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OVERSIGHT OF THE U.S. DEPARTMENT OF HOMELAND SECURITY

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OVERSIGHT OF THE U.S. DEPARTMENT OF HOMELAND SECURITY

TUESDAY, APRIL 27, 2010

COMMITTTEE ON THE JUDICIARY,
Washington, DC.

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

Present: Senators Leahy, Feinstein, Schumer, Cardin, Whitehouse, Klobuchar, Specter, Franken, Sessions, Hatch, Grassley, Kyl, Graham, and Cornyn.

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

Chairman LEAHY. Good morning, everyone. I know we have several Senators in the back coming in, and I appreciate this, and I welcome Secretary Napolitano back to the Judiciary Committee. I am delighted to see you here.

Last year ended with an attempted terrorist bombing aboard a commercial aircraft bound for Detroit, Michigan. This attempt exposed deficiencies in interagency coordination and information sharing and also in other countries' screening of airline passengers. As a result of that incident, Congress and the administration took steps to understand existing weaknesses in our systems and how best to correct them. This Committee heard testimony from officials from the Department of Homeland Security, the Federal Bureau of Investigation, and the State Department, each of whom recognized the need to do better. I am encouraged by the Department's recent strengthening of airline passenger screening policies and the decision to move away from a country-specific screening policy in favor of a smarter, more flexible approach. And I hope that today we will hear more about the Department's efforts to improve security as well as the coordination with the State Department.

Now, along our southern border, we are experiencing historic levels of drug-related violence that must be brought under control. Families are being murdered, law enforcement officers are being murdered, officials are being murdered, and brazen shoot-outs are taking place. The Department is centrally involved in the fight against cross-border drug, cash, weapon, and human smuggling. We saw the brutal murders of two U.S. State Department employees in Mexico and a U.S. citizen in Arizona. Americans are rightly concerned about the impact the situation in Mexico is having here at home.

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The Department has also been involved in aiding the people of Haiti following the devastating earthquake in January. Incidentally, Madam Secretary, I commend your decision to provide Haitian nationals in the United States with Temporary Protected Status (TPS). The reconstruction effort will take years, but TPS status will enable Haitians in the United States to work and send money home to their families and be secure in the meantime. I also want to recognize the U.S. Citizenship and Immigration Services for granting humanitarian parole to Haitian orphans.

In this regard, I worked with Senator Lugar to advance the Return of Talent Act, which would allow a Lawful Permanent Resident to return for a limited amount of time to his or her native country in order to assist in reconstruction efforts following a natural disaster or armed conflict. I think the legislation will encourage Haitian nationals living in the United States to go back to Haiti without suffering adverse consequences to their later application to gain U.S. citizenship.

The Committee also acted recently to assist refugees who wish to serve our Government or military overseas. Again, I worked with Senator Lugar to advance the Refugee Opportunity Act, which would enable refugees to serve our Nation overseas without losing time earned toward a green card, and I hope we can work together to enact this legislation.

Marking the 30th anniversary of the 1980 Refugee Act, which was authored by Senator Kennedy, I recently introduced the Refugee Protection Act. It seeks to improve the law where it falls short of meeting our obligations under the Refugee Convention.

I remain concerned about several areas within the Department's jurisdiction. The backlog of refugee cases caught up in the overly broad material support and terrorism bars need to be resolved. The so-called 287(g) program, which engages State and local law enforcement in the execution of immigration laws, continues to be a source of concern. President Obama said recently that we should not "undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe," and I agree. Madam Secretary, you and I both had the privilege of serving in law enforcement capacities, and we know that law enforcement breaks down if citizens fear the police instead of seeing them as protectors and cooperating with them. We must have proper oversight to prevent racial profiling and ensure that local law enforcement has the cooperation of local communities. Police officers have a tough enough job as it is, but if they are seen as an "us versus them" with the law-abiding community, then they do not get the support and the information they need. And I recognize that the Department has recently made positive changes to the administration of this program, and I look forward to hearing more about that.

Border issues affect us all. They take on particular importance to those of us from border States. And while we normally think of border States as being our Southern and Southwestern States, I hear from many Vermonters about measures taken by your Department to alter border policies in towns like Derby Line, Vermont, which sits on the Canadian border. I regularly hear from Vermonters about freeway checkpoints and about Federal use of

private land. And I think you would find that Vermont farmers are as sensitive to their property rights as Texas ranchers are. Federal cooperation and outreach at the local level can go a long way toward achieving a mutual understanding. The citizens of border States share a great burden.

Finally, I thank you for your steadfast commitment to comprehensive immigration reform. I share that commitment. I worked with President George W. Bush on that, and I shared his commitment to it. And I hope we can see a bill enacted this year.

Senator Sessions.

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

Senator SESSIONS. Thank you. Thank you, Madam Secretary. We are delighted to have you with us, and you, I guess, lead next to the Defense Department the largest agency as a host of departments and agencies that have different heritages, and you have the challenge of melding them together in an effective group, and that takes years and determined leadership. I know you are focused on that, and you have to be because it is essential. And the whole purpose of creating Homeland Security was to gain better cooperation, better cohesion, better effectiveness, and it is just—I am sure a lot of people do not realize how many decisions you have to make and how many spats you have to assuage to keep that Department going well.

I do remain concerned about a number of issues. I will just mention two that I will be asking you about. One deals with what your agents' understanding is with regard to the potential arrest of a terrorist somewhere in the United States or entering the United States. Are they going to be treated as civilian criminals? And will they be provided the panoply of rights such as Miranda and court-appointed and -funded authorities and that kind of thing. What the policy is, there is some confusion, it seems to me, and I believe we have got to get this clear. I believe it will be a big mistake if we treat these individuals as normal criminals entitled to the appointment of a lawyer, entitled not to speak, and not to be taken to military custody if they meet those standards. And so I hope we can work on that.

I remain concerned about our border. The violence, as you know, is increasing and is a serious threat to law-abiding people in Arizona and other places along our southern border. The power of these drug cartels is very real. The power of the coyotes who bring people in illegally is very real. And it has got to be confronted in a very serious way.

I would note that a lot of people might not recognize how much progress has been made in the last, say, 10 years. In 2000, 1.6 million people were arrested at the border. Last year, I understand a little over half a million were arrested at the border. So that indicates, I believe, that the flow is down. It may not be a perfect proof of that, but I do believe it does indicate that the number of people attempting to enter the country illegally is down to a degree.

Then the question to me is: How do we follow up on that and create a lawful immigration flow into our country that serves our National interest, that is consistent with the rule of law, and that al-

lows people who want to enter a proper process to enter and, if they do not qualify, they do not qualify, they do not get to come in illegally if they do not qualify legally.

So a couple things I have concerns about. I understand in February of this year Jim Chaparro, the ICE Detention and Removal Operations Director, authored a memo which encouraged the administration to step up their deportation numbers. It started by noting that ICE had removed 56,000 criminal aliens from the U.S. as of February 15, 2010. However, the memo went on to detail that the pace of removal was insufficient to meet the agency's fiscal year 2010 goals of 400,000 total deportations. As a result, the memo suggested a number of steps to achieve that goal such as increased detention space and increased sweeps or removal of people from jails around the country to identify aliens who should be removed and increased efforts to identify aliens eligible for expedited removal, increased focus on identifying aliens who had been dishonest in immigration forms or visa applications and unlawfully entered the United States.

I think he should have been commended for making recommendations for progress. Instead, it appears that when the Washington Post reported that the administration might, in fact, intensify deportation efforts for those who had entered illegally, the administration issued a statement basically saying they had no intention to do so. And I know you earlier had indicated that you are not favorable to sweeps of businesses who have people in large numbers working illegally. We have got approximately 8 million people who are illegally in the country working today, and we have a substantial amount of unemployment in our country, and these are matters that I do believe need clear leadership from you.

I was glad to see in your testimony that you have submitted that you are expect increased support for State and local law enforcement. And we will also talk about the Arizona law and precisely what it is that you would disagree with in that. But that is certainly one thing that we need to be doing. But I was disappointed to hear that the administration's plan is to make it tougher for State and local law enforcement agencies in effect to assist in enforcing our immigration laws through the 287(g) program. States and locals are now prohibited from asking aliens about their legal status, and in most instances, State and local enforcement are required to release individuals who are here illegally because the administration does not want to fill up immigration detention space with minor offenders.

So we have got a real challenge. I have always believed that State and local law enforcement in the normal course of their duties who apprehend people who are not lawfully in the country should turn those people over to the Federal officials, and they should be processed. And I have not felt and not advocated that they should take the primary role in immigration enforcement. But I do believe that it indicates a lack of commitment to enforcing our immigration laws when we basically tell local law enforcement, even if you know you have apprehended someone here illegally, nothing is going to be done about it.

Those and other questions will be important for our discussion today. You have a big challenge. I would say with regard to immi-

gration, the decline in numbers puts us on a path to make dramatic improvements, continued dramatic improvements in immigration enforcement. We have got to get away from the virtual fence, complete the fencing that we are required to do, make sure we have enough people at the border to enforce the law. If we do that, I think people would be surprised how much continued progress we could make. And it is only in doing that that we will then be able to have a decent, good discussion about what to do about people who have been in our country for a long time and how to handle them.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Secretary Napolitano, it is all yours.

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

Secretary NAPOLITANO. Well, thank you. Thank you, Chairman Leahy, Senator Sessions, members of the Committee, for the opportunity to testify. I would like to focus my opening statement on southwest border security, but I look forward to addressing some of the other issues that the two of you raised in your own opening statements.

Let me begin by reiterating that anyone who has worked directly on the border knows the enormous challenges presented there. We had the murders of the personnel connected with the U.S. consulate in Ciudad Juarez, as well as the recent murder of a longtime rancher, Rob Krentz, in southern Arizona. All of those things are tragic reminders of the need to support Mexico's fight against the cartels within Mexico, but also the need, as Senator Sessions recognized, to keep up our efforts on the southern border.

We now have more manpower and technology at that border than at any time before. And the challenge, however, is deep and it is complicated. We are responding with a partnership among the Department of Homeland Security, the Department of Justice, the Department of States, with the Merida Initiative. This is a partnership, as you know, focused on assisting Mexico in their fight against the cartels on their side of the border.

In addition, we have expanded partnerships between DHS and DOJ because for every apprehension that DHS makes, DOJ is responsible for prosecution. In this effort, manpower is important, and it is more than just about numbers. We need to help investigate and prosecute the cartels, prevent them from proliferating. We also must, as Senator Sessions recognized, assist State and local law enforcement responders to problems emanating from the border.

Now, as a result of what I believe to be focused and strategic and consistent pressure along the southwest border over the past months, we have shut down more and more key trafficking routes used by the cartels, and that is what I hope that we can review today, the significant steps taken in the past 15 months as part of our Southwest Border Initiative, the results of those measures and what more can be done.

First, over the past 15 months, as I mentioned, we have mobilized an unprecedented level of resources at the southwest border.

This is due in no small part to Congress' own actions to dedicate resources to the border. The Border Patrol is better staffed than at any point in its history, more than 20,000 personnel. Since 2004, the number of boots on the ground along the southwest border has increased by 80 percent. U.S. Immigration and Customs Enforcement has dedicated over a quarter of all of its personnel to the southwest border region, the most ever.

We also have more personnel than ever strategically dedicated to efforts like southbound inspections, intelligence, and interagency anti-smuggling task forces. We have more K–9 teams searching for illegal cash and illegal weapons. And for the first time ever, we are scanning 100 percent of southbound rail traffic.

We have doubled the number of personnel assigned to Border Enforcement Security Task Forces, known as BEST teams, and we have quintupled the number of border liaison officers assigned to the southwest border.

We have deployed more proven and effectiveness technology there than ever before. These include record numbers of Z-Backscatters, mobile X-ray units, mobile surveillance systems, and non-intrusive inspection equipment—all at our ports of entry, and some deployed between our ports of entry.

We have increased other resources available such as aerial resources. This means more fixed-wing aircraft, helicopters, and Predator Bs deployed than ever before.

We have fully implemented the Western Hemisphere Travel Initiative technology at all of our southwest border ports, and we can now biometrically verify individuals entering the United States through pedestrian lanes across the entire southwest border.

We have more physical infrastructure there than ever before. We continue to make critical improvements to the ports of entry and to the checkpoints between the ports of entry.

We have finished all of the vehicle fencing that was provided for by Congress. We have fewer than 6 miles of pedestrian fencing left to complete for a total of 652 miles. I have also asked for CBP to re-examine their current budget to prioritize fencing in key areas that are in need of bolstering or of repair.

Let me pause a moment to speak about partnerships with Mexico. They are unprecedented in the history of our countries, and I say that as someone who, as a former U.S. Attorney, Attorney General, and Governor of a border State, has been working border issues for a long, long time. But I have never seen this kind of robust partnership with Mexico and with its Federal Government and Federal agencies.

Among the historic agreements I have signed just in the past months are agreements on sharing cartel-related intelligence and sharing the criminal history of individuals who are being deported back to Mexico from the United States.

In addition, our partnerships with State, local, and tribal law enforcement are key, and we continue to help them combat border crime. One of the primary tools we have used for that is Operation Stonegarden, which received $90 million from the Congress in funding last year. That was $30 million more than originally planned. We deployed a full 85 percent of the Stonegarden funding to the southwest border, and not only that, we broadened the kinds

of uses to which those funds could be put so they are more flexibly used by local law enforcement.

And if I might, we can look at some of the numbers because we are producing results. We have seized 14 percent more in illicit cash along the southwest border this year than last year. We have increased by 39 percent the seizures of illicit cash going southbound this year over last year. We have increased 15 percent the seizure of illegal drugs coming in, and we have increased by 29 percent the seizure of illegal firearms going out.

As was noted, apprehensions are down. Apprehensions are down 23 percent between 2009 and 2008, indicating that fewer people are trying to immigrate illegally or to cross the border illegally. And just a few weeks ago, ICE agents conducted the largest operation of its kind, breaking up smuggling rings in Arizona that had transported 80,000 people into the United States illegally.

So much has been done, much of it the result of actions taken by this Congress and the Congress immediately before it. But there is much work still to be done. We will continue our efforts to make the most of the resources that we have. We look forward to working with the Congress to further strengthen the border in the weeks and months ahead. And, Chairman Leahy, Senator Sessions, I look forward to addressing other concerns you may have, not just along the southwest border but along the northern border and in terms of interior enforcement and worksite enforcement as well. But I thought I would use my introductory time just to review all of the things that have happened along that critical part of our southwest border.

Thank you very much for this opportunity to appear before you.

[The prepared statement of Secretary Napolitano follows:]

Chairman LEAHY. Thank you, Madam Secretary. I know we are going to have a lot of questions about the southern border. At the risk of sounding parochial, let me go to the northern border.

I live 45 to 50 minutes from the Canadian border, and Canada is Vermont's biggest trading partner. It is the largest trading partner for much of the country. I know you are aware of the situation with the Morses Line port of entry and the Rainville family farm. Just for people to know, Morses Line is in the province of Quebec. It comes into Vermont. It is a very, very small, traditional border crossing where people are used to going back and forth, visiting relatives and going shopping and so on.

Now, the Federal Government believes that it needs to acquire 5 acres of land from the Rainville farm in Vermont to construct a new port of entry at Morses Line. I understand and appreciate the Federal government scaled back the size of the port from its initial design. But I question whether some resolution could be found using the current footprint of the part of entry. In other words, not expanding the port beyond the area it presently occupies.

It seems the Government has initiated condemnation proceedings against the 5 acres of the Rainville family's farmland. I know this is an important part of our border, but also we have concerns in Vermont, not the least of which is preserving farms, but also preserving the integrity of our State.

So I asked you in February if you could arrange public meetings between the Department and the communityover the Morses Line

port of entry. I have heard since then from many concerned community members. They want more information.

Will you commit to arranging a public meeting with the local community on this issue in the very near future, a public meeting in or along the border with Canada?

Secretary NAPOLITANO. Yes, absolutely, Mr. Chairman, and this is one of those things where we are trying to work with the owners to get down to the footprint. I believe it has actually been reduced from 10 acres to 4.9 acres in terms of what CBP has determined it needs to actually do the kind of port improvement there that—there is a certain minimum amount, unless you do it, you might as well not do it at all. So we will absolutely have one more community meeting, and as I said, we have been working there to minimize the amount of acreage involved.

Chairman LEAHY. And I understand the situation you have, but we have had Operation Stonegarden in Vermont, we have had the situation where we do have some pent-up concerns over border issues. I fully expect it is not going to be the way it was when I was a youngster and you would drive up for the day into Canada and back. Many of us have family members in Canada. I realize it is not quite as easy going back and forth, but Canada is a friendly country. There may be some unfriendly people that come into the country, but it is a balancing act that we have to do.

I know that Alan Bersin, the new Customs and Border Protection Commissioner, has been to Derby Line, Vermont, to see things firsthand. I want to mitigate concerns when people get stopped tens of miles away from the border along our interstate, get stopped and have to prove their citizenship, people that have been driving back and forth on that road for decades. It is creating the animosity between our residents and the Federal Government that we do not need to have. I know that the men and women who work for the Federal Government are very dedicated, very hard-working, very professional. And I want to find ways to lower the tension that exists between the government and Vermonters, who are themselves very professional and very law-abiding with regard to the border.

Secretary NAPOLITANO. Indeed, Mr. Chairman. I appreciate any suggestions you have on that score so that we will continue to work with your office and work together. And as I said earlier, we would be happy to conduct another public hearing or have another meeting with the community up there where the Morses Line is.

Chairman LEAHY. Thank you. Now, let me move across the country to the new law in Arizona that makes it a crime to fail to carry immigration papers. It requires police to demand papers from any person the police have reasonable suspicion to believe is undocumented.

I believe that States can pass whatever laws they choose, provided they are consistent with the Constitution. This law will be challenged on constitutional grounds. The President called the law misguided. He said it violates the basic notions of fairness that we cherish as Americans. When you were Governor of Arizona, you twice vetoed bills of this type.

What do you do now with your Department with regard to the Arizona law?

Secretary NAPOLITANO. Well, first of all, the Justice Department is reviewing the Arizona law. It does not actually take effect until 90 days after the close of the Arizona legislative session, so it is not, in fact, in effect in Arizona, which permits time, I think, for the Justice Department to really look at whether the law meets constitutional safeguards or not.

From an ICE standpoint and from a DHS standpoint, we have some deep concerns with the law from a law enforcement perspective because we believe it will detract from and siphon resources that we need to focus on those in the country illegally who are—those who are committing the most serious crimes, in addition to violating our Nation's immigration laws. We have focused on felonies, on felons, on felony fugitives, on gang members. That is where we have focused, for example, our 287(g) task forces and the like.

So we have concerns that at some point we will be responsible to enforce or use our immigration resources against anyone that would get picked up in Arizona pursuant to this law.

Chairman LEAHY. This also goes into the obvious question of a comprehensive immigration bill.

Secretary NAPOLITANO. Indeed.

Chairman LEAHY. Something that many of us worked on with former President Bush in a bipartisan way. There is a strong feeling that we need comprehensive immigration legislation just because it would reflect the realities of where we are today.

Can we move forward on such legislation with the problems that are along the border, the murders, the killings, the drug cartels in Mexico? And I realize there are a lot of other immigration issues involving a whole lot of other countries besides Mexico. But can we do both things, secure our border and have comprehensive immigration legislation?

Secretary NAPOLITANO. Yes, and this in a way gets to something that Senator Sessions' opening statement had some implications. What is the relationship between securing the border and CIR, comprehensive immigration reform?

In my judgment, we need to continue to put strong resources at the border and sustain them at the border. They need to be done in a strategic way, and it is a combination of infrastructure, technology, and boots on the ground.

But the plain fact of the matter is from a numbers perspective, the numbers at the border have never been better. There have been some outrageous crimes—the Krentz murder, for example—but the overall numbers border-wide have never been better. We need to keep working those efforts, sustaining those efforts, but at the same time, comprehensive immigration reform should be in our sights.

Chairman LEAHY. Thank you. Thank you very much.

Senator Sessions.

Senator SESSIONS. I do believe that what we do and say here—often what we do is more important than what we say, but it sends a message around the world, and I am confident that for too long the message was as long as there was a willing worker and a willing employer, we did not care if people came into the country, even though that was in clear violation of the law of the United States.

And this kind of confused message gets us into a real problem. This is why we have the problem today.

What we have got to do first and foremost and what you must do, in my opinion, to be the kind of Homeland Security Secretary I would like to see and for President Obama to lead effectively on this issue is to make sure that the world knows the border is no longer open. It is not open. And if you come here, even if you get by—and it is going to be very difficult to get by. But if you succeed in getting by, you will not be able to be employed. And if you are apprehended, you will be promptly deported, and it is a lose-lose game for you. And the way to come to America is to apply and make application and apply and come legally. So this is so fundamental to me.

With regard to the comprehensive phrase, that means amnesty, legalization, regularization or some form of fashion of it, basically. That cannot be done until the American people feel and those of us in Congress really feel that we have ended the open border idea and we have really made the kind of progress we need. And I think they have to be separate. I really do. I see Senator McCain saying the American people have spoken. They want border security first. And I think that is true, and I think that is good policy.

So I just would say that to you with heartfelt belief that we can do better. You can make this border a lawful border. But you have got to continue to improve on the progress that has been made and continue to drive the numbers down, and as the numbers go down, you have more officers per illegal entrant, and you can do an even more effective job with the ones that enter. And as we do, we are going to see more violence, also, I think, as we get more effective at the border, and you will have to be prepared for that. But you have an opportunity to make some real progress on this.

Tell me about Operation Streamline that was begun before your tenure. It is deployed at five of the nine sectors. It seems to result in a substantial reduction in recidivism and re-entries. It is a situation in which there at least is some prosecution and conviction and short detention before deportation. Do you believe that has proven to be effective? And why haven't you expanded it?

Secretary NAPOLITANO. Yes, Operation Streamline, for those who are not familiar with it, does provide for a short period of detention and incarceration prior to deportation, removal from the country. We have continued it where it was. The plain fact of the matter, however, Senator, is that even a short period of detention, now you are implicating the court system, the marshals for transportation of individuals, the detention system in facilities along the border. And so it has to be a coordination between the Department of Homeland Security and the Department of Justice.

It is my understanding that the Department of Justice is looking at Streamline from their resource perspective and the possibility of whether it can be expanded.

Senator SESSIONS. Well, I would say it has—those same concerns were raised initially, and the number of re- entrants and illegal entries went down substantially in those districts, therefore relieving other burdens and costs on the system. So I do not think that is a particular good solution. Are you working to expand it? Would

you like to see it at all border sectors? Do you believe it has proven to be an effective policy?

Secretary NAPOLITANO. Well, in the sectors where it is, there also have been additions in other areas, so there is—we could have a debate about whether it is Streamline that is responsible or more Border Patrol officers or other things that have been deployed. But let me just say this, Senator Sessions: I believe that Streamline should be part of our toolbox of things that we use at the border, and there needs to be a variety of things that we use at the border to get the most effective enforcement strategy. And so, really, it is a resource issue more than anything else.

Senator SESSIONS. Well, it is a policy decision, and if you make a decision to expand it, you would ask for the resources necessary to expand it, and in the long run, the data tends to show that this kind of coordinated effort results in a substantial reduction of illegal entries. And if you can spread that across the entire border, I think we would have another major progressive step. I hope that you will work on that.

Secretary NAPOLITANO. Senator, if I might just interject, it is not just spreading along the entire border. It is being able to do more even in the sectors in which we have deployed it, because we do not and cannot cover—the Department of Justice, the court system in that area of the country cannot do 100 percent of the cases in Streamline even in the sectors to which we have already deployed it. So it is not just going across to all the sectors. It is really looking at the burden on the court system and the marshals system in those Southern District courts. And so I would just make—it is a nuance, but it is an important one.

Senator SESSIONS. I do not doubt that, but in areas where it is working, it has had good results, and I believe they justify the effort to figure out what it takes, and I hope that you will ask for the resources necessary.

Tell me about local law enforcement. It seems to me that a local law enforcement officer has the authority—and I believe court cases have established this—that if they identify a person illegally in the country, they have the power to detain them, even though ultimate deportation or prosecution would be in Federal court. Do you agree with that?

Secretary NAPOLITANO. Senator, actually there is a—that is something, I think, that is being reviewed by the Justice Department now, whether there is inherent authority by any local law enforcement officer to detain. So let me just say that, in my judgment, what we need to be doing is working with local law enforcement so that you have combined and leveraged Federal resources with local, and then you do not actually have to—that question is moot because you always have a Federal law enforcement officer involved.

Senator SESSIONS. Well, the problem with that is there is just not enough Federal law enforcement officers. And if a police officer in a small town in Texas or Alabama or New York captures somebody that they find to be illegally here, you do not have a Federal officer with them. At one point we had three or four Federal officers for the whole State of Alabama, and we have got thousands of local law enforcement officers who can arrest a U.S. Senator if

they violate the city's ordinances. And I try to behave when I am in——

Secretary NAPOLITANO. I was going to make a comment there, but in any event, in some of those areas, this is really where, for example, 287(g) can be useful.

Senator SESSIONS. That is correct.

Secretary NAPOLITANO. And let me, if I might, provide an example. We recently had a situation in southern Missouri where that very issue arose involving a construction worksite, and the individuals were picked up by police who did not have a 287(g). But as we reminded them after the fact, the Missouri State Police do have a 287(g), and because they have that and have that appropriate coordination and oversight, they can deal with some of those situations.

And so while I know 287(g) has come under criticism by many, there are, I think, some appropriate uses for it to leverage Federal authorities with local law enforcement.

Senator SESSIONS. Well, I agree 287(g) provides a great opportunity. I do not think it is being aggressively used and not effectively used, and that is my concern. I hope you will reconsider.

Thank you.

Chairman LEAHY. Thank you.

Senator Feinstein.

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

Madam Secretary, I have been noodling your own statistics while this discussion has been going on, and let me tell you what I find. What I find is really an amazing display of increased assets at the border when you look at them. To raise Border Patrol agents by 10,000, from 10,000 to 20,000, in 5 years is pretty amazing, and resources are doubled and tripled in other areas. It is very impressive.

Where I look at this is in the criminal aspects of what is happening along the border, and I wanted to ask you to comment about this, the number of arrests, the number of drugs and guns seized. You have put out some of the numbers in your opening comments: the quintupling of border liaison officers now from just 10 to 50. Yesterday I spent some time with the DEA talking with them about this.

What it appears to me is that there is increasing drugs, increasing smuggling still along the border, despite the fact that a lot of the statistics show that Department Homeland Security has moved in the right direction. So there is almost a disconnect between all these agents and the increased criminality.

The signing of the bill in your State is very perplexing. I come from the State with the largest number of immigrants. I do not support the Arizona law. And it is hard to understand, but I suspect it rests around people's perception of increased violence.

Would you comment?

Secretary NAPOLITANO. Yes, Senator, and let me, if I might—I think your question goes to the whole issue of the drug cartels in Mexico and the critical importance to the country of our continued efforts with Mexico to break them up, because they literally have fingertips that go into communities all over the Nation. And because the fight is being taken to them both on the southern side

of the border and the northern side of the border, it is resulting in an environment in Mexico, and in northern Mexico in particular, that is more violent.

There is a concern among people who live just north of that in the southern part of the United States, will that spill over? And we have not seen generally across that border a wave of spillover violence. Indeed, the criminal statistics in cities like El Paso would suggest it is one of the safest cities in the United States. But what we want to do is prevent cartel violence in that fashion from spilling over into the United States.

The problem in Arizona is that they are an exception to that rule, where in Phoenix there have been over the last years a record number of stash houses for illegal immigration and drugs and the like, and battles between kind of the end distributors, as it were, for these different cartels in Phoenix.

And so even though statistically Arizona is better than it was several years ago, nonetheless, it is a place where there is a perception that there is spillover violence.

Senator FEINSTEIN. Let me ask you a question. Smuggling boats have become more common off the coast of southern California. These boats smuggle both people and narcotics across the border and onto public beaches in San Diego and Orange County. According to your Department, the San Diego DHS Maritime Unified Command saw a more than sixfold increase in maritime drug interdictions in the Pacific waters extending from the southwest border in fiscal year 2009 compared to the amount seized in fiscal year 2008. They tell us that, despite robust efforts, only 25 to 30 percent of these vessels are being discovered by U.S authorities. It is our understanding that more maritime patrol aircraft with sensors able to detect these vessels may be helpful.

What do you know about this? And what are you doing about it?

Secretary NAPOLITANO. Actually, as efforts on land are successful, you see the expansion into maritime, both in the Pacific and in the Atlantic. And so with the Coast Guard as primary and lead, we are looking at what should our strategy be, how do we intercept these both on sea and with aerial surveillance. We are seeing an increased use of the submersibles to transport drugs into the continental United States. Those are difficult. We are also seeing the use of the ultra lights, which are these very small aircraft, to try to ping, if I can use that phrase, you know, drugs across the border.

So all of those are resulting in us constantly looking at do we have the right deployment, the right equipment, the right resources where they need to be, emphasizes our need for absolute flexibility to move resources around very, very quickly, but also, I think, evidence that statistics are one thing, but we are actually having an operational impact on land.

Senator FEINSTEIN. I wanted to go to one other thing before my time is up, and this is an area where I have a grievance, and I hate to bring it up here. But I wrote you a letter about it a month ago and did not get an answer, so I am going to bring it up here.

In 2005 and 2006, FEMA awarded three grants to the University of California-Berkeley to complete hazardous fuel reduction projects in the hills surrounding the campus. This is a fire-prone,

volatile, potentially catastrophic effort. Despite the urgency of this project, FEMA has taken 58 months to reach the relatively simple conclusion that it required an environmental review.

I have met with the people. The university has come in. I think it is just dreadful that you cannot move a small grant to a university in 5 years. What do you know about it? What is the problem?

