

Question#:	1
Topic:	NPG
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: The FY 2013 budget request for the Department of Homeland Security proposes significant changes to FEMA's homeland security grant programs. Under the new plan, 16 state and local homeland security grant programs would be consolidated into one state block grant program called the National Preparedness Grant (NPG) program. Please explain how FEMA plans to ensure that the capability areas that were developed under each of the previous 16 individual grant programs will be sustained under the current program. Specifically, please describe how communities will continue preparedness activities that were previously funded under the State Homeland Security Program, the Metropolitan Medical Response System grants, the Port Security Grant Program, the Regional Catastrophic Preparedness Grant Program, the Citizen Corps Program, the Urban Areas Security Initiative and the Transit Security Grant Program.

Response: As we look ahead, in order to address evolving threats and make the most of limited resources, FEMA proposed a new vision for homeland security grants in the FY 2013 President's budget that focuses on building and sustaining core capabilities associated with the five mission areas within the National Preparedness Goal (NPG) that are readily deployable and cross-jurisdictional, helping to elevate nationwide preparedness. This proposal reflects the lessons FEMA has learned in grants management and execution over the past ten years. Using a competitive, risk-based model, this proposal envisions a comprehensive process to assess gaps, identify and prioritize deployable capabilities, limit periods of performance to put funding to work quickly, and require grantees to regularly report progress in the acquisition and development of these capabilities.

Consolidating grant programs will support the recommendations of the Redundancy Elimination and Enhanced Performance for Preparedness Grants Act (REEPPG) and streamline the grant application process. This increased efficiency will enable grantees to focus on how federal funds can add value to the jurisdiction's prioritization of threats, risks and consequences while contributing to national preparedness capabilities. In addition, all states and territories receiving homeland security grant funding are required to complete a comprehensive Threat Hazard Identification and Risk Assessment (THIRA) which provides an approach for identifying and assessing risks and associated impacts across their state/territory. The coordination element described in the new grants vision will assist grantees in their efforts to address the gaps identified in their THIRA, while building important statewide and national capabilities.

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The Department believes that the increased flexibility offered by NPGP, along with the emphasis on building and sustaining core capabilities, will provide states, tribes, and communities with ability to maintain the capability gains achieved to date and provide opportunities to expand those capabilities that need additional funding to grow.

Question#:	2
Topic:	THIRA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: According to the new guidance for FEMA’s homeland security grant programs, each state and territory will receive a base level of funding allocated in accordance with a population driven formula, and additional funds will be distributed competitively based on a risk assessment by each state called a Threat Hazard Identification Risk Assessment (THIRA). The THIRA also provides the basis for determining a jurisdiction’s current level of capability for the risks it faces and identifying goals for improvement and capability gaps. According to a GAO report entitled 'Managing Preparedness Grants and Assessing National Capabilities: Continuing Challenges Impede FEMA's Progress', which was released on March 20, 2012, “nearly a year after the THIRA concept was first introduced as part of the fiscal year 2011 grant guidance, grantees have yet to receive guidance on how to conduct the THIRA process.” The report also outlines concerns about local participation stating, “[q]uestions also remain as to how local stakeholders would be involved in the THIRA process at the state level.” I would like to know what steps FEMA is taking to ensure that local communities are part of the assessment process and how FEMA intends to ensure that each state has the resources it needs to develop its THIRA consistent with Department guidance?

Response: The comments in the GAO report cited have been since addressed and resolved by FEMA. In April, FEMA released Comprehensive Preparedness Guide 201: Threat and Hazard Identification and Risk Assessment (THIRA) Guide, which outlines a five-step process for identifying and assessing risks and associated impacts on communities. That guidance expands on existing state, local, tribal, and territorial Hazard Identification and Risk Assessments (HIRA) and other risk methodologies by broadening the factors considered, and incorporating the whole community throughout the entire process. Step one of the THIRA process—identifying threats and hazards of concern—specifically identifies local fire, police, health departments, and local hazard mitigation offices as sources of data and information.

In conjunction with CPG 201, FEMA also released a document entitled “Use of Threat and Hazard Identification and Risk Assessment for Preparedness Grants.” That document outlines validation criteria for the state THIRA, specifically alignment with CPG 201. To that end, as part of the submission, states will identify the local departments and agencies, as well as other whole community partners, who participated in the development of the THIRA. FEMA Grant Programs Directorate Information Bulletin #385a was issued on June 1, 2012 which specified that all 56 states and territories and all 31 urban areas eligible for funding under the FY 2012 Urban Area Security Initiative are required to complete a THIRA by December 31, 2012. The

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Information Bulletin also encouraged tribal nations to also complete a THIRA by the same date.

In order to ensure that the states have the resources they need to complete a THIRA in accordance with Comprehensive Preparedness Guide (CPG) 201, FEMA has taken several steps to provide assistance. First, along with the guidance itself, FEMA released a CPG 201 Toolkit that provides resources and information, data sources, and templates to support the conduct of a THIRA. Second, FEMA streamlined the THIRA and State Preparedness Report (SPR) processes. Recognizing that the steps of the THIRA feed directly into the steps of the SPR, the SPR tool has been aligned to begin with the capability targets identified in the THIRA to reduce reporting burden and duplication of efforts. Third, FEMA conducted 10 technical assistance deliveries on the THIRA process for all states and territories between May 8, 2012 and June 15, 2012. Lastly, FEMA is developing an Independent Study course on THIRA that will allow states, locals and tribes to access training on conducting a THIRA online and at their own pace.

Question#:	3
Topic:	aliens 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: After your appearance before the Judiciary Committee last October, I submitted a question to you regarding those aliens whose cases have been administratively closed under the Department’s prosecutorial discretion policy. Part of my question asked whether any analysis was conducted to determine the effect that providing work authorizations to these individuals would have on the job market and American workers. You stated in response: “Individuals whose cases are administratively closed, the preferred mechanism for exercising prosecutorial discretion in the case-by-case review initiative, are not eligible to receive employment authorization on the basis of the administrative closure alone.” Your answer did not address the question asked. Has your Department or any other agency of the federal government done any analysis to determine how the work authorizations issued to illegal aliens whose cases are administratively closed will affect the job market and American workers? If so, please provide the details of that analysis.

Response: Aliens for whom DHS has decided to exercise prosecutorial discretion do not automatically qualify for an Employment Authorization Document (EAD). Pursuant to longstanding regulations such as 8, C.F.R. § 274a.12 which lists the classes of aliens eligible to apply for work authorization and accept employment, individuals whose cases are administratively closed are not eligible for employment authorization solely on the basis of the administrative closure. DHS has not conducted a labor impact study to determine the effect of issuing EADs to aliens whose cases are administratively closed in the exercise of prosecutorial discretion.

Question#:	4
Topic:	aliens 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: In implementing the prosecutorial discretion policy, how many incoming immigration cases have been reviewed, and how many have been administratively closed?

Response: As of September 24, 2012, U.S. Immigration and Customs Enforcement (ICE) had reviewed 376,094 pending detained and non-detained immigration cases. Of the cases that were reviewed, 9,716 non-detained cases have been administratively closed, 16 detained cases have been dismissed, and 26,980 have been identified as appropriate for closure.

Question: How many of the illegal aliens who have had their case administratively closed have ever been convicted of a crime?

Response: Prior to considering whether to file a motion for administrative closure, ICE conducts both national security and criminal background checks. The ICE Office of the Principal Legal Advisor's (OPLA) Offices of Chief Counsel carefully evaluate the results of criminal background checks to ensure that aliens who fall under our civil enforcement priorities are aggressively pursued for immigration enforcement. In some circumstances, aliens with a criminal conviction may still be considered eligible for prosecutorial discretion on a case-by-case basis, after weighing all of the factors present in the alien's case.

To determine how many of the 9,732 aliens who have had their cases administratively closed have been convicted of a crime, ICE needs more time to review its records as it requires a case-by-case review.

Question: Has your Department established a way to keep track of the aliens whose cases are administratively closed?

Response: Once an immigration judge administratively closes a case, OPLA annotates the case file and transfers the case file to ICE's Office of Enforcement and Removal Operations (ERO). This administrative closure information is then manually entered into ICE's Enforce Alien Removal Module (EARM) records management system.

Administratively closed cases will remain in the Executive Office for Immigration Review (EOIR) system, although in an inactive status. EOIR requires aliens to maintain an updated address and contact information for cases that are administratively closed.

Question#:	5
Topic:	ICE agents
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: How much in total has the Department spent on implementing the prosecutorial discretion policy, including the cost of training ICE agents and attorneys, establishing a working group with members from the Departments of Homeland Security and Justice, conducting a nationwide review of all incoming cases, and the pilot programs that have been launched to implement this policy? If you do not know the exact dollar amount, please provide an estimate.

Response: The implementation of the prosecutorial discretion initiative has not required additional funding. In all of the 26 ICE Offices of Chief Counsel (OCCs), the review of pending immigration cases for the exercise of prosecutorial discretion is an ongoing part of the case preparation process for anticipated immigration court hearings. In the two OCCs where the two-month pilot programs were completed earlier this year, the functions and duties in the offices were shifted, but no additional expense was incurred by ICE. Similarly, there were no extra expenditures incurred in training on prosecutorial discretion as ongoing training on any Department initiative is part of standard attorney and managerial development.

Question#:	6
Topic:	biometric 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: You have testified that establishing a biometric exit program has proven more challenging for DHS, “largely because infrastructure present at ports of entry is completely absent on departure.” What infrastructure changes are necessary to complete the system? What is the estimated cost to implement a completed biometric exit system?

Response: Unlike in many other countries, U.S. airports were not built for the control of the departure of aliens—there are no statutory or regulatory requirements to provide to the government space at no cost from which to collect information on aliens departing the United States (as is the case for arrival). Accordingly, U.S. airports currently are not built to separate international passengers from domestic passengers, and often have international flights co-mingled with domestic flights in the same terminal. Because any biometric air exit system must be able to tell with a high level of certainty that an alien actually departed the United States, it must collect biometric information at the closest point of departure, which is the airline gate. DHS has found it challenging to develop cost-effective ways to collect this information while also not interfering with the airlines’ existing business processes. DHS estimates that a biometric air exit system would cost \$3 billion over ten years, and that economic analysis is publicly available as part of the DHS Notice of Proposed Rulemaking (“Collection of Alien Biometric Data upon Exit from the United States at Air and Sea Ports of Departure” 73 Fed. Reg. 22065 [April 24, 2008], RIN 1601-AA34) on biometric exit. Similarly, building biometric exit at land border ports of entry would also pose a significant cost increase due to the number of land ports and the infrastructure challenges at land ports of entry that are not applicable to air and sea ports. Official cost estimates for a land biometric exit program using current technology are not available, but have been estimated at tens of billions of dollars.

The Secretary has charged the DHS Science and Technology Directorate with researching and exploring emerging technologies to facilitate a more cost effective biometric exit system. This work is ongoing as the Department continues to implement the enhanced biographic exit program. This program was explained in a DHS report to the House and Senate Appropriations Committees in May 2012, and will enhance the ability of DHS to identify and sanction those who overstay their lawful period of admission in the United States. Aspects to the plan include development of an entry/exit system on the northern land border through cooperation with the government of Canada, to be complete in mind-2013, and enhancements to the existing Arrival-Departure Information System (ADIS) that currently matches entry and exit records using biographic information.

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As DHS develops its enhanced biographic exit program, it will also continue to research ways to collect biometric exit data upon exit from the United States in a cost-effective ways, and is already exploring several different options. DHS will continue to respond to Congressional inquiries regarding this issue. The Secretary of Homeland Security has authority to designate airports as able to accept foreign nationals seeking admission to the United States. *See* 8 U.S.C. § 1224; 8 C.F.R. § 234.4. Pursuant to these authorities, the Commissioner of U.S. Customs and Border Protection (CBP) may designate air ports of entry for the inspection of aliens if necessary or advisable and adequate facilities have been or will be provided at no cost to the federal government.

Question#:	7
Topic:	biometric 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: You estimated that implementation of a biometric exit system would cost around \$3 billion over 10 years. Nearly 170 million foreign visitors enter the country each year. If these numbers remain unchanged, in ten years, around 1.7 billion foreign visitors will enter the country. Each of these visitors must register their fingerprints upon entry and would do so upon exiting if an exit program is established. Do you agree that if each foreign visitor was charged a fee, those funds could be used to pay for a biometric exit system? In your estimation, how much would that fee have to be in order to cover the cost of a biometric exit system?

Response: The Secretary has charged the DHS Science and Technology Directorate with researching and exploring emerging technologies to facilitate a more cost effective biometric exit system. This work is ongoing as the Department continues implementing its phased approach of an enhanced biometric exit program.

Question#:	8
Topic:	Visa Waiver
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: In the interest of national security, DHS is required to evaluate all Visa Waiver countries at least every two years and report their findings to Congress. Currently, the Department has completed evaluations and reports on only half of the required countries. Nine reports are more than a year overdue and two are four years overdue. Why has DHS failed to submit these reports to Congress and when do you plan to submit them?

