

Question#:	1
Topic:	border security 1
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You have emphasized that apprehensions at the border are down, and in doing so, praise the Administration's record on border security. However, Customs and Border Protection has just released numbers showing that apprehensions increased 13 percent over the last year. Does the fact that border apprehensions are up mean that the border is becoming less secure?

Response: The deployment of resources that this Administration has made, by every traditional measure, has led to unprecedented success. In Fiscal Year (FY) 2012, Border Patrol apprehension activity remained at historic lows with apprehensions in California, Arizona, and New Mexico continuing a downward trend. In FY 2012, the Border Patrol recorded 364,768 apprehensions nationwide, 78 percent below their peak in 2000 and down 50 percent from FY 2008. An increase in apprehensions during FY 2013 was noted in south Texas, specifically of individuals from Central American countries, including El Salvador, Guatemala, and Honduras. However, significant border-wide investments in additional enforcement resources and enhanced operational tactics and strategy have enabled U.S. Customs and Border Protection (CBP) to address the increased activity. Today, there are more than 6,000 agents in South Texas, an increase of more than 93.5 percent since 2004.

The Border Patrol achieves this desired strategic outcome by maximizing the apprehension of detected illegal entrants or, confirming that illegal entrants return to the country from which they entered; and by minimizing the number of persons who evade apprehension and can no longer be pursued.

Question: The bill only calls for establishing an entry/exit system for air and sea ports before implementing the path to citizenship. Aside from costs, what impediments are there to instituting the system at land ports?

Response: CBP is moving forward with collecting biographic exit data in the land environment already, however, the land border environment is considerably different from that of air and sea. First, the traveler volume at land ports is significantly higher and includes various modes of transportation including vehicles, trains, buses, ferries, bicycles, trucks and pedestrians. There are also major physical infrastructure, logistics and operational hurdles to overcome to actually perform the collection of an individual's biographic/biometric data upon departure at a land border. Land border ports of entry along with the transportation routes were not designed with the intent of processing

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outbound travelers in the same way as CBP processes inbound travelers. There are a limited number of vehicle and pedestrian lanes upon departure and vehicles can depart the United States traveling at 50 miles an hour at some locations.

To address these hurdles, the Department of Homeland Security (DHS) is developing innovative ways to collect biographical exit information at land borders. As part of the Beyond the Border Agreement with Canada, DHS and the Canada Border Services Agency (CBSA) are partnering to create a biographical entry/exit system on the shared land border by exchanging entry information, so that information collected on entry to one country is automatically recorded as an exit from the other. Essentially, each country collects biographical departure information for the other simply using their existing entry collection procedures, and shares this data with the other country.

This program began on June 30, 2013, and already CBP has collected over 2.5 million exit records from Canada, receiving approximately 10,000 to 15,000 per day. The program currently exchanges data only on third country nationals (i.e. non-American or Canadian citizens), but will expand to include citizens in 2014. Using available interfaces which already existed with Canada, this will be developed at virtually no cost. Accordingly, the United States already has an entry/exit system on its northern border today, just as it does in the air and sea environments. While CBP does not have physical structures or officers that facilitate collection of exit data directly from departing passengers, CBP still gets all of the relevant departure information.

On the southern border, CBP is researching additional ways to collect data from departing passengers into Mexico. However, there are significant differences in infrastructure, volume, and data collection procedures between Canada and Mexico. CBP is currently researching data collection methods that will have no impact on the flow of travel for departing travelers or trade between the two countries. These include data exchange programs similar to the northern border, the use of RFID technology for travelers with existing RFID-enabled documents, and several other possibilities. CBP has already begun discussions with the Mexican government regarding data exchange programs, and in 2015, CBP is planning to pilot additional technologies in the outbound pedestrian environment on the southwest border, where there is significant pedestrian traffic.

Question#:	2
Topic:	border security 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
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Committee:	JUDICIARY (SENATE)

Question: The bill requires your Department to establish a strategy to identify where fencing should be deployed along the southern border. During the hearing, you indicated that the administration believes that sufficient fencing is in place and that you'd prefer not to increase fencing along the southern border. Do you anticipate that your study will call for any additional physical fencing?

Response: DHS would prefer flexibility with how funds should be used to fortify border security, as opposed to a mandate that all of the funds dedicated to fencing in the Senate bill go to additional fencing. We believe that increased investments supporting infrastructure, maintenance and repair, and technological assets would be a more efficient use of resources and more effectively provide the situational awareness and operational capabilities that would serve as a force multiplier for the Border Patrol.

Question#:	3
Topic:	border security 3
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, we discussed the fact that the Northern border was not a part of the trigger and did not need to be secured before green cards are distributed. You said that the Northern border is a different border, but that it's a part of the discussion. Can you elaborate? Can you describe how the northern border is "different?"

Response: Although the operational challenges in the Northern and Southern border environments vary greatly, the primary concerns or threats are very similar: the illegal movement of people, goods, and conveyances across the border. In the Northern Border environment, rugged terrain and a corresponding lack of infrastructure hinder our patrol capabilities and equally impede illicit cross border traffic.

To address these threats, the Department of Homeland Security's (DHS) Northern Border approach focuses on bi-national, federal, state, local, and tribal law enforcement partnerships, information sharing agreements, joint integrated operations, and community outreach in order to maximize efforts and resources. DHS employs coordinated inbound and outbound enforcement operations along the Northern Border with other law enforcement entities through Integrated Border Enforcement Teams (IBET), Border Enforcement Security Taskforces (BEST), and Integrated Cross-Border Maritime Law Enforcement Operations (Shiprider). IBETs, which are composed of Border Patrol agents, U.S. Customs and Border Protection officers, Immigration and Customs Enforcement agents, the U.S. Coast Guard, the Royal Canadian Mounted Police, and the Canada Border Services Agency, operate on a daily basis in 23 locations along the border. IBETs collaborate with municipal, provincial, state, federal, and tribal law enforcement agencies, stakeholder agencies, and related governmental departments to identify, investigate, and interdict persons and organizations that threaten the national security of our respective countries or that are involved in organized criminal activity, between the ports of entry. BESTs are multi-agency teams that identify, investigate, disrupt, and dismantle criminal organizations posing significant threats to border security. BESTs, which are ICE-led, utilize co-located and cross-designated investigative assets of federal, state/provincial, local, and tribal law enforcement partners on both sides of the border to investigate transnational crime. Under Shiprider, cross-designated U.S. and Canadian law enforcement officers perform joint patrols in shared maritime areas. The U.S. Coast Guard (USCG) and the Royal Canadian Mounted Police (RCMP) are the primary Shiprider participants.

Question#:	3
Topic:	border security 3
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Please provide a list of “Other than Canadians” that have crossed the Northern border illegally in the last ten years, including their country of origin.

Response: While U.S. Customs and Border Protection does not maintain a list of aliens “Other than Canadians” that have crossed the Northern Border illegally over the last ten years, the total number of deportable, Non-Canadian apprehended on the Northern Border from Fiscal Year 2004 through Fiscal Year 2013 is 59,430.

Question#:	4
Topic:	border security 4
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Section 1102 of S. 744 requires the Secretary to increase the number of CBP officers by 3,500; however, it does not specify how many of those agents will be used to secure the physical border versus customs enforcement and other mission requirements. How do you envision this section being implemented, and how would the department make decisions with regard to determining how many agents are hired to secure the physical borders?

Response: The mission of preventing illicit goods and people who would do us harm from entering the United States, while also facilitating the flow of legitimate trade and travel into and out of the United States, is demanding, complex, and constantly evolving, and requires adequate front-line staffing for effective and efficient performance. To meet this challenge, each U.S. Customs and Border Protection (CBP) officer is multi-disciplined and able to perform the full range of inspection, intelligence analysis, examination, and law enforcement activities related to the arrival and departure of persons, conveyances, and merchandise at the ports of entry (POEs). CBP’s intent is for every CBP officer to directly contribute to the border security mission at the POEs – new CBP officers are brought on board with this understanding.