Secretary NAPOLITANO. What I know about it is I am very unhappy that this has taken that long. I have asked FEMA to work with Berkeley to resolve this. The substantive issue is the environmental issue, but this involves, I suspect, how to handle those large eucalyptus trees that ring the campus and, of course, the fires that occur in the hills around there. And so I have asked FEMA to light a fire under itself, get together with the folks at Cal Berkeley and see what we can do.

Senator FEINSTEIN. My time is up, but would you follow up on it? Because it just falls between the cracks.

Secretary NAPOLITANO. Got it.

Senator FEINSTEIN. I appreciate that, and I am not going to let you off the hook.

Secretary NAPOLITANO. Got it.

Senator FEINSTEIN. Thank you.

Mr. Chairman, thank you.

Chairman LEAHY. Thank you.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman. I appreciate you, Madam Secretary, and the work that you are trying to do and are doing.

As you know, Utah is the crossroads of the West, and we have people coming in and out of there all the time, and we have appreciated the extra help that you have provided. I think it benefits our country as a whole.

As we talk about the 12 to 20 million illegal immigrants in the United States, I think of the immigrant community in my home State of Utah, those who have followed the law, waited their turn, got in line, sometimes even up to 20 years, in order to legally come to the United States. Now, it seems to me their efforts to abide by our laws would be completely discounted by amnesty or so-called pathway to citizenship.

As a former U.S. Attorney and Governor of Arizona, do you believe amnesty for illegal aliens in the United States is the only way we can solve our illegal immigration problem? And does this not go against the very principles of our legal system?

Secretary NAPOLITANO. Senator, I do not believe amnesty is part of the solution. However, I do believe that what is being looked at and reviewed for those already illegally in the country in terms of how they get right with the law is not amnesty. It is a series of sanctions that they would have to go through, and I also believe that what is being examined would not leapfrog them ahead of those who are already in line to get their citizenship.

Senator HATCH. In other words, you feel that they would have to get in line like anybody else and have to comply with the laws. Would they have to go back to their own country under your view?

Secretary NAPOLITANO. In my view——

Senator HATCH. In order to get in line.

Secretary NAPOLITANO. In my view, no. In my view, that would be a huge administrative task to have people have to go back to their countries, re-register with embassies, and cross legally. In my view, what we need is a system where individuals pay a fine, register, provide us with their biometrics—we want to know who they are; we want to increase that capacity—learn English, have paid their taxes, and perhaps pay a sanction in addition on their taxes themselves as a fine for breaking the law.

Senator HATCH. Would you ask at the outset if a system—I am sorry. I talk fairly softly. If a system is finally arrived at, Congressionally or otherwise, would you first ask whether they want to be citizens? Because my understanding is there is a significant number who would not want to be citizens. They just want a job. They want to be able to support their families. But would you think that part of a process of resolving these problems would be to ask them whether they want citizenship or just want to be a guest worker?

Secretary NAPOLITANO. That I think is something that is part of the dialog we need to have with the Congress. To me, from an enforcement perspective, in my judgment, the first—you know, the goal is to have some mechanism by which those illegally in the country are required to come out of the shadows, to register, to give us their biometrics, to have a clean criminal and tax record, to pay a fine for breaking our laws. You know, there can be—I could see different paths taken by those who wish to simply remain versus those who seek citizenship. That is something that I think the Congress needs to debate.

Senator HATCH. Now, you have been Governor of Arizona, and you have seen the recent legislation that the current Governor has signed. As I view that legislation, of course, I believe States do have rights to try and solve their problems. The question is they have to do it constitutionally.

Now, as I view that law, it basically says they have to have reasonable reason to detain anybody, and not only that, it should not be based upon ethnicity or gender, et cetera.

What is your opinion concerning the law there in Arizona? And what would you like to see done about it?

Secretary NAPOLITANO. Well, as I said earlier, Senator, that law does not take effect until 90 days after close of the Arizona legislative session. So I think the first thing that needs to be done is for the Justice Department to review whether the law is constitutional under the laws governing the Supremacy Clause and under the laws governing preemption and the case law governing preemption. So that I think really, as you suggest, is the first thing that needs to be done: Is it constitutional or not?

Senator HATCH. Yes. And do you want to venture your personal opinion on whether it is or is not?

Secretary NAPOLITANO. Not at this hearing, sir.

Senator HATCH. OK. Now, it is my understanding that, to date, $761 million has been authorized for the Secure Border Initiative Network, with the actual cost of $625 million. In March, you decided that the virtual fence on the border with Mexico was such a failure that it no longer deserved continued funding. Instead, you have directed investment in commercially available technology to

secure our border from illegal entries. Unfortunately, in my opinion, the program's failure is at the taxpayer's expense.

Has SBInet yielded any benefit to the taxpayer?

Secretary NAPOLITANO. There are two blocks, Senator, that are now at the phase—well, the first block, called the Tucson block, is at the phase of operational testing, and I am told that that initial testing now looks promising. However, for the amount of money spent and given alternative and other kinds of technologies that are almost off-the-shelf available, I have really put this thing to a severe or a serious analysis as to whether we should build out the rest of it or whether those technology dollars should be deployed for other kinds of technologies.

Senator HATCH. When combined the pedestrian fence, how effective are functional portions of the virtual fence in basically stopping the flow of illegal immigrants from entering the United States? And do you think we should build more reinforced physical fencing along the southwest border?

Secretary NAPOLITANO. You mean like double or triple fencing, that sort of thing?

Senator HATCH. Right.

Secretary NAPOLITANO. Yes, I have asked the CBP to look at that very question and also a related question whether some of the existing fencing that is single layer should be double or triple. And they have promised to get back to me soon with their look at that.

Senator HATCH. Well, thank you, Madam Secretary. I appreciate your testimony here today.

Chairman LEAHY. Thank you very much.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman, for this very important hearing. Thank you, Madam Secretary.

I am going to turn to Minnesota for a second. Four years ago, ICE carried out actions in meatpacking plants in Minnesota and in five other States. One second grader in Worthington, Minnesota, came home that night to find his 2-year-old brother alone and his mother and father missing. For the next week, the boy, a U.S. citizen, no less than you or I, stayed at home caring for his brother while his grandmother traveled to Worthington by bus to care for them.

Current ICE guidelines allow States social service agencies to interview new detainees to help identify if there are abandoned children. This is important because many detainees are afraid to tell ICE officials that they have children at home, afraid that they may be detained as well. But these guidelines only cover enforcement at worksites and target 25 or more individuals.

Do you have any plans of expanding these guidelines to other smaller enforcement actions?

Secretary NAPOLITANO. Senator, let me check with you, but I believe informally, if not formally, that is the principle on which we act to make sure that any child—and as you know, we have changed how we do worksite enforcement, and that will probably be the subject of some other questions. But we have changed how we do enforcement actions at——

Senator FRANKEN. But that has not occurred formally, has it?

Secretary NAPOLITANO. Let me see if it has actually been put on paper.

Senator FRANKEN. OK. Thank you. Get back to me on that.

Secretary NAPOLITANO. Indeed.

Senator FRANKEN. As you mentioned, your State of Arizona passed—and as members have mentioned—a new law requiring law enforcement officers to verify the immigration status of every individual they encounter if they think the person might be undocumented, and it does not matter if it is a victim of domestic violence, an injured person in a traffic accident. No matter what, their status will be checked.

You have spoken about the constitutionality of the law. I want to ask you a separate question. Can you tell me what impact you think this will have on the relationship between law enforcement and the communities that they serve?

Secretary NAPOLITANO. Indeed, Senator, and let me be very clear. The constitutional analysis is a separate analysis from whether the law is misguided or not. And the constitutional analysis is being done at the Justice Department. I have already said—and my record will demonstrate—I think these kinds of laws are not value-added to law enforcement. There is a reason why most law enforcement groups, chiefs of police and the like, oppose them. And your question relates to one of those reasons, which is the undue barrier it puts between crime victims, human-trafficking victims, for example, a growing problem that we are trying to deal with in the United States, and law enforcement.

So constitutional or not, there are some real law enforcement reasons why laws like that are misguided.

Senator FRANKEN. Thank you. I noticed in both your written testimony and your testimony here today that you are using more K–9 teams along the border to detect both currency and weapons. When I was at the Minneapolis-St. Paul airport a couple months ago—it was actually not long after the Christmas incident—the issue in the public discussion was these full-body scanners. And I talked to the director of the airport there, and I asked if dogs might be more effective in detecting explosives. And the director of the airport said that, in fact, they—he was very excited about the fact that they were getting some dogs. And he was just very happy for the reason that I had indicated.

Could you speak for a moment to the effectiveness of dogs in homeland security, both at airports and along borders, and whether we are going to be scaling up their use?

Secretary NAPOLITANO. Senator, I love dogs. Dogs can be trained to——

Senator FRANKEN. Me, too. Me, too.

Secretary NAPOLITANO. Well, dogs can be trained——

Chairman LEAHY. We all love dogs.

Secretary NAPOLITANO. We all love dogs. Well, dogs can be trained to sniff narcotics, bulk cash, arms. We are using them—explosives, and we are using them in all those ways, in airports and at ports of entry along the land, in the land ports. And the President's budget and our internal deployment of resources is increasing the number of dogs as fast as we can.

Senator FRANKEN. Good. You mentioned human trafficking. A recent Kansas City Star article found that many undocumented victims of trafficking are being deported before they are screened for trafficking. I find this disturbing. These people are victims of horrible crimes, but we are not even taking the time to figure that out and to prosecute the people who traffic them.

How are you making sure that potential trafficking victims are identified before undocumented individuals are deported? Overall, how does the Department of Homeland Security promote cooperation between ICE, the DOJ, the FBI, and community organizations to build trust and promote successful prosecutions of human traffickers?

Secretary NAPOLITANO. Senator, we have embarked on a very significant anti-human-trafficking campaign. A signal part of it is training law enforcement and providing law enforcement training on how to distinguish or detect the symptoms of trafficking, find victims, and deal with victims. Indeed, I just taped part of a law enforcement training video just this week that will be used. Demi Moore will also be in the video. We will probably get confused, but that is another question.

Senator FRANKEN. You should just put a little chiron or super underneath.

[Laughter.]

Secretary NAPOLITANO. I think so.

Senator FRANKEN. To make sure that does not happen.

Secretary NAPOLITANO. But that is part of our program. That program will be offered also at FLETC, which is where we train Federal law enforcement officers. They will be being trained on some of these issues about human trafficking, and we are going to embark over the course of the year on a public campaign on how to tell the difference, and also how human-trafficking victims can get access to law enforcement.

Senator FRANKEN. Well, thank you, Madam Secretary.

Mr. Chairman, thank you.

Chairman LEAHY. Thank you.

Senator Kyl.

Senator KYL. Thank you. Welcome, Madam Secretary.

Let me just begin, I am going to focus on the southwest border, particularly Arizona, as you might expect. I thought Senator Feinstein made an important point earlier when she noted that, at least over the last 5 years, we have devoted a significant amount of resources to trying to control the border and enforce the law, and yet troubling that progress seems to be somewhat uneven. I think overall we have made significant progress. Part of that is undoubtedly due to the recession. One of the big concerns is when we get back to a need for more employment, what will happen. And I think everybody is concerned about that.

But I suggest that the employment of the various things that you have mentioned here do work. The question is: Have we done enough of it yet? I think we know what works, and what I would like to do is just focus on the three key elements of what I think works. It is a combination of things. It is having adequate resources in terms of personnel, particularly Border Patrol; some degree of fencing, which is a big assistance to the Border Patrol; and,

third, detention of violators, Operation Streamline, which I will focus on in a moment.

I think we can conclude this by a tale of two sectors, both in Arizona—the Yuma sector and the Tucson sector. Now, to be sure, the Tucson sector is large by some number of miles, although they both have proximity to interstate highways. One of them, the Yuma sector, has reduced illegal immigration to virtually nothing, while the other, the Tucson sector, represents about half of all of the illegal immigration in the entire United States, right through Nogales, Tucson, Douglas, the other cities along the border there.

What is the difference? In the Yuma sector, we have now completed the double fencing, in some cases even triple fencing. It is tremendous. I know your agents all believe it has done a lot for them. Two, they have an adequate number of Border Patrol. By the way, there is some concern that because they are short in other sectors, some of them might be transferred, and I hope you can commit that they will not be, that now that we have Yuma under control, we will keep it that way. And, third, Operation Streamline, which over the course of time meant that anybody that crosses the border will go to jail. And because a fair number, at least 10 and upwards of 15 or 16 percent, are criminals, obviously that is a good thing if they go to jail. For those who want work, they cannot make money while they are in jail, so they tend not to want to cross in those areas where they know they will go to jail. And that is exactly what they know will happen in the Yuma sector.

So the combination of those three things has worked to bring immigration down, illegal immigration down in the last 5 years. The number was about 118,500 apprehensions 5 years ago; it is now down to about 5,000 so far this year. Tremendous progress. Whereas, in the Tucson sector, we still have about 241,000 apprehensions so far this year. Now, that is down from what it used to be, but still, obviously, far too many.

We know that we need additional fencing in the Tucson sector. I know that your agents, for example, would like to replace—and I think you alluded to this a moment ago maybe generally—to replace the old fencing with a fence that they can see through because it is dangerous for them right now and not very effective. We need additional personnel there, and the Operation Streamline is virtually non-existent in the Tucson sector.

Madam Secretary, you are right that resources are a key issue, and it is significantly a matter of court resources—judges, clerks, U.S. marshals, and so on. But I think Senator Sessions was right, that it is not just a matter of resources but of our will to make it work. And in that regard, we have requested—and as you know, the Congress is supposed to receive a study or was to receive it on December 27th from the Department of Justice and the Department of Homeland Security detailing what would be necessary in the way of resources and what the costs would be to effectuate a more complete Operation Streamline in key areas of the border.

Now, I have got three basic questions here. In the 2011 budget—let us just talk about Border Patrol—first, there was going to be a cut of 187. You then since asked them to amend that so that there would be no cut, but no increase either. In the 2010 conference report, there is a requirement that the northern border in-

crease the number of agents from 1,525 to 2,212. You have said that you would maintain a force of 17,000 along the southern border. Actually, it is 17,400 right now.

Question: How can you increase the number on the northern border, keep the number on the southern border the same, with a budget that does not increase any agents?

Secretary NAPOLITANO. Senator, first of all, going to your list of three, I would add a fourth, and that is technology in addition to infrastructure, Streamline, and personnel.

Senator KYL. By fencing, I include technology in that with all of the cameras, the sensors, the radars that are——

Secretary NAPOLITANO. There is the mobile system.

Senator KYL. Sure. You bet.

Secretary NAPOLITANO. They are somewhat different.

The answer is—and we can provide your staff at the briefing that is, I think, set for later this week—moving people who are in non-on-the-line positions to on-the-line positions. It is in reducing travel costs so we can deploy those costs to personnel. It is in really looking at how we move folks around.

Let me just suggest, however, Senator, it is very difficult in the end when there are mandates that you have to have X here and Y there, because people move and the immigration moves.

Senator KYL. Right. If I could just interrupt because I want to get to the other two questions. My understanding is DHS helped to write the law that requires the additional troops on the northern border. I think we need more Border Patrol. I hope that you will ask for them. Congress will provide them if you do.

Second, on fencing, the budget has enough fencing for 1 mile of physical fence. That is inadequate, isn't it?

Secretary NAPOLITANO. I am sorry. I could not hear your question.

Senator KYL. The 2011 budget includes enough funding for 1 mile of physical fence. We need more than that, do we not?

Secretary NAPOLITANO. Well, Senator, it includes the budget to complete what Congress has originally before it. We can and should look at what other areas could require fence, but I also think we need to be looking at what areas need new kinds of fence for additional——

Senator KYL. Yes, of course. You yourself testified, though, that—I forgot the numbers, but there would at least be 30, 40, 50, or 60 miles of fencing yet to be concluded under the original Congressional intent.

Secretary NAPOLITANO. Well, the original Congressional intent was to match up with the DHS operational plan, which was 700 miles. What has happened is as fencing has gone in with other technology, the 700 miles has become 653.3, or right around there, and we are just about at that number.

Senator KYL. Well, we know we need more fencing in the Tucson sector, and I hope that that will be part of your recommendation. Let me, because my time is up now, just mention on Operation Streamline, the whole point here—you said it is a matter of resources. Senator Sessions said it is a matter of policy. It is both. I think our policy should be to expand it. We have asked you to

tell us what resources are necessary. Please do that. If you do, I suspect Congress will provide them.

Until that is done, we are going to continue to have numbers like we do in the Tucson sector, and you are going to continue to have efforts like the Arizona law because the people realize we are not doing everything that we could do to stem illegal immigration through our border.

Secretary NAPOLITANO. Senator Kyl, I appreciate that. As you know, Streamline, I think, is an important part of a toolbox of things that need to be done. I am not sure that I would equate Streamline with the Arizona law. I think there are a lot of other reasons for that. But I will certainly get with the Attorney General to report back to you.

Senator WHITEHOUSE. [Presiding.] All right. Just to recap, since I have taken the chair, Senator Schumer will be next. After that, Senator Grassley has the right, but if he is not available, Senator Graham. And we will bring Senator Grassley back into the rotation. And then Senator Cardin on our side and Senator Cornyn.

Senator Schumer.

Senator SCHUMER. Thank you, and I want to thank you, Mr. Chairman. You have done an excellent job so far chairing this hearing, as usual.

[Laughter.]

Senator SCHUMER. I want to thank you, Secretary Napolitano. You have done an excellent job so far as well, and you have a little longer tenure than Chairman Whitehouse has as Secretary.

Anyway, my first question relates to something that is bothering me, and that is the Securing the Cities program. Securing the Cities is a federally funded effort to protect New York City from the threat of a makeshift nuclear device or dirty bomb. Every time New Yorkers hear about the threat of a potential terrorist attack from al Qaeda or other extreme groups, of course, it sends chills down our spines. Everyone remembers 9/11. I think of the guy I played basketball with who died or a businessman who helped me on the way up or a firefighter who lived in my neighborhood who I worked with closely.

So this is really important, and New York has taken extraordinary efforts on its own. Ray Kelly has done a great job to make sure that we are never attacked again, and I know that obviously is mostly a Federal responsibility.

But one of the things that we have done is set up this Securing the Cities program, and it provides New Yorkers with the reassurance that their Government is working hard to protect them from a radiological or dirty bomb. It uses the available technology at all the bridges and tunnels and major highways to prevent that from being brought into the country. It is expensive. And we already in New York shoulder far too much—an unfair amount of the burden in protecting our city from terrorism.

For instance, I live in Brooklyn. We have to station police officers 24/7 on the Brooklyn Bridge because it is mentioned—it is now public; we are not giving anything away—as a target for terrorist attacks.

And so I was truly upset when, for the second year in a row, the President eliminated funding for Securing the Cities in the fiscal

year 2011 budget. It would be a tragedy. The program has now reached a critical near-operational stage. The New York Police Department has developed a fully operational mobile detection program and completed a substantial amount of work toward putting in place the radiological defensive ring around Manhattan and the city.

Without continued investment, all this work will go down the drain. This is obviously important, and I do not understand why OMB zeroed this out. I recently requested $30 million in appropriations for it, and I would like to get your support for this program. You are head of Homeland Security. You know the dangers of a dirty bomb. You know New York is far and away the No. 1 target. This idea, well, we will let everyone apply and see who should get some money, it does not work because we have to plan. And this year-to-year existence does not allow long-term planning. It does not allow investing in things that cost more in the second year and the third year. I thought we had been through this fight last year when we eventually got some money, but it took a lot of work.

So what is going on here? Why the heck would OMB zero it out? What can we do to get it restored? And can we have your support?

Secretary NAPOLITANO. Yes, Senator. If I could get myself into the head of OMB, I believe that their reasoning is because there had been 50-some-odd million appropriated in fiscal year 2009 and 30-plus million of that still was yet to be drawn down, that there did not need to be another tranche of money added to that. I am just telling——

Senator SCHUMER. I know. I——

Secretary NAPOLITANO. I am speaking as OMB.

Senator SCHUMER. I had long talks with Peter Orszag. The money is all accounted for. We know what it will be drawn down for, but you cannot say you have to get it down to zero before you get more money as you are negotiating contracts and figuring out what to do with it, and that is the stupidity—that is what I would call it—of what OMB is saying. They know that is not good budgeting. They know that you should not let something go to zero and then start all over again when you have an ongoing program that takes several years to put together, 1 year building on the next.

Secretary NAPOLITANO. Senator, I will be happy to re-engage with OMB on this, but there is another point your question has in it that I think is very important for the Department as a whole, and that is, being able to look at how grants are done in a way that is more than year to year to year to year, but to really look at them structurally in terms of how cities and States really operate and what needs to be done there. That is something that I have asked our folks to begin really looking at. The current methodology may not be the best kind of methodology, but I will be happy to re-engage OMB.

Senator SCHUMER. Can you help us?

Secretary NAPOLITANO. I will be happy to re-engage OMB.

Senator SCHUMER. In a positive way?

Secretary NAPOLITANO. In a positive way.

Senator SCHUMER. Thank you. I consider that good enough to say you will help us, so thank you.

All right. And I am not asking you to do it publicly, although I just did.

[Laughter.]

Secretary NAPOLITANO. What else do you need?

Senator SCHUMER. Yes. Well, I have got a few other items here.

Secretary NAPOLITANO. Yes.

Senator SCHUMER. Northern border strategy. My friend Senator Kyl was talking about the southern border. When we are sitting on the northern border, we think the southern border is getting most of the resources and attention, and I understand the problem of drug interdiction across the southern border is real. But as you know, the numbers for Canada are going way up. I think the number of arrests in New York for crack and cocaine that has come in from Canada is in large multiples. I do not remember the numbers, but almost like 1:18 or 1:10 compared to 2, 3 years ago.

And so we have set up—and this has worked out well—HIDTAs, the High-Intensity Drug-Trafficking Areas, and we have several counties in upstate New York that are part of this. What do you think of HIDTA? What can we do to further prevent drug interdiction on the northern border? And to begin with, do you agree it is a growing and serious problem?

Secretary NAPOLITANO. Yes, and I would add methamphetamine to that mix.

Senator SCHUMER. Yes, for sure.

Secretary NAPOLITANO. I used to be Chair of a HIDTA. I used to be Chair of the Arizona HIDTA. I believe when, well done, it can be an effective way of leveraging resources and also leverages Federal, State, and local monies. And so the answer is—what do I think of HIDTAs? On the whole, I think HIDTAs are very effective.

Senator SCHUMER. Can we get any more help? There is a cut in the HIDTA for the northern border.

Secretary NAPOLITANO. Let me take a look at it.

Senator SCHUMER. Would you? Thanks.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Senator Grassley.

Senator GRASSLEY. Thank you very much, Madam Secretary. One thing I wanted to say, and then I want to read a statement about a bill I have introduced and not ask you to comment on either one of my first two statements. Then I will go to questions.

No. 1, I just came back from the spring break with 24 town meetings, and one of the strong messages that came through was people irritated because they feel that the immigration laws are not being adequately enforced. And I just want to bring that message back to you.

Then the second point I would make in regard to the Christmas Day bomber attempt. It highlighted the need to review our visa policies, especially how our agencies handle visa revocations when alarming information is provided authorities. You, Madam Secretary, have the authority to revoke a visa to any individual who is a threat to this country. Revocations are done frequently. However, if the foreign national makes it to our U.S. soil, there is concern about that person accessing our court system and challenging revocation.

So I introduced a bill that would treat visa revocations similar to visa denials because the right of that person to be in the United States would no longer be valid. My bill applies the same standard for an individual on U.S. soil who should not have been granted a visa, limiting their rights to judicial review of such a decision. The Christmas Day bomber reminded us that, despite our best efforts, foreign terrorists can obtain a visa and make it to the United States.

Given this vulnerability, I hope that you would look at and view judicial review for visa revocations for known terrorists on U.S. soil, that if they should not have been here in the first place, they should not have access to our courts. And I would hope that you would agree that a change in law, if it is needed and you cannot do it on your own, that the visa revocations would not be reviewable in a court and that people who wish to harm Americans could be deported immediately.

Secretary NAPOLITANO. Two things, Senator Grassley. One is I would like to offer to give you and your staff the most current numbers on immigration enforcement, because I think there is a difference between perception and reality. The enforcement numbers have never been more robust in terms of our Nation's immigration laws, and so I think that would be helpful when you have town meetings to actually provide the actual numbers.

Second, I would be happy to look at your proposed legislation.

Senator GRASSLEY. OK. Thank you.

Now, I am grateful that there has been a lot more attention to the problems of the H–1B visa program. I applaud your Department and Director Mayorkas for working to eliminate abuses by employers and stop third-party placements, so our success in highlighting the problem with the H–1B visa program has led some to seek other avenues to enter and remain in the United States.

So this is how I see it. I see companies now resorting to the L visa, a program that allows workers from one company to work in their branches in affiliates in the United States. It is understandable why companies would go around the H visa and use the L. There are no wage protections, no annual numerical limits, fewer obligations on employers, and, thus, fewer protections for American workers.

The Inspector General found problems in 2006 with the L visa program, stating, "It is vulnerable in several respects." Department of Health and Human Services agents would agree with the Inspector General, so I would give you a few examples. One case showed that an individual petitioned for himself, came in on an L visa, created a shell company that did not exist, and thanks to a site visit, was obviously not doing business at the claimed address. Another case showed that a petitioner never worked at the foreign affiliate, forged documents to enter our country, and the office he claims to be working in in the United States never existed. Another case showed that managerial experience, while required, was not a prerequisite for visa issuance. In fact, an individual from Turkey was running a pizza parlor, claiming to supervise two employees, and I am pretty sure that you do not—pizza would not qualify for an L visa.

So questions. Let me ask five questions kind of related. Fraud Detection and National Security Directorate is working on a report on the L–1 visa abuse. Could you tell me if that has been finished? And can you share that information with me? Let me stop there on those two questions before I go on to the other two.

Secretary NAPOLITANO. Sitting right here, Senator, I do not know the answers to those questions, but I will get that to you.

I will say that Director Mayorkas and his group have really been working on making sure those visa programs are really run well and that we are really looking at the whole issue of fraud.

I would also say that on the H–1B visas that you mentioned earlier, it is very interesting that the actual number of applications is down substantially this year. That in and of itself allows us to focus more on making sure that these programs are scrupulously run.

Senator GRASSLEY. OK. I think you just answered the other two questions of three, but the extent to which I say there are problems, I described the problems. You might disagree with whether or not there are L visa problems. But if you would agree with me that there are problems, would you consider administrative action to fix the program?

Secretary NAPOLITANO. Yes, and let me, if I might—first of all, I was just mentioned, I think the IG report was 2006, and we often have this issue where their reports——changes we have already made are in advance of when the reports come out. There is a disconnect in terms of timing. But let me commit that we will look at that and get back to you as soon as possible.

Senator GRASSLEY. OK. I have got several questions on E-verify. Let me pick out one here because my time is pretty much up. I recently sent a letter to the Office of Management and Budget about my concern that economic stimulus dollars were going to foreign companies or to companies that manufacture products abroad. The purpose of the Recovery Act was to stimulate the U.S. economy and bolster our employment. So in that vein, we should also be making sure that recipients of these dollars are hiring workers that are legally authorized to work within the United States. The Executive order signed by President Obama requires that contractors of the Federal Government use E-verify.

Could you confirm that recipients of stimulus dollars are using the E-verify system?

Secretary NAPOLITANO. Yes, and I can confirm that the number of companies using E-verify is growing by great multiples every week and that the accuracy of the system, the system itself, is much better than when it was originally started. So a lot of the reports of error rates and the like are, in fact, erroneous.

Senator GRASSLEY. OK. If you would look into that further, I would appreciate it. Then I have another question I will give you for answering in writing.

Secretary NAPOLITANO. OK.

[The question appears under questions and answers.]

Senator GRASSLEY. Thank you.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Senator Cardin.

Senator CARDIN. Mr. Chairman, thank you very much.

Secretary Napolitano, it is a pleasure to have you before the Committee. Thank you very much for your service on this very important area of our homeland security.

I want to go into cybersecurity for a few moments, if I might. In November of last year, the Terrorism Subcommittee of this Committee, which I chair, had, I think, a very interesting hearing in which we heard from Government witnesses as well as private sector witnesses as to the vulnerability of America in regards to cyber attacks. We all know about the criminal elements that are used in cyber attacks to steal money from the people of this Nation. There is more money stolen from banks today through cyber theft than there was during the bank robbery days.

We also know that there are cyber terrorists out there who would like to compromise our country in many different ways. If they can disrupt our air traffic for just a short period of time—you know what the volcanic ash caused. Bringing our cyber down for a few days could run havoc with our National economy, or getting into our banking system or getting into our utility grid.

We also know that there are foreign states that are trying to attack our country through cyber. So this is of an interest not just to the Department of Justice for crime or your Department for terrorists but also the Department of Defense on national security issues, all of which is involved.

So our hearing showed that there has been a long-time neglect of the coordinated efforts between all the agencies of Government and that we are not as safe as we need to be, that we do have the best technology in the world against cyber attack, but we still are vulnerable. The number used at that time is that we are only stopping about 80 percent of the attacks on cyber crime or cyber issues in our community.

My question to you is: With the development of a cyber person in the White House, with that appointment, with the President moving forward with a cyber command within DOD with General Alexander, can you tell us how your role and your Department's role will be in the cybersecurity issues? This is not just a military issue. This is an issue that affects our homeland security. And I am interested as to what type of priority this has on your agenda and what you are doing in relationship to what the President has announced for a cyber head in the White House as well as what is happening in DOD?

Secretary NAPOLITANO. Yes, Senator. First of all, in our Quadrennial Homeland Security Review, which was the first ever for DHS, we actually identified protection of cyberspace as one of our five major mission areas, in addition to counterterrorism, border security, immigration, disaster preparation and response. We did so because of the things that you laid out.

Within our Department, it is primarily located in NPPD because of the intersection with critical infrastructure and with the private sector. We view ourselves and the President's review puts us as primarily responsible for the civilian side of Government in terms of protection and the intersection with the private sector, which is where 85 percent of the critical infrastructure of the country is. And so we have lined up there.

