who pose the most obvious threats to public safety – those aliens with criminal records and those currently involved in criminal activity beyond the crime of illegal immigration itself. A scattershot approach where DHS targets any and all of the around 12 million people in the United States illegally does not amount to an approach that maximizes public safety. A new approach is needed, which is what the new priorities provide.

ICE officers will be held to high investigative standards in their worksite enforcement efforts. ICE will look for evidence of additional crimes that alleged illegal employers may have committed in violation of our nation's laws, including evidence of trafficking, smuggling, harboring, visa fraud, identification document fraud, money laundering, and the mistreatment of workers. With limited exceptions involving exigent circumstances or security-sensitive worksites, ICE offices will work with federal interagency partners to obtain indictments, criminal arrest or search warrants, or a commitment from a U.S. Attorney's Office

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00151 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.115

(USAO) to prosecute the targeted employer before initiating a worksite enforcement operation. Furthermore, existing humanitarian guidelines will remain in effect, now covering worksite enforcements involving 25 or more illegal workers. This reflects a change from the previous threshold of 150.

DHS has many resources, but we still must prioritize in order to ensure our enforcement efforts have the greatest possible impact. These new protocols will be critical to achieving that.

Strengthening Work Eligibility Verification through E-Verify

At the same time that we target employers who violate the law, DHS is also working to aid law-abiding employers in their good-faith efforts to hire legal workers.

As I said, I am a strong believer that robust employer enforcement must be a critical part of our nation's immigration system. ICE will continue to seek out employers who want to comply with our nation's immigration laws and provide them with the training and tools they need to minimize the risk of unwittingly hiring illegal workers.

Additionally, DHS is continuing to strengthen the E-Verify system that U.S. Citizenship and Immigration Services (USCIS) operates in partnership with the Social Security Administration (SSA) to provide quick confirmation of an employee's work eligibility.

E-Verify is an essential tool for employers to maintain a legal workforce. E-Verify has grown rapidly over the past several years – not only making it a cornerstone of workplace enforcement across the country, but also testifying to its improvement. More than 122,000 U.S. employers representing over 468,000 hiring locations are enrolled in E-Verify. The growth is continuing at a solid clip, due in large part to state laws requiring the use of E-Verify. Currently, an average of 1,000 employers are signing up for E-Verify each week. Data from the Bureau of Labor Statistics for the last quarter of FY08 indicate that over 14 percent of all non-agriculture new hires in the U.S. are run through E-Verify.

The E-Verify system is prepared for an increase in its use, and DHS is continually improving the system. DHS continues to focus its efforts on improving and expanding that system as it grows, cracking down on fraud, misuse, and the potential for discrimination.

E-Verify is continuously improving its accuracy. According to the most recent surveys, approximately 96.1 percent of all cases queried through E-Verify are automatically found to be employment authorized. This is compared to a 79 percent immediate confirmation rate in 2002. The remaining 3.9 percent resulted in a mismatch, or tentative non-confirmation (TNC), cases where the tentative lack of a match needs further investigation. Only 0.4 percent of the total application pool successfully contested their cases. The remaining 3.5 percent of the total pool were not found employment authorized and either did not contest their cases or unsuccessfully contested them.

Nevertheless, room for improvement always remains. DHS and SSA are continuously enhancing E-Verify processes to decrease mismatches, improve the system's usability and the accuracy of its databases, strengthen training and monitoring of employers and protect employees against discrimination and other abuses.

E-Verify enhancements include system changes to reduce typographical errors; a photo screening tool, added in concert with the State Department, to combat document fraud; establishing a Monitoring and Compliance Branch to oversee that employers are using E-Verify correctly to protect employee rights; adding new database checks to further reduce initial mismatches; and establishing a new process for employees to call a USCIS toll-free number (1-888-464-4218) to resolve mismatches for naturalized citizenship cases as an alternative to visiting SSA.

DHS is dedicated to increasing E-Verify's effectiveness by reducing system misuse through employer training, educational outreach, and a strong monitoring and compliance assistance program. Outreach plans include releasing bilingual English and Spanish videos for employers and employees to teach them about E-Verify and their rights, roles and responsibilities. USCIS already has online materials in nine languages that inform employees of their rights.

