S. HRG. 115–409

NOMINATION OF KEVIN K. McALEENAN

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

KEVIN K. McALEENAN, TO BE COMMISSIONER, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

OCTOBER 24, 2017

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TUESDAY, OCTOBER 24, 2017

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Enzi, Cornyn, Thune, Isakson, Portman, Toomey, Heller, Scott, Cassidy, Wyden, Stabenow, Cantwell, Nelson, Carper, Brown, Bennet, Casey, and Warner.

Also present: Republican Staff: Jay Khosla, Staff Director; Chris Armstrong, Deputy Chief Oversight Counsel; Nicholas Wyatt, Tax and Nominations Professional Staff Member; Shane Warren, Chief International Trade Counsel; Queena Fan, Detailee; and Andrew Rollo, Detailee. Democratic Staff: Joshua Sheinkman, Staff Director; Michael Evans, General Counsel; Ian Nicholson, Investigator; Greta Peisch, International Trade Counsel; and Jayme White, Chief Advisor for International Competitiveness and Innovation.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order. I would like to welcome everyone here this morning. Today we are here to accomplish two important matters.

First, we will have a hearing to consider the nomination of Kevin McAleenan to serve as Commissioner of U.S. Customs and Border Protection or CBP.

In addition, if a quorum is present at any point during the hearing, we will move to executive session to consider and hopefully report three pending trade-related nominations. If we do not get a quorum, I intend to hold votes off the floor so we can move these nominations in short order. With that, I will turn to Mr. McAleenan's nomination.

In 2015, this committee successfully drafted and reported the Trade Facilitation and Trade Enforcement Act, which was later signed into law by President Obama. Thanks to that effort, Mr. McAleenan, if confirmed, will be the first Commissioner to oversee CBP as a fully authorized agency.

Mr. McAleenan, we want to welcome you to the Finance Committee. We appreciate your willingness to serve in this important position.

CBP is the United States' unified border agency, charged with facilitating legitimate trade and travel, while enforcing U.S. trade laws and securing our borders.

There is a great deal of work to be done to improve enforcement, but this mission should not come at the expense of legitimate trade and travel. Striking the right balance is vital to ensuring that the United States remains competitive with the rest of the world. Balancing facilitation and security will require CBP to work with stakeholders in and out of the government.

As CBP seeks to strengthen and streamline trade enforcement, including the protection of intellectual property rights, the agency must not forget the important role that the private sector can play. As an example, the private sector uses information that CBP shares on counterfeits stopped at the border to prevent future shipments from happening. The private sector can also alert CBP to importers trying to circumvent our anti-dumping and countervailing duty laws.

Coordination with other government agencies is also important. For example, the international mail system is used to traffic narcotics, counterfeits, and other products that pose health and safety risks to Americans. Congress authorized the Postal Service and CBP to collect electronic information on postal shipments in 2002, and these agencies must use this authority to close this security gap.

CBP must also ensure that its regulations clearly outline the rights and responsibilities of stakeholders. For example, the Trade Facilitation and Trade Enforcement Act of 2015, the law I referred to earlier, improved enforcement against goods manufactured with forced labor. CBP needs to update its regulations to inform stakeholders about the type of information necessary to make a proper allegation against an import and to provide necessary guidance for stakeholders to address such allegations.

Long story short, Mr. McAleenan has a tough job ahead of him. However, I believe he is well-prepared and well-qualified to serve in this capacity, and I look forward to discussing his qualifications and his views here today.

With that, I am going to turn to Senator Wyden for his opening remarks. I will remind my colleagues, once again, that I intend to move to executive session at any point that a quorum is present.

[The prepared statement of Chairman Hatch appears in the appendix.]

The CHAIRMAN. Senator Wyden?

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Mr. Chairman. I also want to note we are always glad to have Senator Hirono here. Mr. McAleenan, you are running with the right crowd when you have Senator Hirono in your corner.

The CHAIRMAN. I would say.

Senator WYDEN. Mr. McAleenan, I have very much enjoyed our past discussions. This is—as you know so well—an exceptionally hard job, and I think you are up to it.

I also want to express my appreciation for working with me to increase staffing at the port of Portland. This is a particularly important time for the port because we are trying, as you and I have discussed, to expand our role as a destination for international flights, including a new flight from Mexico that I hope is going to be finalized very soon.

Our challenge with adequate staffing illustrates the acute need to hire more blue uniforms to enforce our trade laws and to facilitate travel. I am anticipating that these are matters that you are going to continue to focus on.

Mr. Chairman and colleagues, I am going to be brief this morning. I just want to touch on two issues.

The first is trade enforcement. The fact is that the administration has talked one tough game when it comes to trade, but so far the record has not lived up to the talk.

If you are serious—genuinely serious—about getting trade done right, the prerequisite to doing it is having tough enforcement of the laws that are on the books today. And Customs and Border Protection is on the frontline of that effort.

Last year, the Trade Facilitation and Trade Enforcement Act was signed into law. The Finance Committee wrote that legislation because it was clear that trade enforcement and the trade enforcement mission at this agency were getting short shrift and that this was a substantial threat to red, white, and blue jobs. The legislation was about making sure the agency was fast enough and equipped to deal with the modern trade cheats who are determined to undercut American workers by evading our trade laws.

As you and I have talked about, Mr. McAleenan, this is something we know a little bit about, because a number of years ago we actually set up a dummy website to see how many trade cheats there were out there. And we were just flooded as a result of having, in effect, a sting operation to catch these characters.

So a lot of good work has been put in place over the last few months since the bill was signed, but it seems to me a lot of those efforts have been stalled under this administration. That is something that has to change in order to protect red, white, and blue jobs in Oregon and across the country.

Trade enforcement is about constant vigilance and staying ahead of the new tactics used by trade cheats to get around our laws. That is a reality. That is what we have found: consistently they are coming up with new ways to get around the existing enforcement regimes. That is why we are going to emphasize that with you this morning.

My concern is, it looks like trade enforcement is an afterthought with this administration. The White House seems more focused on throwing money at a border patrol army and prototypes for a border wall that, hopefully, will never get built.

Trade enforcement is going to fall by the wayside and jobs disappear if all of this business-as-usual continues. I think we learned during the trade debate, it does not matter what kind of deals you

propose or what laws you put on the books unless you are really serious about enforcing them.

So you have a lot of work to do—from rooting out products made with forced labor to preventing trade in illegally harvested timber and wildlife to protecting the health and safety of consumers who use imported products. I look forward to working with you to make sure that the agency effectively enforces our trade laws on those issues.

The other topic that I feel needs to be addressed—and I will ask about it this morning—deals with searches at the border. There has been an onslaught of reports this year about Americans being stopped at the border and forced to unlock their personal electronic devices for inspections that clearly invade their personal privacy.

I have introduced bipartisan legislation called the Protecting Data at the Border Act. The bill requires law enforcement to get a warrant before searching a device at the border, and it comes with strong protections to let Americans know when and how they consent to having their devices searched.

This ought to be a common-sense step. I feel particularly strongly about this, Mr. McAleenan, because the court, the Supreme Court, has already ruled that law enforcement needs a warrant to search a phone after an arrest. Bottom line, the constitutional rights of Americans do not disappear at the border.

So I am going to look forward to addressing that question with you. Again, Mr. McAleenan, thank you for joining the committee.

We are glad to have Senator Hirono here. I think this nominee, colleagues, is a strong individual. I look forward to hearing his plans for the agency, if confirmed, and I plan to support him.

Thank you.

The CHAIRMAN. Well, thank you, Senator.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. Now we do have a quorum.

[Whereupon, at 10:15 a.m., the hearing was recessed, reconvening at 10:25 a.m.]

The CHAIRMAN. Today we have the pleasure of hearing from Mr. Kevin K. McAleenan, who has been nominated to serve as Commissioner of the U.S. Customs and Border Protection. Mr. McAleenan, we want to thank you for appearing here today.

Additionally, I would like to welcome our good friend, Senator Hirono, who also hails from Hawaii. Senator Hirono will be providing the introduction for Mr. McAleenan. Senator Hirono, the floor is yours at this time.

STATEMENT OF HON. MAZIE K. HIRONO, A U.S. SENATOR FROM HAWAII

Senator HIRONO. Chairman Hatch, Ranking Member Wyden, members of the committee, aloha. I am pleased to introduce to you one of Hawaii's own, Kevin K.—and the "K" stands for Kealoha, which is a good Hawaiian name—McAleenan, who has been nominated by the President to serve as Commissioner of U.S. Customs and Border Protection, CBP.

Kevin has a deep connection to Hawaii and to public service. His father worked with at-risk youth at Stephenson Middle School and taught summer courses at the University of Hawaii.

Prior to government service, Mr. McAleenan practiced law in California. He received his Juris Doctorate degree from the University of Chicago Law School, and a Bachelor of Arts degree from Amherst College.

He has served at the leadership level of CBP, first as Deputy Commissioner, Chief Operating Officer, and now as the Acting Commissioner for over 4 years combined, leading CBP through a period of dynamic change, significant resource constraints, and increasing stakeholder expectations.

For the past 6 months, Kevin has served as the Acting CBP Commissioner and oversees nearly 60,000 employees. He manages a budget of over $13 billion and ensures effective operations of CBP's efforts to protect national security while promoting economic prosperity.

Kevin understands that CBP is not only tasked with keeping our country safe from threats beyond our border, but also to securely facilitating legitimate travel and commerce. To this end, Kevin is personally committed to working closely with external stakeholders, including the international trade and travel communities, State and local government and law enforcement, nongovernmental organizations, interagency partners, and members of Congress.

I can attest to this commitment. Last December, CBP in collaboration and coordination with the Hawaii Department of Transportation, resumed inspection of international passengers arriving in Kona Airport after a 6-year hiatus. The success of this project between the State of Hawaii and CBP was fostered by Kevin and the strong team at CBP.

Kevin is also committed to furthering CBP security cooperation with our international partners while also streamlining the Customs process for visitors to our country. I have worked with him on CBP's expansion of preclearance operations to Japan and have seen the successful growth of global entry programs to include a number of Asia-Pacific nations, most recently India.

While I do not expect to support everything that CBP will be tasked by the President to do, Kevin's long career in law enforcement and willingness to constructively work with members of the Senate will equip him to lead the agency with integrity and commitment to service.

A letter of support for Mr. McAleenan has been sent by the Governor of Hawaii, David Ige, in which he highlighted Kevin's "keen desire to serve the public with a spirit of aloha" and the work he did to assist in restarting international flights from Japan to Kona International Airport.

Mr. Chairman, I request that the Governor's letter of support for Mr. McAleenan's nomination be included in the record. That is my testimony.

The CHAIRMAN. Without objection, it will be included.

[The letter appears in the appendix on p. 30.]

Senator HIRONO. Thank you very much, Mr. Chairman, and aloha.

The CHAIRMAN. Well, thank you, Senator Hirono. We appreciate you taking time to provide that great introduction, and we are grateful for you attending our hearing today. So thank you for being here.

Mr. McAleenan, please proceed with your statement.

STATEMENT OF KEVIN K. McALEENAN, NOMINATED TO BE COMMISSIONER, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Mr. MCALEENAN. Good morning, Mr. Chairman, Ranking Member Wyden, distinguished Senators of the committee. Thank you for considering my nomination to lead U.S. Customs and Border Protection today.

Senator Hirono, thank you so much for the kind introduction and for highlighting my connections to my birth State. I have very much appreciated working with you and your colleagues in the State of Hawaii on international travel and trade over the past several years. Mahalo nui loa.

Please allow me to introduce my wife of 15 years, Corina, who is not only behind me here today, but every day in everything I do. Thank you.

My daughters Tatiana, 10 years old, and Caitlin, 7, will watch the recording—or at least part of it—when they get home from school this afternoon. Without their enduring support and patience and love, I would not have had the chance to pursue my tremendously rewarding career in public service, nor this opportunity to present myself to the committee today. It is truly a family commitment to support public service.

I was raised in a family of public servants, each member drawn to a cause and driven to make a difference. My father, whose service began in the United States Army, 82nd Airborne, continues to serve the public today at 80-years strong as a hearing officer in the L.A. County Mental Health Court system.

My mother worked at the university and college levels for decades, and my brother is a principal of a high school in Fresno County, CA working to ensure that children facing stark disadvantages achieve educational opportunities. My stepmother works in public elementary education. My sister works with autistic children while pursuing a degree in social work, and my youngest brother is considering a career in law enforcement. I am pretty proud of this group.

Corina dedicated several years early in her career to working for the Department of Homeland Security at the U.S. Secret Service and continues to work full time while also being the best mom I know in order to enable my own government service.

For me, that call to service came on September 11th. I was extraordinarily fortunate to have the opportunity to help lead a new focus on counterterrorism within the United States Customs Service and then support the transition to our unified border security agency as U.S. Customs and Border Protection.

Over the past 15 years, I have been able to participate in the dynamic evolution of the agency, and I am honored to have had key opportunities to contribute to that transformation, both at headquarters and in the field. In my management and leadership roles,

I have found it most rewarding to engage with, support, and advocate for the operators, the CBP officers, the border patrol agents, air and marine pilots and interdiction agents, trade and agriculture specialists, and mission support personnel—our people accomplishing the mission on the front line.

The men and women of CBP, operating in all 50 States and 40 countries globally, are the heart of our organization and are some of the finest professionals in government service anywhere in the world. If confirmed, it would be the greatest privilege of my professional life to represent and to continue serving alongside them as Commissioner.

In addition to its people, CBP has a strong foundation of legal authorities, operational capabilities, and a mission-focused culture, but we have significant opportunities—as the chair and ranking member have noted in their opening statements—with support from the administration and Congress, to do much more to enhance our trade facilitation and enforcement, counterterrorism, and border security missions. As an indispensable national security partner and the Nation's second-largest revenue collecting source, CBP must continue to innovate to accomplish its complex responsibilities and to recruit and sustain the world-class workforce it needs.

I am honored and grateful for the President's nomination as well as the support from former Secretary Kelly and Acting Secretary Duke. If confirmed, working closely with this committee and our stakeholders, I would commit to addressing CBP's challenges with diligence and transparency and to supporting CBP's dedicated and extremely hardworking personnel to take our efforts and our organization to the next level.

It has been a privilege to meet a number of members of this committee during the process, and I look forward to answering your questions today.

The CHAIRMAN. Well, thank you, sir.

[The prepared statement of Mr. McAleenan appears in the appendix.]

The CHAIRMAN. I do have some obligatory questions that we ask all nominees who appear before this committee.

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

Mr. MCALEENAN. No.

The CHAIRMAN. Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. MCALEENAN. No.

The CHAIRMAN. Third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if confirmed?

Mr. MCALEENAN. Yes.

The CHAIRMAN. Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. MCALEENAN. Yes.

The CHAIRMAN. Well, thank you. We have the obligatory questions out of the way.

The March 31st executive order pertaining to CBP shows that President Trump takes the enforcement of intellectual property rights as seriously as I do. I would like to hear your views on IPR enforcement, including the ability of CBP to share with rights-holders the same information about voluntarily abandoned counterfeit products as CBP shares about seized counterfeit products—if you will.

Mr. MCALEENAN. Absolutely. Thank you, Mr. Chairman.

The enforcement of intellectual property rights is absolutely essential to our economic competitiveness. And the protection of American manufacturers and their innovation is a core responsibility of CBP.

Last year, fiscal year 2017, we ended the year with the highest number of IPR seizures we have ever had, over 34,000, an 8-percent increase from fiscal year 2016. And those seizures are driven largely by the explosion in e-commerce, small parcels shipped through both express consignment and mail. In light of those additional shipments, the workload on our workforce to seize or to abandon those goods has increased significantly.

You noted the March executive order the President signed. I believe it is also this committee's strong intent to have us provide as much information as possible on those voluntarily abandoned goods to the rights-holders, so they understand threats to their IP that are present in the international supply chain. So CBP is working on a regulation that would enable us to provide not only the general information on the shipment, but also the parties involved when we have either seized or abandoned goods that violate international property rights.

The CHAIRMAN. The final deployment of CBP's Automated Commercial Environment or ACE continues to be delayed. Can you please discuss the current status of ACE and when you anticipate that it will be finalized, including whether ACE will be able to accept the electronic submission and drawback claims by the statutory deadline?

Mr. MCALEENAN. Thank you.

During my tenure both as Assistant Commissioner and Deputy Commissioner, one of our absolute top priorities has been the completion of the Automated Commercial Environment and the Single Window, enabling the trade community to submit one time the data they need to be cleared not only by U.S. Customs and Border Protection, but by participating government agencies—47 of them that have an interest in goods crossing our border.

We are nearing the finish line, Mr. Chairman, of the implementation of ACE. It is one of the most complex IT projects, really, that I think the government has undertaken, given all the many connections we need to have with importers, Customs brokers, and partner government agencies.

We are in the seventh of seven deployments in the second stage of that. In December, we are going to have a release, and then on February 24th, we intend to have our final ACE release in production. That would include the drawback capabilities that you referenced.

The CHAIRMAN. The need to balance trade facilitation and trade enforcement cannot be overstated. Can you please discuss how you will ensure that CBP will continue to facilitate legitimate trade while simultaneously enhancing the trade enforcement?

Mr. MCALEENAN. Mr. Chairman, I believe those two missions are vital to our success and are mutually supportive. We cannot secure the vast flow, the $4-trillion worth of goods crossing our border each direction each year, without also working to facilitate it.

The strategy is the same: acquiring advanced data, analyzing it with a risk management mindset, building trust with the business community and the supply chain, and understanding who is operating in that environment. That allows us to both facilitate goods and to find products that might present a risk to the American public or contraband that is included in those shipments.

I think we have matured a lot as an organization and are in a position to do both trade facilitation and enforcement as well as our border security missions effectively in the years ahead. We have a lot of work to do to continue implementing the requirements of the Trade Facilitation and Trade Enforcement Act.

We are applying our intelligence and law enforcement capabilities built for that security mission to our trade enforcement mission. That is going to make us more efficient. We are really working closely with stakeholders to understand their concerns and their hiccups in the supply chain that we can help reduce.

The CHAIRMAN. Well, thank you. Let me just ask one more question.

I appreciate the difficult task that CBP has in implementing the removal of the consumptive demand provision. As you are aware, however, some allegations about the use of prohibitive labor over this past year have proven to be false.

Now, I would like to hear your views on what CBP can do to establish a clear process for importers to address these various allegations.

Mr. MCALEENAN. The removal of the consumptive demand exception was an important aspect of the Trade Facilitation and Trade Enforcement Act that enhances our ability to enforce forced labor elements in the supply chain to protect American businesses from unfair competition, and also to protect populations that would be subject to forced labor around the world.

We have to aggressively enforce that, but we have to do it in a balanced way, making sure that when we do issue a withhold release order on a product, it is appropriate, that we know what is happening in that supply chain. We have tried to do it with balance, with a lot of research up front, which is what we are working on and will continue to do in a balanced manner.

The CHAIRMAN. Well, thank you.

We are lucky to have you accept this position. I think we ought to all be pleased that you are willing to serve.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Mr. McAleenan, Senator Brown and I put a lot of effort into closing the loophole to make sure that goods made with forced and slave labor did not get into the United States. As you know, this fight seems to have been the longest running battle since the Tro-

jan War to do something that, frankly, is important so that this country does not have a moral blot that we have to explain, that somehow we are looking the other way in the face of forced or slave labor. And that is what Senator Brown and I were concerned about.

My question to you is this: my understanding is that you all are looking at some regulations in order to carry this out. Could you give us some sense of what the agency is looking at in terms of these regulations, because this, of course, is where you always have lawyers and others trying to somehow skirt the intent of Congress? So tell us a little bit about what regulations you are looking at to carry out this important matter that Senator Brown and I have felt strongly about.

Mr. MCALEENAN. Thank you, Senator. I am happy to describe our efforts in this area.

Under our trade remedy law enforcement directorate, we set up a forced labor taskforce that is very focused on this mission. I would argue they are passionate about it. They see the importance of it. They have the clear signal from this committee in Congress and the administration to address forced labor in supply chains.

In terms of what we are looking at on regulations, we want to make sure that we are able to apply all effective enforcement tools in a most precise and appropriate manner to this priority mission. I would offer the recent example on North Korean labor for your consideration.

We read an article on October 4th that indicated that North Korean forced labor was being used in seafood production in China. We jumped all over that immediately, researching the companies involved. We put a shipment on hold the next day that was in route to the United States—we are up to six shipments that are on hold, as well as working with our Centers for Excellence and Expertise to evaluate all commodities and manufacturers in the region that are affected to see if we can identify elements of North Korean labor in those supply chains as well.

That action was taken under our regular section 1499 detention authority, not under the section 1307 withhold release order, because we were able to do it more quickly that way and address the shipments that were already on the water.

That is the kind of thing we want to have available in our tool kit to address forced labor more broadly while still pursuing withhold release orders under 1307 when we have either an allegation or a self-initiated case that meets that standard.

Senator WYDEN. Let us go to this question on the warrantless device searches. And you and I have talked about this as well.

Americans are concerned now that their constitutional rights are just stopping at the border. It seems to me that this border search exception is just not suited to the digital age.

Now, I want you all to have the tools to be able to move when you think, for example, national security interests are at stake in these, what are called "emergency circumstances." But what is the agency doing so that, as a matter of regular course, there is a level of reasonable suspicion before requesting to search or seek assistance to search a device?

Mr. MCALEENAN. So we are using our border search authority across multiple requirements, to assess someone's admissibility, to assess the admissibility of goods entering the country, including electronic devices. We are trying to do that in the most judicious and measured way that we can.

When we have searches that are more intrusive, say a personal search looking for drugs, a search of mail, for instance, or in this case a search of an electronic device, we often apply specific policy limitations beyond the constitutionally required or statutorily required limitations. We have such a policy in place for electronic searches.

Now to be very clear, this happens to less than one one-hundredth of 1 percent of travelers entering the country. And even a smaller percentage of those are U.S. citizens. It is something we use in a very measured fashion when there is an indicator of concern.

So it is something, Senator, that I understand you are very interested in. It is something that we expect the committee's guidance on. And it is something that we are going to continue to implement very carefully with an eye towards evolving jurisprudence and the importance of this authority.

Senator WYDEN. We will talk some more about it. I think the only thing I, again, would say that concerns me—you say it is a small number of cases. I guess all of them are calling my office, because I am sure hearing from a lot of people.

Let me ask you about one other matter, and that is the ENFORCE Act. I ask it because it seems to me you are the bright spot of the trade agenda as it relates to this administration. You are really moving on the ENFORCE Act.

Because my time is short, could you give us a couple of examples of what you think are your major accomplishments using the ENFORCE Act thus far?

Mr. MCALEENAN. Absolutely.

Briefly, Senator, I think getting the interim final rule published on time, within 6 months of the finalization of the act, I think was a big start. Within weeks we were receiving allegations through the EPA process. We now have 14 investigations ongoing. We have implemented interim measures, adjusted the rate of entries, issued trade alerts to do live entries, increased the bond rates or gone to a single transaction bond, or suspended liquidation for entries.

Right out of the gate on these 14 cases, we have already protected $33 million in revenue. The single manufacturer of wire hangers in the U.S. is now protected from this transshipment that we were seeing with Chinese wire hangers. And it is something we are pursuing aggressively. We are going to maintain our adherence to the timelines in the statute, and we are seeing very good results from this process. We appreciate the authority in the statute to go after this unlawful trade.

Senator WYDEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Grassley?

Senator GRASSLEY. Congratulations.

Senator Thune and I got passed section 605 of the Customs Act of 2015 so that we could get all of the interest that is owed to people who were harmed by the dumping of bee honey by China.

The previous administration did not carry out 605. Last Friday, you sent Senator Thune and this Senator some new data-mining from CBP's Automated Commercial Environment allowing you to identify the interest owed, and you presumably would disburse that as soon as possible. Can you give Senator Thune and me an accounting of all of the funds that have been and will be disbursed under the requirements of section 605?

Mr. MCALEENAN. I can, Senator.

Last year in 2016, under the CDSOA Act, we distributed $47.2 million in interest, and for section 605, $11.2 million alone. We absolutely recognize the importance of honey, a key agricultural commodity that is coming under pressure from dumping, from foreign competition.

When I met with you, Senator, and other members of the Senate Finance Committee staff, a concern was raised that we were not interpreting section 605 correctly to provide all due interests from assurity payments to manufacturers in the United States. Working with our team, we reevaluated our legal interpretation and were able to expand our analysis of those payments.

So using that methodology that you referenced in the letter, we were able to go back and look at all payments that were covered by assurities to isolate those that we could then reimburse interest on. So we absolutely are moving toward that reimbursement this year. We think we can do it by mid-spring and distribute that to honey producers in Iowa, North and South Dakota, Montana, and other States that are affected.

Senator GRASSLEY. Thank you very much.

At the end of May, Homeland Security released the 2016 Entry/Exit Overstay Report. The Department's current report only provides exit data for air- and seaports of entry, ignoring vast land ports of entry. For example, one port processes approximately 20,000 pedestrians and 70,000 northbound vehicles entering the United States on any given day. However, without exit tracking, our government lacks the ability to confirm whether individuals have left when they are supposed to.

What steps will you take to close this loophole and ensure that CBP starts reporting exit data and land port of entry?

Mr. MCALEENAN. Thank you, Senator.

I think we are making sound progress on our entry/exit across the board, not just at the air- and seaports where we have ongoing pilots to collect biometrics that are in the process of boarding travelers on these flights—it is going very well. But we are not going to forget the land border.

We are, obviously, very focused on our information exchange with Canada and Mexico, which is a key part of that. We are also going to implement, this year, messaging to all third-country nationals who might depart over the land border, explaining the procedures that they need to come into the port of entry—give us their biometrics on their departure. That will be a significant step forward.

But we are also pushing on the technology so that we can address biometric recognition of pedestrians exiting the country, and ultimately vehicles that are in those outbound lanes.

As Senator Cornyn and others know, our outbound land border ports of entry do not have the infrastructure that our inbound ports do, so we are going to have to have a creative and innovative technology solution, but we are not leaving that behind, Senator. That is a key aspect of our mission, and we are going to pursue it all.

Senator GRASSLEY. Will this biometric exit facial recognition pilot program to multiple land port entries be carried out between you and DHS?

Mr. MCALEENAN. Absolutely.

Our acquisition oversight at the Department is looking at that carefully. We are also partnering—I have been working closely with Administrator Pekoske since he got in the chair over at TSA about collaborating on this technology. We think our innovations in this area and the accessibility of the matching tool can be useful for TSA and other partners, working closely with the Office of Biometric and Identity Management to ensure it is consistent with their future developments and their biometric system.

So yes, it absolutely has to be coordinated across the Department to be effective.

Senator GRASSLEY. Okay.

The CHAIRMAN. Senator Stabenow?

Senator STABENOW. Thank you, Mr. Chairman.

I apologize for my voice this morning, but good morning, Mr. McAleenan. It is wonderful to see you again. I appreciate the conversation in my office and enjoyed hearing about your family's connections to Michigan.

You have a very important job ahead of you, and certainly for Michigan, as we talked about. We have the busiest northern border in the United States in Detroit: Detroit to Windsor.

I was pleased to see that in February, President Trump and Canada's Prime Minister Trudeau referenced the construction of the new bridge, Detroit's Gordie Howe International Bridge and Customs plaza, as a factor for building stronger ties between our two countries.

Detroit, though, is not the only border crossing that is busy in Michigan. The Blue Water Bridge in Port Huron is the third busiest land crossing in the United States.

When we are talking about the value of shipments, the Customs plaza there has had serious difficulties with high traffic and has been slated for expansion for years. A lack of Federal funding has stalled the project and affected the community due to lost property tax value when land was cleared in anticipation of the Customs plaza.

So my question is, what are your plans for the Customs plaza at the Blue Water Bridge, and will you commit to working with me to make this long overdue Customs plaza a priority?

Mr. MCALEENAN. Thank you, Senator.

Absolutely. We have a rigorous prioritization process that goes on volume, that goes on the importance of the trade between Canada and the U.S., to prioritize port-of-entry infrastructure projects.

The Blue Water Bridge in Port Huron, as you noted, has been a priority on that list for some time. I absolutely will commit to working with you. We are offering an annual report showing our priorities to our partners at OMB and the General Services Administration. Hopefully, we can continue to move forward with investments in infrastructure, because it has such an impact on international trade.

Senator STABENOW. Thank you.

Well, this was a start/stop project. So the community has been put in a very bad situation on top of the need for the Customs plaza.

What commitment do we have from the President for the Gordie Howe International Bridge and Customs plaza that will be located there?

Mr. MCALEENAN. Our commitment has been to work to put the officers, the technology, and everything we need into the budget to work efficiently as soon as that bridge is done so that we can support the opening as soon as they are done with the span.

Senator STABENOW. Thank you.

Moving to a different subject, again, talking about enforcement. I continue to hear about the growing trend of counterfeit parts, particularly in Michigan—auto parts being imported. We have seen a number of situations where other countries or companies set up fake websites that sell products, steal logos, and the company does not know that that is happening until someone returns a defective product. They would want a refund, but yet the company did not sell that to them. So on top of everything else, it poses serious safety risks.

So CBP plays an important role in effective intellectual property enforcement. In one case, I got a call from a company in Livonia, MI that saw with their own eyes a booth at a trade show in the United States where a company was using their brand and their logo to sell counterfeit auto parts.

They called me. I was able to intervene and communicate with the National Intellectual Property Rights Coordination Center, of which CBP is a member. They did an excellent job. They went right to the trade show, and they actually shut them down, which was very impressive to me to see how quickly they acted.

But this continues to happen over and over again. On the issue of auto parts, the industry loses billions in sales each year. And I am sure that is true for other industries, and the Federal Trade Commission has estimated the use of counterfeit parts has resulted in as many as 250,000 fewer jobs in manufacturing.

Will you commit to cracking down on counterfeit goods as a priority?

Mr. MCALEENAN. I will absolutely commit to that. I am grateful to hear of the responsiveness of our team when they got that report.

One of the main drivers with our Centers for Excellence and Expertise is to have that partnership with industry to receive that business intelligence and respond to it, because we want to shut down those counterfeit parts. They present safety risks, and they affect American manufacturers.

Senator STABENOW. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Enzi?

Senator ENZI. Thank you, Mr. Chairman.

Thank you, Mr. McAleenan, for being willing to serve. We can tell from the questions how diverse your jurisdiction is, and how much you have to cover. So I think I will bring up one more issue.

I am from Wyoming, which is the sixth largest State in the Nation. It is the least populated. So we have miles and miles and miles and miles, but we do have an international airport in the center of the State. It is Casper and Natrona County.

They are in the process of expanding their foreign trade zone. They need to obtain a Customs port of entry designation status in order to qualify for this expansion. We have worked hard to make sure there was a Customs official there, and we want that to continue.

My staff has had trouble getting a straight answer from CBP on the status of their designation. CBP officials have told my staff conflicting information about whether such a designation is likely.

I would like for you to commit that your component will review this request and clearly communicate with my staff and my constituent about the status of the designation and any barriers that remain to the designation so that we can provide the airport with up-to-date and accurate information.

Mr. MCALEENAN. I can commit to that. Obviously, foreign trade zones are critical to expanding exports and to increasing economic activity. I can assure you that we will clean up and clearly communicate on the requirements and our ability to work with Casper Airport to set that up. Executive Assistant Commissioner Todd Owen will be our point of contact.

Senator ENZI. Thank you very much.

Your agency is working closely with the Department of Commerce and the Department of Agriculture to monitor and enforce the recently amended antidumping and countervailing duty suspension agreements on sugar from Mexico. It is essential these agreements operate effectively to assure that the sugar policy can continue to operate at no cost to the government, and that domestic beet and cane farmers, beet processors, cane millers, and cane refiners are not injured by imports of dumped and subsidized sugar from Mexico.

Can you assure me that enforcement of the sugar suspension agreements will be a high priority for CBP?

Mr. MCALEENAN. I absolutely can. We are very focused on antidumping/countervailing duty enforcement across all industries.

Senator ENZI. Thank you.

No further questions.

The CHAIRMAN. Thanks so much.

Senator Cornyn?

Senator CORNYN. Mr. McAleenan, thank you for being willing to serve. I know you come to this job with a lot of great experience, and I appreciate that, because I think it is one of the most important jobs in the Federal Government.

It is no coincidence that I come from a State with 1,200 miles of border with Mexico, and you know all of the issues as well as

anybody. But I want to focus on the combination of security and trade.

I think some people have the mistaken idea that you get one or the other. I think they go together, and it is very, very important for the Federal Government to not only invest in the infrastructure that we have heard referred to in the past on the northern and southern border, but also to provide the personnel to keep legitimate trade and travel moving, because it is an important part of our economic engine.

At the same time, the American people clearly want us to secure the border between the ports of entry, which is necessarily the same thing. I would just commend for your consideration some legislation that we have been working on for some time called the—well, essentially, it is a smart border bill, working with the House and the Senate as we try to find a path forward on the deferred action, the so-called Dream Act kids who are now young adults whom the President has kicked over here to Congress for us to deal with.

It seems to me like there is a perfect marriage of both the border security and enforcement bill along with some solution for these young adults who came here with their parents and, through no fault of their own, find themselves in a dead end. So I would just ask for your continued consideration of what we are trying to accomplish there and to keep working with us.

Part of that, as you know, involves securing fast ports of entry. And you have alluded to this in your testimony earlier. Senator Wyden talked about the need to have more blue shirts at the border, and certainly we support that on the southern border as well.

Can you, sort of, give us your perspective on this marriage of security and legitimate trade and travel, and why you believe that we should accomplish both, and we can do both of those together?

Mr. MCALEENAN. Absolutely, Senator.

It is very clear to us—and it is a mission that we have thoroughly internalized—that economic security, our economic competitiveness, and the fast and smooth flow of trade across our border are instrumental to our national security. So they are absolutely intertwined.

I think the example I was offering on forced labor with North Korea puts it in stark relief, that if you are enforcing against a national security adversary, but doing so in a way that protects the U.S. economy, it is very well aligned.

On our southwest border, obviously hundreds of billions of dollars of trade cross the border with Mexico. That is critical to U.S. exports and imports. And it is part of our responsibility to facilitate that while addressing the challenges we face on narcotics that affect our communities, challenges with illegal immigration, crossing our border, both at ports of entry, but as you referenced, the clear signal from the American people, the administration, that we need to continue to improve our border security between ports of entry, which is going to be a central focus of our organization going forward as well.

To me, as you note, these things go hand in hand. You have to have good partnerships. You have to have trust.

I have been to Mexico four times in the last 6 months, working closely with our law enforcement partners there. We need strong partners, and we need trust and communication with our law enforcement counterparts in Mexico to do this effectively.

I think our relationship with Mexican Customs, Aduana, is as good as it has ever been. We are doing joint inspections, unified customs processing. On the U.S. side of the border, we are able to cut hours down for each truck crossing, and we are able to share information and increase the security of those shipments at the same time.

That is the kind of thing we want to put in place to achieve those dual objectives that you outline.

Senator CORNYN. And you are familiar with the GAO report on CBP action needed to improve wait-time data and measure outcomes of trade facilitation efforts? That is what you are referring to here, is it not?

Mr. MCALEENAN. I am aware of that report. And that is a commitment of ours, to continually improve our ability to capture wait-times, to communicate them transparently and give real-time information for truck drivers so they know what to expect as they approach the border so we can increase utilization of those ports in off-hours.

We get everybody, kind of, arriving at the same time, as you know. You have seen that at Laredo with the trucks lining up. We would like them to use the evening hours or the early morning hours to use that infrastructure more efficiently. That is something we want to be able to communicate effectively, and we sent a report up in response to the GAO analysis.

Senator CORNYN. Well, we would welcome your continued advocacy within the administration and also with explaining to the American people why these are not mutually exclusive and how bilateral trade with Mexico alone supports roughly 5 million jobs in the United States, and they are not all in Texas. They are throughout the country.

Trade with Canada supports roughly 8 million jobs in the United States, and these are important. And they are achievable together, both security and trade. We appreciate your advocacy for that message.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Isakson?

Senator ISAKSON. Thank you, Mr. Chairman.

Congratulations on your nomination, and thank you for the job that you do for the country.

As you probably are aware, the port of Savanah is the fourth largest container port in the United States of America. It went from 2.6 million containers in 2007 to 4 million containers this year. With the deepening and harbor expansion of that project—it will be finished in 3 years—they will be taking the Panamax ships of the 21st century that have 14,000 containers per ship.

So growth of that port has been unbelievable, and its use has been unbelievable. Yet, we still do not have any more officers in the border protection personnel in Savanah now than we had 10 years ago before that growth started.

Can you address that? Are you familiar with what has been done to meet the demand down there, and what do you see for the future?

Mr. MCALEENAN. Thank you, Senator.

I am familiar with the tremendous investments and the growth in Savanah at the seaport. It is something we are monitoring closely as we build our staffing models every year.

We do try to look not only at that growth, the container volume itself, but also at the predicted economic changes in a given region or port of entry. At this point, our Atlanta field office, which Savanah is very near—it has 100 percent of authorized staffing.

But that does not mean that we think that we have enough staff. We have submitted a workload staffing model to Congress which reflects the need for another 2,500 CBP officers and 720 agriculture specialists that would allow us to better process trade.

But that is not the only way that we think we can improve efficiency and meet the need of that growth. We are doing even more on automation, and we have implemented processes where we are able to let trusted traders, trusted carriers, unload cargo even before the vessel has cleared. About 98 percent of that cargo is cleared before it even arrives in Savanah, based on all of the information we have on the supply chain and the shippers involved.

So we are going to continue to drive that. We cannot be a barrier to that economic growth in Savanah.

Senator ISAKSON. Well, your enforcement of Known Shipper and the other programs that are available is just fantastic. My comment about the number of personnel has nothing to do with the competence of the ones who are there, just the hope that we keep up with it as the demand goes up. Which leads me to Hartsfield International Airport, which is the largest airport in the world in terms of the number of travelers. We went through 100 million last year.

Your enforcement there in terms of the number of personnel is still about the same as well. Now again, in terms of border protection violations, we have had little or no increase in violations even with the growth of that airport, but are you planning for that growth as time goes on?

Mr. MCALEENAN. We are. And we have a very close partnership with the airport as well as Delta and the rest of the carriers there in Atlanta. It has some of our lowest wait-times among major airports because of the work they have done on the facility, because of the partnership with us to establish technology that can allow for us to facilitate those travelers more efficiently: the automated passport control kiosk and the mobile passport control kiosk.

They are also partnering closely with us on biometrics that would work within the process of boarding travelers. So that partnership in Atlanta is key.

Senator ISAKSON. Can I interrupt?

Mr. MCALEENAN. Yes, Senator.

Senator ISAKSON. Excuse me for interrupting, but that includes the U.S. Visit Program, the biometrics? Is that correct?

Mr. MCALEENAN. It does. Yes, we are taking biometrics on all international air arrivals——

Senator ISAKSON. That continues to be extremely effective in protecting the border through the airports. Is that not correct?

Mr. MCALEENAN. Absolutely.

Senator ISAKSON. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. And again, congratulations on your nomination.

When it comes to the State of Washington and ports, I always say, "Ports are us," because with so many ports and so much traffic, it is essential that we have the swift movement of goods and services for our economy to be effective. And we spend a lot of time on this—so both on the efficiency and on the security side.

I wanted to get your thoughts on the preclearance program that Senator Collins and I have worked on, which is shifting our borders to overseas airports so that we can be safer and more secure, funding of new personnel so we can better cover our seaports, which are key parts of our gap in personnel, I think, at Customs and Border Protection. And then also I wanted to make sure I understood your position as it relates to racial profiling and whether CBP is involved in racial profiling at our borders.

Mr. MCALEENAN. Thank you, Senator.

I will address all three. On the preclearance side, we think it is simply the most efficient and most secure way to process air travelers headed to the United States. And that is why in the last 3½ years I have spearheaded an effort to expand preclearance and expand the options for traveling to the United States in this secure and facilitative manner.

The airports that have it—I will give you an example. Dublin Airport, for instance, is now the fifth largest last point of departure from Europe. It has grown almost threefold in the past decade. Their transfer traffic is up dramatically.

Abu Dhabi International Airport, which had fewer than 200,000 passengers just a few years ago, is annualizing toward a million already. Passengers are choosing this routing because they can arrive and go direct to their destination or their transfer flight, and we get to do our full checks before they even board that aircraft. So those flights are more secure and safer on the way to the U.S.

So that is something we are going to continue to pursue. It is an economic driver and a security program at the same time.

Additionally, with the partnership with foreign airports, we can add staff to cover those flights while maintaining our staffing levels domestically, which is a requirement under the statute. So that is a key focus, and we are going to continue to press for expansion if confirmed. And really it is something we recognize across our organization as an efficient program.

In terms of seaports, that is part of that staffing requirement and request that we have offered annually in our Workload Staffing Model Report. We do agree that staffing of the seaports is absolutely critical.

I would note, though, that it is the area where we have had probably the most significant long-sustained innovation on speeding containers through. Again, 98 percent of containers are cleared before they arrive. We have adjusted our algorithms on our radiation

portal monitors so we have many, many fewer false positive alarms, called "norm alarms"—so a very big reduction in secondary inspections.

We are also letting on the west coast—through the AQUA Lane Program—carriers unload containers as soon as they arrive and connect to dock power so they do not have environmental hazards, which I know is very important in your State. So we are going to continue to advance on our seaports.

In terms of racial profiling, it is absolutely prohibited. It is unconstitutional. We have a strong, clear policy against it, and we are going to maintain that, and we are going to maintain our relationship with the community in your State to make sure that any issues or concerns are promptly and appropriately followed up on.

Senator CANTWELL. So do you think if people were being asked at the border if they were a devote Muslim, if they were Sunni or Shia, if they prayed 5 times a day, did they have a mat, did they have a Quran in their luggage—what do you think those questions are?

Mr. MCALEENAN. So I cannot speak to a specific incident from the generality, which we would want to do to give you a more specific answer. But religious questioning can be appropriate depending on the type of visa that someone is traveling on, depending on the information on the travel that helps us understand any risk presented better.

But in general, any sort of religious questioning that seems to be not connected to any other indicators of risk would not be appropriate and is prohibited by policy as well.

Senator CANTWELL. Well, I think I am going to have to come back to you on what aspects of those are appropriate. Listen, I could not be more grateful for Customs and Border Protection in catching—in the Ressam case at Port Angeles. So, great work in catching something that did not match up. And just so that I am clear, I am for biometric standards, and we should be saying to Europe and everybody else, use biometric standards or you do not get your visa waiver program.

But on this issue, I have also seen Customs and Border Protection, particularly in the Port Angeles area when we gave more money to the northern border, all of a sudden driving around in dark cars and no one even knew who they were, pulling people over just because they were brown-skinned, and people saying, I do not even know who you are. The sheriff did not even know what was going on.

So we have to have fair treatment of the population as well. So we are going to follow up with you on this.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Cassidy?

Senator CASSIDY. As we know, you are charged with—your agency is charged with enforcing the Jones Act. And in 2009 and earlier this year, CBP proposed to modify or revoke certain Jones Act Ruling Letters. You have been there for several years. So it seems as if—I would like your thoughts as to how we bring this into compliance with the Jones Act.

Again, CBP proposed to revoke these, but it has been put on hold. Your thoughts about that?

Mr. MCALEENAN. Thank you, Senator.

Yes, as you know, earlier this year we had a proposed change under section 1625 to a series of rulings going back decades on specific merchandise covered under the Jones Act, which we enforce. We received over 3,000 comments on that proposed change in the ruling. The decision was made at the Secretary level, in consultation with interagency partners, to not move forward with that at the time. It is something——

Senator CASSIDY. And what was the reason for that, because this has been on hold since 2009? Congress was pretty clear in its legislation as to what the law is. It seems, in a sense, as if CBP or the agencies, or the Department is making a decision as to whether or not to enforce laws that Congress has passed.

Thoughts about that?

Mr. MCALEENAN. Yes. I think, Senator, what you saw was a significant set of considerations that affect interagency interests, whether it is the correct process for undertaking this change from our OMB colleagues, whether it is the Department of Energy, the Department of Defense, or other——

Senator CASSIDY. Now, I get that, but there is a clear law written by Congress. And there might be concerns, but they were Congress's concerns.

What I am hearing from you is that it may not be your department. It may be OMB and Energy, but nonetheless, just for the record, I will say that Congress passed a law. And those were the things of consideration for us. I think I know your sympathies, but at the same time, I have to kind of establish that.

So let me ask. On September 7, 2017, CBP granted an appeal of and reversed penalties totaling more than $24 million for a Jones Act violation involving transportation of merchandise on the outer continental shelf by a foreign vessel.

Can you tell us more about this case, and whether that appeal was granted due to one or more existing Ruling Letters issued by CBP?

Mr. MCALEENAN. I do not have the specifics on that case as we sit here today, Senator. But I will go back and report to your office on that.

Senator CASSIDY. Okay.

And then related to that, since you are going to report, if you could include this in the report, was the Ruling Letter one CBP had proposed to revoke or modify in either 2009, or January of this year, or both? I mean, that is of interest to us.

Mr. MCALEENAN. I will include that.

Senator CASSIDY. Yes, and if you could, also include in that all written communication by CBP to the company involved in this matter.

Secondly, changing the subject kind of significantly, I am told that the number of immigrants caught crossing the border is higher for the second straight month in June of 2017, after decreasing month by month since the election of President Trump. Have you heard from sector chiefs, and what are your thoughts as to why apprehensions have begun to increase again?

Mr. MCALEENAN. Thank you, Senator.

We are fully tallying our 2017 results, but in all likelihood, it is going to be the lowest level of illegal crossings between ports of entry in over 45 years. We believe that that drop in the initial months of this administration was due to very clear messaging on the intent——

Senator CASSIDY. Well, let me ask. I totally accept that, but in the last 2 months it seems to be rising once more. So granted that there has been a fall, what has happened the last 2 months?

Mr. MCALEENAN. Sir, I think that goes back to the announcement by the administration 2 weeks ago about the process of what immigration policy and system changes are going to be required to support the fine efforts of the men and women of the U.S. Border Patrol to apprehend people crossing the border. Those are things like asylum reform, adequate immigration judges to process cases timely and ensure removals happen, use of——

Senator CASSIDY. So just to make a connection between the question and your answer, are you saying because it might be getting tougher to achieve asylum reform, people are rushing in to get in under the current regime?

Mr. MCALEENAN. I am saying that the clear intent to enforce immigration law has resulted in a significant reduction of crossings, but there are still some fundamental aspects of the system that need to be addressed, as the administration released 2 weeks ago. That includes family detention——

Senator CASSIDY. And then that would, hopefully, address this?

Mr. MCALEENAN. Yes.

Senator CASSIDY. Let me ask, in my remaining seconds, Vietnam was one of the primary exporters of seafood to the U.S. In April of this year, one of Vietnam's top health administrators stated that antibiotics in food and their overuse to treat disease are increasing in Vietnam.

When does CBP determine it is necessary to work with FDA to issue fines and generate import alerts and make arrests rather than just to destroy the product; *i.e.,* how do we just catch the symptom as opposed to going after the bad actors themselves?

Mr. MCALEENAN. I will follow up on that specific issue with FDA and get you more information, but in general, we want to apply the maximum enforcement posture we can by going beyond an interdiction of a shipment to look at the network, to look at how they are trying to exploit our laws, and to target them with investigative partners, whether it is FDA or HSI——

Senator CASSIDY. Now, one thing in medicine—I am a doc, so I am going to come at this from medicine. You, typically, would sample. And if you find that 5 percent of a product is bad, you do not just destroy the 5 percent. You say, 5 percent is bad. We are going after the whole lot. You presume that that sample is representative, as opposed to just an out-parcel.

Now, it is my understanding, though, that the way the current system works is that 5 percent is destroyed, but it is not taken as representative of the entire. It seems, intuitively, that if 5 percent is bad, the whole lot is bad.

Am I correct in understanding that only the 5 percent would be destroyed and not the whole lot? And if so, why is it not taken as representative?

Mr. MCALEENAN. We have a robust sampling and testing with our labs. If they detect that a shipment, the parts they are sampling, includes inappropriate antibiotics, in the case you are offering, or other issues that are violative, we will destroy the whole shipment.

We cannot extend that to all shipments from a certain country, but we can target that full shipment.

Senator CASSIDY. But presumably—and, Senator Brown, I am going a little bit long. Am I holding you up? I do not want to, so let me ask: if there is a bad actor that consistently is sending tainted product, is that bad actor targeted so that bad actor gets 100-percent review of their shipped products?

Mr. MCALEENAN. Absolutely.

Senator CASSIDY. Okay. Thank you very much. I yield back.

The CHAIRMAN. Thank you.

Senator Brown?

Senator BROWN. Thank you, Mr. Chairman. I appreciate that.

Welcome to the committee. The opioid crisis issue, as you know, is devastating communities everywhere. My State, in Ohio, between now and lunchtime, the odds are someone will die of an overdose—11 Ohioans by the end of today.

Fentanyl is 50 times stronger than heroin. Any solution to the opioid crisis must include stopping fentanyl shipments from coming to the U.S. The Interdict Act, which Senator Portman and I partnered on with Senators Rubio and Capito would provide your agents with more resources and equipment to screen packages. You know all of this.

Can you confirm that having more portable screening devices would increase and enhance CBP's ability to stop deadly drugs like fentanyl from entering the U.S.? And second, can you confirm it will be a priority for you as Commissioner to procure more of these devices for your agents?

Mr. MCALEENAN. Technology to both identify fentanyl in shipments, to test it effectively, is absolutely essential to successful interdiction. And interdicting fentanyl and prioritizing capabilities that help us do it better will absolutely be a priority.

Senator BROWN. You will help me get this enacted into law?

Mr. MCALEENAN. I cannot comment on specific legislation, Senator, but absolutely I would work with you and provide technical assistance, because we think these kinds of things would be very helpful to our mission.

Senator BROWN. Okay. Thank you.

You and I spoke several times on the phone and in person about the importance of blocking all goods made with forced labor. And I thank both the chairman and the ranking member for their leadership on this issue and how we were able to update the law.

You said it is a top priority of yours. But I remain concerned we have not seen any enforcement actions against forced labor in the last 10 months, not a single withhold release order, not a single WRO has been issued to stop forced labor imports from coming in.

I am troubled by that. I know you said earlier you are trying to achieve a balance. I do not know what that means when it is zero on one side.

My question is, will you commit to using WROs to block imports in every instance—this is not a balance—blocking imports in every instance that CBP has reasonable, but not conclusive evidence that they were made with forced labor?

Mr. MCALEENAN. I can tell you right now that I commit fully to using section 1307 to enforce and protect forced labor elements in supply chains. And we are working very hard to identify, again, tobacco, seafood, palm oil, gold, vegetables, toys, sugar cane. We have 14 ongoing efforts across country and commodity combinations to better go after forced labor in supply chains. And as soon as we hit that standard which is from the statute, we will absolutely issue further WROs.

I would just like to note, Senator, though, that the six shipments we have on hold of suspicion that they were made with North Korean forced labor, I would count as forced labor enforcement even if we did not use a WRO to affect it—all happening this month.

Senator BROWN. Okay.

At best, that is a grand total of one. But I thank you for that comment.

One other troubling point is, I have heard some of your staff are indicating they think WROs should be issued only when they know CBP can make a finding as well. The misreading of the statute could explain the complete lack of enforcement we have seen this year. This is just simply unacceptable. It is not what the statute meant or what the statute says.

Findings require a higher evidentiary standard. And CBP's history of forced labor enforcement is, 34 WROs have been issued, but only 8 findings have been issued—you understand the huge discrepancy there.

If CBP wants to issue a WRO until a finding can be issued, you will gut the most effective forced labor enforcement tool that you, that CBP has.

So my question is, will you commit to issuing WROs when you have met the WRO evidentiary standard, and issue findings, then, when you have met the findings standard?

Mr. MCALEENAN. Yes.

Senator BROWN. Thank you.

Last question, Mr. Chairman, and thanks for your cooperation.

There are plenty of sources of information about forced labor: outside advocacy groups with on-the-ground experts—obviously, it is a complicated, big world out there, and we have a lot of those contacts around the world that feed us that information, as you do.

The Bureau of International Labor Affairs at DOL produces an annual report that identifies sectors, as you know, with forced labor in them. Recent investigative reporting into sectors where forced labor is prominent is important. I have been frustrated that CBP is unwilling to initiate investigations into forced labor in the private sector despite readily available detailed information.

So my last question—and thanks for your indulgence, Mr. Chairman—will you commit to this committee that CBP will use all

sources, including the ones that I just delineated, all sources to investigate and self-initiate cases on forced labor?

Mr. MCALEENAN. Yes, absolutely.

Thank you for the introductions to civil society organizations that are expert in this field. We are going to continue to meet with them regularly.

They have helped us focus on our trade partners, using their responsible sourcing capabilities and their supply chain and third-party audits to increase our intelligence and awareness of these issues. I can tell you that, even though there have not been additional WROs, it is not for lack of internal effort or a number of outstanding efforts that we are analyzing with different country commodity combinations currently.

Senator BROWN. Thank you. We are counting on you.

Thank you.

The CHAIRMAN. Thank you.

Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman.

While Senator Brown is still here, and in reference to comments that I am sure he made before I came in, and comments I heard earlier from Senator Wyden—first I want to welcome you. And we look forward to getting that "Acting" off of your business card, because we need you, but we really need your help on the ENFORCE Act, and the broader issue of enforcing our trade laws.

You and I talked about this at length—it is not typically something that Customs and Border Protection specializes in, but we have to. And we have to because countries are circumventing our trade laws by moving to another country to export their products to avoid our tariffs even when we win trade cases.

There are lots of examples of this. We have one in Ohio. It is American Spring Wire in Bedford Heights, OH. They won a trade case. And after they won the trade case, they celebrated. And then they found out, oh my gosh, even though they won the trade case with regard to Chinese importers, the production then shifted to Malaysia—same issue, same company.

So it is a huge problem. Wheatland Tube in Warren, OH, U.S. Steel in Lorain, have run into this problem also. And we need your help on it. We have provided you the tools. We have given you this new law to be able to be more aggressive.

I will not ask you to comment on that because I want to get into another issue. And I will ask for your comment on this.

This has to do with the drug epidemic we face as a country. Sadly, the new wave of drugs coming in are synthetic heroines which are even more dangerous and even less expensive.

In my State of Ohio, our State of Ohio, with Senator Brown and me, we now believe it is the number one cause of death among the other drugs. So prescription drugs, heroine—fentanyl and carfentanil and other synthetics—are now pushing those out.

I talked to law enforcement last week—someone told me, Rob, it is actually being spread in every other drug now. So they are finding traces of fentanyl in other drugs, including cocaine, marijuana, and so on.