The one principal exception to that is that the Secret Service has a very effective and longstanding cyber crimes and cyber forensic capacity within the Secret Service, so that remains there, but virtually everything else is within the NPPD.

Senator CARDIN. Well, I just urge you to give this the highest priority because I think we have the technology to do a lot better than we are doing today. We just need to make sure that like all intelligence information is shared, we have a common objective on cybersecurity. And you are absolutely correct. The private sector vulnerability is clear. The Government is in better shape, but we still are vulnerable. And we are vulnerable to what happens in the private sector. So this is all very much interrelated and comes very much under homeland security.

I want to go back to one of the principal recommendations of the 9/11 Commission that has yet to be implemented. The 9/11 Commission correctly concluded that the choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberty than the success of a terrorist attack at home, which I strongly support. But then it recommended that the Privacy and Civil Liberties Oversight Board be reconstituted to ensure that liberty concerns are appropriately considered in the implementation of laws, regulations, and executive branch policies related to efforts to protect the Nation against terrorism.

Now, I have been in the Senate long enough to know that when we deal with the tools necessary that agencies need to protect us against terrorist attacks, we still have a fight going on here, and it has been difficult for us to move legislation because of the concern as to whether these tools will be used properly and whether civil liberties will be protected. It seems to me having this board in place would help us in dealing with legitimate concerns raised by the civil liberty issues so that we do not have this continuous fight every time we try to extend a sunset provision or to deal with this issue generally.

The administration has requested $2 million for salaries and expenses. However, we do not have the nominees for the board.

Can you just update us as to the status of the reconstitution of this board that was recommended by the 9/11 Commission?

Secretary NAPOLITANO. Senator, that is probably a question better directed at the White House. All I will say is, A, it is a false dichotomy between security and civil liberties, and we build privacy and privacy protections into really the outset as how we are looking at technologies and different things that we are doing.

Second, we have suggested to the White House some appropriate names for possible nominations, but I think the actual status of the nominees should be directed at the White House.

Senator CARDIN. I understand that the responsibility is with the White House to make these appointments, but I know that you have the opportunity to weigh in on this. I would just urge you that if you want our cooperation on budget support, et cetera, it is a lot easier if we have nominees to consider. And it may take some time for that process to go forward. I would urge you to use your position and voice within the Cabinet to get this issue moving forward.

Secretary NAPOLITANO. Indeed.

Senator CARDIN. Thank you, Madam Secretary.

Senator WHITEHOUSE. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

Madam Secretary, welcome.

Secretary NAPOLITANO. Thank you.

Senator GRAHAM. You have one of the toughest jobs in America. You are dealing with so many issues. And I would argue there is no more challenging issue facing America than immigration reform. Would you agree with that?

Secretary NAPOLITANO. I would say it was among the top issues, yes, indeed.

Senator GRAHAM. Having been involved in trying to find a solution in the past, I can assure you it is difficult politics, but here is where I have come down on this issue. I think 70 percent of Americans are in the camp that illegal immigrants need to be fairly and firmly dealt with, and fairly and firmly does not mean mass arrests. Do you believe we can put 12 million people in jail?

Secretary NAPOLITANO. No.

Senator GRAHAM. Nor do I. And I believe that is not a required solution. Do you believe that we are going to deport 12 million people?

Secretary NAPOLITANO. No.

Senator GRAHAM. I do not believe that is going to happen either. And I would say to what Senator Sessions said, all of us kind of look the other way as long as the labor needs are being met. After 9/11, illegal immigration takes on a different flavor. It is not about people helping our economy. It is about broken systems that could lead to attacks on the country.

Isn't it true that all the hijackers, 9/11 hijackers, did not come across the southern border, they overstayed their visas?

Secretary NAPOLITANO. I believe that to be true.

Senator GRAHAM. And isn't it also true that one hijacker had, I think, up to 18 or 19 multiple driver's licenses that were faked?

Secretary NAPOLITANO. I would have to double-check.

Senator GRAHAM. Just say yes because I know I am right on this one.

[Laughter.]

Secretary NAPOLITANO. It sounds like you are asking me a real question.

Senator GRAHAM. Just go along with me here for a while because I can prove what I am saying on this. And the point of the matter is that there are two problems in America: an unsecured southern border and a visa system that is completely broken.

Do you agree with me that the worst thing we could do is bring up immigration reform and it crash and burn politically?

Secretary NAPOLITANO. You know, Senator, I think that, as you and I have discussed and I have discussed with other members of the Committee, the administration looks forward to taking up immigration comprehensively and dealing with the visa issues, the enforcement issues, workers——

Senator GRAHAM. And so do I. I look forward to it. Do we have 60 votes to bring up comprehensive immigration reform between now and November? Are there 60 United States Senators ready to deal with this issue between now and November?

Secretary NAPOLITANO. Senator, I am not going to presume to put myself in the place of counting votes of——

Senator GRAHAM. Well, the only reason I would suggest that we need to know is because it is important. Somebody needs to talk to Senator—Republicans—but Nelson, Lincoln, Webb, Baucus, Byrd, McCaskill, Tester, Dorgan, Conrad, Pryor, and Bingaman. Some of these people voted no in 2007. And I am not saying they were wrong to vote no. I am saying that the 2007 bill would not pass. Do you agree with that?

Secretary NAPOLITANO. As you state the question, I would give you a tentative yes.

Senator GRAHAM. I would bet everything I own that the answer is this 2007 bill will not pass. And you agree with that or not?

Secretary NAPOLITANO. I will bet you everything I own that the Congress needs to take up immigration reform because it is not going to go away.

Senator GRAHAM. Yes, ma'am. It will not go away. But I bet you everything I own, if you bring it up in this environment, not having done anything that is going to reassure the American public that we will not have 20 million more, that you are going to crash and burn, and that immigration comes up this year is absolutely devastating to the future of this issue, and the southern border is not only not secure, there is a war in Mexico that is bleeding over to America. The mayor of Juarez has moved out of his city, and he is living in the United States. And I think most Americans think we will have lost our mind if we move forward without securing the border, because the biggest change between 2007 and now is that there is a war in Mexico threatening the Mexican Government that also threatens people who live along the border. And your State of Arizona is made up of a lot of good people. You would agree with that?

Secretary NAPOLITANO. Absolutely.

Senator GRAHAM. Well, look what good people will do when they are under siege. What happened in Arizona is that good people are so afraid of an out-of-control border that they had to resort to a law that I think is unconstitutional and does not represent the best way forward. And it is impossible for me and any other serious Democrat to get this body to move forward until we prove to the American people we can secure our borders. And, quite frankly, Madam Secretary, we have got a long way to go. But once we get there, comprehensive reform should come up, will come up, and I believe we can do it by 2012 if we are smart and we address the big elephant in the room, and that is that our borders are broken and there is a war going on that is going to affect the future of this issue until we get that solved.

Secretary NAPOLITANO. Senator, may I respond to that?

Senator GRAHAM. Please.

Secretary NAPOLITANO. And I say this, again, as someone who has—I have walked that border. I have ridden that border. I have flown it. I have driven it. I know that border I think as well as anyone——

Senator GRAHAM. Do you think it is secure?

Secretary NAPOLITANO.—And I will tell you, it is as secure now as it has ever been——

Senator GRAHAM. My question——

Secretary NAPOLITANO. Senator, please, let me——

Senator GRAHAM. Yes, please.

Secretary NAPOLITANO. Let me answer the question. Every marker, every milepost that has been laid down by the Congress in terms of number of agents, deployment of technology, construction of fencing and the like has already either been completed or is within a hair's breadth of being completed. And one of the questions I think we need to talk about is whether securing the border is ever going to be reached before the Congress, in the sense of the Congress, or whether that goalpost is just going to keep moving. And I also believe that we need to communicate better with the American people.

Senator GRAHAM. Yes.

Secretary NAPOLITANO. All that the Congress has already done along that border——

Senator GRAHAM. I totally agree with that.

Secretary NAPOLITANO. It is a very different border now.

Senator GRAHAM. I totally agree with that.

Secretary NAPOLITANO. You know, 6, 7 years ago, the number of illegal apprehensions in the Tucson sector of the border was over 600,000. Now it is 200,000—too many, I agree. But the securing the border aspect has moved forward, and the issue then is will CIR move forward, too?

Senator GRAHAM. Under the law that we tried to pass in 2007, it required border State Governors to say that the border was secure along their border, their State border. Knowing what you know about Arizona—and, Mr. Chairman, if you would indulge me a little bit, I would appreciate a little more time—would you say, would you certify that the Arizona border is secure?

Secretary NAPOLITANO. If I were asked that question now in this position—first of all, it is an unfair question, and that is why the border Governors——

Senator GRAHAM. If that is an unfair question, then it would be news to the——

Secretary NAPOLITANO. Well, let me finish my answer.

Senator GRAHAM.—people of the United States and Arizona. If it is unfair to ask a simple question, is the border secure, then we are never going to have the confidence to get it secure, because it is a fair question, and I will give you my answer. I do not think it is. I think since the last effort to solve immigration, the border security has deteriorated. Along with your best efforts, there is more to be done, and there is a war going on. You cannot ignore the fact that the border is more dangerous because of the war in Mexico, which requires more action not less. So I—I am sorry. Go ahead.

Secretary NAPOLITANO. Senator Graham, let me, if I might.

Senator GRAHAM. Please.

Secretary NAPOLITANO. Let me respond the way I heard the question. Maybe you were answering a different question.

Senator GRAHAM. OK.

Secretary NAPOLITANO. What I would say is that we need to continue with all of our efforts to secure the border, and the numbers are better than they have ever been. But that does not mean we

stop and that there is not more progress to be done. But I would also suggest, sir, I would also say that the passage of laws like that at the State level illustrate the need for Congress to move ahead on CIR.

Senator GRAHAM. Yes, and I agree with you, and I will end this. The Chairman is right. Here is my view. I think the border is less secure because the circumstances of Mexico make it less secure. You have done some good things. A lot more needs to be done. For anybody who is watching this issue who wants relief in the Hispanic community, you deserve it. But the last thing that can ever happen, in my view, to get that relief is to bring up a bill where there is no hope of it passing. In this environment, there is no hope of it passing. Let us get this environment corrected on border security, move forward in a comprehensive fashion, secure the border, protect America, and be fair to the 12 million people, but also be firm that we are never going to have 20 million more in the future. That is the winning combination.

Senator WHITEHOUSE. I thank my colleagues for allowing Senator Graham the extra time. Given the remarkable extent of his involvement in this issue, I think he was entitled to it, and I hope my colleagues understand.

It has now come to me, Secretary, and I wanted to talk with you about two things: FEMA and cyber. I want to first thank you for your visit to Rhode Island after our flooding. I do not remember whether I called you on a Tuesday or a Wednesday, but I think you were there by Friday. It was a very, very quick response. You came up in person. It was important for Rhode Island to see that kind of attention. This was a very significant flood for us. There were places where the flooding exceeded the Army Corps of Engineers 500-year flood lines. So your presence was very important, and I want to commend the effort of FEMA in deploying rapidly, in deploying widely, in deploying effectively. The presence has been first-rate, and the people who have come in from all across the country to help have been very good to work with.

There is inevitable disappointment about the fact that the program that FEMA can deliver has statutory and regulatory restrictions. You get what you get, and not more. But the speed and the effectiveness with which you came in to deliver what FEMA can deliver was very commendable, and I wanted to say that.

There are two areas where we are still having some problems that I wanted to focus on, and if you could pass on to one of your staff people to follow up and try to help us work through it, I would appreciate that. One is that some of our disaster victims—we have 2,000 Rhode Islanders still not back in their homes. It has been quite a while now. This is a long time to still be out. Some of them are having problems finding temporary housing and have reported being moved from hotel to hotel and having difficulty funding monthly rentals, particularly monthly furnished rentals since all their furniture is under water. So anything that can be done to help us work through that problem I think would be helpful.

The other problem that has emerged is some cases in which FEMA inspectors have disagreed with the local determination by municipal building officials whether a building is inhabitable or not. It puts the occupant of the building in an impossible position

to be told different things by FEMA inspectors and local inspectors. And so a resolution of that quickly between those two, some mechanism for resolving it I think is very important. Otherwise, I mean, these people are pretty frustrated to begin with to be flooded out of their homes from flooding that they had never foreseen, never experienced in their lives, and then all the inconvenience and delay, and now, "It isn't inhabitable. It isn't inhabitable. Your benefits are going because we say you can move in, but the building inspector says you cannot." So if you could help us work through that, I would appreciate that.

Secretary NAPOLITANO. We will, and we will get in touch with FEMA after this hearing to see what can be done.

Senator WHITEHOUSE. Great. I appreciate that.

On cyber, I guess I would like to ask two questions. One is, you know, we have got maybe three dozen cyber pieces of legislation pending in Congress right now. In the professional community that looks at cyber as a national security issue, there is intense interest and activity. It is an area in which I think you and I both believe an enormous amount needs to be done in order to prepare America better. But partly because what we do to protect .gov and .mil is classified and what the private sector experiences in .com and .org is not something they want to talk about because it reveals vulnerabilities that competitors can take competitive advantage of and so forth, my contention is that the American people are way behind this discussion.

My first question is how you think—should we try to formalize some way for getting the American people more involved in this discussion? There are very significant questions we are going to have to answer about the use of the Internet, about protecting our companies, about what their rights are to defend themselves, about protecting our own Government, acts about the extent of the cyber piracy that we are being engaged in. I contend that cyber piracy is the biggest transfer, the biggest theft of value in the history of humankind, and we are on the losing end of it. So I think a lot needs to be done. How do we get the American people more engaged?

Secretary NAPOLITANO. Well, I think your question actually lays out some of the—that the private sector needs to be more engaged, that we need greater connectivity on the civilian side. And one of the things, Senator, that we have been looking at is just plain old, good cyber hygiene by any individual who is getting on the Net. We actually have a competition under way right now—I think it closes next week—for some simple sloganing, some simple messaging that can be used to engage anyone who is on the Net, because now they are part of the system. Once you are on the system, you get the advantage of the system, but you also get the disadvantages. So it is, as you say, something that much work needs to be done.

Senator WHITEHOUSE. I look forward to working with you on it, and the statistic that I have heard is that 80 percent of the cyber attacks that America sustains that succeed could be blocked if people simply took very basic, very common, standard preventive measures and that, in effect, we are not applying to our computers and laptops anywhere near the same degree of duty of care that we require Americans to do when they get out on the regular high-

way with their vehicles. And we need to find a way to bridge that gap.

The second question has to do with emergency response in the event of a very significant cyber attack. If a bank, for instance, crashes because of solvency concerns, the FDIC can come in on a Friday; by Saturday it is opened under new management. Everybody feels comfortable. The institution continues. It goes right back into the private sector. But it is saved because there was a brief and effective Government intervention that carried it from one private owner to another.

If that same bank is hit by a cyber attack that renders confidence in it suspect and it faces the same run on the bank, or if an electric utility is hit in a way that compromises its ability to continue to deliver services and its own information systems cannot withstand the attack, how ready are we as a Nation to step in behind that bank or that utility and sustain them through the sustained cyber attack, help them defend their network, help them make sure that their billing and electron flow and deposit records and all those things are maintained, and then when the situation is back under control, step back out again so that it remains in private hands?

Secretary NAPOLITANO. I think, you know, we have the CERT teams, we have other mechanisms there, but they are not set up in the same way, in the same kind of a takeover type of facility or capability as you would in a bank receivership, for example.

You know, I think these are all ideas that now need to be discussed within the Congress and that we need to move—really need to be exploring a lot of these different ideas that are—some of them are expressed in the multiple pieces of legislation that are being proposed, but I think you are right to say that, look, this needs to be a very high priority of us both at the individual level but also at the private and institutional level as well.

Senator WHITEHOUSE. Well, I look forward to working with you on it, and I very much appreciate and salute your leadership of the Department of Homeland Security.

I believe Senator Cornyn is next, followed by Senator Klobuchar, and Senator Specter will take the gavel.

Senator CORNYN. Madam Secretary, I know you share my concern with the escalating drug violence in Mexico, and, by the way, I appreciate your reaching out and calling me and giving me some insight into your meetings recently—you and Secretary Gates, the DNI, the Secretary of State and others. I was very impressed by the high-level nature of that delegation, which I think speaks to the seriousness of the challenges the Mexican Government is having with the cartels—a challenge that threatens not only their safety and security but ours as well.

I think most Americans would be shocked to learn that there have been about 23,000 people killed in Mexico since 2006. There is a war going on, as you know, and I worry that the Mexican Government may not be poised to win that war.

I support the Merida Initiative, which I know you support and are responsible for implementing in large part. But I worry that what we are doing is not turning the direction of the escalating violence around, and there is more that we need to do.

I went to El Paso on Friday and had a good briefing from all the Federal authorities there, which was very informative. But one of the things that I learned there is that there are substantial spillover effects into the United States, and particularly into El Paso. For example, Silvestre Reyes, the Congressman who represents that district, has written to the President citing 150 victims of violence in Ciudad Juarez who have been paroled into the United States and hospitalized at the University Hospital at a cost of about $3 million. He also notes that 32 percent of the associated physicians' fees—only 32 percent have been paid and that many of the hospital employees worry, with some justification, that the cartels if they have not finished the job in Juarez will come over to the United States and complete it.

So it is with an eye to all of this that I want to ask you specifically about Predators, unmanned aerial vehicles, and other assets which we can deploy to help provide intelligence and other assets that could be used not only by the United States to secure our border, but also by the Mexican Government to defeat the cartels.

My understanding is that U.S. Customs and Border Protection has five unmanned vehicles currently in operation—three Predators on the southern border and two on the northern border. I will tell you that I am upset that there are none in Texas. We have a 1,200-mile border with Mexico, and as I understand, none of those Predators are available or are being used by the Border Patrol or Customs and Border Protection in Texas.

Specifically what I was told is that the Federal Aviation Administration has failed to issue a certificate of authorization for the flight of these unmanned aerial vehicles in commercial airspace, and I wonder if you could tell us what the hold-up is and what the plan is to fix that, because it seems to me that getting those Predators, those drones available to fly and provide intelligence, is very important and the FAA appears to be blocking it at this point.

Secretary NAPOLITANO. Senator, this is an issue pending in the FAA. The plain fact of the matter is that the Texas airspace is more crowded than the other airspace that needs to be protected along the border and had more predetermined certifications already in place. And so the FAA now has to go in and carve out, as I understand it, space for the Predator. But that is under way, and we have urged them and said that we would very much like to be able to deploy the Predator there.

Senator CORNYN. Well, I know we have been talking about this—not you and me, but all of us here—for some time, and it seems like the delay just keeps extending on and on and on. And I would ask for your help to try to expedite approval. I intend to ask the FAA to come to my office and explain to me what their posture is and what the delay—why the delay, because I am very concerned that some of the assets that could be deployed not only to help quell the violence in Mexico, but also keep our borders secure, are not being deployed because of unnecessary foot dragging.

I mentioned some of the spillover effect of the violence in Mexico. I also was advised in some of my meetings in El Paso that there are as many as 20,000, perhaps more, displaced Mexican citizens that are living with relatives and others in El Paso on the U.S. side. Senator Graham mentioned the fact that the mayor of

Juarez—a city where 700 people have been killed so far this year, and which is right across the river from El Paso, that mayor lives in El Paso. He lives in the United States because he fears for his own safety and security in Mexico.

And I mentioned the spillover effect on hospitals, but it also is having an affect throughout Texas. It's obvious in schools where children are being registered for public school in the United States in El Paso, and in people moving into U.S. homes and rental property in order to protect themselves. This is a very, very serious problem, as I know you recognize, and we have got to find a way to do more to help Mexico, and to help ourselves.

One last thing. What kind of cooperation does your Department get from the Department of Defense? I am thinking not just about troops. I am talking about assets, niche assets. I mentioned unmanned aerial vehicles, other radar assets that the United States military has developed in the course of our conflicts in Afghanistan and Iraq, which could be state-of-the-art technology that could be a big help. Could you explain to me what the conversation has been, what kind of cooperation? Or is there no coordination or collaboration or cooperation between DHS and the Department of Defense?

Secretary NAPOLITANO. Two points, Senator. One is I think your observation bears repeating, and that is, by helping Mexico we help ourselves, and that particularly our assistance through Merida and other means in this issue on the cartels helps us. These cartels impact us, and that is why we view them as a homeland security issue.

Second, we have good cooperation with DOD. As you noted, Secretary Gates was with us when we had the high-level contact group meeting in Mexico City. There are ongoing operational things that are being done and exchanges of things like technology. So we have very good cooperation there.

Senator CORNYN. Well, I again commend you and the Administration for treating this problem so seriously. I would just like to respectfully suggest to our Chairman and our current Chair that it might be good to have all Members of the Senate, on a bipartisan basis, briefed in a classified setting on what is going on in Mexico, what the United States involvement is, because, frankly, I think this represents a huge threat not only to Mexico but also to American citizens, and not just along the border.

Finally, let me just say that I note that in fiscal year 2009 there were 556,000 apprehensions of people coming across the southern border—I believe my number is correct—which is down considerably from its height. But I do not think it is anywhere near the point where we can say that our border is secure. Would you agree with that? And if you do, what additional resources do you need in order to secure our border?

Secretary NAPOLITANO. Well, I think we always are working to make the actual physical security of the border more complete, but I would say that not only has significant progress been made, but in all of the sectors of the border you can show that it is better now than it was 2 years ago, 3 years ago, 5 years ago, and the like.

I think we need to continue to make sure that we sustain the Border Patrol presence, that we continue to look at the technology

dollars you have appropriated and make sure they are being deployed in the right way with the most effective kinds of technologies and that there will be different technologies in different areas of the border because of the different terrain involved, among other things, and that we look at infrastructure in the right way to deploy infrastructure. And interior enforcement is an important part of the puzzle as well. So it is what we do at the border, it is interior enforcement and how that is done, and that is the package that we are implementing.

Senator CORNYN. Well, I look forward to working with you to make sure you get the resources you need in order to get the job done, and I appreciate your commitment to that objective.

Mr. Chairman, I would like to ask unanimous consent that three letters be made part of the record. One is from Hon. Silvestre Reyes to the President of the United States, dated March 28th, and then two other letters from the University Medical Center of El Paso, dated March 16th and April 16th that all pertain to the spillover effects of the ongoing cartel-related violence in Juarez into El Paso.

Senator SPECTER [presiding.] Without objection, they will be made a part of the record.

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

Senator SPECTER. Thank you, Senator Cornyn.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Senator Specter. Hello, Madam Secretary. Thank you so much for being here.

Secretary NAPOLITANO. Senator.

Senator KLOBUCHAR. I was thinking, as I know there has been a lot of focus on the southwest border, I think I will ask one question about that. I have to tell you I came in from a hearing on national tourism with Ken Burns to Senator Graham's questioning of you, and it was quite an alarming change of pace. And my first question actually is about—and first is a thank you for the work that you did with the orphans in Haiti and the adoptions and granting humanitarian parole and working with us. There are many very happy kids and happy Minnesota families that had pending adoptions that were nearly complete when the tragedy happened there, and if it was not for your good work and Secretary Clinton's, I do not think that those kids would be there with those families. And I know you will probably never meet those kids or their families, but you changed their lives forever, so thank you for that.

I wanted to specifically ask about the follow-up on some of the Christmas Day bombing work. I know that we talked about that the last time you were here. We talked about the disclosure of the airport screening procedures and things like that. I wondered what is the update on the security lapse with that document being shown. This would be the disclosure of the TSA airport screening procedures when the confidential document was placed online. And I think there is going to be some looking at that, and so that would not happen again, and then also what is happening with the airport screening and the installation of some of the new screening.

Secretary NAPOLITANO. Let me get back to you on the TSA issue because I think there has been action taken, but I do not have it at my fingertips.

With respect to airport screening, quite a bit has been done. As you know, we have accelerated the deployment of the AIT machines. We have also increased explosive trace detection machinery, K–9 teams, behavior detection officers in our domestic airports. We have also embarked on a very ambitious global initiative in terms of raising world aviation security standards because what was clear on Christmas or became clear on Christmas is that once you get into an airplane in any airport in the world, you potentially have access to the entire system. And so working with ICAO, which is the UN's aviation branch, we have had meetings with the EU countries in Spain, with the Western Hemisphere countries in Mexico City, Asian countries in Tokyo. We just had a meeting with the African nations in Nigeria. We will have a meeting in the Mideast in the next coming weeks—all geared toward an international, global consensus on what everybody needs to do to increase aviation security.

Senator KLOBUCHAR. Very good. I wanted to, like Senator Whitehouse, thank you for the work of FEMA. As you know the Red River flooding and the near miss last time and this time, I think the planning and all the work that we had done with FEMA and some of the work that was done in the interim, smaller things, helped out. Obviously, we have a bigger issue with flood diversion that we need for the long term. But I wanted to ask you about the levee certifications.

As you know, FEMA is working with communities across Minnesota to recertify their flood protection levees. One example, Oslo, Minnesota, literally for months they have had—they get into their community by boat because they are surrounded by a ring dike. And Oslo was given 2 years to complete the certification process, until April 30th, in order to be in compliance with FEMA requirements. Although Oslo fully intends to comply, there have been some issues with finding the funds necessary to pay for the expensive technical advisers and engineers necessary to complete the certification, not just in Oslo, some other towns.

In addition, in most instances the Army Corps of Engineers constructed these levees, but does not have the resources or capability to complete the work necessary for FEMA certification.

So I know this is not unique. Do you know how the Department has been handling these situations? My fear is while they are doing their best to comply, we do not want them to be unnecessarily punished as they are surrounded by water?

Secretary NAPOLITANO. Well, my understanding is that there are several pieces of legislation moving through looking at the National Flood Insurance Program overall, which is really the connect with the whole levee issue and levee certification. As you suggest, Senator, this is enormously complicated, it is enormously expensive, and it is enormously important. And there are lots of issues that we are going to need to work through with the Congress and with people like you to get this right, because there are many, many communities across the country that are now looking at that April 30 deadline and going, "What do we do next?"

So, again, I know there is some legislation moving through. We are providing assistance with that legislation.

Senator KLOBUCHAR. OK. Back to travel. As you know, we finally passed the Travel Promotion Act. You and I have talked about this, and I am not certain if I got you that movie I wanted you to see, but if I did not, we will get it there tomorrow. But it is a movie for greetings, just a continual feed with no voice to be potentially used in the airports where international visitors come. It is a beautiful film. We showed it a year or so ago, just wonders of our country. That plus trying to process these foreign visas quicker with hopefully some resources we will have now from that $10 fee on foreign visitors. I just wanted to encourage you to work with us on that. I know given all the questions of my colleagues it is not the No. 1 thing on everyone's mind, but I remind them that every 1 percent we lost in international tourism since 9/11, we have lost 20 percent of the market, is 170,000 jobs in this country, every 1 percent.

So as we are looking at ways to further this economy, we are really excited about the Travel Promotion Act and look forward to working with you.

Secretary NAPOLITANO. Indeed, and as the former Governor of a State that relies heavily or relied heavily on tourism dollars, I really appreciate the importance of that.

Senator KLOBUCHAR. Very good. The last thing is just to follow up, listening to Senator Graham's questions, and a little of Senator Cornyn's. It is just my impression, having only been here for 4 years, that since you have come in, you have worked very hard on these border issues, specifically some of the drug enforcement issues, and really have had a laser focus on that that we had not seen before. And I just wanted to give you an opportunity to talk about the difference between what was going on under some of your predecessors with the border and with some of the law enforcement issues with Mexico and what you have been doing now.

Secretary NAPOLITANO. Well, thank you, and let me just say that one of the key things that is going on now is the cooperation with Mexico, and one of the things that does not get counted is the amount of law enforcement resources Mexico itself is deploying to the border. Just on our southern side, for example, we are about to begin helping them train their first ever Border Patrol. So it is not just going to be our Border Patrol on this side. They will have Border Patrol on their side. It is those kinds of things that give us—what we want to have is a 21st century, really a border zone, protected south and north, but it needs to marry up with an immigration system that works. And as we know, that immigration system itself needs to be reformed by the Congress.

Senator KLOBUCHAR. Thank you very much.

Secretary NAPOLITANO. Thank you.

Senator SPECTER. Thank you, Senator Klobuchar.

Madam Secretary, thank you again for your service. I note in your resume that you lived for a while in Pennsylvania, born in New York, and lived in New Mexico. How much credit can Pennsylvania take for you?

Secretary NAPOLITANO. Well, probably some Pennsylvanians want to take a lot and probably some would rather not. But I

learned how to read in Pennsylvania. I lived there for several years, nursery school, kindergarten, and first grade.

Senator SPECTER. Well, we are proud of you.

Secretary NAPOLITANO. Thank you very much.

Senator SPECTER. The issue as to what has happened in Arizona has caused a great deal of concern in many quarters, and I know that President Obama has been anxious to move ahead on immigration reform. We came very close in 2006 when both Houses passed bills. The Senate passed a comprehensive bill. The House bill focused only on border protection. And we could not get a conference convened, and nothing happened. And now Arizona has legislated in a way which has drawn a lot of questions, a lot of criticism.

The impact of what the law contains could be very, very serious in terms of what happens with the relations between the Latino community and the people who are so heavily pressing on enforcement measures which may be unconstitutional. On their face, they appear to have that significant risk of racial profiling.

You, of course, have intimate knowledge there, having been Governor two terms. How serious is it, as a matter of race relations in Arizona and the temper of the community, that the Federal Government move ahead to legislate to impose appropriate standards contrasted with what the Arizona law has?

Secretary NAPOLITANO. Senator, in my view, one of the motivations behind the Arizona law was frustration with the perception that Congress was not moving on this issue at all, and that the State would have to move in the absence of Congressional movement. I know the President is very interested in reaching out for a bipartisan consensus to see if we can move an immigration bill through. Senator Graham expressed some doubts as to whether there were 60 votes in the Senate for that. But I think the message sent from Arizona was that movement needs to occur that this issue should not be allowed to languish.