We are continually working to ensure that E-Verify is non-burdensome to employers. The system rates higher than average on the American Customer Satisfaction Index Survey, scoring an 83 out of a possible

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00152 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.116

100 points on a recent survey, above the latest Federal Government satisfaction index of 69 percent.

Of course, USCIS also continues its vital mission to provide immigration services and benefits in a timely and expeditious manner to legal immigrants. USCIS is the largest immigration service in the world, serving millions of foreign nationals from every country seeking to live or work temporarily in the United States and in certain instances to make the U.S. their permanent home. USCIS performs this function at home and abroad in an expeditious manner, with the same level of security and scrutiny as our other agencies to protect our borders and secure public safety.

Criminal and Fugitive Aliens

Identifying, arresting, and removing criminal and fugitive aliens also remains a top priority for DHS. Shortly after arriving at the Department, I issued an action directive requesting an assessment of existing DHS initiatives to see how we might accelerate and make more effective our efforts in this area.

ICE is the primary federal agency responsible locating and removing criminal and fugitive aliens within the United States. Under its Secure Communities program, ICE works to identify criminal aliens in federal, state, and local custody and those at-large, prioritize the removal of dangerous criminal aliens, and improve our current enforcement processes.

As I noted earlier, a key part of this effort involves identifying criminal aliens by checking their biometrics against US-VISIT and FBI databases. Through the Secure Communities program, state and local law enforcement have the ability to search a subject's criminal history and immigration information automatically at the time of booking. This saves time, improves accuracy, and gives our state and local partners a powerful tool to identify criminal aliens in their custody so that appropriate action can be taken for those with a criminal conviction. Currently, biometric identification technology supporting information-sharing has already been deployed to 23 counties along the southwest border.

An important component of Secure Communities is the prevention of the re-entry of criminal aliens. ICE is supporting Operation Repeat Offender, a program with the Department of Justice, including the United States Attorneys, to ensure federal prosecution of aliens who return illegally after removal. If convicted of these immigration charges, these criminal aliens serve their sentence in federal custody.

ICE also continues its efforts to identify and remove criminal alien gang members as part of Operation Community Shield. Since the program's inception, ICE agents working in conjunction with federal, state, and local law enforcement agencies nationwide have arrested a total of 11,106 street gang members and associates.

ICE's National Fugitive Operations Program (NFOP) is also working to reduce the nation's fugitive alien population, with a specific emphasis on aliens who pose a threat to national security and community safety. ICE has significantly increased its fugitive operations teams from eight teams in 2003 to the 104 teams operating today. Additionally, ICE has developed the Fugitive Operations Support Center (FOSC), which provides information support to teams nationwide.

In Fiscal Year 2008, fugitive operations teams were responsible for more than 34,000 arrests. This fiscal year, these teams have arrested over 15,700 fugitives. Of those, nearly 6,000 were criminal fugitives. Compared to the same period last year, this marks an increase of 180 percent. Overall, our nation's fugitive alien population fell by 37,000 individuals last fiscal year.

State and Local Law Enforcement Under 287(g)

DHS also has continued to expand its partnerships with state and local law enforcement under the 287(g) program, which gives specially trained officers authorization to perform immigration enforcement duties under the supervision of ICE agents and officers. ICE has 58 active Memoranda of Agreement (MOAs) with law enforcement agencies in 23 states. As of April 2009, ICE's 287(g) partners have encountered over 104,000 aliens who were screened for removability.

This program continues to be an effective force multiplier for our efforts. For this reason, it is vitally important that the program has strong oversight and remains free of abuse. In the past few years, the 287 (g) program has been the subject of much media attention and heightened scrutiny. To address many of the concerns, ICE is redrafting the MOA template to increase oversight and supervision as well as align the goals of state and local law enforcement participating in the program with ICE priorities and guidelines. In addition to the MOA, ICE has issued credentials to state and local 287(g) partners and is drafting a policy mandating

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00153 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.117

refresher training for all active 287(g) officers. In these efforts, DHS is carefully reviewing the recommendations provided in the January 2009 report by the Government Accountability Office. Finally, we are committed to working with stakeholders to address concerns about racial and ethnic profiling and other abuses in this and other enforcement programs.