It is a scourge, and it is something we can do something about. And as you know, back in 2002, this committee passed legislation

that said, if you are a private carrier, you have to provide Customs and Border Protection, the DEA, local law enforcement, information so that they can stop these illegal drugs, but also other contraband coming into the country. And that is advanced electronic data that allows them to target packages or letters to know when there is a potential problem by saying what is in it, where it is from, where it is going.

We did not require it of the post office in 2002, but we did say they should do it. And we said there should be a study on it.

Well, here we are 15 years later with this crisis on our hands, and the post office still has not done it. Why is that a problem? Because fentanyl does not come in over land. Fentanyl comes almost exclusively through the mail system, and the traffickers have figured this out. They do not intend to use UPS or Fedex, DHL. They use the post office because the post office does not require that information.

So I just cannot tell you—I have been out in the field with your guys. You should know—I told you about this. I have been at two screening facilities in Ohio where I have seen them at private carriers, DHL, UPS, pull the packages, have them tested, which is incredibly dangerous, because they have the information. They know where the suspect packages are.

The post office has pushed back on this unbelievably. This committee has responsibility here, and the chairman has a lot on his plate right now with tax reform, but we need to mark up this bill, Mr. Chairman.

It is called the STOP Act. It is very simple. It simply says the post office should do what we suggested they do 15 years ago, and we have to do it now. This stuff is coming primarily from China, and it is coming primarily from the U.S. Postal Service, and it is going straight to P.O. boxes from traffickers and users and to abandoned warehouses in my State of Ohio.

This poison is getting into our communities. It is, again, the number one cause of death, we believe, in terms of overdoses. So, again, you and I have talked about this. I would love for you to comment on this today and to tell us what you are going to do once we get that "Acting" off of your business card and you are able to roll up your sleeves and get engaged in helping to stop this deadly poison from coming into our communities.

Mr. MCALEENAN. Thank you, Senator.

Let me just say I share your concern on the scourge of fentanyl and its effect on our communities, especially in the State of Ohio, 100 percent.

Since I have met you, I have met with Postmaster General Brennan four times, either in person or by phone, to try to talk about how we can increase that advanced electronic data to better identify potential risky shipments coming into the U.S. We have had some significant developments in this area.

We are up to 44 percent of mail providing some advanced electronic data. That is a dramatic change because of China increasing their submissions. China is also the highest risk origin point for fentanyl, as you know, Senator.

So we think those are very positive developments, but we are not going to stop there. We know we need to move toward a regulatory

approach after requiring this data. We know we need to closely collaborate with Postal on capacity building for posts around the world. We need to continue to emphasize this at the World Customs Organization, where I would represent the U.S., as well as the Universal Postal Union, where the Postmaster General would be representing.

We have to get there. We have to get comprehensive data to better target. And we appreciate your focus on that requirement in the Senate.

Senator PORTMAN. Do you support the STOP Act?

Mr. MCALEENAN. I cannot support a specific piece of legislation, but I absolutely support the goals of the STOP Act in getting that advanced electronic data. And there are several other things in a strategy that we think would be helpful, along with the U.S. Postal Service and FDA, that we can offer to enhance our capability as well.

Senator PORTMAN. Your Acting Assistant Commissioner, Robert Perez, testified before us at the Homeland Security Committee that the STOP Act was a good idea. So has the Secretary of DHS, both former and current. This administration needs to help us to get this thing done and to be sure that we have the requirement in law that these packages are able to be identified by your people to be able to stop this poison from coming in.

I will say also, Mr. Chairman, just quickly, you know, this is an issue that crosses party lines. We have 26 cosponsors, including members from this committee on both sides of the aisle, including Senator Brown and myself, and there is an urgency here. This is not like some other legislation we may talk to you about today. This is one that is killing people right now.

We know we can help to keep some of this off the streets—at a minimum, raise the price. I think this is such an urgent matter that I hope—should you be confirmed, and I believe you will be—that you will take this up and help us get this legislation passed.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you, Senator.

Senator Wyden has some remarks.

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

I just want to take a quick minute and talk about where I think our country is with respect to trade policy as of this moment. And in particular, contrary to Federal law, the American people are in the dark about what their government is asking for on NAFTA.

As Chairman Hatch knows—and I have been very appreciative of his support on this—I insisted in the last Congress that the administration publish and regularly update public summaries of its trade objectives. And as of now, the administration is falling down horribly on this job, and the reason that this is so important—and as I say, I appreciate the chairman's support on this—is whatever a Senator's view is with respect to the trade issue—and I happen to think it is awfully important, because in my State one out of five jobs revolves around international trade—the trade jobs often pay better than do the nontrade jobs. I believe it ought to be possible for an American to go to their Senator's community meetings—I have these town hall meetings—and to be able to sit at that meeting with a copy of one of these summaries in their lap so that they

can ask their duly elected Senators questions about what is actually being debated.

The fact is, this administration is not following through on a Federal law that I felt particularly strongly about, and that the chairman and I worked together on. So, Mr. Chairman, it is my intention that unless this administration gets serious about following Federal law and the public's right to know as determined by the Congress of the United States, after Mr. McAleenan gets out of the committee—and I surely hope he does, because I think he has been responsive to our questions and, obviously, he has expertise—it is my intention to not support moving from the committee any additional trade nominees until Federal law is complied with and these summaries are actually updated.

Mr. Chairman, again, I will be working closely with you on these matters. I appreciate being able to take a minute to address this concern.

The CHAIRMAN. Well, thank you.

As you can see, our ranking member feels very deeply about many matters, and this is one of them.

I want to thank everybody for their participation today. I have appreciated the thoughtful comments and questions from my colleagues as well as the really good responses from Mr. McAleenan. You have been one of the best witnesses I have seen before the committee in a long time. I am really proud of you. I think it is wonderful that we can have your services and your help in this very, very critical and important area.

My hope is that we can process Mr. McAleenan's nomination in short order and continue the important bipartisan work of this committee.

For any of my colleagues who have written questions for the record, I ask that you submit them by close of business on October 27th.

So with that, thank you for your appearance, Mr. McAleenan. You have done very, very well, and I hope to push you right through as soon as possible.

With that, the hearing is adjourned.

Mr. MCALEENAN. Thank you.

[Whereupon, at 11:30 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R–Utah) today delivered the following opening statement at a Finance Committee hearing to consider the nomination of Kevin K. McAleenan to serve as Commissioner of U.S. Customs and Border Protection:

In 2015, this committee successfully drafted and reported the Trade Facilitation and Trade Enforcement Act, which was later signed into law by President Obama. Thanks to that effort, Mr. McAleenan, if confirmed, will be the first Commissioner to oversee CBP as a fully authorized agency.

Mr. McAleenan, welcome to the Finance Committee. We appreciate your willingness to serve in this important position.

CBP is the United States' unified border agency, charged with facilitating legitimate trade and travel, while enforcing U.S. trade laws and securing our borders. There is a great deal of work to be done to improve enforcement, but this mission should not come at the expense of legitimate trade and travel. Striking the right balance is vital to ensuring that the United States remains competitive with the rest of the world.

Balancing facilitation and security will require CBP to work with stakeholders in and out of the government. As CBP seeks to strengthen and streamline trade enforcement, including the protection of intellectual property rights, the agency must not forget the important role that the private sector can play. As an example, the private sector uses information that CBP shares on counterfeits stopped at the border to prevent future shipments from happening. The private sector can also alert CBP to importers trying to circumvent our anti-dumping and countervailing duty laws.

Coordination with other government agencies is also important.

For example, the international mail system is used to traffic narcotics, counterfeits, and other products that pose health and safety risks to Americans. Congress authorized the Postal Service and CBP to collect electronic information on postal shipments in 2002, and these agencies must use this authority to close this security gap.

CBP must also ensure that its regulations clearly outline the rights and responsibilities of stakeholders.

For example, the Trade Facilitation and Trade Enforcement Act of 2015, the law I referred to earlier, improved enforcement against goods manufactured with forced labor. CBP needs to update its regulations to inform stakeholders about the type of information necessary to make a proper allegation against an import and to provide necessary guidance for stakeholders to address such allegations.

Long story short, Mr. McAleenan has a tough job ahead of him. However, I believe he is well-prepared and well-qualified to serve in this capacity, and I look forward to discussing his qualifications and his views here today.

LETTER SUBMITTED BY HON. MAZIE K. HIRONO, A U.S. SENATOR FROM HAWAII

State of Hawaii

DAVID Y. IGE, GOVERNOR

October 13, 2017

The Honorable Orrin G. Hatch, Chairman
Committee on Finance
U.S. Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Re: Hearing to consider the nomination of Kevin K. McAleenan, of Hawaii, to be Commissioner of United States Customs and Border Protection, Department of Homeland Security; Nomination Number: PN489–115

Dear Senator Hatch:

I am writing to provide my wholehearted support for the nomination of Acting Commissioner Kevin K. McAleenan to become the next Commissioner of the United States Customs and Border Protection (CBP), Department of Homeland Security. Through Acting Commissioner McAleenan's leadership, technical knowledge, and perseverance, we successfully reinstated CBP service to the Kona International Airport at Keahole, enabling the first nonstop foreign arrivals from Japan to Kona since 2010. The resumption of these flights to Kona has a wide-ranging, positive impact on Hawaii Island and the State as a whole by boosting tourism spending, creating jobs and generating millions of dollars for our economy.

Acting Commissioner McAleenan has always exhibited a keen desire to serve the public with the spirit of aloha. In my personal dealings with Acting Commissioner McAleenan, he has shown the highest level of character and commitment to his role in CBP. He was recognized for his leadership when he received the 2015 Presidential Rank Award and the 2005 America Medal, Call to Service Award.

I respectfully request that you confirm him as the next Commissioner of the United States Customs and Border Protection.

With warmest regards,

David Y. Ige
Governor, State of Hawaii

PREPARED STATEMENT OF HON. KEVIN K. MCALEENAN, NOMINATED TO BE COMMISSIONER, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. Chairman, Ranking Member Wyden, and distinguished Senators of the committee, thank you for considering my nomination to lead U.S. Customs and Border Protection.

I am humbled by and grateful for the President's nomination and would like to take this opportunity to thank President Trump, Chief of Staff Kelly, and Acting Secretary Duke for the faith and confidence they have placed in me.

I was raised in a family of public servants, each member drawn to a cause and driven to make a difference. My father, whose service began in the U.S. Army, 82nd Airborne, continues to serve the public today—at 80 years strong—in the LA County Mental Health System. My mother and brother have worked in the university and public school systems for years, working to help at-risk youth achieve educational opportunities. And my wife, who dedicated several years early in her career working for the Department of Homeland Security in the United States Secret Service.

For me, the call to service came on September 11th. I was extraordinarily fortunate to—almost immediately—have the opportunity to help lead a new focus on counterterrorism within the U.S. Customs Service, and then support the transition to our unified border security agency as U.S. Customs and Border Protection within the Department of Homeland Security.

Over the past 15 years, I have been able to participate in the dynamic evolution of the Agency, and I am honored to have had key opportunities to contribute to that

transformation, both at headquarters and in the field. In my management and leadership roles, I have found it most valuable and rewarding to engage with, support, and advocate for the operators—the CBP Officers, Border Patrol Agents, Air and Marine Pilots and Interdiction Agents, Trade and Agriculture Specialists, and mission support personnel—accomplishing our mission on the front line.

The men and women of CBP, operating in every State and 40 countries globally, are the heart of our organization and are some of the finest professionals in government service anywhere in the world. If confirmed, it would be the greatest privilege of my professional life to represent, and continue serving alongside, them as Commissioner.

In addition to its people, CBP has a strong foundation of legal authorities, operational capabilities, and mission-focused culture, but much more needs to be done to enhance its trade facilitation and enforcement, counterterrorism, and border security missions. As an indispensable national security partner, and the Nation's second largest revenue-collecting source, CBP must continue to innovate to accomplish its complex and critical tasks and to recruit and sustain the world-class workforce it needs.

If confirmed, working closely with this committee and our stakeholders, I am committed to addressing these challenges and to supporting CBP's dedicated and extremely hard-working frontline and support personnel to take our efforts, and our organization, to the next level.

SENATE FINANCE COMMITTEE

STATEMENT OF INFORMATION REQUESTED OF NOMINEE

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Kevin Kealoha McAleenan.
2. Position to which nominated: Commissioner, U.S. Customs and Border Protection.
3. Date of nomination: May 22, 2017.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: September 5, 1971, Honolulu, Hawaii.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):

   Undergraduate: Amherst College, September 1990 to May 1994; B.A. *cum laude,* in political science. Double major in law, jurisprudence, and social thought. Degree granted in May 1994.

   Professional: University of Chicago Law School, September 1995 to June 1998; Juris Doctor granted in 1998.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):

   Acting Commissioner, U.S. Customs and Border Protection, Washington, DC, January 2017–present.

   Deputy Commissioner, U.S. Customs and Border Protection, Washington, DC, October 2014 to January 2017 (permanent), March 2013 to October 2014 (acting).

   Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, Washington, DC, December 2011 to March 2013 (acting and then permanent).

Deputy Assistant Commissioner, Office of Field Operations, U.S. Customs and Border Protection, Washington, DC, July 2010 to March 2013.

Executive Director, National Programs, Office of Field Operations, U.S. Customs and Border Protection, Washington, DC, May 2010 to July 2010.

Vice president, The Sentinel HS Group, LLC, Vienna, VA, February 2008 to May 2010.

Area Port Director, Los Angeles International Airport, Office of Field Operations, U.S. Customs and Border Protection, Los Angeles, CA, October 2006 to February 2008.

Executive Director, Office of Antiterrorism, U.S. Customs and Border Protection, Washington, DC, August 2003 to October 2006.

Counselor and Senior Policy Advisor, Office of the Commissioner, U.S. Customs Service (November 2001 to March 2003), U.S. Customs and Border Protection (March 2003 to August 2003), Washington, DC.

Associate (practicing attorney), Gunderson Dettmer et al., LLP, Menlo Park, CA, March 2000 to October 2001.

Associate (practicing attorney), Sheppard, Mullin, Richter, and Hampton, LLP, Los Angeles, CA, November 1998 to February 2000.

Research associate, University of California, Los Angeles, CA, July 1996 to August 1996.

Legal intern, SGS-Thomson Microelectronics, St. Genis-Pouilly, France, March 1995 to August 1995.

Legal assistant, Dewey Ballantine, Washington, DC, September 1994 to March 1995.

10. Government experience (list any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above):

See positions 1 through 5 and 7 through 9 listed above in response to question number 9 for a description of government positions with U.S. Customs and Border Protection and the U.S. Customs Service.

Additionally, during my tenure at Sentinel HS Group, LLC, I was engaged on consulting projects for Federal Government agencies.

11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

From February 2008 to May 2010, I was an officer and partner of Sentinel HS Group, LLC. During this time, I consulted for a number of corporations.

I was an associate with two law firms: Gunderson, Dettmer, Stough, Villenueve, and Hachigian (March 2000–October 2001); and Sheppard, Mullin, Richter, and Hampton (November 1998 to February 2000).

12. Memberships (list all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations):

Member, California State Bar (inactive).

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate.

None.

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

Contributions to All Other Political Committees Except Joint Fundraising Committees

Contributor Name	City	State	ZIP Code	Employer	Occupation	Committee Name	Transaction Date	Amount
McAleenan, Kevin	Marina Del Rey	CA	90292	The Sentinel HS Group	Area Port Director	Obama, Barack/Joseph R. Biden via Obama for America	02/23/2008	$300.00
McAleenan, Kevin	Marina Del Rey	CA	90292	The Sentinel HS Group	Area Port Director	Obama, Barack/Joseph R. Biden via Obama for America	04/05/2008	$500.00
McAleenan, Kevin	Marina Del Rey	CA	90292	The Sentinel HS Group	Area Port Director	Obama, Barack/Joseph R. Biden via Obama for America	05/15/2008	$500.00
McAleenan, Kevin	Marina Del Rey	CA	90292	The Sentinel HS Group	Area Port Director	Obama, Barack/Joseph R. Biden via Obama for America	06/29/2008	$500.00
McAleenan, Kevin	Marina Del Rey	CA	90292	The Sentinel HS Group	Area Port Director	Obama, Barack/Joseph R. Biden via Obama for America	10/15/2008	$600.00
McAleenan, Kevin	Vienna	VA	22181	The Sentinel HS Group, LLC	Consultant	Oberman, Justin Pereira via Oberman for Congress	12/31/2008	$250.00
McAleenan, Kevin	Vienna	VA	22181			Oberman, Justin Pereira via Oberman for Congress	03/17/2009	−$198.00
Total contributions								$2,452.00

Recipient of Joint Fundraiser Contributions

These Are the Final Recipients of Joint Fundraising Contributions

Contributor Name	City	State	ZIP Code	Employer	Occupation	Committee Name	Transaction Date	Amount
McAleenan, Kevin	Vienna	VA	22181	The Sentinel HS Group, LLC	Consultant	DNC Services Corp./Democratic National Committee	10/22/2008	$3,300
McAleenan, Kevin	Vienna	VA	22181	The Sentinel HS Group, LLC	Consultant	DNC Services Corp./Democratic National Committee	11/04/2008	−$3,300
Recipient total								$0.00

14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement):

2015, Presidential Rank Award, Distinguished Executive.

2005, Service to America Medal, Call to Service Award.

2014, Secretary's Homeland Security Silver Medal.

2016, Travel Champion, U.S. Travel Association.

2017, Larry Neushotz Memorial Award, for partnership with trade from OHL.

15. Published writings (list the titles, publishers, and dates of all books, articles, reports, or other published materials you have written):

I maintain a public LinkedIn page and post official updates as Acting Commissioner, CBP.

I do not have any published books or articles.

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

Copies of speeches have been provided to the committee.

17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

I believe that my 20 years of combined government, legal, consulting, and international experience, combined with my education and training, have prepared me well to serve as Commissioner, U.S. Customs and Border Protection (CBP). In almost 15 years in government, I have had the opportunity to sit at the CBP and Department of Homeland Security leadership tables and work directly for each CBP Commissioner, and with all five Secretaries of Homeland Security.

I have served, successfully, at the leadership level of CBP, first as the Deputy Commissioner/Chief Operating Officer, and now the Acting Commissioner, for over 4 years combined, leading CBP through a period of dynamic change, significant resource constraints, and increasing stakeholder expectations. During that time, we have refocused effectively on trade facilitation and enforcement, enhanced our border security and counterterrorism posture, enhanced the capabilities of the CBP National Targeting Center and delivered the Single Window-Automated Commercial Environment, transformed international air passenger arrivals, and strengthened our organization and mission support functions.

During my government service, I have had significant experience leading large international organizations and operations, including directing a major field operation as Area Port Director at LAX, the largest operational component of CBP in the Office of Field Operations, and now, the entire agency with personnel and activities in all 50 States and more than 50 countries around the world. I have also led an agency-wide coordination office at Headquarters, which managed strategic and operational planning, as well as incident management across all components of CBP, and I have been detailed to interagency task forces working on national policy. I am well-versed in all aspects of CBP's operations in the field and its mission support efforts. And I have led significant international engagements and successfully negotiated international agreements as head of delegation for the U.S. Government.

I work closely and effectively with external stakeholders, including the international trade and travel communities, State and local governments and law enforcement agencies, nongovernmental organizations, and interagency partners. I also attend to oversight recommendations and concerns, partnering with Congress, the Government Accountability Office, the DHS Inspector General, the DHS Office of Civil Rights and Civil Liberties, and the DHS Office of Privacy. CBP has become a more transparent and responsive organization, and has adopted, on my watch, best practices for transparency in areas as diverse as use of force policy and training, and privacy impact assessments.

At a time when there is tremendous focus on CBP's trade, counterterrorism, and border security missions, I am prepared to lead the agency forward in accomplishing administration priorities and addressing congressional mandates.

The attached curriculum vitae provides further specifics and details of my qualifications for the position.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

   I am currently a career government employee in the same agency to which I am being nominated. I have no other employment associations.

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

   No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

   No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.

   Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   My wife works for Deloitte, a multinational consulting firm. While she works for Deloitte Services, an entity solely focused in the commercial or private sector, a separate component of her firm does business with the Federal Government, including CBP. While multiple reviews by ethics counsel have confirmed that there is no substantive conflict of interest, to avoid any appearance of conflict, I have maintained screening arrangements involving Deloitte and recused myself from making any procurement or source selection decisions involving consulting work for CBP. I have also signed an ethics agreement reinforcing this commitment.

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

   In addition to my spouse working at Deloitte, for the past 7 years I have maintained a screening arrangement with my former firm, Sentinel HS Group, LLC, and have been recused from any procurement or source selection decisions involving projects they may be involved in. A recent review by agency ethics counsel has determined that any past connections are distant enough, and attenuated to the point where it is not necessary for a specific screening arrangement to be maintained.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

   None.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

   Ethics reviews with counsel have determined that I have no known substantive or potential conflict of interest. To avoid even the appearance of conflict due to my wife's employment, however, I intend to maintain a screening arrangement vis-à-vis Deloitte, and have entered into an ethics agreement confirming my impartiality on matters involving their business.

5. Two copies of written opinions should be provided directly to the committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

None.

D. LEGAL AND OTHER MATTERS

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

In 2007 (estimated), I was informed that I was briefly a potential subject of an Office of Special Counsel investigation into a prohibited personnel practice and was interviewed in conjunction with the matter. I was later told that the allegations were not substantiated, and that I, in fact, was no longer the selecting official when the selection was made.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

In April 1987 (age 15), I was briefly taken into custody and issued a citation for littering, for which a fine was paid.

In August 1989 (age 17), I was briefly taken into custody and issued a citation for reckless driving, for which I paid a fine and attended a safe driving class for juveniles.

In January 1994 (age 22), I was briefly taken into custody and cited for driving while my privilege to drive in the Commonwealth of Massachusetts was suspended. I was driving on a valid, current driver's license from the State of California and was not aware that my privilege to drive in Massachusetts had been suspended administratively. The suspension was the result of an unpaid citation from 5 years prior for an expired inspection sticker. I had received a $50 ticket for that infraction as a 17 year-old high school student and asked my mother to pay the ticket for me. Instead, she wrote a letter to the court stating that we were no longer the owners of the vehicle and had moved from the Commonwealth. Due to the unpaid ticket, unbeknownst to me, my privilege to drive in Massachusetts had been suspended. The matter was resolved by paying the fine and explaining the situation to a judge.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

The response provided here is made to the best of my knowledge and recollection.

I have not been involved, in my personal capacity, as a party in interest in any administrative agency proceeding or civil litigation.

I have been involved as a party in interest in the civil litigation matters listed below, all of which were brought in my official capacity with U.S. Customs and Border Protection (CBP); in these cases, I was named as a defendant in my official capacity along with other senior U.S. Government and Department of Homeland Security personnel. In gathering the information for this response, I retrieved case file information currently available through the Public Access to Court Electronic Records (PACER) system as well as requested the assistance of the CBP Office of Chief Counsel in identifying cases responsive to this request. The information below has been separated to indicate which cases were filed during my tenure as Acting Commissioner of U.S. Customs and Border Protection, which began on January 20, 2017.

As noted in the responses below, some of the cases named my predecessor, R. Gil Kerlikowske, as a defendant in his official capacity, and it is my understanding that I am substituted as a matter of course for Mr. Kerlikowske in those matters, since I am now the Acting Commissioner. Out of an abundance of caution, I have included those cases here. In addition, there may be additional civil cases that name the former Commissioner of CBP in his official capacity for which a new Commissioner would be substituted.

Cases Filed Before January 20, 2017:

Bryan, et al. v. United States (D.V.I.) (filed July 23, 2010) (Case No. 1:10–cv–00066–WAL–RM) (case involving border search of cruise ship cabin).

Although I was not named as a party in this case, I executed an affidavit for this case in my official capacity. The case was appealed by plaintiffs to the United States Court of Appeals for the Third Circuit (Case No. 17–1519), where it is currently pending.

Perez, et al. v. United States, et al. (S.D. Cal.) (filed June 17, 2013) (Case No. 3:13–cv–01417–WQH–BGS) (action involving cross-border shooting).

I was dismissed from this case on September 22, 2016.

Additionally, *Paredes Nino, et al. v. U.S. Customs and Border Protection, et al.* (S.D. Cal.) (filed Feb. 27, 2013) (Case No. 3:13–cv–00469–WQH–BGS) is a related Federal Tort Claims Act (FTCA) claim. I was dismissed from this suit on April 14, 2014.

Mares v. United States, et al. (2d Cir.) (filed June 30, 2014; terminated Oct. 5, 2015) (Case No. 14–2396) (case involving Border Patrol encounter of individual in New York).

Mares v. United States, et al. (W.D.N.Y.) (filed Oct. 28, 2015; terminated June 14, 2016) (Case No. 6:15–cv–06656) (action alleging unlawful arrest and seizure after a roadside interaction involving two U.S. Border Patrol agents on April 16, 2010).

On the date of the encounter, I was not employed by CBP.

Bramlett v. U.S. Department of Treasury, et al. (E.D. Pa.) (filed Jan. 21, 2016; terminated Apr. 25, 2017) (Case No. 2:16–cv–00257–WB) (action alleging plaintiff was improperly prevented from submitting shipments of damaged coins to the U.S. Mint's Mutilated Coin Redemption Program prior to the Mint's suspension of the program).

Adee Honey Farms, et al. v. United States, et al. (CIT) (filed July 15, 2016; Case No. 16–00127 consolidated with CIT Case Nos. 16–00129, 16–00130, and 16–00131 on Sept. 21, 2016; amended consolidated complaint filed Feb. 6, 2017) (action alleging that delinquency interest collected pursuant to 19 U.S.C. § 1505(d) is subject to distribution under the Continued Dumping and Subsidy Offset Act ("CDSOA")).

This case expressly named R. Gil Kerlikowske in his official capacity as the Commissioner, CBP along with naming the United States generally and CBP generally.

Christopher Ranch, LLC, et al. v. United States, et al. (CIT) (filed July 15, 2016; Case No. 16–00129 consolidated with CIT Case Nos. 16–00127, 16–00130, and 16–00131 on Sept. 21, 2016; amended consolidated complaint filed Feb. 6, 2017) (action alleging that delinquency interest collected pursuant to 19 U.S.C. § 1505(d) is subject to distribution under the CDSOA).

This case expressly named R. Gil Kerlikowske in his official capacity as the Commissioner, CBP along with naming the United States generally and CBP generally.

Monterey Mushrooms, Inc., et al. v. United States, et al. (CIT) (filed July 15, 2016; Case No. 16–00130 consolidated with CIT Case Nos. 16–00127, 16–00129, and 16–00131 on Sept. 21, 2016; amended consolidated complaint filed Feb. 6, 2017) (action alleging that delinquency interest collected pursuant to 19 U.S.C. § 1505(d) is subject to distribution under the CDSOA).

This case expressly named R. Gil Kerlikowske in his official capacity as the Commissioner, CBP along with naming the United States generally and CBP generally.

A & S Crawfish, et al. v. United States, et al. (CIT) (filed July 15, 2016; Case No. 16–00131 consolidated with CIT Case Nos. 16–00127, 16–00129, and 16–00130 on Sept. 21, 2016; amended consolidated complaint filed Feb. 6, 2017) (action alleging that delinquency interest collected pursuant to 19 U.S.C. § 1505(d) is subject to distribution under the CDSOA).

This case expressly named R. Gil Kerlikowske in his official capacity as the Commissioner, CBP along with naming the United States generally and CBP generally.

Jacobsen, et al. v. U.S. Department of Homeland Security, et al. (9th Cir.) (filed Nov. 29, 2016) (Case No. 16–17199) (challenging checkpoints and the creation of enforcement zones that exclude protestors).

The complaint named former CBP Commissioner R. Gil Kerlikowske in his official capacity.

Janfeshan v. Department of Homeland Security, et al. (E.D.N.Y.) (filed Dec. 14, 2016) (Case No. 1:16–cv–06915–ARR–LB) (challenge to CBP encounter of traveler at JFK International Airport).

Anibowei v. Lynch, et al. (N.D. Tex.) (filed Dec. 23, 2016) (Case No. 3:16–cv–03495:.0) (challenge to CBP encounter of traveler at Dallas/Fort Worth International Airport).

Cases Filed After January 20, 2017:

Unless otherwise noted, these cases relate to implementation of executive orders that were issued on January 27, 2017 and March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States) and remain pending before the court. Cases are listed in chronological order of date of filing.

Abushamma v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Feb. 8, 2017) (Case No. 1:2017–cv–00488).

Ahmed v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Jan. 31, 2017) (Case No. 1:2017–cv–00493).

Alqaissi, et al. v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Jan. 30, 2017) (Case No. 1:17–cv–00487–RRM).

Alknfushe v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Feb. 8, 2017) (Case No. 1:2017–cv–00483).

Al Saeedi v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Jan. 30, 2017) (Case No. 1:2017–cv–00484).

Ali Khoshbakhti Vayeghan v. Kelly, et al. (C.D. Cal.) (filed Jan. 28, 2017) (Case No. 2:17–cv–00702–SJO–GJS).

Aziz, et al. v. Trump, et al. (E.D. Va.) (filed Jan. 28, 2017; terminated June 1, 2017) (Case No. 1:17–cv–00116–LMB–TCB).

Bayani v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Jan. 31, 2017) (Case No. 1:2017–cv–00492).

Noohi v. Trump, et al. (N.D. Ill.) (filed Jan. 28, 2017; terminated Mar. 20, 2017) (Case No. 1:17–cv–00694); related case with same parties (filed Jan. 28, 2017; terminated Jan. 31, 2017) (Case No.1:17–cv–00695); related case with same parties (filed Jan. 28, 2017; terminated Mar. 21, 2017) (Case No. 1:17–cv–00696).

Darweesh, et al. v. Trump, et al. (E.D. N.Y.) (filed Jan. 28, 2017) (Case No. 1:17–cv–00480–CBA–LB).

Doe 1, et al. v. Trump, et al. (W.D. Wash.) (filed Jan. 28, 2017; terminated Jan. 30, 2017) (Case No. 2:17–cv–00126–TSZ).

Emamjomeh, et al. v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Feb. 6, 2017) (Case No. 1:17–cv–00494–CBA).

Hemaidan v. Trump, et al. (N.D. Ill.) (filed Jan. 28, 2017; terminated Jan. 31, 2017) (Case No. 1:17–cv–00693).

Jalayer v. Trump et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Feb. 1, 2017) (Case No. 1:17–cv–00490–CBA).

Louhghalam, et al. v. Trump, et al. (D. Mass.) (filed Jan. 28, 2017; terminated Mar. 20, 2017) (Case No. 1:17–cv–10154–NMG).

Rashekhi v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Jan. 30, 2017) (Case No. 1:17–cv–00489–CBA).

Sabounchi v. Trump, et al. (E.D.N.Y.) (filed Jan. 28, 2017; terminated Jan. 30, 2017) (Case No. 1:2017–cv–00486).

Alinejad v. Trump, et al. (E.D.N.Y.) (filed Jan. 29, 2017; terminated Jan. 30, 2017) (Case No. 1:2017–cv–00498).

Farmad, et al. v. Trump, et al. (C.D. Cal.) (filed Jan. 29, 2017; terminated Feb. 28, 2017) (Case No. 2:17–cv–00706–SJO–GJS).

Hassanpour v. Trump, et al. (N.D. Tex.) (filed Jan. 29, 2017; terminated Jan. 31, 2017) (Case Nos. 3:17–cv–00270–K; 3:17–xc–00269).

Hatahet v. Trump, et al. (E.D.N.Y.) (filed Jan. 29, 2017; terminated Jan. 31, 2017) (Case No. 1:17–cv–00495–CBA).

Morshed v. Trump, et al. (E.D.N.Y) (filed Jan. 29, 2017; terminated Jan. 31, 2017) (Case No. 1 :17–cv–00503–CBA).

Ali, et al. v. Trump, et al. (W.D. Wash.) (filed Jan. 30, 2017) (Case No. 2:2017–cv–00135).

Doe v. Trump, et al. (N.D. Ill.) (filed Jan. 30, 2017; terminated Feb. 17, 2017) (Case No. 1:2017–cv–00770).

Tawfeeq v. U.S. Department of Homeland Security (N.D. Ga.) (filed Jan. 30, 2017) (Case No. 1:17–cv–00353–TCB).

Dhaif Allah Ahmed Mohammed, et al. v. United States of America, et al. (C.D. Cal.) (filed Jan. 31, 2017; terminated Feb. 3, 2017) (Case No. 2:2017–cv–00788).

Hagig v. Trump, et al. (D. Colo.) (filed Jan. 31, 2017) (Case No. 1:2017–cv–00289).

Badr Dhaifallah Ahmed Mohammed, et al. v. United States of America, et al. (C.D. Cal.) (filed Jan. 31, 2017) (Case No. 2:2017–cv–00786).

Azimi, et al. v. Trump, et al. (W.D.N.Y.) (filed Jan. 31, 2017; terminated Feb. 2, 2017) (Case No. 1:17–cv–00096).

Amer Al Hommsi v. Trump, et al. (N.D. Ill.) (filed Jan. 31, 2017; terminated Feb. 9, 2017) (Case No. 1:2017–cv–00801).

Arab American Civil Rights League, et al. v. Trump, et al. (E.D. Mich.) (filed Jan. 31, 2017) (Case No. 2:2017–cv–10310).

Abou Asali, et al. v. U.S. Department of Homeland Security, et al. (E.D. Pa.) (filed Jan. 31, 2017; terminated Apr. 12, 2017) (Case No. 5:2017–cv–00447).

Albaldawi v. Trump, et al. (N.D. Tex.) (filed Jan. 31, 2017; terminated Mar. 7, 2017) (Case No. 3:2017–cv–00281).

Asgari v. Trump, et al. (D. Mass.) (filed Feb. 1, 2017; terminated June 1, 2017) (Case No. 1:2017–cv–10182).

Unite Oregon v. Trump, et al. (D. Or.) (filed Feb. 1, 2017) (Case No. 3:2017–cv–00179).

Robertson v. Kelly, et al. (W.D. Wash.) (filed Feb. 2, 2017) (Case No. 2:17–cv–00163–RAJ–BAT).

Al-Mowafak, et al. v. Trump, et al. (N.D. Cal.) (filed Feb. 2, 2017) (Case No. 3:2017–cv–00557).

Zadeh, et al. v. Trump, et al. (D.D.C.) (filed Feb. 3, 2017; terminated Apr. 18, 2017) (Case No. 1:17–cv–00243–TSC).

Doe, et al. v. Trump, et al. (W.D. Wash.) (filed Feb. 7, 2017) (Case No. 2:17–cv–00178–JLR).

Pars Equality Center, et al. v. Trump, et al. (filed Feb. 8, 2017) (Case No. 1:17–cv–00255–TSC) (Administrative Procedure Act case).

Doe, et al. v. Kelly, et al. (9th Cir.) (filed Mar. 3, 2017) (Case Nos. 17–15381; 17–15383) (challenge brought by individuals temporarily held at Tucson Sector stations).

International Refugee Assistance Project, et al. v. Kelly, et al. (C.D. Cal.) (filed Mar. 4, 2017) (Case No. 2:17–cv–01761–JLS–AFM).

Atanackovic, et al. v. Kelly, et al. (D.D.C.) (filed Mar. 8, 2017) (Case No. 1:17–cv–00419–TFH) (Administrative Procedure Act case).

Cancino Castellar, et al. v. Kelly, et al. (S.D. Cal.) (filed Mar. 9, 2017) (Case No. 3:17–cv–00491–BAS–BGS) (complaint challenges process of alien detention).

International Refugee Assistance Project v. Kelly, et al. (D.N.J.) (filed Mar. 15, 2017) (Case No. 2:17–cv–01709–JLL).

Doe v. Department of Homeland Security, et al. (3d Cir.) (filed Mar. 15, 2017; terminated Apr. 25, 2017) (Case No. 17–1578).

Universal Muslim Association of America, Inc., et al. v. Kelly, et al. (D.D.C.) (filed Mar. 24, 2017) (Case No. 1:2017–cv–00537).

Twitter, Inc. v. U.S. Department of Homeland Security, et al. (N.D. Cal.) (filed Apr. 6, 2017; terminated Apr. 7, 2017) (Case No. 3:17–cv–01916) (action challenging issuance of CBP summons, voluntarily dismissed by Twitter one day after it was filed).

Center for Biological Diversity, et al. v. Kelly, et al. (D. Ariz.) (filed Apr. 12, 2017) (Case No. 4:17–cv–00163–CKJ) (complaint seeking declaratory and injunctive relief under the National Environmental Policy Act related to issuance of executive order on January 25, 2017 (Border Security and Immigration Enforcement Improvements)).

Montes Bojorquez v. U.S. Customs and Border Protection, et al. (S.D. Cal.) (filed Apr. 18, 2017) (Freedom of Information Act litigation).

Am. Drew, et al. v. United States, et al. (CIT) (filed April 18, 2017) (Case No. 17–00086) (action alleging that delinquency interest collected pursuant to 19 U.S.C. § 1505(d) is subject to distribution under the CDSOA).

Hilex Poly Co., LLC, et al. v. United States (CIT) (filed April 20, 2017) (Case No. Case No. 17–00090) (action alleging that delinquency interest collected pursuant to 19 U.S.C. § 1505(d) is subject to distribution under the CDSOA).

Rodriguez v. Brooks, et al. (D. Ariz.) (filed Apr. 21, 2017) (challenge to CBP review of individual's access to secure area at Phoenix Sky Harbor International Airport).

Other Matters:

I previously served as a witness in an Equal Employment Opportunity (EEO) case in a matter against DHS, but I was not the selecting official in that case. Even though I only served as a witness in that case, I am disclosing it here out of an abundance of caution. In addition, I was the selecting official in two EEO cases involving non-selections. One of these matters included one EEO complaint and two related MSPB appeals. The Office of Chief Counsel of CBP has advised me that EEOC Management Directive 110 contains restrictions on the disclosure of information related to a complaint file outside of the EEO complaint process; if additional information on these matters is desired, please let me know.

Finally, because of my position as the Acting Commissioner of CBP, I may be named in the case title or caption of an EEO or Merit Systems Protection Board (MSPB) case filed by a CBP employee but otherwise would not have had any involvement in the matter.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

   No.

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

   Copies of each supportive letter for my nomination have been supplied to the committee.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

   Yes; certainly. I have testified over a dozen times over the past 6 years, met with or had teleconferences with members of both houses several dozen times, and given in excess of 50 briefings to members and staff. I would fully intend to continue, and even enhance my robust communication, and be responsive to congressional oversight.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

   Yes.

QUESTIONS SUBMITTED FOR THE RECORD TO KEVIN K. MCALEENAN

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. Over New Year's weekend, CBP's systems crashed, delaying thousands of travelers and wreaking havoc on the inspection process at ports of entry. While the system outage was not the result of a malicious attack, with the improvements technology has made in travel facilitation, we are becoming more dependent on this type of technology.

If confirmed, how would you address the need to modernize technology to improve travel facilitation and while at the same time being able to address existing travel volume and increased traffic during peak travel times and projected travel increases at gateway airports?

Answer. I recognize that maintenance as well as modernization of technology at our ports of entry (POEs) is critical to ensuring that CBP can handle high transaction volumes, especially during the holiday seasons. CBP is committed to enhancing availability in our critical systems. Additionally, CBP utilizes a layered defense for vetting travelers arriving in the United States which begins when travel documents or authorizations are issued and continues as reservation data and advance passenger information is received from airlines prior to passengers boarding the plane. Along with backup systems that can be used when passengers arrive in the United States, the advance vetting reduces the risk of the system issues noted in the subject report for vetting and inspecting travelers at our ports of entry.

If confirmed, I further intend to press forward on our modernization efforts at airports. The success of the Automated Passport Control and Mobile Passport Control applications, only with sustained growth in Global Entry, and operational innovations such as modified egress, have allowed CBP to maintain or reduce wait times despite continued increases in travelers. With the support of Congress, we have an opportunity to use biometrics to further enhance the arrivals process while we also implement biometric exit. These innovations will be supported by a new cloud infrastructure which will support better backup processes and reduce downtime.

Question. The Border Interagency Executive Council (BIEC) was first established by executive order in February 2014 to address International Trade Data System (ITDS) issues.

Do you believe that this function should be expanded further to cover all government agencies to address key issues and to work toward the goal of a true single window?

Answer. I believe that Border Interagency Executive Council (BIEC) is an important interagency forum that allows participants to address key issues and enhance our single window efforts from a technical, operational, and partnership perspective. Representatives from the departments of Agriculture, Commerce, Energy, Health and Human Services, Homeland Security, Interior, Justice, State, Transportation, and Treasury, along with representatives from the Consumer Product Safety Commission, the Environmental Protection Agency, the Office of Management and Budget, and the National Security Council regularly participate in the Border Interagency Executive Council (BIEC) Principals Meetings.

From February 2014 through December 2016, the U.S. Government's Partner Government Agencies (PGAs) worked collaboratively through the Border Interagency Executive Council (BIEC) to deliver the Single Window and to automate each agency's import and export reporting requirements through the Automated Commercial Environment (ACE). These changes underscore the necessity of continued progress required to ease the submission and management of data required by the U.S. Customs and Border Protection (CBP) and the Partner Government Agencies (PGA) to efficiently and securely import or export cargo through the Single Window.

The BIEC has continued in fiscal year 2017 and 2018 under the current administration as a significant forum for ongoing coordination in executing priority projects approved by the BIEC Principals. Such projects address operational and automation issues relating to U.S. importing and exporting requirements of the International Trade Data System (ITDS) Single Window, developed under ACE. With the deployment of the majority of Single Window core capabilities, the BIEC has refocused its established BIEC priorities.

At the April 25, 2017, Principals Meeting, the BIEC established priorities that align with today's trade environment and support a vibrant and competitive U.S.

economy. Each priority is headed by a Working Group Lead who is responsible for spearheading the work and managing or delegating Working Group actions. Working Group members actively participate and contribute to project updates, which are provided to the BIEC working level on a monthly basis. All government agencies can be included in working groups or sub-groups as issues warrant. Consistent with your question, I intend, if confirmed, to emphasize continued outreach to all Participating Government Agencies on the existence of this forum and the opportunity to address key issues relating to the single window in a collaborative interagency process.

Question. What do you see as the biggest opportunities in the negotiation to improve customs cooperation with Mexico and Canada, improve trade facilitation, and strengthen trade enforcement?

Answer. While the Office of the U.S. Trade Representative (USTR) leads free trade agreement negotiations for the United States, CBP is also at the negotiating table. The CBP Office of Trade is leading a team of trade experts from across the Homeland Security enterprise that participate in the NAFTA 2.0 negotiations, including in discussions related to customs and trade facilitation provisions and on other issues that impact CBP's customs operations.

Though CBP cannot speak directly to text proposals that are actively under negotiation, CBP continues to support USTR by participating in negotiating sessions, reviewing all of the proposed NAFTA text through the interagency process, and even drafting some of our own text to ensure that the new agreement is consistent with our legal authorities, policies, procedures, and operational realities. CBP will continue to engage USTR in the negotiation process to obtain a NAFTA 2.0 that enhances CBP's customs enforcement mission at our borders while also raising regional trade facilitation standards.

Specifically, CBP seeks NAFTA 2.0 outcomes that reflect CBP's risked-based approach to customs enforcement, emphasize our focus on priority trade enforcement issues (including free trade agreement preferences, intellectual property rights, antidumping and countervailing duties, wildlife trafficking, and forced labor), enhance our ongoing trade facilitation efforts with our Canadian and Mexican partners to further automate, streamline, and harmonize all three countries' customs processes and procedures, and promotes a regional approach to security.

Question. The Trade Facilitation and Trade Enforcement Act of 2015 raised the *de minimis* level to $800, providing additional opportunities to receive expedited clearance at the U.S. border through section 321.

How is CBP working with other agencies to ensure a smooth process for clearing low risk shipments expeditiously?

Answer. Facilitation of cargo is a key part of CBP's trade mission. Streamlining and promoting frictionless trade are CBP's goals especially in light of changing technologies and business processes. CBP has been working closely with the trade community and participating government agencies to facilitate low value cargo while ensuring that shipments facilitated by e-commerce are complying with CBP and other agency regulatory requirements.

Question. CBP is engaged in discussions with the trade about automating the section 321 *de minimis* procedures across all modes of transportation.

What procedures are being adopted in regards to the land, sea, and rail shipments?

Answer. Recognizing the intent of Congress to support frictionless trade, particularly in the e-commerce environment through the increase of the *de minimis* to $800, CBP is working with both the trade community and PGAs in providing a streamlined mechanism for low value shipments. Our operational approach is that the bulk of shipments will not require significant advanced information to allow CBP to assess risk. CBP will provide an automated mechanism to allow the trade community to provide additional information about shipments which have other agency regulatory requirements—allowing other government agencies to assess the risk and ensure their regulatory requirements are met.

Question. GAO found that CBP generally had not met the staffing levels set by Congress for trade positions and that these shortfalls could impact CBP's ability to effectively enforce trade laws (*e.g.,* fewer cargo inspections).

If confirmed, what would be your plan to meet the staffing levels set by Congress for trade positions?

Answer. I plan to work closely with both the Senate Finance and Appropriations Committees to ensure our full staffing for trade positions is appropriately resourced and that CBP's recruiting and hiring efforts prioritize these critical positions. CBP has worked to reduce shortfalls in critical operational trade occupations over the last year, as well as emphasizing closing the remaining gaps within the Office of Trade. CBP has also initiated a modeling effort to demonstrate the economic benefits of trade staffing.

We remain committed to working on strategies to ensure full staffing of all authorized positions. For example, CBP has made some strides in staffing for Import Specialists, and as of November 7, 2017, has made 43 tentative selections to fill the current 93 vacancies. Of these, ten (10) have an entry on duty (EOD) dates set. Selections remain in progress for the remaining 50 vacancies which we anticipate completing by the end of Calendar Year 2018.

CBP has dedicated a significant amount of resources to accomplish the requirements within the law, but the reality is that we simply were not staffed to meet those requirements provided for to timely meet some of the goals of the Trade Facilitation and Trade Enforcement Act of 2015. Additionally, we are working to better define our existing challenges which have resulted in gaps in the trade related positions, set by the SAFE Port Act of 2006 and the Homeland Security Act, and are creating a long-term hiring and resource plan to support and increased authorized trade position on a sustained basis with a target for completion by the end of February 2018. Toward that end, the President's FY 2018 budget request included funding for an additional 140 positions across multiple disciplines in the Office of Trade to support duty evasion, intellectual property rights, and forced labor enforcement among other priorities.

Question. In its efforts to strengthen trade enforcement efforts, what is CBP doing to ensure that performance targets are included (when applicable) in plans covering high-risk issue areas and plans to develop a long-term hiring plan for trade positions?

Answer. CBP is working to better define our existing challenges which have resulted in gaps in the trade related positions, set by the SAFE Port Act of 2006 and the Homeland Security Act, and are creating a long-term hiring and resource plan to support trade position hiring on a sustained basis, with a target for completion by the end of February 2018. Significantly, the fiscal year 2018 President's budget request includes 140 positions that will be dedicated to implementing various parts of TFTEA, including trade enforcement, security, and facilitation positions.

CBP has also taken steps to quantify the impact these positions to the U.S. economy through the development of an Economic Benefit Model (EBM). The model is based on an activity-based costing framework, and economic theory and production functions reliant on data sourced from the Federal Government, academia, and global trade organizations and is used by OT as a decision support tool to inform planning processes, allocate resources across directorates, and prioritize initiatives and investments. Using FY 2016 inputs and data from the EBM aligned to the positions outlined above, OT estimates a potential economic impact of $2.3 billion in benefits to producers, consumers, and government. These benefits are a measure of increased production and higher profits for domestic industry, resulting from the flow of cheaper intermediate goods (trade facilitation), and protection for domestic producers from competition against illegal and subsidized goods (trade enforcement and security). I would welcome the opportunity to provide a more in-depth briefing on the EBM to you or your staff.

Question. CBP has identified the need to hire over 2,000 CBP Officers.

How does CBP intend to address those hiring needs? How does CBP plan to deploy these officers in key growth areas, such as the Salt Lake City airport, which has not seen growth in officers in the past few years despite the increase in passenger volume and forecasted growth in cargo?

Answer. CBP is fully committed to refining our hiring process and finding better, more effective ways to recruit and retain frontline and mission support personnel. I recognize our staffing challenges not only impact the Salt Lake City region, but the Nation as a whole.

CBP remains focused on having the right mix of resources at and between our Nation's POEs. As the CBP mission continues to evolve to meet the threat to the Nation and facilitate legitimate trade and travel, we must continually assess personnel staffing requirements. The WSM is a data-driven model that incorporates the

most recent year's workload data to determine staffing requirements and considers factors for future facility enhancements and projected volume growth in cross-border commercial and passenger traffic. Updated WSM results continue to show a need for additional OFO capability to fully meet the standards set by statute, regulation, and CBP policies, assuming maintenance of current processes, procedures, technology, and facilities. The most recent results—factoring in the additional 2,000 CBPOs funded by the FY 2014 Omnibus—show a need for 2,516 additional CBPOs through FY 2018. The administration's submission of the updated 2017 WSM demonstrated an important commitment to the requirements it identified, as did the statement of intent in the President's FY18 budget to submit proposals for authorizing language that would provide user fee funding to address the gap as we have in past years.

At the same time, CBP is continuing to address 1,132 CBPO positions that are vacant as of September 30, 2017. It is my top mission support priority, and will remain so if confirmed, to achieve full authorized and funding staffing levels for all frontline law enforcement positions. Additionally, CBP continues to implement Business Transformation Initiatives (BTIs) by focusing on faster processing in the air, pedestrian, vehicle, and cargo environments. CBP makes a concerted effort to implement the newest and most advanced technologies at the Nation's POEs to create efficiencies. Along with technological advancements, CBP is deploying biometrics and processing enhancements and expanded Trusted Traveler Programs. These transformative initiatives and technological advancements provide the platform from which CBP can achieve operational success in the face of increased border and air traffic, budget constraints, and demand for new and expanded services at existing and proposed POEs. CBP's BTIs have saved more than 1 million inspectional hours through FY 2016 and are estimated to save more than 500,000 inspectional hours or (over 400 CBPOs) through FY 2018.

To support increased staffing needs, CBP continues implementation of alternative funding strategies to increase revenue sources. CBP continues to support the Donations Acceptance Program and the Reimbursable Services Program made permanent with the enactment of the Cross-Border Trade Enhancement Act of 2016 (Pub. L. 114–279). Many airports have taken advantage of and benefited from this program. Salt Lake City International Airport (SLC) qualifies for additional overtime hours to support expanded staffing during selected hours or to conduct operations outside of the operational day. Our Office of Field Operations has engaged SLC management on this opportunity, and the airport may submit an application at any time, and CBP will review it at the following evaluation window.

Question. CBP has recently had significant outreach with the NGO community regarding forced labor issues.

Can you please describe CBP's outreach plan to engage the private sector and stakeholder community in the development of forced labor policies and procedures and to improve CBP's targeting?

Answer. CBP has taken a number of steps to enhance enforcement of forced labor in supply chains since the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was enacted. CBP is committed to working with Congress, private sector, Civil Society Organizations, and interagency stakeholders to craft the most effective approach to modernize the regulations to protect human rights and to protect U.S. workers from unfair competition.

CBP has undertaken an active communications effort to ensure importers are aware of the risks associated with forced labor, what their compliance responsibilities are and how they can validate that their supply chains are free of forced labor. These efforts include sustained engagement with the Commercial Operations Advisory Council and public dialogue on the issues. We want to ensure that importers and the broader trade community have clarity on forced labor concerns. CBP published technical corrections to the forced labor regulations to remove the consumptive demand loophole and is now outlining substantive changes to allow for an agile enforcement response. I have further directed the Customs Trade Partnership Against Terrorism team to ensure that forced labor issues are incorporated into their engagement with our trusted supply chain partners.

My staff is actively engaged in the DHS-led Forced Labor Interagency Working Group, which includes ICE, Department of State, DOJ, U.S. Agency for International Development, Department of Treasury, General Services Administration, and Department of Labor. CBP works closely with these agencies, when appropriate, to evaluate forced labor cases and allegations.

We have also leveraged intelligence units within our Office of Trade and OFO's National Targeting Center, Counter Networks Division. In the last 2 years, CBP has detained $6,307,926 in goods suspected of violating 19 U.S.C. § 1307. Most recently, CBP detained 11 shipments of seafood suspected of being processed by companies in China using the labor of North Korean nationals. The shipments are valued at $564,775 and are detained at four ports of entry. Further, OFO issued an Action memorandum to the Centers directing them to issue requests for information to approximately 235 importers. This effort focuses on manufacturers and importers with links to the areas within China suspected of using the labor of North Korean nationals to manufacture goods destined for the United States.

CBP also continues to meet with Civil Society Organizations to ensure we are aware of trends, insights, and concerns that these groups possess into forced labor issues. If confirmed, I will continue to implement aggressive and broad-based enforcement efforts to address the challenge of goods manufactured with forced labor entering our supply chain.

Question. What steps will CBP continue to take to ensure the trade community understands how it is approaching enforcement of the forced labor import prohibition to improve transparency and deterrence together?

Answer. CBP has taken a number of steps to enhance enforcement of forced labor in supply chains since TFTEA was enacted and to communicate about these efforts to the trade community. CBP engaged specific industry sectors through our Centers of Excellence and Expertise and our regulatory auditors to conduct bi-directional education and assess best practices of risk mitigation and compliance related to forced labor in the global supply chain.

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If confirmed, I remained committed to ensuring that CBP continues to engage with the trade community in order to ensure transparency and foster our mutual goals of predictability, consistency, and deterrence of unfair or violative trade practices in supply chains.

Question. It continues to be a challenge for CBP to acquire data elements to get advanced electronic data from the U.S. Postal Service to better target shipments.

What steps is CBP taking to address these issues so that CBP can better target mail shipments to prevent violative and dangerous goods from entering our country?

Answer. CBP is working closely with the United States Postal Service (USPS) to better target mail shipments destined for the United States. CBP and USPS signed an MOU on September 1, 2017, outlining roles and responsibilities between the agencies and better aligning out enforcement efforts. Additionally, I have worked closely with the Postmaster General, Megan Brennan, meeting or speaking with her numerous times in the past 2 months, to cultivate a more robust relationship and enhance our ability to function in tandem.

Toward that end, CBP and the U.S. Postal Service (USPS) are pursuing joint priorities, including, first and foremost, the increased collection of advanced electronic data (AED) on mail parcels, along with technology and facility enhancements, and collaborative inspection and investigative efforts. With respect to AED, CBP has offered to support USPS capacity building and diplomatic efforts with foreign postal partners. Recently, increases in submission of AED on parcels from China has resulted in a dramatic increase in the total percentage of AED received by the U.S. Government—now over 40 percent. Our discussions also include the impact of relevant legislation and outreach to international partners and world organizations such as the Universal Postal Union to allow for the collection of advanced electronic data or AED.