Senator SPECTER. Madam Secretary, to what extent is there a concern about civil unrest with what may occur with the enforcement of this law?

Secretary NAPOLITANO. I think there are a lot of issues. If this law goes into effect—and, again, the effective date is not until 90 days after the session ends. But if it goes into effect, I think there are a lot of questions about what the real impacts on the street will be, and they are unanswerable right now.

Senator SPECTER. My State has a considerable Latino population, and I hear a lot of concern and a lot of anger. And when you start getting really tough with the high-handed tactics which are authorized by this law and the racial profiling, it puts added stress on Congress. We have been derelict, flatly derelict, in not acting up until now. And those who search for 60 votes might find it easier to locate them in the face of that kind of a problem. So I am interested in what you think about it because you know the temper down there a lot better than those of us who have only been inside the Beltway.

Secretary NAPOLITANO. Well, Senator, I really appreciate it. I think there is a lot of cause for concern in a lot of ways on this bill and what its impacts would be if it is to actually go into effect.

And I think it signals once again a frustration with the failure of the Congress to move.

I will work with any Member of the Congress and have been working with several Members of the Congress on actual language about what a bipartisan bill could and should contain.

Senator SPECTER. What can the Federal Government do, Madam Secretary, to deal with the potential for racial profiling and other unconstitutional aspects of the Arizona law short of superseding it?

Secretary NAPOLITANO. Well, I think the Department of Justice, Senator, is actually looking at the law as to whether it is susceptible to challenge, either facially or later on as applied, under several different legal theories. And I, quite frankly, do not know what the status of their thinking is right now.

Senator SPECTER. Shifting to the issue of our overall relations with Mexico, we passed NAFTA over a lot of concerns and over a lot of objections. And the thought was expressed at the time that to stimulate economic development and prosperity and the raising of the standard of living in Mexico would be very beneficial to the United States, would limit immigration, limit illegal immigration, could have an impact on the drug wars, which are ferocious.

How helpful has NAFTA been, Madam Secretary? You have been very close to it. Aside from being better than it might have been, has it had any real significant effect on improving the situation in Mexico so that we were looking for that collateral benefit in the United States?

Secretary NAPOLITANO. Senator, I believe that NAFTA has had some beneficial impacts. But I also believe that the Mexican economy still has not created the number of jobs that it needs to create overall so that we still must be aware not just of illegal immigration but jobs that are created by the drug cartels themselves, including the production of drugs, not just the trafficking in drugs.

So, again, it is very important for us, I believe, to work closely with Mexico. They are the No. 1 or two trading partner of 22 States of the United States, and so to the extent that their economy and our economies have trade and other relationships ongoing, that needs to be an important part of our dialogue.

Senator SPECTER. There is no doubt that NAFTA has benefited Mexico. Has NAFTA benefited the United States?

Secretary NAPOLITANO. Senator, I believe it has in the sense that it has added to the trade and commerce in Mexico, and that relates to jobs within the United States itself.

Senator SPECTER. Do you think economically it is a net plus for the United States?

Secretary NAPOLITANO. I would say, Senator, that I check numbers—in part, because it is hard to say how the recession and the global recession has affected everything, but I can say that it would be a lot worse without NAFTA.

Senator SPECTER. Well, no doubt it would be a lot worse without it. But the question looms, and there is still a lot of undercurrent of dissatisfaction with NAFTA from the start. And then the question arises as to what extent has it benefited the United States economically, and then the collateral question, has it really helped Mexico on the other items which we had hoped for, the drug war, the border migration, et cetera?

Secretary NAPOLITANO. Senator, some of these questions might better be addressed to some of my colleagues on the economics side, but let me tell you on the security side and on the cooperation and the need to be able to work closely with Mexican Federal law enforcement, that relationship right now is as strong as I have ever seen it.

Senator SPECTER. Thank you very much, Madam Secretary. We appreciate your being here and staying so long and seeing so many Senators come and go. Thank you.

Secretary NAPOLITANO. Thank you.

Senator SPECTER. That concludes the hearing.

[Whereupon, at 12:32 p.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Question#:	1
Topic:	JFCPMO
Hearing:	Oversight of the DHS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: According to your written responses to questions from the Judiciary Committee, DHS is currently developing an intra-Departmental Report and Recommendations on the establishment of a Joint Fusion Center Program Management Office (JFC-PMO). It is my understanding that the office will ensure coordination across all DHS components to support fusion centers. These centers, established by state and local law enforcement, are the primary way that DHS shares intelligence and analysis.

Can you provide me with an update on when you expect this report to be completed and if the report will be shared with Congress?

In addition, can you provide us an update on when that office will be fully operational and who will be leading that effort?

Response: On March 16, 2010, I signed a plan that identified key considerations involved in successfully standing-up and implementing a Joint Fusion Center Program Management Office (JFC-PMO). In June, the Department of Homeland Security's (DHS) Office of Intelligence and Analysis (I&A) submitted a Section 503 Notification to Congress to stand up the JFC-PMO; however, Congress denied the reprogramming request for the JFC-PMO in a letter dated July 29, 2010.

While Congress has denied the creation of the JFC-PMO, ensuring coordination amongst all DHS components remains a high priority for I&A's State and Local Program Office (SLPO). The SLPO will continue to work within its mission to provide coordinated support to state and major urban area fusion centers.

Question#:	2
Topic:	MOU
Hearing:	Oversight of the DHS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: As you may be aware, when DHS enters into information sharing agreements with State, tribal and local law enforcement agencies, it is barred from signing mutual indemnification agreements. This lack of mutual indemnification means that State, tribal of local law enforcement agencies could be held liable in the event of inappropriate or illegal use of the information by a Federal agent. While some larger law enforcement agencies can afford that legal exposure, the vast majority cannot. As a result, the continuing ability of State, tribal and local law enforcement agencies to fully participate in information sharing initiatives is at risk.

Have any State, local or tribal law enforcement in California expressed their inability to sign an Intergovernmental Agreement (IGA) or Memorandum of Understanding (MOU) for information sharing with the Department of Homeland Security?

Response: No State, local or tribal law enforcement organization in California has expressed an inability to sign an IGA or MOU for information sharing with DHS.

Question#:	3
Topic:	bomb
Hearing:	Oversight of the DHS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: It has been reported that there were DHS officers (CBP or ICE) prepared to meet with Umar Farouk Abdulmutallab at the airport in Detroit. It's obvious now that the appropriate time for meeting with, and questioning, Abdulmutallab was before he got onto the plane, not after it landed.

What has been done to change the procedures so that we are making sure people should be allowed into the country before they get here?

Response: The U.S. Department of Homeland Security (DHS) has undertaken a number of initiatives to strengthen security since the attempted bombing on Northwest Flight 253 on December 25, 2009.

"No Board" Process

Prior to the attempted bombing on December 25, 2009, CBP had procedures in place to refer certain initial screening results to Immigration Advisory Program (IAP) officers stationed at select air transit hubs in seven countries, including information on individuals who were matches to the Terrorist Screening Database (TSDB, including the No Fly List), whose U.S. visa has been revoked; whose Electronic System for Travel Authorization (ESTA) has been denied; who is using a foreign issued, lost, or stolen passport; or who is included on a Public Health Record provided by the Centers for Disease Control and Prevention. IAP officers would then make "no board" recommendations to carriers and host governments regarding passengers bound for the United States who are considered high risk, or were likely to be found inadmissible to the U.S.

Following the attempted attack on December 25, CBP expanded this program in two key ways. First, CBP implemented Pre-Departure Targeting for non-Immigration Advisory Program (IAP) overseas locations. CBP now uses the IAP methodology—in coordination with its Regional Carrier Liaison Groups, DHS personnel stationed overseas as well as the airline carriers—to ensure that the individuals identified as high risk or likely to be found inadmissible do not board an aircraft destined for the U.S. Second, CBP expanded the types of records matched to include those terrorism-related lookout records from State Department.

DHS continues to work with the Intelligence Community to develop parameters and implement specific operations to address the ever-changing threat, including new

63274.003

Question#:	3
Topic:	bomb
Hearing:	Oversight of the DHS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

procedures for identifying for possible visa revocation visa holders who are subsequently added to the TSDB.

Enhanced Screening Measures

In April, the Transportation Security Administration (TSA) began implementing new enhanced security measures for all air carriers with international flights to the United States to strengthen the safety and security of all passengers. These threat and risk-based security protocols—tailored to reflect the most current information available to the U.S. government—will apply to all passengers traveling to the United States.

Secure Flight

Additionally, fulfilling a key recommendation of the *9/11 Commission Report*, TSA implemented Secure Flight for 100 percent of passengers flying domestically and internationally on U.S. airlines in June of 2010. TSA expects all international carriers with direct flights to the United States to be using Secure Flight by the end of 2010. Under Secure Flight, TSA prescreens passengers directly against government watchlists, a function previously performed by individual air carriers. In addition to facilitating secure travel for all passengers, Secure Flight helps prevent the misidentification of passengers who have names similar to individuals on government watchlists.

In designing the Secure Flight system, TSA conducted several tests using various passenger data elements to determine which would be the most effective in accurately matching passengers and would support Secure Flight's objective of reducing the number of false-positive matches. The tests concluded that a full name, date of birth, and gender were key elements in positively identifying passengers whose names were on the government watch lists. In addition to these key data elements, Secure Flight has also integrated a redress process into its system to clear passengers who have been determined not to pose a threat to aviation, thereby further reducing the likelihood of passengers being mistakenly matched to watch list records.

The false positive rate is a Secure Flight metric used to measure the misidentification of passengers who have names similar to individuals on government watch lists. It is defined in the Concept of Operations for the Secure Flight program as the percent of passengers whose name is still deemed a match after being processed through the Secure Flight name matching process including through ID verification. The ID verification occurs when the passengers are unable to print their boarding passes prior to arriving at the airport check in at the airport. TSA set a maximum allowable false positive rate and a

63274.004

Question#:	3
Topic:	bomb
Hearing:	Oversight of the DHS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

target rate in its program metrics. Current measurement of this metric for FY 2010 indicates that the program is consistent with the established target and program goals.

Question: Are you satisfied that TSA is taking the right steps to deploying adequate screening technologies and detection systems, especially to detect a bomb like the one Adulmutallab used?

Response: TSA continually assesses intelligence and develops countermeasures to enhance its multiple layers of security at airports and onboard aircraft in order to anticipate and mitigate the constantly evolving threats to aviation security. TSA has deployed explosive detection technology, including Advanced Technology X-Ray Machines (which enhance the detection capabilities of carry-on bag screening), next-generation Explosives Trace Detection Machines (which improve explosives detection capabilities at airports) and Advanced Imaging Technology Machines (which allow for increased detection of both metallic and non-metallic threats) to airports across the country to detect potential threats.

DHS has also strengthened partnerships across the federal government, working with the Department of Justice (DOJ) on a number of initiatives to enhance risk-based aviation security countermeasures and collaborating with the Department of Energy (DOE) and its National Laboratories to leverage their expertise in building risk-based technology solutions to key aviation security challenges.

Further, each year, DHS/TSA conducts international aviation security training for countries around the world focusing on risk-based security strategies, including cargo security, screening technologies, and airport security management, among other topics. TSA has also successfully negotiated agreements with various foreign governments permitting Federal Air Marshal deployments on international U.S. carrier flights, based on risk.

Question: As of today, who is responsible for making sure that people on a terrorist no fly list don't get onto an airplane, and is that check done by DHS employees or by airline employees?

Response: Under Secure Flight, TSA prescreens passengers directly against government watchlists, a function previously performed by individual air carriers. TSA has implemented Secure Flight for 100 percent of passengers flying domestically and internationally on U.S. airlines in June of 2010. TSA expects all international carriers with direct flights to the United States to be using Secure Flight by the end of 2010. For

63274.005

Question#:	3
Topic:	bomb
Hearing:	Oversight of the DHS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

international flights on foreign carriers that are not yet covered by Secure Flight, CBP screens Advance Passenger Information System (APIS) data against the Terrorist Screening Database, including the No Fly and Selectee subsets.

Question#:	4
Topic:	standards
Hearing:	Oversight of the DHS
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Part of the problem we found on Christmas Day was that the watchlisting and no-fly standards were being applied in a way that made it too difficult to put someone that posed a legitimate threat on the watchlist.

Are you confident that the standards in place for who gets on the no fly list are set at the right place and are being implemented appropriately?

Response: In January, the President ordered a review of watchlist policies to determine appropriate corrective actions. The Deputies Committee formalized interagency guidance to rectify security vulnerabilities in the watchlisting process in May. The Deputies Committee will continue to review watchlisting guidelines to ensure procedures are adapting to meet the evolving threat.

63274.006

Question#:	5
Topic:	NCIC
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: The 9/11 Commission previously identified this lack of visa overstay enforcement as a point of compromise for terrorists to exploit in order to gain access to the U.S. and disappear. I can't figure out why overstay information is not being placed into NCIC.
ICE deploys Visa Security Units overseas at embassies to screen visa applicants. Foreign visitors obtain a visa from the Department of State but once they enter the U.S. they are processed by CBP. ICE touts itself as the largest investigative agency in DHS and the largest contributor to the Joint Terrorism Task Forces. However, simple information regarding the expiration of a visa is not being tracked.

I believe that ICE has the capacity to enter overstay information into NCIC, Why is not doing so?

Response: DHS does not currently have the authority to enter visa overstay information into the NCIC system because it requires that any information entered into an NCIC database have an underlying criminal offense and a visa overstay alone is not a criminal offense. ICE does enter Removed Aggravated Felons and Absconders into the NCIC system.

In terms of nonimmigrant overstay and status violation enforcement, in CY 2009, US-VISIT identified and referred to ICE for investigation over 17,400 individuals who appear to have overstayed their visas, a 46 percent increase compared to the same period in CY 2008.

ICE's Compliance Enforcement Unit (CEU) within its National Security Investigations Division—the first national program dedicated to enforcing nonimmigrant visa violations—is focused on preventing criminals and terrorists from exploiting the nation's immigration system by proactively developing cases for investigation from the various immigration registration databases.

Since its creation in June 2003, the CEU has reviewed more than 1,300,000 leads from these databases. Of these leads, over 40,000 revealed potential violations of U.S. visa or immigration law and were immediately referred to ICE field offices for investigation. To date, these investigations have resulted in over 7,000 arrests.

63274.007

Question#:	6
Topic:	secure flight
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: The Transportation Security Administration (TSA) is set to launch its Secure Flight program. This program will assist TSA in comparing domestic passenger information against the Terrorist Screening Database.

I understand that TSA is set to begin this program in full effect this year. Eventually, the plan is to have TSA use Secure Flight to screen international passengers by the end of 2010. Currently, the Customs and Border Patrol has responsibility for screening international passengers through its own program, known as the Advance Passenger Information System (APIS).

As originally conceived the Secure Flight program included an element to select passengers for greater screening at passenger checkpoints based on certain characteristics gleaned from passenger name records and advanced passenger information. However, this capability of Secure Flight was dropped. Dropping this additional capability to analyze data and recommend screening concerns me. My basis for this concern is that on 9/11, nine of the nineteen hijackers were selected for additional baggage screening. At that time, the passenger screening program in use did not select passengers for additional screening at checkpoints. After 9/11, Secure Flight's predecessor known as CAPPS (Computer Assisted Passenger Prescreening System) was using Passenger Name Record (PNR) data for not only baggage screening but also additional passenger checkpoint screening as well.

In light of recent events and recent threats is TSA reconsidering the elimination of this proactive screening capability?

Response: In April, TSA began implementing new enhanced security measures for all carriers with international flights to the U.S. to strengthen the safety and security of all passengers which superseded the emergency measures put in place immediately following the attempted attack on December 25, 2009. These new measures utilize real-time, threat-based intelligence along with multiple, random layers of security, both seen and unseen, to more effectively mitigate evolving terrorist threats. These new, enhanced measures are part of a dynamic, threat-based aviation security system covering all passengers traveling by air to the United States while focusing security measures in a more effective and efficient manner to ensure the safety and security of the traveling public. These new measures involve enhanced security and random screening measures throughout the passenger check-in and boarding process, including the use of explosives trace detection, advanced imaging technology, canine teams, or pat downs, among other security measures.

63274.008

Question#:	7
Topic:	finance
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: What assurances can you give me that the Department is not diverting investigative funding and attention away from securing the nation's financial system?

Response: The United States Secret Service (Secret Service) is on the forefront of the effort to protect and secure the nation's critical financial infrastructure and combat cyber crime.

The Secret Service has expanded its Electronic Crimes Task Force (ECTF) program across the country and internationally, with its first international ECTF in Rome, Italy. These task forces are designed to prevent, detect, and investigate various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems.

Furthermore, Immigration and Customs Enforcement (ICE) has a lead role in combating bulk cash smuggling, a common strategy used by criminals seeking to move illicit proceeds across transnational borders. ICE's Operation Firewall, a bulk-cash smuggling initiative that intercepts currency smuggling en route to the border, has led to more than hundreds of arrests and the seizure of more than $316 million, including $116 million seized overseas. ICE has provided outreach and training on the interdiction and investigation of bulk currency violations to more than 2,500 law enforcement, financial, and government officials in more than 85 countries.

ICE also developed the Cornerstone Initiative to detect and close gaps within U.S. financial, trade, and transportation sectors that can be exploited by criminal networks, and ICE's Trade Transparency Units target money laundering and illegal trade transactions. These Trade Transparency Units have launched over 600 trade-based money laundering investigations, seizing more than $180 million since 2004.

Question: Can you provide a few examples of how criminal investigations led by DHS agencies resulted in successful prosecution of individuals attempting to disrupt the nation's financial system?

Response:

Heartland Payment Systems Intrusion

63274.009

Question#:	7
Topic:	finance
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

In January 2009, Heartland Payment Systems detected an intrusion into their processing system and the subsequent theft of credit card data. The intruders breached Heartland Payment Systems corporate environment via a Structured Query Language (SQL) injection and navigated to the credit card processing environment where a custom packet "sniffer", modified to capture payment transaction data, was recovered.

The Secret Service investigation has revealed that over 130 million credit card accounts were at risk of being compromised and that data was ex-filtrated to a command and control server run by an international group related to other ongoing Secret Service investigations. During the course of the investigation, the Secret Service revealed that this same international group committed other intrusions into multiple corporate networks specifically for stealing credit card and debit card data. Various investigative methods to include search warrants, Mutual Legal Authority Treaties, pen traps, and subpoenas have been used to identify three main suspects of this international group.

In March 2010, one of the defendants was sentenced to 20 years in prison for his role in this case. Currently, this case represents the largest and most complex data breach investigation ever prosecuted in the United States.

Operation Living Large

In 2000, ICE agents opened a money laundering investigation after learning that possible drug proceeds were being laundered through a local bank. Working in partnership with law enforcement agencies in New York and Brazil, ICE targeted companies that were using U.S. bank accounts as conduits into the U.S. financial system for funds laundered illegally through Brazilian doleiros—individuals who practice a form of black market currency exchange. Bank Secrecy Act reports filed by U.S. financial institutions assisted this investigation by identifying additional bank accounts that were used by the doleiros.

The doleiros established U.S. bank accounts where they would receive and send wire transfers, one of which was at Merchants Bank of New York, a division of Valley National Bank of New Jersey. Incoming and outgoing wire transfers were credited to the doleiro's accounts from different entities, including businesses and individuals in the United States, Brazil and elsewhere, for payments in Brazil and the United States.

ICE learned that a bank employee, a U.S. citizen originally from Portugal, was facilitating these wire transfers. In return for kickbacks from the doleiro organization, the employee used dozens of bank accounts under her control to transmit money on behalf of currency exchange houses and money transmitting businesses in Brazil. In a seven month period, more than $500 million passed through 26 of these bank accounts.

63274.010

Question#:	7
Topic:	finance
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

ICE agents arrested the bank employee, and she was charged in an eight-count criminal complaint for conducting an illegal money transmitting business.

ICE ultimately seized 39 accounts worth over $21 million connected to the doleiro organization. The employee has since been convicted in the U.S. District Court for the State of New Jersey for violations of operating an unlicensed money service business and tax evasion, and is currently awaiting sentencing. During the course of the investigation, Brazilian authorities developed additional information concerning these doleiros, which led to more than 100 individuals being charged in Brazil for money laundering and other related crimes. Indictments were brought in this case against 16 corporate entities and 34 individuals for operating a money transmitting business without a license.

Question: Is DHS committed to retaining the Secret Service's investigative mission and authority to investigate counterfeit obligations of the United States government?

Response: The Secret Service's investigative role is essential to DHS's mission of protecting the nation's financial system and the integrity of our national currency. Through its network of 142 domestic and 22 international investigative field offices across 18 countries and its Electronic Crimes Special Agent Program, Electronic Crimes Task Forces, Financial Crimes Task Forces and the Criminal Intelligence Section, the Secret Service is the lead agency in DHS for combating financial crimes, identity theft, and cyber crimes.

Question: Is the Department assessing the impact of the new design's introduction to the world economy on the Secret Service's investigative budget for future funding requests?

Response: Given the Secret Service's preeminent subject matter expertise in combating counterfeiting, DHS will continue to ensure proper funding of the Secret Service's investigative mission.

Due to new security features, the introduction of the newly designed $100 Federal Reserve Note (FRN) will most likely have the greatest impact on reducing digitally-produced counterfeit, which today constitutes the majority of domestically-produced counterfeit currency (approximately 65%). Historically, the Secret Service has seen an initial reduction in counterfeiting related to the introduction of re-designed FRNs. However, it is reasonable to assume based on past precedent that counterfeiters will attempt to duplicate the new security features over a period of time. Further, because previous designs of U.S. FRNs will remain in circulation, the Secret Service fully expects counterfeiters to continue to also manufacture the "older" designs.

63274.011

Question#:	7
Topic:	finance
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: What is the amount of counterfeit currency currently in circulation worldwide?

Response: Statistically, for FY 2010 (Oct 1, 2009 – May 1, 2010), the Secret Service has observed the following activity:

Domestic Passed Counterfeit:	$42,938,810
Domestic Seized Counterfeit:	$3,793,527
Foreign Passed Counterfeit:	$2,132,006
Foreign Seized Counterfeit:	$20,534,017
Total Counterfeit Passed:	$45,070,816
Total Counterfeit Seized:	$24,327,544
Total Counterfeit Passed/Seized:	$69,398,360

***These numbers do not reflect notes that are undetected and remain in circulation at this time.*

63274.012

Question#:	8
Topic:	finance - 2
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Recently, DHS just issued it Quadrennial Homeland Security Review. The department identified and recognized 5 homeland security missions. On page 14 of the QHSR, referenced financial system security as a "Traditional Responsibility" of Homeland Security. As I reviewed the QHSR, I fail to see where financial system security was folded into the core Homeland Security missions.

What DHS investigative countermeasures are in place to protect our nation's financial system?

Response: The Secret Service has a long-standing record of excellence with regard to protecting and securing the nation's critical financial infrastructure through its investigation of cyber and financial crimes. The Secret Service's investigative mission helps to maintain the integrity of the nation's currency and financial systems through its investigations of cyber and financial crimes against our nation's financial system – fitting squarely under the QHSR missions of Preventing Terrorism and Enhancing Security and Safeguarding and Securing Cyberspace.

Question#:	9
Topic:	cyber
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: The QHSR stated that "robust law enforcement and counter intelligence capability" is critical to securing cyberspace. Safeguarding and securing Cyberspace was identified as one of the department's recognized missions in the QHSR. Securing cyberspace is a legislative priority of mine. I am currently involved in legislation focused on identifying international havens of cybercrime.
Gaining international cooperation from nations that appear to be a source of cyber attacks, like China and Russia, is a key to preventing criminal and malicious use of cyber technology.

What if any is the presence of DHS agencies in countries like China and Russia?

How would the placement of representatives from DHS agencies, like the Secret Service and ICE, assist in the investigative and criminal intelligence mission of DHS?

Is DHS and the Department of State working to get country clearance to place investigators in nations identified as a cyber concern?

Are there other international locations where investigators are deployed and have been successful in working with the host country to prosecute trans-national cybercrime rings?

Response: The Department of Homeland Security (DHS) plays a vital role in the Nation's effort to combat cyber crime. The United States Secret Service (USSS) and the U.S. Immigration and Customs Enforcement (ICE) are on the forefront of the effort to combat cyber crime, and DHS's National Protection and Programs Directorate's (NPPD) National Cyber Security Division (NCSD) leads the Federal government's efforts to protect public and private sector networks from attacks.

NCSD

NCSD plays a leadership role in the Meridian process, which aims to provide governments worldwide with a means to collaborate on critical information infrastructure protection (CIIP). Participation in the Meridian process is open to all countries and aimed at senior government policy-makers. Both Russia and China were invited to the 2009 Meridian Conference, held in Washington D.C., and Russia sent a delegate from its embassy to participate.

63274.014

Question#:	9
Topic:	cyber
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

NCSD does engage with China within a multilateral context, specifically the Asia Pacific Economic Cooperation (APEC) Telecommunication and Information Working Group (TEL) Security and Prosperity Steering Group (SPSG), and is actively exploring further constructive means for engagement.

USSS

To combat the emerging threat posed by often-well-funded and well-organized cyber criminals, the Secret Service has developed and adopted an innovative and multi-faceted approach that has led to the successful investigation and prosecution of some of the largest known international cyber criminal organizations.

The Secret Service currently operates 22 overseas offices in 18 countries throughout the world, including Moscow, Russia and Hong Kong, China. Following Congressional approval last year, the Secret Service plans to officially open the Tallinn, Estonia office in August 2010 to counter the increased use of phishing emails, account takeovers, malicious software, hacking attacks, and network intrusions resulting in significant data breaches originating in the Baltic region.

To combat this problem, the Secret Service has increased its efforts and focus on High-tech/E-crime criminal activities, concentrating on establishing cooperative investigative relationships with a number of high tech crime units operating within our host countries overseas. Strong working relationships have also been established with private-sector high technology companies and investigative agencies including the London-based Serious Organized Crime Agency (SOCA), Europol (The Hague), Interpol (Lyon), and the Bucharest-based Southeast European Cooperative Initiative (SECI), in furtherance of our investigative mission and continued support to our host countries and Secret Service domestic and foreign offices.

In May 2008 the Secret Service began full-time, rotational assignments of highly trained Special Agents to form the nucleus of the Baltic Electronic Crimes Working Group (BWG) in Riga, Latvia. Paris Field Office agents with regional responsibility for the Baltics, now working in conjunction with these agents, have conducted numerous cyber investigations that relate to U.S. financial institutions and U.S. victims.

In 2009, the Secret Service formally partnered with the Italian Government to create the first Europe-based Electronic Crimes Task Force (ECTF) centered in Rome, Italy. This ECTF is modeled after the 28 other ECTF's the Secret Service manages in the United States consisting of the private sector, public sector, and academia.

63274.015

Question#:	9
Topic:	cyber
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

The Secret Service also plans to begin a joint operation in the Netherlands similar to that in the Baltics. The Netherlands High-Tech Working Group (NHWG) will incorporate rotational assignments of highly trained Special Agents from the USSS CIS. The NHWG will enhance the Secret Service's ability to aggressively respond to the present threat posed to the integrity of the American financial infrastructure by the organized electronic criminal groups working throughout Eastern and Western Europe.

Additionally, the Secret Service has been working for nearly ten years to establish a permanent office in Beijing, China to enhance cooperation between Chinese law enforcement officials and the Secret Service. The National Security Decision Directive (NSDD) 38 for the Beijing office was approved by the State Department in 2001; however, the Secret Service has been waiting for final approval from Chinese officials for the permanent staffing of one special agent in that location.

ICE

ICE has 63 offices in 44 countries around the world, with more than 300 personnel and local employees committed to the DHS mission. The ICE Cyber Crimes Center (C3) investigates domestic and international criminal activities occurring on or facilitated by the Internet. C3 brings together highly technical assets dedicated to conducting cross-border criminal investigations to analyze emerging trends and threats. To accomplish this mission, C3 comprises four sections – Child Exploitation, Computer Forensics, Cyber Training, and Cyber Crimes – that investigate how the Internet is used to further criminal activities in the areas of identity document fraud, money laundering, narcotics trafficking, child exploitation, illegal exports, and human trafficking and smuggling.

As an example of its international investigative activity, ICE signed a Memorandum of Understanding (MOU) in March 2010 with the Investigative Committee at the Public Prosecutor's Office of the Russian Federation designed to speed the investigation and information-sharing process between the agencies. ICE is the first U.S. agency and second in the world to sign a MOU with the Russian organization. The agreement will change the way information is exchanged and requested, and provide real-time collaboration on potential and ongoing international criminal investigations including cyber crimes. In the past, ICE and the Investigative Committee at the Public Prosecutor's Office of the Russian Federation have worked together on mutual investigations of crimes involving, among other things, financial and cyber crimes that affect both the U.S. and Russian communities.

63274.016

Question#:	10
Topic:	screening
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: I have been closely watching the security of incoming and outbound cargo in the United States. There is no doubt that we have efforts underway to secure cargo coming into the United States. However, by some accounts, cargo still remains the soft underbelly of the United States. Clearly, it remains a weakness and there have been many vulnerabilities reported. As you know the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53, section 1701), requires all imported containers be scanned by nonintrusive imaging equipment and radiation detection equipment at a foreign loading port by July 1, 2012. This deadline is fast approaching. What is the status of your progress of compliance with this requirement?

Response: The Secure Freight Initiative (SFI) is an effort to enhance the U.S. government's ability to scan containers for nuclear and radiological materials at seaports worldwide and better assess the risk of inbound containers. This initiative is the culmination of our work with other Federal agencies, foreign governments, the trade community, and vendors of cutting-edge technology. SFI provides carriers of maritime containerized cargo greater confidence in the security of the shipment they are transporting, and increases the likelihood of an uninterrupted and secure flow of commerce.

In advancing the goal of 100% scanning, the Secure Freight Initiative (SFI) deploys networks of radiation detection and imaging equipments at five overseas pilot ports. This advanced pilot has encountered a number of serious challenges to implementing the 100% scanning mandate.

