

HEARING OF THE SENATE JUDICIARY COMMITTEE

■ **SUBJECT: OVERSIGHT OF THE HOMELAND SECURITY DEPARTMENT, FOCUSING ON IMMIGRATION, CITIZENSHIP AND RELATED ISSUES**

■ **CHAIR BY: SENATOR PATRICK LEAHY (D-VT)**

■ **WITNESS: HOMELAND SECURITY SECRETARY JANET NAPOLITANO**

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SEN. LEAHY: We -- it has been kind of hectic and in this meeting with the secretary yesterday -- how many appearances have you had on Capitol Hill now in the last couple weeks?

SEC. NAPOLITANO: This will be my fifth full-committee hearing in the last two weeks -- last week and this week combined. Yes, sir.

SEN. LEAHY: We're going to have to get you an office up here.

SEC. NAPOLITANO: (Chuckles.)

SEN. LEAHY: But I am glad you're here. And I'm going to put most of my statement on the record; I'm just going to put a few comments in.

But first off, Madame Secretary, I want to acknowledge your decision to delay the implementation of the REAL ID Act. I think that is very good. I think that gives states a chance to -- more time to make progress and it also allows those of us in Congress who are looking at alternatives to this to do it. We go from the concerns of the security of the country to the concerns of people having a national ID card, which worries a lot of us too; a mandate on the states that a lot of the states are not prepared to meet. But we'll -- we'll work with you and your department, but I think the delay is a good thing.

We know that you're in charge of protecting our security and responding to emerging threats. And I think all of us here are cognizant of that task. But we also hear from our constituents about things like security screening in airports. And I think Americans expect to be treated with dignity when they go

through an airport -- just as we hope that our visitors to the United States are treated with dignity when they come here.

For many Americans, the use of x-ray scanning machines that detail -- that produce a detailed body image is a bridge too far. And for many Americans, the alternative of a pat down is even more difficult to tolerate. So I understand there is an effort among the TSA and the manufacturers of these scanners to develop new software that would render images without anatomical detail in a truly anonymous manner. When you come from a small state like mine where everybody knows everybody, it doesn't matter what kind of security you put, there is justifiable concern if our airport, for example, had such a screening where there were images in pretty graphic detail.

We also -- some are concerned about the health effects of these scanners. We should not dismiss any citizen's health concerns and we have to support independent assessments of any associated health affects. And I took some comfort in what you just said, but you have people -- one person I mentioned to you is a cancer survivor and she won't go through it. And she's a registered nurse and read all the reports and she just cannot bring herself to go through an x-ray screening. And her reaction is one that ways heavily on me -- I have been married to her for 48 years.

And we can't set aside the need to reform our nation's broken immigration system. We have to look at what might make a smart reform.

And finally, I want to thank you for working with me to protect refugees and asylum seekers. I was gratified by the announcement in December 2009 of a new parole policy for asylum seekers. I understand that's being implemented with positive results. I appreciate that.

And I will put my whole statement in the record.

And Senator Grassley -- and again, Senator Grassley, I thank you for all your help and others, but your help especially on the patent reform bill which we passed last night.

SEN. CHUCK GRASSLEY (R-IA): Well, it's very gratifying to work with a bill that gets passed with only five dissenting votes in the United States Senate. But it's a tribute to your and a lot of other members -- other than me -- on this committee who worked on it for a long period of time.

I was on the sideline kind of, in a sense, of not being the main negotiator, but being the beneficiary of a product that was well worked out because of your leadership.

Chairman Leahy, I thank you for calling this hearing. This department was created to defend our nation's borders and infrastructure. Yet, as we look at the Department of Homeland Security today, we see agencies failing to coordinate with one another, breakdowns in judgments and failure to protect our government's own agents on the front lines. In short, what I see is approaching a level of that some might call chaos.

With Mexican President Calderon visiting President Obama last week, it highlighted some of the problems that more and more Americans are becoming aware of. Violence on our southern border has

escalated its gains and cartels acquire more weapons. Further, our lack of defenses and their ability to evade justice has emboldened these criminals who are becoming a greater threat.

In just the last three months, the Department of Homeland Security has seen two of its own agents murdered in the line of duty: Border Patrol Agent Terry and Immigration and Customs Enforcement Agent Zapata. Both were tragedies and my heart goes out to the families and the loved ones of these agents.

Most troubling is that agencies of our government have contributed to this violence by intentionally allowing thousands of guns to be trafficked from U.S. to Mexico. The Bureau of Alcohol, Tobacco, Firearms and Explosives decided to let thousands of guns walk after being purchased by straw buyers' intent on reselling them. Many of those guns ended up in the hands of bandits who operate on the border trafficking drugs and other illicit goods back to our country.

This risky strategy of letting guns walk did not occur in a vacuum. There are serious questions to be answered about the role played by the Justice Department and agencies within the Department of Homeland Security. This ill-conceived policy has clearly affected the lives of countless individuals who may have been victims of crimes perpetrated as a result of letting guns into the hands of criminals.