Response: Since May 2011, the Department of Homeland Security has submitted 19 reports on Visa Waiver Program (VWP) countries' reviews to Congress pursuant to the statutory reporting requirements of Section 217 of the *Immigration and Nationality Act* (INA). These submissions include a number of reports that the Government Accountability Office (GAO) reported were overdue in their May 2011 VWP audit.

To address the issue the GAO identified in their May 2011 audit, the DHS Visa Waiver Program Office (VWPO) developed a reporting timeline to address delays in completing VWP reviews and associated reports. The VWPO also conducted outreach to DHS and interagency partners that are involved in the review process to ensure their awareness of the reporting timeline and to discuss related workflow issues. Lastly, the VWPO has identified a mechanism by which to inform Congress of potential delays in a particular VWP Report to Congress. The reporting timeline and notification process will be fully implemented in 2013.

Question#:	9
Topic:	detainers
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Sessions
Committee:	JUDICIARY (SENATE)

Question: You testified that that the first step that DHS takes to address problems caused by the actions of local governments is to attempt to work with them directly. You testified that you were taking this approach in dealing with Cook County's refusal to honor ICE detainers. What steps were taken by DHS to work with the counties in Alabama that requested and expected Secure Communities to be implemented by the end of last year to address the Department's concerns as you have expressed them to this Committee?

Response: Secure Communities is currently active in 37 of 67 Alabama jurisdictions with an estimated 76 percent of Alabama's non-citizens residing within jurisdictions where Secure Communities has been activated. ICE plans to activate Secure Communities in the remaining Alabama jurisdictions no later than Fiscal Year 2013. ICE is evaluating the recent decision by the U.S. Court of Appeals for the Eleventh Circuit. ICE will continue to operate Secure Communities in each of the Alabama jurisdictions where interoperability has already been activated and will enforce federal immigration law in Alabama in line with our priorities.

Furthermore, ICE's Criminal Alien Program conducts outreach with law enforcement officials in Alabama and continues to enforce federal immigration laws against criminal aliens and others who fall within ICE's civil immigration enforcement priorities.

Question#:	10
Topic:	training
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Question: Last year, the Federal Bureau of Investigation (FBI) disclosed that some of the training materials it was using for its agents contained bigoted and racist descriptions of Arabs and Muslims. For example, presentations described Muhammad as a “cult leader” and said that Muslims are likely to be terrorist sympathizers. Meanwhile, in April 2012, the Defense Department (DOD) suspended a training course for military officers when it realized that the course relied on inflammatory and inaccurate materials, including a presentation which said that the United States is at war with Islam. The FBI and DOD materials not only are offensive, they compromise federal law enforcement’s relationships with minority communities. What is the Department of Homeland Security doing to ensure that its training materials are free of racist, bigoted, offensive, and inaccurate statements about Arabs, Muslims, and other minority populations? Is the Department of Homeland Security conducting a review of its training materials? Has the Department of Homeland Security adopted standards for its training materials?

Response: DHS is committed to ensuring that DHS supported training is accurate and helps foster strong partnerships at the local level, which are critical to preventing crime. To this end, DHS has taken a number of steps to: 1) develop accurate and professional training for Federal, State, Local, Tribal, and Correctional Facility law enforcement at the recruit and management level; and 2) communicate best practices and standards for CVE training to State and Local entities.

The Department is working closely on multiple interagency efforts and with state, local, tribal, and territorial and correctional facility law enforcement to develop CVE training curricula and ensure that these trainings are compliant with USG and DHS CVE approaches. Over the past year, DHS has worked closely with State and Local partners, including the State and Provincial Police Academy Directors (SPPADS), the International Association of Chiefs of Police (IACP), the Major City Chiefs Association (MCCA), the Major County Sheriff’s Association (MCSA), as well as NCTC, DOJ, and the FBI to develop training for Federal, State and Local, and Correctional Facility law enforcement officers, as well as a training block for State and Municipal Police Academies. The key goal of the training is to help law enforcement recognize the indicators of violent extremist activity and distinguish between those behaviors that are potentially related to crime and those that are constitutionally protected.

The Department has hosted four workshops to receive feedback from frontline officers on the State and Local CVE training materials. Workshops were also conducted to review the CVE training curriculum for Correctional Facility law enforcement. Additionally, the

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Department has held multiple review sessions with the State and Provincial Policy Academy Directors and IACP to receive input on the training materials focused for State Academy Training facilities.

DHS is now in the final stages of reviewing and implementing this CVE training for State, Local, Tribal, Federal, and Correctional Facility law enforcement officers, as well as a training block for State Police Academies. Through the DHS CVE Working Group, the Department is working to ensure that all of these training materials and content are being reviewed by the appropriate CVE representatives, including the Office of Intelligence and Analysis (I&A), the Office for Civil Rights and Civil Liberties (CRCL), the Science and Technology Directorate (S&T), the Office of Policy (PLCY), the Office of the General Counsel (OGC), the Office of Privacy (PRIV), and other members of the CVE Working Group for accuracy and compliance with civil rights and civil liberties. DHS also co-chairs a bi-monthly Sub-IPC Working Group on CVE Law Enforcement Training with NCTC. This group works to ensure that trainings are consistent and in accordance with the standards outlined in the USG and DHS CVE approaches. DHS aims to make all of the CVE training materials available to law enforcement online through a Homeland Security Information Network (HSIN) CVE portal by September, 2012.

We are also working with the IACP, SPPADS, FLETC, and other DHS Components to plan a “Train-the-Trainer” session for state and local training authorities across the country on the CVE training resources that have been developed. DHS has actively worked to develop a set of best practices and standards for CVE training, and to communicate CVE training priorities and best practices to State and Locals and grant recipients in three key ways. First, in response to reports of inappropriate and inaccurate training, CRCL released its *CVE Training Guidance and Best Practices* which specifically outlines that training should focus on behavior and not appearance or membership in particular ethnic or religious communities, and should support the protection of civil rights and civil liberties. This guidance was incorporated into a FEMA Information Bulletin that was distributed to all State Administrative Agency (SAA) Heads, State Homeland Security Directors, State Emergency Management Agency Advisors (HSAs), and Tribal Nation Points of Contact nationwide in October 2011. This FEMA Bulletin emphasized the importance of ensuring that all grant funds, training, presentations, and speakers on CVE are consistent with the Department’s CVE guidelines. Moreover, CRCL regularly trains state and local law enforcement on issues related to: 1) understanding violent extremism; 2) cultural differences; and 3) community engagement.

Second, DHS is also working closely with interagency partners, and law enforcement associations, such as the MCCA and senior law enforcement officials nationwide to

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improve CVE training standards. In January, 2012, the MCCA adopted a motion to ensure that all CVE training is operationally appropriate and accurate. DHS has expanded FY2012 grant guidance to include funding for CVE training, partnerships with local communities, and local CVE engagement in support of the White House's *Strategic Implementation Plan to Empower Local Partners to Prevent Violent Extremism in the United States*.

Third, the Department is working to develop an accreditation process for CVE trainers and develop a train-the-trainer program by FY 2013. FLETC, FEMA, and the CVE Working Group are working to achieve the following three goals: 1) Ensure Federal training provided by Components meets DHS and the USG's CVE standards; 2) Ensure that grantees and State and Locals using DHS funds for training are utilizing trainers that are certified with specific qualifications and meet DHS and the USG's CVE standards; and 3) Disseminate our DHS training through specific accredited partners.

Question#:	11
Topic:	grant program 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Question: I am concerned about security at rural and suburban courthouses. In December 2011, a man shot a prosecuting attorney and a witness in the Cook County courthouse in my home state of Minnesota. There has been about one courthouse shooting per month over the past two years. In response to an inquiry that I sent to you in February, the Assistant Administrator of the Grants Program Directorate sent me a letter stating as follows: “The costs associated with some security enhancements at courthouse facilities are allowable under the [State Homeland Security Grant Program]. Allowable physical security enhancement equipment commonly used for courthouse security includes, but is not limited to, camera-based security systems, access and intrusion control technology, remote sensing devices, and impact resistant systems for doors and gates. In addition, [State Homeland Security Grant Program] funds may be used to conduct risk assessments and provide training for key personnel to perform homeland security related activities. However, the cost associated with hiring personnel to secure courthouse facilities is not authorized.” Does the letter that I received from your Assistant Administrator for the Grants Program Directorate reflect your views about allowable uses under the State Homeland Security Grant Program?

Response: Yes, the information that you received in February is correct.

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

Question: On March 30, 2012, the Department of Homeland Security's (DHS) Assistant Inspector General for Investigations, Tom Frost and the Deputy Assistant Inspector General for Investigations, John Ryan were placed on administrative leave pending the conclusion of an investigation by the Federal Bureau of Investigation and the Department of Justice's Public Integrity Section into allegations of obstruction of justice.

Since its inception, CBP has more than doubled. While this growth is a positive step, with it has come increased corruption. For example, in just one year, from FY 2010 to FY 2011, open or assigned cases of CBP corruption almost doubled from 103 to 205. This is particularly true of agents on the southwest border. For example, of the current 570 open or assigned cases DHS OIG is investigating related to CBP agents, 338 or 59% relate to corruption. Problems in prosecuting CBP corruption also appear to be at the root of this dispute between the FBI and DHS OIG, including a large backlog of CBP corruption cases. What steps are you taking to make sure that DHS OIG has the resources sufficient to investigate these cases?

Response: The Department is committed to ensuring that every allegation of misconduct is swiftly and fully investigated. On August 12, 2011, the OIG and CBP entered into a Memorandum of Understanding (MOU) whereby CBP will augment the OIG's investigations of corruption allegations against CBP personnel by detailing CBP Internal Affairs (IA) agents to the OIG's Office of Investigations. Under the terms of the MOU, CBP IA has 13 agents currently detailed to the OIG. In addition, the OIG is in the process of transferring approximately 47 percent of its existing caseload to ICE OPR agents who will investigate the cases with the support of CBP IA. DHS expects these efforts will lead to a significant acceleration in the investigation of corruption allegations.

Question: Why didn't DHS do a better job of screening CBP agents on the front end of the hiring process?

Response: CBP applicants undergo a stringent pre-employment process including a background check and interview through multiple layers of review. This robust candidate screening has been enhanced through the Anti-Border Corruption Act of 2010 (Pub. L. No. 111-376), which requires CBP to conduct polygraph examinations on all law enforcement officer applicants.

Question: Please provide all reports prepared for DHS by the Homeland Security Institute related to combating CBP corruption or the backlog of CBP corruption cases.

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Response: A copy of the Final Report produced by the Homeland Security Institute entitled “U.S. Customs and Border Protection (CBP) Workforce Integrity Study” is attached.

Question#:	13
Topic:	Ninth Circuit Order 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On February 6, 2012, the Ninth Circuit put five deportation cases on hold and asked the government how the illegal aliens in the cases fit into the administration's immigration enforcement priorities. In relevant part, the order in each case states: In light of ICE Director John Morton's June 17, 2011 memo regarding prosecutorial discretion, and the November 17, 2011 follow-up memo providing guidance to ICE Attorneys, the government shall advise the court by March 19, 2012, whether the government intends to exercise prosecutorial discretion in this case and, if so, the effect, if any, of the exercise of such discretion on any action to be taken by this court with regard to Petitioner's pending petition for rehearing.

On March 1, 2012, House Judiciary Committee Chairman Lamar Smith and I sent a letter to you and Attorney General Eric Holder expressing concern about the Ninth Circuit's order. Moreover, the letter asked the DOJ and DHS to respond to questions about how they were handling cases before immigration judges, the Board of Immigration Appeals (BIA) and the federal courts of appeals. In particular, our letter contained four specific questions or requests for information:

For each of the cases that is subject to the order(s) issued by the Ninth Circuit on February 6, 2012, identify the following: (a) the date the case was commenced before an immigration judge or trial judge, (b) the date the appeal to the Ninth Circuit was filed, (c) the date the government's merits brief in the Ninth Circuit was filed, (d) the status of the case in the Ninth Circuit, (e) whether the government has argued that the Ninth Circuit should affirm a removal order, (f) the number of hours worked on the case by government attorneys before the case reached the Ninth Circuit, (g) the number of hours worked on the case by government attorneys since the case was filed in the Ninth Circuit, (h) an estimate of the number of hours worked on the case by immigration judges, BIA judges and federal judges and (i) the amount of taxpayer dollars spent on the case to date, including the portion of the salaries of the government attorneys, judges and court staff who have worked on the case.

Does the government seek to have immigration judges enter removal orders even though those orders may subsequently be disregarded pursuant to prosecutorial discretion? If so, how does the administration justify wasting millions in taxpayer dollars and wasting the time of the government attorneys working to achieve removal orders and the immigration judges presiding over the cases?

Question#:	13
Topic:	Ninth Circuit Order 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Response: The U.S. Department of Homeland Security (DHS) does not initiate removal proceedings before an immigration judge with the intention of eventually having those proceedings suspended or dismissed. Facts may come to light during the litigation or adjudication of an immigration case that may warrant the exercise of prosecutorial discretion. DHS is committed to continuing this Administration's enforcement priorities which ensure that we optimize our resources by targeting for removal those aliens who pose a danger to public safety or pose a threat to national security, including convicted criminals, as well as repeat immigration violators, recent border crossers, and immigration fugitives.