Detention Facilities

On an average day, roughly 33,400 detainees are housed under ICE authority at as many as 350 detention facilities nationwide. Very few of these facilities are under ICE's direct control, and delivery of health care is shared by the Division of Immigration Health Services (DIHS) and several hundred state and local partners with which ICE has formed intergovernmental agreements. We recognize that more needs to be done to improve oversight of these facilities and ensure that detainees receive appropriate treatment and care.

To oversee this charge, I created a new position -- Special Advisor on Detention and Removal Operations at ICE – to focus exclusively on immigration detention. This position reports directly to the assistant secretary of ICE and is filled by Dora Schriro. Ms. Schriro is now serving in this capacity and brings a wealth of experience to the job, having most recently served as the Director of the Arizona Department of Corrections during my tenure as Governor. Under Dora's leadership, we will work to ensure that detainees in ICE custody are treated humanely and receive appropriate care.

ICE has already made improvements in detention management, awarding two recent contracts with companies recognized for their expertise in detention management. These detention professionals are now performing annual detention facilities inspections formerly performed by ICE employees. They are also serving as on-site, full time quality assurance inspectors at our 37 largest facilities and plans are underway to extend this capability to others on a regional basis.

ICE also announced the implementation of revised performance-based detention standards in September 2008. These standards are in the process of being implemented, with final implementation in 2010. The standards apply to ICE owned and operated Service Processing Centers (SPC), Contract Detention Facilities (CDF), and state or local government facilities used through Inter-governmental Service Agreements (IGSAs) to hold detainees for more than 72 hours. These new standards are modeled on the American Correctional Association (ACA) Adult Local Detention Facility standards, which are the industry benchmark. They are different from previous standards; they focus on the outcome to be achieved, instead of process compliance.

ICE plans to utilize Secure Communities program funding to increase its detention capacity targeted to criminal aliens during FY 2009. It is also in the process of renegotiating inter-agency service agreements with the 100 largest state and local facilities with which it contracts. In addition, the FY 2009 appropriation provides $2 million to ICE to undertake immediately a review of the medical care provided to people detained by DHS and to improve the scope, the services and the system of health care. Based on the outcome of this review, we will make further improvements. We are committed to improving detainee health care, and these actions will put us on a path to achieve that goal.

We are also reviewing effective alternative to detention programs. Properly structured, these programs offer clear benefits to the integrity of the immigration system, to taxpayers. But to be effective, the programs will have to demonstrate a sufficiently high rate of compliance with removal orders.

III. FACILITATING TRAVEL THROUGH SECURE IDENTIFICATION

Western Hemisphere Travel Initiative

Beyond efforts to protect the border and strengthen interior enforcement, we are taking aggressive action to strengthen and standardize travel document security at the ports of entry to prevent terrorists, criminals, and illegal immigrants from breaching our border. A cornerstone of this effort is the Western Hemisphere Travel Initiative (WHTI), which will both enhance our security and to facilitate legitimate travel and trade. As you know, WHTI is already in effect at our international airports, where travelers arriving to the United States must present a WHTI-compliant document denoting citizenship and identity to enter our country. To date, compliance with this requirement, which went into effect in January, 2007, remains extremely high.

DHS takes seriously the coming implementation of WHTI to our land and sea ports of entry on June 1, 2009. In preparation for this implementation, we have worked with our federal, state, and private sector partners to make a full range of WHTI compliant documents available to U.S. citizens, including passports, Passport cards issued by the State Department, Enhanced Drivers' Licenses (EDLs) issued by border states, and

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00154 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.118

trusted traveler cards (NEXUS, FAST, and SENTRI) issued by DHS. Canada also has worked with us to issue new WHTI-compliant credentials for its citizens, including three provincial EDLs.

In addition to these standardized, secure documents, we are installing radio frequency identification (RFID) readers at our top 39 land ports of entry. RFID infrastructure technology has already been installed at 348 lanes at 33 ports of entry. This technology will help facilitate processing for travelers with RFID-enabled documents by allowing CBP officers to verify an individual's identity and perform real-time queries against lookout databases, even before the traveler arrives at the inspection booth.