Agents on the ground were ignored when they questioned the wisdom of this decision. And that just seems to pour salt on the wounds of the families who lost loved ones. When the agents came forward with concerns, you know what? They were shunned and retaliated against. If the federal agencies charged with protecting America's borders were not working together, I have to question why the left hand didn't know what the right hand was doing.

If they were working together, then that raises the question of whether any other agencies objected. Who else know; how high up was it approved? The American people deserve answers; the families of those that may have died as a result deserve answers as well. Our government is organized precisely so that Congress can require accountability and oversight of the activities of the U.S. government in situations like this.

There are many other issues that need to be discussed as well. So I'm looking forward to asking our secretary guest today about the internal memos written by officials in her department that outline ways that the administration can circumvent Congress and provide legal status to millions of people who are in this country illegally.

Every Republican member of this committee sent the secretary a letter on September 21st of last year inquiring about the internal amnesty memos and the use of special discretionary authority granted to the secretary. We asked the secretary to come before Congress to meet with memos and explain the memo. The reply was unbelievably frustrating to say the least.

The secretary responded to this very serious issue by changing the subject to enforcement. The response barely touched on the internal memo about how to sidestep Congress and keep the undocumented individuals in the country. The department refused to allow a briefing for committee

members with authors of the memo. The department assured the public that deferred action and parole would not be granted to the entire illegal immigrant population -- but what about the tens of thousands that it could have applied to? But questions remain about potential plans to benefit certain large segments of the undocumented population.

I also have questions of the department's misuse of the Privacy Act as an excuse to stonewall congressional oversight by senators who happen to be in the minority in the name of protecting the rights of terrorists. I'm also concerned about the extension of the deadline for states to comply with the REAL ID Law and the inability to maintain operational control of our borders.

I thank the secretary for coming. I appreciate it very much and look forward to hearing what she has to do to address some of these concerns.

SEN. LEAHY: Thank you very much.

And Madame Secretary, we'll put your full statement in the record. But please feel free to go ahead.

SEC. NAPOLITANO: Well, thank you, Mr. Chairman. And thank you, Senator Grassley, members of the committee.

I appreciate the opportunity to testify about the department's work to keep our nation safe from terrorism and other threats -- as well as our historic border security and immigration efforts.

As you know, we just observed the eighth anniversary of the department. I believe in those eight years -- in the nearly 10 years after the 9/11 attacks -- we have built a more effective and integrated department, a strengthened homeland security enterprise and a more secure America.

Indeed, last week we had a program at Georgetown University featuring all three secretaries of the department on the same stage -- Secretary Ridge, Secretary Chertoff and myself. Each of us acknowledging Homeland Security 1.0 when it started; 2.0 under the secretary-ship of Michael Chertoff; and then the great advancement that has been made based on that strong foundation moving forward.

Now, as I often say, homeland security begins -- or homeland security begins with hometown security. Working hand in hand with first responders; state, local, tribal and territorial governments; community groups; our international partners; and the private sector, we have made great strides in protecting our nation from terrorism and other threats, while building a culture of resiliency and preparedness across the nation. Let me address just a few issues that are particularly within the jurisdiction of this committee.

Border security: Over the past two years, the Obama administration has launched an unprecedented effort to bring focus and intensity to Southwest border security, coupled with a reinvigorated, smart and effective approach to enforcing our immigration laws in the interior of the country.

Under our initiative, we have increased the size of the Border Patrol to more than 20,700 agents today -- more than double the size it was in 2004. We have doubled personnel assigned to border enforcement

security task forces; we have increased the number of ICE intelligence analysts along the border who are focused on cartel violence; we have quintupled deployments of border liaison officers to work with their Mexican counterparts; and we have been screening 100 percent of southbound rail and also a large percentage of vehicle traffic for the illegal weapons and cash that are helping fuel the cartel violence in Mexico.

Additionally, with the aid of the supplemental requested by the administration, passed by the bipartisan Congress last summer, we are adding more technology, manpower and infrastructure to the border -- including 1,000 new Border Patrol agents, 250 new CBP officers at the ports of entry, 250 new ICE agents focused on transnational crime, two new forward-operating bases; and two more unmanned aerial vehicle systems. In fact, we now have UAS coverage along the entire reach of the Southwest border from El Centro to Brownsville.

President Obama also has authorized deployment of 1,200-plus National Guard troops who are actively supporting our work along the border. And we continue to engage in unprecedented cooperation with Mexico. And while we still face challenges -- and we are not here running a victory lap -- one thing is clear: the approach is working. Nationwide, Border Patrol apprehensions have decreased 36 percent in the past two years and are less than one-third of what they were at their peak. That means -- we extrapolate from that that fewer people are trying to cross our border illegally.

Our seizures of illegal cash, drugs and weapons are up all across the board.

And violent crime in Southwest border communities has remained flat or fallen, even as drug-related violence has increased in Mexico, and we want to make sure it stays that way.