CBP has developed the Workload Staffing Model (WSM) to identify CBP officer staffing needs at ports of entry and inform staffing decisions. The WSM is a data-driven model that includes activities for all environments (air, land, and sea) and more than 100 workload elements. Actual deployment decisions are then made by CBP management, using a number of factors including the WSM results, service levels, and operations subject matter expertise; this information is regularly updated to account for changing conditions.

Question#:	5
Topic:	border security 5
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Section 1104 provides funding for only the Tucson Sector of the Southwest Border region. Does the administration support only resources to this sector? Are there other sectors that should be included? If so, please provide details.

Response: U.S. Customs and Border Protection supports funding for resources throughout the border regions, consistent with the threat and management of risk.

Question#:	6
Topic:	border security 6
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Section 1105 relates solely to the State of Arizona. Should this provision be expanded to all of the Southwest Border states?

Response: In accordance with the 2006 Memorandum of Understanding between U.S. Customs and Border Protection (CBP), the Department of the Interior (DOI), and the Department of Agriculture (USDA), Border Patrol agents have not been denied access in the case of an emergency or exigent circumstance to exercise their authority. All access issues that have been identified are currently being cooperatively addressed by CBP, DOI, and USDA's U.S. Forest Service. CBP does not believe any additional authority to access federal lands is necessary.

Question#:	7
Topic:	border security 7
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Section 1107 provides for a grant program in which individuals who reside or work in the border region and are “at a greater risk of border violence due to lack of cellular service” can apply to purchase phones with access to 911 and equipped with GPS. Does the administration believe that the Southwest Border region is safe and secure, rendering this grant program unnecessary?

Response: The Department of Homeland Security (DHS) agrees that access to 911 service through cellular telephone service can improve public safety, and generally supports efforts to improve such access, whether in the Southwest border region or elsewhere. Border security has changed significantly over the past ten years, not only in terms of resources, infrastructure, and operations, but also in how we assess and measure the state of an ever-changing border environment. Over the past four years, the Obama Administration has made historic investments in border security, adding more personnel, technology, and infrastructure; making our ports of entry more efficient to lawful travel and trade; deepening partnerships with federal, state, local, tribal, and territorial law enforcement, and internationally; improving intelligence and information sharing to identify threats sooner; strengthening entry procedures to protect against the use of fraudulent documents and the entry of those who may wish to do us harm and enhancing our exit system to improve tracking and enforcement of overstays. We are proud of these achievements, which reflect the hard work of many DHS agents and officers and our partners, who work long hours and often at great personal risk.

These efforts have contributed to a border that is far stronger today than at any point in our nation’s history, and border communities that are safe and prosperous. Since 2004, we have doubled the number of Border Patrol agents from approximately 10,000 to more than 21,000 today. Along the Southwest border, the number of Border Patrol agents has increased by 94 percent to nearly 18,500. Along the Northern border, we now have more than 2,200 Border Patrol agents. To facilitate the secure flow of people and goods, we have also increased the number of U.S. Customs and Border Protection (CBP) officers ensuring the secure flow of people and goods into our nation from 17,279 customs and immigration inspectors in 2003 to more than 21,000 officers and 2,300 agriculture specialists today. CBP has deployed proven, effective technology to the border tailored to the operational needs of our agents on the ground. We have expanded our unmanned aerial surveillance capabilities and strengthened our air and marine interdiction capabilities. These efforts have contributed to a border that is more secure today than at any point in our nation’s history.

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Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
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Question: Does the administration have any views on Section 1111 on the Use of Force, including the requirement that the department collaborate with the Assistant Attorney General for the Civil Rights Division of the Department of Justice?

Response: The Department believes that it is important for DHS to collaborate on Use of Force policies with the Assistant Attorney General for the Civil Rights Division of the Department of Justice. We believe that the language would be strengthened if it recognized the statutory and important role of the DHS Office for Civil Rights and Civil Liberties in such collaboration; CRCL is currently responsible for reviewing DHS programs, policies, etc., to ensure protection of civil rights and civil liberties.

Question#:	8
Topic:	worksite/e-verify
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: E-Verify has proven to be an effective tool to help employers verify the work eligibility of its workforce. It's web-based and easy to use. The system has been ready for national deployment for years. Yet, this bill doesn't make it mandatory for all employers for five years from the time your Department issues regulations. How long will it take your Department to issue regulations with regard to the E-Verify program?

Response: In its current form, the bill requires these regulations to be issued on an interim basis within one year of the date of enactment (sec. 3106). The bill also requires a five-year roll-out in mandatory use of E-Verify based on company size to ensure that the system meets the needs of both employers and workers (sec. 3101). DHS supports the current timeline specified in the bill, and will use the five-year rollout time frame to make additional enhancements and changes as required by the bill and to educate employers and employees nationwide.

Question#:	9
Topic:	layers of review 1
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill is full of administrative reviews for people here illegally. What is your position on the ability of these people to take a denial or revocation to a U.S. Federal court?

Response: Availability of administrative review, and, when appropriate, judicial review, for both lawfully present and undocumented individuals is important aspect of immigration law. DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

Question#:	10
Topic:	layers of review 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill would grant Immigration Judges broad new discretion to allow an immigrant that DHS wants to remove to stay in the United States by waiving current bars to admission and removal grounds for numerous crimes such as drug crimes, firearms offenses, domestic violence, fraud, high speed flight at a checkpoint, and crimes involving moral turpitude, if the Immigration Judge finds hardship to a citizen or legal permanent resident or if he thought it was in the public interest. Do you think current immigration laws are too strict against illegal immigrants who engage in this type of criminal conduct?

Response: Discretionary waivers of inadmissibility or deportability are an important part of immigration law. DHS supports the Senate bill and we look forward to seeing any proposal from House of Representatives and working with Congress on these issues.

Question#:	11
Topic:	layers of review 3
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill provides for broad authority for appeals to district courts and circuit courts if your Department denies an alien's application for the legalization program. Thus, if DHS denies an alien's request for legalization, the alien can appeal to federal court and delay his deportation for years. This would include criminal aliens. Do you think federal courts should be able to second guess your decision of whether to deny an application for the bill's legalization program and prevent you from removing aliens including criminal illegal immigrants?

Response: The Department supports the judicial review provisions included in the bill.

Question#:	12
Topic:	legal immigration 1
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill provides for an increase in H-1B visas. It also includes a so-called “market escalator” that allows the cap to move up or down, based on demand. The agency has always had difficulty counting the visas, sometimes exceeding the congressional mandated cap. Some say this bill only complicates the matter. Do you support this approach to the H-1B cap?

Response: The Department supports the inclusion of some market-based adjustment criteria in the H-1B cap and the Department believes that it would be able to administer them effectively.

Question#:	13
Topic:	legal immigration 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill allows the U.S. CIS to “recapture” unused visas. Is there any such thing as an “unused” visa? Please list how many visas have been “unused” each year since 1990 and what category they fall under.

Response: DHS defers to the U.S. Department of State, which leads Administration efforts to calculate available immigrant visa numbers.

Question#:	14
Topic:	temporary worker program 1
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The new temporary worker program – known as the W visa program – is a brand new concept in which an employer applies independently from the foreign national. It’s a two step process, giving instant portability to the worker and very little responsibility for the employer. Do you think this program is properly set up? How would you improve it?

Response: The Department supports the W visa program in the bill and looks forward to working with Congress on passage of the legislation.

Question#:	15
Topic:	temporary worker program 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In 1996, after the 1993 World Trade Center attack, Congress mandated that the immigration service, with cooperation from schools and universities, collect information on foreign students. This system took years to get up and running. In fact, it still wasn't in place on 9/11. While it's operational today, there's still work to be done to make that system effective. Yet, the bill would require the U.S. Citizenship and Immigration Service[s] – the same agency in charge of the legalization program, E-Verify, and every other immigration benefit – to set up and operate a monitoring system for employers who use the new W visa program. The bill clearly lacks instruction on how your Department will establish and maintain this very critical monitoring system, exposing a huge vulnerability. How do you anticipate setting up this system, and when would it be operational?