Certain challenges are logistical. Many ports simply do not have one area through which all the cargo passes; there are multiple points of entry, and cargo is "transshipped," meaning it is moved immediately from vessel to vessel within the port. These ports are not configured to put in place detection equipment or to provide space for secondary inspections. At these ports, scanning 100% of cargo with current systems is currently unworkable without seriously hindering the flow of shipments or redesigning the ports themselves, which would require huge capital investment.

Other challenges are the limitations that are inherent in available technology. DHS currently uses both passive radiation detection and active x-ray scanning to look for radioactive material in cargo. An important obstacle is the absence of technology which can effectively and automatically detect suspicious anomalies within cargo containers that should trigger additional inspection. Currently, DHS personnel visually inspect

63274.017

Question#:	10
Topic:	screening
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

screens for possible anomalies, but the scale and the variety of container cargo make this process challenging and time-consuming. In addition, current x-ray systems have limited penetration capability; this can limit their ability to find a device in very dense cargo.

While DHS is pursuing technological solutions to these problems, expanding screening with available technology would slow the flow of commerce and drive up costs to consumers without bringing significant security benefits.

Finally, and on that note, the costs of 100% scanning pose a great challenge, particularly in a struggling economy. Deploying SFI-type scanning equipment would cost about $8 million per lane for the more than 2,100 shipping lanes at more than 700 ports around the world that ship to the United States. On top of these initial costs, operating costs would be very high. These include only DHS expenses, not the huge costs that would have to be borne by foreign governments or industry. It is also important to keep in mind that about 86% of the cargo shipped to the United States is sent from only 58 of those more than 700 ports. Installing equipment and placing personnel at all of these ports – even the tiny ones – would strain government resources without a guarantee of results.

Thus, in order to implement the 100% scanning requirement by the 2012 deadline, DHS would need significant resources for greater manpower and technology, technologies that do not currently exist, and the redesign of many ports. These are all prohibitive challenges that will require the Department to seek the time extensions authorized by law.

63274.018

Question#:	11
Topic:	CSPA
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: The Child Status Protection Act (CSPA) was signed into law in August 2002. The CSPA was enacted to preserve child status for certain beneficiaries who would otherwise 'age out" or turn 21 years old before they could be issued a visa, only due to administrative delays in processing. It has now been almost 9 years, and I am not aware of the Department of Homeland Security publishing any regulations for the CSPA, albeit courts continue to interpret it without any published regulations to guide them. When will you be publishing regulations for the CSPA?

Response: USCIS recognizes the need for regulations for the application of CSPA, and in order to provide clear and understandable explanations of the many legal issues involved in CSPA, USCIS is currently drafting a CSPA rule. USCIS believes that the regulation will clarify these issues, improve the efficiency of adjudications, and provide greater transparency for stakeholders.

Question#:	12
Topic:	staffing
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: You noted in your testimony that the Border Patrol is better staffed than at any time in its 85-year history. We've seen a steady increase of violence this last year at the border. It seems that as violence escalates we should increase our Border Patrol presence. However, it is my understanding that the Border Patrol staffing levels will remain at the same level as provided for in the current fiscal year.

Considering the serious challenges we face at the border, shouldn't we be increasing our Border Patrol staffing to keep up with the level of violence we are currently experiencing?

Response: DHS shares your concern about violence along the Southwest border, and border security is a top priority of the Administration. DHS has dedicated historic levels of personnel, technology, and resources to the Southwest border. Today, the Border Patrol is better staffed than at any time in its 86-year history, having nearly doubled the number of agents from approximately 10,000 in 2004 to more than 20,000 today. Since March 2009, DHS has doubled the number of personnel assigned to Border Enforcement Security Task Forces; tripled the number of ICE intelligence analysts working along the U.S.-Mexico border; and begun screening 100 percent of southbound rail shipments for illegal weapons, drugs, and cash – for the first time ever. DHS has also deployed additional canine teams trained to detect drugs and weapons and non-intrusive inspection technology that helps to identify anomalies in vehicles at the Southwest Border.

To continue to bolster these efforts, President Obama requested $600 million in supplemental funds for enhanced border protection and law enforcement activities, and announced the deployment of up to 1,200 National Guard troops – beginning in August 2010 – to the Southwest border to contribute additional capabilities and capacity to assist law enforcement agencies.

63274.020

Question#:	13
Topic:	WBI
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Madam Secretary, many have advocated limiting the use of whole body imaging machines to only a secondary screening role for airline passengers.

What are the advantages and disadvantages of using these machines only as a secondary screening method?

Response: The Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) strongly believe that the most effective use of Advanced Imaging Technology (AIT) machines for aviation security is in the primary screening position, and the advantages to using AIT as a primary screening method far outweigh its use in the secondary. Use of the technology for primary screening takes full advantage of this technology to detect anomalies on passengers that are both metallic and non-metallic in nature. The disadvantage of having the AIT only in the secondary position is limiting its use to passengers who have triggered a metal detector alarm, rather than applying its technological benefits across a wider range of people to better mitigate the non-metallic threat.

Question: With the attempted terrorist attacks by Richard Reid, the so-called shoe bomber, and Umar Farouk Abdul Muttallab, the so-called Christmas bomber, is the use of metal detectors obsolete?

Response: Over the years, Walk Through Metal Detectors (WTMD) have proven to be an effective technology against metallic threats. TSA will reassess investments in WTMDs in light of the enhanced detection performance that AIT systems provide as a primary screening device.

Question: What steps are being taken to ensure the privacy of airplane passengers?

Response: TSA has implemented strict measures to protect passenger privacy, which is ensured through the anonymity of the image. The image is not stored, transmitted or printed, and is deleted immediately after any anomaly is resolved. No cameras, cell phones, or any device capable of capturing an image is permitted in the resolution room.

To further ensure privacy, the officer who interacts with the passenger never sees the passenger's image, as another security officer in a walled-off location views the image generated by the technology. Passengers who opt out of imaging technology screening receive alternative screening, which includes a physical pat-down.

63274.021

Question#:	13
Topic:	WBI
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: What is the Department's plan for the additional deployment of whole body imagine machines?

Response: TSA plans to deploy another 450 Advanced Imaging Technology (AIT) units by December 2010, bringing the total number of deployed AIT units to 500. TSA has also requested funding in Fiscal Year 2011 for 500 more units to be deployed by December 2011.

Question: Is the Department encouraging our foreign allies to use these machines?

Response: Yes, the Department has encouraged our allies to use advanced imaging technology (AIT) as a part of its initiative to bolster international aviation security. AIT is used in hundreds of locations around the world in aviation and mass transit environments, including Canada, France, the Netherlands, Nigeria and the United Kingdom.

Question#:	14
Topic:	NIPRCC
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Madam Secretary, I am pleased with the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) division efforts to fully implement the National Intellectual Property Rights Coordination Center. I believe the Center is absolutely critical to coordinate our nation's efforts to begin to stem the onslaught of counterfeit merchandise entering the United States. However, I must admit to being troubled to learn the Federal Bureau of Investigation (FBI) has yet to permanently place agents at the Center's location. When can we expect these FBI agents to have their offices at the Center?

Response: As of April 15, 2010, the FBI had eight permanent agents working at the National Intellectual Property Rights Coordination Center.

63274.023

Question#:	15
Topic:	IP laws
Hearing:	Oversight of the DHS
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Madam Secretary, I have always been impressed with the vigilance and professionalism of Department of Homeland Security's Customs and Border Protection (CBP) division. In the Global War on Terrorism, CBP's mission is critical to protect the United States from the importation of materials which could be used in a terrorist attack. However, maintaining our economic power is also a critical national concern. Therefore, CBP's role in the prevention of the importation of counterfeit goods is also vital. Yet, many in Congress are concerned CBP has directed its resources almost entirely toward the anti-terrorist mission to the detriment of adequately enforcing our economic laws.

What are your plans and recommendations to Congress to ensure more efficient enforcement our Intellectual Property Rights laws?

Response: Protection of America's industries and economy from the damages caused by counterfeiting and piracy is a priority for the Department of Homeland Security (DHS). Last year, DHS made almost 15,000 seizures of counterfeit and pirated goods. More than 90% of those seizures, which covered a broad spectrum of industries from critical technology components and pharmaceuticals to luxury goods and DVDs, were made by U.S. Customs and Border Protection (CBP) at our Nation's borders. CBP referred many of these cases to U.S. Immigration and Customs Enforcement for criminal investigation. CBP is working on a Five-Year Strategy for Intellectual Property Rights (IPR) Enforcement, which will address counterfeiting not only as cargo arrives at our borders, but also overseas before cargo reaches our ports and after it arrives in our country. This modernized strategy – combined with better technology, process redesigns, and additional personnel – will further strengthen CBP's efforts to combat counterfeiting. The FY 2011 budget requests $25 million for CBP for IPR enforcement.

63274.024

Question#:	16
Topic:	staffing - 2
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: The FY 2011 Obama DHS budget cut the number of Border Patrol by 187 positions. I understand, per our recent phone conversation and from the notice you gave the Appropriations Committee on March 15 that you reversed the cut and that, while you will not increase the number of agents, you will not reduce them.

The FY 2010 DHS conference report (which increases the number of agents by 100 for FY 2010) requires that the northern border increase the number of agents from 1,525 to 2,212 along the northern border in FY2010. The DHS conference report, however, does not require that any particular number of agents be maintained along the southern border. DHS has said it will "maintain its force of 17,000" along the southern border. But, there are currently some 17,400 agents along the southern border now.

If you supported the language in the DHS conference report (I am told you did) increasing the number of agents along the northern border only and there will only be an increase of 100 agents total for the entire year (as a result of the DHS conference report), how will you increase agents in the north and maintain the 17,400 agents on the southern border with no increase in your budget for agents in 2011?

In your testimony, you say that you have increased the number of agents in the Douglas area by 100. I appreciate and applaud that. Where did the agents come from? Have you taken, or do you plan to take, agents from the Yuma Sector?

In a response to me at the hearing, you said you will take Border Patrol agents "from desk jobs" and put them on the line. Please describe from where these agents will come, the number of agents, and the type of work they will be pulled from to satisfy the northern border requirement, and your commitment to me that agents would not be taken from the Southwest.

Response: To achieve the Departmental goal of 17,415 agents on the Southern Border and Congressionally mandated goal of 2,212 agents on the Northern Border, CBP has adjusted the FY 2010 staffing goal for Border Patrol Agents (BPAs) from 20,163 to 20,370. CBP is on target to meet this adjusted staffing goal.

As of April 24, 2010, there were 16,986 BPAs assigned to the Southern Border. These forces were augmented by a Special Operations Group of 44 Agents and 363 Northern Border Interns in field training on the Southern Border. In addition, there were 2,164 BPAs on the Northern Border.

63274.025

Question#:	16
Topic:	staffing - 2
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

The additional agents in the Douglas area were reassigned to the area based on assessments of operational need. No assets were taken from the Yuma sector to accomplish the increase.

As of April 24, 2010, there are 16,986 agents assigned to the southern border and CBP plans to have 17,415 agents on the southwest border by the end of FY 2010. CBP is in the process of realigning and redeploying agents who have been serving tours of duty at non-border locations (e.g., Border Patrol Headquarters and the Border Patrol Training Academy) in order to meet this goal.

Question#:	17
Topic:	fence
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: The DeMint Fence language requiring that 700 miles of "real" fence (fence that would prevent pedestrians, not just motorists, from crossing over) be completed by December 31, 2010 was stripped out of the FY 2010 DHS conference. I asked you back in December of 2009 if "zero dollars [could] actually be dedicated to fencing if you decide to have alternate barriers constructed instead?" Your answer to me did not provide enough detail to determine whether that would be the case. I read your testimony, but it doesn't answer my questions about the fence.

Is it true that your 2011 budget includes enough funding for 1 mile of physical fence? Is it true that you will construct 0 miles of additional fence in Arizona even though we know that the 11 miles of double fence in the Yuma Sector has provided a very good deterrent effect (actually stops people from coming across the border) for that sector and we are getting word from your officers and other community leaders that some additional fencing (double fencing) would help?

Are you aware that the Nogales landing mat fencing is hindering enforcement in Nogales (it is hard to see through it) and that our office hears from folks on the ground consistently that we need to update that fence?

Do you have plans to do so and if not why not?

Response: DHS has completed 646.4 miles of fencing out of nearly 652 miles mandated by Congress, including 298.5 miles of vehicle barriers and 347.9 miles of pedestrian fence. DHS anticipates completing the remaining 6 miles shortly. Based upon proposed budget allocations for Fiscal Year 2011, CBP anticipates receiving $25 million to facilitate the construction of additional tactical infrastructure.

Regarding the construction of additional fence in Arizona, the U.S. Border Patrol continuously assesses the requirements for additional fence, and replacement of legacy landing mat fencing. Prioritization of tactical infrastructure requirements are based upon identified threats, vulnerabilities and risks, and then prioritized accordingly.

63274.027

Question#:	18
Topic:	Operation Streamline
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Your statement does not mention Operation Streamline once. You and I talked recently about the program and you told me that you were going to get in touch with Attorney General Holder about it to determine where the hold-up is on the Streamline report required of your agency and Justice.

Did you talk to Attorney General Holder?

When will I receive the report?

My staff has worked to gather the statistics on the Yuma and Tucson sectors, and has determined that less 10 percent of Tucson Sector apprehensions result in either petty offense or misdemeanor charges. Approximately 250,000 aliens were apprehended in the Tucson Sector last year and approximately 25,000 (a very large number for the Arizona District by the way) cases (petty offenses, misdemeanors, or felonies) were processed. The Yuma Sector's prosecution numbers are much, much more robust, and, coupled with – increases in the agents, additional fencing, the Guard back in 2007 and Operation Streamline – apprehensions went from a high of 118,530 in 2006 to less than 7,000 in 2009.

Why can't we make this happen border-wide?

Response: The report was sent to Congress on August 16, 2010.

63274.028

Question#:	19
Topic:	detention space
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: You did not ask for any additional detention space in your 2011 budget and though $1.7 billion is included in the 2010 DHS conference to identify and remove criminal aliens, the conference report does not increase, only maintains, the current detention bed space level of 33,400 as well. Instead of increasing detention bed space, the conference report includes $70 million for alternatives to detention.

I asked you the same question last year – if you are committed to working toward comprehensive reform some time in the next year or two and you are committed to stepped-up enforcement as well, how does maintaining detention space, instead of increasing it, make sense?

Response: ICE is removing more convicted criminal aliens than ever before. As ICE identifies, arrests, and removes more criminals, ICE will continue to need detention space. Simultaneously, we are eager to use alternatives to detention (ATD) to ensure compliance with removal orders for those aliens who do not present a danger to the community or an unmanageable risk of flight. In addition, we are working to reduce the average length of stay for individuals which reduces the number of beds we will need. In combination, these efforts will allow DHS to remove increased numbers of criminal aliens without a concomitant need to expand detention bed space.

Question: How is the alternative to detention program going? I have heard from local Arizona law enforcement officials who are concerned about the potential for security problems associated with this program.

Response: As part of ICE's broader immigration detention reform efforts and commitment to effective immigration enforcement, ICE is bolstering the ATD program to increase removal rates among non-detained aliens subject to final orders of removal. A working group of field and headquarters staff is preparing operational guidance that:

- Identifies pre-order or final-order aliens best suited for ATD;
- Identifies individuals not suited for ATD;
- Establishes methods to optimize ATD resources;
- Standardizes case management procedures for ATD participants; and
- Standardizes enforcement procedures for program violators.

63274.029

Question#:	19
Topic:	detention space
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

ICE is developing a scientific, data-driven risk assessment tool that will help ensure we place only those persons who do not pose a risk to the community on ATD.

Question: The Pinal County system is able to incarcerate 600 individuals and wants to continue to work with DHS to continue to do so. Pinal County, and other willing Arizona counties, it seems could possibly be an integral part of an expansion of Operation Streamline.

What are your thoughts about this?

Response: ICE continues to work closely with Pinal County and regularly houses detainees in its facility. If ICE requires additional space, it will consider expanding its use of Pinal County or other willing Arizona counties.

Question#:	20
Topic:	port wait times
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: Your testimony goes into great detail about southbound traffic and the stimulus dollars dedicated to some port issues. But Arizona still has issues. On March 25, Senator McCain and I wrote you about wait times at the DeConcini port and we haven't heard back. We also sent a letter to OMB about difficulties at the San Luis I port. We haven't gotten any real feedback about these ports and, while we have all worked hard on the San Luis II and Mariposa ports, these two other ports also have important issues.

Do you know about the issues at these ports and what are you doing about it as there was nothing in your testimony about Arizona's ports?

Response: To accomplish its security mission while facilitating the flow of legitimate trade and travel, U.S. Customs and Border Protection (CBP) continues to implement a dynamic recruitment and hiring strategy designed to quickly meet staffing needs. At your request, CBP officials in the Tucson Field Office conducted a review of current officer staffing and projected future staffing levels for the Port of Nogales.

Traffic at the Port of Nogales, the largest land border port in Arizona, is prone to fluctuations. To address seasonal increases in traffic, the Port of Nogales is using its Fiscal Year 2010 overtime budget and has temporarily assigned more officers when needed. The U.S. General Services Administration is also expanding and upgrading the Mariposa facility at the Port of Nogales using American Recovery and Reinvestment Act of 2009 funds. Ultimately, this project will substantially increase CBP's capacity to process vehicles and pedestrians; however, while construction is underway there is likely to be an impact on operations which could temporarily result in longer wait times.

63274.031

Question#:	21
Topic:	Real ID
Hearing:	Oversight of the DHS
Primary:	The Honorable Jon Kyl
Committee:	JUDICIARY (SENATE)

Question: The 9/11 Commission made the following recommendation following the September 11, 2001 terrorist attacks: "Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure people are who they say they are."

What are your current plans, and timelines, for REAL ID and do you agree that a secure driver's license is necessary for an effective worker verification system to work? How do you plan to help states come into compliance with REAL ID or any other similar program?

Response: We all share common goals in improving the security of state-issued driver's licenses: preventing terrorism, reducing fraud, and improving the reliability and accuracy of personal identification documents. DHS has worked closely with Governors, State Legislators, Homeland Security Advisors, and DMV Commissioners to address longstanding concerns with the implementation of REAL ID. Although DHS is still working with Congress on a comprehensive solution that allows cost savings and flexibility to the states through PASS ID legislation, we are obligated to continue moving ahead with efforts to improve the standards for state-issued driver's licenses and identification under the REAL ID framework pending any legislative changes by Congress. We commend the states on their progress and will continue to work with all states and territories to meet the full compliance deadline of May 2011.

Under DHS's Driver's License Grant Security Grant Program, states have made substantial progress in improving the security and integrity of their driver's licenses and issuance processes. Over the past several years, the Drivers Licenses Security Grant Program has made available nearly $140,000,000 to the states, with an additional $50,000,000 to be made available in FY 2010 funds, to assist with implementing these security procedures.

63274.032

Question#:	22
Topic:	SBI
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: The Secure Border Initiative, or "SBI-Net," has suffered from cost overruns and failures of technology. In March you froze "SBI-Net" funding and said you would redirect $50 million of stimulus money to other security technology such as mobile surveillance, radios, cameras and laptops for pursuit vehicles.

What is your long term plan for SBI-Net and physical fencing on the southern border?

Response: We are conducting a comprehensive, science-based assessment of alternatives to SBInet to ensure that we are utilizing the most efficient and effective technological and operational solutions in all of our border security efforts. If this analysis suggests that the SBInet capabilities are worth the cost, this administration will extend deployment of these capabilities. If this analysis suggests that alternative technology options represent the best balance of capability and cost-effectiveness, this administration will immediately begin redirecting resources currently allocated for border security efforts to these stronger options.

Question: What are your top border security priorities now?

Response: Over the past year and a half, the Obama administration has pursued a new border-security strategy with an unprecedented sense of urgency, making historic investments in personnel, technology and infrastructure while combating the transnational criminal organizations that smuggle weapons, cash and people across the United States border. We continue to take decisive action to disrupt these organizations and the networks they utilize in their criminal activity.

We're doing this by deploying hundreds of additional Immigration and Customs Enforcement agents, Border Patrol Agents and other personnel to bolster efforts to target criminal aliens who pose a threat to public safety. This will also enhance our ability to conduct outbound inspections, patrol challenging terrain and interdict illicit smugglers.

We are also reassigning major technology assets, including mobile surveillance systems, thermal-imaging binocular units, and trucks equipped with detection scopes, as well as observation and utility aircraft, to the Southwest border to enhance and expand our capability to detect illicit activities.

Complementing these efforts, National Guard deployments to the Southwest border announced by President Obama began in August. Furthermore, the President also

63274.033

Question#:	22
Topic:	SBI
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

requested that Congress appropriate $600 million in supplemental funds for enhanced border protection and law-enforcement activities.

The numbers show we are moving in the right direction. Last year, illegal crossings along the Southwest border were down 23 percent from the year before, to a fraction of their all-time high. Seizures of contraband rose significantly across the board in 2009. DHS seized 14 percent more illegal bulk cash, 29 percent more illegal weapons and 15 percent more illegal drugs than the year before. And, by all measurable standards, crime levels in U.S. border towns have remained flat for most of the last decade.

Despite this considerable progress, more remains to be done. This administration will continue our unprecedented efforts to secure our border, crack down on transnational criminals, drug-related violence, smugglers and traffickers to ensure the safety and security of our citizens. And we remain committed to actively working with members of Congress from both parties to make necessary reforms to our immigration laws at the federal level.

Question#:	23
Topic:	dairy
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: As you know, the dairy industry is not eligible to participate in the H-2A agricultural visa program. I will soon introduce legislation to ensure dairy can participate in the H-2A program. I also continue to strongly support the Ag JOBS legislation, which would reform the overall H-2A program.

I recognize that DHS does not play a direct role in determining eligibility of H-2A workers, but as the cabinet official with direct responsibility for enforcing immigration laws and administering immigration benefits, do you have any objection to a change in the statute to clarify that dairy is eligible for the H-2A program?

Response: I have no objection to a change in the statute to specifically allow dairy workers to be classified as H-2A nonimmigrant workers.

I further would offer you the assistance of my staff to advise on any technical issues that may arise in revising the statute to accomplish your objectives, including the appropriate definition of dairy workers for the purpose of the change.

63274.035

Question#:	24
Topic:	checkpoint
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: In testimony before this committee last year, you said that you were conducting a review of the effectiveness of the internal border checkpoint program, including the checkpoint on I-91 in Vermont. These checkpoints have been a source of ongoing concern in Vermont for some time.

Have you made any progress in measuring the effectiveness of these internal checkpoints?

Does the Department have any plans to make the Vermont checkpoint permanent?

Response: There are no plans to make the Vermont checkpoints permanent. All checkpoints operated in the State of Vermont are operated as tactical checkpoints based upon actionable intelligence.

Border Patrol interior checkpoints have been proven over time to be a very effective means to interdict cross-border illegal activity that has evaded interception closer to the border. In fact, approximately one-third of all drugs seized by the Border Patrol are found at interior checkpoints.

Despite their proven success, the Border Patrol is aware that checkpoints can have an impact on local communities. We are committed to finding ways to reduce the impact while improving how we track overall checkpoint performance. The Border Patrol is currently working to develop a comprehensive checkpoint study as well as creating a new set of complete checkpoint performance metrics to supplement arrest and seizure statistics.

63274.036

Question#:	25
Topic:	material support
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: You and I have discussed many times the overbroad definition in the immigration law regarding material support to terrorist organizations. The law has the effect of barring from protection some refugees who were victims of the organizations they are accused of supporting. After the December 2009 oversight hearing, I asked you how close you are to announcing an interagency agreement to exercise the exemption and waiver authority that I added to the 2008 omnibus appropriations bill with the cooperation and support of Senator Kyl. In your written answer you said you have actively pursued the issue and that it is a high priority. Another five months have passed since that hearing, and it has been more than two years since Congress gave DHS the authority to resolve these cases.

In December 8,000 cases were stuck in limbo. How many are still waiting to be cleared?

Response: The Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) has approximately 6,700 pending cases of individuals that existing exemptions do not cover. These include various kinds of claims, including asylum, refugee, adjustment of status to lawful permanent resident, and refugee/asylee relative petitions.

Question: When will you announce a resolution to this longstanding problem?

Response: The overwhelming majority of the approximately 6,700 cases on hold at USCIS involve aliens with voluntary associations to one of over 350 undesignated terrorist organizations as defined by section 212(a)(3)(B)(vi)(III), or "Tier III," terrorist organizations, that have not had exemptions put into effect to date. DHS, the Department of State (DOS), and the Department of Justice (DOJ) have prioritized review and reform of the interagency process for Tier III exemption authorization because the existing process – largely an ad hoc one – to authorize Tier III exemptions is too cumbersome and slow to address the large volume of different Tier III groups. Recently, we have reached agreement on a new process that represents a significant improvement.

The new process will allow for a thorough review of all of the over 350 Tier III groups and associated cases on hold and the adjudication of those cases over approximately the next 18 months. The process will remain in place to ensure timely consideration of future exemptions. The process has been designed to enhance the national security reviews each group and individual beneficiary of an exemption undergoes before an exemption or the underlying case is granted.

63274.037

Question#:	25
Topic:	material support
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

The key features of the process include:

- Group-by-group evaluation by interagency partners, including open-source reviews, distribution of case examples, and Intelligence Community input;
- Intensive individualized security reviews on every alien considered for an exemption;
- Interagency consultation, in light of the available information on the groups or categories of cases in question, on whether, and under what circumstances, an exemption should be provided; and
- Specified timelines for review and consultation to ensure the process moves apace.

Once a decision is reached whether or not an exemption should be granted for a particular group or category of cases, DHS and DOS will adjudicate cases within that group or category under their respective jurisdictions, including any cases previously on hold pending an exemption decision.

We aim to have over 50% of the hold cases adjudicated by the end of the calendar year.

I understand my staff and interagency colleagues have met with House and Senate staff, including from the Senate Judiciary Committee, to provide a briefing on the new interagency process. My staff will be happy to continue to keep interested Members and their staffs apprised of significant developments in this area.

Question#:	26
Topic:	program
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I have heard some positive reports about the work of non-uniformed officers based in El Paso, Texas and Tucson, Arizona who are dedicated to working with the local communities on border issues. The officers are tasked with outreach to a variety of local stakeholders, including local residents, land owners, business-owners, and advocates. The relationships established can foster cooperation and trust that serves both the local residents and the border security goals of CBP.

Does CBP plan to expand this program to other areas on the Southern Border? On the Northern Border?

Response: CBP actively engages with stakeholders in an effort to build understanding of its mission, laws and regulations – and will continue to do so in communities across the northern and southern border. Our ability to ensure security and promote economic growth through international travel and trade is dependent on stakeholders' understanding and support of border security operations.

63274.039

Question#:	27
Topic:	reforms
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I applaud the Department's effort to reform our immigration detention system to make it truly civil and humane. You announced a series of reforms, which will include issuing new detention standards, a new risk assessment classification instrument, and a detainee medical classification system.

What is the timeline for each of these items?

Are you on track to make these reforms on time?

These reforms are quite comprehensive and require strong leadership. Have you made any progress in finding a permanent Director for the Office of Detention Policy and Planning?

Response: The Department of Homeland Security (DHS) is reforming the Nation's immigration detention system, prioritizing health, safety and uniformity in detention facilities while ensuring security, efficiency and fiscal responsibility. The core principles of detention reform are:

- Prioritizing efficiency throughout the removal process to reduce detention costs, minimize the length of stays, and ensure fair proceedings;
- Detaining aliens in settings commensurate with the risk of flight and danger they present;
- Maintaining fiscal prudence when carrying out the detention reform;
- Provide sound medical care to detainees;
- Provide the necessary federal oversight of detention facilities; and
- Ensuring Alternatives to Detention (ATD) are cost effective and promote a high rate of compliance with orders to appear and removal orders.

The first step in making meaningful changes in detention facilities is the development and issuance of new detention standards. The ICE Performance Based National Detention Standards (2010) are undergoing final edits and are expected to be issued by the end of FY2010.

The new risk assessment and classification instrument has undergone an initial pilot and is currently being refined based on the results of that study. Once these revisions are

63274.040

Question#:	27
Topic:	reforms
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

completed, the instrument will be piloted once more before full deployment. ICE expects to deploy nationwide by the end of the calendar year.

The detainee medical classification system is currently being developed. In June 2010, ICE instituted a pilot program at select detention facilities to gather medical and patient information and inform the design and development of a nationwide medical classification instrument. ICE plans to have a prototype of the instrument by the end of the calendar year.

The permanent Director for the Office of Detention Policy and Planning has not yet been selected. ICE continues to evaluate potential candidates and plans to announce a selection within the next 60 to 90 days.

In addition to the above reforms, ICE has made significant strides in creating a detention system in line with our core principles. Below is a list of detention reform accomplishments achieved to date:

August 2009

- Created the Office of Detention Policy and Planning—as well as an independent Office of Detention Oversight that reports directly to the ICE Assistant Secretary—to focus on greater federal oversight, specific attention to detainee care and uniformity at detention facilities.
- Established two advisory boards comprised of local and national stakeholders.

September 2009

- Discontinued family detention at the T. Don Hutto Family Residential Facility in Texas and converted the facility to be used solely as a female detention center.
- Issued new protocols on Reporting and Notification of Detainee Deaths which increased transparency in notifications to Congress, the press, and other stakeholders.

October 2009

- Initiated hiring that will increase the number of federal personnel providing on-site oversight at the facilities where the majority of detainees are housed.
- Began housing non-criminal, non-violent populations (such as newly arriving asylum seekers), at facilities based on assessed risk, including the Broward Transitional Center in Florida, which offers a secure but less restrictive environment.
- Centralized detention facility contracts under ICE headquarters in order to consolidate and streamline contract oversight.

63274.041

Question#:	27
Topic:	reforms
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

December 2009

- Implemented initiatives to improve basic living conditions at facilities, including new beds, upgraded lighting, renovated bathrooms, and telephone dividers – at no cost to the government.
- Transitioned the ICE alternatives to detention program to a single provider, allowing for better performance and evaluation.