Some of the specific questions asked in your March 1, 2012 letter were addressed in DHS Assistant Secretary for Legislative Affairs Nelson Peacock's April 23, 2012 letter to you. Between the months of April to June 2012 the U.S. Courts for the Ninth Circuit issued mandates in all five civil cases, dismissing each of the plaintiffs' lawsuits. DHS did not track the specific number of hours worked by the attorneys involved in each part of the litigation process or the costs associated with litigating each case as was requested in your March 1, 2012 letter.

Question#:	14
Topic:	Ninth Circuit Order 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Does the government seek to have the BIA affirm removal orders even though the affirmances may subsequently be disregarded pursuant to prosecutorial discretion? If so, how does the administration justify wasting millions in taxpayer dollars and wasting the time of the government attorneys working to achieve removal orders and the BIA judges presiding over the cases?

Does the government seek to have federal courts of appeals affirm removal orders, even though those orders may subsequently be disregarded pursuant to prosecutorial discretion? If so, how does the administration justify wasting millions in taxpayer dollars and wasting the time of the government attorneys working to achieve removal orders and the federal judges presiding over the cases?

Response: The U.S. Department of Homeland Security (DHS) does not initiate removal proceedings before an immigration judge with the intention of eventually having those proceedings suspended or dismissed. Facts may come to light during the litigation or adjudication of an immigration case that may warrant the exercise of prosecutorial discretion. DHS is committed to continuing this Administration's enforcement efforts, while ensuring that we optimize our resources by targeting for removal those aliens who are convicted criminals, pose a threat to national security, pose a danger to public safety, repeat immigration violators, recent border crossers, or immigration fugitives. DHS defends removal orders before the Board of Immigration Appeals with the intention of ultimately executing the removal orders.

Question#:	15
Topic:	Ninth Circuit Order 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: According to some reports, there are at least 1.6 million immigration cases pending before immigration judges, the BIA and the federal courts of appeals. Also, according to reports, the DHS and/or DOJ are “reviewing” 300,000 or more cases under the “prosecutorial discretion” initiative.

The DOJ and the DHS are supposed to be prosecuting these cases and seeking to have illegal aliens deported. As part of that effort, line attorneys from the DOJ and DHS spend thousands of hours working on these cases. Simultaneously, immigration judges and federal judges, assisted by court staff, spend hundreds of hours adjudicating these cases. Tens of millions of taxpayer dollars, if not more, are spent to pay the salaries of those attorneys, judges and court staff.

The answer to the Ninth Circuit’s question set forth in the government’s pleadings was nonresponsive. The government’s pleadings tell the Court that the government does not presently intend to use prosecutorial discretion with the cases, but that the matter is totally within the discretion of the Executive Branch. If the government decides to use prosecutorial discretion while any of the cases are pending, it will inform the Court. What is unwritten is that the Obama administration can still use prosecutorial discretion after a case is concluded, even if a Court has issued a deportation order and after all the time, effort and money has been expended.

The DHS responded to the March 1 letter with a one-page letter dated April 23, 2012 and signed by Nelson Peacock, the Assistant Secretary for Legislative Affairs. The April 23 letter does not answer the four specific questions or requests for information in the March 1 letter.

Did you review the April 23 letter before it was sent?

Did you authorize the April 23 letter?

Is the DHS refusing to answer the questions and requests for information from the March 1 letter? If so, what is the legal authority for the DHS’s refusal? If the DHS is not refusing to answer, how do you explain the April 23 letter’s failure to answer the questions?

Question#:	15
Topic:	Ninth Circuit Order 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Provide complete and detailed answers to the all of the questions and requests for information from the March 1 letter, which are quoted above.

Response: As the Department explained in its letter of April 23, 2012, U.S. Immigration and Customs Enforcement (ICE) must retain its flexibility to exercise prosecutorial discretion as appropriate at any stage of the enforcement process. In cases where prosecutorial discretion is appropriate, ICE aims to exercise it as early in the enforcement process as possible in order to conserve the greatest number of resources. However, ICE retains the authority to exercise prosecutorial discretion at later stages of the enforcement process, including after federal courts have completed review of a case. Even when an individual has received a final order and a federal court has reviewed his or her case, additional resources must be expended to execute that order and remove that individual from the United States. As a result, the exercise of prosecutorial discretion in appropriate cases at later stages of the enforcement process also helps conserve agency resources, which permits ICE to focus those resources on cases that are enforcement priorities, including convicted criminals, public safety or national security threats, repeat immigration violators, recent border crossers, and immigration fugitives. Nevertheless, prosecutorial discretion is purely a prerogative of the Executive Branch and, as a result, is not a matter appropriate for a court's consideration – a point which the Department of Justice made clear in its filings in the U.S. Court of Appeals for the Ninth Circuit.

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

Question: On March 30, 2011, the House Committee on Oversight and Government Reform released its 153-page report on its investigation of the DHS's political vetting of requests under the Freedom of Information Act (FOIA). The Committee reviewed thousands of pages of internal DHS e-mails and memoranda and conducted six transcribed witness interviews. It learned through the course of an eight-month investigation that DHS political staff has exerted pressure on FOIA compliance officers, and undermined the federal government's accountability to the American people. The report by Chairman's Issa's Committee reproduces and quotes email from political staff at the DHS. The report also quotes the transcripts of witness interviews. The statements made by the political staff at the DHS are disturbing.

What is your response to each of the findings contained on pages 5-7 of the report?

What is your response to the disturbing statements made by DHS political staff, who are quoted in the report? In particular, what is your response to political appointees in your office referring to a career FOIA employee, who was attempting to organize a FOIA training session, as a "lunatic" and to attending the training session, for the "comic relief"?

What actions, if any, have you personally taken in response to Chairman Issa's report?

Set forth in detail your involvement in the FOIA vetting process implemented by the Office of the Secretary at the DHS in or about July 2009, which was the subject of Chairman Issa's report/investigation and which was described in a July 2010 article by Ted Bridis of the Associated Press?

Did you authorize the implementation of the FOIA vetting process?

If you did not authorize it, when did you first learn of the FOIA vetting process and what was your response at that time?

Chairman Issa's report and a report prepared by the Inspector General of the DHS find that political staff at the DHS lacks a fundamental understanding of FOIA. What, if anything, have you personally done to address this situation? If you have not done anything personally, acknowledge that fact.

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

Response: The Department respectfully disputes the findings. The Department of Homeland Security's (DHS) Privacy Office administers policies, procedures, and programs to ensure overall compliance with the Freedom of Information Act (FOIA) and the Privacy Act. In fiscal year 2010, less than one-half of 1 percent of more than 138,000 FOIA requests processed were deemed significant by career FOIA officers pursuant to Department standards established in 2006. The significant requests include those related to ongoing litigation, sensitive topics, requests made by the media, and requests related to Presidential or agency priorities. In these relatively few cases, senior department management was and is provided an opportunity to become aware of the contents of a release prior to its issuance to the public through a FOIA notification process to enable them to respond to inquiries from Members of Congress, their staffs, the media, and the public, and to engage the public on the merits of an underlying policy issue.

No one other than career staff made substantive changes to proposed FOIA releases. No information deemed releasable by the FOIA office or the Office of General Counsel, has at any point, been withheld, and responsive documents have neither been abridged nor edited. The Department's Inspector General (IG) provided an independent analysis on this issue which made many critical findings, including that the significant FOIA request review process did not prevent the eventual release of information; no FOIA requesters were disadvantaged because of their political party or particular area of interest; the Office of the Secretary is responsible for overseeing DHS operations, and thus is well within its rights to oversee the FOIA process; and DHS has made important progress in promoting openness, including through proactive disclosure. We concurred with all of the IG's recommendations, and have implemented a series of process improvements to address the recommendations. The Inspector General has closed his six recommendations for improving the efficiency of FOIA processing, acknowledging the steps the Department has taken. The Department remains fully committed to implementing the Freedom of Information Act and Privacy Act effectively and efficiently and with the highest standards for exceptional customer service.

Beginning in 2011, the Chief FOIA Officer directed the Deputy Chief FOIA Officer, to undertake a comprehensive review of departmental FOIA operations, meeting with all Component-level FOIA Officers to discuss the challenges they faced. As a result of these and other reviews on March 16, 2010, the Chief Privacy Officer issued a memo directing the Department to continue to actively implement the Administration's FOIA policy changes. The memo reiterated the importance of the presumption of disclosure and proactive disclosure requirements and noted specific progress in Components' proactive disclosure activity.

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Primary:	The Honorable Charles E. Grassley
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In total in FY 2011, DHS proactively released 8,903 pages of material, a 43-percent increase from the previous fiscal year. In FY 2012, the FOIA Office anticipates additional growth in proactive disclosure, by implementing new recommendations from the pro-active disclosure team.

The Department has made a significant effort in educating and training its workforce on the importance of the Freedom of Information Act and Privacy Act. In its periodic training of new and current employees on the requirements of FOIA, the Privacy Office emphasizes the contents of the President's FOIA memorandum of January 21, 2009, particularly regarding his policy that "[t]he Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears." Our components also provide training on these important points. Thus, not only FOIA staff but also DHS personnel, as a whole, are repeatedly advised of these important points.

The Privacy Office also undertook a systematic review of Exemption 5 usage, reviewing current guidance and consistent with Delegation 13001, by memorandum issued to all of DHS on January 31, 2012, the Chief FOIA Officer reiterated that: "[W]e do not assert FOIA exemptions to prevent embarrassment of public officials or possible revelations of errors or failures, or because of speculative or abstract fears."

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

Question: According to news reports, a 2011 reference guide for DHS analysts monitoring the media reveals that the DHS is tracking opponents of its policies. In particular, the DHS is directing its analysts to identify and monitor media reports (and social media) that reflect adversely on the DHS. Analysts are also apparently directed to track reports on the Obama administration's policy changes in immigration and the term "illegal immigration" in particular.

Is the DHS monitoring, tracking and/or researching U.S. citizens or organizations that criticize or question the policies of the Obama administration or the DHS, solely because of the individual's or organization's criticism/questioning? If so, when did this start? And if so, for what purposes has this monitoring, tracking and/or research been undertaken and what is the justification for it?

Have you authorized the monitoring, tracking and/or researching of U.S. citizens or organizations that criticize or question the policies of the Obama administration or the DHS, solely because of the individual's or organization's criticism/questioning? If so, when did you authorize this and why did you authorize it? Also, if so, what is the justification for this monitoring, tracking or research?

Who is reviewing the information collected by DHS analysts? Are the same political appointees who were involved in the FOIA political vetting process, and who are identified in Chairman Issa's report reviewing the information?

How is the information that is collected being used?

Response: In support of its statutory mission to provide situational awareness and a common operating picture for the federal government and for other homeland security enterprise partners, the National Operations Center (NOC) within the DHS Office of Operations Coordination and Planning (OPS) reviews publicly available traditional and social media postings to gain an enhanced awareness of rapidly emerging or evolving incidents and events concerning homeland security, emergency management, and national health. By examining open source information and comparing it with other sources of information, the NOC provides enhanced situational awareness and greater detail for the common operating picture to DHS leadership and homeland security enterprise partners.

The NOC's social media initiative (Initiative) is not designed to actively collect personally identifiable information (PII) and remains focused on reporting on event

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categories that are operationally relevant to DHS. Beginning in January 2011, the Initiative was first permitted to collect PII on seven defined categories of individuals when doing so lends credibility to the report or facilitates coordination with interagency or international partners. The seven categories are: 1) U.S. and foreign individuals in extremis, *i.e.*, in situations involving potential life or death circumstances; 2) senior U.S. and foreign government officials who make public statements or provide public updates; 3) U.S. and foreign government spokespersons who make public statements or provide public updates; 4) U.S. and foreign private sector officials and spokespersons who make public statements or provide public updates; 5) names of anchors, newscasters, or on-scene reporters who are known or identified as reporters in their posts or articles, or who use traditional and/or social media in real time to provide their audience situational awareness and information; 6) current and former public officials who are victims of incidents or activities related to homeland security; and 7) terrorists, drug cartel leaders, or other persons known to have been involved in major crimes of homeland security interest, who are killed or found dead. This PII is relevant to the NOC's reporting because a journalist, government representative or private sector spokesperson creating a public posting in his or her professional capacity is considered to have greater credibility than an individual bystander posting information on a publicly available social media site. Other PII is collected to better ensure public safety and national security.

In addition, the DHS Privacy Office recently completed its fourth Privacy Compliance Review (PCR) of the Initiative. As part of the review, the DHS Privacy Office reviewed the NOC's 2011 Analyst's Desktop Binder and Standard Operating Procedures (SOPs) and found these documents reflected the purpose and scope of the initiative. However, as some language could have been interpreted differently by those outside the Initiative who have not undergone its extensive training, the DHS Privacy Office recommended changes to reconfirm that monitoring of certain activities is outside the scope and purpose of the initiative. The NOC has already implemented these clarifications.