Response: If USCIS is to establish and operate a W monitoring program, it will work with other departments and agencies to build on their expertise implementing similar systems. USCIS will need to 1) hire staff to design and operate the system, 2) educate employers on their obligations and how the system will track them, 3) educate government agencies on the information that will be kept and appropriate uses of that information, 4) establish protocols to notify other government agencies of potential violations of W laws and regulations, and 5) ensure appropriate resources are designated for the creation and maintenance of the system. It also will be necessary to ensure that it has sufficient staff and resources to address W noncompliance, and that DHS, DOS, and other appropriate government entities have access to the system.

Question#:	16
Topic:	temporary worker program 3
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill creates the Bureau of Immigration and Labor Market Research as an independent statistical agency within the U.S. Citizenship and Immigration Services. The Bureau will devise a methodology to determine the annual change to the cap for W visas. The new Commissioner of this Bureau will designate shortage occupations, in need of workers, so that an employer can petition the Commissioner for a determination of whether a particular occupation in a particular area has been deemed a shortage occupation.

Why is there a need to create this new Labor Market Research agency housed in the U.S. Citizenship and Immigration Services? Why not put it in the Labor Department, which undoubtedly has access to similar information? Particularly when the bill appropriates, not authorizes, but appropriates \$20 million to establish the Bureau. Aren't there more efficient and cost-saving ways to handle this?

The bill permits employers to “lobby” the Commission of the new Bureau for a determination of whether they can fill particular jobs with temporary workers as opposed to U.S. citizens. What kind of message does that send to the public, especially when the bureau is meant to be an “independent statistical agency”?

Response: The Bureau of Immigration and Labor Market Research would be tasked with important and significant new responsibilities. To perform these responsibilities, USCIS may request data from the Department of Labor, including the Bureau of Labor Statistics, and Department of Commerce. USCIS already tracks and reports annually on labor statistics related to the H-1B, H-2B, and EB-5 programs. Expanding these duties to encompass the new W visa category is a natural extension of current USCIS responsibilities.

The bill permits employers to petition the Commissioner “for a determination that a particular occupation in a particular metropolitan statistical area is a shortage occupation.” However, the bill also requires the Bureau to publish in the Federal Register, subject to an opportunity for public comment, the methodology to designate shortage occupations, to ensure robust public input and transparency.

Question#:	17
Topic:	legalization/RPI status 1
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Your testimony stated that the Department has removed a record number of criminals from the United States. But, I'm afraid that some parts of the bill we're considering would undermine the work of your agents, further weakening the confidence of the American people that we're serious about enforcing the laws. The bill states that individuals here illegally who apply for RPI status are not made ineligible even if they've been convicted of numerous misdemeanor offenses. As written, only if someone's been convicted, on different days, of 3 or more offenses are they ineligible for RPI status. So, if someone was convicted of 10 misdemeanor offenses on one day, then that person isn't ineligible?

Response: The bill contains several grounds of ineligibility for registered provisional immigrant (RPI) status. Applicants with criminal convictions are ineligible for RPI status if they have been convicted of a felony, an aggravated felony, three or more misdemeanors on different dates, or of an offense that makes the applicant inadmissible under section 212(a)(2) of the Immigration and Nationality Act. Depending on the offense or conviction, a single misdemeanor may render an applicant ineligible. For example, the term "aggravated felony" includes both misdemeanor and felony convictions that fit with the definition of that term. An applicant who has been convicted of a misdemeanor controlled substance offense is inadmissible under section 212(a)(2). Likewise, an applicant who has been convicted of two or more crimes involving moral turpitude is inadmissible under section 212(a)(2) regardless of whether those convictions are misdemeanors or felonies. These grounds of ineligibility capture many individual misdemeanor offenses. Other misdemeanors that are not aggravated felonies, do not relate to controlled substances, and do not involve moral turpitude will still render an applicant ineligible if the applicant has convictions for three or more misdemeanor offenses, and if the alien was convicted on different dates for each of the offenses.

Question#:	18
Topic:	legalization/RPI status 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In the past, there has been an attempt to impose a time limit for federal agents to complete background checks on aliens who apply for legalization. Will you assure us that, under your leadership, no such time limit would be imposed?

Response: The majority of background checks that USCIS performs are resolved in a timely manner with assistance from law enforcement agencies and the intelligence community. When a check returns derogatory information, USCIS will, whenever necessary, coordinate with its law enforcement and or intelligence community partners to de-conflict the returned information prior to adjudicating any benefit. This external coordination and deconfliction may add additional time to the adjudication process, but USCIS considers this a necessary step in its ability to identify fraud and national security concerns. Beyond deconfliction, USCIS will generally withhold adjudication of applications when the applicant is subject to a law enforcement or national security investigation. USCIS will withhold adjudication 1) to ensure that USCIS does not compromise an ongoing investigation by granting or denying a benefit or status, and 2) so that it can best determine eligibility.

Question#:	19
Topic:	legalization/RPI status 3
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill simply provides authority to the Secretary of Homeland Security to require an applicant for Registered Provisional Immigrant status to appear in person for an interview. Congress said that anyone applying to enter the country from abroad should undergo an in-person interview. Why should this be any different? Under your leadership, would you require those who apply for legal status to undergo an interview with agents? How many times, and under what circumstances, have DACA applicants been interviewed?

Response: USCIS employs robust tools to safeguard the integrity of the adjudication process and, given the evidence we see in other benefits streams, believe interviewing all RPI applicants may be unnecessary to achieve accurate adjudications, safeguard security, or mitigate fraud. We support having the authority to conduct interviews of RPI applicants in our discretion. USCIS's ability to determine interview selection criteria is an integral component of the strategy to move adjudication production forward and assures USCIS of another tool it can use to resolve fraud, public safety or other national security and law enforcement concerns. We develop our operational processes carefully and will examine our interview procedures under any new legislation that is signed into law.

Question#:	20
Topic:	legalization/RPI status 4
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill prohibits the Secretary to detain or remove any person during the application period, with limited exceptions including those whose RPI status has been revoked. What action would the department take against aliens during the application process who are a serious national security, public safety or health risk?

Response: The Department of Homeland Security (DHS) will continue to prioritize its civil enforcement efforts on those individuals who pose a risk to public safety, such as those who are convicted of violent crimes and other serious felonies, and recent border crossers. DHS will also continue to pursue criminal investigations consistent with its public safety and national security statutory authorities.

Question#:	21
Topic:	legalization/RPI status 5
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: One of the requirements under this bill – and previous bills in the last several years – is that those here illegally would have to pay back taxes before they are legalized. The bill lacks detail about how this would actually be carried out. Given that your department will have to process millions of people and determine if they paid all their tax liabilities, how do you envision this working?

Response: The Department is confident that working in coordination with the Internal Revenue Service, we can adhere to the requirements of the legislation and process these applicants.

Question#:	22
Topic:	legalization/RPI status 6
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: If an alien provides information in an application that is law enforcement sensitive or criminal in nature, should that information be used by our government and not be protected under confidentiality provisions – even for law enforcement and national security purposes? b) Does the language, in the department’s opinion, preclude the ability to disclose information related to visa fraud or immigration fraud with law enforcement entities? c) If an applicant provides information in an application that clearly renders him ineligible and commits a serious crime that would warrant his immediate removal, shouldn’t the government be able to use that information to place him in deportation proceedings?

Response: Under present law, law enforcement in most cases may use the information provided in official documents for official purposes. Aliens who knowingly provide false information on official documents may also be prosecuted under 18 U.S.C. § 1001. Section 2104 of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act would generally restrict use of information furnished in an application filed under proposed Immigration and Nationality Act sections 245B, 245C, and 245D to determinations of eligibility under those provisions, but requires that such information be disclosed for national security and certain criminal investigative purposes that do not relate to applicants’ immigration status.