January 2010

- Consolidated ICE authorized facilities -- reducing the total number from 341 to 270—to improve efficiency and oversight and reduce costs.
- Assigned clinical directors to provide ongoing case management of complex medical cases and to expeditiously review denials of requests for medical services.
- Surveyed conditions in detention centers to determine how to provide additional visitation and legal access in the 69 facilities holding 85% of ICE's detainees. More than 20 of these facilities have already expanded visitation hours and access to legal resources for detainees.
- Implemented a new policy to release arriving asylum seekers from detention who have a credible fear of persecution or torture if they establish their identities, pose neither a flight risk nor a danger to the community, and have no additional factors that weigh against their release. The new guidelines also mandate that all such arriving aliens should automatically be considered for parole—a significant change from prior guidance.
- Piloted a project in Miami and Baltimore with the Executive Office for Immigration Review at the Department of Justice to expedite the adjudication of cases of aliens supervised on the Alternatives to Detention program with a goal of reducing the average length of time in the program from over 300 days to 180 days.
- Implemented a comprehensive procurement strategy to review contracts for all detention facilities in order to identify opportunities for improvement and renegotiate or terminate contracts as warranted. ICE has already cancelled contracts at 13 facilities because they received at least two deficient ratings.

February 2010

- Created the Detention Monitoring Council of ICE senior leadership to review detention facility inspection reports, assess corrective action plans, ensure remedial plans are implemented, and determine whether ICE should continue to use a particular facility.

March 2010

63274.042

Question#:	27
Topic:	reforms
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

- Established an on-site monitoring program to ensure that federal employees are present to monitor conditions where ICE houses the majority of detainees.
- Trained the first and second classes of detention service managers (42 in total) to ensure uniformity in quality at detention facilities.

April 2010

- Conducted a comprehensive review of the medical delivery system throughout the detention facilities, with assistance from DHS's Office of Health Affairs and the Bureau of Prisons, and provided new leadership and Area of Responsibility staffing plans to improve the delivery and management of medical services.
- Placed the first and second class of 42 detention service managers at facilities to monitor conditions at facilities housing 80% of the detainee population.
- Drafted, in collaboration with stakeholders, the Performance Based National Detention Standards (PBNDS) 2010, a revised set of detention standards which detail the custody and care of the detainee populations. These standards will be implemented at detention facilities housing 55% of the population by the end of 2010, and at facilities housing 85% of the population by the end of 2011. The standards include:
    - Contact visitation with attorneys and family members during both day and evening hours, and the elimination of unreasonable time restrictions on the lengths of visits;
    - Expanded access to legal information for detainees, including information contained in legal rights groups presentations and the detainee handbook;
    - Language that clearly enumerates the right of detainees to practice their religious beliefs;
    - Provision of 1-4 hours of outdoor recreation a day, as well as facilities for recreation;
    - Zero tolerance policy for sexual abuse or assault.

May 2010

- ICE formally launched the pilot of a new ATD risk assessment and classification tool in the Washington and Baltimore field offices to improve and standardize ICE's individual detainee detention decisions based on objective factors such as criminal history, propensity for violence, threat to the community, risk of flight, immigration status, and medical and mental health issues.
- Modified the Treatment Authorization Request (TAR) process used by medical providers to streamline detainee access to necessary medical procedures.

June 2010

63274.043

Question#:	27
Topic:	reforms
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

- Developed new tools and technologies to forecast, analyze, and map the projected supply and demand for detention bed space aligned with the location of apprehensions and the characteristics of the population in order to develop an ideal ICE Detention Facility Map which strategically aligns the location of beds with arrest activity, population characteristics, drive times to and from offices and airports, access to families, legal resources and consulates, and provides for a consolidated, right sized and streamlined detention system, which operates with maximum efficiencies and eliminates costly transfers
- Conducted a comprehensive review of grievance procedures and designed a pilot project to ensure direct involvement of ICE officers in both formal and informal grievances.
- Instituted a pilot program to inform the design of a nationwide medical classification instrument in three facilities in New York City, New Jersey and Buffalo and developed a database to collect and analyze patient information. The purpose of this medical classification instrument is to assess the medical needs of the detainee and determine which facilities are best to address those needs.

July 2010

- Announced the launch of an Online Detainee Locator System (ODLS), a public, Internet-based tool designed to assist family members, attorneys and other interested parties in locating detained aliens in ICE custody. The ODLS is located on ICE's public website and provides users with information on the location of the detention facility where a particular individual is being held, a phone number to the facility and contact information for the ICE Enforcement and Removal Operations office in the region where the facility is located.
- Announced the procurement of detention space in Orange County, California to reduce substantially the number of transfers of detainees from the Los Angeles area.

63274.044

Question#:	28
Topic:	standards
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Recent experience with the closing of the Varick Detention Facility in New York on February 26, 2010 underscored the challenges in closing an immigration detention facility that falls short of minimum standards.

How will your new contracts ensure that operators of facilities that fail to meet your new standards are held accountable?

Response: All new ICE contracts require that the facilities meet ICE detention standards. ICE enforces this requirement through the use of Contracting Officer Technical Representatives (COTRs), On-Site Detention Monitors, Annual Inspections, and Special Reviews by the Office of Detention Oversight. ICE contracts also provide the ability to assess financial damages for a lack of performance. Already, under our detention reform initiative, ICE has cancelled contracts at 13 facilities because they received at least two deficient ratings.

Question: Will the Department issue guidance governing the decision to terminate a contract when a facility fails to meet standards and the process of shutting a facility down?

Response: It is ICE's policy to discontinue the use of any facility that does not provide safe and secure conditions of detention and to automatically remove detainees from any facility that receives two consecutive ratings of less than acceptable. Already, under our detention reform initiative, ICE has cancelled contracts at 13 such facilities.

Question: How will this guidance ensure that access to counsel and other humanitarian concerns are taken into account when deciding where to transfer detainees in the event of a facility closure?

Response: It is ICE's policy that detainees removed from a deficient facility must be transferred to a facility with a current rating of acceptable or better, thereby assuring that access to counsel and other humanitarian issues are being met at the new facility.

63274.045

Question#:	29
Topic:	287 - 1
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I remain concerned that INA § 287(g) agreements can encourage racial profiling and undermine cooperation between immigrant communities and local law enforcement. In written answers to questions from the December 9, 2009 hearing, you stated that U.S. Immigration & Customs Enforcement had begun to collect data "to help identify arrest trends that are not consistent with overall arrest data" in local jurisdictions. I was troubled to read the Inspector General's March 2010 Report on "The Performance of 287(g) Agreements," which identified several serious shortcomings in the 287(g) program, particularly with regard to civil rights and civil liberties protections.

What is your timeline for complying with the IG's recommendations and what are the costs? Do you have sufficient resources to comply with the recommendations?

Response: The March 2010 Office of the Inspector General report does not reflect the current 287(g) program. Since the audit was conducted, ICE has fundamentally reformed the 287(g) program, strengthening public safety and ensuring consistency in immigration enforcement across the country by prioritizing the arrest and detention of criminal aliens-fulfilling many of the report's recommendations.

Question#:	30
Topic:	287 - 2
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: ICE did not agree with the IG's recommendation #18, that ICE "establish collection and reporting standards that provide objective data to increase monitoring of methods participating jurisdictions use in carrying out 287(g) functions, and their effect on civil liberties."

ICE suggested these requirements would be too onerous, stating that they "raise[] logistical issues including whether a TFO would report all interactions, just interactions predicated solely on 287(g) authority, and how the TFO would distinguish in a meaningful way while performing his or her daily duties."

It is critical that the 287(g) program not be used to delegate federal authority to state and local jurisdictions in a way that undermines federal civil rights protections, and it is crucial that ICE collect the necessary data to make sure this is not the case.

Since the IG's report was issued in March 2010, has ICE developed data collection and reporting requirements that meet the IG's suggested criteria?

Response: ICE is in the process of developing additional tracking enhancements relating to the initial encounter by a 287(g) officer. This tracking mechanism will assist ICE with the collection of initial encounter and prior criminal history information to comply with ICE criminal prioritization levels. Currently, ICE collects 287(g) statistical data based on aliens encountered, aliens taken into ICE custody, aliens removed/granted Voluntary Return, and criminal priority levels.

63274.047

Question#:	31
Topic:	MOU - 2
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I am interested in seeing the effect of the implementation of the new Memoranda of Understanding on the numbers of complaints of improper performance of immigration enforcement activities and the results of any subsequent investigations.

Please provide the number of complaints of racial profiling or discriminatory enforcement for the last three (3) fiscal years and break down those figures by:

Response: During the last three fiscal years, four complaints have been filed at the Joint Intake Center related to racial profiling by state & local law enforcement organizations with 287(g) delegated authorities.

The DHS Office for Civil Rights and Civil Liberties (CRCL) has received allegations of 21 instances, affecting approximately 63 individuals, of racial profiling regarding the implementation of the 287(g) program over the last three years.

Question: The jurisdictions in which those complaints arose;

Response: Of the Joint Intake Center complaints, two complaints arose in Phoenix, Arizona, one complaint arose in Panama City, Florida, and one complaint arose in Los Angeles, California.

Of the CRCL allegations, nine arose in Maricopa County, Arizona; one from an unknown location in Arizona (complainant did not specify location); three from Gwinnett County, Georgia; and, eight from Wake County, North Carolina.

Question: Whether the complaints were lodged directly with ICE or referred from the local jurisdiction;

Response: Of the Joint Intake Center complaints, one complaint was referred to ICE by the local organization with 287(g) delegated authority. The remainder were referred directly to ICE by detainees or other ICE components on behalf of detainees.

The majority of the allegations CRCL received were filed by the ACLU directly with CRCL (four of the nine from Maricopa, three from Gwinnett County, and eight from Wake County). The remaining five Maricopa County complaints and the one unknown Arizona location were filed directly with CRCL by an ICE detainee who gathered allegations from other detainees.

63274.048

Question#:	31
Topic:	MOU - 2
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: How many complaints resulted in an investigation; and

Response: Of the Joint Intake Center complaints, three were referred to the Office of Professional Responsibility for investigation and one was indexed as information only and closed. At present, one remains an open investigation, while the other two investigations are now closed.

Question: Whether the investigation resulted in any remedial/enforcement action by the Department.

Response: The Joint Intake Center investigations into the three complaints did not yield results meriting any remedial or disciplinary actions.

63274.049

Question#:	32
Topic:	rewards program
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: The State Department administers a program authorized by Congress called the Narcotics Rewards Program. The State Department reports that since its inception in 1986, the program has paid out more than $44 million in rewards to individuals who provided information that led to the arrest or conviction of major narcotics traffickers. Individuals with actionable information are advised to go to a U.S. Embassy or Consulate, or to contact the DEA, FBI, or ICE. Many of the traffickers who have been apprehended through this program were located in Mexico. Congress authorized the State Department to award up to $5 million.

Do you believe that the current Narcotics Award Program is an effective tool among the resources the United States has for its efforts to combat drug cartels in Mexico?

Response: The Narcotics Rewards Program has proven to be an effective tool to combat drug cartels.

The program has increased pressure on Mexican drug cartels and brought a number of cartel leaders to justice. For example, after posting rewards for members of the Arturo Beltran-Levya drug trafficking organization in early December 2009, U.S. and Mexican law enforcement authorities apprehended the head of the organization, Arturo Beltran-Leyva, two weeks later, and captured the organization's logistics leader, Jose Gerardo Alvarez-Vasquez, in April 2010.

Question: Given the violence that we have witnessed in Mexico associated with the drug trade, is the reward money authorized adequate to encourage those with information to come forward?

Response: The Narcotics Rewards Program target reward levels have proven effective and appropriate in bringing major narcotics traffickers to justice. The unique circumstances of each case determine the amount of the reward requested by the law enforcement agency handling the informant.

Question: Are there ancillary benefits to the Narcotics Award Program? For example, have you seen evidence that the program has the capacity to disrupt inter or intra-cartel operations?

Response: Yes, publicity of the reward offers against major drug traffickers forces them to change their organizational dynamics and operational logistics, opening windows of

63274.050

Question#:	32
Topic:	rewards program
Hearing:	Oversight of the DHS
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

opportunity for their capture. In addition, publicity may cause traffickers to accuse those with most access to them of disloyalty, which in turn may actually drive individuals who fear reprisal to law enforcement for protection, or may cause disruptions to the organizational dynamics of trafficking entities, as trust among members diminishes.

In one example, a captured major narcotics trafficker was asked by Drug Enforcement Administration Special Agents, what was the single most important instrument the U.S. implemented against his organization. Without hesitation, the answer was the $5 million reward. The captured trafficker said that after the reward came out he could not trust anyone in his organization who possessed less than that amount.

63274.051

Question#:	33
Topic:	process
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Recently, 2 separate DC District Court judges granted habeas petitions for 2 terrorists currently detained at GITMO. The U.S. has filed notice of appeal in the case of Mhamedou Slahi, but has yet to do so in the case of Uthman Abdul Rahim Mohammed Uthman, a Yemeni citizen. If the government fails to file a notice of appeal in the Uthman case, it could have an impact on DHS since the Administration has announced that it will not transfer Yemeni national detainees back to Yemen.

At the recent DOJ Oversight hearing, Senator Graham asked AG Holder "if a detainee is ordered released by the judge -- the habeas petition is granted, what happens next? What -- what -- do we have to release them in the United States? If we can't find a third country, what do we do with them?" Without citing any law, Holder answered "[t]hey do not have to be released into the United States. And they would remain in custody while our efforts to try to find a location..." Even if detainees are put into deportation proceedings, they may not be able to be sent to either their country or origin or any other country.

In Zadvydas v. Davis and Clark v. Martinez, the Supreme Court ruled that under current law, aliens who have been ordered removed cannot be detained for more than six months if for some reason they cannot be removed. Based on the two decisions, DHS has had no choice but to release back onto the streets many hundreds of criminal aliens, many who have received relief from removal pursuant to the Convention Against Torture.

Can you explain the process by which a detainee who is brought to America and ordered released can continually be detained in light of these Supreme Court holdings?

Response: If a domestic court rules that the United States government may not detain an individual at Guantanamo Bay under the authority granted by the Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001), the Executive Branch will facilitate the individual's repatriation or third-country resettlement. Current law provides that Guantanamo Bay detainees may be brought into the United States only "for the purposes of prosecuting such individual, or detaining such individual during legal proceedings." Department of the Interior, Appropriations Act, 2010, Pub. L. No. 111-88, § 428(a)-(c) (2009); Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83 § 552(a)-(c) (2009) (DHSAA). Additionally, under section 552(f) of the DHSAA, DHS funds may not be used to provide any immigration benefit to Guantanamo Bay detainees except for parole into the United States "for the purposes of prosecution and related detention."

63274.052

Question#:	34
Topic:	MOU - 3
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Last month USCIS signed a Memorandum of Agreement with the DOJ's Civil Rights Division that commits the E-Verify program to refer suspicious use of the E-Verify program to the Civil Rights Division Office of Special Counsel for investigation and enforcement of the INA's antidiscrimination provisions. I believe that because E-Verify creates an electronic "trail," it helps cut down on discrimination and abuse by unscrupulous employers. But I want to make sure the program is not abused, and so I hope you will continue to make progress in building up your compliance and enforcement capabilities with E-Verify.

I am concerned, however, by what looks to me like a pretty significant overreach by the Civil Rights Division into compliance and enforcement operations for E-Verify. As you know, the Civil Rights Division's responsibility in this area is defined by statute; it covers actions by employers taken with the intention of discriminating against a job applicant or an employee on the basis of citizenship status or national origin. The law does NOT give DOJ general authority to police any and all violations of the E-Verify program's terms of use. The agreement that your department signed with the Civil Rights Division looks, however, like DOJ will be getting referrals in any case where USCIS thinks someone is violating the rules for using E-Verify, whether or not there's any reason to believe the misuse is intended to discriminate on the basis of national origin or citizenship.

Was it your intention to hand over enforcement of the E-Verify programs rules to the Civil Rights Division?

If not, why would USCIS have signed this agreement?

This reminds me of your announcement early in 2009 that ICE would no longer conduct worksite enforcement raids unless there was approval from Justice Department headquarters that the employer who was being raided would be prosecuted for knowingly hiring illegal aliens. At that time I was concerned that you were effectively ceding your authority to set enforcement priorities to the Justice Department some parts of which have not been very supportive of immigration enforcement. This looks similar to me. Can you explain why you are turning so much authority over to DOJ?

Response: USCIS has not ceded authority to the Department of Justice for enforcement of E-Verify program rules. Through our Memorandum of Agreement with the Department of Justice, USCIS has set up guidelines to refer specific cases for law

63274.053

Question#:	34
Topic:	MOU - 3
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

enforcement action where appropriate and where USCIS does not have the statutory authority to take additional action.

Specifically, USCIS does not have the authority to enforce section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b). Paragraph 4.b of the MOA with the Office of Special Counsel (OSC) permits USCIS to refer potential discrimination matters that might fall under OSC's authority (or the Equal Employment Opportunity Commission's authority) to OSC for action.

Upon referral, OSC makes a determination as to whether it has jurisdiction over the matter, and only investigates in instances in which it does have jurisdiction.

Question#:	35
Topic:	deferred action
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: On April 21, Senators Lugar and Durbin sent you a letter asking you to grant legal status through "deferred action" to the potentially hundreds of thousands of aliens who would be eligible to be beneficiaries of the DREAM Act, were the DREAM Act to be made law.

Do you believe it is the place of the Executive Branch to de facto implement by fiat an immigration amnesty bill that failed in the previous Congress and that the current Congress has not chosen to debate in the 13 months since its most recent introduction, much less pass?

If you believe granting deferred action to all potential beneficiaries of the DREAM Act is justifiable because of the sympathetic circumstances surrounding the class of alien high-school graduates who would benefit from DREAM, wouldn't the same considerations compel granting deferred action to any sympathetic class of illegal aliens?

Would you support granting deferred action to the 1-3 million potential beneficiaries of the AgJOBS bill?

Response: The agencies of the Department of Homeland Security have the authority to grant a deferral of removal action or humanitarian parole based on the merits of cases while considering humanitarian circumstances and other factors in the interest of the Department's overall law enforcement mission. This discretionary authority is implemented on a case-by-case basis and we do not grant deferred action or humanitarian parole without a review of relevant facts. To be clear, DHS will not grant deferred action or humanitarian parole to the nation's entire illegal immigrant population.
We continue to maintain that comprehensive bipartisan legislation, coupled with smart, effective enforcement, is the only solution to our nation's immigration challenges.

63274.055

Question#:	36
Topic:	solutions
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: I've read in the press that DHS is considering a number of "administrative" solutions to problems with the immigration system in the event that the comprehensive immigration reform bill process should stall. Your Principal Deputy General Counsel, David Martin, told an audience at UVA law school in March that "[t]here are difficulties in immigration reform best addressed by legislation, but if it is stalled, there are good measures that can be done administratively."

Will you commit to brief the members of this Committee on the specifics of these proposals before announcing them?

Response: As the text of the full article makes clear, Mr. Martin was referring to what government lawyers can help accomplish through public service, using as examples DHS initiatives that have already been announced and are currently being implemented, such as improving the worksite enforcement program by targeting employers who do not maintain legal workforces, focusing enforcement efforts on criminal aliens, and reforming the detention system.

63274.056

Question#:	37
Topic:	authority
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Do you possess the authority to refuse or revoke a visa? In your testimony before the Senate Homeland Security Committee in January your answer to this question referred only to visa refusals.

What did you mean in your testimony before the Senate Homeland Security Committee in January about not wanting to be "a little bit pregnant" on visa security? Doesn't the broad authority granted to you under Section 428 of the Homeland Security Act to control visa policy and to refuse or revoke visas make you "fully pregnant?"

How, exactly, do you understand the mandate for DHS established by Section 428 of the Homeland Security Act?

In light of the fact that the Department of State's line visa adjudicators have the authority to refuse and revoke visas, do you support delegation of your visa refusal/revocation authority to DHS officials overseas, such as CBP's Immigration Advisory Program officers and ICE Visa Security Program agents?

Response: Pursuant to section 428 of the Homeland Security Act of 2002 (HSA), the Secretary of Homeland Security may "refuse visas in accordance with law." 6 U.S.C. § 236(b)(1). The statute provides that this authority is to be "exercised through the Secretary of State." Under section 428(c) "Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under [an enumerated list of laws.] DHS and the Department of State entered into a Memorandum of Understanding (MOU) regarding implementation of this authority. *Memorandum of Understanding Between Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002* (Sept. 30, 2003). The MOU provides that the Secretary of Homeland Security may direct the refusal or revocation of a visa by requesting "the Secretary of State to instruct the relevant consular officer to refuse or revoke the visa and specify the grounds and factual basis for refusal or revocation."

As a general matter, I support the delegation of my authority under Section 428(b)(1) of the Homeland Security Act (HSA) to those within the Department best positioned to assess the security and operational interests and make determinations on revoking or refusing a visa application.

63274.057

Question#:	38
Topic:	VSP
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

****LAW ENFORCEMENT SENSITIVE/ FOR OFFICIAL USE ONLY BEGINS****

Question: Why does the DHS budget request, which was submitted to Congress weeks after the Christmas Day attack, not request an increase in funding for the Visa Security Program? Has the Department now changed its mind about asking Congress for more funds to expand the program to additional high-risk overseas posts?

Response: DHS is continuing to expand the U.S. Immigration and Customs Enforcement (ICE) Visa Security Program (VSP). Since 2005, the VSP has opened an average of three new Visa Security Units (VSUs) per year. In FY 2010, ICE's requests to establish new positions were approved for four additional posts: Sana'a, Yemen; Tel Aviv, Israel; Jerusalem, Israel; and London, UK. In addition, ICE's request to expand staff in Frankfurt, Germany, was recently approved.

In the FY 2011 President's budget request, ICE will maintain the same level of funding and resources as FY 2010—$30.6 million and 67 FTEs. This level of funding will cover existing VSUs and planned VSU expansion in FY 2010. Furthermore, ICE is planning for additional staff positions in Amman, Jordan, as well as deploying a new VSU in Jeddah, Saudi Arabia.

63274.058

Question#:	39
Topic:	posts
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: The Homeland Security Act authorizes DHS agents to be deployed to all visa-issuing posts abroad unless you make the determination "that such an assignment at a particular post would not promote homeland security." I understand that there are 57 visa-issuing posts that DHS and the Department of State have determined to be high risk.

At how many of those posts does DHS currently have a presence?

Response: The Visa Security Program (VSP) is currently conducting operations in 14 visa adjudicating posts determined to be high-risk.

Question: Have you made a determination that deployment of DHS officials to the 57 high-risk posts will not promote homeland security?

Response: No.

Question: Do you believe that the DHS Visa Security Program should be expanded to all 57 visa-issuing posts determined to be high risk by DHS and the Department of State?

Response: ICE has identified high-risk countries where VSUs do not exist and is considering the visa adjudicating posts within those countries for VSP deployment. The program's expansion depends on acquiring funding to accommodate the process of establishing the new positions required to open each VSU office.

Question: If so, how much would it cost to expand the VSP to all high-risk posts and did you ask Congress for that amount as part of your proposed budget? Why not?

Response: VSP estimates that it costs approximately $1.7 million to open a new office, with subsequent annual operating costs, and two to three full-time equivalents and one Foreign Service National person on staff per office. Thus, it would cost approximately $66.3 million to deploy to the 39 remaining high risk posts (not including the four offices deploying during fiscal year (FY) 2010 with existing funds).

****LAW ENFORCEMENT SENSITIVE/FOR OFFICIAL USE ONLY ENDS****

63274.059

Question#:	40
Topic:	pilot
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: I understand that U.S. Customs and Border Protection recently started a pilot program at two land ports of entry in Arizona requiring H-2A and H-2B temporary workers who entered the country through those ports of entry to register their final departure at the same port of entry through which they entered.

Does DHS consider a temporary worker who fails to register his departure under this program an overstay?

Response: As with other DHS departure initiatives, DHS will consider all information available as part of its assessment as to whether the person has overstayed the terms of his or her admission.

Question: Why doesn't DHS expand this program to require all foreign temporary workers to register their departure?

Response: This is a one-year pilot program to determine the feasibility and effectiveness of an exit registration effort in the land border environment, with the target group being H-2A/B visa holders. The pilot will be evaluated at the one year mark to determine:

- The operational benefits of the verification of departure;
- The operational impact at the ports of entry;
- The compliance rate;
- The efficiency of the technical solution used.

DHS will evaluate the effectiveness and success of the current pilot project before expanding the exit registration requirement to other foreign temporary workers.

63274.060

Question#:	41
Topic:	list
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: DHS prohibits H-2A and H-2B temporary worker visas from being granted to workers from countries that aren't on a list of approved countries. As I understand it, a country that doesn't cooperate with ICE on the repatriation of its nationals may not be put on the list.

Do you agree with me that this list serves an important purpose, and if so, would you agree that a country with a high overstay rate should also be kept off that list?

Response: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services generally may approve H–2A and H–2B petitions only for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as countries whose nationals are eligible to participate in the H-2A and H-2B programs. Such designation is published as a Notice in the *Federal Register* and expires after one year. In designating countries to include on the list, DHS, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(i), (6)(i)(E)(1). A high overstay rate by a country's nationals is one factor that is considered in making such a determination.

63274.061

Question#:	42
Topic:	Greece
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Why did DHS just a few weeks ago let Greece, a country on the brink of possible economic collapse, into the visa waiver program? In 2002 we took Argentina off the list of visa waiver countries precisely because of that country's fiscal crisis leading to increased risk of overstays. How can DHS say it's staying on top of the overstay problem when it expands the visa waiver program to countries in economic turmoil?

Response: The Department of Homeland Security (DHS) determined that Greece complies with the statutory and policy requirements for designation in the Visa Waiver Program (VWP), including a visa refusal rate below three percent, the issuance of electronic passports, and timely reporting of lost and stolen passports. Greece concluded the requisite information sharing arrangements with the U.S. on travelers who may pose a threat to the security or welfare of the United States or its citizens. Additionally, DHS conducted a comprehensive review of Greek document security standards, border security procedures and immigration controls, and counterterrorism and law enforcement cooperation with the United States to determine that Greece's VWP designation would not compromise U.S. security and law enforcement interests, including immigration enforcement interests.

Greece faces a different situation than that of Argentina in 2001-2002 because of Greece's close economic ties to the rest of the EU and its use of the Euro and Greek citizens' unrestricted right to relocate and seek employment in other EU member states.

In the short time that has elapsed since Greece's VWP designation (since April 5, 2010), DHS has not observed any significant differences in travel patterns.

63274.062

Question#:	43
Topic:	TPS
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Temporary Protected Status (TPS) for Honduras and Nicaragua expires on July 5, 2010; TPS for El Salvador expires on September 9, 2010. Do you think TPS for these countries should be extended, yet again, when the hurricane (Hurricane Mitch) that prompted the initial grant of TPS for Honduras and Nicaragua was in 1998 and the earthquake that prompted the initial grant of TPS for El Salvador was in 2001?

Response: U.S. Citizenship and Immigration Services (USCIS) announced on May 5, 2010 that DHS will extend Temporary Protected Status (TPS) for nationals of Honduras and Nicaragua from the current expiration of Jul. 5, 2010, to the new expiration date of Jan. 5, 2012 and on July 9, 2010 announced the extension of TPS for El Salvador to March 9, 2012.. During the past year, DHS and the Department of State have reviewed the conditions in these countries. Based on this review, I have determined that an 18-month extension is warranted because the conditions that prompted the TPS designation in 1999 following the environmental disaster persist and prevent Honduras from adequately handling the return of its nationals.

63274.063

Question#:	44
Topic:	access
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Recently, Arizona rancher Robert Krentz, was murdered on his ranch while checking his cattle. It has been confirmed by the Border Patrol and the Fish and Wildlife Service that his killer both entered and exited the U.S. thru the San Bernardino National Wildlife Refuge. It just so happens that the refuge is the only place along the border in southeast Arizona where Border Patrol is banned from doing regular patrols by the Fish and Wildlife Service because of endangered fish. In fact, the Border Patrol has placed cameras, towers and equipment in and around the entire area except for the refuge because of environmental regulations and protests from the Department of the Interior. The killing of Rob Krentz sadly illustrates that we cannot continue to have our national security be subservient to environmental laws and regulators.

Have you demanded that Border Patrol have access to San Bernardino Wildlife Refuge and other areas where they are currently not going because of environmental regulations?

Response: While the Border Patrol does not currently drive patrol vehicles behind the locked gate at the San Bernardino National Wildlife Refuge, they patrol both north and south of the fenced area. Discussions are ongoing regarding access to the Refuge for patrol purposes. Border Patrol has and will continue to patrol this area in a manner that minimizes the impact on the Refuge.

63274.064

Question#:	45
Topic:	aircraft
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: You stated that since Robert Krentz was killed you have deployed 100 additional Border Patrol officers to the area as well as additional fixed-wing, helicopter and unmanned drone patrols.

How many of these new agents are now patrolling San Bernardino Wildlife Refuge?

Response: Agents work south and north of the refuge and can access the refuge on foot. While the Border Patrol currently has no agreement with the Department of the Interior to allow agents to patrol the refuge by patrol vehicle, discussions are ongoing regarding access to the Refuge.

Question: What good are these patrolling aircraft if they can't land or do low overflights in the refuge or in the Wilderness areas in the Coronado National Forest that surround the Krentz's ranch?

Response: CBP is not restricted from conducting flight operations around the Krentz ranch, nor is CBP precluded from flying in the airspace above the San Bernardino National Wildlife Refuge.

To meet border security threats and challenges along the southwest border, Customs and Border Protection's Office of Air and Marine (OAM) utilizes helicopters and fixed-wing aircraft to search, detect, identify, and track suspect airborne and ground targets of interest. OAM aircraft act as force multipliers to ground agents in these areas agents to suspects.