Furthermore, CBP is currently conducting special operations in the International Mail Facility environments throughout the year focusing on intellectual property

rights and fentanyl enforcement and we will continue to conduct these operations. CBP is also looking to increase staffing at the International Mail Facilities to help address the increased volume of shipments.

Question. Section 303 of the Customs bill closes a statutory loophole regarding the seizure and disclosure of information related to circumvention devices.

Can you please provide us with CBP's timeline for implementation of this new provision?

Answer. CBP has completed drafting of the Notice of Proposed Rulemaking necessary to make this change, and is working through the Office of Management and Budget-led interagency process to finalize and publish that rule in the Federal Register. While I cannot offer a specific timeline with confidence, I assure you that, if confirmed, I will pursue finalization of the rule expeditiously, as we continue to do with all of the regulatory changes directed by the Trade Facilitation and Trade Enforcement Act of 2015.

Question. You recently noted that CBP is in the process of developing a new strategy to address the rapid growth of e-commerce.

How do you envision this new strategy affecting CBP's current IPR enforcement efforts?

Answer. We believe the strategy should engage new partners in e-commerce supply chains to ensure full compliance with trade laws and regulations.

The most significant challenges to CBP in the area of trade enforcement come from the dramatic changes ongoing in the global supply chain. The most prevalent is the dramatic growth in e-commerce and direct to consumer imports. E-commerce is largely responsible for the increase in the volume of small shipments entering the U.S. stream of commerce. As the agency with physical control over U.S. imports, CBP must adapt to the growth of imports through e-commerce business. The potential threat of harm to the public due to the challenges in the e-commerce environment is real. From terrorist plots that have involved small packages to the seizure of thousands of non-compliant goods with health and safety issues or intellectual property rights violations, CBP must continue to address threats in e-commerce shipments to preempt such risks to the Nation's safety and security.

To address these evolving challenges, CBP officially established the E-Commerce and Small Business Branch within the Office of Trade and directed it to develop and implement a new e-commerce strategy. The developed strategic goals and objectives, will position CBP to address the challenges in the e-commerce environment now and into the future. We believe the strategy should engage new partners in e-commerce supply chains to ensure full compliance with trade laws and regulations.

Additional intellectual property rights (IPR) exams and special operations targeting the small package environment will help to address the critical risk of counterfeit goods. By leveraging a strong partnership with Homeland Security Investigations at the National Intellectual Property Rights Center (IPRC), CBP will direct targeting and operational resources to areas of greatest concern. CBP will also work with the U.S. Postal Service to increase the amount of advanced electronic data received from foreign posts and work to identify emerging technologies that can provide enhanced inspection capabilities of parcels.

QUESTIONS SUBMITTED BY HON. RICHARD BURR

ADCVD IMPORTS

Question. Customs and Border Protection has the role of collecting antidumping and countervailing duties on imports that are unfairly subsidized or sold at less than fair market value. These duties are important to level the playing field for American producers who would otherwise be faced the adverse impact of unfair trade practices. A GAO report from last year estimated that there were $2.3 billion in anti-dumping and countervailing duties owed to CBP, and I've written to DHS before on the effect uncollected duties of wooden bedroom furniture has on manufacturers in my State. I realize there are a number of challenges to collecting these duties, and I appreciate the work that CBP has done to address the outstanding duties owed. However, for our trade remedies to be meaningful, it is essential that they be enforced, and the failure to collect these duties harms North Carolina businesses.

Can you assure me that if confirmed, you will continue to make the collection of outstanding duties a priority?

Answer. Yes, if confirmed, I can assure you that I will continue to make collection of outstanding duties a priority. To that end, as part of CBP's enforcement related to the Enforce and Protect Act (EAPA), CBP has initiated over 14 EAPA investigations, including some related to wooden bedroom furniture, all of which have resulted in interim measures. I am committed to continuing this enforcement effort.

Question. And can you explain how you will improve upon CBP's record in duty collection?

Answer. Duty collection is a critical, but complicated, component of anti-dumping/countervailing duty (AD/CVD) enforcement. In order to be more effective in our enforcement efforts, CBP is exploring creative ways to adjust bonding requirements to mitigate the risk of non-payment that certain importers present. For example, CBP has identified options for risk-based bonding as part of its implementation of section 115 of the Trade Facilitation and Trade Enforcement Act ("TFTEA") (Pub. L. 114–125). CBP's intent is to statistically predict the risk of future non-payment of duties, taxes, and fees and adjust bond amounts to protect government revenue and apply AD/CVD orders effectively. In addition, as required by Executive Order 13785, the Department of Homeland Security (DHS) has submitted a report to the White House outlining a plan for risk-based bonding to provide greater security for payments of final AD/CVD. CBP has automated the securing of bonds within ACE (e-Bonds) that centralizes CBP's management of bonds and ensures bonds are properly executed thus facilitating the collection of monies owed secured by bonds.

When CBP identifies revenue risks from AD/CVD imports, CBP is proactively requesting additional security in the form of single transaction bonds from importers. Despite repeated court challenges, CBP continues these efforts to secure AD/CVD revenue. CBP has also been successful in recent years in taking sureties to court to collect delinquent AD/CVD when sureties do not fulfill their legal obligation to pay amounts owed. CBP has had great success in aggressively pursuing sureties in these cases to establish a clear monetary incentive for sureties to make prompt payment upon demand. CBP will continue to actively pursue collection of uncollected AD/CVD duties against delinquent importers and sureties.

For certain high-risk commodities, CBP is also taking steps, such as "live entry" for certain steel products, to ensure payment of duties prior to the time of release.

Through implementation of the Enforce and Protect Act (EAPA), CBP has also successfully halted the flow of illicit goods within months of initiating the investigations into evasion of the antidumping and countervailing duty orders. For example, in the EAPA investigations into the transshipment of wire hangers through Thailand and Malaysia from China for nine U.S. importers, CBP stopped the evasion of over $33 million in antidumping duties annually.

QUESTIONS SUBMITTED BY HON. JOHN CORNYN

Question. As you know, through the first 4 months of 2017 we saw a significant decline in the number of apprehensions made on the Southwest border. This apprehension metric helps us determine how secure our border is. However, recently CBP has reported an upward trend in apprehensions which suggests that there might be a surge of aliens again trying to enter the United States illegally.

To what do you attribute this steady increase in border apprehensions?

Answer. I believe that a number of factors are driving border crossing trends this year. The first 4 months after the inauguration of President Trump resulted in a sharp decrease in apprehensions, largely due to the administration's clear messaging on the intent to enforce immigration laws. The increases we have seen over the last several months are comprised primarily of family units and unaccompanied alien children (UACs) from the Northern Triangle countries of Central America. As the administration recently noted in its release of immigration principles and policies, systemic improvements are needed in the process for handling aliens asserting credible fear at the border, UACs, and other populations, including increased immigration court capacity. The recent increases may also be partially attributable to U.S. seasonal labor demands and traditional push/pull factors, as well as active efforts by human smuggling organizations to increase volume.

Question. Border security and "the wall" have been a main topic of discussion for this administration. In my bill—the Building America's Trust Act—I provide for a multi-layered approach to border security, focusing not only on physical barriers, but also on technology like drones, ground and vehicle radar, and other types of surveillance equipment to help the border patrol quickly identify and apprehend those seeking to enter the United States illegally.

Do you believe that only a physical barrier, such as a wall, is the best path forward to securing our southern border?

Answer. Securing the border requires an integrated approach including infrastructure such as border wall and road access, surveillance technology, response capability and personnel. The U.S. Border Patrol maintains a Capabilities Gap Analysis Process that begins with input from the sector level, and has identified the necessary capabilities to secure the border. The four key Master Capabilities are: Domain Awareness, Impedance and Denial, Access and Mobility, and Mission Readiness. The border wall provides an important capability to impede or deny illegal crossings in those areas where it is applied, as demonstrated in San Diego, Tucson, El Paso, and Yuma Sectors, but it is not effective alone, and is not an appropriate solution for every area of the border. Where it is applied, the border wall must be supported by the ability to detect activity through advanced surveillance technology, and the ability to respond effectively with mobile, trained personnel. In this way, the most effective means of achieving operational control of the border does not rely on any single capability, piece of technology, or infrastructure. It is a mixture of all of those things, executed by a properly trained and properly equipped mission ready workforce.

Question. Would you agree that my multi-layered approach is the best way to ensure that CBP gains 24/7 situational awareness and operational control of the border?

Answer. Yes, layering resources strategically according to operational requirements enables the U.S. Border Patrol to detect, identify, classify, and track persons entering the United States illegally between the POEs and effect the appropriate response and resolution to secure our Nation's borders. This approach utilizes manpower, technology, and tactical infrastructure deployed in areas of greatest risk to ensure the highest degree of success. A constant cycle of conducting intelligence analysis, capability gap analysis, and mission analysis ensures that resources are providing the expected results, or need revisiting.

Question. As you know, the U.S. Government currently employs many various forms of technology along the southern border. Everything from fixed and mobile tower systems with radars and cameras, to UAVs, to Aerostats, to mention a few. But I understand that integrating all of this available technology and information has been a challenge and in some cases impossible.

Do you have a plan to integrate the available resources to provide CBP the best possible situational awareness for gaining and maintaining operational control of the border?

Answer. This is an important area of effort for CBP, directly contributing to a key capability for border security. It would be a priority for me, if confirmed, and we have numerous efforts ongoing in this area. For example, CBP developed the Tracking, Sign-cutting, and Modeling (TSM) application as a solution to the Border Patrol's problem of sorting, organizing, presenting, and disseminating its massive volume of intelligence information. TSM is a capability shared between the Intelligent Computer Assisted Detection (ICAD) and Enterprise Geospatial Information Services (eGIS) development teams. TSM facilitates comprehensive geospatial monitoring of ground detection and tracking operations and provides situational awareness to all relevant parties. TSM tracks incursion events, rolling-up every intelligence source available, relating them to specific groups, and displaying it all on an eGIS map. Existing technologies sensor information is either manually (IFT and RVSS) or automatically (UGS and i-UGS) reported into TSM. Currently, efforts are underway to integrate existing sensor capabilities to eliminate operator manual inputs into TSM to provide CBP the best possible situational awareness for gaining and maintaining operational control of the border. TSM also has plans to more fully integrate with the Border Patrol Enforcement Tracking System (BPETS) and e3, CBP's portal that collects and transmits biographic, encounter, and biometric data of individuals encountered at the border.

A vital component of DHS's domain awareness capabilities, AMO's Air and Marine Operations Center (AMOC) integrates surveillance capabilities and coordinates

a response to threats to national security with other CBP operational components, including USBP, Federal, and international partners to detect, identify, track, and support interdiction of suspect aviation and maritime activity in the approaches to U.S. borders, at the borders, and within the interior of the United States. Coordinating with extensive law enforcement and intelligence databases and communication networks, AMOC's command and control operational system, the Air and Marine Operations Surveillance System (AMOSS), provides a single display capable of processing up to 700 individual sensor feeds and tracking over 50,000 individual targets simultaneously. The eight TARS sites represent approximately 2 percent of the total integrated radars in AMOSS, yet were able to account for detecting 53 percent of all suspect target detections. As we continue to deploy border surveillance technology, particularly along the Southwest border, these investments in fixed and mobile technology, as well as enhancements of domain awareness capabilities provided by the AMOC allow CBP the flexibility to shift more agents from detection duties to interdiction of illegal activities on our borders.

Perhaps the most important advancements come in the area of data integration and exploitation. Downlink technology, paired with the BigPipe system, allows AMO to provide a video feed and situational awareness to its law enforcement partners in real-time. In addition, the Minotaur mission integration system will allow multiple aircraft to share information from multiple sources, providing a never before seen level of air, land, and maritime domain awareness. As the Minotaur system evolves, it will provide even greater awareness for a greater number of users.

AMO also combats airborne and maritime smuggling with an integrated long-range radar architecture comprised of ground-based radars and elevated radars deployed on tethered aerostats. AMO, in partnership with DOD, operates and maintains a network of more than 120 long range radars providing a wide-area, persistent surveillance capability to detect and identify cooperative and non-cooperative aircraft traveling within or near the United States and crossing its borders. This network provides AMO the capability to detect and respond to air and maritime threats to the homeland, including organizations attempting to traffic contraband into the United States.

AMO's Tethered Aerostat Radar System (TARS) monitors the low-altitude approaches to the United States and denies this airspace for illicit smuggling. With eight aerostat sites—six along the Southwest border, one in the Florida Keys, and one in Puerto Rico—the TARS elevated sensor mitigates the effect of the curvature of the earth and terrain-masking limitations associated with ground-based radars, enabling maximum long-range radar detection capabilities.

Question. One of the biggest issues I hear about from agents in the Rio Grande Valley of Texas is the inability to fully eradicate the invasive and nonnative carrizo cane and salt cedar plants. These plants must be removed from the riverbanks in order to provide full visibility and sightlines for our agents. In my border bill, I require DHS to work with the relevant Federal, State, and local agencies to begin eradicating carrizo cane and salt cedar along the Rio Grande River.

How long would it take for DHS to develop a plan and contract with the relevant government and private entities to begin eradicating this invasive plants along the Rio Grande?

Answer. In 2007, CBP partnered with DHS's Science and Technology Directorate and the U.S. Department of Agriculture (USDA) to execute the carrizo cane control program to address carrizo cane (Arundo donax) along the Southwest border.

A pilot study was completed in 2009 along a stretch of the Rio Grande River in the USBP's Laredo sector. The study was conducted to evaluate the effectiveness of two methods of cane control, the mechanical removal of cane and cutting of cane stems and applying herbicide. The pilot study provided CBP and USDA with valuable removal method performance.

Subsequent to the pilot study, CBP funded USDA to research and develop a biological control method for cane using Arundo wasp and Arundo scale, which feed on the roots and stems of the cane and suppress new growth. During initial studies, these insects were released via aircraft as well as dispersed by USDA personnel in heavily infested sections of the Rio Grande River Basin.

In 2012, USDA conducted additional pilot studies of topping cane at various heights to determine how best to maximize the effectiveness of the biological control agents. Through these studies, USDA determined, the biological control agents are most effective when the cane is topped at 3 feet.

Through the pilot studies completed by USDA, CBP, and USDA have developed a combined strategy of mechanical topping and biological control that provides immediate visibility for BPAs into areas of cane and aids in the long term control. Because control of cane is difficult and complete eradication may be unrealistic, primary objectives for managing cane are focused on suppression of existing infestations and reducing the spread of cane through control of healthy plant communities.

Last year, CBP participated in a number of coordination meetings and calls with interested State, local, and congressional stakeholders focused on educating stakeholders on CBP efforts and maintaining a continued dialogue and information among stakeholders.

As of December 2016, CBP has realized a reduction of approximately 32 percent in above ground biomass with the eradication of 2.5 million tons of carrizo cane. Visibility into remaining cane is now approximately 24–36 feet. We anticipate receiving updated data from USDA on the reduction of cane is expected in December 2017.

CBP and USDA anticipate executing an inter-agency agreement by the end of the second quarter of FY 2018 to execute a program for the mechanical topping of carrizo cane along the Rio Grande River. The cane control area encompasses five U.S. Border Patrol (USBP) sectors: El Paso, Big Bend, Del Rio, Laredo, and Rio Grande Valley. CBP will identify priority areas to be addressed by several USDA topping crews. USDA crews will mechanically top (*i.e.,* trim) the cane to a height of 3 feet (approximately 1 meter) using a mechanical cutter bar mounted on a four-wheel drive tractor. A small amount of cane control may also occur with hand-held trimmers. The mechanical cane control method will rapidly decrease cane height to ensure sufficient visibility of critical areas in the Rio Grande basin and provide access to these areas by BPAs and allow the biological control agents to be most effective for the long term eradication of carrizo cane.

This current approach is limited by funding availability and personnel resources. Currently, CBP anticipates funding USDA $1 million annually to support mechanical topping. This rate of funding does not allow CBP to control carrizo cane to the extent required by USBP to operate efficiently and safely where cane is present. Should additional funding for this effort be provided, CBP would execute one or more contracts with private companies for the topping of cane to more rapidly address Border Patrol's need for visibility along the entire Rio Grande River. Contracts with private companies would be executed before the end of FY 2018 with work beginning before the end of the calendar year 2018.

Question. Does DHS have sufficient resources and the authorities needed to make this happen in the next year?

Answer. DHS/CBP have the necessary authorities to continue its working partnership with USDA on the control of carrizo cane. In addition, DHS/CBP has the necessary authorities to enter into contracts with private entities that may be needed for additional support in this effort.

DHS/CBP has identified $1 million from our base budget for operations and support to continue our partnership with the USDA which would allow for continued progress. Additional funding would be required to expedite the process of controlling carrizo cane through the use of private contracts for mechanical topping.

Question. I am glad to hear that we are finally making progress on deploying biometric exit. I'm especially pleased to hear that DHS's pilot programs have proved to be successful and that facial recognition technology seems to be the solution we have been seeking to create an effective exit program.

When does DHS expect to have facial recognition technology deployed at all major airports in the United States?

Answer. CBP is working towards full implementation of biometric exit in the air environment within the next 4 years. CBP has deployed biometric exit technical demonstrations at one departure gate to the following airports: Hartsfield-Jackson Atlanta International Airport (Atlanta), Washington Dulles International Airport, Houston George Bush Intercontinental Airport, Chicago O'Hare International Airport, Las Vegas McCarran International Airport, Houston William P. Hobby Airport, and John F. Kennedy International Airport (JFK). Coordination and partnership with CBP stakeholders including airlines and airports is critical to the success of deployment of biometric exit in the air environment.

CBP has also launched a partnership with the Transportation Security Administration at JFK to test facial biometric matching to determine how CBP's facial rec-

ognition biometric exit might be leveraged for checkpoint operations. Beginning in early 2018, CBP is working to fully scale out air biometric exit and will spend 2018 working with stakeholders to get commitment to deploy biometric exit technology.

Question. When does DHS expect to begin deploying this facial recognition technology at land ports of entry?

Answer. CBP will be implementing a Third Country National (TCN) departures program by the end of 2017 at three land border POEs (Champlain, NY; Brownsville, TX; and San Ysidro Pedestrian West). CBP will utilize a mobile device to take two index fingerprints from departing TCN encountered by CBP officers during existing pulse and surge outbound operations.

In FY 2018, CBP will deploy biometric facial recognition technology at the entry and departure points of three southern land border crossings (DeConcini and Morley Gate ports of entry (POEs)) in Nogales, AZ and the San Luis POE. While a comprehensive deployment schedule is still under development, the initial deployments at DeConcini and San Luis will commence by summer 2018.

The deployment of facial recognition in the pedestrian land border environment is aimed at achieving the following goals:

- Confirming the arrival and departure of pedestrians subject to exit requirements at land ports of entry using facial recognition without negatively impacting the flow of traffic across the border.
- Reducing the threat posed by imposters arriving on foot by verifying the identity of travelers and comparing their photo to the travel document being used for travel.
- Validating the concept of "face as a token" for verification of traveler's identity and closing the arrival/departure reporting gap in the pedestrian environment.

Question. Has DHS considered public-private partnerships to help implement biometric exit at land ports of entry?

Answer. CBP is considering public private partnerships for biometric exit in the land environment. For example, CBP is researching the use of mobile applications to facilitate biometric exit confirmations, similar to the Mobile Passport Control application in the air environment, which was developed from a public private partnership. There is opportunity for a similar arrangement in land. Additionally, CBP is exploring areas where facial recognition might be used to facilitate driver and cargo processing. Some stakeholders have also signaled their interest to possibly work with CBP on exit implementation. CBP welcomes private sector input and partnership on these initiatives.

Question. Has DHS considered "staging" commercial, vehicle and pedestrian traffic to facilitate biometric exit at land ports of entry?

Answer. CBP is examining all options to implement biometric exit in the land environment that does not negatively impede the flow of legitimate trade and travel. Capitalizing on CBP's successful streamlining of the I–94 document issuance process, including issuing those documents away from the POEs where there is ample parking, CBP is evaluating the effectiveness of using those same facilities in order to implement biometric exit in the land environment.

Question. Could CBP create EZ-pass lanes to automatically capture information like license plate numbers and photographs of exiting vehicle traffic?

Answer. CBP currently utilizes license plate readers in a number of outbound lanes in order to capture outbound vehicle information. The limitation of license plate readers is license plates do not provide the identity of the occupants of the vehicles which is required to confirm timely exit. Accordingly, CBP is exploring technologies that might enable facial recognition screening in vehicles at speed. For example, CBP has worked with government and private sector organizations and will be leveraging the DHS Silicon Valley program to identify any new and emerging technologies in this area.

Question. Has DHS considered expanding the NEXUS program to allow for travelers to be pre-screened prior to exiting the United States?

Answer. CBP and Canada currently have a biographic information exchange program for third country nationals. Currently, Canada provides the United States with their inbound biographic information on non-Canadians so that the United

States can use that information as departure information. Canada has not yet shared Canadian Citizens' data.

CBP has made this a priority in working with the Canadian Government for several years, and is looking forward to Canada completing the necessary legal process to allow for sharing their biographic inbound data for Canadian citizens. This will strengthen CBP's knowledge of departing Canadian citizens and cover all northern border crossers, including NEXUS members when it is fully implemented.

Question. With the total number of Border Patrol agents falling to less than 20,000 nationwide at the end of FY16, we must do everything that we can to retain quality law enforcement professionals that make up today's border patrol.

In my border bill, I've included the Anti-Border Corruption Reauthorization Act, which would allow CBP to hire former law enforcement personnel who previously passed polygraph tests as part of their positions. Do you support efforts like these to hire already qualified personnel to these positions?

Answer. Hiring is my top mission support priority for CBP and I could not agree more that we must do everything we can to recruit and retain a world-class law enforcement workforce.

CBP regularly reviews staffing levels and hiring practices (including the security vetting, which includes the polygraph exam as part of the background investigation process) and we are open to streamlined hiring of professionals with a demonstrated track record of trustworthiness. I support Congress's effort to allow waivers for former law enforcement personnel who previously passed polygraph tests as part of their positions. DHS values the demonstrated commitment and trustworthiness that these applicants bring to the mission, and the quality of vetting already performed at the State, local, and Federal levels for these individuals in sensitive positions. The flexibility to waive the polygraph for individuals in these limited populations would potentially expedite their onboarding and allow CBP to direct more resources toward processing other groups of applicants, preventing potential bottlenecks in the hiring pipeline.

I believe this approach enables CBP to weigh pre-employment risks and implement mitigation measures in order to improve its hiring capacity without lowering standards. Additionally, retaining the requirement for all law enforcement applicants to undergo a Tier 5 background investigation (the highest level), coupled with random drug testing, periodic reinvestigations, and the continuous evaluation of employees for criminal conduct, will assist in mitigating any potential risk.

I will ensure we remain judicious in any expansion of this authority and have shown this discretion in our application of the current waiver authority under the FY 2017 National Defense Authorization Act (Pub. L. No. 114–328) granting the waiver for approximately 20 percent of all requests to date.

To be clear, I do not favor lowering our standards for frontline personnel, but rather that we work to fill these critical national security personnel slots with seasoned law enforcement officers and military personnel who can help keep the Nation's borders and ports of entry (airports, seaports, and land ports) safe.

Question. The agents of the U.S. Border Patrol, including the roughly 10,000 in my home State of Texas alone, do a dangerous job and make personal sacrifices that affect not only them but their families. We must take care of our people and their loves ones. Furthermore, we must ensure that our hard-working agents are not only rewarded but encouraged to serve a full career with the Border Patrol and not leave early to pursue opportunities at other law enforcement agencies.

As Commissioner, what do you personally intend to do to retain quality law enforcement professionals at the Border Patrol?

Answer. I agree that ensuring we take steps to retain quality law enforcement professional within the Border Patrol, and CBP more broadly, is paramount—especially when we have made the initial investment in training these agents and officers, it is in our interest to have them remain within CBP rather than depart for other components in the Department or other agencies. I have asked both the U.S. Border Patrol (USBP) and the Office of Human Resources Management (HRM) to work on how to best address the challenges of retention and understand why agents depart and what we can do to address that. One of the top concerns I am hearing is that agents leave CBP due to both the lack of mobility and the challenges of working in remote locations.

I would like to thank Congress for your support of our pilot Operational Mobility Program. The $25 million in initial funding provided in the FY 2017 Omnibus to establish this program is critical since an identified lack of mobility accounts for approximately 74 percent of USBP non-retirement attrition. I look forward to this program assisting in our efforts to help retain these agents, and believe it provides multiple benefits as it addresses our agents' mobility concerns, provides the ability to meet evolving national security threats, and builds better agents with a broader experience base.

I will continue to concentrate on retaining the workforce by offering operational based mobility/relocations for frontline agents and explore options to make CBP and the USBP the employer of choice. I look forward to working with you and your staff further on potential solutions.

Additionally, CBP's ability to meet its ever increasing and complex mission is dependent on a strong and resilient workforce. Suicide remains a serious problem for law enforcement officers and CBP is no exception. I will continue to seek best practices and leverage tools that will assist in building workforce resiliency and reduce the stigma associated with help-seeking behavior. The well-being of the men and women of CBP is a top priority for me.

Question. On May 21, 2017, severe storms struck both in the City of Laredo, TX and the City of Nuevo Laredo, Mexico, causing significant damages to the facilities of border crossings in my State. The damages specifically were to Bridge III in Nuevo Laredo and the World Trade Bridge in Laredo. As a result of these storms, operations were significantly hindered and the flow of goods and services across the border was interrupted.

Is the Laredo World Trade Bridge POE back at 100 percent operational capacity?

Answer. The World Trade Bridge POE is at 100 percent operational capacity, with CBP operating out of temporary facilities while restoration activity continues on site.

Question. Have all of the facilities been refurbished?

Answer. Repair activities remain in progress, with an expected completion date of December 2017.

Question. At the end of last year, my bill, the Cross-Border Trade Enhancement Act, was signed into law. The legislation was the product of years of effort to expand a very successful pilot program that allowed for public-private partnerships at land, air, and sea ports of entry. In fact, as a result of its enactment, many new stakeholder entrants have been able to find new ways to improve traffic flows and expand capacity at ports of entry.

How is the implementation of the Cross-Border Trade Enhancement Act going and do you believe benefits of this legislation been fully realized?

Answer. The Cross-Border Trade Enhancement Act made permanent and expanded CBP's authority to enter into partnerships to accept donations and provide reimbursable services under its Donations Acceptance and Reimbursable Services Programs respectively. To date the CBP Donations Acceptance Program (DAP) has approved 17 donation proposals totaling $150 million in planned public and private sector investment in U.S. POEs and important CBP initiatives. Ten of the 17 proposals have been approved since enactment of the Cross-Border Trade Enhancement Act in December 2016, while the others were approved under a predecessor pilot authority provided by Congress. The 10 DAP projects range from infrastructure improvements, partnerships for the provision of biometrics services and data and donations of luggage for canine training purposes. Partnerships entered into under DAP have and will continue to enhance border security and promote the safe and efficient flow of passenger travel and commercial trade.

Since the pilot program began in 2013, CBP's Reimbursable Services Program has entered into agreements with more than 60 stakeholders, providing over 368,000 additional processing hours at the request of our stakeholders-accounting for the processing of more than 8 million travelers and over 1.1 million personal and commercial vehicles. This success would not have been possible without the Cross-Border Trade Enhancement Act being signed into law. In 2017, CBP tentatively selected 64 stakeholders across 54 ports of entry for participation in the RSP (34 air POEs, 4 for air and sea POEs, 1 for land POE, and 15 for sea POEs). CBP continues to see a steady stream of applications for new agreements under this legislation, so while recent results have been very encouraging, continued growth and expanded

utilization of this program is expected to allow CBP to approve new and enhanced services, which could not be provided without the Cross-Border Trade Enhancement Act.

Question. Will you continue to support public-private partnerships as a tool to boost staffing levels and upgrade existing infrastructure?

Answer. Yes; CBP will continue to explore public-private partnerships as a viable mechanism and tool by which to provide new and enhanced services and modernize the agency's POE infrastructure. Where there is a return on investment for private sector to partner with us to increase service levels or infrastructure capacity, we want to be responsive and we appreciate the authority that Congress has granted.

Question. Four rounds of negotiations between the United States, Mexico, and Canada have now been completed on the North American Free Trade Agreement (NAFTA). As you know, NAFTA has had a major impact on my State in particular. Texas has led the Nation in exports since 2002. In 2015 alone, exports totaled more than $251 billion. The State's largest market was Mexico. In fact, about half of all U.S.-Mexico trade moves through Texas ports of entry.

Could you share your thoughts on the customs aspects of a soon-to-be-renegotiated North American Free Agreement?

Answer. While the Office of the U.S. Trade Representative (USTR) leads free trade agreement negotiations for the United States, CBP is also at the negotiating table. The CBP Office of Trade is leading a team of trade experts from across the Homeland Security enterprise that participate in the NAFTA 2.0 negotiations, including in discussions related to customs and trade facilitation provisions and on other issues that impact CBP's customs operations. Though CBP cannot speak directly to text proposals that are actively under negotiation, CBP continues to support USTR by participating in negotiating sessions, reviewing all of the proposed NAFTA text through the interagency process, and even drafting some of our own text to ensure that the new agreement is consistent with our legal authorities, policies, procedures, and operational realities. CBP will continue to engage USTR in the negotiation process to obtain a NAFTA 2.0 that enhances CBP's customs enforcement mission at our borders while also raising regional trade facilitation standards.

Question. What would CBP like to see reflected in a new NAFTA?

Answer. CBP seeks NAFTA 2.0 outcomes that reflect CBP's risked-based approach to customs enforcement, emphasize our focus on priority trade enforcement issues (including free trade agreement preferences, intellectual property rights, antidumping and countervailing duties, wildlife trafficking, and forced labor), enhance our ongoing trade facilitation efforts with our Canadian and Mexican partners to further automate, streamline, and harmonize all three countries' customs processes and procedures, and promotes a regional approach to security.

Question. I'm encouraged by CBP's efforts to reduce redundant inspections at the border but still maintain a high level of security. As you know, duplicative inspection processes are a big concern for private industries.

Could you comment on your expectations for the expansion of joint inspections at U.S. ports conducted by CBP and their Mexican and Canadian counterparts?

Answer. On August 23, 2017, CBP and Mexico Customs (SAT) signed a Memorandum of Understanding (MOU) regarding Unified Cargo Processing (UCP). CBP and Canada Customs (CBSA) have finalized a MOU on UCP and expect to sign it by the end of 2017. UCP is a program which allows for joint inspections (either inbound or outbound operations) by CBP personnel with foreign Customs personnel on U.S. soil.

SAT currently lacks the infrastructure in Mexico to process all the cargo and UCP allows for a single operational location. Instead of trucks carrying cargo making multiple stops, in both Mexico and the United States, UCP allows for a single streamlined inspection that reduces wait times significantly and enhances security. It also fosters information exchange on customs and security issues with Mexican Customs. UCP with SAT is operational at the Laredo (truck, air, and rail cargo), Rio Grande City (truck cargo), Texas; Nogales (truck and rail cargo), Douglas (truck cargo), San Luis (truck cargo), Arizona; and Calexico (truck cargo), California, POEs. CBP is in discussion with SAT on potential UCP expansion to El Paso, Columbus, Santa Teresa, Brownsville, Progresso, Pharr, Eagle Pass, Otay Mesa, Tecate, Phoenix, and Port Fourchon (ocean cargo) POEs. These potential UCP loca-

tions will be jointly determined by CBP and SAT based upon operational impact, available personnel, and available space.

Canadian Customs is interested in outbound operations specific to the rail environment as they do not have any non-intrusive inspection equipment such as x-ray technology. UCP allows for Canadian Customs to see all x-ray images from the rail and they can adjudicate concerns much more rapidly. On the Northern Border, CBP is discussing UCP with CBSA for applicability at Champlain (rail cargo), Buffalo, New York, POEs.

CBP is looking to take the concept of UCP to a location where all three Customs Agencies can be located in one location. The UCP has helped reduce truck crossing wait times. Some trucking companies reported to CBP that they have seen the crossing time reduced from 3 hours to as little as 30 minutes.

Question. Constituents in my State are relying on the timely implementation of Drawback Simplification section of the Trade Facilitation and Enforcement Act of 2015 ("TFTEA"). However, the regulations implementing this section are still under review by the Department of Treasury, and may not be finalized on February 24, 2018 even though required by statute. Furthermore, in a recent meeting with members of your CBP and Treasury, the trade was advised that Accelerated Payment may be withheld for claims filed on and after the February 24, 2018 date even if the regulations are not final. As you know several changes to the drawback laws have been made over the years, and even when regulations implementing the changes were not finalized accelerated payment was still made.

Will CBP follow past practice and precedent by guaranteeing accelerated payments of drawback refunds even if the regulations are not final?

Answer. We intend to deliver the regulations timely. CBP completed the drafting in July and initiated Department of Treasury review on July 31, 2017. Since then, CBP and Treasury have had multiple meetings on several substantive matters raised by Treasury on the package. CBP has submitted 3 rounds of passbacks to Treasury. Since that time we have completed implementation of multiple rounds of comments.

We are awaiting Treasury's final concurrence and engaging the Office of Management and Budget (OMB) to ensure a streamlined review process commensurate with the importance of the regulations. Even as we work toward timely completion, we are actively contingency planning and are considering making the accelerated payment (AP) available for TFTEA drawback claims once a final rule is effective. CBP will accept TFTEA drawback claims as of February 24, 2018.

QUESTIONS SUBMITTED BY HON. BENJAMIN L. CARDIN

Question. The Homeland Security Committee Minority Office estimated that President Trump's wall could cost up to $70 billion. As we've discussed previously, during my CODEL to El Paso, I heard directly from CBP officers that they would rather see investments in technology over a wall.

Do you think spending $70 billion on 3rd-century technology is an effective use of U.S. taxpayer dollars?

Answer. Securing the border requires an integrated approach including infrastructure such as border wall and road access, surveillance technology, response capability, and personnel. The U.S. Border Patrol maintains a Capabilities Gap Analysis Process that begins with input from the sector level, and has identified the necessary capabilities to secure the border. The four key Master Capabilities are: Domain Awareness, Impedance and Denial, Access and Mobility, and Mission Readiness. The border wall provides an important capability to impede or deny illegal crossings in those areas where it is applied, as demonstrated in San Diego, Tucson, El Paso, and Yuma Sectors, but it is not effective alone, and is not an appropriate solution for every area of the border. Where it is applied, the border wall must be supported by the ability to detect activity through advanced surveillance technology, and the ability to respond effectively with mobile, trained personnel. In this way, the most effective means of achieving operational control of the border does not rely on any single capability, piece of technology, or infrastructure. It is a mixture of all of those things, executed by a properly trained and properly equipped mission ready workforce.

Question. In terms of the proposed border wall, do you anticipate CBP and DOJ having to assert eminent domain against private landowners?

Answer. At this stage, DHS/CBP cannot state with certainty how many landowners will be impacted by new border wall construction requirements. The preferred method of obtaining interest in real property is through negotiating an offer to sell based upon the property's fair market value. We avoid, with few exceptions, any acquisition of real property through eminent domain. However, in situations where voluntary acquisition is not possible, DHS/CBP may have to consider acquisition through condemnation.

Question. During a recent CODEL to Mexico City and El Paso, I heard how critical our bilateral cooperation is to dealing with a broad range of critical national security issues, as well as managing challenges of Central American migration. I have serious concerns about how President Trump's negative comments could put this cooperation at risk, ultimately jeopardizing U.S. national security.

What is your assessment of U.S-Mexico collaboration?

Answer. CBP's collaboration with Government of Mexico counterparts at the operational levels is as strong as it has ever been and we continue to work with them to develop and implement shared strategic, prioritized efforts, operations, and programmatic collaboration. The United States and the Government of Mexico (GOM) are committed to expanding our partnerships and working with each other to address issues regarding our borders. In 2017, I traveled to Mexico on three occasions (April, June, and August), to meet with key counterparts (including Mexican Customs, Immigration, Police, and other agencies) and to discuss border security and immigration enforcement. During my trip in August, I attended meetings with officials from Mexico's Secretariat of Foreign Affairs (SRE), Secretariat of the Interior (SEGOB), and National Immigration Institute (INM). These discussions focused on CBP's use of force, border management, and border violence prevention. I have also met with senior Mexican Government officials on numerous occasions in Washington, DC over the past 10 months.

CBP's partners include the Mexican Federal Police (FP), Customs (SAT), Army (SEDENA), Navy (SEMAR), National Immigration Institute (INM), Office of the Attorney General (PGR), and Intelligence and Research Service (CISEN). The following objectives underpin CBP's efforts:

1. Disrupting Transnational Criminal Organizations (TCOs) and Deterring Terrorist and Weapons of Mass Destruction from entering the United States through coordinated border efforts, bilateral surveillance and operations, and increased coordination with GOM partners such as FP, SEMAR, SEDENA, and INM.
2. Increasing border security by expanding joint programs such as the Southern Border Mentor Initiative, the Joint Security Program (JSP), and Cross Border Coordination Initiative.
3. Facilitating increased trade and more efficient customs processing through innovative initiatives, including the North America Single Window, Cargo Manifest Harmonization, and Unified Cargo Processing (UCP). CBP also is supporting Mexican risk management, the development of trusted traveler and shipper programs, partnerships with the private sector, the development of new technology at POEs.
4. Continuing targeting efforts by supporting successful programs—such as the Automated Targeting System-Global and the exchange of liaison officers to between targeting centers.
5. Building the capacity of Mexican INM and SAT partners to enhanced shared border security.
6. Supporting Preclearance expansion by engaging with Mexican ministries and airport authorities and conducting bilateral preclearance agreement negotiations. The new Mexico City airport was selected by DHS as a priority location for preclearance expansion in 2016. Discussions are ongoing towards establishing preclearance at the new airport.

Question. Instead of spending money to hire 500 new Border Patrol agents, wouldn't this money be better spent at the Ports of Entry, where CBP intercepts the vast majority of drugs and contraband?

Answer. CBP has critical staffing needs across its frontline law enforcement positions, both at and between ports of entry. In addition to supporting the President's Budget Request for an additional 500 Border Patrol agents and 94 Air and Marine Interdiction Agents, CBP does indeed need to continue to hire CBP Officers and Ag-

ricultural Specialists at ports of entry. The most recent results from the Office of Field Operations' Workload Staffing Model justifies the need for an additional 2,516 CBP Officers at our ports through FY 2018 and we are making progress towards our authorized levels that was last increased by Congress through additional funding in the FY 2014 Omnibus. CBP also plans to continue to offer fee-based proposals for targeted staffing increases for CBP Officers and Agriculture Specialists.

Question. After the 9/11 attacks, don't you agree that the agency moved too quickly to hire new recruits without the proper vetting and standards, and then paid the price later in terms of employee misconduct?

Answer. CBP learned important lessons from previous times of growth and much has improved in the past 15 years. CBP has worked internally to increase communication throughout all areas of the hiring process (*e.g.,* recruiting, testing, security, on-boarding, etc.). CBP has added additional security items to the process (*e.g.,* new automated vetting system, polygraph examination, etc.). Technology has allowed for greater information sharing across the government during the background investigation process. CBP law enforcement applicants undergo a thorough pre-employment examination process including a cognitive exam, a structured panel interview, an automated vetting procedure, a statutorily required polygraph exam, and a Tier 5 level background investigation. CBP believes our process is one of the most rigorous in the Federal Government.

Question. Can you give us an update on the use of body-worn cameras and improved oversight over the Border Patrol? In my experience in Baltimore after the Freddie Gray case and pending DOJ consent decree, these cameras can help to reduce complaints, de-escalate conflicts (and enhance officer safety), and ensure compliance with use of force procedures.

Answer. I am committed to pursuing the use of camera systems, including body-worn cameras, where operationally appropriate. Currently, we are actively pursuing the use of Incident-Driven Video Recording Systems (IDVRS), including both vehicle-mounted camera (VMC) and body-worn camera (BWC) systems in order to enhance transparency, accountability, and credibility with the public. In April 2018, CBP's Law Enforcement Safety and Compliance (LESC) Directorate will conduct an operational evaluation with USBP, OFO, and Air and Marine Operations (AMO) to test the effectiveness of IDVRS and determine the appropriate portfolio of VMCs and BWCs in CBP law enforcement environments. The results of the evaluation will also be used to inform and further refine CBP policy and technology requirements for IDVRS. Before the evaluation can begin, many things must be accomplished. Currently CBP is working to complete lab-testing, resolve issues related to camera security, Technical Reference Model restrictions, procedural vendor security concerns, and CBP wireless network connectivity issues. The Privacy Impact Assessment for this initiative is being revised and must be published by DHS before field deployments can begin. CBP's Office of Information and Technology (OIT) is working to address USBP checkpoint circuit and storage upgrades that are needed to avoid impacting operations and to transfer the camera data captured with each activation. Currently, these tasks are on schedule to be completed prior to the field evaluation in April 2018. The field evaluation is scheduled to be completed in September 2018, with a full report and revisions to policy, technology requirements, and updated deployment strategies.

Question. Can you give me some examples of best practices you have implemented in order to address misconduct by Border Patrol agents?

Answer. As the largest law enforcement agency in the United States, CBP has a responsibility to the public it serves and to fellow law enforcement agencies to be a leader in adopting best practices in training, tactics, equipment, integrity, and transparency. Our effectiveness depends on maintaining the trust of the public. Toward that end, CBP has implemented a number of best practices over the past 5 years and continues to enhance our efforts in this area.

CBP's approach to promoting workforce integrity is predicated on rigorous pre-employment screening of job applicants to weed out unsuitable candidates, increased emphasis on integrity awareness training, proactive anticorruption detection measures, and timely and thorough investigations of criminal and serious misconduct allegations. CBP takes all allegations of employee misconduct seriously. Under a uniform system, all allegations of misconduct are recorded in a secure, centralized database. All allegations are then immediately referred to the DHS Office of Inspector General for an investigative determination. Under DHS policy, the OIG maintains the "right of first refusal" on all allegations involving DHS employees. Allegations

declined for investigation by the OIG are then returned to CBP OPR for appropriate handling.

The Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125) authorized CBP OPR to investigate criminal and administrative matters and misconduct by CBP employees. OPR investigators average over 20 years of criminal investigative experience and are equipped with a full complement of investigative tools, including the latest in forensic and cyber-technology. OPR also utilizes the intelligence-gathering and manpower resources of the FBI through its membership in 20 of the FBI's 22 Border Corruption Task Forces and maintains strong, collaborative working relationships with the DEA, ICE HSI, and other Federal and local authorities. OPR also leverages its vast array of data collection resources by deploying full-time analysts to proactively identify suspicious or anomalous activity that could be indicative of corruption or serious misconduct. After OPR completes its criminal or administrative investigation, the Office of Human Resources Management and the Office of Chief Counsel work collaboratively with OPR and management to propose and impose discipline when appropriate. OPR continues to study known cases of corruption to inform proactive detection of potential misconduct and corruption.

Based on the CBP Integrity Advisory Panel (IAP) recommendations of the agency's complaints and discipline process CBP has made many improvements to the process. For instance, we have increased transparency for use of force incidents, are moving forward with hiring additional criminal investigators, making technical improvements to its case management system, reissued the directive on reporting misconduct, and HRM is revising the Table of Penalties and Offenses and the discipline review process.

In February 2015, CBP established a Use of Force Incident Team (UFIT) program and a Use of Force Review Board (UFRB) process in an effort to increase transparency and accountability. The UFIT and UFRB is a CBP-wide response plan to investigate, monitor, report, evaluate, and review use of force incidents involving CBP officers and agents. With regards to use of force incidents, the UFIT investigation results can provide recommendations concerning tactics, training, equipment, and/or safety issues. The investigations can also identify potential misconduct and administrative violations that may result in disciplinary or other corrective actions taken against employees.

In 2015, in order to address the misconduct associated with domestic violence or alcohol related driving offenses (DUI) promptly and consistently, USBP consulted with the Offices of Internal Affairs, Chief Counsel, Human Resources Management, as well as gained the perspectives of District Attorneys in California, Arizona, and Texas in order to standardize administrative consequences for the entire USBP. The Standardized Post-Employee Arrest Requirements (SPEAR) outlines a standardized process for identifying and taking appropriate administrative action following the arrest of a USBP employee for domestic violence or DUI. It is designed to ensure consistent management action post-arrest. Through the application of SPEAR and consistent messaging through video and slides on the Information Display System about the program, alcohol related driving offenses have decreased 14 percent from FY 2016 to FY 2017. As with arrests of all CBP employees, arrests involving USBP employees decreased in FY 2017. With 110 reported arrests, USBP decreased 19 percent overall and 8 percent in Domestic/Family Misconduct arrests. USBP continues to implement its SPEAR program and actively runs musters regarding drug and alcohol related misconduct.

Question. What are some of the most stubborn problems that you face in terms of corruption and misuse of deadly force, and in your experience which types of agents or offices are most vulnerable?

Answer. CBP has a workforce of dedicated men and women who are among the finest civil servants in the world, who carry out their duties with the utmost professionalism and efficiency. With support of Congress, CBP has improved its ability to prevent corruption and, due to a number of proactive efforts, has seen consistent reductions in uses of deadly force.

With regard to the use of deadly force, over the past 3½ years, CBP has taken a number of steps to ensure our law enforcement personnel are prepared for potential use of force encounters to protect them and the public they serve. Some of these steps include the following:

- **Creation for the Law Enforcement Officers Safety and Compliance Directorate (LESC) to Manage CBP's Use of Force Program**—In March

2014, CBP established what is now the LESC to manage the agency's use of force program. The LESC is responsible for the development and articulation of CBP's use of force policy and oversees a comprehensive and fully operational program that conducts training standardization audits, incident reviews to identify enhancements to existing training, data analysis, use of force instructional delivery, and weapon accountability and procurement to ensure use of force training, equipment, and policies meet CBP's operational requirements.

- **Joint Integrity Case Management System and the Assaults and Use of Force Reporting System**—In January 2014, CBP, in conjunction with Immigration and Customs Enforcement (ICE), enhanced the data collection and reporting capabilities of the Joint Integrity Case Management System (JICMS). JICMS is the system that tracks allegations of excessive force. That same year, in October 2014, CBP integrated JICMS with the data systems that captures information on assaults against officers and agents to create the new Assaults and Use of Force Reporting System (AUFRS) which is integrated with the Use of Reporting System (UFRS). This new system allows CBP to conduct comparative analyses of how officers and agents respond to assaults. This analysis will help the agency identify "best practice" responses to threats and better inform enhancements to policies, training, tactics, and equipment. It also has the capacity to track use of force investigations from start to finish.
- **Use of Force Incident Tracking System**—In February 2015, the Use of Force Incident Tracking System (UFITS) was implemented to track the investigations of use of force incidents involving CBP employees.
- **Media Engagement in Response to Use of Force Incidents—"Maximum Disclosure, Minimum Delay"**—OPA updated its Standard Operating Procedures (SOP) in June 2015 to enhance CBP's release of information following a significant use of force incident. The SOP requires the respective OPA public affairs specialist—in coordination with the respective field commander and OPR special agent in charge—to issue a statement detailing the basic facts of the incident within one hour of headquarters notification. After subsequent information has been confirmed, the field leadership, in coordination with OPA and OPR, will issue a more detailed statement and/or hold a press briefing within 12 hours of the initial statement. This new posture has improved the timeliness and substance of public engagement in response to fatal use of force incidents.

Previously, CBP was dependent upon local law enforcement agencies to conduct investigations involving CBP personnel. CBP's role was minimal, relying solely on other agencies to conduct thorough investigations, which resulted in significant internal delays to complete use of force investigations. These delays, along with minimal CBP participation in the investigations, hampered CBP senior leadership's ability to address use of force incidents effectively. With the authority to Investigate Criminal Misconduct and Review of Use of Force Cases, CBP now has at its disposal a variety of tools to review and investigate use of force incidents. Some of those tools include:

- **Use of Force Incident Teams (UFIT)**—To better respond to CBP use of force incidents, UFITs were created to provide an administrative review process that uses proven investigative protocols and evidence gathering standards to objectively, impartially, and thoroughly examine use of force incidents in a timely and transparent manner. UFIT is a CBP-wide, multi-office investigative unit, operating under the leadership of an OPR incident commander, whose purpose is to conduct a thorough, factual, and objective investigation into a use of force incident involving death or serious injury; prepare a comprehensive report appropriate for the type of incident involved; and promptly report and subsequently track observations, recommendations, and instructions, including any suggested policy changes or the need for referral for further administrative or disciplinary review.

The UFIT responds to all use of force incidents involving serious injury or death; coordinates with local or Federal authorities having investigative jurisdiction to ensure the use of force investigation is thorough and complete; serves as "eyes and ears" of CBP executive leadership and allows for CBP leadership to make initial statements of facts.

The UFIT review process provides the affected CBP agents and officers more timely feedback about the use of force incidents, helping them move on, both professionally and personally. Getting our officers and agents back to work dispels unwarranted mistrust, lifts the cloud of suspicion, and improves their units' readiness—and that benefits all of CBP and the public we serve.

- **Use of Force Review Board (UFRB)**—The National UFRB (NUFRB) is a CBP committee established to review all significant use of force incidents resulting in serious physical injury or death, or any incident involving the discharge of a firearm in a non-training setting. All findings and recommendations are provided to CBP Senior Leadership. Local UFRBs will address lesser use of force incidents that do not result in serious physical injury or death or the discharge of a firearm.

  The UFRBs review use of force incidents for three issues: (1) was use of force within policy; (2) was misconduct associated with the application of force; and (3) what lessons can be learned from the incident in terms of techniques, tactics, policy, training and equipment?

  The findings of the UFIT investigation are presented to the National UFRB (NUFRB). The NUFRB is comprised of Office of Professional Responsibility Assistant Commissioner; Office of Border Patrol, Chief of Operations; Office of Air and Marine, Executive Director; Office of Field Operations, Executive Director; DOJ/Civil Rights Division; Office of Air and Marine, Management Official; Use of Force Center of Excellence Director; Office of Chief Counsel; Laboratory Scientific Services, Executive Director; Labor and Employee Relations, Director; Office of Public Affairs, Management Official; ICE/Office of Professional Responsibility; DHS/Office for Civil Rights and Civil Liberties; and DHS/Office of Inspector General.

  The NUFRB reviews each significant use of force incident resulting in serious physical injury or death to determine the following: (1) if the application of force in each individual incident was consistent with the CBP Use of Force Policy; (2) provide any recommendations concerning tactics, training, equipment, and/or safety issues; and (3) refer potential misconduct and administrative violations to CBP OPR for further handling as appropriate.

- **Reporting Protocols for Use of Force Allegations:** In August 2014, CBP initiated new reporting protocols to ensure all complainants who allege excessive force are interviewed prior to being processed for removal. All CBP components have been directed to immediately notify the Office of Professional Responsibility upon receipt of a complaint of alleged excessive force and to not remove individuals until OPR has had the opportunity to conduct an investigative interview of the complainant.
- **Public Transparency and Accountability:** CBP has posted guidance on its website to allow the public to easily file a complaint or provide feedback at *https://help.cbp.gov/app/home.* The agency uses the feedback to improve performance across the enterprise.

The CBP Information Center also has increased its Spanish-language capacity to provide improved service, accountability and transparency to those who speak Spanish via the fully integrated Spanish-language service at *https://helpspanish.cbp.gov/*.

- New Reporting Protocols for Excessive Force Allegations.

Additionally, as part of our agency's focus and commitment to transparency we have also increased our engagement with the public, interagency partners, Non-Governmental Organizations (NGOs), and the Media.

- Stakeholder Outreach.
- CBP Integrity Advisory Panel.
- Border Violence Prevention Technical Working Group.
- Interface with the Government of Mexico.
- Media engagement.

CBP takes allegations of employee misconduct, to include allegations of excessive force, seriously. Under a uniform system, allegations of misconduct are documented and referred to the DHS Office of Inspector General (OIG) for independent review and assessment. Cases are either retained by the DHS OIG for investigation or referred back to CBP's Office of Professional Responsibility for further handling.

CBP's administrative review process of Use of Force incidents begins after all Federal and local authorities decline criminal prosecution. CBP's Use of Force Review Board (UFRB) considers whether the application of force was within CBP policy and constitutionally permissible, identifies potential issues involving training, tactics and equipment, and refers any disciplinary issues (*e.g.,* excessive force) to the Joint Intake Center (JIC). Use of force information for specific incident may be available upon request under the Freedom of Information Act (FOIA).

Allegations of criminal misconduct, serious misconduct, administrative misconduct, and informational incidents can be immediately reported using one of the following methods:

- Call the toll-free Joint Intake Center Hotline at 1–877–2INTAKE or send a fax to (202) 344–3390;
- Send an email message to Joint.Intake@dhs.gov;
- Write to P.O. Box 14475, 1200 Pennsylvania Avenue, NW, Washington, DC 20044; or
- Call the DHS Office of Inspector General (OIG) at 1–800–323–8603.

CBP has also recently implemented a new extended curriculum for the Border Patrol Academy that includes extensive scenario-based training.

Taken together all of these measures have resulted in reduced instances of the use of deadly force, and increased transparency and accountability when deadly force is used. If confirmed, I intend to sustain and enhance these initiatives as they are critical to earning and maintaining the trust of the public, a fundamental prerequisite for effective law enforcement.

Question. Recently my staff traveled to Mexico's southern and northern borders where they heard numerous complaints that women, families and unaccompanied children fleeing violence and persecution have been denied the opportunity to apply for asylum or other forms of humanitarian protection at ports of entry along the U.S.-Mexico border. These reports are disturbing.

How will you address allegations of CBPOs illegally and improperly turning away asylum seekers? To what extent are CBPOs using an expedited removal process?

Answer. Over the last 2 years, CBP has referred over tens of thousands of applicants for admission who expressed fear of return to U.S. Citizenship and Immigration Services for review by an asylum officer. CBP carries out its mission of border security while adhering to U.S. and legal international obligations for the protection of vulnerable and persecuted persons.

DHS addresses any and all allegations of misconduct through a consistent, stratified review, and investigative process. All allegations, regardless of the mode through which they are received, are channeled through the Joint Intake Center (JIC), a central processing center, responsible for receiving, documenting, and referring all allegations of employee misconduct. Once an allegation is assessed and assigned for investigation, CBP conducts a thorough and impartial investigation. Upon completion of the investigation, CBP Office of Professional Responsibility conducts a subsequent review of the findings to develop alternate investigative strategies or identify additional investigative leads.

When appropriate, CBP proactively follows up on all allegations submitted to the Joint Intake Center for sharing with the Office of Inspector General and to track investigative follow through. Additionally, CBP conducts regular engagements with NGOs both at the sector and field office level, and at headquarters.