We have already begun the next phase of an aggressive communications campaign that will extend beyond the June 1 deadline to encourage travelers to obtain appropriate documents. For more than two years, DHS has been communicating to travelers that WHTI-compliant documents will be required to enter the United States. To date, our television and radio spots have aired more than 21,000 times; print advertisements have run more than 124 times; a web site (www.getyouhome.gov) has been created as the primary source of information on WHTI documents; and over six million education tear sheets have been distributed to travelers. Within the next two weeks, CBP will conduct press events at every land border port within the next two weeks reminding the traveling public to apply for their secure documents in order to have them for June 1, 2009.

We believe most travelers will be compliant with the new WHTI requirements. Our preliminary data indicates the vast majority of travelers (more than 80 percent) already have the necessary documents. We plan to be flexible and practical in our enforcement of WHTI and apply this flexibility on a case-by-case basis for those who do not have the necessary documents.
CBP also maintains its authority to permit crossing of certain groups with special or unique needs, including first responder communities along the border. We will continue to honor the protocols previously established for these types of crossings. However, we ask that first responders in border areas proactively obtain appropriate documentation for personnel who may respond across the border, in order to facilitate their crossing as expeditiously as possible.

To aid in the implementation of WHTI, CBP will establish a 24-hour WHTI Operations Center to continually monitor port of entry operations before, during, and after the June 1, 2009, implementation. CBP will conduct daily teleconferences with the field, provide immediate responses to questions and concerns, and issue daily reports on successes and challenges. In short, we are committed to implementing WHTI at our land and sea ports of entry in a smooth fashion, with minimal disruption.

US-VISIT

Coupled with more secure and standardized document requirements at the ports of entry, we have continued to enhance the capabilities of US-VISIT. As you know, US-VISIT collects, stores, and shares digital fingerscans and digital photographs of aliens seeking to enter the United States. This biometric information is paired with biographic information about an individual and used to establish and verify that individual's identity and check their biometrics against criminal, terrorist, and immigration databases. US-VISIT enhances the security of our citizens, lawful permanent residents, and visitors, helps facilitate travel and trade, ensures the integrity of our immigration system, and protects the privacy of visitors.

US-VISIT continues to be a proven tool for our federal, state, and local partners. Each week, it provides more than 250 credible leads to ICE, allowing for better enforcement of our immigration laws. Through ICE's Secure Communities Program, US-VISIT also helps identify immigration violators arrested by State and local law enforcement, including high-risk criminal aliens. US-VISIT also provides access to biometric data to authorized Federal, State, and local government agency users to help them identify, mitigate, and eliminate security risks.

Recognizing the benefits of US-VISIT, many foreign countries also have begun pursuing similar programs. Today, the United Kingdom and Japan have programs that use biometrics. The European Union, Canada, Mexico, Australia, Argentina, Peru and many other countries also are in various stages of applying biometrics to immigration control.

To strengthen this important program, US-VISIT has been transitioning from collecting 2 digital fingerprints to collecting 10 digital fingerprints at ports of entry. This transition is nearly complete. It started in 2007 when the Department of State began collecting 10 fingerprints from visa applicants at all of our embassies and consulates to enhance the ability to establish and verify applicants' identities. 10-fingerprint scanners have now been deployed to all major ports of entry, providing the capability to capture 10 fingerprints from 97 percent of travelers.

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00155 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.119

The transition to 10-fingerprint collection increases DHS's ability to keep dangerous people out of the United States, while making legitimate travel more efficient. We are able to improve the accuracy of identification as well as have more data points, allowing us to match against prints lifted from crime scenes and those collected in Afghanistan and Iraq. Further, we are able to improve the accuracy of identification, improve interoperability with the FBI and Department of State, local, and tribal governments, and refer fewer travelers to CBP secondary inspection. We are also able to conduct full searches against the FBI Unsolved Latent File, which, for example, allows us to match against prints lifted from crime scenes and those collected in Afghanistan and Iraq.

This 10-fingerprint collection standard has made our system more compatible with the FBI's biometric system, the Integrated Automated Fingerprint Identification System (IAFIS). We have been working with the FBI to make our two databases fully interoperable and to more seamlessly match biometric information so we can better identify people who pose a threat to our country.