Question#:	23
Topic:	legalization/RPI status 7
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The bill doesn't make gang membership an inadmissible or deportable offense. It only renders them so if they commit a felony. Should gang members be allowed to benefit from a legalization program?

Response: DHS is committed to prioritizing its civil enforcement resources and ensuring that those individuals who pose a risk to public safety, such as those individuals convicted of violent crimes and felonies, are removed from the U.S. Similarly, consistent with its statutory authorities, DHS conducts criminal investigations of transnational gang activity in furtherance of public safety and security.

Question#:	24
Topic:	legalization/RPI status 8
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Does the bill allow those who have current investigations for having filed and been denied applications under another identity to be eligible for legalization/RPI status?

Response: Section 212(a)(6)(C) of the Immigration and Nationality Act does not apply to individuals applying for legalization under the bill unless based on the act of unlawfully entering the United States after the date of enactment or misrepresentations related to the application.

Question#:	25
Topic:	legalization/RPI status 9
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Should people that have been denied legalization through the program be placed in immigration proceedings and removed?

Response: The bill would allow certain noncitizens who are currently unlawfully present and who entered the United States prior to December 31, 2011, to apply for registered provisional immigrant (RPI) status. DHS anticipates that, consistent with the nation's immigration enforcement laws, it would continue to prioritize the removal of aliens who pose a danger to national security or public safety.

Question#:	26
Topic:	legalization/RPI status 10
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You responded to questions after the February 13th, 2013, hearing by saying that USCIS plans to hire a total of 1,422 positions to support the DACA workload. How many more positions at USCIS, ICE and CBP will need to be hired to fulfill the requirements under S. 744?

Response: The staffing needs of DHS component agencies will depend on the shape of any final bill. When a bill is passed, DHS will be in a better position to estimate hiring needs.

Question#:	27
Topic:	legalization/RPI status 11
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Will the department publish guidelines or a broad policy memorandum regarding affidavits that are allowed under the bill? How will fraud and abuse be prevented, and will training be provided to adjudicators on affidavits? Given that the department has accepted various forms of evidence for DACA, including receipts for purchase of internet video games, what has the department learned about affidavits and what will the department change from the DACA guidelines?

Response: Immigration law has long permitted the use of affidavits as evidence. DHS regulations at 8 C.F.R. § 103.2(b)(2) provide general guidance for the use of affidavits:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

See also, e.g., 8 C.F.R. §§ 101.5(b), 103.5(a)(2), 204.1(g)(2)(ii), 204.2(a)(1)(i)B)(5), 208.4(a)(5)(iii)(A), 208.9(b), 210.3(c), 214.2(h)(4)(iv), 214.2(o)(2)(iii), 216.4(a)(5)(v), 245.1(c)(8)(v)(E).

USCIS officers are provided comprehensive training on the adjudication process for all USCIS applications and petitions. The training includes the evaluation of evidentiary records which may include affidavits in support of various aspects of a claim. USCIS officers are prepared to evaluate the totality of the evidence to determine if the requestor satisfies the burden.

Question#:	27
Topic:	legalization/RPI status 11
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

When necessary USCIS officers may conduct interviews or request the assistance of the Fraud Detection and National Security Directorate (FDNS) assets to confirm the veracity of an affidavit.

Question#:	28
Topic:	legalization/RPI status 12
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Does this bill, or any other provision of law, penalize people here unlawfully from falsely claiming eligibility for RPI status? Is there concern that aliens could falsely claim eligibility in order to avoid detention and removal?

Response: U.S. criminal laws prohibit providing false information when submitting visa application information and other official documents. Section 3709 of the proposed legislation contains a new ground of inadmissibility based on convictions or admissions of committing offenses relating to immigration document fraud under 18 U.S.C. sections 1541, 1545, and 1546. In addition, although providing a revised waiver standard for certain grounds of inadmissibility in the adjudication of applications for registered provisional immigrant status, section 2101 provides that inadmissibility under section 212(a)(6)(C)(i) of the INA may not be waived under the revised standard for “representations relating to an application for registered provisional immigrant status.”

The Department of Homeland Security (DHS) may deny applications containing false information or lacking the information required by statutes and final rules.

As in existing programs, DHS will continue to seek criminal prosecution to the fullest extent of the law to combat immigration fraud. Persons submitting fraudulent applications will be treated as an enforcement priority.

Question#:	29
Topic:	DACA
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On April 23rd, the U.S. District Court for the Northern District of Texas concluded that the Plaintiffs in Christopher L. Crane et al v. Janet Napolitano are likely to succeed on the merits of their claim that the DACA directive violates 8 USC 1225(b)(2)(A). This preliminary decision is reflects how the administration has overstepped its authority to reinterpret current law. How can the American people trust that you and this administration will faithfully carry out an immigration bill passed by Congress?

Response: On July 31, 2013, the U.S. District Court for the North District of Texas dismissed all of the Plaintiffs' claims in Crane v. Napolitano. The court concluded that the Civil Service Reform Act precludes the court from addressing the claims by depriving the court of subject matter jurisdiction. Thus, the court concluded it could not decide the merits of Plaintiffs' claims, and dismissed the case in its entirety. More generally, the Department of Homeland Security has dedicated unprecedented levels of personnel, technology, and resources in support of smart, commonsense enforcement of our immigration laws. That would continue under any new law. The Supreme Court has recognized the role of discretion in enforcing our immigration laws. *See, e.g., Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012) ("A principal feature of the removal system is the broad discretion exercised by immigration officials."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999) (instructing that "[a]t each stage the Executive has discretion to abandon the endeavor" of an immigration enforcement action).

Question#:	30
Topic:	stateless
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Section 3405 provides for protections for certain “stateless” persons in the United States and allows the Secretary of Homeland Security to designate specific groups of individuals who are considered stateless persons. This provision appears to grant blanket relief to any “stateless” person who is in the United States, even though a date of physical presence is not identified. Does the administration support this provision? Given that this provision has serious implications for national security and delegates unlimited power to you as Secretary, can you describe who would be designated under this section if the bill were to pass as written?

Response: DHS supports the Senate bill and we look forward to seeing any proposal from House of Representatives and working with Congress on these issues. DHS believes that robust screening requirements employed in the refugee and asylum programs, including security screening protocols, would inform the structure of such a program.

Question#:	31
Topic:	timelines
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Are the timelines provided in the bill, including the requirements for reporting and issuing regulations, appropriate and realistic?

Response: DHS is confident it will meet the deadlines specified in the bill.

Question#:	32
Topic:	immigration system
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: There is concern that terrorists have and will continue to exploit our immigration system to enter and remain in the United States. One witness on April 22 testified that terrorists have used our generous asylum laws to gain status. Can you provide statistics on the number of people in the United States that have sought asylum and were granted asylum in each of the last 10 years? Are there ways to improve the process so that terrorists don't abuse the system?

Response:

Affirmative¹ Asylum Applications by Fiscal Year

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Total new case receipts	58,404	43,339	27,908	24,260	24,288	25,674
Approvals	19,611	12,176	10,278	9,897	10,059	10,191
Ineligible for Asylum	34,263	28,806	21,657	20,646	21,263	26,708
Administratively Closed	32,527	49,736	77,016	85,926	45,322	22,635
Approval Rate	36%	30%	32%	32%	32%	28%
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Total new case receipts	25,505	24,553	28,444	35,067	41,883	44,446
Approvals	9,796	9,614	9,174	10,700	12,991	10,981
Ineligible for Asylum	21,562	17,283	16,742	18,369	18,870	13,074
Administratively Closed	14,007	5,621	3,563	4,336	5,032	4,294
Approval Rate	31%	36%	35%	37%	41%	46%

USCIS's Asylum Division encounters the world's most vulnerable population—those who have fled persecution—and understands that our nation's time-honored tradition of protecting refugees is strengthened when the integrity of the program is above reproach. For the past two decades, the Asylum Division has implemented a number of safeguards and measures to establish an accountable, reliable, efficient, and effective process for adjudicating asylum claims that simultaneously deters fraud and safeguards our national security.