Question. Border Patrol makes public few details about deaths or the methodology it uses to count deaths. Incomplete data on migrant deaths may affect Border Patrol's ability to understand the scale of the problem in different sectors while making it more difficult to locate remains.

How can you improve migrant death reporting?

Answer. CBP defines a border-related death as a suspected, undocumented migrant who died: (1) while in furtherance of an illegal entry; (2) within a designated target zone whether or not the Border Patrol was directly involved; and/or (3) outside the designated target zone when the Border Patrol has direct involvement with the incident.

USBP will notify law enforcement and the coroner's office within the jurisdiction of the located deceased individual. Local law enforcement conducts an appropriate death-related investigation and the county coroner assumes responsibility for the

deceased. USBP contacts the coroner's office to request cause of death and identity determination. USBP will also contact the consulate office of the deceased individual's native country for notification.

Once the medical examiner/coroner determines the cause of death, a suspected cause of death is cited in the Border Safety Initiative Tracking System (BSITS), a USBP managed client-server database that serves as the central repository through web-based applications for collecting, managing, and disseminating critical incident data related to suspected, undocumented migrant deaths and Border Patrol rescues in selected counties along the U.S. border with Mexico. The data is used for analyzing the number and locations of deaths and rescues, categorizing deaths and rescues, identifying trends, and identifying high-risk areas.

As part of the Customs and Border Protection attention to humanitarian needs, the Missing Migrant Program (MMP) was established by U.S. Border Patrol (USBP) in June 2015, as a pilot program within the Tucson Sector and subsequently rolled out to South Texas in June 2016.

MMP institutionalizes procedures for third party missing migrant reports, providing a focal point of collaboration and integration, to prevent deaths and increase rescues of missing migrants. MMP also assists county medical examiner offices, forensic pathologists, and foreign consulates in the identification and family reunification of deceased migrants. Information obtained from this multi-agency and multinational effort provides closure to families and helps to shape CBP operations.

In June 2017, USBP Headquarters agreed to make this pilot into an official program under its Foreign Operations Division (FOD). FOD has been working with Tucson and South Texas Sectors to identify best practices and develop an Internal Operating Procedure (IOP) for the MMP. As of November 2017 the MMP has expanded to the El Paso and Yuma Border Patrol Sectors with a full roll out across the entire Southwest border completed by the summer of 2018.

USBP has several programs and initiatives focused on increasing border safety and minimizing the risk of migrant deaths. As an example, USBP has more than 246 BORSTAR Unit agents who are trained and certified for advanced search and rescue operations. BORSTAR agents are located strategically along the Southwest border and are on call and available to respond to high-risk emergent situations for extended periods. In FY 2017 alone, USBP completed over 3,000 rescues. USBP medical initiatives provide emergency medical response training to agents throughout the entire border region specifically focusing on high-risk areas. USBP currently has more than 1,200 certified Emergency Medical Technicians, as well as paramedics and first responders. USBP also has 85 active rescue beacons strategically placed throughout the Southwest border, to save the lives of illegal aliens in distress.

I am committed to continuing these efforts to provide robust search and rescue response capabilities to mitigate risk in remote and austere environments as well as continuing to develop innovative ways to address these challenges proactively. I will continue to ensure CBP complements DHS efforts to provide public awareness through communicating the dangers of crossing the Southwest border both within the United States and abroad. USBP complements the DHS media campaign plan to reach out to potential migrants in their home countries to discourage them from attempting to enter the United States illegally in the first place.

Question. Will you pledge to conform CBP enforcement practices with the recommendations of the Task Force on 21st Century Policing? The Task Force recommended that: "To embrace a culture of transparency, law enforcement agencies should make all department policies available for public review and regularly post on the department's website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics."

Answer. Since 2014, CBP has implemented and continues to implement significant policy, procedural and programmatic reforms with respect to transparency initiatives CBP has taken and variety of steps and implemented policies to increase transparency and accountability. For example, to improve the public's access to information, CBP has posted policies, reports, and statistics consistent with the recommendation from the Task Force cited in the question, including:

1. Use of Force Policy, Guidelines, and Procedures Handbook, *https://www.cbp.gov/sites/default/files/documents/UseofForcePolicyHandbook.pdf.*

2. Use of Force Review, Cases, and Policy From the Police Executive Research Forum, *https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf.*
3. Use of Force Case Summaries, *https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries.*
4. Use of Force Statistics, *https://www.cbp.gov/newsroom/stats/cbp-use-force.*
5. CBP Discipline Overview FY 2015, *https://www.cbp.gov/sites/default/files/assets/documents/2017-May/FY15-discipline-report-5-4-17.pdf.*
6. Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, *https://www.gpo.gov/fdsys/pkg/FR-2014-03-07/pdf/2014-04675.pdf.*
7. CBP Policy on Zero Tolerance of Sexual Abuse and Assault, *https://www.cbp.gov/employees/eeo/ztp/cbp-policy-zero-tolerance-sexual-abuse-and-assault.*
8. CBP Enforcement Statistics, *https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.*
9. Southwest Border Migration Statistics, *https://www.gpo.gov/fdsys/pkg/FR-2014-03-07/pdf/2014-04675.pdf.*
10. Arrests of criminal aliens by U.S. Border Patrol, *https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-alien-statistics.*
11. Homeland Security Advisory Council—Interim Report of the Integrity Advisory Panel, *http://www.dhs.gov/sites/default/files/publications/DHS-HSAC-CBP-IAP-Interim-Report.pdf.*

If confirmed, I plan to sustain and continue to enhance our commitment to transparency related to our law enforcement mission.

Question. Will you pledge to provide more transparent data on the use of force by CBP agents, including the perceived race or ethnicity of all individuals stopped, and the resulting disposition of the stop or search, including the length of the encounter (*i.e.,* search, arrest, use of force)?

Answer. CBP's authority to enforce the law appropriately bears the responsibility of accountability, which includes integrity and a commitment to continued transparency. The current CBP Use of Force Policy Handbook is available for public view on *CBP.gov.* In addition, CBP continues to provide the public with updated monthly use of force statistics and summaries for use of force cases reviewed by the CBP National Use of Force Review Board, which can be found here: *https://www.cbp.gov/newsroom/stats/cbp-use-force.* In FY 2017, the CBP National Use of Force Review Board (NUFRB) convened three times, deliberating on a total of 12 CBP use of force incidents. Additionally, the CBP Use of Force Incident Team (UFIT) review boards—known as Local Use of Force Review Boards (LUFRB) reviewed 162 use of force incidents. CBP released the results of a number of incidents reviewed by the NUFRB and will release remaining cases once they have completed the full review process. The case summaries can be found here *https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries.*

Currently, CBP does not collect the race or ethnicity of individuals who are encountered in the course of CBP's law enforcement operations. CBP does capture and routinely releases information on the nationalities of persons apprehended crossing between ports of entry or subject to adverse immigration actions at ports of entry.

Question. Will you pledge to review my legislation, the End Racial and Religious Profiling Act (ERRPA, S. 411), and let me know if you can incorporate ideas or best practices from this legislation into CBP practices?

Answer. I can commit to review this proposed legislation, consider if we can incorporate ideas and best practices, and have my team work with your staff to provide any appropriate technical assistance.

Question. As you may know, drawback law is the refund of duties, taxes, and certain fees paid on importation of articles into the United States when those articles, or like-kind articles, are exported or destroyed.

Drawback, and other duty deferral regimes, are a long-standing feature of U.S. law that enable U.S. manufacturers to compete on a "level playing field" with their foreign competitors. By refunding duties, taxes and fees paid on imports when there is a similar-classed export, drawback strongly promotes U.S. exports, manufacturing, capital investment, and job creation.

Congress most recently expanded drawback privileges in 2016 with the passage of TFTEA, providing even greater opportunities for U.S. exporters to take advantage of this statutory benefit.

If you are confirmed as Commissioner of U.S. Customs and Border Protection, will you and your office support our U.S. manufacturers and workers by maintaining and enforcing legislation such as duty drawback and deferral programs in order to promote growth in U.S. manufacturing and exports?

Answer. As Acting Commissioner of CBP, and, if confirmed, I am committed to upholding the laws of the United States, including drawback as a longstanding trade facilitation law. Drawback, and other duty deferral regimes, are important features of U.S. law that enable U.S. manufacturers to compete on a "level playing field" with their foreign competitors. By refunding duties, taxes and fees paid on imports when there is a similar-classed export, drawback strongly promotes U.S. exports, manufacturing, capital investment, and job creation.

CBP takes very seriously its dual role of trade facilitation and protection of the revenue. I have been, and will continue to work closely with CBP's subject matter experts and those in the Department of Treasury to expeditiously and effectively implement TFTEA's drawback benefits provided by Congress to the U.S. business community. CBP will continue to be committed to administering the drawback and duty deferral laws and will actively work with the Department of Treasury, and other relevant Partner Government Agencies, to effectively support growth in U.S. manufacturing and exports.

QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

Question. The Delaware River ports make up one of the largest fresh fruit importation areas in the United States, bringing in over $2 billion worth of fruit goods each year. While imports have increased dramatically over the past couple years and terminal operators are making significant investments to increase storage capacity and cargo handling, the number of full-time CBP agriculture inspectors has remained stagnant. Low staff levels make it difficult for my constituents to process shipments of foreign fruits in a timely manner. This increases the amount of fruit that spoils before it can be moved to cold storage and creates an incentive for distributors to import their products through ports outside of Philadelphia.

Does CBP plan to increase the number of permanent agriculture inspectors stationed in Philadelphia, and if so, when do you expect that increase to occur?

Answer. Yes, CBP has articulated existing requirements to increase the number of permanent Agriculture Specialists, including in the area port of Philadelphia. While CBP is currently at its full authorized and funded staffing level for agriculture specialists nationwide, the annual Agriculture Resource Allocation Model (AgRAM) shows a gap of over 700 CBP Agriculture Specialists (CBPAS) to effectively carry out our mission nationwide, including at the area port of Philadelphia. The Animal and Plant Health Inspection Service (APHIS) fee allotments to CBP from the APHIS Agricultural Quarantine Inspection (AQI) user fee revenues are providing full cost recovery for CBP AQI operations, but only at the current staffing floor of 2,414 CBPAS. CBP intends to consider multiple options for increasing funding, including potential fee based or appropriated solutions. CBP anticipates an increase in staffing of CBPAS at Philadelphia if additional funds become available for hiring.

Currently trade stakeholders and terminal operators utilize Reimbursable Services Agreements and CBP has provided temporary duty personnel to supplement and support existing staffing year round to cover peak periods and increases in perishable imports.

CBP's Reimbursable Services Program has entered into eight agreements with Delaware River terminal operators to provide additional inspection services during peak seasons. CBP entered into agreements with the following stakeholders: Independent Container Line, Ltd., Penn Terminals, Inc., Greenwich Terminals LLC, Network Shipping Ltd. (Del Monte Fresh Produce), Gloucester Terminals LLC, Turbana Corp., Interoceanica Agency (Isabella Shipping Company), and Diamond State Port Corp.

Question. How does CBP determine staffing levels at our Nation's ports, specifically for agriculture inspectors?

Answer. To objectively identify baseline staffing requirements for CBP agriculture protection operations, CBP developed the AgRAM. Like the CBP Workload Staffing Model, the AgRAM is an analytical tool developed by CBP to calculate the required number of CBP Agriculture Specialists based on the volume and composition of arrivals. The model takes into account both the legally mandated inspection of regulated cargo as defined by United States Department of Agriculture (USDA)—Animal and Plant Health Inspection Services (APHIS) and the risk-based inspection of passengers and cargo. The model takes into account the volume of cargo, conveyance, and passenger arrivals in all environments as reported by Operations Management Report data. The AgRAM also utilizes USDA APHIS data to determine the various work counts in all environments and incorporates pest risk levels as determined by the USDA. The AgRAM:

- Accounts for the volume of cargo, conveyance, and passenger arrivals in all environments;
- Incorporates pest risk levels as determined by APHIS to ensure sufficient staffing is allocated for inspection of high, medium, and low risk commodities, passengers, and conveyances;
- Factors AQI Trade Facilitation Programs, *e.g.,* the National Agriculture Release Program (NARP); and
- Incorporates a utilization factor to ensure staffing levels can process peak workloads within acceptable time frames, additionally it has the capability of determining overtime staffing needs.

The AgRAM was subject to an independent assessment by Deloitte Consulting, LLP, in fiscal year 2015. The assessment determined the AgRAM's methodology and approach to identifying staffing needs is thorough and efficient. Internally, the AgRAM is updated each year with the previous fiscal year's data and reviewed to ensure the integrity of the results. The model results are then validated by CBP before being certified by DHS prior to submission to Congress each fiscal year. The most recent results of CBP's Agricultural Resource Allocation Model show a need for an additional 721 CBP Agriculture Specialists through FY 2018.

The AgRAM, combined with other information about resources, threats, and passenger volume are incorporated into leadership review of how to best allocate CBPAS resources.

Question. What other policies and automated technologies is CBP considering to help streamline the inspection process for agricultural products in an effort to reduce processing times?

Answer. CBP has delivered several key agriculture-centric automation and interoperability programs. The efforts have resulted in significant savings by automating data sent to USDA for mandatory inspections of cargo and for the pest identification process. The implementation of a single, unified data repository to further automate trade and passenger reporting functions, work accomplished, transport/export commodity tracking, and exam findings recordation. The goal is an automated environment that facilitates agriculture data management for purposes of targeting/selectivity, analysis, reporting, and performance measures, and to support the Agriculture Resource Allocation Model (AgRAM).

The National Agriculture Cargo Targeting Unit (NACTU) is specifically focused on agricultural quarantine targeting (animal and plant pest/disease risk). The NACTU researches import cargo shipments and analyzes national quarantine activity to identify those shipments posing significant risk. These agricultural quarantine risks relate to shipments with pests, contaminants, and prohibited agricultural products (including through smuggling activities).

OFO's Agriculture Programs and Trade Liaison (APTL) and the Office of Information and Technology (OIT) partnered to build a single window for targeting vessels, recording vessel inspection data, and communicating vessel risk(s) directly with ATS–4. This technology is replacing the paper CBP Form AI–288 and re-orienting the Ship Inspection Report (288) into an electronic collection of vessel inspection data. CBP has deployed and commenced the interface capability between targeting systems Vessel Risk List, and electronically capturing, communicating to other ports and maintaining inspection metrics such as: mobile targeting for high risk commercial vessels with Asian Gypsy Moth (AGM), Khapra Beetle, Mediterranean fruit fly, and international garbage violating vessels. In addition, this new technology automatically populates/generates the information into paper report format, eliminating duplication of work for CBP Agriculture Specialists (CBPAS), such as return to the office and manually record inspection results in both CBP and APHIS databases,

as well as manual communication with a variety of stakeholders. Economically the contractor research estimated $2.3 million annually in time savings for CBPAS through 288 app utilization during all three phases of operations: targeting, inspection, and recording/reporting out significant exam results.

The Agriculture Pest Exclusion Coordinating Specialists (APECS) facilitates trade by ensuring that cargo is not delayed pending identification of non-quarantine plant pests. Since its development CBP working with APHIS has significantly increased the number of cargo shipments released at participating ports. The Pharr, Texas Cargo Import achieved a reduction in cargo processing dwell time from 5 hours to 20 minutes.

Question. As you know, CBP contracts with Centralized Examination Stations (CESs) in an effort to consolidate cargo inspections at single, private warehouse facilities, which may be located miles away from the dockside terminal. It is my understanding that the CES in Philadelphia is only used for intensive exams that require special inspectors, while non-intrusive and most agriculture exams remain at the terminal. That said, terminal operators in Philadelphia are concerned that CBP will eventually move all agriculture inspections to the off-site CES facility, which could raise transportation costs for importers and increase delays for inspections.

Will you commit to working with the terminal operators in Philadelphia before implementing new inspection policies and procedures?

Answer. CBP is committed to working with its public and private stakeholders before implementing such procedural changes. Local CBP management currently engages in monthly, quarterly, or as needed agriculture-focused meetings with the maritime operations community; CES focused meetings; and will begin having a reoccurring Customs Broker meeting. These engagements provide many opportunities for CBP to provide operational updates and for the trade community, including terminal operators, to provide feedback and express concerns.

Question. In Philadelphia, does CBP intend to move all non-intrusive and agriculture inspections from the dockside terminals to the CES?

Answer. CBP Philadelphia does not plan to move all non-intrusive and agriculture inspections from dockside terminals to the CES. A few advantages of having a CES are that the operation allows CBP to consolidate staffing and resources, eliminate commute time to numerous terminals and warehouses, and reduce inspection and cargo hold times when multiple team and/or agencies require inspection. Having the CES is one element of addressing staffing and resource limitations. However, other factors would need to be analyzed before considering moving other exams to the CES. As port operations are constantly changing, CBP is also constantly reviewing its procedures. If the time were to come to consider moving additional inspections to the CES, CBP will communicate that with the trade community, and stakeholders will have the opportunity to provide feedback.

Question. Can you explain how CBP monitors and audits CES facilities once they have been designated by CBP?

Answer. Pursuant to title 19, § 1467, of the United States Code (19 U.S.C. 1467), CBP has a right to examine any shipment imported into the United States. Per CBP regulations, it is the responsibility of the importer to make the goods available for examination. No distinction is made between commercial and personal shipments. If a shipment is selected for examination, it will generally be moved to a CES for the CBP exam to take place. A CES is a privately operated facility, not in the charge of a CBPO, at which merchandise is made available to CBPOs for physical examination. The CES facility will unload the shipment from its shipping container and will reload it after the exam. The CES concept fulfills the needs of both CBP and the importer by providing an efficient means to conduct exams in a timely manner. The CBP Port Director has the authority to review the CES and make adjustments within regulation if necessary. A CBPO is located at the CES facility to monitor and execute all necessary examinations. CBP reviews cargo turnaround times and expresses concerns to the CES operator for improvements. In Philadelphia, CBP and local stakeholders conduct periodic meetings with the trade community so that concerns can be expressed and addressed timely. The last single-focused meeting was held with the trade community on August 24, 2017, where stakeholders were able to express feedback on current operations. On September 14, 2017, CBP attended two meetings with the Delaware River and Bay Maritime Exchange, the quarterly Maritime Operations meeting and the CBP–USDA Agriculture Working Group meeting. The last CES single-focused meeting was November 7, 2017, and a CBP/Philadelphia Brokers Association meeting was November 9, 2017.

QUESTIONS SUBMITTED BY HON. SHERROD BROWN

Question. In your testimony, you mentioned that you used your authority under 19 U.S.C. 1499 to block imports of seafood made with North Korean forced labor in China. Why did you use section 1499 instead of section 1307 to block the imports?

Answer. CBP has multiple legal tools to combat the importation of prohibited merchandise, including merchandise made with North Korean labor in violation of section 302A of the Countering America's Adversaries through Sanctions Act (Sanctions Act) and merchandise subject to 19 U.S.C. § 1307. CBP received shipments where it had reason to believe that the merchandise was prohibited from entry pursuant to the Sanctions Act. CBP utilized its well established authority under 19 U.S.C. § 1499 to detain the merchandise so that its admissibility can be determined. Where CBP has information to believe that merchandise was manufactured with forced labor, CBP may act under 19 U.S.C. § 1307 to withhold release of the merchandise into the commerce of the United States pursuant to regulations promulgated under section 1307. The authority under 19 U.S.C. § 1499 is appropriate for this case and allowed CBP to act quickly to block the importation until a final admissibility decision is made, but, I can confirm that CBP intends to continue to use section 1307 withhold release orders whenever appropriate.

Question. Have 30 days lapsed since the imports were blocked?

Answer. No. Thirty days will lapse on November 13, 2017.

Question. If not, does CBP expect to request an extension of the 30-day window to obtain more time to review the evidence you have compiled on the forced labor allegations?

Answer. CBP is still evaluating information related to the detained shipments to determine their admissibility. At the 30-day deadline, CBP will take whatever action is warranted with respect to the merchandise based on information that CBP has developed, and pursuant to the various legal authorities governing the detention or release of merchandise. If the information does not support a release of the goods within 30 days, then this is treated as a decision to exclude the merchandise for purposes of 19 U.S.C. § 1514, and the importer may protest the exclusion.

Question. Are you now preparing to issue a withhold release order against Chinese seafood imports more broadly?

Answer. With respect to the shipments that are currently detained as discussed during the hearing, CBP is using our existing legal authorities to enforce the rebuttable presumption, established by the Sanctions Act, that merchandise made with North Korean labor is prohibited from entry. Further, CBP is actively collecting and developing additional information on the region in question and shipments related thereto. To the extent that said information reasonably indicates that Chinese seafood imports violate 19 U.S.C. § 1307, CBP would issue a withhold release order.

Question. Recent news reports have alleged that Haribo gummy bears are produced in part with forced labor in Brazil. Has CBP taken the same approach to the gummy bear news reports that it did in response to the news reports of North Korean forced labor being used in Chinese seafood products?

Answer. With respect to the allegations of forced labor in the carnauba wax industry, the CBP Commissioner must first issue a withhold release order (WRO) before CBP port directors may detain suspect merchandise to determine admissibility. CBP remains committed to take vigorous action to enforce 19 U.S.C. § 1307. CBP's approach to news reports alleging forced labor in the Brazilian carnauba wax industry differs from its approach with respect to alleged North Korean labor because the Sanctions Act presumes that merchandise made with North Korean labor violates 19 U.S.C. 1307 and is therefore prohibited, whereas allegations with respect to the Brazilian Carnauba wax industry are not subject to the Sanctions Act presumption and prohibition.

Question. Has CBP blocked any imports of Haribo gummy bears under section 1499 or section 1307 as a result of the reports?

Answer. CBP has begun to review this serious allegation and has been in contact with our partners at Immigration Customs Enforcement (ICE)—Homeland Security Investigations (HSI) to further consider the available information. To date, we have not detained any shipments related to the recent news on the Brazilian carnauba wax industry and downstream products because we have not developed information which supports this action at this time.

Question. Thank you for your response to the letter Senator Portman and I and some of our colleagues sent on July 11, 2017 regarding implementation of the Enforce and Protect Act (EAPA). In that letter, we asked CBP to revise its rule EAPA to ensure that "interested parties," as included in the statute, are able to participate in the duty evasion allegations. In your response you identified several ways that interested parties could participate in the investigation but did not commit to revising the rule to reflect the statute's broader term. Is it your position that CBP will not revise the rule to reflect the statute's intent that a much broader group of interested parties can participate in the investigation?

Answer. Our current definition of "parties to the investigation," is based on the statute's use of the phrase "interested party that filed an allegation," includes the interested party who filed the allegation and the alleged evader, to clarify that fundamental procedural rights under EAPA are limited to only the party that filed an allegation. CBP is evaluating whether to amend the regulatory definition of "parties to the investigation," for its final rulemaking.

Question. How many times since EAPA was passed have "interested parties" used the ways included in your response letter to participate in the allegations?

Answer. We would not necessarily be aware of situations where parties to the investigation were provided information by third parties and then filed it in our proceedings. As for the other methods, we have not yet encountered this. We have recently clarified these alternate methods for providing information to CBP on our EAPA website. As we gain experience with more investigations, we anticipate that parties will avail themselves of these options in the future.

Question. In our letter we also expressed concern that CBP was requiring allegations to identify the importer in order for them to be considered by your agency. In your response you indicated that you were working on a potential legislative change that would allow CBP to initiate duty evasion allegations where the importer is not identified. Why do you believe you need legislation to make this change to CBP's allegation proceedings?

Answer. The EAPA interim final regulations currently require the identification of the importer in the allegation because a party might argue that CBP's identification of the importer's name violates the Trade Secrets Act. Thus, a legislative change exempting this from the Trade Secrets Act would permit CBP to reveal the identity of the importer who may be entering merchandise as to evasion and avoid potential violation of the Trade Secrets Act.

Question. What is the status of the potential legislative fix that you mentioned?

Answer. CBP has developed a legislative proposal that is currently being vetted through the interagency clearance process.

Question. And since EAPA was signed into law, how many duty evasion allegations has CBP refused to act on because the importer was not identified?

Answer. There has not been an allegation where CBP has declined to initiate upon an investigation the importer was not identified. Any cognizable allegation received by CBP will be pursued, and CBP has tools which may allow it to identify an importer and pursue appropriate enforcement actions. The Trade Secrets Act only limits the identification of the importer by CBP through EAPA, not the pursuit of the underlying allegation or violation.

QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL

Question. While your nomination is considered by the Finance Committee, many of the decisions you make and the policies that you will implement fall under the jurisdiction of the Homeland Security and Governmental Affairs Committee, of which I am the ranking member.

Will you provide a prompt response in writing to *any* questions addressed to you by any Senator of the Homeland Security and Governmental Affairs Committee, regardless of party?

Answer. I have worked closely with the Senate Committee on Homeland Security and Governmental Affairs in the past, and understand its important role in conducting oversight of CBP. If confirmed, I will ensure that CBP provides appropriate information in response to requests from the committee, regardless of party affiliation.

Question. The Justice Department's Office of Legal Counsel has published an internal memo stating that the executive branch has no obligation to respond to requests for information from individual members of Congress, including ranking members of committees. This represents an effort to stonewall minority and other members of Congress as we perform oversight of Federal agencies. If confirmed, one of your central tasks will include facilitating responses to congressional requests for information. Do you commit to fully respond to requests for information from members of congressional oversight committees, regardless of party?

Answer. I have worked closely with the Congress in the past, have testified over a dozen times, and given over 50 briefings to members and staff, as well as hundreds of written responses and reports. I understand and appreciate its important role in conducting oversight of CBP, and, if confirmed, I will ensure that CBP provides appropriate information in response to requests from the committee, regardless of party affiliation.

Question. The President has ordered the hiring of 5,000 additional Border Patrol agents and 10,000 new immigration officers. There are approximately 23,000 officers that currently comprise the CBP Office of Field Operations, although CBP is authorized to have just over 24,000 officers. The CBP staffing model that you helped to develop recommended that CBP have more than 27,000 officers in place. That appears to leave CBP around 4,000 officers short from the recommended amount.

President Trump has only proposed increases in staffing for Border Patrol and ICE. Does that concern you?

Answer. CBP remains focused on having the right mix of resources at and between our Nation's POEs. As the CBP mission continues to evolve to meet the threat to the Nation and facilitate legitimate trade and travel, we must continually assess personnel staffing requirements. CBP utilizes its Workload Staffing Model (WSM) to ensure CBPO staffing resources are aligned within the existing threat environments, while maximizing cost efficiencies. The WSM is a data-driven model that incorporates the most recent year's workload data to determine staffing requirements and considers factors for future facility enhancements and projected volume growth in cross-border commercial and passenger traffic. Updated WSM results continue to show a need for additional OFO capability to fully meet the standards set by statute, regulation, and CBP policies, assuming maintenance of current processes, procedures, technology, and facilities. The most recent results—factoring in the additional 2,000 CBPOs funded by the FY 2014 Omnibus—show a need for 2,516 additional CBPOs through FY 2018. The administration's submission of the updated 2017 WSM demonstrated an important commitment to the requirements it identified, as did the statement of intent in the President's FY18 budget to submit proposals for authorizing language that would provide user fee funding to address the gap as we have in past years.

At the same time, CBP is continuing to address 1,132 CBPO positions that are vacant as of September 30, 2017. It is my top mission support priority, and will remain so if confirmed, to achieve full authorized and funding staffing levels for all frontline law enforcement positions.

CBP has worked aggressively over the past several years to implement a multifaceted recruitment strategy that improves frontline hiring processes and enhances its ability to meet hiring goals. CBP continues to strengthen all aspects of hiring, which includes initiatives designed to attract more qualified applicants, expedite the pre-employment timeline, refine the hiring process to address all potential bottlenecks, and reduce the attrition rate of the existing workforce. Staffing the frontline with well-qualified individuals of the highest integrity remains a top priority for CBP.

Additionally, CBP continues to implement Business Transformation Initiatives (BTIs) by focusing on faster processing in the air, pedestrian, vehicle, and cargo environments. CBP makes a concerted effort to implement the newest and most advanced technologies at the Nation's POEs to create efficiencies. Along with technological advancements, CBP is deploying biometrics and processing enhancements and expanded Trusted Traveler Programs. These transformative initiatives and technological advancements provide the platform from which CBP can achieve operational success in the face of increased border and air traffic, budget constraints, and demand for new and expanded services at existing and proposed POEs. CBP's BTIs have saved more than 1 million inspectional hours through FY 2016 and are estimated to save more than 500,000 inspectional hours or (over 400 CBPOs) through FY 2018.

To support increased staffing needs, CBP continues implementation of alternative funding strategies to increase revenue sources. CBP continues to support the Donations Acceptance Program and the Reimbursable Services Program made permanent with the enactment of the Cross-Border Trade Enhancement Act of 2016 (Pub. L. 114–279).

Since the pilot program began in 2013, CBP's Reimbursable Services Program has entered into agreements with more than 60 stakeholders, providing over 368,000 additional processing hours at the request of our stakeholders—accounting for the processing of more than 8 million travelers and over 1.1 million personal and commercial vehicles. In 2017, CBP tentatively selected 64 stakeholders across 54 ports of entry for participation in the RSP (34 air POEs, 4 for air and sea POEs, 1 for land POE, and 15 for sea POE). To date the CBP Donations Acceptance Program (DAP) has approved 17 donation proposals totaling $150 million in planned public and private sector investment in U.S. POEs and important CBP initiatives. Ten of the 17 proposals have been approved since enactment of the Cross-Border Trade Enhancement Act in December 2016, while the others were approved under a predecessor pilot authority provided by Congress. The 10 DAP projects range from infrastructure improvements, partnerships for the provision of biometrics services and data, and donations of luggage for canine training purposes. Partnerships entered into under DAP have and will continue to enhance border security and promote the safe and efficient flow of passenger travel and commercial trade.

CBP continues to see a steady stream of applications for new agreements under this legislation, so while recent results have been very encouraging, continued growth and expanded utilization of this program is expected to allow CBP to approve new and enhanced services, which could not be provided without the Cross-Border Trade Enhancement Act.

Question. Why should staffing at Border Patrol and ICE be increased, but not the Office of Field Operations?

Answer. CBP remains focused on having the right mix of resources at and between our Nation's POEs and continues to address 1,132 CBPO positions vacant as of September 30, 2017.

Updated WSM results submitted to Congress earlier this year continue to show a need for additional OFO capability to fully meet the standards set by statute, regulation, and CBP policies, assuming maintenance of current processes, procedures, technology, and facilities. The most recent results—factoring in the additional 2,000 CBPOs funded by the FY 2014 DHS Appropriations Act—show a need for 2,516 additional CBPOs through FY 2018. Again, the administration did submit the updated WSM and intends to submit proposals for authorizing language that would provide user fee funding to address the gap as we have in past years.

Question. Does President Trump's budget proposal give CBP the resources it needs to achieve operational control of our ports of entry, which he required in his January 25th executive order and defined as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband." [1] If it does not, what additional resources would be required to do so?

Answer. As you know, CBP has the dual mission of preventing suspected terrorists, terrorist weapons, and other contraband from entering the United States, while also facilitating the flow of legitimate trade and travel into and out of the United States. CBP ensures that all persons and cargo enter the United States legally and safely through official checkpoints and POEs. CBP's over 60,000 highly trained employees ensure that the agency performs its mission with vigilance, integrity, and professionalism.

The FY 2018 budget request will enable the Non-Intrusive Inspection Division (NIID) to recapitalize the relocatable VACIS and some mobile NII systems, average age over 10 years with Multi Energy Portals (MEP), at land border crossings and seaports. This recapitalization provides an opportunity to significantly increase NII capacity at POEs. The MEP concept scans the tractor at a lower energy (safe exposure for the driver) and the trailer at higher energy (for the seaport configuration, only the container is scanned). This concept supports a higher throughput by reducing the total time to scan by eliminating the need for the driver to leave the truck. The technical throughput of the system will sustain between 100–125 vehicles per

[1] Executive Order 13767, 82 Fed. Reg 8793 (January 25, 2017).

hour. Since the system works at a higher energy for cargo, it will increase the equivalent steel penetration capability from approximately 2 inches (VACIS) to 11 inches. In addition, the MEP is expected to have a lower sustainment cost because it has fewer mechanical parts and a modular construction. Finally, the concept is designed to free up manpower currently dedicated to NII roles such as ground guides for enforcement operations. The MEP will be "CBP Network ready," which will support transferring image files via the network, either individually or en masse, and will eventually integrate with CBP enforcement systems further increasing efficiency and freeing additional manpower for enforcement operations.

The MEP is the enabling technology that will allow CBP to introduce the Model Port concept, which is being funded by the city of Donna, TX, through the Donation Assistance Program (DAP). Unlike typical cargo POEs the Model Port will not have primary and will allow for the significant increase in the number of containers scanned while at the same time reducing the processing times for trucks crossing the southern border.

The resources requested in the FY 2018 President's Budget Request will allow enhanced security at the ports of entry. CBP maintains a robust process for developing requirements for increased security across a 5-year time horizon to further increase security, within the constraints of available appropriated funding.

Question. How many additional personnel would be required?

Answer. The portion of the FY 2018 President's budget request relating to CBP indicates requests an additional 714 full time equivalent (FTE) employees in FY 2018. This includes personnel for AMO, Office of Intelligence, Office of Professional Responsibility (OPR), USBP, OFO's National Targeting Center, and the Office of Trade. Additionally, the administration submitted the updated 2018 WSM and intends to submit proposals for authorizing language that would provide user fee funding to address the gap as we have in past years.

Question. Is it even possible to achieve full operational control of ports of entry?

Answer. The Office of Field Operations (OFO), within CBP, is relentlessly self-critical in looking for more efficient and effective ways to accomplish our mission at the ports of entry. CBP continues to enhance the security of its processes at ports of entry, beginning at the point of origin for travelers and goods destined for the United States.

It is important to note that most of what OFO does every day is mandated by statute. Every person and good seeking to be admitted into the United States must present themselves to a CBP Officer. Each day, more than 1 million people arrive at 328 U.S. POEs by air, land, and sea where OFO employees prevent the entry of terrorists and instruments of terror, welcome travelers, and facilitate the flow of goods essential to our economy 24/7. An additional $11 billion worth of international trade also crosses our border each day.

CBP Officers at the POEs are the face at the border for all cargo and travelers entering the United States. While serving in this ambassador role to the Nation's trade community and internationally traveling public, over 30,000 CBP Officers, Agriculture Specialists, Trade and Revenue Staff, and Mission Support Staff, support CBP's critical anti-terrorism mission; enforce import and export laws and regulations of the United States; implement immigration policy and programs; and protect the United States from foreign animal and plant pests, diseases, and invasive species that could cause serious damage to U.S. crops, livestock, pets, and the environment.

CBP has considerable risk management capability and physical control of the movement of people and goods seeking to enter our country through lawful ports of entry. If confirmed, I will continue to work with you, your staff, and Congress to outline requirements for further improvement.

Question. Are you concerned that our ports of entry are understaffed? Why or why not?

Answer. CBP is always concerned about having the right mix of resources at and between our Nation's POEs. Sufficient staffing at the POEs continues to be a key element of a prosperous economy and secure border. As one of the questions noted above, I had a leadership role in the development of the CBP WSM, the first rigorous, comprehensive effort to accurately capture our staffing requirements at ports of entry. This work was driven by demonstrated operational need, externally reviewed, and supported by extensive academic research into the economic impact and

benefits of CBP Officer staffing. CBP staffing increases at ports of entry contribute directly and indirectly to the U.S. economy. This report is now provided annually, along with initiatives implemented to enhance our processes, and an assessment of how we can continue to innovate to improve service.

In 2013 and 2014, the extent to which staffing and wait times affect the local and national economy was studied by the National Center for Risk and Economic Analysis of Terrorism Events (CREATE), a DHS Center of Excellence in Research and Education. In 2013, CREATE completed a report titled "The Impact on the U.S. Economy of Changes in Wait Times at Ports of Entry." Their analysis found that an increase or decrease in staffing at the POEs has an impact on wait times and therefore on the U.S. economy. The impacts begin with changes in tourist and business travel expenditures and with changes in freight costs. These changes, in turn, translate into ripple, or multiplier, effects in port regions and the overall U.S. economy. In summary, CREATE found that the impacts on the U.S. economy of adding 33 CBPOs (their baseline) are $65.8 million increase in Gross Domestic Product (GDP), $21.2 million in opportunity cost savings, and 1,094 annual jobs added. While the U.S. Travel Association found every 33 overseas travelers creates one new American job (Travel Means Jobs, 2012), CREATE's findings equate to 33 new American jobs per CBPO added.

Leveraging that analysis, CREATE published an additional report titled "Passport Inspection Wait Time at U.S. International Airports and Its Economic Impacts" in February 2014. The analysis found that average passport inspection wait time at U.S. airports rose by 25 percent from 2010 to 2013, and the amount of time waited by travelers by 45 percent. Given projected increases in passenger volumes through 2018, they estimated that CBP–OFO resources will need to grow by 4 percent per year to stabilize wait times at their current levels. The analysis also found that an increase or decrease in staffing at the airports has an impact on wait times and, therefore, on the U.S. economy. The impacts begin with direct changes in tourist and business travel expenditures of foreign to the United States, as well as some offsetting increased travel by U.S. resident tourist and business travel abroad. These changes, in turn, translate into ripple, or multiplier, effects on the overall U.S. economy. Numerous other studies have been conducted on the economic impact of wait times at the POEs.

In addition, the economic impact of CBP staffing, CBP is committed to ensuring the security of our Nation's borders, while continuing to facilitate legitimate travel and trade. Sufficient staffing resources are a vital component of ensuring that CBP maintains the highest level of vigilance along the borders. This can only be achieved with a specific strategy to maximizing the use of current resources through overtime and optimal scheduling practices; pursue alternative sources of financing through legislative proposals adjusting user fees; and continuing to implement transformative initiatives to reduce costs and mitigate staffing requirements.

As noted above, the most recent results of CBP's Workload Staffing Model for CBPOs and Agricultural Resource Allocation Model—factoring in the additional 2,000 CBPOs funded by the FY 2014 Omnibus—show a need for 2,516 additional CBPOs and 721 CBP Agriculture Specialists through FY 2018. To close the gap for CBPOs, CBP proposed minimal increases for the IUF and COBRA user fees with the submission of the FY 2018 President's budget to Congress which would allow CBP to fund the positions identified in the FY 2017 Resource Optimization Strategy without requiring the use of appropriated funding.

Question. In your position as Acting Commissioner, have ever you raised a concern about staffing levels with former Secretary Kelly or Acting Secretary Duke?

Answer. CBP is grateful for former Secretary Kelly's support and the continued support of Acting Secretary Duke on a variety of issues, not the least of which are CBP's staffing requirements. DHS is well-versed in the staffing needs of CBP, including those embodied in the WSM and other reports. We have discussed our staffing needs with DHS on many occasions and have briefed them on our models. We have also discussed our hiring challenges with DHS and their guidance and partnership in effectuating a resolution to these challenges continues to be critical. We also discuss staffing levels in the context of the annual budget submission and the decisions made within the FY 2018 President's budget request in support of CBP's most critical needs.

Question. If so, what was your concern?

Answer. As noted above, we have consistently engaged with DHS leadership. Within the FY 2018 President's budget request, we have outlined our intentions to

increase the USBP and AMO workforce, the National Targeting Center (which is part of OFO), our trade and revenue staffing, and a number of mission critical support positions. CBP continues to use our workload staffing models and use fee requests to seek balances support of our resource needs.

Question. Given that President Trump's budget proposal includes no additional funding for CBPOs at ports of entry, it's clear that if you have raised staffing concerns, you have been unsuccessful to encourage any addition of staffing at ports of entry. If you are confirmed, how can we expect you to adequately elevate this important issue and advocate for the critical needs at our ports of entry?

Answer. During my tenure as Acting Commissioner, CBP has received consistent support for operational and staffing needs both at and between ports of entry. While the FY 2018 proposal includes initiative hiring requests for Border Patrol Agents and Air and Marine Pilots and Interdiction Agents, as noted above, the administration's submission of the updated 2017 WSM demonstrated an important commitment to the requirements it identified, as did the statement of intent in the President's FY18 budget to submit proposals for authorizing language that would provide user fee funding to address the gap as we have in past years.

As mentioned above, I led the development of the WSM, and remain convinced of its validity and principles, including the economic benefits of adequate CBP staffing at ports of entry. I am a subject matter expert in these issues, have had direct access to and support from leadership at DHS and OMB since I became Acting Commissioner, and, if confirmed, would feel fully empowered to continue to elevate and advocate with regard to CBP Officer staffing.

Question. Senator Roberts and I helped get a bill passed that codified DHS's responsibilities related to securing the food and agriculture sector. CBP Agriculture Specialists play a critical role in helping to secure our food and agriculture sectors.

According to the staffing model for CBP's Office of Field Operations that you were responsible for developing, we have a deficit of more than 600 CBP Agricultural Specialists. If you are confirmed, what will you do to make sure that hiring additional Agriculture Specialists is a priority for CBP?

Answer. If confirmed, recruiting, hiring, and sustaining our front line workforce, including CBP Agriculture Specialists (CBPASs), will remain my top mission support priority. CBP Agriculture operations are largely funded by an Animal and Plant Health Inspection Service (APHIS) Agricultural Quarantine Inspection User Fee (AQIUF). APHIS recently reassessed user fee rates to try and encompass costs associated with Agriculture Quarantine Inspection operations for both APHIS and CBP. In 2015, the new/adjusted fees went into effect, but have not resulted in sufficiently increased collections to allow for additional hiring. To date, APHIS fee allotments from the user fee revenues have not fully covered the cost of CBP agriculture operations at the current staffing level; which is below the AgRAM recommendation. I intend to continue to engage USDA to address this discrepancy, and CBP and APHIS have agreed to revisit AQIUF fee rates in FY 2018.

In the interim, CBP is attempting to optimize operational efficiencies and assess risks to better assign mission priorities. Additionally, the gap in CBP Agriculture Specialist staffing will be partially mitigated through the expansion of agriculture-related Business Transformation Initiatives (BTI) such as mobile technology which has benefitted the trade community while providing savings for CBP.

For example, in FY 2016, CBP conducted an analysis at Port Everglades where mobile tablet technology initially was deployed. The study found that the use of the tablet to conduct agricultural releases of cargo as opposed to the use of a systems release for cargo release creates a 98 percent time savings within the release process. Specifically, the average release time drops from 4 to 6 hours to 5 minutes. According to trade community interviews, the use of the tablet for the 21,000 tailgate inspections last year at Port Everglades resulted in approximately $20 million savings in additional landed costs (reduction of overtime for equipment and local warehouse personnel, late gate fees, truck-related costs, and other non-CBP costs that commonly occur in 20 percent of agriculture shipments). When compared to the initial investment of $226,000, OFO has delivered a significant return for its initial investment at just a single POE and continues to expand these capabilities nationwide.

Question. President Trump's budget proposal does include $110 million for Non-Intrusive Inspection Systems that scan cargo as it passes through ports of entry.

Will President Trump's funding request achieve 100% screening of cargo and passengers at all ports of entry?

Answer. The $110 million for Non-Intrusive Inspection (NII) systems does not allow CBP to *scan* with NII technology, 100 percent of cargo and passengers at all ports of entry for contraband—without impact to trade and travel. CBP does *screen* 100 percent of cargo and examines, through physical search or NII means, 100 percent of cargo that is deemed high-risk. In addition, CBP scans more than 99 percent of the cargo arriving into the United States via seaports, land borders, and mail express facilities for the presence of radiation.

Currently, CBP operates 305 Large Scale NII systems at POE and Border Patrol Checkpoints throughout the United States. Containerized cargo or truck cargo identified as high risk by CBP is x-rayed to determine if further search is necessary. With the current x-ray technology deployed it would be virtually impossible for CBP officers to x-ray all containers prior to their release. The systems are standalone and primarily located in secondary inspection. As currently deployed, conducting 100 percent scanning with NII systems would create substantial cargo release delays throughout the United States.

However, CBP is actively working to assess new technology and concepts of operations to increase the volume scanned. At present, CBP is conducting technology demonstrations on a new Large-Scale drive-through x-ray system(s) to determine the effectiveness of utilizing NII systems in primary inspection to scan a larger portion of vehicles.

The new systems are Drive-Through Multi Energy Portal Systems (MEPS). The key difference with these new systems allows the driver to stay in the vehicle while it is being x-rayed. The cab and driver will pass through the portal which will be x-rayed at a low dose and as the truck proceeds through the portal the truck and cargo will be x-rayed at a higher dose. These systems have passed radiation safety tests and ANSI safety standards. In effect, CBP can increase NII scanning from approximately 15–20 trucks per hour, as we do now, to potentially >50 trucks per hour (based on vendor specifications). In fiscal year 2018, these MEPS will be tested at two ports of entry along the Southern border and at a major east coast seaport. Based on the results, CBP plans to deploy the system(s) at high-volume ports of entry along the Southwest border and major seaports which will allow CBP to scan a higher portion of arrival cargo and personal vehicles arriving at the United States. The $110 million would allow CBP to install this new type of technology at many major ports of entry throughout the United States which will significantly increase the number of inbound containers x-rayed without jeopardizing the facilitation of cargo and vehicles.

Question. What will it take to get to a 100-percent screening standard?

Answer. The Department takes its responsibility to ensure the security of all goods and containers entering the United States very seriously, and is committed to mitigating any threat to our citizens and national interests. DHS remains committed to advancing container security toward compliance with the law. DHS has produced numerous reports and analysis across the last two administrations on what 100 percent scanning, which is currently under Secretarial waiver, would entail. While DHS continues to work on improving scanning technologies at seaports, the Department is expanding its efforts through broader interagency engagement to optimize solutions for securing all goods entering the United States. In so doing, DHS and its partners are considering more holistic approaches to addressing this challenge, that may include changes to policy and risk-based approaches to scanning cargo entering the country, creating a layered security risk based approach.

CBP does currently perform 100 percent screening of passengers and cargo through a variety of systems and processes using a layered risk management approach. Currently, CBP operates 305 Large Scale NII systems at ports of entry and Border Patrol Checkpoints throughout the United States. Containerized cargo or truck cargo identified as high risk by CBP is x-rayed to determine if further search is necessary. With the current x-ray technology deployed it would be virtually impossible for CBP officers to x-ray all containers prior to their release. The systems are standalone and primarily located in secondary inspection. As currently deployed, conducting 100 percent scanning with NII systems would create substantial cargo release delays throughout the United States.

CBP remains committed to maximizing pre-lading examinations of all high-risk cargo and increasing the percentage of containers scanned before they are laden on vessels destined for the United States.

Question. Regarding maritime security, do you plan to implement the 9/11 Act requirement for 100 percent scanning of all cargo container shipments or will you continue to support CBP's current approach of identifying and examining high-risk shipments?

Answer. DHS remains committed to advancing container security toward compliance with the law. To move toward 100 percent scanning of cargo containers, DHS must not only enhance its own programs and layers of defense, but collaboratively build new partnerships with foreign governments and private sector entities. These partnership efforts must address the specific nuclear/radiological threat central to the objectives of the 100 percent scanning requirement by increasing the amount of U.S. bound cargo scanned, improving global scanning capacity overall, reducing the volume of radiological/nuclear materials out of regulatory control, and improving security in other vectors. In addition, we must take a more comprehensive view of the broader risk landscape to identify and build resilience against other threats that could disrupt the entire global supply chain.

Question. Can you give a sense of the scale of how much more traffickers rely on routes that go through ports of entry, than those that cross in more remote border areas?

Answer. Based on intelligence reporting and seizure data, the CBP Office of Intelligence assesses that most hard drugs (cocaine, heroin, methamphetamine, and synthetic opioids) are smuggled through the POEs along the Southwest border (SWB). We believe that the relatively small size and high value of these loads make smuggling through the POEs the most viable means to move these drugs. In the case of marijuana, the bulk nature and relative low value of this drug means that it is predominately smuggled into the United States between the POEs. In the case of fentanyl and other synthetic opioids, these drugs are generally smuggled through the POEs at the land borders in privately-owned vehicles (POVs) and are normally part of poly-drug loads. An increasing number of seizures of hard narcotics and synthetics are being made in the express consignment and international mail environments as well.

We assess with high confidence that when traffickers engage in hard narcotics smuggling via land borders, they rely on routes through the POEs more often than traffickers that utilize remote border areas. The terrain and geography in remote areas often provide operational impediments to the trafficker, and when you pair the terrain obstacle with the fact that narcotics traffickers rely on in many cases physical security scouts and counter intelligence tactics to monitor the movements of narcotics, both factors greatly increase the preference to move narcotics through POEs in a semi-controlled smuggling operation, rather than in between or around a POE.

Question. If we increase enforcement between ports of entry by expanding the Border Patrol, how do you expect transnational criminal organizations (TCOs) will respond?

Answer. By increasing enforcement between the POEs by expanding the U.S. Border Patrol, TCOs will likely shift operations to locations with less Border Patrol presence. Also, TCOs may increase the use of "non-conventional smuggling tactics" such as tunnels, Unmanned Aerial Systems, and semi-submersible vessels. TCOs may also incite violence towards Border Patrol Agents when encountered in an attempt to avoid capture or loss of narcotics load. CBP may also see a change in tactics to increase human smuggling operations at POEs and the recent trend of increased narcotic smuggling between POEs may reverse.

Question. If we increase enforcement between ports of entry by building a border wall, how do you expect TCOs will respond?

Answer. TCOs will likely respond much the same way to the increase enforcement between POEs by building a border wall as they would to an increase of enforcement between the POEs by expanding the Border Patrol. In the past, TCOs have adapted and shifted operations to locations they feel are more vulnerable between the POEs or increase—in volume and sophistication—smuggling attempts at the POEs. Increased enforcement either through a manpower surge or an expansion in infrastructure could lead to a change of tactics, such as more frequent smuggling attempts with smaller loads. An increase in agent assaults as TCOs become more desperate to get their commodities (narcotics or people) across the border successfully is also likely. CBP may also see a change in tactics to increase human smuggling operations at POEs, and the recent trend of increased narcotic smuggling between POEs may reverse.

Question. The President requested $1.6 billion to build 74 miles of border wall and replacement fencing in 2018. At $21.6 million per mile, that's more than triple what it cost to build existing fencing. I understand that the Border Patrol in April compiled a list of operational requirements for the Southwest border.

Will you commit to allowing my staff to review the data related to the Southwest Border Capability Roadmap if you are confirmed as CBP Commissioner?

Answer. Yes, I will commit to allowing your staff to review the data. My team has already taken steps to provide context as well as data. On October 26, 2017, U.S. Border Patrol provided your staff members an extensive briefing regarding the Capability Gap Analysis Process as well as the Capabilities Roadmap. At this time, U.S. Border Patrol walked through some of the data provided by the sectors in support of this process. Due to the amount of data provided, follow up meetings are being scheduled to further walk through the border investment strategy and the data that supports additional infrastructure and technology requests. I am committed to providing Congress the data needed to understand our requirements and the strategy we are employing to meet those requirements.

Question. What data, metrics, and cost-benefit analyses were used to determine that 74 miles of wall and replacement fencing is the best and most cost-effective method for deterring the illegal entry of people, drugs, and contraband into the country?

Answer. The U.S. Border Patrol maintains a Capabilities Gap Analysis Process (CGAP) that begins with input from the sector level, and has identified the necessary capabilities to secure the border. The four key Master Capabilities are: Domain Awareness, Impedance and Denial (I&D), Access and Mobility, and Mission Readiness. The USBP developed a comprehensive, repeatable methodology to help assess its Southwest border Impedance and Denial needs. A key component of this is a decision support tool, developed to help evaluate and prioritize investments. Since implementation of CGAP in 2014, USBP field commanders have consistently identified impedance and denial, domain awareness, access and mobility and mission readiness as priority capability gaps at and along the Southwest border. The analysis is intended to assist USBP in identifying locations along the Southwest border that would benefit from an impedance and denial solution and prioritizing the locations where I&D solutions are needed most. This analysis helped inform the requirements that were advocated for in both the FY 2017 Budget Amendment and the FY 2018 Budget Request.

The 74 miles requested includes 60 miles of border wall requirement in the Rio Grande Valley and 14 miles in San Diego. In the case of RGV, the wall requirement will support continued barrier requirements originating from field commanders of the busiest and most vulnerable areas of the Southwest border. In FY 2016 the Rio Grande Valley Sector had over 186,000 apprehensions and seizures of over 327,000 pounds of narcotics.

The 14 miles of wall in San Diego will replace dilapidated barrier to recapitalize on previous investments and to sustain operational gains that have been achieved in that area. In FY 2016 this portion of barrier had over 800 breeches in the existing infrastructure and no longer met USBP's operational requirements.

The USBP has analyzed statistical information evaluating the impacts of border barrier on border security operations. That analysis shows that past use of barrier has had many positive effects that include increased operational control and improved quality of life, including safety, for border communities. USBP has seen illicit drug and human smuggling activity shift from areas where border walls are deployed to other areas with limited or no border walls.

Securing the border requires an integrated approach including infrastructure such as border wall and road access, surveillance technology, response capability and personnel. The border wall provides an important capability to impede or deny illegal crossings in those areas where it is applied, as demonstrated in San Diego, Tucson, El Paso, and Yuma Sectors, but it is not effective alone, and is not an appropriate solution for every area of the border. Where it is applied, the border wall must be supported by the ability to detect activity through advanced surveillance technology, and the ability to respond effectively with mobile, trained personnel.

Given the dynamic nature of the border environment, all operational analyses must be regularly revisited. USBP will repeat the impedance and denial analysis annually as part of its requirements management process to leverage the latest threat and risk information and inform future budget requests.

Question. Will the Federal Government exercise eminent domain to seize private property in order to build the wall that President Trump has ordered?

Answer. DHS only acquires real property that is necessary to meet DHS mission requirements. The preferred method of obtaining interest in real property is through negotiating an offer to sell based upon the property's fair market value. DHS avoids, with few exceptions, any acquisition of real property through eminent domain. However, in situations where voluntary acquisition is not possible, DHS/CBP may have to consider acquisition through condemnation.

Question. How many private land owners will have their property seized in order to build the wall?

Answer. At this stage, DHS/CBP cannot state with certainty how many landowners will be impacted by new border wall construction requirements. However, as previously noted, the preferred method of obtaining interest in real property is through negotiating an offer to sell based upon the property's fair market value. DHS avoids, with few exceptions, any acquisition of real property through eminent domain.

Question. How many miles of additional border barrier do you intend to build along the Southwest border?

Answer. U.S. Border Patrol has assessed the entire Southwest border to determine requirements for impedance and denial. CBP is currently developing a comprehensive assessment of potential requirements for the border wall as part of the Border Security Improvement Plan required by the FY 2017 Omnibus. Any future construction of barrier will be performed in a manner which is responsive to the operational priorities as identified by Border Patrol leadership.

Question. How long will it take to build the wall?