DHS is also working with the Department of Defense to identify ways to exchange information in a more systematic manner to further our missions consistent with legal authorities and privacy. This includes the potential automated exchange of biometric data on individuals that the Department of Defense encounters overseas. Such information would greatly enhance our ability to effectively screen who is admitted into the United States, and this information is useful to the Department of Defense for credentialing and access control vetting, among other uses.

We will continue to research emerging technologies to expand our screening and identification capabilities, including the testing of biometric exit procedures at ports of entry. We are looking for more efficient, less invasive technologies to verify visitors' departures. Particularly at the land border, we are looking for technologies that might meet our needs better without causing undue delays to travelers.

In some cases, the key to expanding biometric screening is to bring the technology to remote locations. For example, Coast Guard is using mobile biometric collection and analysis capabilities on the high seas off the coasts of Puerto Rico and Florida. This project has helped the Coast Guard identify and refer for prosecution and/or administrative immigration proceedings hundreds of repeat illegal migrants who are ineligible to enter the United States, including some wanted for human smuggling and murder. In addition, CBP's Air and Marine Operations is examining opportunities to use mobile biometrics in its areas of operation.

Improving State-Issued Driver's License Security

As you know, the REAL ID Act mandated that the Department of Homeland Security set federal standards for state driver's licenses and identification cards that can be accepted by the federal government for official purposes, such as accessing federal facilities, boarding federally regulated commercial aircraft, and entering nuclear power plants.

The goal of REAL ID is an important one – to strengthen the security and integrity of identity documents in the United States – but the program's planned implementation has caused significant resistance from states, which are responsible for putting these mandates into effect. In particular, the resources required to fully implement REAL ID would put a major strain on state budgets already stretched thin by the current economic downturn. Ten states have enacted laws prohibiting compliance with REAL ID, and many more have anti-REAL ID legislation pending.

DHS is focused on assisting states in improving the security of driver's licenses, consistent with the recommendations of the 9/11 Commission, but there has got to be a better way than REAL ID. Since January, the Department has been working closely with the National Governors Association to develop an alternative to REAL ID that accomplishes its security goals while avoiding many of its costs.

This proposal, which will soon be introduced in the Senate, is a bi-partisan effort that will fulfill the 9/11 Commission recommendation that the "federal government should set standards for sources of identification, such as driver's licenses." It would establish national performance standards to enhance the security and integrity of all licenses and identification cards, while retaining state flexibility to meet and exceed the standards as they are incorporated into each state's unique operations. Moreover, this proposal would increase security by facilitating participation of all jurisdictions – it would not undo the pro-security measures that states have already taken under REAL ID, but it would allow states with anti-REAL ID statutes on the books to rejoin cooperation in security efforts under a more state-friendly system that would implement important privacy safeguards to protect personally identifiable information.

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00156 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.120

States have already made great strides toward enhancing the security and integrity of their licenses and IDs, and our intent is not to reverse or diminish these gains, but to build on the work that has already been done through creating a more constructive and cooperative framework in a way that can be practically implemented. I look forward to continuing to work with Congress and the states on this opportunity to improve the security of state-issued driver's licenses and identification documents, while protecting personal privacy and giving states more flexibility to achieve these necessary improvements.

CONCLUSION

Ultimately, the solution to our nation's immigration challenges is to comprehensively address all aspects of the problem, from border security and interior enforcement to reform of our visa programs and legalization for illegal workers. I am committed to working with the President and Members of Congress to develop a plan for action to address this issue. As many Members of this Committee recently stated at the April 30th immigration subcommittee hearing, the status quo is unacceptable. I look forward to working with this committee in the future on reforms to solve these problems.

Chairman Leahy and members of the Committee: Thank you again for this opportunity to testify on all the actions DHS is taking to execute its vital mission. I also ask that the Committee move forward with all speed on President Obama's nomination of John Morton to be Assistant Secretary for ICE, a position which is clearly critical, as you can see through this testimony. I am happy to take your questions.

VerDate Nov 24 2008 10:39 Jun 28, 2010 Jkt 056800 PO 00000 Frm 00157 Fmt 6633 Sfmt 6011 S:\GPO\HEARINGS\56800.TXT SJUD1 PsN: CMORC

56800.121