To maintain a capability focused on reviewing incident and event information, OPS trains analysts to review information in compliance with the parameters set forth in the Privacy Impact Assessments (PIAs). OPS uses a layered approach to ensuring unauthorized PII is not included in reports. During the report production process, reports are reviewed multiple times to ensure PII is not inadvertently included. All reports distributed during each 24-hour period are checked by a media monitoring capability senior reviewer, and the media monitoring capability's quality control leads conduct weekly reviews of all distributed reports to ensure any inadvertent PII inclusions are identified and corrective action is taken. The DHS Privacy Office conducts Privacy Compliance Reviews every six months to ensure OPS is complying with the PIAs. This review process is wholly unrelated to Freedom of Information Act (FOIA) processes.

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All NOC social media initiative PIAs and PCRs are available to the public at www.dhs.gov/privacy. The report on the results of the fourth PCR of the NOC Publicly Available Media Monitoring and Situational Awareness Initiative (http://www.dhs.gov/xlibrary/assets/privacy/privacy_privcomrev_ops_monitoringinitiative_05082012.pdf) contains Appendices with a random sample of media monitoring reports distributed by the NOC during the review period as well as a February 2012 Media Monitoring Guidance Reminder.

Question#:	18
Topic:	cybersecurity 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You have vocally campaigned for legislation which would designate DHS as the lead agency for cybersecurity and which would grant it extraordinary (regulatory) powers and massive new funding. In addition to concerns about the approach you have advocated, there are significant reservations about the DHS's ability to handle primary responsibility for cybersecurity. One of those reservations is based on the DHS's failure to implement ten fundamental recommendations made by the Government Accountability Office (GAO) in 2008. After four years, the DHS has yet to confirm that it has implemented the GAO's cybersecurity recommendations.

The GAO's recommendations broke down into two categories. In the first category, the GAO recommended that the DHS should address the challenges that impede it from fully implementing key attributes of cybersecurity, including:

Response: As its cybersecurity mission continues to evolve, the Department of Homeland Security (DHS) has increased funding of key programs to keep pace with emerging threats through innovative technologies and services. The President's fiscal year (FY) 2013 Budget request makes significant investments to expedite the deployment of intrusion prevention technologies on government computer systems, increase Federal network security of large and small agencies, and continue to develop a robust cybersecurity workforce to protect against and respond to national cybersecurity threats and hazards.

Since 2010, DHS's National Protection and Programs Directorate (NPPD) has been providing documentation to the Government Accountability Office (GAO) to support the closure of recommendations contained in GAO-08-588. By the end of August 2011, DHS had provided all agreed upon documentation to GAO and has followed up with GAO several times on our submissions. The following summaries relate to each of the 10 recommendations.

Question: Filling key management positions and developing strategies for hiring and retaining those officials

Response: On August 12, 2011, the National Cyber Security Division (NCSD) provided an organizational chart to GAO, which reflected the status of key management positions as of that date. Per GAO's request, NCSD updated the status of key management positions on July 24, 2012.

Question#:	18
Topic:	cybersecurity 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Developing predictive analysis capabilities by defining terminology, methodologies, and indicators, and engaging appropriate stakeholders in other federal and nonfederal entities

Response: In July 2011, GAO and NCSD agreed that the envisioned predictive analysis capabilities require participation from a set of agencies broader than DHS. GAO indicated that it would either eliminate this recommendation or close it as “not implemented.”

Question: Identifying and acquiring technological tools to strengthen cyber analytical capabilities and handling the steadily increasing workload

Response: NCSD continues to acquire tools to strengthen cyber analytical capabilities and handle the steadily increasing workload as part of the National Cybersecurity Protection System (NCPS). NCSD’s United States Computer Emergency Readiness Team (US-CERT) has grown its analytic capabilities while developing the Cyber Indicators Analysis Platform (CIAP). These and other tools enable automated analytical capabilities, which are especially important as US-CERT’s workload increases. During July and August 2011, NPPD provided GAO with samples from CIAP and other tools and products.

Question: Expeditiously hiring sufficiently trained cyber analysts and developing strategies for hiring and retaining highly qualified cyber analysts

Response: Since the issuance of GAO-08-588, NCSD has increased the size of its workforce by approximately 600% with more people in the hiring pipeline. Through our Cybersecurity Workforce Initiative, NCSD is hiring a diverse group of cybersecurity professionals to secure the nation’s digital assets, critical infrastructure, and key resources. NCSD seeks prospective hires through a variety of mechanisms and has established Individual Development plans (IDPs) for all new and current employees. The IDPs are unique for each employee and are based on specific skill set that the employee needs to learn or improve to accomplish the cybersecurity mission.

In 2010 and 2011, NCSD provided GAO with updates to the size of its workforce, and on May 25, 2010, and again on February 16, 2011, NCSD provided GAO with documents relating to its IDP requirements for all employees and training and mentoring opportunities available to its employees. In August 2011, NCSD also provided GAO the redacted hiring strategy from the Comprehensive National Cybersecurity Initiative fiscal year (FY) 2009 report, which helped drive NCSD’s hiring initiatives.

Question#:	18
Topic:	cybersecurity 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Engaging appropriate stakeholders in federal and nonfederal entities to determine ways to develop closer working and more trusted relationships

Response: Since 2008, NCSD has engaged Federal and non-Federal stakeholders through numerous forums to develop closer working relationships. These include, but are not limited to, monthly meetings of the Cross-Sector Cyber Security Working Group; sponsorship of the Industrial Control Systems Joint Working Group; and increased Federal, state, local, and private sector participation in the Cyber Storm exercises. More recently, NPPD's Office of Cybersecurity and Communications (CS&C) began executing Cooperative Research and Development Agreements (CRADAs) with companies and information sharing organizations, such as Information Sharing and Analysis Centers, to facilitate increased information sharing and to enable state, local and private-sector stakeholders to maintain a presence on the watch floor of DHS's National Cybersecurity and Communications Integration Center (NCCIC).

Question: Ensuring that there are distinct and transparent lines of authority and responsibility assigned to DHS organizations with cybersecurity roles and responsibilities.

Response: When GAO issued its report, the National Cybersecurity Center (NCSC), which was the focus of this recommendation, operated separately from NPPD. The functions and mission of the NCSC are now executed by DHS through mechanisms like the NCCIC. In August 2011, NCSD provided GAO with a copy of July 26, 2011, testimony on the cybersecurity environment and mission, which described the realignment of functions and missions. This is further reflected in NCSD's FY 2012 Expenditure Plan and the President's Budget Request for FY 2013.

Question#:	19
Topic:	cybersecurity 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In the second category, the GAO recommended that to fully establish a national cyber analysis and warning capability, the DHS should address deficiencies in each of the attributes identified for:

response, including ensuring that US-CERT provides assistance in the mitigation of and recovery from simultaneous severe incidents, including incidents of national significance;

Response: The Department of Homeland Security (DHS) worked with its Federal, state, local, and private sector stakeholders to develop and exercise the National Cyber Incident Response Plan (NCIRP), which provides a strategy for rapidly coordinating the operational response activities of Federal, state, local, tribal, and territorial governments, the private sector, and international partners during cyber incidents. The NCIRP is consistent with the National Response Framework and the principle of “unified command” for multi-jurisdictional response activities. In accordance with the NCIRP, the National Cyber Security Division’s (NCSD) United States Computer Emergency Readiness Team (US-CERT) has enhanced its ability to provide onsite and remote assistance during cyber incidents. In 2011, US-CERT handled over 106,000 cyber incidents involving Federal agencies, critical infrastructure, and our industry partners. So far in 2012, US-CERT has responded to over 65,000 incident reports, which reflects a 35 percent increase from the same period in 2011. DHS provided GAO with a sample of US-CERT’s Quick Response Incident Response Kit in August 2011.

Question: Warning, including ensuring consistent notifications that are targeted, actionable, and timely

Response: DHS shares actionable threat and vulnerability information with a broad set of partners through the distribution of diverse products, such as Early Warning and Indicator Notices (EWINs) and Security Awareness Reports (SARs). US-CERT also reaches end users through products released through the National Cyber Alert System (NCAS), which includes the US-CERT Web Portal. In August 2011, NCSD provided GAO with copies of EWINs and SARs as well as US-CERT Web Portal membership as of July 2011. NCSD also provided GAO with a copy of US-CERT’s Standard Operating Procedures on Information Sharing with Law Enforcement and Intelligence.

Question: Analysis, including expanding its capabilities to investigate incidents

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Topic:	cybersecurity 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
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Response: US-CERT has greatly improved its analysis capabilities including developing the Advanced Malware Analysis Center, which analyzes the current state of digital artifacts, conducts static and behavior analysis of malicious code types, and manages the development of the unclassified/classified lab and its evolution support US-CERT's operations and mission. In August 2011, NCSD provided GAO with a copy of the signed program requirements for the Malware Lab's expansion.

In addition, US-CERT provides data and analysis of observed cyberactivity to Federal Agencies and partners by reporting specific incidents and aggregated data to senior cybersecurity officials throughout the Government who maintain awareness of suspicious activity affecting their networks. The DHS Office of Intelligence and Analysis (I&A) also provides attribution support and shares the data from reports, NCPS, and other sources with the Intelligence Community to enhance understanding of tactics, techniques, and procedures as well as supporting US-CERT's development of signatures to better identify malicious activity on U.S. Government networks.

Question: Monitoring, including establishing a comprehensive baseline understanding of the nation's critical information infrastructure and engaging appropriate nonfederal stakeholders to support a national-level cyber monitoring capability.

Response: US-CERT monitors and analyzes intrusion detection system sensor data observed across the dot-gov. For example, EINSTEIN is a system we use to conduct continuous diagnostics of the traffic flowing to and from the Federal civilian enterprise. EINSTEIN helps analysts identify and combat malicious cyber activity that may threaten government network systems, data protection, and communications infrastructure. EINSTEIN 2 has provided US-CERT with a baseline understanding of network flow activity and supplements this data with signature-based alerts when network traffic, indicative of malicious activity, is detected. DHS also derives signatures from numerous sources, such as commercial or public computer security information, incidents reported to US-CERT, information from Federal partners, or independent in-depth analysis by US-CERT.

To support information sharing, DHS regularly shares situational awareness information, threat products, and Liaison Officer (LNO) exchange with the Department of Defense (DOD), which is responsible for the .mil domain. In addition, numerous NPPD components are collocated on the NCCIC watch floor along with other Federal partners, such as members of the law enforcement and intelligence communities. The NCCIC also co-locates Federal staff with non-Federal and private sector stakeholders to fuse situational awareness resulting from independent diagnostics. For example, the Multi-State Information Sharing and Analysis Center (MS-ISAC) provides diagnostics services

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to state and local governments and contributes to the larger common operational picture at the NCCIC.

In order to close this recommendation, DHS provided GAO with a copy of a legal memorandum titled “The Legality of Intrusion Detection System to Protect Unclassified Computer Networks in the Executive Branch” in August 2011. At the same time, DHS provided GAO with the Privacy Impact Assessment (PIA) for EINSTEIN 2, a copy of the US-CERT Concept of Operations, and the EINSTEIN 2 deployment status as of July 2011.

Question: In addition to GAO report GAO-08-588, DHS also has a number of additional outstanding recommendations related to Cybersecurity. For example, DHS currently has four reports with a total of 19 open recommendations related to Cybersecurity. What is the status of these 19 outstanding recommendations related to Cybersecurity? When does DHS plan to implement these recommendations to satisfy the concerns expressed by GAO?

Response: By the end of August 2011, DHS had provided all agreed-upon documentation to GAO on actions implemented and milestones completed in accordance with DHS’s corrective action plan submitted to Congress and GAO for GAO-10-628. DHS has followed up with GAO several times on the submittal, and GAO is continuing to perform analysis.

The other two GAO reports, GAO-12-8 and GAO-12-92, were issued more recently. DHS is on track to implement each of the recommendations pursuant to the corrective action plans, which are included in the associated 60-day letters.

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

Question: Congress is continuing to debate Cybersecurity legislation. A number of different bills provide DHS additional authority to regulate the public and private sector networks. Specifically, one proposal would place DHS as the lead agency in overseeing baseline regulations for entities that DHS determines qualify as covered critical infrastructure.

I have serious concerns with this proposal because it creates a new regulatory bureaucracy at DHS. I am also concerned about this new regulatory power given DHS's background on overseeing Chemical Facility Security under the CFATS program.

Congress gave DHS regulatory power over chemical facilities in 2006 and regulations were issued in 2007. However, five years later, nearly 4,200 chemical facilities have complied with the regulations, but DHS has yet to approve a single security plan. Despite failing to approve a single plan, DHS has spent nearly half-a-billion taxpayer dollars to effectively do nothing.

I have obtained a copy of an internal review conducted for Undersecretary Rand Beers by two subordinates that details the problems DHS faces in implementing CFATS. To be honest, this memorandum is the most candid review of a failed federal government program I have seen.

For example, the memorandum states:

- There a “number of people in leadership positions who lack managerial experience/knowledge.”
- The Department had hired “people who do not have the necessary skills to perform key mission and essential functions.”
- “While the vast majority of employees are talented, hardworking people, there are many numerous exceptions.”
- Employees have “demanded that they be paid if we expect them to answer their cell phones during lunch, or to carry their cell phones outside duty hours.”
- “There is a catastrophic failure to ensure personal and professional accountability” among agency employees.