Answer. The length of time required to build the border wall is predicated on the availability of funding with which to execute construction projects, the total mileage of wall that will be built, and any necessary land acquisition.

Question. How much will it cost?

Answer. At this time, CBP cannot provide a total cost for border wall construction. CBP is currently developing a comprehensive assessment of potential requirements for the border wall as part of the Border Security Improvement Plan required by the FY 2017 Omnibus. That said, the Southwest border is a dynamic environment and each mile of border requires a tailored solution. Costs will vary depending on the type of barrier required by the terrain, traffic, and threats as well as specific construction and land acquisition requirements.

Question. In your view, what are the most effective types of technology that can and should be deployed along the Southwest border in order to increase border security?

Answer. One of the most effective ways we could enhance border security would be by extending broadband wireless capability into more remote areas of the border. One of our challenges is transmitting data we collect from sensors to command centers and to individual agents and officers. In fact, we often must construct substantial communications infrastructure in order to deploy our most capable systems along the border. Providing extensive and secure broadband capability would provide us greater flexibility and enhance the reach of our sensor technologies.

Extending and increasing the capability of our tactical communications network is also important. Our agents and officers need reliable communications for operational efficiency and agent/officer safety.

With respect to sensors, the most effective systems are those that allow us to detect activity and then to characterize it. Typically, radars and cameras are useful in this regard. Long range radars (to detect activity) and cameras that give us high resolution images at a distance (so we can see, for example, whether someone is carrying a weapon or not) tend to be very effective in this regard.

Where radars may not be effective (due to terrain or other obstructions), other types of detection technology are useful. For example, acoustic or seismic sensors can help us detect tunneling and low flying aircraft.

The specific choice of technology in a given area is highly dependent on terrain, geology, and threat. While we can describe generally the types of technology that are effective, the actual deployment approach (for example: mobile, fixed, or reloca-

table; ground-based or air-based) can vary with the specific needs of individual operational environments.

Question. If confirmed, what method will you use to evaluate each technology's effectiveness?

Answer. I will continue to use both quantitative and qualitative measures to evaluate the effectiveness of technology.

When we deploy technology, we establish expectations for its performance based on predictions, analysis, modeling and simulation, and agent/officer feedback. Those expectations set a baseline and we then measure the performance against those expectations.

One element of our evaluation is a formally defined process called "operational test and evaluation (OT&E)." In OT&E, we have our front-line personnel operate the system in the actual operational environment and collect data to determine if the system meets our expectations, and how well it supports our mission performance. Some of the things we measure are very precise technical characteristics—like effective range of radars, sensitivity of x-ray equipment, or accuracy of predictive analytical models, for example. Others are based on feedback from the agents and officers—like ease of use of information of systems and clarity of camera images.

We also evaluate how the deployment of technology changes the level of border security. We can measure things like changes in number of apprehensions, number of incursions detected, and percentage of detected incursion that are interdicted. We also rely on the expert judgment of our front-line officers and agents, who can tell us whether illegal activity has increased or decreased based on their experience and other evidence (like changes in terrain as foot paths are created or become overgrown, amount of trash and other material left behind, results of interviews with those apprehended).

Based on what we learn from this evaluation process, we update our plans, expectations, and requirements for future technologies to ensure we are selecting the most cost-effective tools to support our mission.

Question. GAO concluded in a February 2017 report that CBP has not developed metrics that could be used to systematically evaluate existing border fencing's contributions to border security. GAO recommended that the Chief of the Border Patrol develop appropriate metrics and use them to make resource allocation decisions.

What steps will you take, if confirmed, to comply with GAO's recommendation and to develop performance metrics to evaluate the effectiveness of the physical wall that President Trump has ordered?

Answer. If confirmed, I will work to ensure we have appropriate metrics in place to make effective and appropriate resource allocation decisions. The aforementioned CGAP is intended to identify gaps and other trends between the ports of entry. Once the gaps have been identified, analyzed and prioritized, USBP views these gaps through the lens of available resources including personnel, persistent surveillance, and impedance and denial (*i.e.,* wall)—to address those threats. The time to procure and available funding shape the immediate response, while we address the long-term strategic needs. We already use metrics like the Interdiction Effectiveness Rate[2] and State of the Border risk analysis to guide and shape the balancing of resources to meet the actions of the extremely nimble transnational criminal organizations. "Operational Control" of the border, as directed by both the Secure Fence Act of 2006 (8 U.S.C. 1701) and Executive Order 13767 (section 4),[3] is an additional metric that is used to guide our prioritized investment. When balancing competing interests, DHS and CBP will use these and other specific methodologies to identify and validate border control initiatives and investments.

Among other benefits, physical barriers contribute to USBP increasing certainty of arrest of anyone crossing the border illegally. In defining illegal immigration as the threat for the purposes of this question, we know that the threat migrates, generally seeking the path of least resistance for entering our country illegally. Maintaining a high certainty of arrest between the POEs depends upon USBP's ability

[2] Interdiction Effectiveness Rate (IER) is the percent of detected illegal entrants who were apprehended or turned back after illegally entering the United States between Southwest border ports of entry. IERs are calculated by taking the sum of apprehensions and turnbacks, and dividing by the sum of apprehensions, turnbacks, and gotaways.

[3] The Secure Fence Act and the executive order both define "operational control" as the "prevention of *all* unlawful entries into the United States."

to accomplish mission essential tasks with the USBP having the appropriate capabilities to gain, maintain, and expand operational control of the border. The border wall will provide an important capability to impede or deny illegal crossings in those areas where it is applied, as demonstrated in San Diego, Tucson, El Paso, and Yuma Sectors, but it is not effective alone, and is not an appropriate solution for every area of the border. Where it is applied, the border wall must be supported by the ability to detect activity through advanced surveillance technology, and the ability to respond effectively with mobile, trained personnel.

In this way, the most effective means of achieving operational control of the border does not rely on any single capability, piece of technology, or infrastructure. It is a mixture of all of those things, executed by a properly trained and properly equipped mission ready workforce.

Question. A September 2017 report by the Office of Immigration Statistics estimates successful illegal border entries fell from 1.8 million in 2000 to 170,000 in 2016—a 91-percent decline. The report found that "the Southwest land border is more difficult to illegally cross today than ever before."

What are the main factors, in your view, that are driving the sizable decrease in border apprehensions and estimated illegal entries over the past 17 years?

Answer. The most critical factors driving the sizeable decrease in apprehensions of illegal crossings, and related successful entries between ports of entry, on the Southwest border have been the consistent investment over four administrations to increase the capability of the USBP to secure the border. These investments have been supported by sophisticated strategies and operational innovations. The foundation for the positive trends cited in the question was the forward deployment approach first utilized in 1993. Additionally, beginning in the early 2000s, the steady increases of Border Patrol Agents, tactical infrastructure, access and border roads, vehicles and air assets, situational awareness technology, and geospatial intelligence, increased interdictions at the border, and community and international liaisons have attributed to the decrease leading up to this point. These strategies have assisted the USBP in applying an enhanced deployment posture at the border. These investments have been supported and enhanced by development of a comprehensive consequence delivery system to increase deterrence for those crossing our border illegally. The results have been higher rates of interdiction effectiveness, increased costs for crossing the border illegally, and reduced recidivism. The effectiveness of these efforts depend on CBP's partnership with ICE which has increased its capacity to detain and remove.

Question. Do you believe the southern border wall that President Trump has ordered is necessary given the sharp decline in border apprehensions and estimated illegal entries?

Answer. Securing the border requires an integrated approach including infrastructure such as border wall and road access, surveillance technology, response capability and personnel. The U.S. Border Patrol maintains a Capabilities Gap Analysis Process that begins with input from the sector level, and has identified the necessary capabilities to secure the border. The four key Master Capabilities are: Domain Awareness, Impedance and Denial, Access and Mobility, and Mission Readiness. The border wall provides an important capability to impede or deny illegal crossings in those areas where it is applied, as demonstrated in San Diego, Tucson, El Paso, and Yuma Sectors, but it is not effective alone, and is not an appropriate solution for every area of the border. It is most effective where there are populated areas near the line on the U.S. side of the border, where illegal crossers can vanish within residential and commercial areas.

Where it is applied, the border wall must be supported by the ability to detect activity through advanced surveillance technology, and the ability to respond effectively with mobile, trained personnel. In this way, the most effective means of achieving operational control of the border does not rely on any single capability, piece of technology, or infrastructure. It is a mixture of all of those things, executed by a properly trained and properly equipped mission ready workforce.

Question. Given the Office of Immigrations Statistics' assessment, do you agree with the President's assessment that people are "pouring across the border"?

Answer. The significant improvements recognized in the recent Office of Immigration Statistics report are promising, and reflect the benefits of sustained investment in border security capabilities based on operational requirements, combined with the effective operational strategies applied by the U.S. Border Patrol, along with im-

provements in enforcement policies and consequence delivery. Despite these improvements, we continue to see over 25,000 apprehensions of illegal crossings per month between ports of entry, a number that has been growing monthly, as well as increasing amounts of hard narcotics seizures. These threats—over 830 people a day—include previously deported criminals, hardened smugglers employed by ruthless cartels, and other potential security risks. It remains CBP's responsibility to effectively interdict and deter these crossings, in concert with immigration enforcement partners and supported by appropriations and authorities from Congress as we strive toward operational control, the effective deterrence or interdiction of all illegal crossings.

Question. A report published earlier this year by researchers with the Center for Migration Studies concluded that two-thirds of the undocumented immigrants who arrived in the United States in 2014 did not illegally cross a border. Rather, they were admitted on non-immigrant visas and then overstayed their period of admission or otherwise violated the terms of their visas.

Would the physical wall that President Trump has ordered decrease the number of immigrants who enter the country illegally but then overstay a visa?

Answer. The border wall is a key capability to provide impedance and denial between ports of entry. While it does not directly respond to the challenge of those who enter our country legally on visas or under the visa waiver program and then overstay, it hinders, if not outright impedes an option for illegal entry where applied.

To address the challenge of overstays, if confirmed, I am committed to working with my colleagues in U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services, the Department of State, and across the interagency to continue enhancing our enforcement efforts. Over the last 3 years, CBP has made great strides in the ability to identify overstays by visa category and country of origin, as now reported annually to Congress. CBP has a real-time referral process to ICE for overstays, based on a prioritized framework. We are also making significant strides toward implementation of biometric exit as required by statute. If confirmed, I would continue to direct efforts to pursue implementation of the systems and programs designed to address overstays as required by statute and executive order.

Question. Why or why not?

Answer. As noted above, while the physical border wall is not a capability that directly applies to overstays, they are related. While a border wall is a key security capability, it is not an all-encompassing security solution that should be pursued alone. Instead, securing the border between ports of entry requires an integrated approach including infrastructure such as border wall and road access, surveillance technology, response capability and personnel. As the question suggests, the ports of entry and our immigration benefit programs must also maintain strong security postures and capabilities based on enhanced technology, systems, and interagency processes. Both the Congress and the President have given specific guidance to enhance security at ports of entry, including implementation of biometric exit, and to improve the vetting of foreign nationals seeking to travel to the United States. If confirmed, I would remain committed to pursuing border security through balanced investments, enhanced programs, improved operations, and innovative partnerships at ports of entry as well as between.

Question. If confirmed, what resources do you plan to commit and what initiatives do you plan to undertake to address the issue of visa overstays?

Answer. If confirmed, I would continue to support the expansion of existing efforts, as well as introduction of implementation of enhanced technology, programs, and operations aimed at reducing visa overstays. Today, regardless of whether a visitor is traveling via the visa waiver program (VWP) or under a visa, for almost all visa categories, overstays are automatically identified the day their period of admission expires if there is no indication of the traveler having departed within the time frame established on their admission to the United States. These figures are generated using CBP's Arrival and Departure Information System using travel data from CBP records and commercial carrier manifests. This data is correlated against other DHS systems to eliminate individuals who have received extensions or adjusted status and remain lawfully in the United States. The overstay lists are run through CBP's Automated Targeting System which applies ICE-defined criteria to prioritize the records. This information is then provided daily to ICE for appropriate action.

In addition to providing overstay information to ICE for action, CBP is expanding its review of visa overstays for those cases where the individual has since departed the United States. CBP currently reviews select visa overstays and as appropriate places 3- or 10-year travel bans on their ability to re-enter the U.S. System improvements and capacity enhancements are underway to expand the classes and numbers of visa overstays undergoing this review.

CBP is also taking steps to improve travelers' awareness of their admission status. In May 2017, CBP launched a new online capability for VWP travelers to look up their compliance with their current admission. A simple button on a CBP webpage that says, "How much longer may I remain in the United States?" CBP has started sending email notifications to VWP overstays to advise them they have exceeded their authorized period of admission and their permission to utilize the Visa Waiver Program is no longer valid. This program is being expanded to notify visa holders as well, prior to their term of admission expiring it is nearing their time to depart. Ten days prior to becoming an overstay, if a traveler is still in the United States they will be notified by email and referred to a new online capability for details on their expected departure date. This program is intended to support visa and VWP travelers alike.

Additional initiatives addressing overstays include the sharing of relevant overstay details with systems used by other DHS components, as well as other government agencies such as the Department of State, and used by them in the performance of their respective missions. For example, systems are accessed at consular offices when individuals apply for a visa (or subsequent visas), and lookouts placed within these databases indicate status of current or historical visas as it pertains to the traveler's compliance with the length of time associated with the terms of any previous admissions. Furthermore, select overstay information is made available to requesting Department of State consular offices for all travelers originating from a particular region of interest to individual consular posts."

Further, CBP is working towards full implementation of biometric exit in the air environment within the next 4 years. CBP has deployed biometric exit technical demonstrations at one departure gate to the following airports: Hartsfield-Jackson Atlanta International Airport (Atlanta), Washington Dulles International Airport, Houston George Bush Intercontinental Airport, Chicago O'Hare International Airport, Las Vegas McCarran International Airport, Houston William P. Hobby Airport, and John F. Kennedy International Airport (JFK). Coordination and partnership with CBP stakeholders including airlines and airports is critical to the success of deployment of biometric exit in the air environment.

CBP has also launched a partnership with the Transportation Security Administration at JFK to test facial biometric matching to determine how CBP's facial recognition biometric exit might be leveraged for checkpoint operations. Beginning in early 2018, CBP is working to fully scale out air biometric exit and will spend 2018 working with stakeholders to get commitment to deploy biometric exit technology.

Question. The U.S.-Canadian border stands as the longest undefended border in the world, covering nearly 4,000 miles of land and water.

How do you plan to address the vulnerabilities on the northern border?

Answer. CBP works closely with DHS to help ensure the Department is maximizing the benefits of its coordination efforts with northern border partners through interagency forums, international agreements, and the resource planning process. CBP had representation on the DHS-led northern border security threat assessment integrated product team that is intended to inform subsequent strategy.

Based on the findings of the DHS Northern Border Threat Analysis, former Secretary Kelly recognized the need to update the Northern Border Strategy and directed its revision be complete by January 5, 2018. CBP has continued to work with DHS to inform and develop resource planning and will implement these policies and plans to identify, assess, and integrate available partner resources at the northern border. The updated Strategy should be based on an intelligence-driven threat assessment of the Northern Border (as articulated in the Northern Border Threat Analysis). That analysis points to our need to investigate, interdict, disrupt, and dismantle terrorist, transnational, and other criminal organizations that may utilize the northern border to harm the United States.

Question. How will your approach differ from that used on the Southwest border?

Answer. The revised Northern Border Strategy and its associated implementation plan will serve as key management tools and should recognize the unique nature

and challenges of the northern border, including its diverse geography, remote expanses, high volume of cross-border trade and travel, and our long history of social, cultural, and economic ties with Canada. This context will inform appropriate border security solutions. The Strategy should also support enhanced domain and situational awareness, intelligence, and information sharing. Whether concerning terrorism, drug trafficking, human trafficking, human smuggling, or other illicit transnational threats, information sharing and data integration are critical to our ability to secure the northern border.

Each type of terrain presents its own detection and interdiction challenges, inhibiting the utilization of a single set of security measures along the full length of the border. In order to address the unique northern border terrain, from sparsely populated open plains and rugged mountains, to major metropolitan centers and vast lakes heavily utilized for recreational activities, CBP's approach focuses on:

- Enhance cross-border land, air, and maritime domain awareness and improve intelligence and information sharing. Network current and future persistent wide area surveillance systems with sensors deployed on aircraft, vessels, and the AMOC to ensure they share the same operational picture.
- CBP actively participates in and promotes integrated operations with Canadian, Federal, State, local, and tribal partners resulting in the identification, interdiction, investigation, and disruption of terrorist actions and illicit cross-border activities.
  - Cooperate with Canadian counterparts at the port level, such as the Integrated Border Enforcement Teams (IBET) and the Cross Border Law Enforcement Advisory Committee, which allow flexibility and unity of effort in a resource-constrained environment.
  - Enhance participation on task forces and intelligence groups by maintaining agency participation in the Northern Border Coordination Center, Drug Enforcement Agency Task Forces, IBET, and BEST programs.
- Intelligence, risk assessments, and capability gap assessments assist CBP decision makers in optimizing and appropriately prioritizing the mix of technology, equipment, and personnel utilized at various points along the northern border.
- In order to continue encouraging the use of the northern border as an avenue for efficient and lawful trade, finance, immigration, and travel, CBP continues to promote public and private sector engagement with domestic and international partners and stakeholders.
- Harmonize trade and travel facilitation and security requirements with Canada and pursue solutions for addressing policy differences with impacts on trade and travel security.
- Increase public and private sector participation in trusted traveler and trusted traders programs.

Question. Do you believe that CBP has prioritized adequate resources for the northern border?

Answer. CBP maintains robust capabilities on the Northern Border consistent with the considerable amount of legitimate cross-border trade and travel, and current relative levels of illegal cross border activity, threats, and trends. CBP strives to maximize the benefits of its coordination efforts with northern border partners, in particular the Government of Canada and in particular Canada Border Services Agency (CBSA) through interagency forums, international agreements, and resource planning processes. The revised Northern Border Strategy and its associated implementation plan will serve as key management tools that will allow CBP to align programs, assess capability gaps, and fill those gaps in a responsible, cost-effective manner.

Specific to CBP with respect to trade facilitation, economic growth, and jobs, CBP has worked to achieve increased harmonized benefits to NEXUS members, enhanced facilities to support trusted trader and traveler programs, implementation of additional pre-inspection and pre-clearance initiatives, facilitated cross-border business, the provision of a single window (ACE) through which importers can electronically submit all information to comply with customs and other participating government agency regulations, and coordination of border infrastructure investment and upgraded physical infrastructure at key border crossings, among other initiatives.

Question. In recent years, there has been a migration surge from the Northern Triangle of Central America—El Salvador, Guatemala and Honduras—to the United States, particularly by unaccompanied minors and parents with young children.

What role have violence and economic conditions in the region played in this migration?

Answer. CBP's experience is that both push and pull factors play a role in contributing to migration. While violence and weak economies in the Northern Triangle are among the primary push factors that drive citizens, economic opportunity and inconsistency of application of U.S. immigration law have been significant pull factors. If confirmed, I am committed to working across the interagency to address both the push and pull factors leading to migration from the Northern Triangle.

Question. A few months ago, Senators Tester, Heitkamp, and I wrote you a letter about Border Patrol radio failures. The letter discussed severe shortfalls in secure, reliable communications systems along the southern and northern borders that have been brought to our attention by the National Border Patrol Council and individual Border Patrol agents. We have heard reports that the radios many agents use can't talk with State and local law enforcement, and, in remote areas of the border, the radios often simply don't work. In some cases, agents have had to rely on unencrypted personal cell phones to speak to each other. This is a clear threat to agent safety and border security.

Will you commit to resolving this problem within 90 days of your confirmation?

Answer. If confirmed, I commit to the pursuit and attainment of secure and reliable communications by leveraging traditional land mobile radio and innovative technology such as Long-Term Evolution (LTE). It is important to note, however, that remedying all northern, southern and coastal communications and interoperability with acceptable solutions is not attainable in 90 days. For context, CBP environments and network infrastructure vary across the enterprise. The State and local law enforcement agencies our Sectors/Branches/Field Offices need to interoperate with vary across the Nation. Acquiring the necessary real estate, site surveys, environmental clearances, equipment, and supplies for reliable communications towers and networks can't be done adequately in that time frame in remote and rural areas. That said, I commit to working on all of these concerns through 90 days and beyond until we establish a communications network that our agents and officers can continue to rely on and safely perform their duties during daylight, through the hours of darkness, in urban areas, and through the most remote locations along our borders.

Toward that end, CBP is developing a stop gap measure through the use of alternate technologies such as satellite-based, handheld/mobile units in field locations where no Land Mobile Radio (LMR) and/or cellular coverage exists. CBP actively uses satellite-based handheld radios as a stopgap measure in high mission tempo areas where LMR/LTE capabilities are non-existent. CBP satellite radios are currently supported under a Defense Information Systems Agency (DISA) contract expires FY 2018. DISA contract will have to be renegotiated in FY19. Additionally, CBP is working with the Department of Homeland Security (DHS) to construct future tactical communications architecture to standardize technology, security, and leverage or consolidate infrastructure components. CBP regularly coordinates with other DHS agencies, such as Science and Technology (S&T), for future interoperability and training requirements. CBP TALMEC is actively coordinating with FirstNet to leverage their planned deployment of FirstNet sites in locations were CBP has active communications gaps.

Question. What specifically will you do to resolve this problem?

Answer. CBP continues to work diligently towards mitigating any shortfalls in secure and interoperable radio communications. In September 2016, the former CBP Commissioner, at my recommendation along with the Agency Leadership Council, directed the establishment of the Tactical Air, Land and Marine Enterprise Communications (TALMEC) group to act as the single and authoritative voice for all CBP tactical communications representing its stakeholders which include AMO, OFO, and USBP. As such, CBP is committed to leveraging this group in the pursuit and attainment of secure and reliable communications recognizing there are various coverage and interoperability gaps across the CBP operational environments. USBP leads CBP-wide planning, budgeting, coordination, and oversight for all operational components to harmonize requirements across the tactical communications portfolio to achieve maximum interoperability and functionality in the most cost effective manner possible. The TALMEC mandate is to be prioritized in direct relation to strategic goals, risk, and threat assessments. CBP environments and network infrastructure vary across the enterprise. This includes interoperability with Federal, State, local, and tribal civil (F/S/L/T) authorities as well as cross border commu-

nications with Canada and Mexico. As coverage gaps and/or interoperability gaps are identified, CBP TALMEC will initiate engineering studies and coordinate with other CBP programs and other F/S/L/T agencies to consolidate or leverage existing infrastructure where available. With the recent procurement of dual band and multi-band radios, CBP radios are being distributed certified to operate on State and local law enforcement radio networks strengthening interoperability. The added dual and multi-band frequency allows Sectors/Field Offices/Branches to work with the corresponding State and local law enforcement entities on agreements to leverage a State or local radio network to further mitigate CBPs LMR coverage gaps. Additionally, efforts to expand coverage and mitigate existing communications gaps along the northern and southern border are underway in Laredo, TX, Ajo, AZ, Alamogordo, NM, Indio, CA, Malta, MT, Havre, MT, Plentywood, MT and West Palm Beach, FL.

Question. President Trump has stated that "there's no better place for solar than the Mexico border—the southern border. And there is a very good chance we can do a solar wall, which would actually look good. But there is a very good chance we could do a solar wall. . . . We are seriously looking at a solar wall."

Does the administration currently have plans to build a solar wall?

Answer. CBP is moving forward as appropriate in the President's executive order to "construct a physical wall" where appropriate to enhance security along the U.S. border with Mexico. The border wall system designs standards are developed for specific segments of border on the basis of operational requirements and operational and engineering feasibility. To date, CBP does not have a design standard that incorporates solar panels, although it remains an option for future specifications, including to power integrated surveillance technology.

Question. If so, please describe the current status of that project.

Answer. As noted above, to date, CBP does not have a design standard that incorporates solar panels.

Question. President Trump has repeatedly stated that Mexico will pay for the border wall. On June 16, 2015, the day he launched his presidential campaign, Donald Trump declared, "I will build a great, great wall on our southern border, and I will make Mexico pay for that wall. Mark my words." He repeated the claim—and made similar statements—again and again throughout his campaign. During his campaign, Trump engaged in call-and-response chants with his supporters. "Who's going to pay for the wall?" he asked. "Mexico!" they yelled. "Who's going to pay for the wall?" "Mexico!"

To date, has the Government of Mexico provided the United States Government with any payments to build the proposed southern border wall?

Answer. I am not aware of any payments provided by the Government of Mexico in support of the proposed border wall along the southern border.

Question. If so, please indicate how much the Mexican Government has paid.

Answer. I am not aware of any payments provided by the Government of Mexico in support of the proposed border wall along the southern border.

Question. Has the Mexican Government indicated that it will provide the United States Government with any payments to build to proposed southern border wall?

Answer. I am not aware of any payments that the Government of Mexico has agreed to make to construct the proposed southern border wall.

Question. If so, please indicate when the Mexican Government will provide such payments.

Answer. I am not aware of any payments that the Government of Mexico has agreed to make to construct the proposed southern border wall.

Question. Specifications for the wall President Trump has ordered have varied over the course of his campaign and since he was elected. In 2015, he suggested the wall would span almost the entire length of the nearly 2,000-mile Southwest border. He later refined that suggestion, stating that a wall from 700 to 900 miles would be sufficient. More than half of the U.S.-Mexico border features natural barriers, such as mountains and the Colorado and Rio Grande rivers. President Trump has said the wall will be built from precast concrete and steel. In February 2016, he said the wall will stand 35 to 40 feet tall. At another point in the campaign, he said it could reach 50 feet. Asked at the final Republican presidential debate about

former Mexican President Vicente Fox's denouncement of the wall, Trump said, "The wall just got 10 feet taller." According to one report, the wall could reach as high as 80 feet.

Do you support building a wall 50 feet high?

Answer. To explore additional design options for the border wall, CBP issued two Requests for Proposals to Industry, one for concrete wall solutions and a second for alternative materials. Prototypes construction will inform expansion of the border wall tool kit and may influence designs for future deployment.

The prototypes were recently completed and testing and evaluation will begin in late November 2017. The results of the test and evaluation will be used to determine if any prototype design or attributes of any design merit inclusion in the border wall tool kit for possible future construction. CBP will be testing a variety of factors. The two most significant for USBP are how easy it is to climb and how readily it can be breeched using hand held power tools.

Depending on the environment, in CBP's experience, walls of varying heights can be effective. We currently have infrastructure deployed at varying heights up to 18 feet.

Question. Do you support building a wall along the entire southern border?

Answer. As both the President and then-Secretary Kelly have stated, the administration does not envision a wall across the entirety of the U.S. southern border. CBP is currently developing a comprehensive assessment of potential requirements for border wall as part of the Border Security Improvement Plan required by the FY17 appropriations bill. This plan will include requirements developed by USBP for prioritized impedance and denial capability deployment that will provide the greatest benefits to border and national security. That said, the Southwest border is a dynamic environment and each segment of border requires a tailored solution.

Question. President Trump stated that his administration has stopped illegal border crossings by at least 78%.

What percentage of illegal border crossings have stopped under his administration?

Answer. While CBP is still finalizing FY 2017 year-end numbers for apprehensions and interdiction effectiveness rates, it looks like apprehensions and illegal crossings will be at their lowest levels in 45 years. The first 4 months of the President's term saw a drop of 51 percent in apprehensions.

Question. While Acting Commissioner, did you ever inform the President, the DHS Secretary, or the Acting Secretary that a public statement that the President made was inaccurate?

Answer. I do not believe I have informed the President, the former DHS Secretary, or the current Acting Secretary of any public statements from the President that I believed were inaccurate.

Question. In March 2016, the CBP Integrity Advisory Panel (IAP), a panel established by the Homeland Security Advisory Council (HSAC) and composed by a group of law enforcement experts, presented a report to the HSAC, which was adopted unanimously. In this report, the IAP identified that the rapid growth of CBP without commensurate focus on accountability and disciplinary mechanisms has led to serious criminal and disciplinary problems within the agency and that CBP, the largest law-enforcement agency in the Nation, is "vulnerable to a corruption scandal that could potentially threaten the security of our Nation" and that "[t]he CBP discipline system is broken."

How do you plan to address integrity concerns and strengthen accountability and transparency at CBP?

Answer. CBP learned important lessons from previous times of growth and much has improved in the past decade. CBP recognizes that we must work to identify and mitigate integrity concerns throughout the lifecycle of an employee not just at any one point—during the hiring process, continuously throughout employment to ensure continued suitability/eligibility, and with precision to investigate allegations of misconduct or corruption. Building on this, CBP must hold employees accountable and be transparent with the public when lapses occur.

CBP has worked internally to increase communication throughout all areas of the hiring process (recruiting, testing, security, on-boarding, etc.). CBP has added addi-

tional security items to the process (new automated vetting system, polygraph examination, etc.) and leveraging technology has allowed for greater information sharing across the government during the background investigation process. CBP continues to conduct pre-employment polygraph examinations and background investigations to applicants for law enforcement positions. Effective July 1, 2017, OPR implemented the National Security Adjudicative Guidelines on the adjudication of all initial background investigations for CBP applicants, appointees, and contractors and periodic reinvestigations of current employees in National Security designated positions and/or requiring access to classified information. The updated guidelines establish a single common set of adjudicative criteria for all positions which require an initial or continued eligibility to classified information (security clearance) or eligibility to hold a sensitive position. Application of these factors will facilitate a more thorough assessment of an individual's reliability, trustworthiness, and loyalty to the United States, particularly as it applies to national security. This implementation will impact all applicants and appointees to sensitive positions within CBP, as well as all current employees encumbering sensitive employees, regardless of whether the position requires access to classified information. Employees in these positions must maintain eligibility for a sensitive position as a condition of employment. This includes all CBP law enforcement positions and any other position designated as sensitive (*e.g.,* Non-Critical Sensitive, Critical-Sensitive, and Special-Sensitive). Additionally, employees in sensitive positions will be subject to continuous evaluation (CE). CE utilizes a set of automated records checks and business rules to assist in the ongoing assessment of an individual's continued eligibility.

OPR and component offices regularly provide integrity awareness training at briefings and in musters in Washington, DC, in the field, at managerial training, and new employee orientation. In these sessions, the Standards of Conduct are reviewed and employees are reminded of their responsibility to report misconduct. Leadership sessions focus on how CBP supervisors and managers must set the expectations for conduct and hold employees accountable for violations. From a proactive standpoint, OPR continues to study known cases of corruption and analyzes trends in off-duty misconduct to inform detection of potential misconduct and corruption and to develop lessons learned for integrity musters and messaging. OPR raises awareness of corruption through its *Trust Betrayed* web page featuring instances in which employees were convicted of engaging in criminal activity that involved the misuse of official position. In these postings, OPR describes the activity and the consequences as a means to deter future cases and let employees know that such actions will not be tolerated.

As a result of interactions with the IAP and in response to its recommendations, CBP has made many improvements to the complaints and discipline process, increased transparency for use of force incidents, and is expanding the cadre of criminal investigators. CBP has integrated Spanish language capability in the Call Center and has implemented the Complaint Management System in the field to better address complaints from the public. Internally, CBP is working to revise its Table of Penalties and Offenses and is also reexamining the discipline review process to improve accountability across the agency. With respect to increasing transparency, CBP has developed a robust program to review use of force incidents and has implemented communication protocols when incidents occur and is on track to publish its first annual report on OPR activities and key statistics on misconduct and corruption. CBP continues to hire additional criminal investigators, has developed new specialty operational units, and is working to enhance its case management system.

QUESTIONS SUBMITTED BY HON. THOMAS R. CARPER

Question. Last spring, the CBP Integrity Advisory Panel found that the agency needs to improve accountability among its law enforcement workforce. President Trump issued a directive earlier this year directing to rapidly increase the number of Border Patrol agents by 5,000 agents, or roughly one quarter. Currently, CBP is unable to hire even the statutory floor of 21,370 agents. Rapid hiring as directed by the President will likely worsen the agency's accountability problem, particularly if hiring standards are lowered in order to achieve increases. If confirmed, will you work to implement the recommendations made by the Integrity Panel, including incorporating additional random polygraph examinations for current Border Patrol agents?

Answer. CBP requested the Integrity Advisory Panel review and worked closely with the Homeland Security Advisory Council to ensure a robust assessment by a

distinguished panel. CBP has aggressively pursued implementation of the Panel's thoughtful recommendations and to date has completed actions to address 42 out of 53 recommendations provided, including those targeted to augment staffing, update policies, enhance training, and increase transparency. Six recommendations remain in progress, while CBP is not currently pursuing the remaining five.

With regard to ensuring integrity for in-service personnel, CBP agents and officers undergo a 5-year periodic reinvestigation at the Tier 5 level. CBP is also working to implement a robust Continuous Evaluation (CE) program which will be anchored by automated vetting checks for criminal activity, financial information, and other pertinent information. CBP has not ruled out the prospect of reconsidering implementation of post-employment polygraph testing of incumbent law enforcement personnel in the future.

Question. If not, what other or additional accountability and integrity measures do you intend to implement?

Answer. CBP's approach to promoting workforce integrity is predicated on rigorous pre-employment screening of job applicants to weed out unsuitable candidates, increased emphasis on integrity awareness training, proactive anticorruption detection measures, and timely and thorough investigations of criminal and serious misconduct allegations. CBP takes all allegations of employee misconduct seriously. Under a uniform system, all allegations of misconduct are recorded in a secure, centralized database. All allegations are then immediately referred to the DHS Office of Inspector General for an investigative determination. Under DHS policy, the OIG maintains the "right of first refusal" on all allegations involving DHS employees. Allegations declined for investigation by the OIG are then returned to CBP OPR for appropriate handling.

The Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. No. 114–125) authorized CBP OPR to investigate criminal and administrative matters and misconduct by CBP employees OPR investigators average over 20 years of criminal investigative experience and are equipped with a full complement of investigative tools, including the latest in forensic and cyber technology. OPR also utilizes the intelligence-gathering and manpower resources of the FBI through its membership in 20 of the FBI's 22 Border Corruption Task Forces and maintains strong, collaborative working relationships with the DEA, ICE HSI, and other Federal and local authorities. OPR also leverages its vast array of data collection resources by deploying full-time analysts to proactively identify suspicious or anomalous activity that could be indicative of corruption or serious misconduct. After OPR completes its criminal or administrative investigation, the Office of Human Resources Management and the Office of Chief Counsel work collaboratively with OPR and management to propose and impose discipline when appropriate. OPR continues to study known cases of corruption to inform proactive detection of potential misconduct and corruption.

CBP is also working to implement a robust Continuous Evaluation (CE) program which will be anchored by automated vetting checks for criminal activity, financial information, and other pertinent information.

Based on the CBP Integrity Advisory Panel (IAP) recommendations of the agency's complaints and discipline process CBP has made many improvements to the process. For instance, we have increased transparency for use of force incidents, are moving forward with hiring additional criminal investigators, making technical improvements to its case management system, reissued the directive on reporting misconduct, and HRM is revising the *Table of Penalties and Offenses* and the discipline review process.

In February 2015, CBP established a Use of Force Incident Team (UFIT) program and a Use of Force Review Board (UFRB) process in an effort to increase transparency and accountability. The UFIT and UFRB is a CBP-wide response plan to investigate, monitor, report, evaluate, and review use of force incidents involving CBP officers and agents. With regards to use of force incidents, the UFIT investigation results can provide recommendations concerning tactics, training, equipment, and/or safety issues. The investigations can also identify potential misconduct and administrative violations that may result in disciplinary or other corrective actions taken against employees.

In 2015, in order to address the misconduct associated with domestic violence or alcohol related driving offenses (DUI) promptly and consistently, USBP consulted with the Offices of Internal Affairs, Chief Counsel, Human Resources Management, as well as gained the perspectives of District Attorneys in California, Arizona, and

Texas in order to standardize administrative consequences for the entire USBP. The Standardized Post-Employee Arrest Requirements (SPEAR) outlines a standardized process for identifying and taking appropriate administrative action following the arrest of a USBP employee for domestic violence or DUI. It is designed to ensure consistent management action post-arrest. Through the application of SPEAR and consistent messaging through video and slides on the Information Display System about the program, alcohol related driving offenses have decreased 14 percent from FY 2016 to FY 2017. As with arrests of all CBP employees, arrests involving USBP employees decreased in FY 2017. With 110 reported arrests, USBP decreased 19 percent overall and 8 percent in Domestic/Family Misconduct arrests. USBP continues to implement its SPEAR program and actively runs musters regarding drug and alcohol related misconduct.

Question. CBP officers at our ports of entry facilitate the movement of legitimate trade to the tune of several trillion dollars, and millions of travelers, across our borders each year. They also provide front-line defense against the opioid epidemic that has devastated many in this country, by detecting and interdicting dangerous and illegal drugs coming across our border. You were instrumental in developing a workload staffing model to predict staffing and resource needs within CBP. Has a new staffing plan been created since that time that indicates a need for 5,000 additional Border Patrol agents?

Answer. USBP continues to refine its staffing methodology to determine its requirements to conduct border enforcement operations. USBP is currently working on the Personnel Requirements Determination (PRD). This decision tool will support a staffing model with expert field input and a combination of existing data and field input. Absent this decision tool and corresponding staffing model, USBP utilized existing apprehension data and effectiveness ratios, as well as hours spent patrolling the U.S. border. This information, combined with decision-maker judgement and experience, allows for both quantitative and qualitative analysis to ultimately inform the proposed increase for additional personnel. The PRD will answer: (1) what conditions and workload are significantly related to current staffing levels; (2) what do SMEs say are the current, minimal, optimal, and operational control levels for staffing and what evidence exists to support these estimates; (3) what would be the optimal distribution of additional BPAs across sectors and stations based on operational conditions; and (4) as conditions and workload change, what are the effects on staffing requirements by sector, station, and zone.

Question. Is there a timeline to complete a new staffing plan?

Answer. To determine a comprehensive staffing plan we first must understand the requirements of our leaders in the field. As we collect data for use in our decision support tool known as the Personnel Requirements Documentation we are also developing a scalable organizational structure that allows staffing based on available resources. The decision support tool will reach "BETA" testing in July 2018 and is scheduled to be completed on or before September 2019.

Question. If so, would you commit to providing the results of that model to Congress?

Answer. Yes, I would provide the results of that model to Congress.

Question. If confirmed, do you intend to work to ensure that staffing and resource allocation decisions at CBP are based on risk, threat, and need?

Answer. Yes. If confirmed, I will work to ensure that threat, risk, and need are primary considerations in staffing and resource decisions at CBP. As we continue to address the ever-changing threats along the borders, I will ensure the resources allocations are based on a bona fide operational need to uphold the laws of this Nation and protect the United States and the American people.

Question. How does the current staffing model account for trends in apprehensions at the border?

Answer. The current staffing model, as well as the future Personnel Requirements Determination, relies on apprehension and other border census data as a key staffing requirement driver. The number of apprehensions is a first order measure that drives several workload variables, to include processing, temporary holding, and transportation requirements. Data on traffic levels and trends, is combined with a sector by sector capabilities gap analysis that takes into account the number of Agents needed to secure areas within a particular area of responsibility. These totals can include the number of Agents required to mitigate cross-border risks, such as: (1) agents forward-deployed immediately at the border; (2) agents to process and

care for those arrested; and (3) agents who are responding to illicit cross-border traffic identified by technology such as long-range cameras, mobile scopes, and aerostats, to name a few. As additional technology is deployed with the appropriate impedance and denial infrastructure, field leadership continues to evaluate the staffing needs based on the operational dynamics, threat, and risk.

Question. The Justice Department's Office of Legal Counsel has published an internal memo stating that the executive branch has no obligation to respond to requests for information from individual members of Congress, including ranking members of committees. This represents an effort to stonewall minority and other members of Congress as we perform oversight of Federal agencies. If confirmed, one of your central tasks will include facilitating responses to congressional requests for information. Do you commit to fully respond to requests for information from members of congressional oversight committees, regardless of party?

Answer. Congressional committees play an important role in the oversight of Federal agency programs. I have a strong record of working with members of Congress in a bipartisan, bicameral nature to facilitate this important function. If confirmed, I will work with members of committees to provide appropriate information, regardless of party.

Question. Do you commit to providing prompt and meaningful responses to congressional inquiries from any member of Congress?

Answer. CBP will make every effort to be responsive to congressional inquiries in a timely manner.

Question. The administration again in late September issued an Executive Proclamation implementing a travel ban affecting eight countries, six of which are Muslim-majority. According to the administration, this proclamation is based on findings from a "worldwide review" of foreign countries' security, information sharing, and other practices conducted by the Secretary of Homeland Security. Parts of this report were shared with foreign governments. However, administration officials have informed congressional staff that the DHS products cited in the proclamation, and used to inform and develop the travel ban, will not be provided to Congress. Federal courts have now blocked implementation of three separate versions of this ban, and it is clearly appropriate that members of Congress have a chance to review these documents in order to determine whether there is a threat basis for these travel bans. Please describe what role, if any, CBP played in the worldwide review and in development of the proclamation, directly or indirectly.

Answer. CBP provided limited support, as requested, to the DHS Office of Strategy, Policy, and Plans who has the lead for the Section 2 Report and related efforts (which is cited in the question as "worldwide review"), providing comments and information such as basic statistical data, which may have been used in the worldwide review. CBP provided pre-decisional, deliberative comments on the review and its findings in the clearance process. Questions related to section 2 and the worldwide analysis should be directed to the DHS Office of Strategy, Policy, and Plans.

Question. Will you commit to provide any documents CBP developed as part of the travel ban review to Congress, within reason, and in a classified setting as appropriate?

Answer. I would defer to DHS who maintained lead for this assessment.

Question. In January, former Secretary of Homeland Security General John F. Kelly stated before the Senate Homeland Security and Governmental Affairs Committee that border security starts 1,500 miles to the south, including in Central America—and that we must work with our partners there to address some of the "push" factors that lead people there to undertake the dangerous journey to our southern border. The President's FY18 budget request included only $460 million to address the root causes of migration from Central America, a nearly 30 percent cut from the amount provided last year. Both the House and the Senate appropriations committees have largely restored last year's funding in their fiscal year 2018 marks. Please describe your views on the importance of working to address the root causes of migration from Central America as part of a complete border security strategy.

Answer. The "push" factors that drive migration from Central America to our southern border include security and economic factors, both of which CBP can play a role in addressing.

Regarding security, CBP efforts in the region focus on enhancing U.S. and local law enforcement abilities to disrupt and interdict human trafficking and contraband smuggling. Through partnerships with the Department of State and local agencies, CBP pursues these initiatives through vetted local law enforcement units, Mobile Interdiction Teams (MIT), and by providing advisory guidance, training, and best practices to law enforcement personnel. The overarching goal is two-fold: (1) improving the security situation in the region to reduce threats to citizens and create a more conducive environment for economic growth; and (2) increasing awareness and information about migration and smuggling activities in the region that may affect the United States.

In terms of economic conditions in the region, wait times for customs clearance can be long, duties and fees applied can be perceived as arbitrary, risk management and targeting systems are outdated or non-existent, and communication between agencies at POEs is often lackluster—creating an inefficient environment for international trade and reduced customs revenues for these countries. CBP aims to work with Central American governments to address these issues as an important step to encourage investment, trade, and economic growth. CBP is working with U.S. and Central American partners to share best practices to increase efficiency, predictability, and transparency for trade at POEs in Central America.

Question. Do you believe that funding to support the Alliance for Prosperity is important to securing our southern border?

Answer. Yes, supporting the efforts of the Northern Triangle governments to enhance their economic and security environment will serve to address the push factors that drive migration, smuggling, and illicit trade from the region to the United States. The Alliance for Prosperity also shows a commitment by the Northern Triangle countries themselves to address economic and security challenges in the region. At the same time, we need to be addressing the pull factors with consistent messaging and enforcement efforts.

Question. President Trump has issued an executive order calling for the construction of a wall along the entire border between the United States and Mexico. Every estimate agrees that such an undertaking would cost several billion dollars. Additional wall construction could sever wildlife habitat and irreparably damage numerous national parks, wildlife refuges, forests and wilderness areas that are found along our border. The U.S. Fish and Wildlife Service estimates that at least 89 threatened and endangered species and 108 species of migratory birds could be affected by additional border wall construction and accompanying activities, including some of the most endangered creatures in the world such as the jaguar and ocelot. Wall construction could also have severe negative consequences for important regional ecotourism economies. For example, a wall through the Santa Ana National Wildlife Refuge, which is a premier destination for birders, would cut the Refuge off from its visitor center. Should wall construction move forward, what will you do to minimize and mitigate damage to wildlife and related ecotourism economies?

Answer. CBP is committed to environmental and cultural stewardship while performing our core missions of border security and the facilitation of legitimate trade and travel. Additionally, CBP works diligently to integrate responsible environmental practices—including incorporating sustainable practices—into all aspects of our decision-making and operations.

For border infrastructure projects, CBP's commitment to environmental stewardship manifests in a number of different ways. Prior to any construction, CBP conducts natural and cultural resource surveys and assesses potential impacts. As part of this assessment of potential impacts, CBP regularly consults with other Federal, Tribal, State, and local agencies, as well as non-governmental organizations (NGOs) to ensure protection of the Nation's natural and cultural resources.

Further, CBP through its own experience and in working with resource agencies and other stakeholders, has developed a number of environmental best management practices which are implemented during project design and construction to reduce potential impacts. These best managements practices, which are designed help CBP minimize or avoid potential impacts, have been incorporated into contracts for current border infrastructure and CBP intends to include them in future wall construction plans. And, where potential impacts cannot be minimized or avoided, CBP, where practicable, plans and implements mitigation measures to offset impacts.

CBP has always regarded environmental stewardship as one of its top concerns not only during construction projects but also during our day-to-day operations. Our agents and officers frequently work out in the environment and understand the im-

portance of protecting the environment while protecting the border. CBP will strive to eliminate or minimize impacts to the environment as a result of the implementation of border wall construction.

Question. Is CBP currently conducting preparation or construction activities for wall or physical barrier construction in the Santa Ana National Wildlife Refuge?

Answer. In the FY 2018 budget request, CBP identified 60 miles of border barrier systems in the Rio Grande Valley (RGV) region of Texas, to include the area near the northern boundary of the Santa Ana National Wildlife Refuge (NWR), as an operational requirement (approximately 3 miles). Planning activities for those locations are underway and are funded by CBP's FY 2017 reprogramming. These activities include geotechnical analysis (completed), border/levee wall system design, and preliminary title research. These planning activities are not limited to the operational requirements near the northern boundary of the NWR. CBP is also conducting these activities for the additional miles in RGV.

Question. Please describe what activities are underway, and the authority under which those activities are taking place.

Answer. Planning activities for those locations are underway and are funded by CBP's FY 2017 reprogramming. These activities include geotechnical analysis (completed), border/levee wall system design, and preliminary title research. These planning activities are not limited to the operational requirements near the northern boundary of the NWR. CBP is also conducting these activities for the additional miles in RGV.

Question. Please provide an update regarding a cost assessment for border wall construction.

Answer. At this time, CBP cannot provide a total cost assessment for border wall construction. CBP is currently developing a comprehensive assessment of potential requirements for the border wall as part of the Border Security Improvement Plan required by the FY 2017 Omnibus. That said, the Southwest border is a dynamic environment and each mile of border requires a tailored solution. Costs will vary depending on the type of barrier required by the terrain, traffic, and threats, as well as specific construction and land acquisition requirements.

Question. Has the cost assessment been completed?

Answer. At this time, CBP cannot provide a total cost assessment for border wall construction. CBP is currently developing a comprehensive assessment of potential requirements for the border wall as part of the Border Security Improvement Plan required by the FY 2017 Omnibus.

Question. Press reports indicate that Border Patrol agents took a 10 year old little girl with cerebral palsy into physical custody after an emergency surgery on Tuesday, October 24th. Press reports indicate that the Border Patrol agents waited at the hospital to assume custody of the child after her emergency surgery despite the fact that her biological parents are in the United States, appear to be ready and willing to assume custody, and have not had their parental rights terminated. The United States Supreme Court has consistently held that the relationship between the parent and child is constitutionally protected.

Do you believe that immigrants, with or without legal status, have a constitutional right to their child? If no, please state your legal reasoning.

Answer. Many press reports on this matter have been inaccurate. On October 24, 2017, shortly after 3:00 a.m. Rosa Maria Hernandez (a juvenile) and her adult cousin, Aurora Cantu, were encountered as passengers riding from Laredo, TX to Driscoll Children's Hospital in Corpus Christi, TX via a contracted private medical transport vehicle (4-door sedan) for a scheduled gallbladder surgery. The vehicle was not an ambulance. All vehicles traveling northbound on Highway 59 are required to stop at the Border Patrol checkpoint for an immigration inspection of all occupants. An immigration inspection on the vehicle revealed the juvenile was illegally in the United States. The two other occupants were determined to be USCs. Agents subsequently determined that Rosa was an "unaccompanied alien child" (UAC), since she was not with a parent or legal guardian. Upon this determination, Border Patrol agents followed the law as well as all UAC established guidelines and policies in escorting the juvenile to receive her medical care and then proper placement with U.S. Department of Health and Human Services (HHS).

CBP takes its responsibility to protect children and ensure that they are not trafficked very seriously. The government has a robust system in place that balances

the needs to protect children with the important interest of maintaining family unity. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) provides certain protections for children who, like this one, are encountered by CBP and do not have lawful status. This child was not accompanied by her parents or a legal guardian when she was encountered, nor did they arrive to take custody of the child. Accordingly, consistent with law and policy, Border Patrol transferred her to the HHS Office of Refugee Resettlement for proper care and placement.

Question. Cite which specific statute permits CBP to assume custody of a child when the child's parents are ready, willing, and able to assume physical custody of the child?

Answer. Rosa Maria's parents were not present or able to assume custody after surgery. As the 10-year-old was not accompanied by a parent or legal guardian, and was not legally in the United States, CBP is required by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, to take the unaccompanied child (UAC) into custody.

Border Patrol agents allowed Rosa Maria to continue to the hospital so that she could receive her scheduled medical care. The agents remained with the unaccompanied child as she was in their custody and protection, and in the absence of a legal guardian, until such time as she could be transferred to the U.S. Department of Health and Human Services (HHS) Office of Refugees and Resettlement (ORR). This period of time presented an additional opportunity for a parent or legal guardian to come forward to take custody of Rosa Maria; however, during the entire time Rosa Maria was at the hospital, no parent or guardian contacted Border Patrol or came to the hospital in a manner that would make him or her "available to provide care and physical custody" of Rosa Maria. In this circumstance, Border Patrol had no choice but to continue to designate Rosa Maria as a UAC.

The TVPRA requires CBP to transfer all UAC to the custody of HHS–ORR. The TVPRA leaves no discretion for any Federal agency to decline to turn over a UAC in its custody to ORR, or to otherwise transfer custody of that UAC to any individual or entity other than ORR. Thus, once CBP determined that Rosa Maria's parents were not present and would not appear to take custody of her, and therefore that she was a UAC, CBP was obligated by law to transfer her into the custody of ORR.

Question. Provide the legal rationale for how this case complies with the Flores Agreement which favors release of the child and especially to the natural parents?

Answer. CBP takes its obligations to comply with the Flores Settlement Agreement seriously. However, in the present case the TVPRA's requirement that a child may only be released by CBP to her parent or legal guardians governs.

As mentioned above, Rosa Maria's parents were not present or able to assume custody at the checkpoint or during Rosa Maria's scheduled medical care at the hospital. As such, Rosa Maria was designated a UAC. CBP was required by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, to take the unaccompanied child into custody until such time as she could be transferred to the Health and Human Services Office of Refugees and Resettlement.

Question. The Sensitive Locations policy as currently written on the DHS website, indicates that staff must acquire approval prior to carrying out an enforcement action at a sensitive location.

Did Border Patrol agents obtain permission to conduct enforcement actions with the 10 year old girl who has cerebral policy at the hospital after her emergency surgery?

Answer. Enforcement actions were not conducted at a sensitive location, which in this case was Driscoll Children's Hospital. The unaccompanied child was encountered and taken into custody at an immigration checkpoint—a CBP operational location—and was already in Border Patrol custody when she was escorted to the hospital so that she could receive her scheduled medical care. Because no parent or guardian of Rosa Maria was present at either the checkpoint or hospital, and no parent or guardian of Rosa Maria contacted Border Patrol during this time, CBP reasonably determined that Rosa Maria was a UAC at the time she was encountered at the checkpoint and remained a UAC while in Border Patrol custody at the hospital. As such, CBP was obligated by law to place Rosa Maria into the care of the U.S. Department of Health and Human Services Office of Refugee Resettlement after her medical procedure.

Question. Do you believe that the detention and arrest of a 10 year old child with cerebral palsy at a hospital complies with the policy concerning sensitive locations? If yes, provide a detailed description of your reasoning.

Answer. CBP routinely transports persons in its care or custody, including thousands of persons a year rescued from the elements or smugglers, for medical evaluation and care at hospitals and other medical facilities. These efforts to protect the health and safety of the individuals transported to the hospital in CBP custody do not implicate the sensitive locations policy in any way.

Again, enforcement actions were not conducted at a sensitive location, which in this case was Driscoll Children's Hospital. The unaccompanied child was encountered and taken into custody at an immigration checkpoint—a CBP operational location—and was already in Border Patrol custody when she was escorted to the hospital so that she could receive her scheduled medical care. Because no parent or guardian of Rosa Maria was present at either the checkpoint or hospital, and no parent or guardian of Rosa Maria contacted Border Patrol during this time, CBP reasonably determined that Rosa Maria was a UAC at the time she was encountered at the checkpoint and remained a UAC while in Border Patrol custody at the hospital. As such, CBP was obligated by law to place Rosa Maria into the care of the U.S. Department of Health and Human Services Office of Refugee Resettlement after her medical procedure.

Question. In January, the President issued an executive order mandating that CBP hire 5,000 additional Border Patrol agents, about a 25% increase over the current force, citing a need for additional agents. CBP is currently unable to hire to, or retain, its statutorily required number of 21,370 Border Patrol agents.

Given the use of current CBP agents to apprehend a minor following emergency surgery, please summarize CBP's policies regarding enforcement priorities.

Answer. CBP operations between ports of entry are focused on interdicting illegal border crossings at or near the immediate border and on routes of egress into the United States. While the U.S. Border Patrol (USBP) may arrest all individuals found to have entered the United States illegally during border security operations, the vast majority of apprehensions involve recent border entrants. Each person who is apprehended is subject to the Consequence Delivery System (CDS), which ensures the most appropriate actions are applied to each case. CDS standardizes USBP's decision-making process specific to each apprehended subject by consistently and systematically applying consequences and evaluating each consequence's effectiveness and efficiency. CDS measures the consequences applied to persons illegally entering the United States against defined alien classifications. CDS includes the analysis of a variety of possible administrative, criminal, and programmatic consequences and incorporates a number of pre-existing initiatives and programs. CBP referrals for further immigration enforcement action are subject to prioritization and adjudication by both U.S. Immigration and Customs Enforcement and the Executive Office of Immigration Review.