63274.065

Question#:	46
Topic:	payments
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Former Tucson and Yuma Sector Chief Mike Nicley stated in an interview with the Salt Lake City Tribune that Border Patrol agents are subjected to paying what is the equivalent to "shake-down" money in the form of mitigation payments before they are allowed access onto Department of the Interior lands. How much has DHS paid out in mitigation to Interior and for what were these monies used?

Response: CBP is committed to responsible environmental stewardship in a manner that is compatible with the planning and execution of CBP's priority missions of securing the nation's borders while facilitating the flow of legitimate trade and travel. CBP first strives to avoid then minimize impacts to sensitive natural and cultural resources. Where impacts occur, CBP executes appropriate mitigation measures as identified through consultation with resource agencies.

Over the past few years, CBP has paid out approximately $1 million in mitigation for environmental impacts from tactical infrastructure and technology construction. As summarized in the table below, CBP is currently processing approximately $59 million in additional mitigation to send to DOI.

Summary of CBP Mitigation Funds Executed with DOI			
Item	**Agency**	**Date**	**Amount**
Mitigation Funds			
• BMGR/Cabeza Pronghorn BO	US Fish & Wildlife	Fall 2008	$811,00
• Phillip Banco Refuge RGV	US Fish & Wildlife (via USACE)	Fall 2009	$138,00
Funding actions pending (estimated):			
• Comprehensive Mitigation Agreement regarding PF70, PF225 and VF300 Fence Construction	DOI	In Process	Up t $50,000,000
• Ajo 1 Towers Mitigation	US Fish & Wildlife	In Process	$4,200,00
• Tucson West Towers Mitigation	US Fish & Wildlife	In Process	$1,800,00
• Naco Border Patrol Station	US Fish & Wildlife	In Process	$3,000,00

63274.066

Question#:	47
Topic:	documents
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Would you please turn over all documents related to Border Patrol being denied access by federal land managers?

Response: DHS is fully committed to a positive working relationship with Interior and the USFS. We respect the missions of these agencies and we recognize the importance of the preservation of the American landscape. We acknowledge that balancing the requirements of border enforcement and land preservation can at times present challenges, but we are committed to collaboration with Interior and the USFS to find workable solutions on special status lands. DHS's close working relationship with Interior and USFS allows DHS to fulfill its enforcement responsibilities while respecting and enhancing the environment.

Question: Would you please turn over all Threat Assessments done by DHS about the risks from Interior and Forest Service lands that are along our borders?

Response: See attachment from I&A.

63274.067

Question#:	48
Topic:	efforts
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Illegal immigration is a jobs issue. According to the latest estimates from the PEW Hispanic Resource Center: There are 8.3 million illegal immigrants in the labor force, 7.8 million of them actually hold jobs in the U.S. -- of course, even if they don't have jobs, they represent unfair competition with Americans for jobs. According to the Department of Labor, there are over 15,000,000 Americans currently out of work (9.7%). This number doesn't even take into account the number of people who have stopped looking for a job. In the third quarter of 2009, the unemployment rate was 28.8% for African-Americans without a high school degree.

In many states, there are almost as many illegal immigrants in the labor force as there are unemployed workers. Yet, U.S. Immigration and Customs Enforcement ("ICE") has been slashing worksite enforcement efforts (the number of administrative arrests fell by 68% from 2008 to 2009, the number of criminal arrests fell by 60%, the number of criminal indictments fell by 58% and the number of criminal convictions fell by 63%).

Why has Immigration and Customs Enforcement been slashing worksite enforcement efforts?

Do you think that worksite enforcement is a valuable as part of a jobless recovery plan or legislation?

Is it wise for the Administration to push for immigration reform which includes amnesty when so many Americans are out of work?

Response: ICE remains focused on criminally investigating and prosecuting employers who exploit or abuse their employees, as well as companies that work at sites of critical infrastructure or key resources and those employers who, based on intelligence or credible investigative leads, appear to have a history of knowingly employing an illegal workforce. ICE is using many tools to enforce the law, including criminal prosecutions of egregious employers, Form I-9 inspections and audits, civil fines, and debarment from contracting with the Federal government. Since January 2009, DHS has audited more than 2,785 employers suspected of hiring illegal labor, debarred more than 100 companies and 80 individuals, and issued more than $6.4 million in fines—more than the total amount of audits and fines issued in the entire previous administration.

63274.068

Question#:	49
Topic:	jobs
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: When commenting on the need for a mass legalization program you have states that such amnesty will only strengthen our economy. While competition can often be a positive thing, I can't imagine the effect of adding 12-20 million people to an already stretched job market.

How do you draw this conclusion?

Response: When combined with smart, strong, and effective enforcement, comprehensive immigration reform will strengthen our economy, bringing millions of workers out of the shadow economy and helping to raise wages and improve working conditions for all U.S. workers. Making sure these individuals become full taxpayers and pay their fair share will both benefit our economy and make it easier to enforce the laws against unscrupulous or exploitive employers. A tough and fair pathway to earned legal status will mandate that illegal immigrants meet a number of requirements—including registering, paying a fine, passing a criminal background check, fully paying all taxes and learning English.

63274.069

Question#:	50
Topic:	involvement
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Senators Schumer and Reid have vowed to tackle comprehensive immigration reform this year. The last time the Senate worked on immigration reform your predecessor, Secretary Chertoff, was working with members 3 to 4 times a week for months drafting legislation.

Can you please explain what your involvement has been thus far?

Has DHS drafted language to be included in potential legislation?

Response: I remain fully committed to working with Congress on a comprehensive approach to immigration reform that (1) bolsters border security and interior enforcement; (2) mandates a nationwide employment verification program to stem the demand for illegal immigration and hold employers accountable for hiring unauthorized workers; (3) provides a mechanism to help clear family and employment visa backlogs and updates visa policies for both high-skilled and low-skilled workers; and (4) includes a firm but fair way to deal with those who are already here, including registering, paying a fine, passing a criminal background check, fully paying all taxes and learning English.

I have held dozens of meetings with Members of Congress, including many with your colleagues, to discuss the Administration's commitment to comprehensive immigration reform. Additionally, along with other senior DHS officials, I have engaged in extensive external stakeholder outreach, hosting over 40 roundtable discussions and listening sessions across the United States as well as meeting with over 1,000 stakeholders.

At the request of Senators Schumer and Graham, the Department has provided technical assistance relating to smart enforcement measures, improved visa policies, a workable pathway to legalization, and a mandatory employment verification program.

Additionally, I am encouraged by the recent release by Senators Reid, Durbin, Schumer, Menendez, and Feinstein of the new conceptual framework entitled the *Real Enforcement with Practical Alternatives for Immigration Reform* (REPAIR) proposal. I look forward to providing whatever additional technical assistance that is needed to convert this proposal to legislation.

63274.070

Question#:	51
Topic:	SBInet
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Every day the southern border acts as a staging ground for the free transfer of narcotics, weapons, and illegal aliens. According to a recent Washington Post article, more than 22,000 people have been slaughtered as a result of the drug war since December 2006. However, instead of investing in the resources most effective at stopping this stampede of illegality, our government has decided it is more important to throw money at an unsuccessful project. SBInet, more commonly known as the "virtual fence," has been an abject failure and a huge waste of taxpayer dollars (over $1.1 billion). CBP Commissioner Alan Bersin recently testified that SBInet is "not practicable" in the near term and you recently suspended new work on the program pending the outcome of a project review you ordered in January. Senator Lieberman said "by any measurement, SBInet has been a failure, a classic example of a program that was grossly oversold and badly under delivered." Delays, cost overruns, and accidents, have been the hallmark of the program, while actual fencing and interior enforcement have been neglected. There have been many GAO reports and inquiries from Congress from this birth of SBInet, yet the Department kept pouring money into the project until recently.

Did DHS take any of this into account and what steps were taken to address these concerns?

Response: I have long been concerned by SBI*net*'s continued and repeated cost overruns and missed deadlines, and believe they raised fundamental questions about SBI*net*'s viability and availability to meet the need for technology along the border. The high cost of SBI*net* obligates this administration to conduct a full and comprehensive analysis of alternative options to ensure we are maximizing the impact and effectiveness of the substantial taxpayer resources we are devoting to border security technology.

In 2009, I directed the then-Acting Commissioner of Customs and Border Protection to provide his assessment of the path forward for SBI*net*. Based upon the results of his review, I ordered a Department-wide reassessment of the program to determine if there are alternatives that may more efficiently, effectively and economically meet our nation's border security needs.

In the short term, the Department is redeploying $50 million of Recovery Act funding originally allocated for the SBI*net* Block 1 to other proven, commercially available security technology along the Southwest border, including mobile surveillance, thermal imaging devices, ultra-light detection, backscatter units, mobile radios, cameras and laptops for pursuit vehicles, and remote video surveillance system enhancements. Additionally, I have frozen all SBI*net* funding beyond SBI*net* Block 1's initial deployment to the Tucson and Ajo regions until the full assessment is complete.

63274.071

Question#:	52
Topic:	plans
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Instead of pouring more money into a failed program like SBInet, we should be focusing the nation's resources on the effective enforcement technologies we have today. More Border Patrol agents, new barriers, and tougher interior enforcement are the keys to achieving a secure country, not SBInet. Contiguous fencing is an effective and proven enforcement mechanism and deterrent that will reduce cross-border traffic and drug violence by closing the drug corridors exploited by the Mexican drug cartels and smugglers.

How does DHS plan to move forward and how can you explain this waste of taxpayer dollars as government spending is an issue of national concern?

Response: I have long been concerned by SBI*net*'s continued and repeated cost overruns and missed deadlines, and believe they raised fundamental questions about SBI*net*'s viability and availability to meet the need for technology along the border. The high cost of SBI*net* obligates this administration to conduct a full and comprehensive analysis of alternative options to ensure we are maximizing the impact and effectiveness of the substantial taxpayer resources we are devoting to border security technology.

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Additionally, I have frozen all SBI*net* funding beyond SBI*net* Block 1's initial deployment to the Tucson and Ajo regions until the full assessment is complete.

DHS is continuing to pursue many avenues beyond SBI*net* to bolster security on the Southern Border. Over the past 17 months, DHS has dedicated historic levels of personnel, technology, and resources to the Southwest border. Today, the Border Patrol is better staffed than at any time in its 86-year history, having nearly doubled the number

63274.072

Question#:	52
Topic:	plans
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

of agents from approximately 10,000 in 2004 to more than 20,000 today. Immigration and Customs Enforcement (ICE) has deployed a record number of agents to the Southwest border with more than a quarter of its personnel in this region. Since March 2009, DHS has doubled the number of personnel assigned to Border Enforcement Security Task Forces; tripled the number of ICE intelligence analysts working along the U.S.-Mexico border; and begun screening 100 percent of southbound rail shipments for illegal weapons, drugs, and cash – for the first time ever. DHS has also deployed additional canine teams trained to detect drugs and weapons and non-intrusive inspection technology that helps to identify anomalies in vehicles at the Southwest Border.

63274.073

Question#:	53
Topic:	fencing
Hearing:	Oversight of the DHS
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: Recent reports about escalating border violence and increased narcotics production in Mexico underscore the significant challenges we face on our Southern land border. In light of these reports, I urge you to expeditiously complete existing fence construction projects required by law and consider building additional infrastructure wherever needed.

According to a recent analysis by the Department of State, Mexico remains one of the largest producers of illegal narcotics entering the country, particularly in the categories of marijuana, opium and heroin. The increased production of these substances and the growing influence of drug cartels in Mexico – a force that is estimated to consist of more than 100,000 individuals -- continue to present a serious threat to the safety of communities and law enforcement on both sides of the border.

The severity of this situation requires that we take immediate action to secure our Southern land border, starting with the completion of fence projects mandated under the Secure Fence Act (P.L. 109-367). In areas where construction has been unnecessarily delayed, the REAL ID Act (P.L. 109-13) provides the Secretary of DHS with the authority to waive any legal requirements that impede the construction of border security barriers. Given this authority, in addition to the requirement for at least 700 miles of border infrastructure, I request that you take immediate action to finish the miles of uncompleted fence construction projects. I urge you to also consider expanding this infrastructure to other areas of the border that continue to experience the effects of increased border violence.

Please give the committee a full status update of the fence: how many miles of pedestrian fence? How many miles of vehicle fence? How many more miles are to be completed?

Response: DHS has completed 646.5 miles of fencing out of nearly 652 miles mandated by Congress, including 298.5 miles of vehicle barriers and 348 miles of pedestrian fence, with the remaining construction scheduled to be complete by the end of 2010.

Question: Have there been any follow-up studies on the effectiveness of vehicle fence?

Response: CBP is currently working with the Homeland Security Studies and Analysis Institute (HSI) on a more quantitative assessment on the effectiveness of the fence.

63274.074

Question#:	54
Topic:	PIA
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: DHS recently announced a new screening policy for passengers coming to the United States on international flights to replace the 14-country policy. Please provide, in classified form to the degree necessary, the privacy impact assessment(s) that were conducted regarding the new program.

Response: On August 3, 2007, DHS published a privacy impact assessment (PIA) for the Customs and Border Protection Automated Targeting System (ATS). DHS updated this PIA on December 2, 2008 to expand the scope of data used in the system. These existing PIAs sufficiently cover the program for screening international passengers that replaced the 14-country policy, so that no update is required. The ATS PIAs are available through the Privacy Office website (www.dhs.gov/privacy) or directly at http://www.dhs.gov/files/publications/editorial_0511.shtm#3.

The Privacy Office, along with the Office for Civil Rights and Civil Liberties will conduct quarterly reviews of the new program to ensure that the program meet the standards set forth in existing Privacy Impact Assessments.

63274.075

Question#:	55
Topic:	rules
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: DHS recently issued an unclassified privacy impact assessment (PIA) on a cyber security exercise that the United States Computer Emergency Readiness Team (US-CERT) is conducting to test the next generation of intrusion prevention technology, and deserves credit for making this information public. As described in that document, the goal of the exercise is for an ISP "to select and redirect Internet traffic from a single participating government agency through the Exercise technology, for US-CERT to apply intrusion detection and prevention measures to that traffic and for US-CERT to generate automated alerts about selected cyber threats." It explains that "[a]ny traffic that is not associated with a cyber threat will not be retained by US-CERT." It also states that "[i]nformation collected by US-CERT during the Exercise may be disseminated for non-cybersecurity purposes – including law enforcement, intelligence, or administrative purposes – when the recipient is a federal, state, or local law enforcement entity and the information appears to indicate involvement in activities which may violate laws which the recipient is responsible to enforce or an agency of the federal government authorized to receive such information in the performance of a lawful government function." Does DHS have any more specific rules or guidelines that it will use for determining when information can be shared for non-cybersecurity purposes, to protect against abuses?

Response: The United States Computer Emergency Readiness Team (US-CERT) is responsible for supporting Federal executive branch civilian agencies in the protection and defense of their networks and systems. US-CERT does not have its own law enforcement or intelligence authorities but does leverage partnerships with the United States Secret Service (USSS), Federal Bureau of Investigation (FBI), National Security Agency (NSA), and the DHS Office of Intelligence & Analysis (DHS I&A) in support of computer network security.

US-CERT has developed policies and procedures to govern the sharing of information for cybersecurity and non-cybersecurity purposes. US-CERT works with its partners to adopt specific measures in response to identified threat actors and develop vulnerability-mitigation strategies that will reduce the likelihood of successful cyber exploitations.

DHS has taken strong steps to incorporate civil liberties and privacy protections as it adds, upgrades, and builds upon existing defensive cybersecurity capabilities. Each iteration of EINSTEIN has incorporated civil liberties and privacy protections into its operating procedures and architectural engineering development and deployment schedule. In addition, cybersecurity personnel receive specific training civil liberties and privacy protection as they relate to computer network security operations and activities.

63274.076

Question#:	55
Topic:	rules
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

DHS also established an Oversight and Compliance Officer within the Office of the Assistant Secretary for Cybersecurity and Communications, whose primary functions are to monitor the EINSTEIN program train cybersecurity personnel on privacy issues, and provide information oversight and compliance. As you note in your question, the DHS Chief Privacy Officer reviews all components of the EINSTEIN system to determine which elements require privacy impact assessments, and makes the privacy analysis avalaible, consistent with security classification.

The DHS Office for Civil Rights and Civil Liberties (CRCL) is reviewing the EINSTEIN system and will advise US-CERT on conducting enhanced cybersecurity efforts in a manner that is consistent with civil rights and civil liberties. US-CERT operates the EINSTEIN system and follows required operational privacy protection procedures that augment the protection built into the architecture of cybersecurity programs and tools. Additionally, DHS is reviewing and updating these procedures to reflect the evolving capabilities of US-CERT.

Relevant PIAs can be found on our website at www.dhs.gov/privacy.

Question#:	56
Topic:	capacity
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: I continue to have concerns that we are not prepared for a catastrophe in the United States involving a chemical, biological, radiological, or nuclear incident. The Defense Department has been working to establish forces to help with decontamination in the event of a catastrophic incident, but we cannot determine whether DOD has established adequate capacity because DHS has not yet settled on what would be required to respond to a catastrophic contamination. What is the status of the Department's efforts to determine what the requirements are to deal with such an incident?

Response: In response to a chemical, biological, radiological, or nuclear threat, the Department of Homeland Security (DHS) Office of Policy Requirements Planning Team (RPT) generated the Nuclear Response and Short-Term Recovery Capability, Objective, Resources, and Evaluative Measures (CORE) Document in 2008, with support from the Federal Interagency. The CORE Document provides a definition of the capabilities required, including decontamination, to ensure an effective and efficient response to an Improvised Nuclear Device incident.

63274.078

Question#:	57
Topic:	287 - 3
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: DHS's Inspector General recently issued a scathing report of ICE's 287(g) program. The IG report listed 33 recommendations for ICE to implement, but over the last four months, the Department has only managed to resolve 3 of the recommendations to the satisfaction of the IG. 18 of the IG's recommendations remain completely unresolved, and there is one recommendation that the Department has completely refused to implement regarding data collection and tracking of information to prevent racial profiling. The 287(g) program has long been criticized by civil rights groups who are concerned that ICE is doing a poor job of training and supervising the law enforcement agencies that are operating under these agreements, and yet the Department appears to be resistant to making the vast majority of the IG's recommendations. What is the status of the Department's efforts to fully implement all of the IG's recommendations? Will you agree to halt expansion of the 287(g) program until DHS fixes these serious programmatic flaws to the satisfaction of the IG?

Response: The Office of the Inspector General report does not reflect the current 287(g) program. Since the audit was conducted, ICE has fundamentally reformed the 287(g) program, strengthening public safety and ensuring consistency in immigration enforcement across the country by prioritizing the arrest and detention of criminal aliens-fulfilling many of the report's recommendations.

ICE is currently developing additional tracking enhancements relating to the initial encounter by a 287(g) officer. This tracking mechanism will assist ICE with the collection of initial encounter and prior criminal history information to comply with ICE criminal prioritization levels. Currently, ICE collects 287(g) statistical data based on aliens encountered, aliens taken into ICE custody, aliens removed/granted Voluntary Return, and criminal priority levels.

63274.079

Question#:	58
Topic:	letter
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: It recently came to my attention that Mexican drug cartels are targeting and infiltrating federal law enforcement agencies on the southwest border. I sent you a letter about this issue two weeks ago with Senators Pryor, Wyden, and Burris, and asked you to look into the Department's investigations of Customs and Border Protection (CBP) corruption cases, as well as the large backlog that exists in background investigations of current CBP officials. When can I expect a response to this letter? What steps is the Department taking to prevent corruption of CBP, Border Patrol, and ICE officials?

Response: I responded to your letter via direct correspondence on August 2, 2010.

63274.080

Question#:	59
Topic:	regulations
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: I sent you several questions following your hearing in December about the number of people that have been held in ICE detention facilities for extended periods of time after the issuance of a final removal order. You stated in your response that the Department is in the process of developing regulations to improve the post order custody review process in light of the Supreme Court cases, Zadvydas v. Davis and Clark v. Martinez. Can you tell me when the Department anticipates these regulations will be finalized? In the meantime, is the Department working to reduce the number of individuals that are held for months and sometimes years beyond the issuance of a final removal order?

Response: The Zavydas regulations are projected to be completed in the fall of 2010. The Zavydas final rule, "Continued Detention of Aliens Subject to Final Orders of Removal" revises custody review procedures to conform to Supreme Court precedent on detention.

In the interim, ICE has established guidance relating to case management of detained aliens who have received a final order of removal. ICE maintains oversight of this responsibility through weekly and monthly compliance checks. This includes oversight of the Post Order Custody Review (POCR) process and deferred action requests, conducting field office site visits and training, monitoring monthly custody reports, and compiling the Weekly Inventory List of Detained Cases (WILDC). The WILDC identifies aliens in the removal process that may be subject to removal but have not yet been scheduled for removal. The cases identified by the WILDC are reviewed by the field offices and travel documents are requested. Once those documents are received, the aliens are scheduled for removal. ICE also conducts monthly audits of every field office to ensure compliance with the POCR process and procedures as defined by the Supreme Court decisions in *Zadvydas v. Davis* and *Clark v. Martinez*. Cases within the three different phases of the process—0-90 days, 90-180 days, and greater than 180 days—are randomly selected by ICE and reviewed for compliance with current regulations, policies, and procedures.

63274.081

Question#:	60
Topic:	delay
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: The Defense Department is planning to rely on ground transportation to move its homeland response forces in the event of a catastrophic incident. This could delay the arrival of critical forces by several days. Was the Department of Homeland Security consulted on the Defense Department's plans for the homeland response forces? What impact would a delay of several days have on the effectiveness of these forces?

Response: DHS was a participating member of the Department of Defense's (DoD) 2010 Quadrennial Defense Review (QDR) Civil Support Issue Team. The Department of Defense, at the recommendation of the Civil Support Issue Team, established the following plans for the transportation of its homeland response forces in the event of a catastrophic incident. The restructured chemical, biological, radiological, nuclear, and high yield explosives (CBRNE) Consequence Management Reaction Force (CCMRF), will move by air due to its size. Homeland Response Forces (HRFs), which will be dispersed to the 10 FEMA regions around the country, will self-deploy by ground or air within six to twelve hours of an event. Should an event require the deployment of multiple HRFs, those HRFs that are farther away from the incident will travel by air.

These plans will improve DoD's ability to respond to a domestic CBRNE event. By dispersing forces to each of the 10 FEMA regions around the country, DCRF will be prepared to deploy forces more quickly to the incident site, with a response window of 24-48 hours compared to 48-96 hours under the former CCMRF procedures.

63274.082

Question#:	61
Topic:	ETD
Hearing:	Oversight of the DHS
Primary:	The Honorable Russell D. Feingold
Committee:	JUDICIARY (SENATE)

Question: On March 15, 2010, you announced that the Department purchased an additional 1200 explosives trace detection units (ETDs) to be used at airport security check points at a cost of $35.5 million. This is a large investment in technology that that the Department previously determined had performance issues. As I understand it, the Department ceased deployment of ETDs in 2006 due to concerns about effectiveness, and TSA had not tested or evaluated ETDs in an operational setting before deployment. What has now changed to justify the purchase of these 1200 new machines? Does the Department have new testing data on ETDs that shows they are effective?

Response: Explosive Trace Detection units (ETDs) were never removed from the field due to concerns about effectiveness. However, a similar technology, Explosives Trace Portals (ETP) experienced operational suitability issues in airports and were removed from use. Explosives Trace Detectors (ETD) are a different, mature and proven technology.

ETDs, which are tabletop devices used to screen passengers, carry-on, and checked bags for the presence of explosives residue, have been fully tested in the operational environment and found to be operationally effective. TSA is purchasing Next Generation ETD units to replace over 7,000 units (checkpoint and checked baggage) that are past or near the end of their lifecycle. The Next Generation ETD units provide an upgraded threat library to compliment the units in the field.

63274.083

SUBMISSIONS FOR THE RECORD

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Oversight Of The Department Of Homeland Security
April 27, 2010

I welcome Secretary Napolitano back to the Judiciary Committee.

Last year ended with an attempted terrorist bombing aboard a commercial aircraft bound for Detroit, Michigan. This attempt exposed deficiencies in interagency coordination and information sharing. As a result of that incident, Congress and the administration took steps to understand existing weaknesses in our systems and how best to correct them. This Committee heard testimony from officials from the Department of Homeland Security, the Federal Bureau of Investigation, and the State Department, each of whom recognized the need to do better. I am encouraged by the Department's recent strengthening of airline passenger screening policies and the decision to move away from a country-specific screening policy in favor of a smarter, more flexible approach. I hope that today we will hear more about the Department's efforts to improve airline security, as well as its coordination with the State Department on visa security.

Along our Southern border, we are experiencing historic levels of drug-related violence that must be brought under control. The Department is centrally involved in the fight against cross-border drug, cash, weapon, and human smuggling. The brutal murders of two U.S. State Department employees in Mexico and a U.S. citizen in Arizona bring added urgency to the situation. And Americans are rightly concerned about the impact the situation in Mexico is having here at home. I look forward to hearing from you about the Department's strategies and progress in confronting this situation.

The Department has also been involved in aiding the people of Haiti following the devastating earthquake in January. I commend your decision to provide Haitian nationals in the United States with Temporary Protected Status, or TPS. The reconstruction effort in that country will take years, but TPS status will enable Haitians in the United States to work and send money home to their families. I also want to recognize the U.S. Citizenship and Immigration Services for granting humanitarian parole to Haitian orphans and helping to bring them to the United States.

In this regard, I worked with Senator Lugar to advance the Return of Talent Act, which would allow a Lawful Permanent Resident to return for a limited amount of time to his or her native country in order to assist in reconstruction efforts following a natural disaster or armed conflict. This legislation will encourage Haitian nationals living in the United States to give back to Haiti without suffering adverse consequences toward gaining U.S. citizenship.

The Committee also acted recently to assist refugees who wish to serve our Government or military overseas. Again, I worked with Senator Lugar to advance the Refugee Opportunity Act, which would enable refugees to serve our Nation overseas without losing time earned toward a green card. I hope we can work together to enact these bipartisan bills.

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Marking the 30th anniversary of the 1980 Refugee Act, which was authored by Senator Kennedy, I recently introduced the Refugee Protection Act. Our legislation seeks to improve the law where it falls short of meeting our obligations under the Refugee Convention. The bill will restore the United States as a beacon of hope for those who flee persecution. I hope to work closely with you on this important legislation.

I remain concerned about several areas within the Department's jurisdiction. The backlog of refugee cases caught up in the overly broad material support and terrorism bars needs to be resolved. The so-called 287(g) program, which engages state and local law enforcement in the execution of immigration laws, continues to be a source of concern. President Obama said recently that we should not "undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe," and I agree. I believe we must have proper oversight to prevent racial profiling and to ensure local law enforcement has the cooperation of local communities. I recognize that the Department has recently made positive changes to the administration of this program, and I look forward to hearing your views on how these changes have improved its operation.

Border issues affect us all, but they take on particular importance to those of us from border states. I hear from many Vermonters about measures taken by your Department to alter border policies in towns like Derby Line. I regularly hear from Vermonters about freeway checkpoints, and about Federal use of private land. I am certain that you have found that Vermont farmers are just as sensitive to property rights as Texas ranchers. Federal cooperation and outreach at the local level can go a long way toward achieving a mutual understanding. The citizens of border states shoulder a great burden.

Finally, I want to thank you for your steadfast commitment to comprehensive immigration reform. I share that commitment and hope we can see a bill enacted this year.

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The Honorable Janet Napolitano

Secretary
United States Department of Homeland Security

Testimony on
"Oversight of the Department of Homeland Security"

Before the
United States Senate
Committee on the Judiciary

April 27, 2010

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Chairman Leahy, Senator Sessions, and members of the Committee: Thank you for inviting me to testify today; I appreciate the great interest this Committee has in homeland security and law enforcement issues. Today I will focus on Southwest border security and the results of our enforcement efforts over the past fifteen months. Before I begin my testimony, I would like to thank Congress for their continued support on this critical homeland security and law enforcement priority. With your assistance, the resources dedicated to this mission through the Department's Southwest Border Initiative, and the unprecedented partnerships we have forged with the Mexican government and federal, state and local law enforcement, I believe we have the right strategy, the right partners and the necessary commitment to continue making unparalleled progress in creating a safe and secure Southwest border, while facilitating legitimate trade and travel.

Strategy for the Southwest Border

When I first assumed office at DHS, drawing on my law enforcement and security experience on the Southwest border – first as the U.S. Attorney for Arizona, then as Arizona Attorney General and later as Governor of Arizona – I ordered a review of the Department's Southwest border enforcement efforts. That review helped generate our new strategy for the Southwest border and the Southwest Border Initiative. This strategy emphasizes three essential aspects of border security: personnel, technology, and infrastructure. Simply put, we must strategically deploy our border security personnel in the roles and locations where they are best able to counteract illegal smuggling of goods, people, drugs, weapons, and currency – while simultaneously supplementing their efforts with the right mix of technology and infrastructure so that they can do their jobs effectively.

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Because our border security efforts are inextricably tied to the efforts undertaken by the Government of Mexico, our strategy also focuses on forging unprecedented partnerships with Mexican law enforcement as we work together to combat the shared threats to our mutual security. Mexico, under the strong leadership of President Calderón and his administration, has been conducting a valiant campaign to disrupt and dismantle the drug cartels that pose the threat of cross-border violence. To do our part to address this shared threat, DHS has deployed its resources to maximize the pressure we put on smuggling organizations with the goal of disrupting and dismantling their operations.

The Administration's increases in border security personnel, technology, and infrastructure; our interagency Southwest Border Counternarcotics Strategy; and our Department's continued efforts to combat drug cartels based in Mexico seek to stem the transnational threats that these organizations pose along the border. The cartels that Mexican authorities are confronting are the same criminal organizations that put drugs on our streets and use violence as a tool of their trade. The tragic murders of three people connected to our consulate in Ciudad Juarez and of longtime rancher Rob Krentz near Douglas, Arizona only serve to remind us of how drug violence can directly affect Americans and our nation's interests. Later, I will detail how the Department has surged resources in the areas of the border where these murders took place.