Current integrity measures include:

¹ These figures do not include defensive asylum application filings and grants of asylum by the Department of Justice's Executive Office for Immigration Review (EOIR).

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Topic:	immigration system
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
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- A specially-trained cadre of asylum officers trained in relevant law, interviewing techniques, fraud detection and prevention, national security issues, and country conditions research. Each asylum office is required to devote ten percent of its work week to training to maintain such skills and stay abreast of the latest developments in these areas.
- An in-person, in-depth interview of every principal asylum applicant, which allows the officer to fully explore the asylum claim and any credibility issues. To ensure the accuracy of interpretation and prevent fraud, professional, telephonic interpreters monitor the applicants' interpreters.
- An extensive battery of required security checks to confirm each applicant's identity, uncover criminal or other derogatory information, and identify information, such as travel history, that could impact the decision. Mandatory checks include name checks and fingerprint verification against numerous department and external agency databases, including law enforcement and the intelligence community. Specifically, biographic checks include FBI name checks, Customs and Border Protection TECS, Immigration and Customs Enforcement ENFORCE Alien Removal Module, Department of State (DOS) Consular Consolidated Database (CCD), and National Counterterrorism Center vetting. Biometric checks include screening against the FBI's IAFIS database, the Office of Biometric Identity Management's (OBIM; formerly US-VISIT) IDENT database, and for certain applicants, vetting against the Department of Defense's Automated Biometric Identification System (ABIS) database. Additional integrity measures such as government-funded interpreter monitors, information sharing with other countries, and involvement of specially trained Fraud Detection and National Security Immigration Officers as necessary would also be utilized under the proposed process. The Asylum Division also conducts information sharing with Canada, the United Kingdom, Australia, and New Zealand. When necessary, officers may also request that USCIS offices overseas or U.S Embassies or Consulates abroad verify documents or information that an asylum applicant has submitted in support of an asylum application.
- Supervisory review of certain categories of sensitive cases, including national security-related cases, helps ensure consistency, spot potential fraud patterns, and identify possible national security concerns. Such decisions are also reviewed by the training and quality assurance branch in headquarters, which must concur with the decision before it is issued.
- Special procedures for identifying and handling for cases involving national security concern, which ensure that our officers are working with relevant law enforcement and intelligence community partners to fully understand any

Question#:	32
Topic:	immigration system
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
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- potential threats posed by applicants, and ensure that asylum decisions are based on all relevant information available.
- Posting a Fraud Detection and National Security Directorate (FDNS) officer at every Asylum Office. FDNS officers are trained to investigate asylum requests involving potential fraud, public safety, or national security concerns, and they work with the asylum adjudicators to ensure that all relevant information is available and considered when adjudicating the request for asylum. This includes liaising with local Joint Terrorism Task Forces regarding these cases.

The Asylum Division has continually sought to enhance its processes by employing strong integrity measures and will continue to explore the availability of new mechanisms in the future.

Question#:	33
Topic:	asylum screening process
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, Senator Feinstein inquired about a provision that would streamline the asylum screening process by allowing your Department to grant asylum immediately following a screening interview. She expressed fear that your Department would not confer with the State Department, as it does not, to verify the veracity of an asylum applicant's claims. While you responded that your Department has good relationships with the State Department, you failed to answer whether proper checks would be done before granting asylum to anyone who shows up at our ports of entry. Can you please elaborate on this matter and explain how the Department would work with State? How does this not make us more vulnerable to those who will try to take advantage of this expedited process?

Response: If the asylum process is modified to allow asylum officers to grant asylum following a credible fear screening interview, those asylum applicants will undergo the same full battery of background identity and security checks currently required for affirmative asylum applicants. This includes biographic and biometric checks. Biographic checks include FBI name checks, Customs and Border Protection TECS, Immigration and Customs Enforcement ENFORCE Alien Removal Module, Department of State (DOS) Consular Consolidated Database (CCD), and National Counterterrorism Center vetting. Biometric checks include screening against the FBI's IAFIS database, the Office of Biometric Identity Management's (OBIM; formerly US-VISIT) IDENT database, and for certain applicants, vetting against the Department of Defense's Automated Biometric Identification System (ABIS) database. Additional integrity measures such as mandatory supervisory review of all asylum decisions, government-funded interpreter monitors, information sharing with other countries, and involvement of specially trained Fraud Detection and National Security Immigration Officers as necessary would also be utilized under the proposed process.

The Asylum Division's officers regularly use DOS country of origin information in adjudicating asylum claims. DOS publishes a variety of reports containing country of origin information. Apart from its annual Human Rights Reports, DOS also releases annual reports on religious freedom, general country background information, fact sheets, and information on visa reciprocity and document availability. DOS releases periodic topical reports and oversees the Humanitarian Information Unit (HIU) that drafts reports, maps, and statistics about humanitarian crises all over the world. This DOS country of origin information provides a context for asking relevant questions during the interview and evaluating the applicant's credibility. Informed questioning may expose

Question#:	33
Topic:	asylum screening process
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
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inconsistencies and falsehoods in the applicant’s claim, and may also help re-establish credibility when something appears inconsistent or implausible at first impression.

Additionally, since 2004, U.S. Embassies and Consulates capture biometrics on visa applicants. These records are placed into OBIM’s IDENT database. Since November 1, 2006, the Asylum Division mandates a check of DOS’s CCD for any case in which an OBIM check indicates an existing visa encounter. The information the applicant presented to the DOS Consular Officer when applying for the visa that appears in CCD may support or refute the information the applicant provided to USCIS and must be considered in adjudicating the asylum claim. CCD data regarding a visa application may be valuable to the Asylum Division’s officers in providing information about the identity, previous travel history, method of entry into the United States, or background of an asylum applicant. At minimum, a visa application adjudication, especially if it contains biometric data, can establish that the applicant appeared in person at an Embassy or Consulate on the date stated in the visa record. When a visa record is retrieved biometrically in IDENT, the record may reveal an identity, travel history, or other information that was not previously made available to USCIS.

In cases where the Asylum Division believes DOS may have information specific to an asylum applicant or the applicant’s situation, the Asylum Division routinely reaches out to DOS which often provides written comments on the case. Similarly, DOS routinely reaches out to the Asylum Division on cases that have come to its attention. Additionally, DOS conducts overseas verification of information in certain cases when an Asylum Officer needs to verify information contained in an application or supporting documentation that originated overseas. In such cases, this exchange may extend the adjudication timeline, as DOS comments and/or any verifying information are considered towards the applicant’s eligibility for asylum.

Engagement with DOS at various levels will continue even if the asylum process is modified to allow asylum officers to grant asylum following a credible fear screening interview.

Question#:	34
Topic:	Tsarnaev Brothers 1
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: When did Dzhokhar Tsarnaev first arrive in the United States?

When did Tamerlan Tsarnaev first arrive in the United States?

Please provide a timeline of when the Tsarnaev brothers' parents claimed asylum in the United States.

What was the basis for granting the Tsarnaev brothers Legal Permanent Resident status?

When did DHS officials first have questions about Tamerlan Tsarnaev? Please detail all investigative measures undertaken regarding him.

Was DHS aware at any time in 2011 that the FBI was investigating Tsarnaev? If so:

When and for what?

Did DHS give any consideration at that time to revoking Tsarnaev's Legal Permanent Resident status? If so, why wasn't it ever revoked?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question#:	35
Topic:	Tsarnaev Brothers 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During yesterday’s hearing, I asked you: “Is it true that his identity document did not match his airline ticket?” You responded: “There was a mismatch there. . . . But even under—even with the misspelling, under our current system, there are redundancies, and so the system did ping when he was leaving the United States.”