Question. Specifically, please describe how CBP assesses threat and risk in determining whether to carry out enforcement action, and any other factors taken into account.

Answer. As discussed above, each person who is apprehended is subject to the Consequence Delivery System, which ensures the most appropriate actions are applied to each case. CDS standardizes USBP's decision-making process specific to each apprehended subject by consistently and systematically applying consequences and evaluating each consequence's effectiveness and efficiency. CDS measures the consequences applied to persons illegally entering the United States against defined alien classifications. CDS includes the analysis of a variety of possible administrative, criminal, and programmatic consequences and incorporates a number of pre-existing initiatives and programs. CBP referrals for further immigration enforcement action are subject to prioritization and adjudication by both U.S. Immigration and Customs Enforcement and the Executive Office of Immigration Review.

QUESTIONS SUBMITTED BY HON. RON WYDEN

Question. Unlike sales at duty-free stores at U.S. airports, which are limited to personal use quantities, sales at such stores at U.S. land ports of entry are unlimited. I understand that ICE and CBP have found that sales of tobacco products at duty-free stores on the Southwest border have resulted in diversion back into the

United States as well as the smuggling of such products into Mexico, some of which is linked to organized crime, including the use of these sales for money laundering. These problems are exacerbated by the fact that there are no limits on the quantities of such duty-free products that can be sold along the border.

If confirmed, would you support the imposition of personal use restrictions at duty-free stores at ports of entry other than airports?

Answer. I am aware of this challenge, and would be happy to work with you, Senator Wyden, and other members of the committee to address these concerns. As you note, the current statute only provides for a personal quantity limit for airport duty free stores. Under my oversight in the Office of Field Operations, we did conduct enforcement operations and share information with Mexican authorities where appropriate on duty free purchases that seemed designed to evade Mexican laws or perhaps be diverted back to the United States. Accordingly, I am familiar with the issues and would support a review of potential solutions, such as a limit on sales that would create barriers to these smuggling and money laundering efforts.

Question. On May 20, 2016, Senator Wyden sent then-Commissioner Kerlikowske a letter regarding concerns about the increasing volumes of fentanyl and other illicitly-produced opioids entering the United States. A recent Morbidity and Mortality report compiled by Centers for Disease Control and Prevention researchers found sharp increases in fentanyl-related deaths, a trend that press reports suggest continues to this day. Please update the agency's response to Senator Wyden's May 2016 letter, including providing data current through September 30, 2017, for all of the data-related requests.

Please provide up to date figures on the amount of illicit synthetically made opioids that CBP has seized during fiscal year (FY) 2016. Which illicit synthetic opioids are most frequently seized?

Answer. The most frequently seized synthetic opioid is fentanyl. Overall CBP–OFO Fentanyl seizures have increased by 159 percent when comparing FY 2016 to FY 2017. This surge is driven by the 408 percent increase in fentanyl seizures in the Express Consignment, 180 percent increase in the Mail environment, and 126 percent in the Southwest-Land-Border.

OFO Fentanyl Seizures (Kgs) by Mode

Mode of Transport	FY 2016		FY 2017		% Change (Kgs)
	Weight (Kgs)	Total Incidents	Weight (Kgs)	Total Incidents	
POV—land	145.92	14	323.69	52	122%
Other—land	25.42	6	63.49	13	150%
Express consignment	21.42	40	108.88	118	408%
Mail	15.33	51	42.93	227	180%
Air (other)	0.15	5	0.38	2	153%
Total	**208.25**	**116**	**539.38**	**412**	**159%**

Please provide a geographic breakdown.

Origin Countries From Which the Seized Synthetically Made Opioids Were Shipped

Top Countries	FY 2016 (Kgs)	FY 2017 (Kgs)	Grand Total (Kgs)
Mexico (through the border)	171.35	387.44	558.79
China (shipped from)	31.09	121.46	152.55
Hong Kong (shipped from)	4.12	26.69	30.81

Destination State or District Within the United States of the Illicit Synthetically Made Opioids That Were Seized

State	FY 2016 (Kgs)	FY 2017 (Kgs)	Grand Total (Kgs)
California	164.89	332.72	497.61
Arizona	9.04	63.00	72.04
Tennessee	12.88	47.16	60.04
Ohio	3.45	29.38	32.83
Kentucky	0.22	29.70	29.92
New York	8.25	16.74	24.99
Illinois	2.78	15.19	17.97
Florida	2.67	1.65	4.32
Massachusetts	3.76		3.76
Texas		1.79	1.79
New Jersey		0.85	0.85
Georgia		0.62	0.62
Oregon		0.37	0.37
Michigan	0.25		0.25
Indiana	0.00	0.14	0.14
Alaska	0.06		0.06
Minnesota		0.05	0.05
Hawaii		0.01	0.01
Grand Total	**208.25**	**539.38**	**747.63**

These statistics are constantly evolving as lab results are confirmed and records reconciled.

Question. On January 2, 2017, a multi-hour passport processing system outage led to long delays for international passengers entering the United States. A recent Office of Inspector General (OIG) report estimated the outage "affected approximately 119,774 international travelers nationwide" including "[a]bout 13,000 passengers who arrived at Miami International Airport" where long lines "created hazards and security concerns . . . including difficulties with crowd control, temperature, health emergencies, and officer and public safety." Miami airport officials alone estimated that "258 CBPOs worked 762 overtime hours, resulting in more than $58,000 in overtime pay." Media reports suggest that long delays at other airports around the country may have led to similar situations. Given that U.S. airports handle more than 300,000 incoming international air passengers every day, such outages are extremely troubling and must be addressed.

Please describe the issues that led to the nationwide outage in January.

Answer. The root cause was determined to be a culmination of workload and background processes competing for system resources. The competing processes included the high transaction volume due to holiday traffic, application code with an inefficient way of accessing the database, storage limitations, and a resource intensive background "clean up" process. Our Office of Information Technology has addressed the specific issues that led to the outage. CBP has also committed to enhancing

availability in our critical systems as well as improving the availability and speed of our back up capabilities.

Question. Please disclose any instances in which a similar issue has taken place.

Answer. There have been no recent instances in which a similar issue took place. As noted above, on January 2, 2017, a unique combination of circumstances involving the culmination of workload and background processes competing for system resources caused the outage.

Question. Please describe the steps that Customs and Border Patrol has taken and additional steps it plans to take to ensure such an outage does not occur again.

Answer. To ensure such an outage does not occur again, CBP has taken the following steps:

- Implemented a programming change to address the error handling to include defensive logic in the application code that will protect against the condition that caused the problem.
- Increased system resources (memory and computer processing) available for the application.
- Updated the background "clean up" process to occur more frequently in shorter bursts; minimizing the consumption of resources.
- Increased sensitivity on monitoring alert settings to initiate a production support call earlier.
- Initiated improvements to backup capabilities.

Question. Lastly, please describe the steps—either on their own or in conjunction with other agencies—that CBP has taken to ensure the health and safety of passengers and employees if such an outage takes place again.

Answer. OFO performs certain functions related to restricting, regulating and interdicting cross-border flows of people and products. During the performance of a range of inspectional activities, a priority is the safety and health of the American public, travelers and personnel. We strive to make proactive and continuous improvements to enhance safety at our ports. Particularly in airports, we work closely with our airport authority partners, whom we rely on for certain services as we work in their facilities. OFO works with our stakeholders, offering the opportunity to contribute and provide feedback in areas of services and participation in tabletop exercises. At most major arrival airports, joint procedures have been developed and exercised with terminal operators and carriers.

Question. Please provide any after-action reports related to the January 2nd passport system outage, either for specific ports of entry/airport, or for the agency as a whole.

Answer.

U.S. Customs and Border Protection
Office of Information and Technology
Office of Field Operations

Traveler Processing Problems on January 2, 2017
AFTER ACTION REPORT

Incident Summary:

On January 2, 2017, from approximately 1700 to 2100 EST, TECS—the system used to process travelers at Ports of Entry (POEs)—experienced a system degradation/outage with airline manifest processing and Air/Sea primary applications which had an impact on traveler processing. The degradation/outage was not caused by a cyber-attack or other malicious activity.

CBP took immediate action to address the issue and CBP officers continued to process international travelers using alternative procedures at airports experiencing the disruption. CBP officers worked to process travelers as quickly as possible while maintaining the highest levels of security, but travelers at some ports of entry experienced long wait times.

During the technology disruption, CBP had access to national security-related databases and all travelers were screened according to security standards.

CBP Office of Information and Technology (OIT) Duty Officers initiated a troubleshooting call at 1700 EST on January 2, 2017. Actions were taken during the trou-

bleshooting that did provide some temporary relief. The problem continued, however, so at 2040 EST on January 2nd, portions of Primary traveler processing were moved to mitigation mode, which involved switching TECS query services and manifest processing to the CBP mainframe. While this option was discussed earlier in the troubleshooting call, at the time the technical team thought the other corrective actions implemented would resolve the issue.

Root Cause:

The root cause was determined to be a culmination of workload and background processes competing for system resources. The competing processes included the high transaction volume due to holiday traffic, application code with an inefficient way of accessing the database, storage limitations, and a resource intensive background "clean up" process.

It has been noted that the system did not encounter similar conditions during the Thanksgiving and Christmas holidays with similar volume of travelers. OIT determined the corrective actions and they include the measures noted below.

Office of Information Technology

Actions Following Outage:

- Conducted a cyber security analysis of the incident and found no indications of any malicious activity.
- January 2nd:
  - Updated the background "clean up" process to occur more frequently in shorter bursts; minimizing the consumption of resources.
  - Increased sensitivity on monitoring alert settings to initiate a production support call earlier.
- January 6th—Implemented a programming change (as recommended by Oracle subject matter experts) to address the error handling to include defensive logic in the application code that will protect against the condition that caused the problem. The airports were activated in a phased approach starting with Atlanta and Miami. As airports were activated, they were monitored closely to ensure that corrective actions effectively addressed the root cause.
- Added additional infrastructure for Air/Sea processing to support larger volumes of traveler processing.
- Identified and implemented improvements to system monitoring. The monitoring that was used on January 2nd did not provide an accurate understanding of the seriousness of the problems at the airports. To ensure faster and more responsive actions going forward, OIT implemented the below changes to the monitoring of airport processing systems:
  - Established manual review of both Automated Passport Control (APC) and Traveler Primary Arrival Client (TPAC) status on a regular basis, with hourly reports on the system health checks.
  - Reduced the time threshold for when to initiate an alert about a system problem (*i.e.,* after 2 minutes of being in red status).
  - Added monitors to all critical areas within the Data Center for better display of monitoring tools.
  - Configured application performance management tools to automate issuance of alerts for unresponsive or slow business transactions impacting end users, database connection issues, application error rates, and server crashes.
  - Monitoring of social media for first-hand accounts of traveler impacts as a failsafe for alerts about airport processing problems.
- Identified and implemented improvements to troubleshooting call procedures, including:
  - OIT will call major locations to validate that the problems seen through monitoring match the operational reality. For the January 2nd incident, OIT monitors were only showing a slowdown, but the reality was that the system was unavailable to process travelers.

Office of Field Operations

Miami International Airport

The outage at Miami International Airport lasted over 5 hours and affected 13,000 travelers. Although port management quickly implemented mitigation protocols, delays resulted in potentially unsafe conditions. Flights were permitted to arrive in the FIS without metering. Processing was slowed by the carriers scrambling to locate paper I–94 forms for non-immigrant travelers. Processing was also slowed due to some officers having issues accessing Automated Targeting System (ATS) and the Portable Automated Lookout System (PALS). Due to the large number of people, HVAC systems in the North Terminal were unable to produce enough cool air, and some passengers required medical attention due to the high temperatures.

Miami OFO Actions Implemented Following Outage:

- PALS workstations will be routinely tested.
- During a full outage when PALS is deployed, all available officers that are performing other assigned duties will be redirected to primary.
- Immediate communication with stakeholders will be effected.
- At a minimum a GS14 will be on site to work with stakeholders.
- During a complete outage and the FIS is full, Miami Dade Aviation Department (MDAD) has pre-positioned water in five designated areas. These are areas where the passengers will be held and not allowed into the FIS until the FIS traffic is reduced and it is safe to move.
- Miami Dade Police Department (MDPD) and CBP resources will be deployed to the FIS and the five designated areas for crowd control.
- A Miami Dade Fire Department (MDFD) paramedic team will be deployed to the FIS.
- MDAD will make PA announcements in the five areas concerning the status of processing.
- Airline stakeholders will be on site to answer passengers' onward flight questions.

OFO Headquarters Actions Following Outage:

- A review of port response indicated that ports followed mitigation guidelines as specified in CBP Directive 3340–041.
- OIT and OFO developed a process to eliminate the need for paper I–94s by using the advance passenger manifest information to generate electronic I–94s once system functionality is restored.
- OFO worked with OIT to develop a more robust mitigation process by phasing out ATS–QQ and implementing Mobile Primary and Mobile Query applications.
  - These Mobile applications can be used on a desktop or mobile device, utilize document readers to quickly input passenger data, and allow the officer to record class of admission during mitigation.
  - Mobile applications can also utilize CBP or port Wi-Fi in the event of local network issues, and if used on mobile devices can utilize battery power in the event of a power failure.
- In January 2017, OFO convened a working group to update national mitigation guidance.
  - The guidance mandates timely systems outage notification to stakeholders, including air carriers, port authority, and terminal operators.
  - This also provides direction for the use of the new mobile mitigation tools.
- OFO and OIT developed new mitigation modes for APC and TPAC, OFO's main resources for primary processing in the air and sea environments. These automated modes allow APC and TPAC to process passengers in a timely manner in the event that manifest information is unavailable due to an outage.
- OFO worked with OIT to develop a new version of PALS, a CD–ROM based data source used for network or power outages. This new PALS replaces the monthly mailing of CD's to ports with a one-time distribution of encrypted USB data sticks which are automatically updated with new enforcement records every 2 weeks. Unlike the old PALS, this new application can be used with a document reader to expedite traveler data input.

- OFO is working with OIT to develop port level system dashboards to provide local port management with real-time visibility on system health and strength.
- OFO is working with OIT to develop a real-time Airport Wait Times Dashboard. This dashboard will replace the current historical dashboard on *www.cbp.gov* and provide accurate real-time wait time information for the traveling public.

Question. I have described how I believe "digital is different." Do you believe, as Chief Justice Roberts has said in the Supreme Court case *Riley,* that "cell phones differ in both quantitative and a qualitative sense from other objects?"

Answer. CBP understands that electronic devices often contain personal information and, for that reason, has taken steps for many years to ensure that border searches of electronic devices are conducted in a judicious and transparent manner. As reflected in CBP's governing policy directive addressing this issue, which has been available to the public since 2009, CBP has provided specific guidance to our officers about conducting these searches in addition to supporting robust oversight and monitoring to ensure that CBP continues to respect the privacy of international travelers while performing its vital law enforcement mission. Furthermore, CBP takes steps to ensure that it only searches information residing on the device itself, and our agency has applied policy limitations that are above and beyond those which are constitutionally required. Border searches of electronic devices affect less than one-hundredth of one percent of travelers entering the United States, a significant majority of which do not concern U.S. citizens. Additionally, we carefully monitor the evolving jurisprudence around digital media, and I am committed to ensuring that strong policies and transparent practices governing our examinations of these devices are in place and improved iteratively.

Question. As you know, the Protecting Data at the Border Act I have introduced with Senator Paul requires a warrant to search a device at the border. Understanding that your agency can move far more quickly than Congress, will you revise your internal policies to require a level of suspicion nationwide before requesting or seeking assistance to search a device?

Answer. CBP is aware of the proposed Protecting Data at the Border Act and respects the rights of our citizens. The concerns at issue are why we conduct border searches of electronic devices in a limited, judicious manner and ensure searches of electronic devices adhere to the strict and clearly defined guidelines set forth in CBP Directive 3340–049. That said, searches of electronic devices at the border routinely result in significant enforcement actions despite the rarity of their use.

As an example of the care with which CBP applies this authority, when requesting subject matter assistance in furtherance of a border search of electronic devices, CBP Directive 3340–049 authorizes CBP officers to transmit electronic devices or copies of information contained therein to other Federal agencies only when they have reasonable suspicion of activities in violation of the laws enforced by CBP. Moving forward, and in recognition of the requirement described in section 802(k) of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which requires CBP to review and update at least every 3 years its standard operating procedures relating to searches of electronic devices at ports of entry, we are currently reviewing CBP Directive 3340–049 and intend to revise and update it to reflect evolving operational practices on this important and sensitive issue.

Question. The 9th Circuit has required reasonable suspicion for searches of devices at the border. As such, people in Portland currently get greater protection than travelers flying into New York or Chicago. Airports in the 9th Circuit are some of the busiest in the United States, with tens of millions of international travelers entering the country through them each year. If CBP has been able to protect our borders and, more broadly, U.S. national security, while following a reasonable suspicion standard in the 9th Circuit, why could the agency not also adopt the same standard elsewhere in the country?

Answer. CBP dutifully adheres to judicial rulings and will continue to carry out our mission of protecting the homeland as permitted by law. CBP is responsible for ensuring the safety and admissibility of the goods and people that enter the United States. Doing so in an increasingly digital world depends on our ability to lawfully inspect goods—electronic or otherwise—entering the United States. Moreover, under U.S. immigration law, applicants for admission bear the burden of proof to establish that they are clearly eligible to enter the United States, and all items entering the country are subject to inspection. In compliance with the requirements of the Trade Facilitation and Trade Enforcement Act of 2015, CBP is actively engaged in reviewing its governing policy on the border search of electronic devices, to include setting

appropriate policy limitations for these searches, particularly when forensic review is involved.

Question. When meeting with my staff, CBP personnel stated that the agency does occasionally perform border searches of Americans' electronic devices at the request of other governmental agencies.

Answer. CBP has the authority to inspect and examine all individuals and merchandise entering or departing the United States, including all types of personal property such as electronic devices. See, *e.g.,* 8 U.S.C. §§1225; 1357; 19 U.S.C. §§ 482; 507; 1461; 1496; 1581; 1582; 1589a; 1595a; see also 19 CFR § 162.6, stating that "[a]ll persons, baggage, and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection and search by a Customs officer." CBP exercises its border search authority in accordance with its statutory and constitutional authority. More specifically, pursuant to CBP Directive 3340–049, the use of other Federal agency analytical resources, such as translation, decryption, and subject matter expertise, may be needed to assist CBP in reviewing the information contained in electronic devices or to determine the meaning, context, or value of information contained in electronic devices. CBP's Directive specifies how officers may pursue seeking such assistance.

Question. In each of the last 5 calendar years, how many searches of electronic devices at the border did CBP perform at the request of another Federal agency?

Answer. CBP does not have a tracking mechanism to account for electronic devices searched at the border with the assistance of another Federal agency. However, the total number of border searches of electronic devices performed for the past 5 fiscal years are as follows: 5,085 for FY 2012; 5,709 for FY 2013; 6,029 for FY 2014; 8,503 for FY 2015; 19,033 for FY 2016 and 30,151 for FY 2017. Although the trend has been for an increasing number of searches, it remains that CBP examines the electronic devices of less than one-hundredth of one percent of travelers arriving to the United States. Over the past few years, CBP has adapted and adjusted our actions to align with current threat information, which is often based on intelligence. As the threat landscape changes, so does CBP. Additionally, travelers are carrying more devices and more CBP officers have been trained on electronic device searches as more travelers than ever before are arriving at U.S. ports of entry with multiple electronics. Searches of electronic devices at the border routinely result in significant enforcement actions despite the rarity of their use.

Question. What does CBP require of the requesting Federal agency before stopping an American at the border and searching their electronic devices?

Answer. The decision to conduct a border search of an electronic device rests exclusively with CBP and is conducted in accordance with applicable law and policy, including CBP Directive 3340–049. CBP decisions to perform border searches of electronic devices can benefit from information provided by other law enforcement agencies.

Question. Must the request be made in writing and do they have to describe what information or evidence of a crime they are looking for?

Answer. CBP liaises with other Federal agencies in many ways, including through the Joint Terrorism Task Force (JTTF). CBP exercises its authority to search electronic devices in concert with law and policy and driven by CBP operational need to inspect goods and persons crossing our border. CBP decisions to perform border searches of electronic devices can benefit from information provided by other law enforcement agencies.

Question. During the past 5 years, have CBP personnel ever surreptitiously installed surveillance software or malware onto a traveler's device during a border search?

Answer. To my knowledge, CBP personnel have not surreptitiously installed surveillance software or malware onto a traveler's device during a border search.

Question. Alternatively, has CBP assisted another government agency in covertly installing malware onto a traveler's electronic device?

Answer. To my knowledge, CBP personnel have not assisted another government agency in covertly installing malware onto a traveler's electronic device.

Question. In your due diligence responses to questions submitted by staff on June 20, 2017, you enclosed a copy of a muster marked "For Official Use Only" detailing procedures for handling devices at the border. I request that you make that muster

public and submit it into the record of this hearing alongside your responses to these questions.

If you choose not to make that muster public, please describe your rationale for continuing to mark it "For Official Use Only."

Answer. The muster speaks to internal operational policy and protocol and contains law enforcement sensitive material. Nevertheless, CBP has explained publicly that its border searches extend to the information that is physically resident on the device, and does not extend to information that is solely located on remote servers (known as solely "in the cloud"), which is the subject of that muster.

Question. Additionally, please describe for the public what procedures are included in the muster that ensures agents only search for information not found exclusively on remote servers.

Answer. Border searches of electronic devices extend to searches of the information residing on the physical device when it is presented for inspection or during its detention by CBP for a border inspection. To ensure that data residing only in the cloud is not accessed, officers are instructed to ensure that network connectivity is disabled to limit access to remote systems.

Question. How many times did border officers search electronic devices during FY 2017?

Answer. CBP processed 388,379,188 travelers during FY 2017 and conducted 30,151 border searches of electronic devices during that time period.

Question. Of those border device searches, how many were supported by reasonable suspicion?

Answer. CBP does not compile this specific data set, but strictly adheres to court orders in how it conducts border searches.

Question. Of those border device searches, how many were of U.S. citizens?

Answer. There were 6,003, or fewer than 20 percent.

Question. Many of our discussions have included reference to your privacy policy governing device searches at the border. The American public deserves more certainty than guidelines can provide, which is why I wrote the Protecting Data at the Border Act. Will you make public any changes to the privacy policy immediately, and before they are implemented in the field?

Answer. If confirmed, I do intend to make the updated policy public. As CBP works to develop policies and programs that achieve DHS's mission to protect the homeland, CBP will continue to work vigorously to minimize the impact on an individual's privacy. In particular, CBP will continue to safeguard a traveler's personal information. We are currently reviewing CBP Directive 3340–049 to reflect evolving practices and in compliance with the Trade Enforcement and Trade Facilitation Act of 2015.

Question. When your officers ask travelers and citizens if they can search their devices at the border, most travelers don't know they can refuse. Being asked by an agent to search your intimate possessions is relatively frightening situation for most people, especially when they're just trying to catch connecting flights or make important appointments.

It is your policy that people can refuse, but if they do refuse, you can take their device, correct?

Answer. CBP may request the traveler's assistance in presenting his or her effects—including electronic devices—in a condition that allows inspection of the item and its contents. If a CBP officer is unable to determine whether an item being brought into the United States is admissible to this country, as presented for inspection, the officer may detain the item pending a determination of its admissibility in accordance with the law. To the extent that CBP detains an electronic device, it provides a custody receipt to the traveler, as outlined in CBP Directive 3340–049.

Question. I understand you don't believe you need consent to search a digital device, but I think it's important that people know their rights, and that CBP can't demand people assist in unlocking a device at the border. Will you to commit to making sure that individuals know their rights, and your authorities, before they're asked to provide assistance in searching a device?

Answer. CBP profoundly respects the constitutional rights and privacy of our citizens, and when the fact of a search can be disclosed to the traveler without hampering national security, law enforcement, or other operational considerations, we continue to provide comprehensive information to travelers who have experienced a search of their electronic device by offering a tear sheet that clearly explains and details the authority supporting the search of their electronic device. This tear sheet is publicly available at: *https://www.cbp.gov/sites/default/files/documents/inspection-electronic-devices-tearsheet.pdf.* In short, CBP provides the traveler with details on how they can request additional information or report concerns about the search.

Question. Mr. McAleenan, I'm very concerned about the direction our country is headed given the sharp increase in anti-immigrant rhetoric I've witnessed over the last year. From my family's experience and from my experience seeing the sacrifices people make to come to our country, the issue of immigration is one that is near and dear to my heart. Today, we continue to see this cycle of families and individuals fleeing their home countries in hopes they too can find a better, safer life in a new country. It's an amazing thing about our country—that no matter the many challenges we face, the United States is still the place where immigrants yearn to be.

This is why it is so offensive to me to hear stories about immigration agents stalking locations that are part of daily life in this country, in order to find and harass suspected immigrants. A few months ago, I introduced a bill to block immigration agents from stalking sensitive locations like schools, hospitals, and religious institutions without prior approval. The Protecting Sensitive Locations Act ensures that immigrants have access to education, criminal justice, and social services without fear of deportation. The Department of Homeland Security's existing policy on sensitive locations would be codified and expanded to ensure that people are not afraid to go to the doctor, to send their children to school or attend a place of worship.

What is your approach to enforcement in sensitive locations?

Answer. CBP's sensitive locations policy remains in place and I have no plans to change it at this time. I fully support our officers and agents efforts to enforce the laws of the United States through their dedicated work in the field. Our policy has guidance for operations at or near certain locations to ensure that the interruption of daily lives of most Americans is reduced to the greatest extent possible.

Question. Do you believe that hospitals, schools, courthouses, places of worship, and organizations assisting crime victims and providing services to children, pregnant women, and those with disabilities should be off limits to enforcement actions, unless exigent circumstances require it?

Answer. CBP's sensitive locations policy remains in place and I have no plans to change it at this time. I fully support our officers and agents' efforts to enforce the laws of the United States through their dedicated work in the field. Our policy has guidance for operations at or near certain locations to ensure that the interruption of daily lives of most Americans is reduced to the greatest extent possible.

CBPOs and Agents enforce all applicable U.S. laws, including against illegal immigration, narcotics smuggling and illegal importation. Inevitably, enforcement actions and investigative activities may, at times, lead to an apprehension at or near community locations or establishments which have been deemed as sensitive locations. CBP policy does not preclude its Officers and Agents from conducting enforcement actions at or near these locations, but directs that careful consideration be undertaken, including consultation with supervisors where appropriate. In all cases, Agents and Officers are expected to exercise sound judgment and common sense while taking appropriate action, and exigent circumstances requiring an Agent or Officer to enter a sensitive location must be reported immediately to ensure visibility and oversight.

Question. How do you plan to ensure that CBP officers respect immigrant rights in sensitive locations?

Answer. CBP's sensitive locations policy remains in place and I have no plans to change it at this time. CBPOs and BPAs do not actively patrol or station themselves outside of locations deemed sensitive under CBP policy. As noted above, however, if information is received regarding a violation of Federal law at or near those locations, CBP policy does not preclude its Officers and Border Patrol Agents from conducting enforcement actions at or near these locations, but directs that careful consideration be undertaken, including consultation with supervisors where appropriate. In all cases, Agents and Officers are expected to exercise sound judgment

and common sense while taking appropriate action, and exigent circumstances requiring an agent or officer to enter a sensitive location must be reported immediately to ensure visibility and oversight.

Question. The Republican budget includes massive cuts to domestic spending programs that are essential to millions of Americans—programs like Meals on Wheels, LIHEAP, and Medicaid. However, the budget also makes room for increased spending for misguided border and immigration enforcement.

Given CBP's recent issues with corruption, including more than 140 agents arrested or convicted on corruption charges, how will you ensure that this funding is only used to hire well-qualified candidates?

Answer. CBP has a workforce of dedicated men and women who are among the finest civil servants in the world, and who carry out their duties with the utmost professionalism and efficiency. Recruiting, hiring, and sustaining a world class law enforcement workforce is CBP's top mission support priority, and would remain mine, if confirmed. I would ensure appropriate funding is only used to hire a well-qualified workforce by continually reviewing and enhancing our hiring process. CBP law enforcement applicants undergo a thorough pre-employment examination process including a cognitive exam, a structured panel interview, an automated vetting procedure, a polygraph exam, and a Tier 5 level background investigation. I believe our process is one of the most rigorous in the government.

I do not favor lowering our standards for frontline personnel, and remain committed to key background and security steps such as a federally certified polygraph examination. Any waiver authority granted by Congress where applicants demonstrate a track record of service and trustworthiness would be utilized in a judicious manner.

Question. Since the President took office, the administration has largely stopped prioritizing the deportation of undocumented immigrants with criminal records and routinely fails to take into consideration circumstances like children in the United States and community ties. Do you believe that the best use of CBP resources is to arrest and deport every undocumented immigrant they come across, no matter the circumstances?

Answer. U.S. Border Patrol (USBP) operations between ports of entry are focused on interdicting illegal border crossings at or near the immediate border and on routes of egress into the United States. While USBP may arrest all individuals found to have entered the United States illegally during border security operations, the vast majority of apprehensions involve recent border entrants. Each person who is apprehended is subject to the Consequence Delivery System (CDS), which ensures the most appropriate actions are applied to each case. CDS standardizes USBP's decision-making process specific to each apprehended subject by consistently and systematically applying consequences and evaluating each consequence's effectiveness and efficiency. CDS measures the consequences applied to persons illegally entering the United States against defined alien classifications. CDS includes the analysis of a variety of possible administrative, criminal, and programmatic consequences and incorporates a number of pre-existing initiatives and programs. CBP referrals for further immigration enforcement action are subject to prioritization and adjudication by both U.S. Immigration and Customs Enforcement and the Executive Office of Immigration Review.

Question. In recent years, the CBP has taken a number of questionable actions that infringe on the rights of U.S. citizens, permanent residents, and immigrants like roving border patrols, racial profiling, and unlawful detentions. To reign in the administration's unfair immigration policy, I co-sponsored legislation with my colleague Senator Menendez to counter them. The PROFILED Act guarantees basic due process rights and protections for any individual impacted by immigration enforcement and detention operations. Targeting American citizens, immigrants and refugees because of the way they look goes against the very founding ideas of who we are as Americans. It's only right that when people are unfairly targeted by law enforcement in our country, they have the full protection of our laws.

The best practices for Federal law enforcement agencies clearly identify that training, data collection, and accountability are the only way to make a profiling policy work.

Will you implement implicit-bias training for CBP employees to address the obvious racial profiling that harasses members of our border communities?

Answer. CBP policy prohibits the consideration of race or ethnicity in law enforcement, investigation, and screening activities, in all but the most exceptional circumstances. CBP's Standards of Conduct further highlights CBP's prohibition on bias-motivated conduct and explicitly requires that "Employees will not act or fail to act on an official matter in a manner which improperly takes into consideration an individual's race, color, age, sexual orientation, religion, sex, national origin, or disability, union membership, or union activities." The use of race and ethnicity information in violation of this policy may subject CBP employees to discipline under the Standards of Conduct. CBP will continue to provide training to ensure continued adherence to our existing policies on this topic.

Question. Will you collect data on individual stops so that CBP can understand if their practices are even effective?

Answer. CBP documents individual stops in the Intelligent Computer Assisted Detection (ICAD) system. Our collection practices continue to evolve to ensure we efficiently and effectively identify and respond to threats to border security. The amount and type of data collected for individual stops, including vehicle stops and pedestrian interactions, is frequently reviewed and amended when necessary, within the bounds of our authority. Data we track and collect from our significant encounters includes time, location and outcome, as well as multiple other details. CBP has considered adding fields to track specific descriptions of subjects and vehicle occupants. We determined that it would not be appropriate as it could encourage the reliance of the perception of ethnicity as a consideration in our stops. Ethnicity is not a primary consideration in our stops and there are no immediate plans for additional specific additional data fields. CBP will reinforce its collection activities for stops to ensure that we are collecting sufficient data to ensure our practices are effective and unbiased.

Question. Considering the CBP has authority to stop and conduct searches within 100 miles of any land or coastal border, I am alarmed at how far and wide CBP's roughly 20,000 agents' authority to hassle Americans reaches. Oregon is a coastal State, and I can't imagine explaining to voters there that border agents could in fact set up a mobile checkpoint in Portland—80 miles inland—and subject them to the kind of harassment a checkpoint encounter entails. Roving checkpoints have severely impacted border residents' quality of life, disrupted legitimate business, and gained the CBP little more than minor drug prosecutions against citizens.

Will you continue to support their use as Commissioner?

Answer. USBP checkpoints, both fixed and temporary, are a proven, effective layer in our multi-layered approach to securing the border and interdicting unlawful entry. Checkpoints are strategically placed where potentially illegal cross border traffic is most likely to converge as it makes egress away from the border into the United States. Travelers in vehicles are briefly questioned as to their citizenship to ensure those out of status are prevented from further entry into the interior of the country in violation of U.S. immigration laws. As the Supreme Court recognized in *United States v. Martinez-Fuerte,* immigration checkpoints are both a constitutional and necessary law enforcement tool to detect illegal aliens seeking to enter the United States. 428 U.S. 543 (1976). Accordingly, Border Patrol Agents may ask individuals about their citizenship and request documents proving their right to be in the United States.

If confirmed, I would support the continued use of immigration checkpoints as an important part of a layered border security approach where they provide interdiction capabilities on routes of egress away from the border. I would not support their use in operationally inefficient or ineffective manner.

Question. If so, on what evidence of their effectiveness would that decision be based?

Answer. The decisions on when and where to operate immigration checkpoints are based on routes of egress from the border, recent and historical operational results, and current intelligence. Checkpoints are strategically placed where potentially illegal cross border traffic is most likely to converge as it makes egress away from the border into the United States. USBP immigration checkpoints are effective. Border Patrol Agents conduct thousands of immigration enforcement actions annually resulting in the arrest of criminal aliens, smugglers, and thousands of individuals that have entered the country unlawfully. USBP also makes significant seizures of illegal drugs at checkpoints each month. In FY 2017, BPAs apprehended over 6,000 illegal aliens and seized over 75,000 pounds of illegal narcotics.

Question. In recent years, reports of extremely poor conditions for individuals held in CBP short-term custody facilities have proliferated, including from facilities in Oregon. Hundreds of thousands of individuals are held in CBP short-term custody facilities each year. These facilities, which are designed to detain individuals for up to 72 hours but in practice are often used to hold people for up to 2 weeks or longer, lack comprehensive standards, as well as effective oversight and transparent data collection on detention activities.

Reports from the Northwest Detention Center in Tacoma, Washington have found that conditions for detainees are troubling, to say the least. Detainees there have reported conditions including poor hygiene and lack of access to medical care, recreation and nutritious food. DHS itself has acknowledged "recurring problems" and oversight failures. Multiple Federal cases are pending, one of which credited evidence of "widespread and deplorable conditions."

What will you do to ensure that conditions in these facilities are appropriate and consistent with American law and values?

Answer. CBP operates short-term holding facilities as defined in the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). TFTEA states in part that "'short-term detention' means detention in a CBP processing center for 72 hours or less" (19 U.S.C. 4301). The vast majority of individuals apprehended or arrested by CBP are removed, transferred to another agency, or released from these short-term holding facilities within this 72-hour time frame.

CBP treats all individuals with dignity and respect, and ensures that all such facilities meet all relevant legal and policy requirements, including the requirements of the *Flores v. Reno* Settlement Agreement, the Prison Rape Elimination Act, and CBP National Standards on Transport, Escort, Detention, and Search (TEDS). Additionally, both CBP's Office of Field Operations and U.S. Border Patrol ensure that all agents and officers appropriately monitor the conditions in hold rooms, and enter pertinent information into the appropriate systems of record on a regular basis. Conditions in CBP holding facilities are reviewed internally, and are subject to both DHS Civil Rights and Civil Liberties, and Office of Inspector General oversight.

If confirmed, I will remain committed to the humane care and treatment of individuals in these short-term holding facilities.

Question. Will CBP commit to increasing transparency regarding its detention facilities, in terms of public data reporting as well as release of inspections that monitor conditions?

Answer. CBP has several compliance mechanisms in place, including a Self-Inspections Program and inspections by CBP's Management Inspection Division (MID). DHS's Office of Inspector General has also conducted spot inspections of CBP facilities. Additionally, CBP prepares an annual report assessing CBP efforts to prevent, detect, and respond to sexual abuse in holding facilities. This report addresses CBP's efforts to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, and is posted in CBP's public *Care in Custody* webpage.

Question. Please specify what and when such reporting can be expected.

Answer. CBP reports assessing CBP efforts to prevent, detect, and respond to sexual abuse in holding facilities, pursuant to the Department of Homeland Security (DHS) Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities (6 CFR § 115.188), are prepared annually and made readily available to the public through the CBP *Care in Custody* webpage. Additionally, CBP will post final reports of holding facility audits conducted by independent auditors assessing CBP's implementation of the Standards to the agency's public website.

Question. Will you increase transparency by permitting non-governmental/third-party inspections and publishing statistics on detention operations?

Answer. CBP engages with non-governmental organizations (NGOs) frequently, including providing briefings on our facilities. I personally hosted our last NGO roundtable in October. Additionally, CBP publishes a range of data on our *CBP.gov* website that provides information on demographics and locations of apprehensions and adverse immigration actions.

Question. I appreciate your working with me on staffing at the Port of Portland. I understand international passenger arrivals at the Portland Airport increased 48 percent from 2013 through 2016. The Port of Portland says CBP has done an out-

standing job of managing this dramatic growth with a static staffing level. I expect that it will continue to be a challenge to safely, securely, and efficiently process new services as the needs grow.

If confirmed, will you continue to work with me to ensure the Portland Airport is properly staffed to accommodate the immediate and future growth in demand for CBP services?

Answer. I appreciate your interest in this topic, and, if confirmed, I look forward to continuing to work with you to ensure CBP's ability to facilitate legitimate trade and travel in the future. Appropriate staffing of our Nation's ports is among the most significant challenges that we face and is essential to providing a secure and expeditious gateway for trade and travel so critical to the U.S. economy.

Question. CBP is on the front line of enforcement of our trade laws, but I worry that trade issues are getting short shrift from this administration. The President promises to pour more money than ever into border security, at a time when border crossings are at lows not seen since the 1970s. He has ordered the hiring of 5,000 more Border Patrol agents, in addition to the planning, designing and construction of a border wall, including millions for prototypes.

In my view, this is a gross misallocation of scarce resources. CBP has consistently failed to meet minimum staffing requirements set out in statute for trade functions, and is well below the optimal level for carrying out trade enforcement. The difficulties you and I have discussed in staffing the Port of Portland is emblematic of the failure to meet staffing goals. What we are seeing overall is an increase in challenges for trade enforcement, and a decrease in CBP's capabilities to meet it.

What is CBP's staffing target for CBP officers in 2018, and how does that compare with the latest staffing target from CBP's Workload Staffing Model?

Answer. CBP's top mission support priority is recruiting, hiring, and sustaining a world-class law enforcement workforce, and CBP Officers are a fundamental element of that effort. CBP's estimated FY 2018 Staffing Target for CBPOs is derived from historical congressional floors and increases to appropriations and fees, as well as alternative funding. The FY 2018 target of 24,147 is the goal for CBPO hiring efforts and represents our floor for CBPOs.

Updated CBP Workload Staffing Model results submitted to Congress earlier this year continue to show a need for additional CBP Officers to fully meet the standards set by statute, regulation, and CBP policies, assuming maintenance of current processes, procedures, technology, and facilities. The most recent results—factoring in the additional 2,000 CBPOs funded by the FY 2014 DHS Appropriations Act—show a need for 2,516 additional CBPOs above our FY 2018 target. The administration submitted the updated WSM earlier this year, and the President's FY18 budget submission states the intent to submit proposals for authorizing language that would provide user fee funding to address the funding gap for CBP Officers as we have in past years.

Question. Have you developed a plan for addressing staffing shortfalls with respect to CBP officers?

Answer. Recruiting, hiring, and sustaining our law enforcement workforce is our top mission support priority. CBP has developed an integrated plan, led by our Office of Enterprise Services and supported by the Office of Field Operations. Over the past 3 years, we have revamped our hiring efforts with over 40 process improvements that have dramatically decreased the time to hire.

Our primary focus for FY18 is on enhancing our recruiting efforts to increase the number and quality of applicants entering our hiring process, to build on the positive trends in applications and success rate seen over the last 6 months. We have established a National Recruiting Command, invested in digital advertising, and identified uniformed personnel to serve full-time to enhance our outreach.

To support the recruitment of CBP Officers specifically, OFO has established a Recruitment Crisis Action Team (RCAT), and created an OFO National Recruitment Strategy, which is focused on targeting the right applicants for the CBPO position. OFO has begun to focus recruitment efforts for the many vacancies on the Southwest border area.

OFO is in the process of developing Destination Guides, Port Guides, and "Day in the Life of a CBPO" videos, all of which will be used at recruitment events and be available on the web in an electronic version. Going forward, OFO will be training all of our recruiters on the OFO National Recruitment Strategy, on the usage

of the various guides, and have all recruiters target specific areas, as designated by OFO Headquarters.

Question. Given the President's goal with respect to hiring Border Patrol agents, how will you ensure that hiring of CBP officers is not impacted?

Answer. CBP continues to strengthen all aspects of its recruitment and hiring strategy to ensure the entire frontline—both along the border and at every POE—is staffed in accordance with the expanding complexity and demands of its mission.

In those instances where CBP is concerned about a specific POE being understaffed relative to others, it will rebalance by directing resources from other Field Offices to fill the gap, as is evidenced by our recent temporary assignments to the Tucson and San Diego Field Offices.

CBP is continuing work to address 1,132 CBPO positions that are vacant as of September 30, 2017. CBP has worked aggressively over the past several years to implement a multifaceted recruitment strategy that improves frontline hiring processes and enhances its ability to meet hiring goals. CBP continues to strengthen all aspects of hiring, which includes initiatives designed to attract more qualified applicants, expedite the pre-employment timeline, refine the hiring process to address all potential bottlenecks, and reduce the attrition rate of the existing workforce. Staffing the frontline with well-qualified individuals of the highest integrity and capability remains the top mission support priority for CBP.

Question. One of the important things that the 2015 Customs bill did—thanks in large part to the hard work of Senator Brown—was to close a loophole that allowed goods made with forced labor into the United States. That was supposed to make sure that there are no circumstances under which such goods can enter the commerce of the United States. It was the right thing to do both to protect human rights and to protect U.S. workers from unfair competition. However, enforcement of this prohibition seems to have stalled under this administration.

I understand that CBP is considering regulations on this topic. If confirmed, will you commit to working with my staff to ensure that regulations are aimed at vigorous enforcement of the ban on goods made with forced labor from entering the United States?

Answer. Yes. I am committed to rigorous enforcement of forced labor prohibitions. CBP is undertaking a regulatory review to ensure that we are using all CBP authorities, and other agency resources effectively in forced labor enforcement efforts.

Question. What other steps are you taking to step up enforcement?

Answer. CBP has taken a number of steps to enhance enforcement of forced labor in supply chains since TFTEA was enacted. CBP engaged specific industry sectors through our Centers of Excellence and Expertise and our regulatory auditors to conduct bi-directional education and assess best practices of risk mitigation and compliance related to forced labor in the global supply chain. We updated our internal enforcement policies to require mandatory referral to U.S. Immigration and Customs Enforcement, Homeland Security Investigations (HSI) for all allegations of forced labor. As with other criminal fraud referrals, CBP works closely with HSI and the Department of Justice (DOJ) to support these investigations. To date CBP has referred six forced labor allegations to HSI.

CBP is committed to working with Congress, the private sector, Civil Society Organizations, and interagency stakeholders to craft the most effective approach to modernize the regulations to protect human rights and to protect U.S. workers from unfair competition. CBP has undertaken an active communications effort to ensure importers are aware of the risks associated with forced labor, what their compliance responsibilities are and how they can validate that their supply chains are free of forced labor. CBP published technical corrections to the forced labor regulations to remove the consumptive demand loophole and is now outlining substantive changes to allow for an agile enforcement response.

My staff is actively engaged in the DHS-led Forced Labor Interagency Working Group, which includes ICE, Department of State, DOJ, U.S. Agency for International Development, Department of Treasury, General Services Administration and Department of Labor. CBP works closely with these agencies, when appropriate, to evaluate forced labor cases and allegations.

We have also leveraged intelligence units within our Office of Trade and OFO's National Targeting Center, Counter Networks Division. In the last 2 years, CBP has detained $6,307,926 in goods suspected of violating 19 U.S.C. § 1307. Most recently,

CBP detained 11 shipments of seafood suspected of being processed by companies in China using the labor of North Korean nationals. The shipments are valued at $564,775 and are detained at four ports of entry. Further, OFO issued an Action memorandum to the Centers directing them to issue requests for information to approximately 235 importers. This effort focuses on manufacturers and importers with links to the areas within China suspected of using the labor of North Korean nationals to manufacture goods destined for the United States.

CBP also continues to meet with Civil Society Organizations to ensure we are aware of trends, insights, and concerns that these groups possess into forced labor issues. If confirmed, I will continue to implement aggressive and broad-based enforcement efforts to address the challenge of goods manufactured with forced labor entering our supply chain.

Question. The Trade Facilitation and Trade Enforcement Act of 2015 required CBP to establish a risk assessment program to adjust the bonding amount based on importer risk, to ensure that the customs revenue is collected from trade cheats that evade our laws, underpay duties, and then cut and run. I am not aware that any such program has been established to date, even though we are almost a year past the deadlines. At the same time, President Trump signed an executive order that mandated a narrower plan to provide security for the payment of anti-dumping and countervailing duties. I understand that plan is being finalized for delivery to the White House.

Answer. CBP is actively working on implemented risk-based bonding as directed in TFTEA. The CBP Office of Trade (OT) has led an internal working group with the Centers of Excellence and Expertise and the Office of Finance to identify key risk factors to incorporate into the Risk Assessment Guidelines called for in TFTEA section 115—Importer Risk Assessment Program. At the same time, the OT is developing statistical models for risk based bonding to determine which risk factors have a strong statistical correlation with future AD/CVD non-payment. CBP is currently working with the COAC Trade Enforcement and Revenue Committee's Bond Working Group on ways to implement enhanced bonding procedures as work on the statistical models progresses. OT plans to pilot this process in FY18. Once fully deployed, CBP will use the statistical results to adjust bond amounts to protect government revenue and apply AD/CVD orders effectively.

The plan called for in Executive Order 13785, entitled "Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws," has been finalized and delivered to the White House.

Question. Presumably, you have submitted the plan mandated by the executive order to the President, but what are your intentions for complying with the mandate in the Trade Facilitation and Trade Enforcement Act?

Answer. CBP is actively working to comply fully with the mandate in TFTEA. CBP is pursuing a rigorous analysis process to ensure that risk factors used in assessing importers are defensible and meaningful predictors of importer risk. The Office of Trade (OT) has led an internal working group with the Centers of Excellence and Expertise and the Office of Finance to identify key risk factors to incorporate into the Risk Assessment Guidelines called for in TFTEA section 115—Importer Risk Assessment Program. At the same time, the OT is developing statistical models to determine which risk factors have a strong statistical correlation with future AD/CVD non-payment. The CBP Office of Trade plans to pilot this process in FY 2018. Once fully deployed, CBP will use the statistical results to adjust bond amounts to protect government revenue and apply AD/CVD orders effectively.

Question. In the Trade Facilitation and Trade Enforcement Act of 2015, we raised the *de minimis* threshold for imports so that when small businesses bring in low-value shipments they don't need to go through the red tape or pay duties to bring inputs or product returns into the countries. I was a big proponent of this because it is a huge boon for small businesses that don't have the resources to navigate all the requirements for their smaller and less frequent imports. This is critical to the digital economy, where very small businesses now have a global reach and our trade policy should support that fact.

If confirmed, are you committed to ensuring that *de minimis* shipments remain as streamlined as possible—and that new requirements aren't imposed on them?

Answer. Facilitation of cargo and support of U.S. competiveness is a key part of CBP's trade mission. Streamlining and promoting frictionless trade are CBP's goals

especially in light of changing technologies and business processes. CBP has been working closely with the trade community and participating government agencies to facilitate low value cargo while ensuring that shipments facilitated by e-Commerce are complying with CBP and other agency regulatory requirements.

Question. If confirmed, will you commit to ensuring that CBP aggressively pursues the adoption of similar *de minimis* threshold by our trading partners, through the World Customs Organization, trade agreements negotiations, and other forums?

Answer. Harmonizing *de minimis* approaches with other trade partners would be beneficial and contribute to the reduction in supply chain barriers globally. CBP is working with stakeholders in the private sector and the WCO to share best practices and lessons learned as we implement the TFTEA *de minimis* level increase. In addition, we are providing subject matter expertise to the U.S. Trade Representative, as it pursues the negotiating objectives as expressed in TFTEA around *de minimis.*

Question. Mr. McAleenan, as you know, the customs reauthorization bill signed into law last year included the Enforce Act—the product of years of work by this committee to address brazen evasion of U.S. trade laws before businesses are sunk and jobs are lost. CBP started implementing the Enforce Act over a year ago.

Can you give me an update on your enforcement actions under the Enforce Act provisions so far?

Answer. To date, CBP has initiated over 14 EAPA investigations and has reached an affirmative determination at the interim measures stage for each of them. These investigations cover various products, including wire garment hangers, wooden bedroom furniture, diamond sawblades, and oil country tubular goods (steel tubing). The interim measures taken protect the revenue, such as providing cash deposits on subsequent entries, suspending and extending liquidation of entries, rejecting entries summaries that are within the reject period, as well as evaluating the continuous bond and requiring single transaction bonds, as appropriate. In these investigations, the Trade Remedy Law Enforcement Directorate has coordinated more than 10 foreign onsite verifications, including two locations in Thailand and eight locations in Malaysia, among others, as well as domestic onsite verifications and multiple cargo exams. The onsite verifications are crucial to gather evidence of exporter production capability and capacity, to assess the information against that provided in the allegations and CBP's own research of the exporters and importers.

The first EAPA allegation was filed only a few weeks after the regulations went into effect. CBP quickly formed a small cohesive investigative unit and completed its work well ahead of the statutory deadline for interim measures. In that first investigation, CBP initiated a unique investigative approach to obtain key information when the parties being investigated declined to participate. CBP reached its determination on interim measures a month ahead of the statutory deadline and issued its final determination to the parties to the investigation on August 14, 2017. The notice explained that there was substantial evidence on the record that merchandise was entered into the U.S. customs territory through evasion via transshipment of wire hangers from China through Thailand. As a result of this enforcement effort, the alleger filed eight more allegations and to date, these investigations alone have stopped the evasion of $33 million in anti-dumping duties annually.

Question. In my view, the success of implementation will hinge on the input of stakeholders. If confirmed, do you commit to working on increasing transparency and opportunities for stakeholder input in Enforce proceedings?

Answer. Yes. To further the transparency of the EAPA investigations, we have provided a website to post both our decisions as well as background information on the investigations. We have already held a workshop with industry in April 2017 and anticipate another in early 2018 in order to engage stakeholders. Further in addition to our other public outreach efforts, EAPA investigations have been on the agenda at our East and West Coast Symposiums for the last 2 years and this provides another avenue for engagement with stakeholders on the program. I intend to listen carefully to stakeholder input and work closely with Congress on EAPA implementation as we continue forward.

Question. I requested a report from the Government Accountability Office that was released in July regarding U.S. Foreign Trade Zones (FTZs) and CBP's oversight of compliance with U.S. trade laws in the FTZ program. GAO found that CBP had not assessed compliance risks across the FTZ program, and therefore could not

analyze and respond to the risk. That finding is troubling given that the FTZ program accounted for about 11 percent, or $245 billion, of imports in 2015.

What is CBP doing to address the shortfalls identified by GAO, and what are the plans for the future to ensure compliance across the FTZ program?

Answer. CBP concurred with the findings of this report from GAO and identified the gaps with GAO as part of the program review. We were pleased that detailed reviews did not identify revenue losses or other serious issues with the program, but rather that CBP was still transitioning from a paper based process, monitored at the local level, to a much more automated process under ACE that would allow for modernization and automation of CBP's control processes as well. We have determined that we will take a multi-step approach to this review and update of this important oversight:

1. As of October 1, 2017, CBP is collecting in a centralized database, the results of all compliance reviews and risk assessments performed nationwide by ports. As per the GAO recommendation, we will collect the first year worth of data for the purposes of a national review of the risk assessment process applied to FTZ oversight.
2. Starting October 1, 2018, CBP will begin the comprehensive national FTZ risk assessment review based on the data collected for the Fiscal Year. That process is expected to take 90 days. At the end of that period, CBP will issue updated risk assessment procedures based on any gaps identified in the risk assessment review and implement same.

Concurrent to the risk assessment review and collection, CBP is undergoing a comprehensive review of current procedures with the goal of using automation more effectively for oversight. Current paper processes are being reviewed and assessed to see if automated alternatives can be utilized (paper files vs. ACE reports for example) and determining the time frames for these implementations based on availability of technology. CBP has further targeted an update in the internal Compliance Review Handbook for March 2019.

Question. President Trump has repeatedly said he will build a wall along the 2,000-mile southern border. Not only would this be extremely costly, but it would also require the confiscation of private lands by the Federal Government and would likely result in numerous legal challenges and environmental damage.

A September 2017 report by the DHS Office of Immigration Statistics found that illegal entries were at their lowest level since 2000 and likely since the early 1970s. Further, numerous reports by GAO and other government bodies have criticized the lack of systematic assessment of border barrier effectiveness. In light of the significant drop in unauthorized entries, which began long before this administration, and the uncertainty of the effectiveness of border walls, is it optimal use of taxpayer resources to spend billions of dollars on a border wall?

Answer. The border environment is dynamic and the threat situation is driven by adversary actions and is constantly in flux. CBP must be afforded flexibilities to remain agile to respond appropriately based on current mission needs and resourced to address capability gaps.

Securing the border requires an integrated approach including infrastructure such as border wall and road access, surveillance technology, response capability, and personnel. The U.S. Border Patrol maintains a Capabilities Gap Analysis Process that begins with input from the sector level, and has identified the necessary capabilities to secure the border. The four key Master Capabilities are: domain awareness, impedance and denial, access and mobility, and mission readiness.

A significant portion of the success we have realized over the last decade and a half can be attributed largely to increased deployment of impedance and denial infrastructure. The border wall provides an important and enduring capability to impede or deny illegal crossings in those areas where it is applied, as demonstrated in San Diego, Tucson, El Paso, and Yuma Sectors, but it is not effective alone, and is not an appropriate solution for every area of the border. It is most effective where there are populated areas near the line on the U.S. side of the border, where illegal crossers can vanish within residential and commercial areas.