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- “Our lack of focus and vision has resulted in problems with how we have spent our money, and how we are managing those funds.”

This memorandum details failures of an unprecedented level. The memo cites: poor hiring decisions, hiring workers who lack skills to do the job, poor staff morale, management and leadership failures, lack of subject matter experts, union problems, and a "catastrophic failure to ensure personal and professional accountability.”

The memorandum also states that inspectors lack expertise to effectively evaluate site compliance with cybersecurity requirements. This report paints the picture of an agency that cannot control costs, manage its employees, or effectively implement its mission.

If it cost DHS \$480 million to effectively regulate zero chemical facilities, how much can we expect it to cost taxpayers for DHS to regulate cybersecurity among thousands of private businesses?

Response: Since the Chemical Facility Anti-Terrorism Standards (CFATS) program was adopted, DHS has made substantial progress in identifying and regulating high-risk facilities. As of July 25, 2012, CFATS covers 4,425 high-risk facilities nationwide; of these 4,425 facilities, 3,662 are currently subject to final high-risk determinations and submission of an SSP or Alternative Security Program (ASP). The remaining facilities are awaiting final tier determinations based on their SVA submissions. ISCD continues to issue final tier notifications to facilities across all four risk tiers as it makes additional final tier determinations.

As of August 16, 2012, the Department has:

- Conducted 14 authorization inspections (AIs), which occur after a covered facility receives a Letter of Authorization for its SSP or ASP, but before DHS issues a Letter of Approval for the facility’s SSP. AIs are conducted to verify that the descriptions of measures in the facility’s authorized SSP or ASP are accurate and complete and that the equipment, processes, and procedures described in the SSP or ASP meet applicable CFATS risk-based performance standards. ISCD evaluates the AI results to determine whether DHS should issue a Letter of Approval.
- Conditionally authorized SSPs for 63 Tier 1 facilities, although two of those facilities subsequently had their tier reduced. For the remaining 53 Tier 1

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SSPs reviewed, we are either validating results or reaching out to these facilities to obtain additional information.

- Conducted more than 1,060 Compliance Assistance Visits (CAVs) at regulated or potentially regulated chemical facilities. CAVs are visits at regulated or potentially regulated chemical facilities that seek to provide compliance and technical assistance.

Since the inception of CFATS, more than 2,700 facilities have eliminated, reduced, or otherwise made modifications to their holdings of potentially dangerous chemicals and are now no longer considered high-risk. These actions have helped reduce the number of high-risk chemical facilities located throughout the Nation and have enabled facilities to take actions that minimize their requirements under CFATS.

The cost of not taking action to better secure our Nation's most critical networks is unacceptably high. Private-sector estimates range from \$28 billion to \$340 billion in annual losses from cyber attacks. However, this estimate is based on known financial and intellectual property theft and therefore cannot be fully reflective of unreported incidents. The potential cost of a significant disruption to one or more of our interdependent critical services, such as electricity, communications or transportation, would be much higher. For example, in the cybersecurity scenario the Administration presented to the Senate on March 7, 2012, which reviewed the federal response to a three-day power outage in a large metropolitan area, the impact to GDP was estimated at \$1 billion per day. However, this scenario was contained to one metro area; losses would be much greater if additional parts of the country were impacted and the duration of the attack, extended. While there will be a cost of securing these facilities, DHS believes it will be significantly less than the expected losses that could be suffered if action is not taken.

Question: Given the documented failures highlighted by this memo, why do you feel that DHS can handle the additional responsibilities you have advocated for in Cybersecurity legislation?

Response: While DHS does not agree that the internal memorandum highlights "failures" in the CFATS program, the Department is working to remedy programmatic and management challenges in the CFATS program. Some areas of progress include the following:

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- *Hiring:* The Infrastructure Security Compliance Division (ICSD) is leading an internal analysis to ensure that the proper staffing and qualification needs of the Division are met.
- *Training and Inspection:* In June 2012, ISCD finished updating its internal inspections policy and guidance materials for inspectors. ISCD also began providing additional training that focuses on the updated policy and guidance materials to prepare Chemical Security Inspectors to resume authorization inspections at facilities with authorized or conditionally authorized Site Security Plans (SSPs). As a result, as of July 16, 2012, ISCD has resumed authorization inspections at Tier 1 facilities. This is a vital step for moving the CFATS program toward a regular cycle of approving SSPs and conducting compliance inspections for facilities with approved SSPs.

Question: It has taken four years and DHS has yet to regulate any chemical facilities. How long would it take to regulate thousands of businesses under a cybersecurity bill?

Response: The timeline for implementing a process to designate covered critical infrastructure and establishing risk-based performance requirements would be determined by the Department's engagement with other partners. Establishing new frameworks for critical infrastructure would be a collaborative process that enhances the existing public-private partnership for securing critical networks. In order to leverage the expertise of stakeholders, the Department of Homeland Security believes that close interaction will be necessary going forward.

Question: When will DHS approve all 4,200 site security plans? How much more taxpayer money will it cost to achieve 100% approval?

Response: There are a number of variables with regard to authorizing and approving facilities' site security plans (SSPs), including ensuring that ISCD continues to have sufficient resources to review SSP submissions and continuing to train our inspector cadre to conduct authorization and compliance inspections.

The SSP review, inspection, and approval process has several steps that must occur before an SSP can be approved. First, DHS must review the SSP to preliminarily determine whether the SSP is sufficient to satisfy applicable risk-based performance standards and, when necessary, work with a facility to improve its SSP. Once DHS preliminarily determines the SSP is sufficient to satisfy the applicable standards, as appropriate for the facility's tier assignment, DHS can authorize, with or without conditions, the SSP. Not every SSP submitted to DHS necessarily meets these

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

requirements. With regard to the SSPs that do not warrant authorization, DHS first works with the facility to revise the SSP so that it meets applicable risk-based performance standards; but if these efforts are not successful, DHS may ultimately have to disapprove the SSP.

Following an authorization or a conditional authorization of an SSP, an authorization inspection is conducted to verify that the descriptions of current and planned measures in the facility's SSP are accurate and complete. If, in reviewing/evaluating the results of the authorization inspection and other information, DHS determines that the security plan satisfies the CFATS requirements, DHS then approves the SSP and the facility is notified that it should carry through with the planned security measures and continue to implement existing measures.

Given the dynamic nature of chemical facilities, new facilities can become regulated, and currently covered facilities can add, change, reduce, or remove chemicals of interest, which can lead to changes in their risk tiers or even to becoming unregulated under CFATS.

Since the inception of CFATS, more than 2,700 facilities have eliminated, reduced, or modified their holdings of potentially dangerous chemicals to the point that the facilities are no longer considered high-risk. We believe these actions have reduced the risk from chemical facilities and increased the safety of surrounding communities.

Question: When will DHS conduct the first inspection of an approved chemical facility under CFATS?

Response: In September 2011, ISCD established an Inspector Tools Working Group to ensure the Chemical Security Inspectors have up-to-date and, where appropriate, improved inspections procedures, policies, equipment, and guidance. In June 2012, ISCD finished updating its internal inspections policy and guidance materials for inspectors. ISCD also began providing additional training that focuses on the updated policy and guidance materials to prepare Chemical Security Inspectors to resume authorization inspections at facilities with authorized or conditionally authorized SSPs. As a result, I am pleased to announce that as of July 16, 2012, ISCD has resumed authorization inspections at Tier 1 facilities. This is a vital step for moving the CFATS program toward a regular cycle of approving SSPs and conducting compliance inspections for facilities with approved SSPs.

Question#:	21
Topic:	grant program 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On February 28, 2012 the Government Accountability Office (GAO) released its second annual report to Congress under a requirement that GAO identify federal programs, agencies, offices, and initiatives in the federal government that have duplicative goals or activities. With regard to DHS specifically, the report described the results of a separate, in-depth study of DHS’s management of disaster preparedness programs, which have provided more than \$20 billion to state, local, tribal, and territorial governments since 2003. DHS’s Federal Emergency Management Agency (FEMA) allocated these funds through four programs: the State Homeland Security Program, the Urban Areas Security Initiative, the Port Security Grant Program, and the Transit Security Grant Program. Although no actual cases of duplicative funding were found for Fiscal Year 2011, GAO considered that multiple factors contributed at least to the risk of FEMA funding unnecessarily duplicative projects, including overlap among grant recipients, goals, and geographic locations, combined with the limited project information that FEMA had available regarding grant funding levels, grant recipients, and grant purposes. DHS responded to the finding by noting that it had determined that starting in FY 2013, it will merge all four programs into a single one, to be called the National Preparedness Grant Program. You mentioned this consolidation in your testimony as well as in your responses to my Questions for the Record (QFRs) from your last appearance before the Committee.

Please describe in detail the structure of the National Preparedness Grant Program, including its methods for preventing overlap and duplication of funding (I note that you referred to MOUs among DHS components in your responses to the QFRs; please describe what kind of coordination they require.)

Will this program require authorization from Congress in legislation?

According to DHA OIG audits of grants to California, New York, and Nevada under the Urban Areas Security Grant Program, these states did not prepare contingency plans for funding if federal money was not available for future planned expenditures. OIG stated that several years’ worth of funding by DHS “has created a perception that this funding will continue indefinitely as would be the case for entitlement programs, such as Medicare and Social Security.” How will the consolidated grant program prevent this from happening?

According to OIG reports on Louisiana, Maryland, Missouri, Pennsylvania, Nevada, New Jersey, New York, South Carolina, and Texas, these states did not have “measurable

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goals and objectives” for their strategic plans for homeland security, in accordance with DHS’s guidance requiring such goals and objectives. How will the consolidated grant program ensure that grantees have measurable goals and objectives for their homeland security strategies?

Numerous OIG audits of states revealed failures to monitor subgrantees’ use of grant funds, leading to lack of compliance by subgrantees with appropriate grant management requirements. How will this consolidated program ensure compliance by subgrantees?

Response: The FY 2013 President’s Budget outlined a vision for a new National Preparedness Grant Program (NPGP) designed to develop, sustain, and leverage core capabilities across the country in support of national preparedness. DHS has been supporting state, local, tribal, and territorial efforts across the homeland security enterprise to build capabilities for the past nine years, awarding more than \$35 billion in funding. Through these federal investments, grantees have developed significant capabilities at the local level to prevent, protect against, mitigate, prepare for, respond to and recover from threats and hazards of all kinds. As we look ahead, in order to address evolving threats and make the most of limited resources, the NPGP will utilize existing governance structures to focus on building and sustaining core capabilities associated with the five mission areas within the National Preparedness Goal (NPG) that are both readily deployable and cross-jurisdictional, helping to elevate nationwide preparedness. FEMA is currently soliciting feedback from our partners on this proposal to help guide further development of the proposal. The Administration looks forward to working with Congress and stakeholders to ensure the NPGP enables the whole community to build and sustain, in a collaborative way, the core capabilities necessary to prepare for incidents that pose the greatest risk to the security of the Nation.

NPGP consolidates current grant programs into one overarching program (excluding Emergency Management Performance Grants and fire grants), which will support the recommendations of the Redundancy Elimination and Enhanced Performance for Preparedness Grants Act (REEPPG) and streamline the grant application process. This will enable grantees to build and sustain core capabilities outlined in the National Preparedness Goal instead of requiring grantees to meet the mandates from multiple individual, often disconnected, grant programs. NPGP also provides grantees with maximum visibility of all of the projects being implemented with federal preparedness grant funding, which reduces overlap and duplication of spending. This increased efficiency will enable grantees to focus on how federal funds can add value to the jurisdiction’s prioritization of threats, risks and consequences while contributing to national preparedness capabilities.

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In addition, all states and territories receiving homeland security grant funding are required to complete a comprehensive Threat Hazard Identification and Risk Assessment (THIRA) which provides an approach for identifying and assessing risks and associated impacts across their state/territory. The coordination element described in the new grants vision will assist grantees in their efforts to address the gaps identified in their THIRA, while building important statewide and national capabilities. This incentivizes grantees to fund areas that are in the greatest need of supplemental homeland security funding, and discourages the practice of continually funding areas that may not need continued funding.

Finally, NPGP requires grantees to match their proposed investments to one or more specific core capabilities and incorporates effectiveness measures that facilitate accountability. To facilitate the sharing of capabilities via mutual aid, the NPGP requires that capabilities built with grant funding be made available for use in a mutual aid system and requires grantees to maintain membership in the Emergency Management Assistance Compact (EMAC).

In response to the other questions, all of the grantees identified in the OIG reports as lacking measureable goals and objectives in their state strategies are required to update their strategies to meet this requirement. Along with the THIRA, grantees will be required to maintain a state strategy and a formalized monitoring process in place in order to ensure their sub-grantees are compliant with all grant requirements.

FEMA/GPD has developed several MOUs with other agencies including the Department of Transportation, DHS/Office of Infrastructure Protection, Transportation Security Administration, and Customs and Border Protection. The purpose of these MOUs is to further establish formal relationships with partnering agencies to identify gaps in funding as well as improve coordination and reduce redundancy.