On what specific document was Tamerlan’s name misspelled?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: What redundancies were you referring to?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: Did TSA crosscheck Tsarnaev’s passport and Legal Permanent Resident Card with his boarding pass when he left the country?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: What steps should TSA officials take if an individual’s boarding pass does not match their identity documentation when they go through airport security?

Response: If a passenger’s name on the boarding pass does not match the name on the identity document, the Transportation Security Administration official must contact the Identity Verification Call Center and request the name on the identity document be checked against the watch list, which is comprised of full Terrorist Screening Database (TSDB) entries containing full name and date of birth (which includes No Fly and Selectee Lists), and the Centers for Disease Control and Prevention (CDC) Do Not Board List. The IVCC contacts the Secure Flight Operations Center (SOC) and provides the name on the boarding pass and the name on the identity document to the SOC. The SOC manually enters the data into the Secure Flight system to perform a manual review

Question#:	35
Topic:	Tsarnaev Brothers 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
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against the watch list. The data is also matched against the data that was submitted by the airline for the passenger.

Question: Did TSA officials take those steps in the case of Tsarnaev in January 2012? If not, why?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: Was Tsarnaev questioned upon his departure about the discrepancy regarding the misspelling to which you referred?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question#:	36
Topic:	Tsarnaev Brothers 3
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Assistant Director of the FBI indicated to Senator Graham that they received no notification when Tamerlan Tsarnaev left the United States in January 2012. However, you stated yesterday: “The system pinged when he was leaving the United States States. By the time he returned, all investigations had been -- the matter had been closed.”

- (a) What “system pinged” when Tsarnaev was leaving the United States?
- (b) What are the positions and agencies of the individuals who received notification of this initial ping?
- (c) What further notifications did DHS make to other agencies, including the FBI, based on this initial ping? Please provide the date and method each further notification was made. By agency and position, what individuals received the further notifications?
- (d) What subsequent steps, if any, were taken with this notification?
- (e) Did any of DHS’s component agencies notify FBI of Tamerlan’s travel to Russia? If so, which agency, on what date, and by what method? If not, why not?
- (a) What was the date of Tamerlan’s departure from the United States in January 2012?
- (b) What was the date of Tamerlan’s return to the United States in July 2012?
- (c) You stated that when Tamerlan returned to the United States, “all investigations had been closed on him.” What investigations were open or opened on Tamerlan in January 2012?
- (d) According to one press account, “many agencies were aware of Tsarnaev’s return” to the United States in mid-July.[2] Did Tamerlan’s return to the United States receive any notice by DHS or any of its components? Was this different from what a U.S. citizens or Legal Permanent Resident would typically receive when re-entering the United States? If so, why?
- (e) Did any of DHS’s component agencies notify any other agency (including agency-to-agency within DHS) that Tamerlan was re-entering the United States?
- (f) According to another press account, “An official at the Department of Homeland Security said [Tamerlan] was on the ‘radar screen’ of agents in Boston from when he returned to the U.S. to the end of autumn.” Was this official’s statement accurate? If so, what does that mean? Why was Tamerlan on DHS’s radar? Why did he remain on DHS’s radar in the weeks between when he returned to the United States in mid-July and when he applied for citizenship on September 5, 2012?
- (g) How does an individual get added into TECS such that the system issues alerts when that individual enters or departs the United States?

Question#:	36
Topic:	Tsarnaev Brothers 3
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

(h) What is the process for removing someone from TECS?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question#:	37
Topic:	Tsarnaev Brothers 4
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You stated yesterday: “By the way, the bill will help with this because it requires that passports be electronically readable, as opposed to having to be manually input. It really does a good job of getting human error, to the extent it exists, out of the process.”

What country’s passport did Tamerlan Tsarnaev use to depart and re-enter the United States?

If this legislation had been in place, how would it affect individuals traveling with a foreign passport?

What procedures does the U.S. have in place to verify the integrity of passports issued from other countries?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question#:	38
Topic:	Dzhokhar Tsarnaev
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: According to press reports, Dzhokhar Tsarnaev became a U.S. citizen on September 11, 2012.

(a) When did Dzhokhar submit his application for citizenship?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: (b) Did DHS conduct background checks on Dzhokhar's family members in the course of his citizenship process? If not, why not?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: (c) Did DHS officials conducting the background investigation on Dzhokhar know about Tamerlan's interview by FBI? If so, did they contact the FBI about Dzhokhar applying for citizenship?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: (d) What derogatory information was on file with DHS about Tamerlan while his brother's citizenship application was being considered?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

(e) Why was Dzhokhar Tsarnaev given citizenship given the derogatory information about Tamerlan on file with DHS?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question#:	39
Topic:	Tamerlan Tsarnaev
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question:

(a) During Tamerlan's citizenship process, what alerted DHS to the fact that he had been interviewed by the FBI?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: (b) What databases were utilized in the background check of Tamerlan?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: (c) During the background check of Tamerlan, what referrals or requests were made to the FBI and what responses, if any, were received?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: (d) When DHS learned that the FBI had interviewed Tamerlan in 2011, did DHS notify the FBI that Tamerlan had applied for citizenship?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: (e) Does DHS have direct access to Terrorist Identities Datamart Environment (TIDE) or Terrorist Screening Database (TSD) in conducting background checks for those applying for United States citizenship?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question#:	40
Topic:	ICE custody 1
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Associated Press reported on April 20 that HSI arrested two individuals in New Bedford, Massachusetts. Do the individuals have any connection to either of the Tsarnaev brothers?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: Are the two individuals suspected in any other crimes?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question: Are any individuals being deported as a result of the investigation that began with the Boston Marathon bombing?

Response: Given the sensitive nature of the facts requested relating to specific individuals, DHS will be happy to answer these questions in a briefing upon receipt of a request for such a briefing by the Committee.

Question#:	41
Topic:	ICE custody 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: I understand that a large number of unregistered alien sex offenders may be under the supervision of U.S. immigration and Customs Enforcement (ICE). Typically when a sex offender leaves prison, the Bureau of Prisons sends a letter to their state saying the person should register within three days. However, when the Bureau of Prisons hands over an alien sex offender to your Department, it's up to ICE to make sure that they get registered.

Does ICE require alien sex offenders to register?

How many unregistered alien sex offenders are in the custody of ICE?

How many unregistered alien sex offenders are on parole and under ICE supervision?

How frequently is check-in with ICE required for alien sex offenders who are on parole and under ICE supervision?

Will you commit to address this issue immediately?

[REDACTED]

[REDACTED]

Question#:	41
Topic:	ICE custody 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Question#:	41
Topic:	ICE custody 2
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

[REDACTED]

[REDACTED]

[REDACTED]

Question#:	42
Topic:	resources
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: How does the Department of Homeland Security determine whether the resources it is dedicating to border security are effective?

Response: DHS uses a number of indicators and outcomes to evaluate security efforts at our borders, including such factors as resource deployment, crime rates in border communities, and apprehensions. All enforcement statistics and economic indicators point to increased security and an improved quality of life; however, no single metric can conclusively define the state of border security.

Question#:	43
Topic:	metric
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: At last week’s Homeland Security and Government Affairs Committee hearing, Senator McCain expressed frustration that there was not an established metric to rate the security of our borders.

Have you reconsidered or thought of a better answer to this question than the one you gave Senator McCain last week?

I agree with him, measuring our success is crucial.

Do you believe there is a way to give an accurate depiction of the security of our border?

Response: The U.S. Border Patrol’s 2004 National Strategy created a focus on building up important personnel, technology and infrastructure resources, measured at that time by miles of operational control. By 2012 the Border Patrol’s improved capabilities were called on to address a changed border environment where converging threats to national security required a risk-based approach and strategy. To show progress toward enforcement improvements that promote a low risk border, we developed a new set of performance measures to support the 2012-2016 Border Patrol Strategic Plan.