Where it is applied, the border wall must be supported by the ability to detect activity through advanced surveillance technology, and the ability to respond effectively with mobile, trained personnel. In this way, the most effective means of achieving operational control of the border does not rely on any single capability,

piece of technology, or infrastructure. It is a mixture of all of those things, executed by a properly trained and properly equipped mission ready workforce.

USBP will continue to utilize the Capabilities Gap Analysis Process to identify mission needs and offer courses of action to fill gaps—impedance, technology, people—or a balance of all three depending on available resources. We will build a wall where it is prudent and effective and the design will change based on the environment and operational needs. We will deploy technology to produce domain awareness of illegal criminal activity exposing our citizens to risk. We will increase the hiring and deployment of new and relocate existing agents to both areas of increased threat and increased activity. A comprehensive view of all border threats, risks and activity is essential.

The significant improvements in border security over the past 10–15 years are promising, and reflect the benefits of sustained investment in border security capabilities based on operational requirements, combined with the effective operational strategies applied by the U.S. Border Patrol, along with improvements in enforcement policies and consequence delivery. Despite these improvements, we continue to see over 25,000 apprehensions of illegal crossings per month between ports of entry, as well as increasing amounts of hard narcotics seizures. These threats—over 830 people a day—include previously deported criminals, hardened smugglers employed by ruthless cartels, and other potential security risks. It remains CBP's responsibility to effectively interdict and deter these crossings, in concert with immigration enforcement partners and supported by appropriations and authorities from Congress as we strive toward operational control, the effective deterrence or interdiction of all illegal crossings. The impedance and denial capability provided by border wall remains an important component of that effort.

Question. This is now the third administration that you have served under within CBP and its predecessor agency the U.S. Customs Service. Have you ever recommended the building of a border wall?

Answer. During the Bush administration, when I served as Director of Anti-terrorism and Senior Counselor to then-Commissioner Robert C. Bonner, I was involved with, and supported, the development of U.S. Border Patrol resource requirements to enhance security on the Southwest border. Those requirements, developed in support of the budget processes and security initiatives during the 2004–2006 time frame, included investments in border wall and security infrastructure in key high-traffic sectors such as Tucson, AZ, and were largely supported by bipartisan majorities and the Secure Fence Act. Then, as now, I relied on the recommendations of the operators in the field who identified key capabilities needed to enhance border security.

Additionally, during my tenure as Deputy Commissioner, CBP requested funding for, and invested approximately $70 million to replace approximately 10 miles of legacy pedestrian barrier in Naco and San Luis, AZ as well as Sunland Park, NM.

Question. A fundamental task of CBP is to collect revenue. CBP's collection of tariffs on imports is the second largest source of revenue for the Federal Government. In addition, CBP's revenue collection protects U.S. businesses and workers. Much of the uncollected revenue comes from foreign goods subject to anti-dumping and countervailing duty orders put in place to protect U.S. manufacturers from unfair trade practices. Congress said in the Trade Enforcement bill that revenue collection is a priority trade issue.

If confirmed, what will you do to make revenue collection a priority, particularly when that revenue is also collected to protect American workers and business?

Answer. Duty collection is a critical component of revenue and AD/CVD enforcement, which are both priorities for CBP. CBP targets revenue and AD/CVD risks by relying on data informed analysis for underpayment of duties due to various types of evasion schemes to include misclassification, undervaluation, failing to file AD/CVD entries, and illegal transshipment. CBP is exploring creative ways to adjust bonding requirements to mitigate the risk of non-payment that certain importers present, collaborating with our Surety trade chain partners. CBP has identified options for risk-based bonding as part of its implementation of section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA) (Pub. L. 114–125). CBP's intent is to use this new TFTEA authority to statistically predict the risk of future non-payment of duties, taxes, and fees and adjust bond amounts to protect government revenue and apply AD/CVD orders effectively. In addition, as required by Executive Order 13785, DHS has submitted a report to the White House outlining a plan for risk-based bonding to provide greater security to secure payments of final

AD/CVD and other unpaid bills. CBP has automated the securing of bonds within ACE (e-Bonds) that centralizes CBP's management of bonds and ensures bonds are properly executed thus facilitating the collection of monies owed that are secured by bonds.

When CBP identifies revenue risks from AD/CVD imports, CBP is proactively requesting additional security in the form of single transaction bonds from importers. Despite repeated court challenges, CBP continues these efforts to secure AD/CVD revenue. CBP has also been successful in recent years in taking sureties to court to collect delinquent AD/CVD when sureties do not fulfill their legal obligation to pay amounts owed. CBP has had great success in aggressively pursuing sureties in these cases to establish a clear monetary incentive for sureties to make prompt payment upon demand. CBP will continue to actively pursue collection of uncollected AD/CVD and regular duties against delinquent importers and sureties.

Question. Illegal logging doesn't just hurt the environment, it hurts sawmill workers in Oregon and around the country who have to compete with an influx of cheap stolen wood. I have fought for years to stop trade in illegally harvested timber. As you know, the enforcement legislation Congress passed last year requires Customs agents to be trained in detection and seizure of illegally traded fish, wildlife, and plants.

Can you provide an update on your work with experts such as the World Wildlife Fund and the Environmental Investigation Agency to develop and implement an effective training module on illegal logging and begin trainings, so that America's port officers are fully equipped to deal with illegal trade in wood products?

Answer. An Illegal Logging Issues Seminar was held in New Orleans in September 2017, for key CBP personnel, with the assistance of the World Wildlife Fund (WWF), DOJ, CBP Laboratory and Scientific Services, and the Industrial and Manufacturing Materials Center of Excellence and Expertise. The seminar presented a comprehensive overview of illegal logging issues, global priority threats, and specific species for priority. Based on participant feedback received at this seminar, CBP will refine this training module further and present it more broadly via webinar to CBP field personnel nationwide in FY 2018.

QUESTIONS SUBMITTED BY HON. DEBBIE STABENOW

Question. I continue to be concerned about countries that break the rules and evade U.S. trade laws. Last Congress, the Enforce and Protect Act was signed into law as part of an effort to crack down on duty evasion. Duty evasion has affected businesses and workers in numerous industries, including in Michigan. It is critical that we work together to ensure our trade laws are being enforced.

How will you ensure that we are effectively countering duty evasion?

Answer. To date, CBP has initiated over 14 Enforce and Protect Act (EAPA) investigations, and has reached an affirmative determination at the interim measures stage for each of them. These investigations cover various products, including wire garment hangers, wooden bedroom furniture, diamond sawblades, and oil country tubular goods (steel tubing). The interim measures taken protect the revenue, such as providing cash deposits on subsequent entries, suspending and extending liquidation of entries, rejecting entries summaries that are within the reject period, as well as evaluating the continuous bond and requiring single transaction bonds, as appropriate. In these investigations, the Trade Remedy Law Enforcement Directorate has coordinated more than 10 foreign onsite verifications, including two locations in Thailand and eight locations in Malaysia, among others, as well as domestic onsite verifications and multiple cargo exams. The onsite verifications are crucial to gather evidence of exporter production capability and capacity, to assess the information against that provided in the allegations and CBP's own research of the exporters and importers.

The first EAPA allegation was filed only a few weeks after the regulations went into effect. CBP quickly formed a cohesive investigative unit and completed its work well ahead of the statutory deadline for interim measures. In that first investigation, CBP initiated a unique investigative approach to obtain key information when the parties being investigated declined to participate. CBP reached its determination on interim measures a month ahead of the statutory deadline and issued its final determination to the parties to the investigation on August 14, 2017. The notice explained that there was substantial evidence on the record that merchandise

was entered into the U.S. customs territory through evasion via transshipment of wire hangers from China through Thailand. As a result of this enforcement effort, the alleger filed eight more allegations and to date, these investigations alone have stopped the evasion of $33 million AD duties annually.

Question. Will you commit to fully implementing the law so that affected industries and workers are able to participate in the process for duty evasion cases?

Answer. Yes, CBP is fully committed to implementing EAPA.

Question. The U.S. sugar industry supports 142,000 jobs across the country, including thousands of jobs in Michigan. Unfortunately, our producers have been hurt by very low prices and volatility caused by Mexico dumping large volumes of sugar on the U.S. market. I am hopeful that this dumping will be stopped by the revised antidumping and countervailing duty suspension agreements negotiated earlier this year. However, the success of the agreements will largely depend on Customs and Border Protection adequately enforcing them.

If confirmed, will you commit to working closely with the Departments of Agriculture and Commerce to monitor and enforce these agreements, and make enforcement of these suspension agreements a priority for CBP?

Answer. Yes; I can commit, if confirmed, to work closely with USDA to monitor and enforce the revised antidumping and countervailing duty suspension agreements negotiated with Mexico earlier this year.

Question. I appreciated our earlier discussion about the importance of CBP working closely with the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to protect farmers from invasive pests and diseases. Agriculture is Michigan's second-largest industry, and our farmers are increasingly facing these threats. For example, our cherry growers have been grappling with the damage caused by spotted-wing drosophila for several years now. Just last week, USDA confirmed the presence of a new invasive pest, the European cherry fruit fly, in upstate New York.

If confirmed, will you commit to a strong partnership with APHIS at the border to protect our farmers?

Answer. Yes, I will continue to commit to a strong partnership with APHIS. With regards to preventing the introduction of nonnative destructive pests into the United States, the CBP–APHIS relationship is symbiotic in nature. Strong collaboration with APHIS is an integral component to the overall success of the mission. APHIS has the scientific resources needed to effectively assess risk and promulgate agriculture safeguarding regulations, whereas CBP has the autonomy and operational capability needed for immediate implementation and action.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

Question. I am troubled by the allegations that U.S. Customs and Border Protection officers at Newark Liberty International Airport subjected new officers to what is being described as "hazing" rituals. On September 13th, three CBP officers were arrested and charged with forcibly assaulting, impeding, intimidating, and interfering with two men identified as victims who were both CBP officers at the time the incidents occurred. The three officers who have been charged were members of the Passenger Enforcement Rover Team, or PERT, a specialized unit within CBP which is tasked with preventing passengers from bringing illegal items into the United States. The alleged assaults took place at Newark Liberty International Airport on top of what has been described as a "rape table."

You committed to me in private that you were well aware of this situation and found this conduct unacceptable. While charges have been filed against these three CBP officers, what actions has CBP taken to ensure that Newark Liberty International Airport is not only safe for CBP officers, but the people who utilize the airport on a daily basis?

Answer. Following the allegations at Newark Liberty International Airport, swift and decisive action was taken by the Office of Field Operations (OFO). Significant changes were made to U.S. Customs and Border Protection (CBP) management at Newark International Liberty Airport. Eleven CBP employees, including three supervisors, were immediately placed on administrative duty and their firearms, badges, and access to sensitive databases were suspended while DHS's Office of the Inspector General investigated the allegations. Also, on May 11, 2017, the Passenger

Enforcement Rover Team in Newark was disbanded. Managers and Enforcement Team trainers from John F. Kennedy International Airport were assigned to Newark to review and assess operations, provide training, and assist with the reorganization of Newark's Enforcement Team. Additionally, port chaplaincy, peer support programs, and on-site Employee Assistance Program training and counseling have been made available to CBP employees in Newark.

In May 2017, the OFO Executive Director for Operations issued a memorandum and a muster to the Directors of Field Operations reminding all employees of the Standards of Conduct for CBP employees, stressing that U.S. Customs and Border Protection (CBP) employees are responsible for their actions. CBP employees, to include supervisors and managers, were reminded not to engage in or promote, criminal, infamous, dishonest, or notoriously distasteful conduct, or any conduct prejudicial to the government on or off duty. The muster noted that all employees are required to immediately report inappropriate behavior by other employees. This muster reiterated that the failure to operate under a zero tolerance environment may lead to disciplinary actions. In addition, memoranda and musters were issued reminding all employees of the requirement to act professionally when processing all persons entering and exiting the country.

CBP increased Headquarters and local management oversight into complaints which serves to quickly identify employees who are potentially at risk of participating in behavior that would be indicative of egregious misconduct. Please be assured that CBP takes all allegations of employee misconduct seriously. Every CBP employee is required to immediately report misconduct to his or her supervisor or other management official, the Office of Professional Responsibility (OPR), or the DHS OIG. In addition, CBP's Standards of Conduct stipulate that nothing in the Standards should be construed or applied to interfere with an employee's right to communicate with their congressional representatives and to engage in activity protected by the Whistleblower Protection Act. Moreover, CBP's policies and practices support the protection of employees who fulfill their obligation to report misconduct. To promote awareness, CBP has distributed materials regarding whistleblower rights and posted information in prominent locations within CBP offices. Additionally, CBP requires all employees to complete training at least every 2 years regarding their rights and remedies under antidiscrimination, retaliation, and whistleblower protection laws.

CBP's most valuable attributes in protecting the American people are the integrity and professionalism of its workforce. The alleged acts of a limited number of individuals at Newark Liberty International Airport could tarnish the reputation of the nearly 60,000 dedicated CBP employees who take the utmost pride in performing their duties with vigilance, integrity, and professionalism, in order to earn and maintain the public's trust. CBP's focus on employee accountability and transparency is only as good as its commitment to exemplifying and standing by those principles.

Question. How are you assuring the public that the officers whose duty it is to identify dangerous contraband and threats to national security are not compromised in any way after three of their members have been charged with a serious crime?

Answer. If allowed to stand without investigation or action, the allegations could have undermined the reputation of the thousands of CBP Officers who take the utmost pride in performing their duties with vigilance, integrity, and professionalism, in order to earn and maintain the public's trust. In response, I ensured that appropriate management actions were taken and that CBP's Office of Professional Responsibility fully supported the Office of Inspector General investigation.

Question. According to reports, the new officers were initially reluctant to file a complaint about this hazing ritual, since the officers committing the acts were well connected within CBP. How can you prevent similar behavior in the future and will you commit to putting procedures in place to ensure this type of conduct is discovered sooner and officers feel comfortable reporting abuses?

Answer. These allegations were ultimately routed through the CBP Joint Intake Center and CBP's swift and decisive action serves as an example for those that may be reluctant to come forward that the process to file these complaints does work. I am committed, if confirmed, to ensuring that every CBP employee feels that they can immediately report misconduct to his or her supervisor or other management official, the Office of Professional Responsibility (OPR) or the DHS OIG.

In addition, CBP's Standards of Conduct stipulate that nothing in the Standards should be construed or applied to interfere with an employee's right to communicate

with their congressional representatives and to engage in activity protected by the Whistleblower Protection Act. Moreover, CBP's policies and practices support the protection of employees who fulfill their obligation to report misconduct. To promote awareness, CBP has distributed materials regarding whistleblower rights and posted information in prominent locations within CBP offices. Additionally, CBP requires all employees to complete training at least every 2 years regarding their rights and remedies under antidiscrimination, retaliation and whistleblower protection laws.

Question. Please provide any updated training or operational changes that are being considered or are currently in place.

Answer. Shortly after the alleged misconduct became known to OFO, musters geared toward both managers and employees were issued to each employee reiterating the Standards of Conduct and the Office of Human Resources Management Table of Offenses for unprofessional and disruptive behavior. CBP has distributed materials regarding whistleblower rights and posted information in prominent locations within CBP offices. OFO also maintains a robust professionalism program at each Field Office, with over 200 Professionalism Service Managers (PSMs) nationwide. OFO Headquarters conducts routine conference calls with all PSMs to discuss topics of concern and best practices on how to avoid and address unprofessional and disruptive behavior. Finally, CBP requires all employees to complete training at least every 2 years regarding their rights and remedies under antidiscrimination, retaliation and whistleblower protection laws. As part of this training, employees are advised of the avenues for reporting wrongdoing and the resources available to assist them with any questions or concerns about discrimination, retaliation, mismanagement, waste, fraud, or abuse.

Question. While charges have been filed against three CBP Officers, there were reports of other CBP Officers who complained of assault or harassment by their coworkers at the Newark Liberty International Airport. In particular, one female officer stated that she was tied to a chair, put into confinement, and had a gun pointed at her. Is the Inspector General still investigating incidents at the Newark Liberty International Airport?

Answer. I must defer questions on the status of any ongoing OIG investigations to the Inspector General. For CBP's part, CBP OPR Headquarters became aware of the alleged misconduct in Newark on or about January 23, 2017, when the allegations were reported via email to CBP's OPR. In accordance with DHS Management Directive 810.1, the information was forwarded immediately to the DHS Office of Inspector General (OIG), which opened an investigation. CBP's OPR has actively supported the DHS OIG investigation.

Question. If so, what is the status of these investigations?

Answer. It would be more appropriate to defer any questions on the status of any OIG investigations to the Inspector General.

Question. We discussed at our meeting reports that a number of border officials are making factually incorrect statements to those fleeing persecution and arriving at our borders. Human Rights First published a report "Crossing the Line" documenting examples of asylum seekers being turned away from the border without the proper protocol being followed. A lawsuit was filed against Secretary Kelly at the Department of Homeland Security and you as Acting Commissioner of the United States Customs and Border Protection. The lawsuit alleges that CBP officials have systematically violated U.S. law and binding international human rights law by refusing to allow asylum seekers who present themselves at ports of entry along the U.S.-Mexico border and assert their intention to apply for asylum or a fear of returning to their home country the ability to seek protection in the United States.

What action has CBP taken to correct these issues and ensure that officers are complying with the law?

Answer. Over the last 2 years, CBP has referred over tens of thousands of applicants for admission who expressed fear of return to U.S. Citizenship and Immigration Services for review by an asylum officer. CBP carries out its mission of border security while adhering to U.S. and legal international obligations for the protection of vulnerable and persecuted persons. The laws of the United States, as well as international treaties to which we are a party, allow people to seek asylum on the grounds that they are being persecuted outside of the United States because of their race, religion, nationality, membership in a particular social group, or political opinion. CBP understands the importance of complying with these laws designed to pro-

tect some of the world's most vulnerable populations, and takes its legal obligations seriously. Accordingly, CBP has designed policies and procedures based on these legal standards, in order to protect vulnerable and persecuted persons in accordance with these legal obligations. All CBP officers must comply with all law and policy, investigations are initiated whenever specific complaints are received, and appropriate disciplinary action may be taken against those who do not follow law and policy.

Question. What steps will you commit to taking to ensure that this practice ends immediately across the southern border?

Answer. CBP takes any allegation of employee misconduct very seriously. All complaints against officers, regardless of the mode through which they are received, are recorded and investigated, and appropriate action is taken against CBP employees who are found to have violated agency policy. Additionally, CBP's Office of Professional Responsibility (OPR) has been actively engaged with Non-Governmental Organizations (NGOs) to identify and investigate incidents alleging that persons were prevented or discouraged from making claims of fear to CBP.

Question. Do you think that border officials are properly trained in their role of referring asylum seekers and our asylum policies?

Answer. Over the last 2 years, CBP has referred over tens of thousands of applicants for admission who expressed fear of return to U.S. Citizenship and Immigration Services for review by an asylum officer. In the vast majority of cases, CBP carries out its mission of border security while adhering assiduously to U.S. and legal international obligations for the protection of vulnerable and persecuted persons. CBP recognizes the importance of thoroughly training our frontline officers and agents. Both Border Patrol Agents (BPAs) and Customs and Border Protection Officers (CBPOs) receive training on the proper processing, treatment, and referral of aliens who express a fear of return. This training begins at the Academies, and is reinforced through Post Academy training and the periodic issuance of memoranda and musters.

Question. What steps have you taken or will you take to ensure that both Border Patrol agents and Office of Field Operations officers are trained on referrals of asylum seekers?

Answer. Both Border Patrol Agents (BPAs) and Customs and Border Protection Officers (CBPOs) receive training on the proper processing, treatment, and referral of aliens who express a fear of return. This training begins at the Academies, and is reinforced through Post Academy training and the periodic issuance of memoranda and musters.

Question. Will you issue written guidance to the field to make clear U.S. legal obligations are being fulfilled and border enforcement policies and practices do not dissuade or prevent genuine asylum-seekers from legally seeking protection in the United States?

Answer. CBP issues periodic guidance to the field reminding CBP Officers and Agents of their legal obligations towards those who express a fear of return, and has done so recently. If confirmed, I will ensure that continued guidance is communicated.

Question. In 2015, the Office on Inspector General expressed concern that DHS was violating international law by referring individuals who expressed fear of persecution for criminal prosecution for illegal entry and/or re-entry before DHS determined whether the individuals might have a valid claim for persecution under U.S. law. Additionally, a recent article reported that a young woman who was tortured and raped after being turned away from the United States was charged with criminal re-entry when she attempted to cross the border a third time seeking asylum.[4]

What action has CBP taken to correct these issues and ensure that officers are complying with the law?

Answer. It is CBP's policy to treat all individuals in a professional manner and with dignity and respect, consistent with U.S. laws and international obligations. According to U.S. law and CBP policy, if an officer or agent encounters an individual who is not lawfully present or who is seeking admission, at or between ports of

[4] Stanton, John, "All it Takes is Torture," *Buzzfeed News,* October 10, 2017, *https://www.buzzfeed.com/johnstanton/a-young-woman-was-tortured-and-raped-after-being-turned?utm_term=.euNYok8X9Z#.kiagKodxm7.*

entry, the person is amenable to expedited removal, pursuant to section 235(b)(1) of the Immigration and Nationality Act. If an individual expresses a fear of being returned to his or her home country, CBP officers and agents record verbal and nonverbal indications of fear and refer the person for an interview with a U.S. Citizenship and Immigration Services (USCIS) Asylum Officer. CBP officers and agents do not make any determination on the validity of such claims.

In any instance in which an applicant for admission may be subject to a criminal charge, CBP consults with local U.S. Attorney's Office (USAO). The USAO, given specific facts/circumstances, will make a determination as to whether to take a case for criminal prosecution. Criminal prosecution proceeds separately from any administrative processing, including expedited removal/credible fear, by CBP.

Question. What steps have you taken or will you take to ensure that Border Patrol agents and Office of Field Operations officers are trained on this legal obligation and how referral of asylum-seekers for prosecution violates U.S. law?

Answer. Both Border Patrol Agents (BPAs) and Customs and Border Protection Officers (CBPOs) receive training on the proper processing, treatment, and referral of aliens who express a fear of return. This training begins at the Academies, and is reinforced through Post Academy training and the periodic issuance of memoranda and musters.

Question. What written or oral guidance has been given to CBP employees regarding enforcement of priorities and the exercise of prosecutorial discretion apart from the January 25th executive order on interior enforcement and Secretary Kelly's February 20th memo to you and the other DHS agency heads?

Answer. Following Executive Orders 13767 and 13768 and the Secretary's Implementation Directions of February 20, 2017 the Chief of the U.S. Border Patrol and the Executive Assistant Commissioner of the Office of Field Operations issued respective guidance that reiterated the Secretary's rescission of the November 20, 2014 memorandum entitled, "Exercising Prosecutorial Discretion With Respect to Individuals Who Came to the United States as Children and With Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents." Additionally, this guidance reiterated the administration's enforcement policy that criminal aliens have demonstrated their disregard for the rule of law and as such are a priority for removal. CBP policy directs the referral for criminal prosecution of any alien whom our officers and agents have a reason to believe has committed a criminal offense and directs the initiation of removal proceedings against any alien who is subject to such removal under the Immigration and Nationality Act.

Question. Does CBP refer all apprehended cases to ICE regardless of whether an individual presents a public safety threat?

Answer. OFO processes all applicants for admission at Ports of Entry (POEs) under section 235 of the Immigration and Nationality Act (INA). Depending on the particular enforcement action taken, an applicant for admission who has been found inadmissible may or may not be referred to ICE Enforcement and Removal Operations (ERO). Under section 235(b) of the INA, an inadmissible applicant for admission who is subject to expedited removal, but who has not expressed a fear of return, may be removed by CBP officers at a POE, or may be referred to ICE to effectuate their removal, where additional coordination is required. Aliens who are permitted to withdraw their application for admission, pursuant to section 235(a)(4), are also generally not referred to ICE ERO.

Under section 235(b)(1) of the INA, inadmissible applicants for admission who are subject to expedited removal, but who express a fear of return, are referred for a Credible Fear interview and must be referred to ICE ERO for detention.

U.S. Border Patrol processes all aliens arrested between the ports of entry according to policies and procedures set forth by law and agency regulations (Immigration and Nationality Act sections 287, 240, and 235, Border Patrol Handbook, and M–68). Aliens apprehended between the ports of entry who are subject to expedited removal and who have not expressed a fear of return may be removed without a referral to ICE. Under section 235(b)(1) of the INA, inadmissible applicants for admission who are subject to expedited removal, but who express a fear of return, are referred for a Credible Fear interview and are referred to ICE ERO. Adults, family units, and unaccompanied alien children all require specific needs for detention and processing which are followed by all BPAs and their supervisors.

Additionally, CBP officers and agents will take enforcement action against all aliens encountered in the course of their duties who enter illegally or who do not

have a lawful status to remain in the United States. Such action includes the arrest or apprehension of aliens whom CBP has reason to believe have entered or who remain in the United States in violation of immigration laws. Such action also includes the referral for criminal prosecution of any alien whom CBP has reason to believe has committed a criminal offense, and the initiation of removal proceedings against any alien who is subject to removal under any provision of the INA. CBP officers and agents coordinate with ICE/ERO for referrals for detention.

Question. CBP has authority to stop and question individuals within 100 miles of the border. CBP also sets up checkpoints and conducts roving patrols where many times lawful residents and U.S. citizens are subjected to racial profiling and harassment. What have you done or how will you ensure individuals are not subjected to racial profiling or other impermissible profiling? Please include details in your response about whether there have been CBP trainings and/or data collection reforms in response to the Department of Justice's December 2014 Guidance for Federal Law Enforcement.[5]

Answer. CBP is committed to the fair, impartial and respectful treatment of all, and has memorialized its commitment to nondiscrimination in existing policies, including the February 2014 CBP Policy on *Nondiscrimination in Law Enforcement Activities and All Other Administered Programs.* This policy was developed to implement *DHS Policy on Nondiscrimination in Law Enforcement Activities and All Other Administered Programs* and prohibits the consideration of race or ethnicity in law enforcement, investigation, and screening activities, in all but the most exceptional circumstances. To further implement CBP/DHS Policy, CBP took the following actions:

- Initiated an antidiscrimination awareness campaign through payroll notice statements, the IDS, and the CBPnet;
- Developed and delivered muster module for enforcement personnel on anti-profiling in security screen and enforcement activities; and
- Coordinated with the Office of Training and Development (OTD) to update training material for law enforcement personnel.

CBP's Standards of Conduct further highlights CBP's prohibition on bias-motivated conduct and explicitly requires that "Employees will not act or fail to act on an official matter in a manner which improperly takes into consideration an individual's race, color, age, sexual orientation, religion, sex, national origin, or disability, union membership, or union activities."

The use of race and ethnicity information in violation of this policy may subject CBP employees to discipline under the Standards of Conduct.

Question. Press reports indicate that Border Patrol agents detained Rosa Maria Hernandez, a 10-year old child with cerebral palsy after an emergency surgery. CBP agents reportedly stopped the ambulance at an interior border checkpoint on October 24, 2017 as it was travelling from Laredo, TX, to Driscoll Children's Hospital in Corpus Christi. Following Rosa Maria's surgery, Federal agents took her into custody and placed her in a San Antonio detention facility.

Is it the policy of CBP to routinely detain ambulances?

Answer. No, it is not the policy of CBP to routinely detain ambulances. U.S. Border Patrol sectors and stations routinely work with medical providers and emergency transportation companies to coordinate an expedited inspection when provided advanced notice. These actions are conducted with strict adherence to policy and regulations found in, but not limited to the Border Patrol Handbook and local agreements guided by national policy.

Many press reports regarding the Rosa Maria Hernandez encounter have been inaccurate. Rosa Maria was traveling in white sedan with an adult male driver and adult female passenger. Agents subsequently determined that Rosa was an "unaccompanied alien child" (UAC), since she (a) had no lawful immigration status, (b) is under the age of 18, and (c) had no parent or legal guardian in the United States available "to provide care and physical custody."

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) provides certain protections for vulnerable minors, including requiring agencies to promptly take steps to notify the Office of Refugee Resettlement

[5] Fact Sheet: U.S. Department of Justice Racial Profiling Guidance, December 8, 2014, *https://www.dhs.gov/news/2014/12/08/fact-sheet-us-department-justice-racial-profiling-guidance.*

(ORR) of the U.S. Department of Health and Human Services (HHS), and erring on the side of involving ORR for the protection of the minor. Indeed, the TVPRA leaves no discretion for any Federal agency to decline to turn over a UAC in its custody to ORR, or to otherwise transfer custody of that UAC to any individual or entity other than ORR. Thus, once CBP determined that Rosa Maria's parents were not present and would not appear to take custody of her, and therefore that she was a UAC, CBP was obligated by law to transfer her into the custody of ORR.

Question. Does CBP consider an ambulance a "sensitive location" as outlined in the 2011 memorandum entitled "Enforcement Actions at or Focused on Sensitive Locations"?

Answer. During any law enforcement operation, preservation of life and the safety of the public are the first considerations. Although an ambulance is not considered a sensitive location per our current policy, and USBP has seen various methods of smuggling through checkpoints to include emergency vehicles, common carriers, commercial vehicles, etc., CBP understands the nature and sensitivity of legitimate emergency medical service vehicles traveling through USBP checkpoints. It is CBPs policy and practice that we should endeavor to assist other agencies when possible, and close coordination with emergency medical services and local hospitals is key to ensuring that both CBP and other agencies continue to operate effectively and efficiently to accomplish their missions, especially in regard to providing lifesaving medical treatment of any person that CBP might encounter.

Question. Should you be confirmed, how will you instruct CBP agents with regard to the treatment of ambulances?

Answer. USBP sectors and stations routinely work with medical providers and emergency transportation companies to coordinate an expedited inspection when provided advanced notice. These actions are conducted with strict adherence to policy and regulations found in, but not limited to the Border Patrol Handbook and local agreements guided by national policy. If confirmed, I will work to ensure that CBP's policy is effectively communicated to partner emergency responders in affected areas. CBP will continue to take the appropriate enforcement actions, but will continue to coordinate to ensure that no such action impedes the legitimate medical treatment or lifesaving efforts of local emergency medical services, traveling through USBP checkpoints.

Question. The 2011 memorandum "Enforcement Actions at or Focused on Sensitive Locations" includes hospitals in its definition of a "sensitive location." Please explain why that guidance was violated in Rosa Maria's case.

Answer. Enforcement actions were not conducted at a sensitive location, which in this case was Driscoll Children's Hospital. The unaccompanied child was encountered and taken into custody at an immigration checkpoint—a CBP operational location—and was already in Border Patrol custody when she was escorted to the hospital so that she could receive her scheduled medical care. Because no parent or guardian of Rosa Maria was present at either the checkpoint or hospital, and no parent or guardian of Rosa Maria contacted Border Patrol during this time, CBP reasonably determined that Rosa Maria was a UAC at the time she was encountered at the checkpoint and remained a UAC while in Border Patrol custody at the hospital. As such, CBP was obligated by law to place Rosa Maria into the care of the U.S. Department of Health and Human Services Office of Refugee Resettlement after her medical procedure.

Question. How many agents were present during the escort of Rosa Maria to the hospital, during her surgery and recovery, and during her detention and transfer to San Antonio?

Answer. Agency policy requires two (2) agents are present.

Question. Does CBP consider the medical needs of minors when making determinations regarding detention?

Answer. CBPOs and Agents take every action necessary to ensure the safety and welfare of individuals in our custody, and adheres to the requirements of Federal law, regulation, and policy, including the TVPRA.

Question. In the past 10 years, our government has spent more taxpayer dollars on border security than at any other point in its history. Since 2000, the U.S. Border Patrol budget has increased by 245 percent. At the same time, apprehensions are at lows not observed since the 1970s.

Should Congress take greater account of the evolving border dynamics when assessing if money should be spent on a border wall and additional border patrol agents?

Answer. The border environment is dynamic, and the threat situation is driven by adversary actions and is constantly in flux. CBP must be afforded flexibilities to remain agile to respond appropriately based on current mission needs and resourced to address capability gaps.

Securing the border requires an integrated approach including infrastructure such as border wall and road access, surveillance technology, response capability, and personnel. The U.S. Border Patrol maintains a Capabilities Gap Analysis Process that begins with input from the sector level, and has identified the necessary capabilities to secure the border. The four key Master Capabilities are: Domain Awareness, Impedance and Denial, Access and Mobility, and Mission Readiness.

A significant portion of the success we have realized over the last decade and a half can be attributed largely to increased deployment of impedance and denial infrastructure. The border wall provides an important and enduring capability to impede or deny illegal crossings in those areas where it is applied, as demonstrated in San Diego, Tucson, El Paso, and Yuma Sectors, but it is not effective alone, and is not an appropriate solution for every area of the border. It is most effective where there are populated areas near the line on the U.S. side of the border, where illegal crossers can vanish within residential and commercial areas.

Where it is applied, the border wall must be supported by the ability to detect activity through advanced surveillance technology, and the ability to respond effectively with mobile, trained personnel. In this way, the most effective means of achieving operational control of the border does not rely on any single capability, piece of technology, or infrastructure. It is a mixture of all of those things, executed by a properly trained and properly equipped mission ready workforce.

USBP will continue to utilize the Capabilities Gap Analysis Process to identify mission needs and offer courses of action to fill gaps—impedance, technology, people—or a balance of all three depending on available resources. We will build the wall where it is prudent and effective and the design will change based on the environment and operational needs. We will deploy technology to produce domain awareness of illegal criminal activity exposing our citizens to risk. We will increase the hiring and deployment of new and relocate existing agents to both areas of increased threat and increased activity. A comprehensive view of all border threats, risks and activity is essential.

The significant improvements in border security over the past 10–15 years are promising, and reflect the benefits of sustained investment in border security capabilities based on operational requirements, combined with the effective operational strategies applied by the U.S. Border Patrol, along with improvements in enforcement policies and consequence delivery. Despite these improvements, we continue to see over 25,000 apprehensions of illegal crossings per month between ports of entry, as well as increasing amounts of hard narcotics seizures. These threats—over 830 people a day—include previously deported criminals, hardened smugglers employed by ruthless cartels, and other potential security risks. It remains CBP's responsibility to effectively interdict and deter these crossings, in concert with immigration enforcement partners and supported by appropriations and authorities from Congress as we strive toward operational control, the effective deterrence or interdiction of all illegal crossings. The impedance and denial capability provided by the border wall remains an important component of that effort.

Question. By what specific metrics will you evaluate the effectiveness and fiscal responsibility of various methods used for border security, including walls, fences, levees, personnel at and between ports, aerostats, drones, and manned aircraft?

Answer. USBP conducts an annual Capability Gaps Analysis Process (CGAP) to identify gaps and other trends between the ports of entry. Once the gaps have been identified, analyzed and prioritized, USBP views these gaps through the lens of available resources including personnel, persistent surveillance, and impedance and denial (*i.e.,* the wall)—to address those threats. The time to procure and available funding shape the immediate response, while we address the long-term strategic needs. We use metrics like the Interdiction Effectiveness Rate[6] and State of the

[6] Interdiction Effectiveness Rate (IER) is the percent of detected illegal entrants who were apprehended or turned back after illegally entering the United States between Southwest border

Border risk analysis to guide and shape the balancing of resources to meet the actions of the extremely nimble transnational criminal organizations. "Operational Control" of the border, as directed by both the Secure Fence Act of 2006 (8 U.S.C. 1701) and Executive Order 13767 (section 4),[7] is an additional metric that is used to guide our prioritized investment. When balancing competing interests, DHS and CBP will use these and other specific methodologies to identify and validate border control initiatives and investments. Moving forward, we will include "Operational Control" of the border as an additional metric, directed by both the Secure Fence Act of 2006 (8 U.S.C. 1701) and Executive Order 13767 (section 4),[8] to guide our prioritized investment. When balancing competing interests, DHS and CBP will use specific methodologies to identify and validate border control initiatives and investments.

Question. Will you make this analysis public?

Answer. Annually, CBP makes many statistics and metrics available to the public and we will continue to promote transparency where and when we can while protecting the men and women defending the Nation. The submission of many of these metrics and others to Congress is required by statute as well.

Question. A 2016 OECD report showed that nearly half a trillion dollars in global trade is made up of counterfeited and pirated goods and that U.S. companies are the biggest victims, falling prey to fully 20 percent of the knockoffs. The OECD also reported postal parcels are the top method of shipping these fake goods, amounting to 62% of seizures from 2011 to 2013. Will you commit to working with me to address this growing threat, and to make sure that CBP devotes the resources necessary to combat the problem?

Answer. Yes, I can commit to working with you to address these enforcement issues, if confirmed. CBP is committed to addressing the growing challenges in the mail and express environments, particularly with respect to the opioid crisis and IPR violations. To that end, CBP and the United States Postal Service signed an MOU on September 1, 2017, outlining roles and responsibilities between the agencies and better aligning out enforcement efforts. Additionally, my staff and I have worked closely with the Postmaster General, Megan Brennan, and her staff to cultivate a more robust relationship and enhance our ability to function in tandem. Including the development of relevant legislation and outreach to international partners and world organizations such as the Universal Postal Union to allow for the collection of advanced electronic data or AED.

Furthermore, CBP is currently conducting special operations in the International Mail Facility environments throughout the year focusing on IPR enforcement and we will continue to conduct these operations. CBP is also looking to increase staffing at the International Mail Facilities to help address the increased volume of shipments.

Question. Last Congress, various Senators as well as companies and industries expressed concerns about duty evasion. We ultimately passed the Enforce and Protect Act to address those concerns. We need to make sure that we're fully and effectively countering duty evasion, and that affected industries and workers are able to meaningfully participate in this process. Given the importance of the Enforce and Protect Act to many Senators on this committee, will you work with us to ensure our concerns about duty evasion are addressed and that the law is fully implemented so that domestic industry can participate actively in duty evasion investigations?

Answer. If confirmed, I can assure you that I will continue to work with you to detect and deter duty evasion. Part of that effort will include CBP's continued vigorous enforcement of the Enforce and Protect Act (EAPA) which CBP has been effectively and dutifully implementing over the past year. To date, CBP has initiated over 14 EAPA investigations, all of which have resulted in interim measures. These investigations cover various products, including wire garment hangers, wooden bedroom furniture, diamond sawblades, and oil country tubular goods (steel tubing). The interim measures taken protect the revenue, such as providing cash deposits on subsequent entries, suspending and extending liquidation of entries, rejecting entries summaries that are within the reject period, as well as evaluating the contin-

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ports of entry. IERs are calculated by taking the sum of apprehensions and turnbacks, and dividing by the sum of apprehensions, turnbacks, and gotaways.

[7] The Secure Fence Act and the executive order both define "operational control" as the "Prevention of *all* unlawful entries into the United States."

[8] The Secure Fence Act and the executive order both define "operational control" as the "Prevention of *all* unlawful entries into the United States."

uous bond and requiring single transaction bonds, as appropriate. In these investigations, the Trade Remedy Law Enforcement Directorate has coordinated more than 10 foreign onsite verifications, including two locations in Thailand and eight locations in Malaysia, among others, as well as domestic onsite verifications and multiple cargo exams. The onsite verifications are crucial to gather evidence of exporter production capability and capacity, to assess the information against that provided in the allegations and CBP's own research of the exporters and importers.

The first EAPA allegation was filed only a few weeks after the regulations went into effect. CBP quickly formed a small cohesive investigative unit and completed its work well ahead of the statutory deadline for interim measures. In that first investigation, CBP initiated a unique investigative approach to obtain key information when the parties being investigated declined to participate. CBP reached its determination on interim measures a month ahead of the statutory deadline and issued its final determination to the parties to the investigation on August 14, 2017. The notice explained that there was substantial evidence on the record that merchandise was entered into the U.S. customs territory through evasion via transshipment of wire hangers from China through Thailand. As a result of this enforcement effort, the alleger filed eight more allegations and to date, these investigations alone have stopped the evasion of $33 million AD duties annually.

Question. A recent article, citing a speech you gave in June, said that during a 5-day interagency operation at JFK Airport, CBP and its partner agencies found that 43 percent of shipments inspected were non-compliant. As I understand it, these shipments were express and mail shipments under the *de minimis* threshold—not traditional freight. While I agree that *de minimis* shipments should come in duty-free, they should not be free from enforcement. How does CBP plan to address the issue of inspecting express and mail shipments and ensuring that all products sold in the United States—regardless of their value—comply with regulatory requirements and do not infringe on U.S. companies' intellectual property rights?

Answer. Everyday, millions of Americans make online purchases, often not realizing that they are, in fact, importing. Since 2000, the number of Americans shopping online has increased nearly fourfold, up from 22 percent to 79 percent. As the agency with physical control over U.S. imports, CBP continues to adapt to the growth of *de minimis* shipments and imports through e-commerce business to ensure a safe and secure trade system that supports the U.S. economy. To address these evolving challenges, CBP officially established the E-Commerce and Small Business Branch within the Office of Trade and directed it to develop and implement a new e-commerce strategy. The developed strategic goals and objectives, will position CBP to address the challenges in the e-commerce environment now and into the future. Additional intellectual property rights (IPR) exams and special operations targeting the small package environment in both express carrier environment as well as in international mail will help to address the critical need to continue to focus on IPR enforcement. By strengthening the partnership with Homeland Security Investigations at the National Intellectual Property Rights Center (IPRC), CBP will direct targeting and operational resources to areas of greatest concern. CBP will also work with the U.S. Postal Service to increase the amount of advanced electronic data received from foreign posts and work to identify emerging technologies that can provide enhanced inspection capabilities of parcels.

QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. Mr. McAleenan, our domestic steel industry continues to face unfair and illegal competition from counties like China, who not only export heavily subsidized products to the United States and around the world, but have also engaged in state-sponsored cyber-enabled economic espionage. These are not the actions of a Nation respectful of market principles.

Unfortunately, the Commerce Department's section 232 investigation into imported steel and aluminum has stalled despite repeated calls to take action by our steel industry, as well as me and other members of Congress. This delay has made a bad situation worse—imports of steel are now higher than they were last year as importers try to get product into the United States before any remedy order goes into effect. If Commerce and President Trump do eventually take action, Customs will be tasked with enforcing such remedies, which is all the more critical given the current surge in imports.

To what degree are you coordinating with Commerce, USTR and the White House to ensure Customs is prepared to both enforce these import restrictions and also identify and address any gaming or transshipment that may stem from these restrictions?

Answer. CBP has coordinated with the Department of Commerce and the International Trade Commission (ITC) to be prepared to address technical implementation issues. CBP's National Targeting and Analysis Groups (NTAGs) are prepared to identify and address risks related to "gaming" or trans-shipments that might occur to avoid these restrictions when implemented.

Question. Nothing we ask you to do is simple or easy. You are on the front lines of protecting our domestic industrial base from imports of illegally subsidized goods—identifying transshipped goods and properly imposing anti-dumping and countervailing duties are critical components of those efforts.

Answer. AD/CVD Enforcement is a priority for CBP, and CBP aggressively pursues all allegations and indications of evasion of anti-dumping and countervailing duty orders.

Question. Can you describe how the sophistication of these efforts have evolved?

Answer. AD/CVD evasion often involves sophisticated fraudulent activity that takes place outside of the United States, including the creation of fraudulent information and documents that are transmitted to CBP with the entry information. Goods are illegally transshipped to hide the identity of the parties involved in the transaction. The countries that are used to facilitate the illegal transshipment often vary. Parties also constantly look for and test potential loopholes in complex AD/CVD requirements.

Question. How have you and your agents responded to the evolving dynamics?

Answer. In order to verify and obtain proof of AD/CVD evasion, including illegal transshipment, CBP employs document reviews, cargo examinations, scientific testing, audits, and partnering with U.S. Immigration and Customs Enforcement (ICE) and foreign customs authorities. When CBP identifies types of AD/CVD evasion that are potential criminal violations, CBP refers issues to ICE and supports ICE criminal investigations. CBP also partners with the U.S. Department of Commerce on AD/CVD enforcement, and works closely with the trade to obtain market intelligence and commodity expertise. On an organizational level, CBP has stood up 10 Centers of Excellence and Expertise (Centers), which have a strong focus on commodity-based AD/CVD orders and centralize AD/CVD activities for importers aligned with the respective industry sector. The Centers are increasing uniformity and expertise across CBP for the administration of AD/CVD entries and AD/CVD enforcement.

CBP has also been addressing evasion through implementation of the EAPA investigations. By centralizing the EAPA investigations under the Office of Trade's Trade Remedy Law Enforcement Directorate (TRLED), CBP has been able to ensure that any concerns occurring in the investigations are readily addressed, as well as to provide better communication and coordination among the various units within CBP that are working these investigations. TRLED, being at Headquarters is also better positioned to coordinate with other government agencies, such as the U.S. Department of Commerce, as well as other foreign governments to facilitate the exchange of information in these investigations.

Question. Please also discuss any tools you have which are particularly helpful in addressing these challenges, including those provided in the 2016 customs bill.

Answer. CBP takes an agency-wide approach to enforcing AD/CVD laws and utilizes national assets and numerous tools from across the agency to enforce AD/CVD. The combination of techniques and tools are targeted on the specific evasion schemes. CBP audits are used in many cases of AD/CVD evasion, and in FY 2017, identified $27.1 million in AD/CVD discrepancies with $2.2 million collected to date. The Enforce and Protect Act, which was part of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) provided new means for the trade to provide AD/CVD evasion allegations to CBP, and for CBP to pursue these allegations, and is already proving effective. TFTEA also gave CBP new tools and impetus around risk-based bonding. Finally, civil penalties provide a means to penalize and deter AD/CVD evasion. In FY 2017, CBP levied 43 monetary penalties totaling over $253.6 million on importers for fraud, gross negligence, and negligence for AD/CVD violations. CBP is also applying law enforcement targeting, intelligence, and analytical techniques towards its trade enforcement mission.

Question. In your view, what are the most significant challenges to you and your agency in the area of trade enforcement in the coming years?

Answer. The most significant challenges to CBP in the area of trade enforcement come from the dramatic changes ongoing in the global supply chain. The most prevalent is the dramatic growth in e-Commerce and direct to consumer imports. E-Commerce is largely responsible for the increase in the volume of small shipments entering the U.S. stream of commerce. As the agency with physical control over U.S. imports, CBP must adapt to the growth of imports through e-commerce business. The potential threat of harm to the public due to the challenges in the e-commerce environment is real. From terrorist plots that have involved small packages to the seizure of thousands of non-compliant goods with health and safety issues, CBP must continue to address threats in e-commerce shipments to preempt such risks to the Nation's safety and security.

The impact to our markets and U.S. manufacturers of global overcapacity of products, such as steel from China, along with predatory market practices are two additional dynamics that create major incentives for trade evasion and complicate detection and enforcement efforts. Further, detection of forced labor in supply chains is challenging given limited visibility into second and third tier suppliers to foreign manufacturers. With the authorities granted in TFTEA, a commitment to use all of CBP's law enforcement tools and expertise, and additional resources, CBP will work to meet these challenges.

Question. In June, the Drug Enforcement Administration reported that 4,642 fatal drug overdoses occurred in 2016 in Pennsylvania, a 37% increase from 2015. University of Pittsburgh researchers analyzed a regional database and found that in 54% of the deaths, fentanyl was among the drugs involved. In the last weekend of June, two Pennsylvania hospitals treated 51 patients for overdoses in 48 hours. Toxicology reports are pending, but investigators suspect the drugs contain fentanyl or carfentanyl. It is clear that fentanyl and carfentanyl pose a serious and increasing threat to ongoing efforts to curb the opioid crisis.

Do you agree that unlawful importation of fentanyl and synthetic fentanyls poses a growing threat to the Nation's health and security?

Answer. I agree strongly; the seizure statistics, along with reports from law enforcement partners and communities across the country, point to an area of growing concern. Within CBP, we are taking active steps to address the unlawful importation of these substances. Increased and sustained investments in our scientific infrastructure to detect and identify these substances will support the containment of this risk. These investments will be utilized to plan and implement capabilities to mitigate the immediate impact of fentanyls to users, their families, and their communities.

The importation of fentanyl—and other synthetic opioids—will continue to pose a significant threat to the Nation's health and security. Driven by the potential profits and growing demand, transnational criminal organizations (TCOs) based in Mexico and small criminal groups in the United States will likely seek to increase the amount of fentanyl they smuggle into the country. We assess that Mexican cartels will attempt to expand their fentanyl operations and continue to move low-concentration, multi-kilogram shipments across the SWB. At the same time, the amount of low-weight/high-concentration fentanyl shipments arriving directly in the United States via mail/express consignment operations will also rise. This smuggling method is characterized by small criminal groups and individuals based in the United States whose ability to leverage the Internet—especially the "dark web"—allows them to obtain synthetic opioids directly from overseas suppliers with relative ease and anonymity.

CBP's National Targeting Center (NTC) is where advance data and access to law enforcement and intelligence records converge to facilitate the targeting of travelers and items of cargo that pose the highest risk to our security—in all modes of inbound transportation. The NTC takes in large amounts of data and uses sophisticated targeting tools and subject matter expertise to analyze, assess, and segment risk at every stage in the cargo/shipment and travel life cycles. NTC leverages classified, law enforcement, commercial, and open-source information in unique, proactive ways to identify high-risk travelers and shipments at the earliest possible point prior to arrival in the United States and plays a key role in targeting the opioid supply. The NTC works closely with interagency Federal and international partners on joint initiatives aimed at targeting the opioid supply chain.

CBP will also enhance its risk segmentation based on data analytics and data mining by expanding an advanced data pilot in the international mail environment. Other efforts include prioritizing targeting efforts to disrupt, degrade, and dismantle transnational criminal organizations and illicit networks producing and distributing fentanyl and its analogues.

Question. As CBP Commissioner, what steps will you undertake to interdict fentanyl and synthetic fentanyls from entering the United States?

Answer. According to provisional data from the Centers for Disease Control and Prevention, in 2016, drug overdoses were the leading cause of accidental death in the United States, with opioids accounting for over 20,000 fatalities. Aligned with those increases, CBP has seen a sharp increase in fentanyl seizures coming through our land ports of entry and through express consignment and international mail facilities. In FY 2017, CBP's Office of Field Operations seized more than double the amount of fentanyl, a 153 percent increase.

Recognizing this trend and our critical role, in July 2017, I directed the development of a comprehensive and integrated strategy to enhance CBP's ability to target and interdict opioids entering the United States. CBP will continue to arrest and interdict all persons and contraband the entered into the U.S. illegally while conducting border security operation, as well as through counter-network operations to target and interdict the organizations involved in the smuggling of opioids at each node in the supply chain based on intelligence. I would also like to emphasize that ensuring that CBP personnel are properly equipped to conduct these interdictions in a safe and efficient manner must remain a top priority. To that end, CBP is working with partner agencies to identify personal protective measures and testing equipment to ensure officer safety while intercepting and accurately identifying fentanyl in the field.

CBP is focused on allocating internal resources to interdict fentanyl, in all forms, so as to prevent them from entering the United States. CBP is also working with partner agencies to identify personal protective measures and testing equipment to ensure officer safety while intercepting and accurately identifying fentanyl in the field. CBP is the first Federal law enforcement agency in the United States to train canines to detect fentanyl. CBP currently has over 100 canines trained to detect fentanyl and is planning to expand fentanyl training to existing teams that operate in the border security environment as well as ensuring all new canine teams have the ability to detect fentanyl.

CBP is also looking for new and innovative technology to presumptively identify fentanyl in the field. The Field Triage Infrared Reachback program continues to be the most effective means to presumptively identify new fentanyl analogues as it integrates virtual scientists with frontline officers. Reachback scientists are able to interpret data and recognize threats even if the spectra of these new threats do not exist in established libraries. Additionally, Gemini™ presumptive testing devices have been deployed which is currently the only device on the market which is able to utilize Raman and Fourier Transform Infrared Spectrometer (FTIR) technology for presumptive identification purposes. CBP has procured 82 additional presumptive testing devices which will be deployed to field offices nationwide. However, deployment will be heavily focused on the mail/express courier operations and Southwest border.

CBP has conducted many successful special enforcement operations. These enforcement operations have bolstered the interdiction of narcotics on the Southwest border, international mail and express courier facilities. Operation Hybrid II was conducted in Tucson, AZ from September 10–23, 2017. Operation Hybrid I was conducted in Laredo, TX in May 2017. Operation Hybrid bolsters CBP Field Offices with personnel, intelligence, and equipment to interdict hard drugs and other contraband being smuggled by pedestrians, privately owned vehicles, commercial busses, and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) Lanes. During Operation Hybrid I and II, Laboratory and Scientific Services (LSS) deployed a mobile laboratory to perform more rigorous testing for the presence of fentanyl in loads that were interdicted.

CBP also conducted Operation Crush in the express courier facilities in Memphis, TN; Cincinnati, OH; and Louisville, KY from August 23–September 15, 2017. CBP collaborated with other components and external agencies by leveraging enforcement, targeting, investigations, science, and intelligence to identify and disrupt individuals smuggling hard narcotics in the express courier environment. CBP will ex-

pand Operation Crush to international mail facilities beginning with the Chicago and New York Field Offices.

In addition to our internal operations, CBP will continue international engagement to reduce the supply chain in source countries through operational efforts and diplomatic engagement, specifically with China, Mexico, and Central and South America. To address serious gaps in information associated with fentanyl in Mexico, CBP conducted a fentanyl workshop focusing on the Southwest border and Mexico in September 2017 in Tucson, AZ. CBP is working with representatives of Australia, Canada, New Zealand, and the United Kingdom to exchange lessons learned, smuggling trends and best practices related to fentanyl. Subject Matter Experts from the participating countries are working together to conduct focus meetings discussing information such as officer safety, testing/detection, and substance analysis/exchange of spectra.

Lastly, I would note that CBP stands ready to assist Congress on legislative solutions to ensure CBP and its Federal partners are well equipped with the appropriate authorities, information sharing, and resources to amplify our enforcement efforts and best address this emerging threat.

Question. Reports indicate that the terrorist group ISIS has sold cultural artifacts and antiquities on the black market to help finance their operations in Iraq and Syria. In 2016, the Protect and Preserve International Cultural Property Act became Pub. L. 114–151. I sponsored this legislation in the Senate, which imposed restrictions on the import of cultural artifacts from Syria and sought to improve interagency coordination in stopping black market antiquities from entering the United States.

Do you believe that addressing the illegal import of cultural property into the United States, especially if they can be traced back to terrorist groups, should be a priority for CBP?