Question#:	22
Topic:	grant program 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The DHS Inspector-General wrote in its annual report on major management challenges facing DHS, “FEMA faces challenges in mitigating redundancy and duplication among preparedness grant programs...Since grant programs may have overlapping goals or activities, FEMA risks funding potentially duplicative or redundant projects.” I was gratified to see that DHS is taking steps to reduce duplication through creation of the National Preparedness Grant Program. However, just as FEMA must be aware of, and avoid, duplicative grant-making within DHS, it must also ensure that its grants and other STTL support do not overlap with those of DOJ (as well as other government departments and agencies). In your responses to my QRFs from your last appearance before the Committee, you refer to discussions between FEMA and DOJ regarding coordination of grant programs and that these discussions “will hopefully lead to a Memorandum of Understanding (MOU).”

What is the status of those discussions and possible MOU?

Is DHS aware of any overlap between SHSP- and UASI-funded activities with similar activities funded by DOJ? Has DHS shared information on these programs with DOJ?

What is the relationship between DHS’s training programs funded through the SHSP and UASI and DOJ’s State and Local Anti-Terrorism Training (SLATT) Program?

Is DHS aware of any overlap between DHS training activities with similar activities performed through the SLATT Program? Has DHS shared information about its training programs with DOJ?

Response: During the development of the annual Funding Opportunity Announcements (FOA) for each of its grant programs, FEMA conducts regular outreach to Agencies and programs within the Federal Government including DOJ and HHS to ensure that our grant programs are complementary.

FEMA is participating in the DOJ sponsored National Institute of Justice Standards Steering Committee in order to coordinate development of equipment performance standards for law enforcement and corrections responders. The inaugural meeting of this group took place in January.

DHS preparedness grants complement those of the Department of Justice (DOJ) in areas related to law enforcement such as interoperable communications and support to fusion

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centers. Whereas DOJ grants focus solely on law enforcement, DHS complements those efforts by encouraging the engagement of the entire first responder community including the fire service, emergency management, public health, health care and law enforcement in programs such as the National Suspicious Activity Reporting Initiative (NSI), the See Something, Say Something campaign, etc.

All Homeland Security National Training Program and Continuing Training Grant-provided curricula undergo a rigorous certification process to ensure content accuracy and validity, including cross-agency outreach to ensure courses are not duplicative. FEMA's National Training and Education Division (NTED) coordinate its law enforcement-related training with its training partners at DOJ's Office of Justice Program's (OJP) and the Nationwide Suspicious Activity Reporting Program Management Office. NTED also coordinates training programs with the OJP State and Local Anti-Terrorism Training Program, as well as National Suspicious Activity Reporting Initiative Analytic Training programs. FEMA also maintains the Federal Course Catalogue that tracks available, approved course curricula that may be provided with Homeland Security Grant Program funds. Inter-agency collaboration has allowed numerous agency partner-developed curricula to be added to this central depository, further minimizing the risk of duplicative course development.

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

Question: Please delineate precisely the resource contributions of DHS and DOJ to the Fusion Center Technical Assistance Program, including which department provides which services and how those delineations have been determined.

Response: DHS sponsors nine of the thirteen technical assistance services under the joint DHS/DOJ Fusion Process Technical Assistance Program. DHS is responsible for development and delivery of those services that are specifically intended to support the development and operation of fusion centers, including:

- Fusion Process Orientation and Development
- Fusion Center Security
- Fusion Liaison Officer Program
- Fusion Center and Fire Service Information Sharing
- Fusion Center and Emergency Operations Center Information Sharing and Coordination
- Fusion Center Communications and Outreach
- Fusion Center and Health Security Information Sharing and Coordination
- Fusion Center and Critical Infrastructure and Key resources Protection Information Sharing and Coordination
- Fusion Center Exchange Program

In FY 2011, over \$1.6 million was allocated to the Fusion Process Technical Assistance Program through partnerships between the Office of Intelligence and Analysis (I&A), the Federal Emergency Management Agency (FEMA), the Office of Infrastructure Protection, the Office of Health Affairs, the Privacy Office, and the Office for Civil Rights and Civil Liberties.

DOJ sponsors the remaining four technical assistance services, which are more narrowly focused on information exchange and encourage the development of common information sharing systems and models, including:

- Privacy Training and Technical Assistance
- State and Local Anti-Terrorism Training
- National Information Exchange Model
- Fusion Center Technology Technical Assistance

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Primary:	The Honorable Charles E. Grassley
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While DHS leads the development and delivery of fusion center specific services, and DOJ leads the delivery of information sharing/information technology services, all activities are jointly coordinated and often include participation from both Departments. Additionally, all materials developed and delivered in support of this program are reviewed through intra- and interagency partners, including the Federal Bureau of Investigation, Office of the Director of National Intelligence, Program Manager for the Information Sharing Environment, and state and local partners through the Criminal Intelligence Coordinating Council.

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

Question: Regarding the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI):

Please delineate precisely the resource contributions of DHS and DOJ to the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI).

Response: The Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) is a collaborative effort between a number of federal, state, local, and tribal agencies and organizations with counterterrorism responsibilities. The NSI strategy is to develop, evaluate, and implement common processes and policies for gathering, documenting, processing, analyzing, and sharing information about activities potentially related to terrorism. The long-term goal is for state, local, tribal, and federal law enforcement organizations, as well as private sector entities, to participate in the NSI, allowing them to share information about suspicious activity that is potentially terrorism-related.

The Department of Homeland Security (DHS) supports the NSI by helping to develop training courses for frontline personnel to recognize behavior potentially associated with terrorism, executive leadership regarding the purpose and function of the NSI, and analysts to better understand indicators of terrorism-related activity and how to vet SAR.

The Department also contributes support to the NSI in three specific areas: assignment of personnel, implementation of the NSI methodology throughout DHS operational Components, and analysis of information within the NSI.

DHS defers to DOJ for their expenditures related to NSI.

Question: How many Suspicious Activity Reports (SAR) have been sent to DHS and DOJ through the NSI?

Response: Suspicious Activity Reporting from NSI partners is made available to the Department via the Federated Search Tool which is managed by the NSI PMO. As of August 10, 2012, there were 28,901 SAR in the NSI Federated Search.

Question: How many SARs have resulted in intelligence products being written for distribution to Fusion Centers or other consumers?

Response: DHS I&A analysts have produced several NSI-derived intelligence products

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to date. They include:

- 6 SAR Indicators Roll Call Release (RCR) products. An additional 11 SAR Indicator RCRs are currently in various stages of coordination;
- 2 SAR-related Homeland Intelligence Today (HIT) articles;
- Provided responses to 33 SAR-related Requests for Information (3 external, 30 internal); and
- 3 editions of the SAR Top-Five, which highlights the five behavioral indicators associated with SAR that are of particular interest to DHS I&A at that time.
- 2 SAR Indicator Training Workshops on HS-SLIC Weekly Analytic Chat. An additional 14 monthly presentations are scheduled to occur in the future.

Additionally, since July 2011, a group of DHS analysts in I&A's Homeland Counter Terrorism Division have analyzed approximately 7,600 reports from 27 agencies/fusion centers. This effort will develop a baseline of the reporting in NSI to assess any patterns, trends, tactics, techniques, and procedures. At the end of the project, the analysts will have reviewed and assessed a representative sample of over 7,800 reports that were submitted through the NSI.

Question: How many SARs have resulted in DHS or FBI investigations being opened?

Response: DHS defers to the FBI as the statutory lead for all counter terrorism investigations.

Question: How many of those investigations have resulted in legitimate threats being identified?

Response: DHS defers to the FBI as the statutory lead for all counter terrorism investigations.

Question: How many of those investigations have resulted in criminal indictments being brought?

Response: DHS defers to the FBI as the statutory lead for all counter terrorism investigations.

Question: How many of those criminal indictments have led to convictions or guilty

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pleas?

Response: DHS defers to the FBI as the statutory lead for all counter terrorism investigations.

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

Question: Please describe DHS's role in the operations of the Criminal Intelligence Coordinating Council (CICC) and the Global Intelligence Working Group (GIWG), led by DOJ's Bureau of Justice Assistance.

Response: DHS is an active partner with the CICC and GIWG. DHS personnel participate in monthly conference calls and quarterly meetings, including the CICC Privacy Committee and Training Committee meetings. DHS utilizes the CICC and GIWG as a mechanism to provide feedback on the development phase of new services and materials for the joint DHS/DOJ Fusion Process Technical Assistance Program, as well as other interagency resources that are used to standardize training across Departments and agencies (e.g. *Common Competencies for Intelligence Analysts; Privacy, Civil Rights, and Civil Liberties Compliance Verification for the Intelligence Enterprise*; 28 CFR Part 23 training; etc.).

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

Question: When you visited Arizona after Border Patrol Agent Brian Terry's death, you met with individuals from the FBI and U.S. Attorney's office who were aware the guns found at Agent Terry's murder scene were tied to an ongoing Phoenix ATF investigation. Documents produced by the Justice Department suggest that at the DHS press conference announcing Agent Terry's death that morning, FBI Special Agent in Charge Nate Grey advised Tucson Assistant U.S. Attorney Shelley Clemens that the two guns were tied to an ongoing Phoenix ATF investigation. Clemens immediately notified her supervisor, U.S. Attorney Dennis Burke, who confirmed that evening that the guns tied back to Operation Fast and Furious. I understand these events on December 15, 2010, to be two days before your visit to Arizona.

While you were in Arizona, did anyone mention to you any connection between the guns found at the scene of Agent Terry's death to an ATF investigation, even if not by the name Fast and Furious? If yes, please describe in detail all individuals who communicated this information as well as the full substance of what they communicated.

When did you first learn of this connection? Please describe in detail from what source you first learned this information, the circumstances of your learning it, and the full substance of what you learned.

Response: To the best of my recollection, no one mentioned to me any connection between the guns found at the scene of Agent Terry's death to an ATF investigation while I was in Arizona in December 2010. I do not specifically recall when I did learn of this connection. However, I believe I became aware of it in March 2011.

Question#:	27
Topic:	cooperation
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: When my staff was initially briefed on April 20, 2012, Secret Service's Office of Professional Responsibility (OPR) indicated that according to a Memorandum of Agreement with the DHS Inspector General (IG), OPR would be conducting the investigation of Secret Service on their own and only providing summaries of their interviews to the IG. However, when I asked you at the hearing about the IG's involvement, you replied that you "expect the IG to be conducting a full investigation." My staff's understanding is that the IG's entrance conference on the matter did not take place until May 2, 2012.

Please provide the Memorandum of Agreement between Secret Service and the DHS Office of the Inspector General.

Response: Please see attached MOA.

Question: When was the decision made for the IG to conduct a full investigation, rather than merely observing the Secret Service OPR investigation?

Response: April 26, 2012.

Question: When were you informed of that decision?

Response: April 27, 2012.

Question#:	28
Topic:	Cook County
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: There was a lot of discussion during the hearing about Cook County's ordinance, and how your Department was handling the issue. Despite the strong stance taken by you and Director Morton, nothing has changed and the safety of the public is still at risk. Please provide an update on what options are being discussed on how to deal with the ordinance and its impediment on ICE's mission. Also, please outline what discussions have taken place with the Department of Justice about withholding SCAAP funds for places like Cook County.

Response: U.S. Immigration and Customs Enforcement (ICE) is engaged with the Cook County Board of Commissioners on this issue. ICE has discussed several alternatives regarding the ordinance to address Cook County's concerns including the formation of a joint working group, the admission of ICE officers into the Cook County detention facility in exchange for ICE bearing any associated costs, and the assurances that ICE will either assume custody of aliens on their scheduled release date (with 24 hours notice) or, as permitted by law, reimburse the county for prolonged detention expenses (to be negotiated with the Cook County Sheriff). DHS and ICE are committed to ensuring the safety of American communities and will continue to consider all options, both financial and legal, to encourage Cook County officials to honor ICE detainees.

On September 21, 2012, ICE sent a letter to the Bureau of Justice Assistance, within the Office of Justice Programs at the U.S. Department of Justice (DOJ), indicating that ICE has completed its review of the fiscal year (FY) 2012 State Criminal Alien Assistance Program (SCAAP) funding requests. The letter informed DOJ that the agency's ability to accurately verify the immigration status of criminal aliens detained by jurisdictions that restrict ICE's access to information and persons who may be in the country unlawfully is unreliable. Accordingly, while ICE did complete its review of all FY 2012 SCAAP requests received from DOJ, ICE could not accurately verify submissions from Cook County, Illinois, and Santa Clara County, California. Both counties have adopted local policies that greatly restrict cooperation with ICE and prohibit law enforcement from honoring ICE detainees placed on aliens held in county facilities.

Question#:	29
Topic:	detention standards
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In February, ICE announced changes to its detention standards, providing more accommodations and benefits to illegal aliens. The manual says that transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. Does that mean taxpayers will be paying for these therapies, or will the costs of the therapy be the burden of the detainee?

Response: U.S. Immigration and Customs Enforcement (ICE) pays for medically necessary expenses of all detainees while they are in ICE custody, including hormone therapy for detainees who were already receiving hormone therapy, and where continued use is determined medically necessary to prevent adverse medical complications. This policy is in line with the policy of the Department of Justice, Bureau of Prisons, and is the accepted industry standard.