Our measure set contains performance measures that have already begun to inform our effectiveness. Beginning in Fiscal Year (FY) 2013 we began reporting a strategic measure associated with the Government Performance and Results Act, Modernization Act of 2010 (GPRAMA), called “percent of people apprehended multiple times,” commonly known as recidivism. This measure, along with an accompanying management level measure titled “average number of apprehensions for persons with multiple apprehensions,” allows us to demonstrate our ability to hold recidivism down by applying systematic and consistent consequences to those who attempt to cross the border illegally. Another strategic GPRAMA measure, the Interdiction Effectiveness Rate, was introduced beginning in FY 2014, and shows our ability to apprehend or turn back would be illegal entrants.

Several other performance measures are in the development stage and will add important context to our operations on the border over time. The first is development of an index that will quantify situational awareness along the border. Also under development is a measure of Border Security Readiness – which will show the readiness status of Border Patrol mission critical elements such as personnel, equipment, infrastructure and training.

Question#:	43
Topic:	metric
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Lastly, mobility measures are also being planned for the out years to show the Border Patrol's ability to deploy a highly flexible, scalable, and mobile force to quickly respond to and overwhelm emerging threats. Taken collectively these finalized measures will form a set of measures that gives an accurate depiction of levels of risks along the entirety of our borders as well as specific border areas.

Challenges will always remain, but CBP is dedicated to continuing this progress towards a safer, stronger and more secure border.

Question#:	44
Topic:	marijuana plants
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Over the years, millions of marijuana plants have been eradicated from federal public lands. Outdoor marijuana cultivation is the chief source of revenue for Mexican drug trafficking organizations. Growing marijuana in the U.S. saves traffickers the risk and expense of smuggling their product across the border and allows gangs to produce their crops closer to local markets.

During the past several years, marijuana growing operations have been a serious problem on Utah’s public lands where tens of thousands of plants have been seized.

Law enforcement officials confirm that all of the perpetrators arrested at these marijuana grows were both present in the United States illegally and armed with firearms.

This problem is not unique to Utah. Other states with substantial federal lands – including Colorado, California, Idaho, Nevada, Oregon and Michigan – are also seeing a spike in marijuana cultivation by Mexican drug trafficking organizations.

What are your thoughts on providing tougher penalties for cultivating marijuana on federal lands?

Response: Since the question relates to the domestic cultivation of this drug, DHS defers to the Department of Justice (DoJ) and the Drug Enforcement Administration.

Question#:	45
Topic:	applying for legalization
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: How can we ensure that those applying for legalization under the Border Security, Economic Opportunity, and Immigration Modernization Act are who they say they are?

Response: Because the burden will be placed on individuals to demonstrate their eligibility for RPI status and the U.S. Department of Homeland Security (DHS) has extensive anti-fraud measures, we believe we have the tools necessary to detect and deter fraudulent claims to identity. DHS has a stringent process to determine identification based on biometric and law enforcement database background checks, including TECS. If fraud is suspected or identity cannot be satisfactorily established, U.S. Citizenship and Immigration Services (USCIS) will conduct an in person interview and take other appropriate steps to verify an applicant's identity.

USCIS's Fraud Detection and National Security directorate and U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations directorate will be actively engaged whenever fraud is suspected as part of an individual application at all stages of the legalization process. An individual who knowingly makes a misrepresentation, or knowingly fails to disclose facts, in an effort to receive legal status in this new process will be treated as an immigration enforcement priority to the fullest extent permitted by law, subjecting the individual to criminal prosecution and removal from the United States.

Question#:	46
Topic:	identity
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: I assume there will be facial recognition and fingerprint verifications built into the criminal background checks; but at the end of the day, it seems that as long as an individual hasn't committed a crime here in the United States, he or she could take on another identity.

So, a lot hinges on the veracity of the documents presented when an immigrant applies for provisional status.

What kind of vetting process will be in place to prevent identity theft and fraud?

Response: USCIS has implemented robust fraud protections and processes to accurately determine identification.

USCIS would perform background and security checks for all individuals who apply for Registered Provisional Immigrant status. Applicants aged 14 years and older would be subject to a TECS query, an FBI name check, and an FBI fingerprint check. Through its Application Support Centers (ASC), USCIS would also capture applicant fingerprints, photographs, and signatures for purposes of identity management, background checks, and secure document production.

TECS is a law enforcement communication system that, among other functions, supports the screening of travelers entering the United States and the screening requirements of other federal agencies. USCIS has access to all wants, warrants, and lookouts listed in TECS and certain files within the National Crime Information Center (NCIC) database through TECS, as well as files which include wants/warrants, foreign fugitives, missing persons, registered sex offenders, deported felons, supervised releases, protection orders, known or suspected terrorists, terrorist organization members, and violent gang members.

These checks provide information on individuals who may pose national security or public safety risks as well as indicators of potential fraud. Requestors with positive criminal history results, substantiated findings of fraud, or public safety or national security concerns are handled under the current Notice to Appear (NTA) policy.

USCIS is also implementing its Customer Identity Verification program (CIV), which relies on collected biometrics to confirm that a subject who appears for an interview at a USCIS Field Office is the same person who earlier had their biometric information

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collected by an ASC, or otherwise had their information stored in IDENT, typically through collection at a port of entry, during enforcement actions, or through placement on a biometrically-enabled watchlist. Applicants and petitioners will proceed to the interview or be issued their immigration document only after the field office has satisfactorily completed identity verification using both biometrics and government-issued identification.

USCIS also works in collaboration with U.S. Immigration and Customs Enforcement's (ICE) Forensic Laboratory to verify the authenticity of documents provided by the applicant. USCIS also has its own overseas verification process, which relies on personnel in-country to verify the provenance of documents suspected of being fraudulent.

An individual who knowingly makes a misrepresentation, or knowingly fails to disclose facts, in an effort to receive legal status in this new process will be treated as an immigration enforcement priority to the fullest extent permitted by law, subjecting the individual to criminal prosecution and removal from the United States.

Question#:	47
Topic:	E-Verify program
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: What margin of improvement do you expect from universally implementing the E-Verify program?

As an aside, I agree with my colleagues that we should deploy this program immediately.

Response: DHS has continually reduced the error rate for work authorized employees, and expects the error rate to continue to decline over time, including if the E-Verify program is expanded through legislation.

Question#:	48
Topic:	visa-exit system
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: The proposed legislation requires that a visa-exit system must be implemented for all international airports and seaports within 10 years.

You mentioned in today's hearing that an entry-exit tracking system would be ready to go within years. Are you referring to a time frame of less than five years or within 10 years as provided by the legislation?

Response: In May 2012, Department of Homeland Security (DHS) provided House and Senate Appropriators a short and long-term plan for recording the departure of aliens from the United States. The long-term plan (through 2012-2020) called for the future research, development, and, if feasible, deployment of a biometric air exit system. In the short term, DHS has enhanced its existing exit system using biographic data. U.S. Customs and Border Protection (CBP) has been working closely with the Department and other components to develop the enhanced biographic exit program scheduled to be completed during 2014. This will be the first part of a comprehensive entry-exit tracking system. Through enhancing biographic entry-exit tracking, the Department will continue to improve its ability to identify and sanction overstays in the years to come.

Paralleling efforts to enhance the existing biographic exit system, DHS continues to pursue an air biometric exit solution through research and testing of available biometric technologies led by the Science and Technology Directorate. Assuming initial testing proves fruitful, DHS plans to test biometric exit at one international airport by 2015. Pending the outcome of an operational test, DHS may submit future budget requests for incremental biometric air exit deployment.

In summary, the enhanced biographic entry-exit system will be completed within the next four years. CBP believes that a biometric entry-exit tracking system in the air environment can be implemented around the 2018-2020 timeframe provided a feasible cost solution is identified and additional funding is appropriated.

Question#:	49
Topic:	new W visa
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Orrin G. Hatch
Committee:	JUDICIARY (SENATE)

Question: Let me ask you about the new W visa category for the low-skilled guest worker program. The bill allocates 20,000 visas in the first year with a gradual increase to 75,000 in the fourth year.