Answer. Yes, CBP is committed to protecting cultural property, heritage, arts and antiquities by developing and coordinating comprehensive U.S. border enforcement efforts, and working closely with Immigration and Customs Enforcement, Homeland Security Investigations. To do so, CBP coordinates with a host of domestic and international partners to combat illicit cultural property through a variety of fora, at the strategic and tactical levels, to include the exchange of intelligence, identification of anomalies, trends, and violations in the global supply chain to target high-risk shipments and promote compliance. The main forum for CBP domestic coordination with U.S. Government agencies is the Department of State-led Cultural Heritage Coordinating Committee (CHCC), to include its several working groups, such as the Cultural Antiquities Task Force (CATF), to which CBP shares situational awareness to all regarding ongoing and planned CBP activities. In recent decades, the United States also has entered into international agreements with other countries in an effort to limit the trafficking of artistic, archaeological, and ethnological material. CBP enforces these agreements through collaboration with other U.S. Federal agencies, foreign governments and international organizations, *e.g.,* the World Customs Organization.

Question. If confirmed, will you commit to implementing Pub. L. 114–151 in a manner that holds accountable those who would illegally import cultural artifacts while allowing the legal, legitimate trade in cultural property to continue?

Answer. CBP aggressively enforces existing U.S. import restrictions on trafficked cultural property, art, and antiquities (CPAA), to include enforcing Pub. L. 114–151; effecting seizures of trafficked cultural property attempted to be imported to, exported from, or trafficked through the United States in violation of law; pursuing civil administrative penalties against violative parties; and supporting Department of State repatriation of trafficked antiquities to the rightful countries of origin. In order to monitor and detect high risk activity, and specifically to pinpoint illicit cultural property, CBP uses predictive analysis to identify suspicious importations, leverages actionable intelligence obtained through partner government agencies and industry collaboration to identify high-risk transactions and performs national targeting to identify high-risk transactions.

In the process, CBP also actively supports criminal investigations by ICE Homeland Security Investigations (HSI) of the trafficking of antiquities for sale in the United States, *e.g.,* by conducting data analysis, targeting, examinations, joint enforcement operations at and beyond the border and referring interdictions of cultural property to ICE HSI for investigative consideration. This close coordination also assists ICE HSI with the identification, arrest, and conviction of criminals and

associated transnational criminal organizations responsible for illicit antiquities trafficking.

Question. If confirmed, will you report to this committee on CBP's seizures of cultural artifacts pursuant to Pub. L. 114–151?

Answer. Yes, CBP routinely tracks and conducts after-action analysis of cultural property seizures, in part to inform its related risk analysis efforts, and is readily able to report to the committee regarding DHS seizures of cultural artifacts, both those of CBP and ICE. As CBP works closely with ICE during the cultural property interdiction, detention and seizure process in most instances, the CBP reporting and attribution of cultural property seizures typically is at the departmental level, viewed as a collaborative CBP and ICE effort. After CBP detains cultural property, CBP contacts ICE so that ICE may conduct a preliminary investigation to determine whether the detained property is in violation of and imported contrary to law. CBP also requests that ICE locate and identify an appropriate subject matter expert to examine the property to make a preliminary determination regarding the authenticity of the artifact or object. By routinely collaborating with ICE, CBP is able to combat criminal organizations that traffic in illicit cultural property and conduct coordinated ICE/CBP enforcement operations at and beyond the border.

Question. What additional resources, training, or authorizations do you believe CBP Officers need to effectively apply Pub. L. 114–151 and other relevant statutes?

Answer. Pursuant to the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. Law No: 114–125), section 606, CBP is mandated to train its personnel regarding the enforcement of illicitly trafficked cultural property, archaeological or ethnological materials. CBP continues to work in conjunction with its partner government agencies, ICE, Department of State and the Smithsonian Institute, to rapidly expand and pursue greater awareness and education throughout CBP of cultural property, arts and antiquities theft and illicit trafficking; to increase the number of trained resources dedicated to cultural property protection; and to ensure a sufficient cadre of CBP personnel nationwide with expertise devoted to targeting and processing cultural property cases.

QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

Question. President Trump's proposed wall would be extremely costly and would require the Federal Government to confiscate private lands. It would also likely involve numerous legal challenges, environmental damage, and expensive ongoing maintenance. While President Trump has insisted that the cost of the wall would be around $12 billion, a DHS report released earlier this year estimates the cost at $21.6 billion, not including maintenance.

What are the costs of building a wall along the entire southern border—both in terms of price and its effect on trade?

Answer. At this time, CBP cannot provide a total cost for border wall construction. CBP is currently developing a comprehensive assessment of potential requirements for the border wall as part of the Border Security Improvement Plan required by the FY 2017 Omnibus. That said, the Southwest border is a dynamic environment and each mile of border requires a tailored solution. Costs will vary depending on the type of barrier required by the terrain, traffic, and threats.

We do not anticipate that the construction of a border wall will impact on the flow of commerce at our ports of entry and have not historically seen impacts to trade with past infrastructure investments. In fact, we continue to make significant progress with our Mexican partners to facilitate cross border trade and on August 23, 2017, CBP and Mexico Customs (SAT) signed a "Memorandum of Understanding" (MOU) regarding "Unified Cargo Processing" (UCP). UCP is a program which allows for joint inspections (either inbound or outbound operations) by CBP personnel with foreign Customs personnel on U.S. soil.

SAT currently lacks the infrastructure in Mexico to process all the cargo and UCP allows for a single operational location. Instead of trucks carrying cargo making multiple stops, in both Mexico and the United States, UCP allows for a single streamlined inspection that reduces wait times significantly and enhances security. It also fosters information exchange on customs and security issues with Mexican Customs. UCP with SAT is operational at the Laredo (truck, air, and rail cargo), Rio Grande City (truck cargo), Texas; Nogales (truck and rail cargo), Douglas (truck cargo), San Luis (truck cargo), Arizona; and Calexico (truck cargo), California, ports

of entry. CBP is in discussion with SAT on potential UCP expansion to El Paso, Columbus, Santa Teresa, Brownsville, Progresso, Pharr, Eagle Pass, Otay Mesa, Tecate, Phoenix, and Port Fouchon (ocean cargo) ports of entry. These potential UCP locations will be jointly determined by CBP and SAT based upon operational impact, available personnel, and available space.

The UCP has helped reduce truck crossing wait times. Some trucking companies reported to CBP that they have seen the crossing time reduced from 3 hours to around 30 minutes.

Question. What metrics will you use to evaluate the cost effectiveness of various methods to secure the border?

Answer. USBP conducts an annual Capability Gap Analysis Process (CGAP) to identify gaps and other trends between the ports of entry. Once the gaps have been identified, analyzed, and prioritized, USBP views these gaps through the lens of available resources including personnel, persistent surveillance, and impedance and denial (*i.e.,* the wall)—to address those threats. The time to procure and available funding shape the immediate response, while we address the long-term strategic needs. We use metrics like the Interdiction Effectiveness Rate[9] and State of the Border risk analysis to guide and shape the balancing of resources to meet the actions of extremely nimble transnational criminal organizations. "Operational Control" of the border, as directed by both the Secure Fence Act of 2006 (8 U.S.C. 1701) and Executive Order 13767 (section 4),[10] is an additional metric that is used to guide our prioritized investment. When balancing competing interests, DHS and CBP will use these and other specific methodologies to identify and validate border control initiatives and investments.

Moving forward, we will include "Operational Control" of the border as an additional metric, directed by both the Secure Fence Act of 2006 (8 U.S.C. 1701) and Executive Order 13767 (section 4),[11] to guide our prioritized investment. When balancing competing interests, DHS and CBP will use specific methodologies to identify and validate border control initiatives and investments. These requirements will be further justified in the President's annual budget request as we move forward.

Question. Would this include walls, fences, personnel at and between ports, aerostats, drones, and manned aircraft?

Answer. Yes; we will evaluate our success on achieving operational control based on the effectiveness of our multi-layered approach supported with all of the aforementioned resources. Layering resources strategically enables the U.S. Border Patrol to detect, identify, classify, and track persons entering the U.S. illegally between the POEs and effect the appropriate response and resolution to secure our Nation's borders. This approach utilizes manpower, technology, and tactical infrastructure deployed in areas of greatest risk to ensure the highest degree of success. A constant cycle of conducting intelligence analysis, capability gap analysis, and mission analysis ensures that resources are providing the expected results, or need revisiting.

Question. Will you commit to making this analysis public?

Answer. Annually, CBP makes many statistics and metrics available to the public and we will continue to promote transparency where and when we can while protecting the men and women defending the Nation. The submission of many of these metrics and others to Congress is required by statute as well.

Question. A few months ago, I was in Mexico visiting officials regarding our bilateral relationship. In addition to border security, we discussed the heroin and opioid crisis and the changing nature of the drug flow to the United States. As much as 94 percent of the heroin entering America comes through Mexico. Fentanyl is also entering America through Mexico from places like China. And labs in Mexico are using precursor chemicals that are smuggled into the country to produce fentanyl. One expert told us that not only can a large amount of heroin fit into luggage, but compared to other substances, it is difficult to trace.

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[9] Interdiction Effectiveness Rate (IER) is the percent of detected illegal entrants who were apprehended or turned back after illegally entering the United States between Southwest border ports of entry. IERs are calculated by taking the sum of apprehensions and turnbacks, and dividing by the sum of apprehensions, turnbacks, and gotaways.

[10] The Secure Fence Act and the executive order both define "operational control" as the "Prevention of *all* unlawful entries into the United States."

[11] The Secure Fence Act and the executive order both define "operational control" as the "Prevention of *all* unlawful entries into the United States."

Given this, what are the challenges facing your agents on the front lines in tracking the flow of drugs across the border?

Answer. Mexico is the United States' third biggest commercial partner. The border between the United States and Mexico remains the world's busiest land border with both legitimate trade and travel and smuggling endeavors. Mexican drug trafficking organizations (DTOs) are poly-drug organizations that traffic heroin, methamphetamine, synthetic drugs, cocaine, and marijuana throughout the United States. DTOs use established transportation routes and distribution networks controlling drug trafficking routes across the Southwest border (SWB). Mexican DTOs exploit the large volume of pedestrian, cargo, and vehicular traffic to smuggle drugs across the SWB by every imaginable means.

Some of the challenges our officers must overcome is that our enhanced border enforcement posture at the POEs has forced DTOs to find new and innovative smuggling methods. To address these unique challenges, OFO is currently implementing Special Enforcement Operations designed to identify and disrupt drug smuggling at a POE through adaptable, intensified, and multi-layered narcotics smuggling operations over a designated period. CBP realizes effective risk management requires working closely with many Federal, State, and local enforcement partners in a "whole-of-government" approach. This approach will help us address gaps in intelligence and improve risk management and enforcement actions.

CBP has made significant investments and improvements to our drug detection and interdiction technology and targeting capabilities. CBP utilizes non-intrusive inspection technology for the inspection and presumptive testing of unknown substances to immediately identify narcotic substances, to include Fentanyl.

Question. What additional tools do you need to stop those drugs from entering the U.S. market?

Answer. As America's unified border agency, CBP has a critical role in the Nation's efforts to keep fentanyl and other dangerous drugs out of the hands of the American public while ensuring safety of CBP's frontline officers. CBP is working with partner agencies to identify presumptive testing equipment and personal protective measures to ensure officer safety while intercepting and accurately identifying fentanyl in the field. CBP has evaluated and deployed systems to enhance interdiction rates while delivering training to officers and agents. CBP continuously analyzes fentanyl trafficking routes and interdiction rates across U.S. POEs to identify the most appropriate requirements and equipment to detect, identify, and interdict these dangerous drugs. CBP's current efforts include:

- Expanding CBP's naloxone program to locations where opioids may be handled by CBP personnel to ensure officer and agent safety.
- Developing and implementing training to ensure officers and agents are aware of the risks involved with these drugs and understand how to handle them.
- Expanding CBP's Laboratories and Scientific Services Directorate (LSSD) capacity to provide 24-7 reachback support to officer and agents in the field.
- Implementing a mobile laboratory capability at additional field locations.
- Procuring sophisticated laboratory equipment that can be used to analyze narcotics seizure.
- Procuring and deploying field testing equipment technology.

QUESTIONS SUBMITTED BY HON. MARK R. WARNER

Question. Customs and Border Protection has guidance meant to limit routine immigration enforcement in sensitive places such as schools, hospitals, and churches. Yet, earlier this year, undocumented immigrants were arrested leaving an overnight shelter program at a church in Virginia.

What is your approach to enforcement in sensitive locations, including hospitals, schools, and churches?

Answer. CBP's sensitive locations policy remains in place and I have no plans to change it at this time. I fully support our officers and agents' efforts to enforce the laws of the United States through their dedicated efforts in the field. Our policy has protective measures for certain locations to ensure that the interruption of daily lives of most Americans is reduced to the greatest extent possible.

Question. Do you believe there are any areas that should be off limits to enforcement actions? Do you plan to ensure that sensitive locations remain protected?

Answer. CBP's priority mission is to keep terrorists and their weapons from entering the United States. CBPOs and Border Patrol Agents enforce all applicable U.S. laws, including against illegal immigration, narcotics smuggling, and illegal importation. Inevitably, enforcement actions and investigative activities may, at times, lead to an apprehension at or near community locations or establishments which have been deemed as sensitive locations. CBP policy does not preclude its Officers and Agents from conducting enforcement actions at or near these locations, but directs that careful consideration be undertaken, including consultation with supervisors where appropriate. In all cases, Agents and Officers are expected to exercise sound judgment and common sense while taking appropriate action, and exigent circumstances requiring an Agent or Officer to enter a sensitive location must be reported immediately to ensure visibility and oversight. CBPOs and BPAs do not actively patrol or station themselves outside of locations deemed sensitive under CBP policy.

Question. One issue highlighted to me by community leaders in Virginia is the difficulty they face in getting clear guidance on the administration's policies on immigration.

Would you commit to holding a field office meeting with community leaders in Virginia?

Answer. Yes. In October, I met with a number of non-governmental organizations from around the country to discuss some of these very issues and I would be happy to have our personnel that oversee CBP activities in Virginia meet with community leaders and answer any question that fall within our agency's purview. My Assistant Commissioner for Congressional Affairs will coordinate with your staff to arrange a meeting.

Question. The administration has called for the hiring of 5,000 additional Border Patrol Agents—an approximately 25% increase. Achieving this level of hiring will be difficult for a number of reasons—including the fact that we currently have fewer agents than authorized statutory levels. I'm concerned that we're risking security to speed up this process.

Has the Department conducted a recent independent analysis of current workforce needs?

Answer. USBP continues to refine its staffing methodology to determine its requirements to conduct border enforcement operations. USBP is currently working on the Personnel Requirements Determination (PRD). This decision tool will support a staffing model with expert field input and a combination of existing data and field input. Absent this decision tool and corresponding staffing model, USBP utilized existing apprehension data and effectiveness ratios, as well as hours spent patrolling the U.S. border. This information, combined with decision-maker judgement and experience, allows for both quantitative and qualitative analysis to ultimately inform the proposed increase for additional personnel. The PRD will answer: (1) what conditions and workload are significantly related to current staffing levels; (2) what do SMEs say are the current, minimal, optimal, and OPCON levels for staffing and what evidence exists to support these estimates; (3) what would be the optimal distribution of additional BPAs across sectors and stations based on operational conditions; and (4) as conditions and workload change, what are the effects on staffing requirements by sector, station, and zone.

Question. A CBP spokesperson noted that CBP has shortened the hiring process from 18 months to 5 months. Is this accurate?

Answer. Yes, CBP has worked tirelessly to streamline the hiring process and saw a 65 percent reduction in the time to hire from a high watermark of 469 days in January 2016 to a current average of 160–165 days through hiring hubs where we are able to streamline many of those processes. In 2015, CBP launched its hiring hub pilot program to resolve difficulties in scheduling and coordination among various agency components compressing several months' worth of processing steps into just a few days. In FY 2017, CBP incorporated lessons learned from the hiring hub program into a new expedited hiring process that is now being used for all frontline applicants.

Question. If so, where did the time savings come from?

Answer. The majority of the time savings came from reducing internal bottlenecks and improved scheduling capabilities. It's important to note that CBP's end-to-end reengineering of the frontline hiring process included more than 40 process improvement initiatives implemented since 2015. In addition to the aforementioned hiring hub model, CBP also implemented several other process improvements to streamline the process, add capacity, enhance the use of technology, and leverage advanced data analytics.

Question. Estimates show that the construction of a physical wall along the Southern border could total at least $22 billion, which the American taxpayer would have to pay for. As I communicated to the U.S. Department of Homeland Security in April, I'm concerned about the administration's proposals to divert money from TSA and FEMA programs that are currently protecting U.S. citizens.

How will CBP prioritize protecting our national security at all of our borders?

Answer. CBP uses risk management to inform long-term planning and resource decisions, which subsequently enable CBP to enhance operations and achieve the agility that it needs to detect and respond to threats in the border environment. In assessing risk at and between the POEs, CBP emphasizes a threat-based approach that identifies and evaluates threats enabling CBP to prepare, respond, and resolve any border encounter or threat more effectively.

CBP's risk-based approach to investing and guiding operational activity has improved U.S. border security over the last decade. For example, the number of apprehensions between the POEs has been a useful surrogate for the total number of people attempting to cross the border illegally. Overall, the apprehension numbers have trended downward as CBP has applied capabilities and new investments to increase border security. Apprehensions have dropped in locations where CBP has applied more resources. CBP also utilizes a risk-based approach to support the expansion of Preclearance operations. Airports interested in the program are evaluated and prioritized against core requirements for Preclearance expansion, which include national security benefit to the United States, travel facilitation benefit, feasibility, and strategic impact.

Financial resources are not always sufficiently available to support all desired border security initiatives. When fiscal constraints arise, CBP's risk management approach enables a tailored mix of resources that provides the highest possible levels of border security across all the U.S. border environments that CBP is charged with securing.

To ensure the appropriate mix of resources, CBP continuously develops and enhances governance and business processes to facilitate risk-informed decisions. At the enterprise level, CBP is enhancing its performance management processes so that programs, investments, and acquisitions will be measured for reaching the desired outcomes. CBP is incorporating intelligence and risk-management principles into its planning, programming, budget, and accountability (PPBA) business process. Incorporating intelligence and risk management into PPBA enables decisions to be more well-informed and risk-based.

CBP has also looked to find innovative solutions working with private partners to ensure that we are able to meet operational demands. The permanent authorization of a public private partnership pilot that began in 2013 is a testament to this. Under the reimbursable services program, we have been able to bridge the gap between services CBP is able to provide through appropriated levels of funding and level of services desired by stakeholders. Many of the RSP stakeholders have been able to realize business goals such as decreased wait times for travelers, increased volume of travelers and trade, as well as processing of travel and trade outside normal port hours.

Question. Do you agree that sacrificing funding for these crucial programs in order to build a physical wall could hamper our national security?

Answer. I recognize that homeland security and meeting the challenge to secure our Nation's borders cannot be met through one single entity or approach alone. CBP is responsible for establishing and justifying its own operational requirements, while the Department and the Office of Management and Budget are responsible for balancing these requirements against the other operational priority requirements and availability of finite resources.

QUESTIONS SUBMITTED BY HON. BILL NELSON

Question. For States like Florida that have major ports and airports handling large amounts of international travelers and commerce, it is critical that we have sufficient CBP Officers to quickly move people and goods. This has been expressed to me time and time again, most recently by Orlando International Airport, as well as ports throughout my State. Will you commit to prioritizing resources to ensure that States like mine have the port officers they need?

Answer. I recognize your concerns specific to Florida staffing, and would emphasize that I am committed to ensuring all of our ports of entry are appropriately resourced to adequately address increases in trade and travel. I will remain focused on having the right mix of resources at and between our Nation's POEs. As the CBP mission continues to evolve to meet the threat to the Nation and facilitate legitimate trade and travel, we must continually assess personnel staffing requirement.

Currently, CBP utilizes its Workload Staffing Model (WSM) to ensure CBPO staffing resources are aligned within the existing threat environments, while maximizing cost efficiencies. The WSM is a data-driven model that incorporates the most recent year's workload data to determine staffing requirements and considers factors for future facility enhancements and projected volume growth in cross-border commercial and passenger traffic. Updated WSM results continue to show a need for additional OFO capability to fully meet the standards set by statute, regulation, and CBP policies, assuming maintenance of current processes, procedures, technology, and facilities. The most recent results—factoring in the additional 2,000 CBPOs funded by the FY 2014 Omnibus—show a need for 2,516 additional CBPOs through FY 2018. The administration's submission of the updated 2017 WSM demonstrated an important commitment to the requirements it identified, as did the statement of intent in the President's FY18 budget to submit proposals for authorizing language that would provide user fee funding to address the gap as we have in past years.

At the same time, CBP is continuing to address 1,132 CBPO positions that are vacant as of September 30, 2017. It is my top mission support priority, and will remain so if confirmed, to achieve full authorized and funding staffing levels for all frontline law enforcement positions.

CBP has worked aggressively over the past several years to implement a multifaceted recruitment strategy that improves frontline hiring processes and enhances its ability to meet hiring goals. CBP continues to strengthen all aspects of hiring, which includes initiatives designed to attract more qualified applicants, expedite the pre-employment timeline, refine the hiring process to address all potential bottlenecks, and reduce the attrition rate of the existing workforce. Staffing the frontline with well-qualified individuals of the highest integrity remains a top priority for CBP.

Additionally, CBP continues to implement Business Transformation Initiatives (BTIs) by focusing on faster processing in the air, pedestrian, vehicle, and cargo environments. CBP makes a concerted effort to implement the newest and most advanced technologies at the Nation's POEs to create efficiencies. Along with technological advancements, CBP is deploying biometrics and processing enhancements and expanded Trusted Traveler Programs. These transformative initiatives and technological advancements provide the platform from which CBP can achieve operational success in the face of increased border and air traffic, budget constraints, and demand for new and expanded services at existing and proposed POEs. CBP's BTIs have saved more than 1 million inspectional hours through FY 2016 and are estimated to save more than 500,000 inspectional hours or (over 400 CBPOs) through FY 2018.

To support increased staffing needs, CBP continues implementation of alternative funding strategies to increase revenue sources. CBP continues to support the Donations Acceptance Program and the Reimbursable Services Program made permanent with the enactment of the Cross-Border Trade Enhancement Act of 2016 (Pub. L. 114–279).

Since the pilot program began in 2013, CBP's Reimbursable Services Program has entered into agreements with more than 60 stakeholders, providing over 368,000 additional processing hours at the request of our stakeholders-accounting for the processing of more than 8 million travelers and over 1.1 million personal and commercial vehicles. In 2017, CBP tentatively selected 64 stakeholders across 54 ports of entry for participation in the RSP (34 air POEs, four for air and sea POEs, one for land POE, and 15 for sea POE). To date the CBP Donations Acceptance Program

(DAP) has approved 17 donation proposals totaling $150 million in planned public and private sector investment in U.S. POEs and important CBP initiatives. Ten of the 17 proposals have been approved since enactment of the Cross-Border Trade Enhancement Act in December 2016, while the others were approved under a predecessor pilot authority provided by Congress. The 10 DAP projects range from infrastructure improvements, partnerships for the provision of biometrics services, and data and donations of luggage for canine training purposes. Partnerships entered into under DAP have and will continue to enhance border security and promote the safe and efficient flow of passenger travel and commercial trade.

CBP continues to see a steady stream of applications for new agreements under this legislation, so while recent results have been very encouraging, continued growth and expanded utilization of this program is expected to allow CBP to approve new and enhanced services, which could not be provided without the Cross-Border Trade Enhancement Act.

Question. A number of reports allege that CBP officials are not following the legal process for people seeking political asylum who arrive at our borders. There are reports that asylum seekers have been turned away by Border Patrol agents without an opportunity to present their asylum claims. This is particularly concerning as Venezuelans flee a political, humanitarian, and economic crisis that is worsening by the day and Cubans continue to seek shelter from a repressive Castro regime. Will you commit to making sure that asylum seekers are not turned away at the border?

What steps will you take to make sure your agents are actually following CBP policies on the ground?

Answer. Over the last 2 years, CBP has referred over tens of thousands of applicants for admission who expressed fear of return to U.S. Citizenship and Immigration Services for review by an asylum officer. CBP carries out its mission of border security while adhering to U.S. and legal international obligations for the protection of vulnerable and persecuted persons. The laws of the United States, as well as international treaties to which we are a party, allow people to seek asylum on the grounds that they are being persecuted outside of the United States because of their race, religion, nationality, membership in a particular social group, or political opinion. CBP understands the importance of complying with these laws, and takes its legal obligations seriously. Accordingly, CBP has designed policies and procedures based on these legal standards, in order to protect vulnerable and persecuted persons in accordance with these legal obligations. All CBP officers must comply with all law and policy, and appropriate disciplinary action may be taken against those who do not.

All complaints against officers or agents, regardless of the mode through which they are received, are recorded and investigated, and appropriate action is taken against CBP employees who are found to have violated agency policy. Additionally, CBP's Office of Professional Responsibility (OPR) has been actively engaged with Non-Governmental Organizations (NGOs) to identify and investigate incidents alleging that persons were prevented or discouraged from making claims of fear to CBP.

Additionally, both Border Patrol Agents (BPAs) and Customs and Border Protection Officers (CBPOs) receive training on the proper processing, treatment, and referral of aliens who express a fear of return. This training begins at the Academies, and is reinforced through Post Academy training and the periodic issuance of memoranda and musters. CBP also issues periodic guidance to the field reminding CBPOs and BPAs of their legal obligations towards those who express a fear of return.

Question. There is an epidemic in my State of Florida, and that is the opioid crisis. Overdose deaths from heroin and fentanyl are hitting record levels. A lot of it is coming in from China, and last week the Justice Department indicted a big drug trafficking ring, including some folks in Florida. This is a start, but what we need is a comprehensive approach, as well as sufficient resources to truly fight this epidemic. I've supported additional funding that's already reaching local communities, and this week I cosponsored legislation to boost that funding even more. What specifically is CBP doing to help fight this crisis?

Answer. According to provisional data from the Centers for Disease Control and Prevention, in 2016, drug overdoses were the leading cause of accidental death in the United States, with opioids accounting for over 20,000 fatalities. Aligned with those increases, CBP has seen a sharp increase in fentanyl seizures coming through our land ports of entry and through express consignment and international mail facilities. In FY 2017, CBP's Office of Field Operations seized more than double the amount of fentanyl, a 153-percent increase, than seized in FY 2016. Recognizing this

trend and our critical role, in July 2017 I directed the development of a comprehensive and integrated strategy to enhance CBP's ability to target and interdict opioids entering the United States. CBP will continue to arrest and interdict all persons and contraband entering into the U.S. illegally while conducting border security operation, as well as through counter-network operations to target and interdict the organizations involved in the smuggling of opioids at each node in the supply chain based on intelligence. I would also like to emphasize that ensuring that our CBP Officers and Agents are properly equipped to conduct these interdictions in a safe and efficient manner must remain a top priority. To that end, CBP is working with partner agencies to identify personal protective measures and testing equipment to ensure officer safety while intercepting and accurately identifying fentanyl in the field.

CBP is greatly focused on allocating internal resources to interdict fentanyl, in all forms, so as to prevent them from entering the United States. CBP is the first Federal law enforcement agency in the United States to train canines to detect fentanyl. CBP currently has over 100 canines trained to detect fentanyl and is planning to expand fentanyl training to existing teams that operate in the border security environment as well as ensuring all new canine teams have the ability to detect fentanyl.

CBP is constantly looking for new and innovative technology to presumptively identify fentanyl in the field. The Field Triage Infrared Reachback program continues to be the most effective means to presumptively identify new fentanyl analogues as it integrates virtual scientists with frontline officers. Reachback scientists are able to interpret data and recognize threats even if the spectra of these new threats do not exist in established libraries. Additionally, Gemini™ presumptive testing devices have been deployed which is currently the only device on the market which is able to utilize Raman and Fourier Transform Infrared Spectrometer (FTIR) technology for presumptive identification purposes. CBP has procured 82 additional presumptive testing devices which will be deployed to field offices nationwide. However, deployment will be heavily focused on the mail/express courier operations and Southwest border.

CBP has conducted many successful special enforcement operations. These enforcement operations have bolstered the interdiction of narcotics on the Southwest border, international mail and express courier facilities. Operation Hybrid II was conducted in Tucson, AZ from September 10–23, 2017. Operation Hybrid I was conducted in Laredo, TX in May 2017. Operation Hybrid bolsters CBP Field Offices with personnel, intelligence, and equipment to interdict hard drugs and other contraband being smuggled by pedestrians, privately owned vehicles, commercial busses, and the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) Lanes. During Operation Hybrid I and II, Laboratory and Scientific Services (LSS) deployed a mobile laboratory to perform more rigorous testing for the presence of fentanyl in loads that were interdicted.

CBP also conducted Operation Crush in the express courier facilities in Memphis, TN; Cincinnati, OH; and Louisville, KY from August 23–September 15, 2017. CBP collaborated with other components and external agencies by leveraging enforcement, targeting, investigations, science, and intelligence to identify and disrupt individuals smuggling hard narcotics in the express courier environment. CBP will expand Operation Crush to international mail facilities beginning with the Chicago and New York Field Offices.

In addition to our internal operations, CBP will continue international engagement to reduce the supply chain in source countries through operational efforts and diplomatic engagement, specifically with China, Mexico, and Central and South America. To address serious gaps in information associated with fentanyl in Mexico, CBP conducted a fentanyl workshop focusing on the Southwest border and Mexico in September 2017 in Tucson, AZ. CBP is working with representatives of Australia, Canada, New Zealand, and the United Kingdom to exchange lessons learned, smuggling trends and best practices related to fentanyl. Subject matter experts from the participating countries are working together to conduct focus meetings discussing information such as officer safety, testing/detection, and substance analysis/ exchange of spectra.

Lastly I would note that CBP stands ready to assist Congress on legislative solutions to ensure CBP and its Federal partners are well equipped with the appropriate authorities, information sharing, and resources to amplify our enforcement efforts and best address this emerging threat.

Question. I was in Puerto Rico recently and took a helicopter into the remote areas to see the conditions on the ground. Our fellow Americans are struggling to survive and desperately need our help. We need to get supplies into the hardest hit, remote areas of the island. Please describe CBP's efforts to date in Puerto Rico.

Answer. In October I also visited CBP operations and personnel in Florida, the U.S. Virgin Islands, and Puerto Rico. The magnitude of the damage caused by both Hurricanes Irma and Maria is devastating. I was humbled by the response of the CBP personnel who live and work in these affected areas, putting mission first and assisting residents/neighbors who were in desperate need.

In support of Federal Emergency Management Agency (FEMA) and other Federal, State, and local partners, CBP has provided support to various Emergency Support Functions (ESFs) including Transportation (ESF–1), Communications (ESF–2), Emergency Management (ESF–5), Logistics support (ESF–7), Search and Rescue (ESF–9), Public Security and Safety/Law Enforcement (ESF–13),[12] and External Affairs (ESF–15). CBP deployed 224 employees with the Surge Capacity Force in support of FEMA's hurricane responses to Harvey, Irma, and Maria—specifically 150 CBP officers and agents were deployed to Puerto Rico to contribute to the relief effort. CBP distributed over 121,154 ready-to-eat meals, 770,262 bottles of water and 536 generators. CBP deployed subject matter experts to support FEMA's intergovernmental affairs mission to engage with local political leaders, local government officials, and non-governmental organizations across Puerto Rico's 78 municipalities.

CBP air assets have been instrumental in logistical support of emergency response personnel and equipment for the whole-of-government response. CBP's Air and Marine Operations (AMO) UH–60 Blackhawk helicopters have been instrumental in providing food, water, and supplies in remote areas where vehicles or other modes of transportation was unable to access. In fact, helicopters were the only way these lifesaving supplies were able to be distributed to places needing urgent care items. Not only were areas being resupplied, AMO aircraft and crew played a crucial role in rescue operations in and around Puerto Rico. AMO employees flew almost 2,000 hours, on nine (9) different categories of airframes, completing 287 separate missions.

CBP will continue to support the on-going relief efforts in and around Puerto Rico and provide assistance to the Island for the foreseeable future.

Question. What is CBP's long-term plan for helping FEMA and DOD?

Answer. CBP "organically" has assets in Puerto Rico including, but not limited to, San Juan and Aguadilla. CBP intends to continue to carry out its mission and partner with FEMA and Department of Defense (DOD) to assist as needed based on evolving (if not slowly improving) conditions. For example, CBP maintains support to the FEMA National Response Coordination Center (NRCC) and is continuing to monitor and support requests for aerial assets if or when needed.

In support of FEMA (via DOJ's Bureau of Alcohol, Tobacco, Firearms, and Explosives) CBP is currently the last deployed Federal law enforcement team to remain on the island and has assisted various Puerto Rico entities including but not limited to the Puerto Rico Police Department in an effort to stabilize its local police force and facilitate a return to normal operations. This team will demobilize when FEMA is able to determine the need for Federal support is no longer required.

Local Puerto Rico CBP personnel have and will continue to engage with their local counterparts and assess local recovery requirements. CBP through its Lead Field Coordinator (LFC) Diane Sabatino (Director of Miami Field Operations) maintains daily communication with its Puerto Rico based counterparts and similarly, remains in communication with its Headquarters counterparts to respond to local recovery needs where CBP is able to provide support.

CBP as the largest Federal law enforcement agency in the United States is equipped with assets and special response teams. CBP has a close relationship with FEMA and we will remain available to support disaster responses around the country.

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[12] CBP deployed 75 law enforcement personnel (performing a wide variety of missions) in support of FEMA's Emergency Support Function 13 (ESF–13; Public Safety and Security). Teams provided direct Federal assistance to Puerto Rico police departments as well as force protection for Disaster Medical Assistance Teams (DMAT).

QUESTIONS SUBMITTED BY HON. ROB PORTMAN

Question. Before the Enforce and Protect Act (EAPA) was signed into law, CBP's system for investigating duty evasion was opaque and cumbersome. EAPA creates an open process which essentially gives CBP a year to finish investigations. It has been great to see some success—CBP's efforts on wire coat hangers, diamond sawblades, and oil country tubular goods comes to mind. Thank you for your work on these investigations. However, at the same time, there is still more that can be done under the EAPA framework.

Could you comment broadly on how EAPA has helped CBP address duty evasion?

Answer. The Enforce and Protect Act (EAPA) established a formal process for CBP to investigate allegations of evasion of anti-dumping and countervailing duty orders (AD/CVD). Specifically, it provides for a transparent administrative proceeding parties can both participate in, and learn the outcome of, a relevant investigation. The transparent nature of these investigations has had several benefits, such as encouraging importers to participate once they see the public record being compiled in the investigation.

Further, under this newly established process, CBP created various web-based allegation solutions. For example, EAPA-related allegations may be submitted to CBP via email and CBP also created a website to post background information, new updates, and decisions made in the EAPA investigations. This permits real time communication with the trade on important developments in the EAPA program.

Additionally, by centralizing the EAPA investigations under the Office of Trade's Trade Remedy Law Enforcement Directorate (TRLED), CBP has been able to ensure that any concerns occurring in the investigations are readily addressed, as well as to provide better communication and coordination among the various units within CBP that are working these investigations. TRLED, being at Headquarters is also better positioned to coordinate with other government agencies, such as the U.S. Department of Commerce, as well as other foreign governments to facilitate the exchange of information in these investigations.

Question. And mindful of the fact that you have stated CBP's belief that these reforms would take additional legislation, do you believe that the use of Administrative Protective Orders (APOs) or permitting allegations of duty evasion to be filed even when the importer is unknown, would be helpful at curtailing duty evasion?

Answer. The EAPA interim final regulations currently require the identification of the importer in the allegation because a party might argue that CBP's identification of the importer's name violates the Trade Secrets Act. Thus, a legislative change exempting this from the Trade Secrets Act would permit CBP to reveal the identity of the importer who may be entering merchandise as to evasion and avoid potential violation of the Trade Secrets Act. CBP has developed a legislative proposal that is currently being vetted through the interagency clearance process.

This would be extremely helpful in curtailing duty evasion. As more importers become aware of the use of public data in these investigations, they will actively work to shield their identity and hinder the ability of allegers to bring allegations. Closing this loophole means that the alleger need only to identify the scheme and parties involved, but not necessarily the actual importer of record in order for CBP to investigate the allegation and publicly bring the importer of record into the investigation.

An APO provides the ability for parties' attorneys (not the parties themselves) to review and comment upon business confidential information in the course of a proceeding. The benefit that this may add is that the representatives for the importer and alleger may be able to more fully comment upon the other's submissions after having received the unredacted version. Administering such a manually intensive process would take our limited resources away from our investigations, it could potentially hinder our ability to conduct these investigations, rather than facilitate them if such a requirement were added without the resources necessary to administer an APO process. Additionally, we currently serve documents to parties via email as those documents contain only public information. Service of documents with business confidential information may require us to implement an electronic case management system, which would require additional resources and time to establish. Furthermore, CBP currently lacks necessary statutory authority to adopt an APO process.

Question. As you know one of the intended benefits of the Enforce and Protect Act was to incorporate more stakeholder input to better target duty evasion. In the enacted Trade Facilitation and Trade Enforcement Act, under the EAPA guidelines

the agency committed to a establish trade enforcement task force to address issues of concern to stakeholders.

Are you aware if this task force has been established?

Answer. In May 2016, CBP established a Trade Enforcement Task Force to address AD/CVD evasion. Effective October 1, 2017, this function was incorporated into a permanent Enforcement Operations Division within the Trade Remedy Law Enforcement Directorate, Office of Trade. This new division is responsible for intake and investigation of all EAPA allegations. This division also conducts regular outreach to the trade community to discuss best practices for submitting an EAPA allegation and answer any questions.

Question. On March 31, 2017 President Trump issued an executive order entitled "Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing (AD/CV) Duties and Violations of Trade and Customs Laws." The order directs the development of a report in consultation with the Departments of Treasury and Commerce and the U.S. Trade Representative.

What is the agency doing with regard to this executive order?

Answer. The plan called for in Executive Order 13785, entitled "Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws," was transmitted by DHS to the White House during the week of September 11, 2017. The report was developed in consultation with the Department of Treasury, the Department of Commerce, the U.S. Trade Representative, DOJ and ICE.

Question. Has the report already been delivered to the President?

Answer. DHS has completed the report, entitled "Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing (AD/CV) Duties and Violations of Trade and Customs Laws" and transmitted to the White House the week of September 11, 2017.

Question. Section 307 of the Tariff Act bans the import of any products made with forced labor. In the last Congress, the committee took further action to strengthen section 307's ban by passing the Trade Facilitation and Trade Enforcement Act into law, which included language that closed a loophole that had been allowing goods made by human trafficking victims to be imported into the United States. In doing so, Congress made clear that human trafficking is unacceptable, and we should not be furthering this exploitation by accepting products produced with forced labor.

However, in spite of Congress's direction to support trafficking victims and protect American workers by robust enforcement of section 307, CBP only issued four Withhold Release Orders (WROs) last year and none yet this year. Human Rights First estimated $142 billion worth of products made by forced labor are coming into the country each year, and the current level of engagement from CBP on this issue is simply insufficient.

Will you commit to prioritizing the enforcement of the section 307 ban, including through issuing WROs?

Answer. Yes, if confirmed, during my tenure CBP will prioritize the enforcement of section 307 including the issuance of WROs. To that end, CBP is actively self-initiating forced labor investigations to protect vulnerable populations and prevent goods produced with forced labor from entering into our supply chains. We are developing information internally and collaborating with interagency partners to self-initiate these important cases. We are currently evaluating several potential circumstances where withhold release orders could be appropriate.

Question. As you know, the cruise business is new to the Great Lakes, with Great Lakes ports accepting cruise ship passengers for the first time in 2015. The Port of Cleveland first accepted cruise ship passengers earlier this year. I am pleased that CBP has worked with the Great Lakes ports on methods to process incoming passengers from cruise vessels during these early stages, such as jump kits and temporary structures. Such methods were approved by CBP as temporary alternatives with an understanding that permanent structures may need to be built in the future as the cruise business grows. Therefore, the sudden decision made by CBP in April to deny cruise ships into Great Lakes ports that lacked permanent facilities would have shut down the cruise business in the Great Lakes. I appreciate CBP's recognition that this decision was sudden and unworkable, and was reversed. I understand that CBP is now working with the Great Lakes ports on plans to accept cruise passengers in 2018.

Can you provide an update on the discussions on how passengers will be processed at Great Lakes ports in the 2018 shipping season?

Answer. On October 18th, I met with Michigan Governor Rick Snyder to talk through these concerns and I know our Director of Field Operations will continue the dialogue locally. CBP continues to work with cruise lines operating in the Great Lakes to design and implement workable and viable solutions for the processing of passengers and crew. Due to the varying infrastructure around the Great Lakes there most likely will be several solutions depending on the passenger and crew processing environment. Current numbers reflect that a total of 25 cruises took place in FY 2017, a total of 3,313 passengers and 1,896 crew members were processed. There were no adverse actions during the FY 2017 cruise season indicating a lower risk traveler. CBP will continue to work with the appropriate stake holders during the winter months to develop plans for the FY 2018 cruise season.

Question. Has CBP made any long term decisions about the use of portable jump kit technologies as a temporary method to accept passengers?

Answer. CBP continues to research new technology that enhances and enables CBP to maintain security of the United States while facilitating lawful trade and travel. While portable jump kits were the available technology and were utilized as a temporary solution, technology and new pilot programs in the marine environment could provide other solutions to the processing of passengers and crew. CBP cannot commit to the continued use of jump kits as we are moving forward with innovative technology.

Question. Moving forward, can you commit to working with the Great Lakes ports on a long term and cost-effective solution that will aid in the growth of the cruise business in the Great Lakes while acknowledging, as CBP has in the past, that temporary methods may be necessary in the short term?

Answer. Yes, in addition to the discussions for the 2018 cruise season, I will commit to exploring long term and cost-effective solutions, such as the Donation Acceptance Program which may be effective in addressing the current lack of processing facilities which would enable CBP to continue its services to the Great Lakes cruising industry.

QUESTIONS SUBMITTED BY HON. JOHN THUNE

Question. How will the CBP balance the needs of port and cargo security with growing commerce in a supply chain that requires efficiency in and around our ports in order for goods to move through the larger system?

Answer. CBP will continue to employ a layered risk-management approach—relying on advanced electronic information, analytics, non-intrusive inspection technology, and trade community and international partnerships—to address threats in the supply chain at the earliest possible point and facilitate the flow of the lawful trade through ports of entry. CBP is committed to providing a secure gateway for international trade, eliminating supply chain barriers at the border, and developing transformation to enhance the movement of goods through concerted partnership with experts in the trade community.

Question. Hiring veterans has been a useful tool to streamline the CBP hiring and assignment process. How can CBP continue to promote and utilize veterans in the CBP workforce to ensure the secure and efficient movement of goods within a complex supply chain?

Answer. A key element in CBP's Hiring Strategy is a focus on recruiting transitioning service-members, veterans, and disabled veterans for both frontline law enforcement and mission support occupations. CBP uses direct hiring authorities for qualified veterans. In FY 2017, veterans represented over a quarter (28.95 percent) of the total workforce and almost one-third (31.64 percent) of new hires. Veterans with a compensable disability of 30 percent or more represented 6.5 percent of the CBP workforce, and constituted a little over 10 percent of new hires.

In close partnership with the Department of Defense, CBP attends national military conferences and advertises in military publications and on military oriented websites to attract veterans. CBP conducts recruitment and outreach activities at military installations and affiliated organizations to include establishing CBP Recruitment Offices at Ft. Campbell, KY; Ft. Drum, NY; Ft. Hood, TX; and Ft. Bliss, TX to pilot a concept for attracting additional veterans. CBP fully intends to expand

these pilot locations in hopes of offering America's service members more physical access to CBP recruiters allowing them a great place to build a career. In addition to this concept CBP currently conducts expedited hiring hubs monthly for veterans at military installations.

In FY 2017, CBP recruiters conducted 1,906 Special Emphasis Recruiting events, targeting active duty service-members, veterans, and a multitude of diversity groups at military installations, veterans' groups, and Historically Black Colleges and Universities (HBCUs). CBP uses the Veterans Recruitment Appointment (VRA), which has vastly streamlined the hiring process for transitioning service-members, veterans, and veterans with disabilities who qualify for our LEO positions.

CBP is also working to standardize recruiter training to incorporate specific benefits that CBP offers to Veterans and transitioning service members. In FY 2018, this training will be provided to approximately 1,000 CBP Recruiters. We believe this training will be significant in equipping our Recruiters to more effectively articulate why Veterans should consider CBP as a post-service career option. Additionally, in FY 2018 CBP will partner with the Department of Army Career Skills Program (CSP), which is part of the military life cycle that prepares Soldiers for civilian employment upon completion of their military service.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

I want to begin by thanking you for being here today. In my view, you're a highly qualified nominee, and I appreciate your willingness to take on a tough job as Commissioner of U.S. Customs and Border Protection. I also want to thank you for working with me to increase staffing at the Port of Portland to accommodate the airport's growth as a destination for international flights, including a new flight from Mexico which I hope will be finalized soon. Portland's struggle with adequate staffing illustrates the acute need to hire more blue uniforms to enforce our trade laws and facilitate travel. I hope that is something you will continue to focus on.

There are two specific issues I want to touch on in my opening remarks today with respect to CBP. The first is trade enforcement.

This administration has talked a tough game when it comes to trade, but its record to date has not lived up to that talk. In my view, if you're genuinely serious about getting trade done right, step one is vigorously enforcing the laws on the books. Customs and Border Protection is on the front line of that effort.

Last year, the Trade Facilitation and Trade Enforcement Act was signed into law. The Finance Committee wrote that legislation because it was clear the trade enforcement mission at CBP was getting short shrift, and that was a major threat to red, white, and blue jobs.

Our legislation was all about making sure CBP was fast enough and equipped to keep up with modern-day trade cheats, who are determined to undercut American workers by evading our trade laws. A lot of good work was done to put those tools into effect in the months after the bill was signed, but it seems like many of those efforts have stalled under this President. That needs to change. Trade enforcement is about constant vigilance and staying ahead of the new tactics used by trade cheats to get around our laws.

But when I look at the administration's plans for CBP, once again it seems trade enforcement is an afterthought. The White House seems a lot more focused on throwing money at a border patrol army and prototypes for a border wall that may never get built. Trade enforcement is going to fall by the wayside and jobs will disappear if the administration stays on this course.

It doesn't matter what kind of deals you propose or what laws you put on the books if you're not serious about enforcing them.

There's a lot of work for Mr. McAleenan, from rooting out products made with forced labor, to preventing trade in illegally-harvested timber and wildlife, to protecting the health and safety of consumers who use imported products. I look forward to working with him to make sure that CBP is effectively enforcing our trade laws on those issues and more.

The second topic I want to address this morning deals with searches at the border. There has been an onslaught of reports this year about Americans being

stopped at the border and forced to unlock their personal electronic devices for inspections that clearly invade personal privacy.

Senator Paul and I introduced a bill in April called the Protecting Data at the Border Act. Our bill requires law enforcement to get a warrant before searching a device at the border, and it comes with strong protections to let Americans know when and how they consent to having their devices searched.

In my judgment, this ought to be a common-sense step, especially since the Supreme Court has already ruled that law enforcement needs a warrant to search a phone after an arrest.

Bottom line, our constitutional rights do not disappear at the border. So I'm looking forward to addressing this issue in questions.

As I wrap up, let me again thank you, Mr. McAleenan, for joining the Committee today and being willing to serve. You are a strong nominee and I look forward to hearing your plans for the agency if confirmed.

COMMUNICATIONS

LETTER FROM NORMAN W. HARRIS III

October 19, 2017

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Re: Hearing to consider the nomination of Kevin K. McAleenan, of Hawaii, to be Commissioner of United States Customs and Border Protection, Department of Homeland Security

To the Honorable Senate Committee on Finance,

As a licensed Customs house broker, serial number 11389, since 1989 I support the nomination of Kevin K. McAleenan to be Commissioner of United Customs and Border Protection, Department of Homeland Security.

Acting Commissioner McAleenan has worked well with the trade community for the facilitation of efficient goods movement. He is a skilled communicator and a strong leader.

I had the opportunity as Education Chair for the Los Angeles Customs Brokers and Freight Forwarders Association (LACBFFA) to work directly with Mr. McAleenan in his capacity of Area Port Director in Los Angeles arranging for workshops that benefitted the local trade community.

Respectfully,

Norman W. Harris III

LOS ANGELES CUSTOMS BROKERS AND FREIGHT FORWARDERS ASSOCIATION, INC.
320 Pine Avenue, #1050
Long Beach, CA 90802
Phone: 714–316–5270
Fax: 714–632–5405
Email: info@lacbffa.org
Website: *www.lacbffa.org*

October 19, 2017

Senator Orrin Hatch
Chairman
U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Senator Ron Wyden
Ranking Member
U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

The Los Angeles Customs Brokers and Freight Forwarders Association, Inc. is the premier organization in southern California for international trade and U.S. Customs issues, and its more than 300 company members, employing over 5,000 individuals, file more than 95% of all import entries in the Los Angeles Customs District. We have had the pleasure of working with Acting Commissioner McAleenan since his days with Customs and Border Protection (CSP or Customs) in Los Angeles. We wholeheartedly support Mr. McAleenan as the next Commissioner of CBP.

Over the last several years, the responsibilities of CBP have become ever more complex and challenging, and so having someone lead the agency who starts out being intimately familiar with its personnel and functions is a major plus for the agency, but equally so for the trade.

Mr. McAleenan long ago displayed his capabilities to prudently balance the competing interests and efforts of CBP whether related to the efficient functioning of the agency or its efforts related to national security and trade facilitation, all the while keeping in mind the importance of the country's economic prosperity.

The roll-out of the Automated Commercial System has made great strides towards completion, while under Mr. McAleenan's leadership, CBP has shown it can work successfully with some 40+ agencies and address both import and export industry needs. CBP is also close to completion of its implementation of the Centers for Excellence and Expertise, while still focusing on the latest threats, whether arising from terrorism, or related to national security, the current opioid crisis or the more traditional commercial considerations such as the *de minimis* dilemma, free trade agreement and other more traditional areas of trade compliance, such as revenue collection and antidumping/countervailing duty cases.

Taken together, these and Mr. McAleenan's other accomplishments, and those of the agency, make it clear he is the right choice for Commissioner of Customs and Border Protection, and we strongly support his nomination.

Respectfully,

Wayne Wagner
President, Los Angeles Customs Brokers and Freight Forwarders, Inc.

UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS (USCIB)
1212 Avenue of the Americas
New York, NY 10036–1689
212–354–4480 tel
212–575–0327 fax
www.uscib.org

November 2, 2017

STATEMENT FOR THE RECORD

The United States Council for International Business (USCIB) was pleased with the recent nomination of Customs and Border Protection's (CBP) Kevin K. McAleenan as Commissioner of CBP, and the recent announcement of his confirmation hearing. We believe that Mr. McAleenan is the answer for skilled, professional, knowledgeable, and continued strong leadership of CBP. Under his leadership, CBP has seen increased visibility within the Administration. He is the answer to consistency in approach and forward movement of dealing with the challenges and complexities of trading environment in the United States. USCIB is strongly supportive of McAleenan and his prompt confirmation.

Acting Commissioner since January 20, 2017, Mr. McAleenan has a proven track record of leading the largest law enforcement agency, charged with enforcing more than 500 regulations for 45 plus government agencies. Moreover, Mr. McAleenan is the first nominee selected from within the agency ranks in recent memory, and brings with him well over a decade of experience within CBP, having served in such leadership roles as: Area Port Director of Los Angeles International Airport, Acting Assistant Commissioner of CBP's Office of Field Operations, Deputy Commissioner, and most recently as Acting Commissioner. In 2005 and 2015, respectively, Mr. McAleenan received a Service to America Medal, Call to Service Award, and a Presidential Rank Award. Since 2006, Mr. McAleenan has been a member of the U.S. Government's Senior Executive Service. Mr. McAleenan is well suited for the role as CBP Commissioner and is no stranger to the challenges and complexities of directing CBP core missions of counterterrorism, border security, and trade enforcement, while facilitating both the flow of trade and travel of people.

Mr. McAleenan's nomination demonstrates clear Administration support for the well-oiled CBP leadership team that is in place. It is the consistency of a leadership team along with Mr. McAleenan's proven knowledge, hands-on experience and previous leadership roles within CBP and one of its legacy agencies that make him uniquely qualified to successfully serve in a permanent capacity, as CBP Commissioner.

During the USCIB leadership meeting with the Acting Commissioner earlier this year, Mr. McAleenan, was illustrative of his professionalism, understanding of issues being faced by members of the trade community, as well as exemplar of his willingness to engage stakeholders. USCIB Customs and Trade Facilitation Chair, Jerry Cook, Hanes Brands; said, "We believe that the Acting Director's background in facilitation will be good for the trade and CBP. Kevin McAleenan is the right man for the job," said USCIB President and CEO Peter M. Robinson. "As Acting Commissioner, he has demonstrated strong, skilled and knowledgeable direction to CBP. Under his leadership, the agency is positioned to effectively move forward in addressing the challenges and complexities of the trading environment in the United States."

Among other topics, we encourage the Commissioner, if confirmed, to continue to focus on: securing a meaningful Border Interagency Executive Council (BIEC) and BIEC External Engagement Committee (EEC) mechanism; effectively completing implementation of final core ACE (U.S. Single Window) deployment; improving the import process for e-commerce from a trade facilitation and enforcement perspective in a manner that facilitates legitimate trade; partnering with industry on forced labor concerns; implementing all Trade Facilitation and Trade Enforcement Act (TFTEA) requirements; tackling industry concerns related to customs valuation; and working towards the fulfillment of the Centers of Excellence and Expertise (CEEs).

The United States Council for International Business (USCIB) promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and regulatory coherence. Its members include U.S. based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network—encompassing the International Chamber of Commerce (ICC), the International Organization of Employers (IOE), and the Business and Industry Advisory Committee to the OECD (BIAC)—USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

USCIB also provides a range of business services, including ATA Carnet trade services for temporary imports and exports, to facilitate overseas trade and investment in partnership with CBP.

With our unique perspective, we look forward to continuing to work with and help Customs meet its goals and objectives and stand ready to continue to serve as a relevant CBP stakeholder, and provide both subject matter expertise and practitioner support on topics of interest to Customs and to our membership. Again, we urge quick action and a swift vote of support in the U.S. Senate to confirm Kevin K. McAleenan as Commissioner of U.S. Customs and Border Protection (CBP). We believe he is the right choice to lead the agency.

In closing, we thank Mr. McAleenan for his dedication to CBP and willingness to serve. With the passage of TFTEA and the increased importance of strong Customs leadership, we trust that under Mr. McAleenan CBP will continue to partner with industry and relevant stakeholders to address the complexities and challenges of today's trade environment. In the words of Jerry Cook, "under Kevin's leadership, CBP will get its swagger back."

Sincerely,

United States Council for International Business

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