The 2011 Performance Based National Detention Standards (PBNDS) state:

“Transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access. All transgender detainees shall have access to mental health care, and other transgender-related health care and medication based on medical need. Treatment shall follow accepted guidelines regarding medically necessary transition-related care.”

Question#:	30
Topic:	immigration reform
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The draft memo written by four USCIS employees in 2010 titled, “Administrative Alternatives to Comprehensive Immigration Reform,” included several options “to promote family unity, foster economic growth, achieve significant process improvements and reduce the threat of removal for certain individuals present in the United States without authorization.” Please outline which options have been implemented (whether in the form described in the memo or otherwise), and which options are being considered or discussed internally.

Response: DHS does not comment on draft documents that do not and should not be equated as official action or policy, nor does it share internal deliberations which do not constitute official policy.

Question#:	31
Topic:	work authorizations
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: For the last five years, please provide all statistics available regarding employment authorizations issued pursuant to 8 C.F.R. § 274A.12, broken down by class of aliens, including those issued employment authorizations after being granted deferred action, parole, or if their case was administratively closed.

Response: The attached I-765 Approvals by Class Preference workbook contains the information requested. The second tab explains the various employment authorization codes.

Question#:	32
Topic:	L-1 Visa Fraud
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Please provide a status update on the L-1 Visa Benefit Fraud and Compliance Assessment.

Response: In late September 2011, USCIS awarded a contract to an outside firm, Booz Allen Hamilton, to assess the methodology and scientific rigor of the L-1A visa Benefit Fraud and Compliance Assessment (BFCA) report. In the near future, USCIS expects a draft report from the contractor that will analyze the analytical scope, sample size, and relevance of the earlier L-1A visa BFCA study. Based upon the findings in the draft report about the methodology used in the BFCA, USCIS will determine the appropriate next steps.

Question#:	33
Topic:	Visa Security Program
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: What is the status of the Visa Security Program, specifically how many units are deployed and where are they deployed? Do you believe that the Visa Security Program should be expanded to all 57 visa-issuing posts determined to be high risk by DHS and the Department of State? If so, how much would it cost to expand the VSP to all high-risk posts? Why haven't you asked Congress for that amount as part of your proposed budget?

Response:

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

[REDACTED]

[REDACTED]

[REDACTED]

Question#:	33
Topic:	Visa Security Program
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

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

The total estimated initial cost to expand the VSP to all high-risk posts is approximately \$79.2 million, with an additional \$68.4 million in annual recurring operational costs thereafter; however, VSP deployment depends on NSDD-38 request approval and the approval of chiefs of mission at post. Both of these approval processes can contribute to significant deployment delays, with the entire process taking up to two years for each location.

U.S. Immigration and Customs Enforcement (ICE) continues to conduct multiple joint-site visits with DOS to determine the best opportunities for deployment, including the availability of physical space at post. The estimated costs to expand to additional high-risk posts accounts for \$2.2 million required to open each office at the remaining 36 high-risk, visa-issuing posts. Once opened, each post requires estimated recurring costs of \$1.9 million each year in order to sustain operations.

There has been significant expansion in the VSP in recent years, and ICE remains committed to fully staffing and equipping the program. The FY 2013 Budget supports efforts to leverage IT solutions and the capabilities of our law enforcement and intelligence community partners to increase ICE's efficiency in screening visa applications in order to identify patterns and potential national security threats. This will establish greater efficiencies to our Visa Security Program, allowing for research and analytic activities to be carried out in the United States and investigative and law enforcement liaison work overseas.

Question#:	34
Topic:	Guatemala
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The country of Guatemala has officially requested that the administration provide TPS to residents of their country. Are there internal discussions taking place to provide Temporary Protected Status to Guatemalans? Please explain the Department's position on any such proposals.

Response: DHS is in the process of evaluating Guatemala's request for TPS by carefully considering the conditions in Guatemala, including reviewing the information provided by the Government of Guatemala. In addition to its own evaluation of conditions, DHS also consults with the Department of State and considers its independent assessment.

DHS may consult with other federal agencies as well. DHS continues to monitor whether it is safe for nationals to return to Guatemala. While DHS completes its statutorily mandated assessment of the conditions in Guatemala in order to make a final determination regarding TPS for Guatemala, Guatemalans affected may be assisted by policies offered by U.S. Citizenship and Immigration Services, a component of DHS. These policies can be found on the "Special Situations" page of the humanitarian section of the website at www.uscis.gov.

Question#:	35
Topic:	misconduct
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I appreciate your commitment to a prompt and thorough investigation of misconduct by U.S. Secret Service agents in Colombia. At the hearing, in response to my question of whether the April 2012 incident in Colombia was the first time something like this has happened, you stated that “over the past 2-1/2 years, the Secret Service Office of Professional Responsibility has not received any such complaint.” You also said that the Secret Service Office of Professional Responsibility (OPR) was going back beyond that timeframe and would be going through “all of the records.”

The Secret Service has been housed within the Department of Homeland Security (DHS) since the Department was established in 2003. Does OPR have full access to its records prior to 2003?

Response: Yes.

Question: Assuming that OPR currently has full access to its records how far back in time do the records of complaints kept by OPR go?

Response: The Secret Service Office of Professional Responsibility was previously known as the Office of Inspection and was established in 1950. The Secret Service Office of Professional Responsibility currently has cases that date back to 1963 and created a database for these cases in 1997.

Question: What is the breakdown by year of the number of complaints received by OPR?

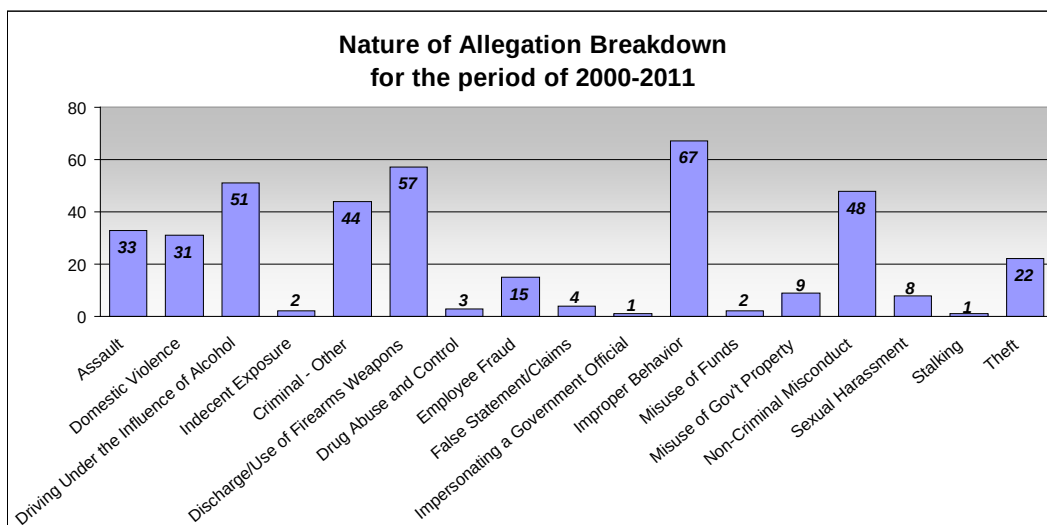
Question#:	35
Topic:	misconduct
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Response:



Question: What is the breakdown by the nature of the allegation of the complaints received by OPR each year?

Response:



Question: What percentage of the complaints received by OPR each year result in disciplinary action? Please specify the action taken.

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Response:

Calendar Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Inspection Cases	39	42	26	32	29	49	38	26	19	34	20	44	398
Employee Relations Board (ERB) Cases	17	27	20	19	21	25	23	17	10	19	8	24	230
Percent	43.6%	64.3%	76.9%	59.4%	72.4%	51.0%	60.5%	65.4%	52.6%	55.9%	40.0%	54.5%	57.8%

Actions taken ranged from reprimand to removal from employment, and in some cases employees resigned prior to administrative action being affected.

Question#:	36
Topic:	dispute
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: If not for the dispute that an agent reportedly had with a foreign national woman who he brought back to his hotel room, we might have never known about what happened in Colombia. The number of agents found to have brought foreign national women back to their rooms—while only a small percentage of the agents who were in Colombia for President Obama’s trip—was shocking.

In addition to reviewing the historical complaints received by OPR, what else is being done to investigate whether there is a cultural problem within the Secret Service that allowed the incident in Colombia to happen?

Response: In April of 2012, Director Sullivan established the Professionalism Reinforcement Working Group (PRWG). The PRWG is conducting a comprehensive review of the Secret Services’ values and professional standards of conduct. This process will include evaluation of policy related to employment standards and background investigations; patterns of discipline related to misconduct; ethics training; and all law, policies, procedures and practices related to the same. To facilitate this effort, the PRWG will undergo the following actions:

- 1) Collect and analyze comprehensive information related to organizational performance and accountability.
- 2) Identify best practices of other federal law enforcement agencies.
- 3) Prepare an action plan with recommendations for reinforcing professional conduct.
- 4) Provide additional ethics training courses for all employees. The goal is to provide enhanced ethics training to all supervisors, mid-level managers and front line field agents, Officers and Administrative, Professional and Technical employees.

Question#:	37
Topic:	press reports
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Following your appearance before the Committee, there were press reports about alleged misconduct by U.S. Secret Service agents in connection with President Obama's visit to El Salvador in March 2011.

Is the Department investigating this allegation as well?

Response: At this time the U.S. Secret Service is unaware if the DHS-OIG will investigate this matter. Respectfully, DHS-OIG would be best suited to answer this question.

Question: Can you assure us that if additional allegations regarding misconduct of U.S. Secret Service agents emerge that those allegations will be fully investigated?

Response: Yes, absolutely. The Secret Service is committed to investigating any allegation of misconduct where witnesses are willing to come forward with facts, provide information, be interviewed and assist Secret Service Inspectors.

If anyone has personal knowledge concerning misconduct by a Secret Service employee, they may contact the OPR directly or the DHS-OIG.

Question#:	38
Topic:	Arizona v. United States
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: The Supreme Court is recently heard arguments about the constitutionality of a controversial law enacted in Arizona dealing with state-level immigration enforcement. There has been a lot of rhetoric around the efforts of some states to enact this type of legislation. Much of that rhetoric involves claims that the Federal Government is refusing to deal with immigration. For example, when the Governor of Arizona signed the legislation, she stated that it was needed because the “crisis” of illegal immigration was something the Federal Government has “refused” to fix.

Do you think this is a fair characterization of your efforts as the Secretary of Homeland Security or our efforts in Congress?

Is it an accurate statement of the administration’s position on this issue?

Response: We believe the Supreme Court’s decision in *Arizona v. United States* serves as an important reminder of the federal government’s central role in effective administration of our borders and immigration system. Over the past three and a half years, the Department of Homeland Security (DHS) has dedicated historic levels of personnel, technology, and resources in support of the enforcement of our immigration laws and border security efforts. Most recently, the President’s Fiscal Year (FY) 2013 Budget Request continues these efforts by supporting the largest deployment of law enforcement officers to the frontline in our agency’s history: 21,370 Border Patrol agents, over 1,200 Air and Marine agents, and 21,186 U.S. Customs and Border Protection (CBP) officers, who work with state, local, and federal law enforcement in targeting illicit networks trafficking in people, drugs, weapons, and money. Over the last year, we have brought greater unity to our enforcement efforts, expanded collaboration with other agencies, and improved response times.

The results of DHS’s comprehensive and coordinated efforts are clear. Border Patrol apprehensions—a key indicator of illegal immigration—have decreased 53 percent in the last three years and are less than 20 percent of what they were at their peak. Indeed, illegal immigration attempts have not been this low since 1971. Violent crime in border communities also has remained flat or fallen over the past decade, and statistics have shown that some of the safest communities in America are along the border. From Fiscal Years 2009 to 2011, DHS also seized 74 percent more currency, 41 percent more drugs, and 159 percent more weapons along the Southwest border as compared to Fiscal Years 2006 to 2008.

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DHS has undertaken an historic effort to enforce immigration laws in a way that is smart, effective, and that maximizes the resources to enhance public safety, border security, and the integrity of the immigration system by focusing on the removal of convicted criminals, threats to public safety and national security, repeat immigration violators, recent border crossers, and immigration fugitives.

Immigration and Customs Enforcement (ICE) expanded the use and frequency of investigations and programs, like Secure Communities, that help ICE identify criminals and gang members in our jails and remove them from our streets from 14 jurisdictions in 2008 to 3,074 today, which represents 97% of all jurisdictions, including all jurisdictions along the Southwest border. ICE plans to expand this program to all law enforcement jurisdictions nationwide by 2013. As of July 31, 2012, more than 159,400 illegal aliens convicted of crimes, including more than 58,750 convicted of multiple felony offenses or aggravated felony offenses like murder, rape and the sexual abuse of children were removed from the United States after identification through Secure Communities.

ICE is also committed to ensuring the Secure Communities program respects civil rights and civil liberties. ICE works closely with law enforcement agencies and stakeholders across the country to ensure the program operates in the most effective manner possible.

To further deter individuals from illegally crossing our border, ICE has prioritized the apprehension of recent illegal aliens and repeat immigration violators. Between Fiscal Years 2009 to 2011, ICE made over 30,936 criminal arrests along the Southwest border, including 19,563 arrests of drug smugglers and 4,151 arrests of human smugglers.