Our strategy also emphasizes collaboration with our state, local and tribal law enforcement partners – increasing information and intelligence sharing, providing additional federal support and coordination wherever possible, and ensuring we are maximizing all available resources in our collective efforts to bolster security at our borders.

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Taking Action and Seeing Results

In March 2009, DHS and other supporting federal agencies began executing our Southwest Border Initiative – deploying unprecedented resources to combat transnational crime and drug-related violence along the Southwest border to help ensure the security of both the United States and Mexico. Over the past year, this historic, collaborative effort has resulted in major progress in combating the cartels that threaten the safety of both our nations. It is important to note that the Southwest Border Initiative not only increases the resources dedicated to combating cartel violence at the border, but it also deploys these resources *strategically* to ensure we are utilizing proven, effective methods and maximizing every taxpayer dollar spent on border security.

Manpower

DHS has put more boots on the ground at the border than ever before. Today, the Border Patrol is better staffed than at any time in its 85-year history, having nearly doubled the number of agents from around 10,000 in 2004 to more than 20,000 in 2009.

In addition, over the past year, DHS doubled the number of agents working on Border Enforcement Security Task Forces (BESTs) in the Southwest border region. BESTs are law enforcement task forces that combine federal, state, local, and international personnel to tackle border crime – including U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), U.S. Coast Guard (USCG), Drug Enforcement Administration (DEA), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), U.S. Attorney's Offices, Federal Bureau of Investigation (FBI), and state, local, tribal and foreign law enforcement agencies. The BEST model has proven extremely effective not only at interdicting illegal activity, but also at

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building criminal cases that lead to high-value prosecutions. Doubling DHS personnel assigned to Southwest border BESTs has aided an increase in contraband seizures over the past year and has helped make the enforcement actions DHS undertakes more strategically focused and effective.

DHS also quadrupled the number of ICE agents in the Border Liaison Program. This program allows ICE to more effectively identify and combat cross-border criminal organizations by providing a streamlined information- and intelligence-sharing mechanism between U.S. and Mexican law enforcement.

The DHS Office of Intelligence and Analysis has tripled the number of intelligence analysts who are focused on the Southwest border – part of our efforts to build a more intelligence-based approach to combating drug smuggling and cartel violence, and in turn focus our resources more effectively.

DHS has also increased ICE Attaché personnel in Mexico by 50 percent, strengthening coordination with Mexico by locating more attaché personnel in Mexico City, Tijuana, Hermosillo, Ciudad Juarez, and Monterrey.

Finally, during the past year, CBP has deployed additional Border Patrol agents to augment outbound inspections at ports of entry, and has deployed three additional Mobile Response Teams of 25 CBP officers each to assist operations at ports of entry where needed. CBP also introduced 12 "dual-detection" canine teams – which are trained to detect both weapons and currency – as part of a strategy to detect outbound cash smuggling and weapons smuggling.

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Technology

In addition to manpower, DHS has increased the amount of proven, effective technology deployed at the border. CBP currently has 30 Z-Backscatter (ZBV) mobile X-Ray units – used in a mobile inspection capacity to identify anomalies in passenger vehicles – on the Southwest border, an increase from a total of nine in March 2009. These machines greatly assist CBP officers in inspections.

On top of this, the FY 2010 President's Budget included support for the expansion of CBP's License Plate Reader program, which assists in combating southbound firearms and currency smuggling. CBP has license plate readers at 52 southbound lanes at 16 Southwest border crossing sites, a number which will grow in the coming year.

Last year, Congress provided $20 million for CBP to acquire Non-Intrusive Inspection Equipment (NIIE), which has enabled CBP to significantly increase southbound seizures. CBP now has 117 large-scale NIIE systems deployed to ports of entry on the southwest border – systems that have greatly improved the ability of our agents to find contraband quickly and to process a higher volume of travelers and shipments.

Thanks to investments that have been made in other technology at the border, CBP currently has a total of 21 low energy mobile imaging systems deployed to our ports of entry along the Southwest border. Two more systems will be deployed to our Southwest border ports of entry by the end of June 2010. Since receiving its first Predator B Unmanned Aircraft System (UAS) in 2005, CBP has increased the number of Predators Bs based along the Southwest border to three.

New technologies have allowed us to begin engaging in new tactical border security strategies. In particular, for the first time ever, the Border Patrol is screening 100 percent of

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southbound rail shipments for cartel-related contraband. This practice augments the longstanding practice of screening 100 percent of northbound rail shipments.

Infrastructure

This year, DHS finished constructing nearly all of the border fencing provided for by Congress. As of last month, all 298.5 miles of vehicle fencing had been completed, and only 5.7 miles of pedestrian fencing remained to be constructed. DHS operations will also benefit from $720 million in Recovery Act funding provided to CBP and the General Services Administration for critical security upgrades to bring the alarmingly outdated infrastructure at our land ports of entry up to date with post-9/11 operational standards. This comes on top of $260 million the Recovery Act provided for border security technology and improved tactical communications equipment. These improvements will provide for more efficient operations at our ports of entry and enhance the ability of DHS personnel to do their jobs.

Increased Support to State, Local, and Tribal Law Enforcement

DHS has formed true two-way partnerships with state and local law enforcement in the border region in our efforts to combat cartel-related crime. Last year, we awarded $90 million in Operation Stonegarden funding to support state, local and tribal law enforcement along the border, expanding eligible expenses to include additional law enforcement personnel, operational overtime expenses, and travel or lodging for deployment to the Southwest border. More than 84 percent of Operation Stonegarden funding went to the Southwest border (as opposed to the Northern border) in 2009, up from 59 percent the year before.

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In addition to providing this kind of funding, DHS has greatly expanded its operational partnerships with state, local, and tribal law enforcement. We are strengthening law enforcement at that level through information sharing, which is aided by the expansion of the DHS intelligence enterprise.

CBP and ICE have established a presence at several institutions that serve to coordinate intelligence and operations between DHS components, other federal agencies, and state, local, and tribal government. CBP and ICE have established positions at the El Paso Intelligence Center (EPIC), which is a major component of building an intelligence-based approach to combating cartels on the southwest border. There is also ICE and CBP presence at the Organized Drug Enforcement Task Force (OCDETF) Fusion Center, which allows participating agencies to facilitate the collection, analysis, and dissemination of actionable drug-related intelligence.

CBP also recently established its first Intelligence Operations Coordination Center (IOCC) in Tucson, Arizona. Unlike the previous centers I mentioned, the IOCC is distinctly focused on the enhancement of field-level operations. One of its roles is to serve as the one-stop shop for coordinating field-level operations and sharing information between CBP and other federal, state, local and tribal partners. The Tucson IOCC will bolster our efforts to strengthen law enforcement in the border region through effective information sharing.

On top of these efforts, the Border Violence Intelligence Cell (BVIC) supports the national effort to combat weapons smuggling and stem the surge in violence along the United States-Mexico Border. This unit facilitates timely information sharing with state, tribal, local, foreign, and other federal law enforcement agencies, and serves as the focal point for analyzing all-source intelligence. The BVIC has provided critical support to BESTs in the past year to focus their efforts against weapons smuggling in an intelligence-based way.

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Our goal is to ensure that we are acting in concert with state, local, and tribal authorities, as well as with our federal partners, in our efforts to secure the southern border region. We have also begun unprecedented outreach to local law enforcement in border communities, which includes regular conference calls to brief local police and sheriffs' offices on DHS activities along the border. I know from my own experience in state-level law enforcement that coordinating with the local officials in the region who have fought border-related crime for years will be critical to our success.

Unprecedented Cooperation with Mexico

An important part of our strategy is to strengthen law enforcement on both sides of the border through intensive coordination with Mexican authorities. The current level of cooperation between the United States and Mexico on combating cartels in the border region is unprecedented in the history of the two countries.

Conducting a coordinated campaign against cartel violence is absolutely essential to the success of our efforts. I have visited Mexico five times since the launch of the Southwest Border Initiative, and have met with President Felipe Calderón on multiple occasions – most recently last month as part of the U.S. delegation for the Merida U.S.-Mexico High Level Consultative group. President Calderón, his administration, and state and local authorities in Mexico have been dedicated, brave, and essential partners in our efforts. We are working with the Mexican government to build new collaborative efforts that will strengthen border enforcement by improving cross-border communications, coordinating enforcement against drug smuggling, improving the security of shared ports and of the aviation system, increasing law-enforcement-related information sharing, expanding law enforcement training, and strengthening trade.

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Our expanded collaboration has produced several highlights. In February, I signed a Declaration of Principles of Cooperation with Mexican Secretary of Public Safety (SSP) Genaro García Luna, which allows for the expansion of coordinated intelligence sharing and joint strategic, intelligence-driven plans — already being implemented in the border region of Sonora and Arizona — to other border areas at high risk for transnational criminal activity.

Last month, I signed a memorandum of cooperation with both Secretary García Luna and Mexican Interior Secretary Fernando Francisco Gomez-Mont that will enable DHS to electronically share some criminal history information with Mexican law enforcement about Mexican nationals who are being repatriated from the United States and who have been convicted of felonies in the United States – enabling the seamless transmission of vital information regarding possible cartel operatives.

These instruments come in addition to other partnerships and collaborations that have been formalized since the launch of the Southwest Border Initiative. In September 2009, the United States and Mexico signed a bilateral agreement initiating a new cross-border communications network for public safety and law enforcement organizations. This will improve security along the U.S.-Mexico border by allowing participating federal, state, local and tribal public safety organizations to coordinate incident response. In August and December, I signed declarations of principles with the Mexican Secretary of Finance – the head of the ministry that controls Mexico's ports – to create a joint U.S.-Mexico framework to improve security along the Southwest border and facilitate the flow of legitimate travel and trade at our ports.

I cannot overemphasize the importance of the unprecedented cooperation that has been taking place every day by law enforcement officials from both countries on the ground. These

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collaborations strengthen this day-to-day operational cooperation, which is a cornerstone of our border security initiative now and for the future.

Using Border Security Resources Wisely

While improving the technological capabilities of law enforcement at the border will always remain a critical part of border security, DHS must remain vigilant in ensuring all border security resources are going to the best use. The continued and repeated delays suffered by SBI*net* – the system of sensors and cameras along the Southwest border launched in 2006 – have raised fundamental questions about the program's viability. The high cost of SBI*net* obligates this administration to conduct a full and comprehensive analysis of possible alternatives. In the meantime, we will use funds allocated to border security technology on proven, cost-effective border security measures that can be put in place now, rather than years down the road.

To that end, I announced last month that DHS is redeploying $50 million of Recovery Act funding originally allocated for Block 1 of SBI*net* to other tested, commercially available security technology along the Southwest Border, including mobile surveillance, thermal imaging devices, ultra-light detection, backscatter units, mobile radios, cameras and laptops for pursuit vehicles, and remote video surveillance system enhancements. I also announced that DHS is freezing all SBI*net* spending beyond SBI*net* Block 1's initial deployment to the Tucson and Ajo regions of the border until the Department-wide assessment of SBI*net* that I ordered in January is completed. This assessment is designed to identify if there are alternatives that may more efficiently, effectively and economically meet our border security needs.

Results: By the Numbers

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In the first year of the Southwest Border Initiative, seizures of contraband rose in every major category – cash, drugs, and weapons – compared to the year before, while illegal crossings continued to decline.

Since March 2009, CBP and ICE have seized $85.7 million in illicit cash along the Southwest border, an increase of 14 percent over the same period during the previous year. This includes more than $29.7 million in illicit cash seized heading southbound into Mexico – a 39 percent increase over the same period during the previous year.

During the same period, CPB and ICE together seized 1,425 illegal firearms, which represent a 29 percent rise over the same period in the previous year. At the same time, CBP and ICE seized 1.65 million kilograms of drugs along the Southwest border, an overall increase of 15 percent.

Additionally, the San Diego DHS Maritime Unified Command – comprised of U.S. Coast Guard, CBP, ICE and other law enforcement partners – saw a more than six-fold increase in maritime drug interdictions in the Pacific waters extending from the Southwest border. The Command seized more than 26,000 kilograms of drugs in fiscal year 2009, compared to 4,029 kilograms seized in fiscal year 2008.

And while these numbers represent significant increases, they are only one part of our efforts across the country to crack down on transnational criminal networks, carry out drug and cash seizures, and undertake enforcement actions.

Resource Surge in Southeastern Arizona

Despite these successes, it is clear that our work to secure the border region is far from over. We were all reminded by this by the outrageous murder last month of Robert Krentz, a

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rancher in southeastern Arizona, who was killed on his land, most likely by a person who was in the U.S. illegally and was connected to cross-border smuggling.

DHS responded immediately to the murder. Immediately following the shooting, CBP deployed additional helicopters and fixed-wing aircraft to the area of the murder. Border Patrol trackers located the footprint sign of the suspect and tracked him back into Mexico. The Border Patrol dispatched additional mobile surveillance systems to the area and supplemented regular manned aerial surveillance with two new helicopter flights per day. CBP also transferred additional Border Patrol agents into the area around Douglas, Arizona, for a total of more than 100 agents. These include teams on horseback and on all-terrain vehicles (ATVs) that can operate across the area's desert terrain.

In addition to CBP, ICE has dedicated several agents to this case full time, and has assigned a full time senior intelligence research specialist to the Cochise County Sheriff's Office. ICE has 25 additional agents in its Douglas office to assist, and ICE continues to offer a $25,000 reward for information that leads to an arrest. Both ICE and CBP are working closely with the Government of Mexico and the Cochise County Sheriff's Office.

As we continue our strategic approach to securing the Southwest border, this murder reminds us of the nature of the threat that we face along the border, and how we cannot rest on past successes.

Conclusion

The steps we have taken over the last 15 months to bolster security on the Southwest border have put substantial pressure on cartels, making it much more difficult for them to thrive. However, we must also remember that the cartels themselves are adaptive; their tactics evolve in

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response to our enforcement efforts. This reality means that, for our own part, we must continue to evolve, and that our work is not done. The United States is committed to doing its part to combat this transnational threat, in addition to working with the Mexican government and our state, local and tribal partners to combat cartel activity and all illicit and dangerous activity along our borders. Continually enhancing border security is not only critical for border communities, but is a necessary part of any comprehensive attempt to fix our nation's broken immigration system to make it work for the 21st Century – a high priority for this administration.

I appreciate the support of Congress and of this Committee in helping the Department to secure our border, and I look forward to continuing to work with you on these critical issues. Chairman Leahy, Senator Sessions, and members of the Committee: Thank you for the opportunity to testify today, and I am now happy to answer your questions on this or any other matter.

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SILVESTRE REYES
16TH DISTRICT, TEXAS

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
CHAIRMAN

COMMITTEE ON ARMED SERVICES
SUBCOMMITTEE ON AIR AND LAND FORCES
SUBCOMMITTEE ON READINESS

Congress of the United States
House of Representatives
Washington, DC 20515

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March 28, 2010

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

As we renew our commitment to assist Mexico in its efforts to combat drug cartels, I would ask that you consider the impact the related violence is having on border communities. Attached you will find a letter from University Medical Center, a Level I Trauma hospital along the U.S.-Mexico border which is also the only public hospital that serves my congressional district in El Paso, Texas.

Over the past two years, University Medical Center has treated over 150 victims of the violence across the border in Ciudad Juarez. To date, caring for these individuals has cost the hospital nearly $3 million, the bulk of which has gone unreimbursed. Only 32% of the associated physicians' fees have been paid. Additionally, physicians and nurses working at the hospital have expressed strong concern for their safety as more and more of their counterparts in Ciudad Juarez have begun refusing to treat these victims due to threats and outright violence directed against them.

Our frontline health care providers cannot continue to absorb these growing emergency care costs, which are placing them at risk of limiting access for our neediest and most vulnerable community members. Over the years, Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (P.L. 108-173), has been a useful reimbursement resource to University Medical Center. Though this funding source has helped cover in small part the cost of providing emergency care for foreign nationals who are medically paroled into the United State and Mexican nationals with laser visas, a significant percentage of the emergency care costs incurred since 2008 has come from caring for U.S. citizens injured in Ciudad Juarez.

University Medical Center is one of many hospitals across the United States that cannot afford to reallocate any of their Medicaid Disproportionate Share Hospital (DSH) funds to make up for uncompensated care. Instead, University Medical Center has relied on local property tax dollars to offset these costs. This past year marked the first time that more than $50 million in property taxes will be used to help the hospital make up for the cost of providing uncompensated care. Since 1998, approximately $400 million in property taxes have been used to offset the cost of uncompensated care for our public hospital.

I urge you to consider their request to dedicate federal resources to compensate border region hospitals, like University Medical Center, so they can better cope with the demands put on them by this surge in violence. Please contact me should you have questions, and I thank you for your consideration of this issue.

Sincerely,

Silvestre Reyes
Member of Congress

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Congress of the United States
Washington, DC 20515

April 16, 2010

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232 Capitol
Washington, DC 20515

The Honorable Steny Hoyer
Majority Leader
U.S. House of Representatives
H-107 Capitol
Washington, DC 20515

Dear Madam Speaker and Leader Hoyer:

As the Appropriations Committee drafts the fiscal year 2010 emergency supplemental spending measure, we write to urge the inclusion of funding to support efforts by the United States and Mexico to combat narcotics and organized crime. We have the privilege of representing communities along the U.S.-Mexico Border, and the violence facing Mexico is having a particular impact on our communities and our sister cities as the Mexican government clamps down on criminal organizations.

U.S.-Mexico Security Cooperation

The Merida Initiative, negotiated by the previous Administration and Mexican President Felipe Calderon, was an important step in cooperative efforts to combat illegal drug trafficking and make needed improvements to the Mexican justice system. The Mexican people have shown great resolve in this battle against deeply entrenched criminal elements, and the Mexican government - at all levels - has invested substantial resources to quell lawlessness and restore order. Despite these efforts, which are starting to show some success, a recent upswing in violence demonstrates that immediate attention, in the form of additional resources and a renewed focus on the problems our two nations face, is needed.

This need for further cooperation prompted President Obama to dispatch a delegation of top U.S. officials including Secretary of State Clinton, Secretary of Defense Gates, and Secretary of Homeland Security Napolitano to Mexico City on March 23, 2010 to discuss our shared interest in addressing crime and disrupting the flow of narcotics, weapons, and money. Additionally, President Calderon will meet with President Obama during an official state visit on May 19, 2010. During this visit, the two leaders will focus on further requirements for cooperation and funding to support Mexico's ongoing efforts.

In advance of those discussions, we urge you to consider including funds to meet urgent requirements in the emergency spending bill currently under consideration. As you know, following the March 23 visit, U.S. and Mexican leaders unveiled a framework for an expanded partnership. This four pillar approach includes continuing efforts to fight organized crime and improve justice institutions and adds creating a 21st Century border and building communities better able to resist the influence of cartels. The governments of both nations are working to translate those broad policy goals into concrete programs, and we have encouraged the Obama

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Administration to share their funding priorities with Congress as soon as possible so that these important programs can be included in upcoming spending measures.

In addition to providing resources to support emerging requirements for Mexico, we also urge the Appropriations Committee to consider providing funds for the following areas to support efforts along the U.S.-Mexico border to combat drug trafficking and to aid our border communities, which are directly impacted by the ongoing violence.

Supporting Border Infrastructure and Personnel to Enhance Security and Commerce

Inadequate staffing and outdated infrastructure at our nation's land ports of entry threaten our national security and hinder the flow of trade which is critical to our national economy. The Government Services Administration (GSA) has identified over $5 billion in needed upgrades to our border infrastructure. While building and expanding ports of entry would greatly improve border operations, it is also critical that these inspection lanes are appropriately staffed. To that end, there is a requirement to increase Customs and Border Protection (CBP) personnel by 30 percent nationwide which would augment the force by 5,000 officers, and an additional 350 support personnel and 1,200 agriculture inspection specialists are also needed. These additional positions would not only improve traffic flow at our land ports of entry but would allow for the expansion of CBP efforts to check southbound vehicles as well, a critical component of cooperative security efforts to disrupt the flow of weapons and money to Mexico in support of the drug trade. These proposals are included in the PORTS Act (HR 1655), which Congressman Silvestre Reyes crafted based on his experience as a U.S. Border Patrol Chief and working with border security experts. As you are considering opportunities to enhance our border security and trade, we hope that you and your staff will examine the PORTS Act as a blueprint for modernizing our nation's ports of entry, and we urge the Committee to include funding for much needed border infrastructure modernization and critical personnel in the supplemental spending bill. At a minimum, we request **$70 million** to hire 500 CBP Officers to alleviate the immediate stress at our understaffed ports.

As you know, CBP depends on user fees to cover 30% of officers' salaries. In FY10, CBP has seen a decline in user-fee revenues and by the end of the year estimates a $100 million user-fee revenue shortfall. This drop affects CBP's ability to pay immigration, cargo, and agriculture inspectors, all of whom are critical to our already under-staffed and under-resourced ports of entry. To make up for the shortfall, CBP is drawing from other sources within its budget, draining the budget of vital resources already marked for other purposes. Given the threats facing the nation and our stated goals of protecting our borders and facilitating commerce and trade, we urge you to provide **$100 million** to CBP through the FY10 Supplemental Appropriations Act for approximately 300 CBP officer salaries. This will offset the decrease in user fees and will ensure that CBP officers are compensated for their work without having to siphon from other areas of the agency budget.

Additionally, Operation Stonegarden has provided resources to enhance law enforcement preparedness and operational readiness along the borders of the U.S. This program is designed to promote cooperation and coordination among federal, state, local, and tribal law enforcement agencies in a joint mission to secure U.S. borders. Because this source of funding is often the only federal resource available to local law enforcement agencies in rural areas, an increase is needed to

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keep up with the law enforcement demands of the border, especially at a time when we are trying to prevent the spread of violence from Mexico. We request an additional **$50 million** in FY10 for Operation Stonegarden for the U.S. Mexico border.

Increasing Funding to hire Border Patrol Agents and Combat Corruption

Ensuring robust levels of field agents is critical to achieving operational control of the border. We urge you to provide **$32.2 million** for 207 additional Border Patrol Agents to help the agency meet its commitments to secure our borders without straining their existing human resources or having to deplete assets from other areas.

Moreover, at a Senate hearing on March 11, 2010, James Tomsheck, assistant commissioner with U.S. Customs and Border Protection's Office of Internal Affairs, testified that members of Drug Trafficking Organizations have attempted to join the Customs and Border Patrol to corrupt the organization. CBP has the goal of screening all applicants through polygraph testing. However, inadequate staffing hinders the ability of CBP to screen all new employees and conduct re-investigations of existing employees using these tests. Further funding to increase the number of polygraph examiners would enable the agency to reach its goal of requiring all applicants to take a polygraph test before they are hired and allow CBP to conduct re-investigations of current employees. We urge you to provide **$39.6 million** for background investigations, including periodic re-investigations and polygraph capabilities.

Developing the Law Enforcement Communications Capability in Remote Areas Along the Border

Enhancing the communication capabilities of both law enforcement and civilians in remote areas along the border is also a critical need. CBP has an antiquated communications system in certain border sectors, and remote areas along the border do not have communications infrastructure in place. Improvements are needed to foster and enable better communication networks, and we ask that you provide **$200 million** to support communications capabilities in remote areas along the border.

Reimbursing Border Communities for Uncompensated Health Care Costs and Developing Trauma Capability in Ciudad Juarez

As Members representing border districts, we have seen first hand the impact the violence has on communities on both sides of the border. One consequence of the violence in Mexico has been the steady flow of individuals shot or otherwise wounded by drug cartels across the border to U.S. hospitals in search of medical care. Health care providers have been forced to absorb emergency care costs, which continue to rise, leaving local taxpayers to cover the cost. We urge the Committee on Appropriations to provide **$10 million** to compensate border region health care providers as they respond to the effects of ongoing cartel violence in Mexico and to develop trauma capability in Ciudad Juarez.

We greatly appreciate your past support for the Merida Initiative and other cooperative efforts to address drug trafficking and organized crime. We are also grateful for your past support to border

communities so that they can cope with the many challenges they face as they deal with the increasing problems wrought by criminal organizations. Your consideration of these requests is important to further both the Merida Initiative and to address the urgent needs detailed in this letter. The will of governments and communities in the U.S. and Mexico to combat criminal elements is strong and United States Congress must continue to honor that resolve with needed funding to aid those serving on the front lines at this critical juncture.

Sincerely,

Ruben Hinojosa

Bob Filner

Harry Teague

Susan A. Davis

G. Gifford

cc: Congressman David Obey
Congresswoman Nita Lowey
Congressman Jose Serrano
Congressman David Price

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UNIVERSITY MEDICAL CENTER
OF EL PASO

March 16, 2010

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Obama,

We are writing in coordination with U.S. Representative Silvestre Reyes (D-TX) on behalf of the Board of Managers of University Medical Center of El Paso, Texas Tech University's Health Sciences Center in El Paso, the physicians and other healthcare professionals who work in our hospital, and the residents of El Paso County, Texas who generously support our Mission via local property taxes. We find ourselves in a unique and challenging situation that we believe merits federal assistance. We write to seek your administration's help.

El Paso, Texas is located directly on the U.S./Mexico border across the Rio Grande river from Juarez, Mexico. In January of 2008, rival drug cartels fighting for control of that country's lucrative drug trade declared war on one another. While the violence was widespread, Juarez quickly became the murder capitol of Mexico. By year's end, more than 1,600 people had been killed on its streets and hundreds of others had been wounded.

Despite the arrival of the Mexican military, which was sent north to quell the violence and reestablish the rule of law in our sister city, the gruesome attacks continued in 2009 when the number of drug-related murders recorded in Juarez exceeded 2,600. Kidnappings, extortion and bank robberies became commonplace. People on both sides of the border were forced to deal with the reality that Juarez had become the most dangerous city in the northern hemisphere and that its problems didn't stop at the Rio Grande.

That became evident on January 23, 2008 when the first of what is now nearly 150 survivors of the violence was transported across the border for medical care at the Level I Trauma Center at University Medical Center of El Paso, our city's not-for-profit, public hospital. Nowhere else along the entire U.S./Mexico border has this occurred.

4815 Alameda Avenue | El Paso, Texas 79905 | T: 915.544.1200 | www.umcelpaso.org

To date, it has cost the hospital nearly $3 million to care for these patients, $2,234,677 of which has not been reimbursed. Their physicians are also rendering service with little hope of reimbursement. Only 32% of the associated physicians' fees have been paid, which means the Texas Tech University Health Sciences Center Paul L. Foster School of Medicine, UMC's partner in delivering academic medicine, has suffered a loss of $382,000.

Mr. President, neither of our organizations can sustain such losses, yet we are required by federal law to provide life-saving treatment to patients in need of emergency care, regardless of their nationality. We write to ask that you help us identify federal resources that can offset our costs and lessen the burden on El Paso County taxpayers.

Sincerely,

James N. Valenti
President & CEO
University Medical Center of El Paso

J. Manuel de la Rosa, MD
Founding Dean
TTUHSC Paul L. Foster SOM

cc: Board of Managers, El Paso County Hospital District
El Paso County Commissioners Court
U.S. Senator Kay Bailey Hutchison
U.S. Senator John Cornyn
U.S. Representative Silvestre Reyes
U.S. Representative Ciro Rodriguez
El Paso Mayor John Cook
Richard Dayoub, President & CEO, Greater El Paso Chamber of Commerce

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April 16, 2010

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Obama,

In follow-up to our letter to you dated March 16, 2010, we write to again express our concerns about the on-going violence in Mexico and the impact it is having on our organizations, University Medical Center of El Paso and Texas Tech University Health Sciences Center Paul L. Foster School of Medicine

As you are well aware, the situation in Juarez, Mexico, directly across the border from El Paso, continues to worsen. Warring drug cartels have already killed nearly 700 people so far this year. Hundreds of others have been wounded. Since our earlier letter to you, we have learned that out of fear, there is now a reluctance or outright refusal by many physicians and healthcare facilities in Juarez to care for the war's survivors. As a result, the wounded continue to cross the border to seek treatment at our Level I Trauma Center. We believe this turn of events represent a new chapter in the deadly violence, one that could jeopardize the safety of our campus.

We are also concerned about how this troubling trend could limit our ability to respond to traumatic situations in our own community. For the most part, the victims that we have cared for have been severely wounded and in need of highly specialized care. Providing it requires extensive resources, human and otherwise. For example, many of these patients have required multiple surgeries and admission to our Intensive Care Unit, some for as long as 30 days. That level of round-the-clock care means the physicians, nurses and ancillary staff that cared for them were not available to other patients, nor were the facilities the patients occupied. In one particularly egregious case, a patient actually had a nearly year-long length of stay in our hospital. Generally speaking, the UMC resources being most taxed are our Level I Trauma Center and our surgical and critical care services, all of which are vital community assets.

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The issue of cost also continues to be problematic. To date, University Medical Center of El Paso has spent nearly $3 million to care for survivors of the violence. Very little of that expense has been paid, meaning local taxpayers are footing the bill for the consequences of a conflict that is occurring on foreign soil. The physicians of Texas Tech University's Health Sciences Center Paul L. Foster School of Medicine are receiving very little reimbursement for the care they have provided. The school has suffered a $382,000 loss as a result.

We join U.S. Representative Silvestre Reyes (D-El Paso) in again asking your administration for help. Please consider directing federal resources to El Paso's academic medical center to offset our costs and preserve our ability to provide critical services to the El Paso community.

Sincerely,

James N. Valenti
President & CEO
University Medical Center of El Paso

J. Manuel de la Rosa, MD
Founding Dean
TTUHSC Paul L. Foster SOM

cc: Board of Managers, El Paso County Hospital District
El Paso County Commissioners Court
U.S. Senator Kay Bailey Hutchison
U.S. Senator John Cornyn
U.S. Representative Silvestre Reyes
U.S. Representative Ciro Rodriguez
El Paso Mayor John Cook
Richard Dayoub, President & CEO, Greater El Paso Chamber of Commerce