Do you have any sense of whether this quota will address our country's needs and deter illegal immigration, or will we repeat the same mistakes made in 1986?

Response: Temporary worker programs are an important part of immigration law. DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

Question#:	50
Topic:	RPI applicants
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: During the hearing, I asked you about the discretion granted to you to waive certain inadmissibility requirements for classes of RPI applicants. In response, you referenced the language of the bill, saying, “[T]here would be consideration based on the age of the conviction or the type of the conviction, whether the individual was the primary wage earner for a family, and the record since their prior conviction. . .” However the Bill as written gives you discretion to determine what is or is not in the public interest.

Can you help define what you would and would not consider as being in “the public interest” as it would apply to this situation?

Also, when defining family unity, do you mean to include only immediate family such as (spouse and children) or do you plan to extend the family unity language further than that?

Do you plan on setting forth any standards that will inform the public and Congress of the foundations on which your discretion in this area will be based?

Response: DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues. Once the legislation is enacted, DHS will issue regulations implementing the legislation and provide any necessary definitions and other criteria.

Question#:	51
Topic:	LPR status
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: You will have discretion to exempt other defined classes of individuals from the fee for adjustment to LPR status.

For what classes of individuals will you waive the fee?

Response: U.S. Citizenship and Immigration Services (USCIS) is funded largely by application and petition fees. Recognizing that some applicants cannot pay the filing fees, USCIS established a fee waiver process for certain forms and benefit types. Demonstrated inability to pay is the only reason USCIS will approve a fee waiver. Waiving a fee for one applicant transfers the cost of processing their application to other applicants through higher fees. Therefore, USCIS carefully considers the merits of each fee waiver request before making a decision. Under current guidance, to be eligible for a fee waiver, one of the following must be met:

- the applicant or qualified members of their household are receiving a means-tested benefit. A means-tested benefit is one for which the individuals' income/resources determine eligibility and/or the benefit amount;
- the household is at or below the 150% poverty level at the time of filing; or
- The applicant is experiencing a financial hardship that prevents payment of the filing fee, including unexpected medical bills or emergencies.

The Department would evaluate the need to exercise the Secretary's discretion under this provision and would promulgate a specific policy to implement it, if required.

Question: What information or standards will guide the decision on who receives the waiver?

Response: Under current guidance, to be eligible for a fee waiver, one of the following must be met:

- The applicant or qualified members of their household are receiving a means-tested benefit. A means-tested benefit is one for which the individuals' income/resources determine eligibility and/or the benefit amount;
- the household is at or below the 150% poverty level at the time of filing; or
- The applicant is experiencing a financial hardship that prevents payment of the filing fee, including unexpected medical bills or emergencies.

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- In addition, the instructions to the Form I-912 offer extensive instructions and explanations of the criteria and USCIS' decision making process for fee waivers.

Question: What safeguards will be put in place to ensure that this process is done fairly and impartially?

Response: USCIS has established standard operating procedures and policy guidance governing fee waivers to ensure that staff adjudicating fee waivers do so in a fair and objective manner. In addition, USCIS has quality assurance measures in place to ensure accurate and impartial resolution of fee waiver requests.

Question#:	52
Topic:	fees and penalties
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: Fees and Penalties associated with the Act may be paid through installment payments. The process for such payments is determined by the Secretary. (p. 108)

What process do you plan on creating for collecting fees and penalties?

Response: In the event that installment payments are included in the final legislation, the Department will develop a plan to modify U.S. Citizenship and Immigration Services' case processing and accounting systems to track the penalty fee installments.

Question: Do people applying for other immigrant visas enjoy the benefit of an installment plan?

Response: USCIS does not currently allow fees to be paid via installments.

Question#:	53
Topic:	judicial review
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: The Act provides aliens the opportunity to challenge revocation of the alien’s application through administrative appellate review, if that fails, before a U.S. district court, and if that fails, through the U.S. court of appeals, all while maintaining lawful presence. Then, if deportation proceedings begin, the alien can remain in lawful presence through a second string of proceedings. This process allows for multiple layers of judicial review. (p. 124)

Why should an illegal alien be permitted to pursue multiple attempts at judicial review for essentially the same determinations to be made, all the while enjoying lawful presence?

Do those who apply for other visas at consular offices have access to judicial review?

Response: Judicial review is available in certain types of cases adjudicated by USCIS or the Executive Office for Immigration Review. DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

Question#:	54
Topic:	LPR status from RPI status
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: In order to adjust to LPR status from RPI status, an applicant must demonstrate that he or she is at 125 percent of the poverty level. (p. 97)

As the family of an applicant may follow on as derivatives (rather than each family member applying individually), will the poverty level threshold be based on the individual or the household as a whole?

Response: Under current fee waiver guidance, household income is evaluated at the time of filing. The Department would evaluate the need to exercise the Secretary's discretion under this provision and would promulgate a specific policy to implement it, if required.

Question#:	55
Topic:	RPIs adjustment to LPR status
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: RPIs applying for adjustment to LPR status must show that they have been regularly employed or enrolled in school during their period of status as an RPI. Under the age exception, those younger than 21 on the date of RPI renewal are exempt from this requirement. Under this exception, a 24-year-old applying for adjustment is exempt from the requirement to work or be enrolled in school.

Do you believe that 24-year-olds should be exempt from the requirement to be employed or in school?

Response: DHS supports the Senate bill and we look forward to seeing any proposals from the House of Representatives and working with Congress on these issues.

Question#:	56
Topic:	E-verify language
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: The E-verify language in this bill exempts from the definition of employers any employment that is “casual, sporadic, irregular, or intermittent.” (p. 402)

What employers would this exclude from the requirement to use E-verify? I would imagine this is meant to exclude those who hire babysitters? What about day laborers? Construction workers?

Response: Current DHS regulations exclude from the regulatory definition of employment “casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent.” 8 CFR 274a.1(h). Under case law, this exception has been determined to apply to work limited to the upkeep and maintenance of a residence and its curtilage. The exception has applied to housekeepers, babysitters, handymen, and gardeners. The exception has not applied to construction workers and day laborers (other than day laborers whose day labor falls within the limited domestic service definition).

The bill’s “casual, sporadic, irregular, or intermittent” exception to the definition of employer does not include any limitation on the type of employment that the exception applies to. If this provision is contained in the enacted legislation, DHS will issue regulations implementing the legislation and provide any necessary definitions and other criteria.

Question#:	57
Topic:	photo tool for E-verify
Hearing:	The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744
Primary:	The Honorable Mike Lee
Committee:	JUDICIARY (SENATE)

Question: This bill directs you to develop a photo “tool” for E-verify, connected to a database of photos kept at USCIS. This tool will enable employers to match the photo an employee’s documents with a photo maintained on the database. (p 414)

What measures will you take to ensure that such a tool does not evolve into a national photograph database used for non-E-Verify purposes?

Response: The E-Verify program currently uses a photo tool to allow employers to compare the photograph on the document presented for verification by the employee with a photograph accessed from various databases by E-Verify. Currently, the tool is enabled for U.S. passports and passport cards, and certain documents issued by USCIS to work authorized aliens. Note that E-Verify does not maintain a database of photos, but can pull photos from various databases, such as USCIS databases that contain information and photos for Employment Authorization Documents and Permanent Resident Cards or the U.S. Customs and Border Protection TECS system, which contains a copy of the U.S. Department of State Passport data and photos. DHS does not maintain a database of driver’s license photos and at this time E-Verify does not connect to any state’s database of such photos. In implementing this photo matching functionality, the E-Verify program applied and continues to apply Privacy Act and other legally required protections and security protocols, including observing limitations in the current E-Verify statute (found at 8 USC 1324a note Sec. 404(h)) against using information from E-Verify databases for other purposes or creating national identification cards. DHS will continue to observe all legal protections and requirements as it develops its existing photo matching technologies in any new system.