Overall, in Fiscal Year 2011, ICE removed nearly 397,000 individuals – the largest number in the agency’s history. Ninety percent of these removals fell within one of ICE’s priority categories, and 55 percent, or more than 216,000 of the people removed, were convicted criminal aliens – an 89 percent increase in the removal of criminals from Fiscal Year 2008. This total includes more than 87,000 individuals convicted of homicide, sexual offenses, dangerous drugs, and driving under the influence. Of those removed without a criminal conviction, more than two-thirds in Fiscal Year 2011 fell into our priority categories of recent border crossers or repeat immigration law violators.

Question#:	39
Topic:	report
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Two major newspapers reported recently about a report from the Pew Hispanic Center, which finds tremendous decline in migration from Mexico to the United States. The report and articles cited a number of factors, including increased immigration enforcement efforts as responsible for this trend.

Are you seeing evidence that your efforts are making a difference?

Response: Border Patrol apprehensions—a key indicator of illegal immigration—have decreased 53 percent in the last three years and are less than 20 percent of what they were at their peak. Illegal immigration attempts have not been this low since 1971.

Question#:	40
Topic:	Border staffing
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Your department has increased overall security staffing levels along the Northern Border over the past decade. But it appears that the vast majority of these new positions are with the Border Patrol, not with CBP officers and agriculture specialists at the ports-of-entry.

I appreciate the budget constraints you face now – and the increasing demands along the Southern Border – but I remain concerned about the low staffing levels at Vermont’s ports-of-entry, where I have received some troubling reports involving overall safety practices, security procedures, and the morale and welfare of CBP officers.

In addition, Autoroute 35, a new highway the Canadians are building between Montreal and the U.S.-Canada border at Highgate Springs, could bring 30 percent more traffic to Vermont’s border crossings starting next year.

Are planning efforts underway to address the staffing and infrastructure needs at Vermont’s ports-of-entry and at other ports along the Northern Border?

Response: Planning efforts are underway to address the infrastructure needs at land ports of entry (LPOE) along the northern border to include select ports located in Vermont. Though no immediate infrastructure planning activities are in place for the Highgate Springs LPOE, CBP will be closely monitoring a Vermont Agency of Transportation led transportation study to reevaluate the anticipated traffic impact associated with the opening of Autoroute 35. This study, scheduled to conclude in July 2013, will take into consideration the latest cross-border traffic updates from 2011 and evaluate the impact of recent LPOE modernization efforts, to include the replacement of the Pinnacle Road, Vermont LPOE using funds received through the 2009 American Recovery and Reinvestment Act.

Question#:	41
Topic:	prosecutorial discretion
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: You and Immigration and Customs Enforcement Director John Morton have developed and are implementing a policy to exercise prosecutorial discretion in some immigration enforcement cases with respect to very low priority aliens. This policy is consistent with your broader policy to use law enforcement resources in a smarter, more effective manner. You have been criticized for this policy, with some suggesting that you are bypassing Congress.

Could you explain how this policy assists your immigration enforcement efforts? Is it fair to say that this policy is primarily directed toward improving the use of law enforcement resources in order to prioritize the worst offenders?

How would you respond to criticism that this policy is an attempt to circumvent Congress in order to provide undocumented immigrants with relief or benefits?

Response: The Department of Homeland Security (DHS) must prioritize the use of its immigration enforcement resources to ensure the removal of those aliens who represent our enforcement priorities, specifically convicted criminals, repeat immigration violators, recent border crossers, and immigration fugitives.

The exercise of prosecutorial discretion is inherent in the execution of our immigration laws and practiced by DHS special agents, officers, and attorneys. For decades, DHS, and previously the Immigration and Naturalization Service, has exercised prosecutorial discretion in order to prioritize the use of its immigration enforcement resources. As the U.S. Supreme Court noted in its recent decision on the Arizona immigration law, “A principal feature of the removal system is the broad discretion exercised by immigration officials.” Moreover, the use of prosecutorial discretion, as embodied in DHS’s policy guidance, aligns fully with the spirit of the November 4, 1999 letter signed by a bipartisan group of 27 Members of Congress,¹ which referred to the exercise of discretion as a means of alleviating “hardship” and to some deportations as “unfair.” It is important to note that this initiative is conducted on a case-by-case basis and provides no legal immigration status.

¹ See *Guidelines for Use of Prosecutorial Discretion in Removal Proceedings*, letter to Janet Reno, Attorney General, and Doris M. Meissner, Commissioner, Immigration and Naturalization Service, from Representatives Hyde, Frank, Smith, Jackson Lee, McCollum, Frost, Barrett, Berman, Bilbray, Brown, Canady, Cubin, Deal, Diaz-Balart, Dreier, Filner, E.B. Johnson, S. Johnson, Kennedy, Martinez, McGovern, Meehan, Sensenbrenner, Shays, Waxman, Granger, Green, and Rodriguez (November 4, 1999).

Question#:	42
Topic:	Officers
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: In recent reports and congressional testimony, the DHS Inspector General has reported a substantial number of open corruption and other investigations into CBP and Border Patrol personnel. And there have been recent reports of what appears to involve the use of excessive force by CBP personnel. I recognize and appreciate the very difficult job these officials have, but it is critical that all Federal law enforcement officials maintain a very high level of professionalism and integrity.

Are you concerned about the number of investigations that the Inspector General has reported and is pursuing?

Response: The Department of Homeland Security (DHS) takes seriously allegations of excessive use of force and employee misconduct. We do not tolerate abuse within our ranks. Such allegations are thoroughly investigated, and U.S. Customs and Border Protection (CBP) fully cooperates in investigations involving use of force issues. If employee misconduct is substantiated, timely and appropriate corrective action will be initiated.

All allegations of misconduct are documented and referred to the Office of Inspector General (OIG) for independent review and assessment. Some cases are retained by the OIG for investigation while others are referred back to the component for appropriate handling. The OIG is in the process of transferring 478 cases to ICE's Office of Professional Responsibility (OPR) agents who will investigate cases with the support of CBP's Office of Internal Affairs (IA). In addition, DHS's Office for Civil Rights and Civil Liberties (CRCL) investigates civil rights and civil liberties complaints filed by the public regarding DHS policies or activities, or actions taken by DHS personnel.

Question: What steps have you taken in response to the Inspector General's work to ensure that along with rapid growth in the ranks of CBP and Border Patrol personnel, your screening and training procedures are keeping pace?

Response: In accordance with The Anti-Border Corruption Act of 2010 (Pub. L. No. 111-376), CBP is on track to implement polygraph examinations on 100 percent of law enforcement officer candidates by the end of FY 2012. The Agency will further comply with Pub. L. No. 111-376 by continuing timely initiation of all periodic reinvestigations.

In addition, CBP has a robust integrity training program for all employees. Throughout an employee's career, CBP provides training that focuses on integrity, ethics, and ethical

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decision making as part of an anti-corruption continuum. When employees initially join CBP they receive training promoting workforce integrity as part of CBP's New Employee Orientation program. Newly hired CBP law enforcement officers receive an expanded level of mandatory integrity and ethics instruction as part of the basic training curriculum.

Recurring integrity training is also an integral part of the advanced and specialized training for CBP employees beyond their initial entry on duty. This training, combined with proper leadership, oversight, and management at all levels of the agency fosters a culture of personal accountability and integrity within CBP. It clearly communicates the standards of conduct with which all CBP employees must comply and identifies the consequences of engaging in inappropriate behavior. Most importantly, periodic in-service training equips CBP employees with the tools they need to recognize, report, and respond to integrity challenges they will encounter both on- and off-duty.

Our focus on integrity is not limited to our non-supervisory personnel. CBP supervisory and leadership training programs such as Supervisory Leadership Training, Incumbent Supervisory Training, the Second Level Command Preparation, the CBP Leadership Institute, and the Department's Senior Executive Service Candidate Development Program incorporate classroom instruction and a series of practical exercises that prepare CBP leaders to guide and direct the workforce in a manner that promotes personal integrity and accountability through critical thinking and integrity-based, ethical decision making.

Question#:	43
Topic:	NCTC
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: The Attorney General and the Director of National Intelligence recently released new guidelines governing the acquisition and retention of data by the National Counterterrorism Center (NCTC). Under these new guidelines, it is now conceivable that the NCTC could retain vast amounts of data regarding U.S. persons for up to 5 years – well beyond the six months that was allowed under the previous guidelines. I am concerned that 5 years seems like an awfully long time to be retaining and sifting through data about U.S. persons who may have no connection whatsoever to terrorism.

As DHS could be one of the agencies sharing entire datasets of information with the NCTC, do you agree that such vast amounts of data should be retained for up to five years?

What privacy laws, criteria, and factors will you consider in determining the length of time that DHS will permit NCTC to retain your Department’s data?

Response: The Attorney General of the United States recently approved *Guidelines for Access, Retention, Use and Dissemination by the National Counterterrorism Center and other Agencies of Information in Datasets Containing Non-Terrorism Information* (AG Guidelines) that establish an outside limit for temporary retention—that is, retention of data for the purpose of determining whether it is terrorism-related—of five years for U.S. Person information obtained from certain datasets of other federal departments and agencies. These guidelines also preserve my authority to negotiate with NCTC the terms and conditions within Information Sharing Access Agreements (ISAAs) relating to, among other things, “privacy or civil rights or civil liberties concerns and protections.”

With this in mind, I tasked a DHS Working Group, chaired by a representative from the Office of Intelligence and Analysis and comprised of representatives from the Office of the General Counsel, the Privacy Office, the Office for Civil Rights and Civil Liberties, the Office of Policy, and the various Departmental data stewards, to establish a framework for evaluating NCTC’s data access requests and to make recommendations for the appropriate temporary retention periods for various datasets. The Working Group has settled on six factors for evaluating NCTC’s request on a system-by-system basis:

Data Sensitivity Factors

- Factor 1: Circumstances of Collection
- Factor 2: U.S. Citizen and U.S. Legal Permanent Resident Content
- Factor 3: Sensitivity of Data Fields Requested

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Operational Factors

- Factor 4: NCTC Operational Mission Benefits
- Factor 5: DHS Operational Mission Benefits
- Factor 6: DHS Steward Dataset Limits

As indicated by our development of this framework, the Department does not reflexively permit our datasets containing U.S. Person information to be held in temporary retention by NCTC for five years.

All sharing between DHS and NCTC must be consistent with both agencies' authorities as well as with the Privacy Act. Last year, NCTC and DHS completed five ISAAs which transferred five DHS travel and immigration benefit-related datasets to NCTC in bulk. The ISAA for each dataset includes express privacy provisions and reflects the Fair Information Practice Principles in a number of ways: establishing the authority of both DHS to share the data and NCTC to receive it; defining which directorates at NCTC could access the data and for what purposes; containing an explicit reference to the applicable Routine Use within the system's Privacy Act System of Record Notice; requiring NCTC to report to DHS on their use of our data; and permitting audits of their compliance with the terms of the agreements. In addition, after the agreements were signed, to enhance transparency, the DHS Privacy Office published Privacy Impact Assessment updates for four of the five impacted systems, disclosing the sharing and the terms and conditions within the agreements that protect privacy. The fifth system already had a PIA providing general transparency of this type of sharing.

I am confident that the continued engagement of both the Privacy Office and the Office for Civil Rights and Civil Liberties will ensure that DHS considers appropriate privacy, civil rights, and civil liberties protections in our information-sharing activities.

Question#:	44
Topic:	287(g)
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Section 287(g) of the Immigration and Nationality Act permits DHS to enter agreements with state and local law enforcement entities to assist in the enforcement of immigration laws. Following the Justice Department’s investigation and findings into the policing practices in the Maricopa County Sheriff’s Office, released in December of 2011, you terminated the County’s 287(g) agreement.

Could you describe what led to your decision to terminate the County’s 287(g) agreement?

You have also announced your intention not to enter any new 287(g) agreements going forward.

What was the basis for this decision?

Response: The U.S. Department of Homeland Security (DHS) has followed closely the U.S. Department of Justice’s (DOJ) investigation and findings related to the policing practices of the Maricopa County Sheriff’s Office (MCSO) and subsequent lawsuit alleging a pattern or practice of discriminatory and unconstitutional law enforcement practices. Discrimination undermines law enforcement and erodes the public trust. DHS first terminated MCSO’s 287(g) task force task force agreement when DOJ initiated its investigation of MCSO, and then terminated MCSO’s jail model agreement and restricted the MCSO’s access to Secure Communities technology when DOJ issued its findings of unconstitutional and discriminatory policing by MCSO.

Further, ICE is discontinuing the least productive 287(g) task force agreements and will also suspend consideration of any requests for new 287(g) task forces. The basis for this decision is that task force agreements are less efficient than jail model agreements at identifying and removing criminal aliens. For example, for 2011, task force model agreements resulted in an average of 35 removals per agreement, whereas jail model agreements resulted in an average of 450 removals per agreement. DHS will continue to focus our limited resources on enforcement priorities including criminal aliens, recent border crossers, repeat and egregious immigration law violators, immigration fugitives and employers who knowingly hire illegal labor.