Now we remain very concerned about drug cartel violence in Mexico, and we must vigorously guard against potential spillover effects into the United States. As you know, or as many of you know, I remain in regular contact with the police chiefs and sheriffs along the Southwest border because they will be the first ones to see if there is an uptick in spillover violence before we actually get the FBI crime statistics. So even as we get the statistics we are keeping live contact with those directly involved on the front line.

Now I can speak for the entire administration when I say we are not only saddened by the loss of our agents but we are outraged by these acts of violence against officers of the United States. Justice will be brought to those involved. We owe nothing less to the memory of Agent Zapata, Agent Terry, and to those who are still on the job along the border and in Mexico. And I look forward, Senator Grassley, to answer, to the extent I can in a public hearing, your questions about those deaths.

Our FY 2012 budget request continues the administration's continued and historic border security efforts by supporting a record number of Border Patrol agents and border protection officers, in addition to the deployments of proven effective technology along the highest traffic areas of the Southwest border, as well as technologies tailored to the maritime and cold weather environments we experience on our northern border.

Currently, we have more than 2,200 Border Patrol agents on the northern border, a 700 percent increase since 9/11, and nearly 3,800 CBP officers at ports of entry and crossings. We're also in the process of modernizing more than 35 land ports of entry along the northern border to meet our security and operational needs, and we recently extended the range of UAS coverage there by nearly 900 miles.

Let me address immigration enforcement because as we have strengthened the border we have stepped up our efforts on the interior of the country. Over the past two years ICE has removed more illegal immigrants from our country than any two-year period before, with more than 779,000 removals nationwide, and in 2010 more than half of those removed were convicted criminals. We have worked to ensure that employers have the tools they need to maintain a legal workforce and face penalties if they knowingly and repeatedly violate the law.

And we have made changes to our immigration detention system to recognize the basic differences between immigration violators, some of whom we find are children, families and the like, and the detention system needs to recognize the violators that fall in those categories, all the way up to and including the most serious violent criminals.

Our FY 2012 budget request continues these priorities, supporting efforts to fund 33,400 detention beds, remove over 200,000 criminal aliens and deploy secure communities to 96 percent of all jurisdictions nationally in FY 2012, while promoting compliance with worksite-related laws through criminal prosecutions of egregious employers, form I-9 audits and inspections, and continued expansion and enhancement of E-Verify.

At the same time we must continue to improve our legal immigration system. By streamlining and modernizing operations we are now processing applications for naturalization and other immigration benefits in record time. We have made our online systems more customer-friendly, and we naturalized record numbers of military personnel this past year.

All this work will only get stronger with comprehensive immigration reform, and I look forward to working with the Congress to make changes to our immigration laws to more effectively secure the border and support our law enforcement priorities while meeting the labor, economic and other needs of our country.

Thank you, Mr. Chairman, for this opportunity to testify. I am happy to answer the committee's questions.

SEN. LEAHY: Thank you, Madame Secretary. As I said, the full statement will be placed in the record, as well as statements by any of the members. We'll have five-minute rounds for members. I'll ask questions first, then Senator Grassley and then we'll go back and forth based on the order of arrival.

Americans and a good number of Vermonters, I mentioned to you privately and earlier, expressed concern over the screening technology and the physical searches conducted in airports. I understand the need for safety, but we also -- Americans appreciate their privacy. I understand TSA is working with the

industry to develop software that will render X-ray images, travelers into anonymous images without anatomical detail.

But I also understand that even when the software takes the image and alters it to obscure body images there is still a raw X-ray image that's captured, so we need a little bit more information about this. One, how long will it be before all airport screening machines are updated to better protect citizens' privacy, and what protocols or procedures are followed by TSA to make sure that the raw images are not stored or improperly viewed or disseminated?

SEC. NAPOLITANO: Thank you, Mr. Chairman --

SEN. LEAHY: Of course it would be a crime to disseminate them, but go ahead.

SEC. NAPOLITANO: Exactly. First of all, we are moving to this new technology because of the threats that we faced, as illustrated by the so-called underwear bomber in December of 2009, but it's clear that al-Qaida and its affiliates still view aviation as a target. The intelligence tells us that. And they have moved beyond explosives that contain metallic materials, so a magnetometer isn't by itself always adequate.

The new machines, we call them AIT -- advanced imaging technologies. We are piloting right now software that produces on the image a stick figure as opposed to a more complete image. And even as we purchase the machines, the protocols, the contracts, the rules all say they cannot collect, store, disseminate any image. Indeed, all that's happened is that the officer -- who is not actually at the line so they can't associate an image with a person -- they see it, they see whether there's an X for an anomaly, and it moves on.

SEN. LEAHY: Basically even though the machine would pick up the raw image, the person screening it is only going to see the stick figure?

SEC. NAPOLITANO: Under the new software that is how it would work, yes, sir.

SEN. LEAHY: Are manufacturers working with you on this? I mean, what role do they play?

SEC. NAPOLITANO: Yes, we're working with the vendors on the software and we're continually working to improve the software to eliminate false positives, as well as to make sure we accurately capture what needs to be checked out.

SEN. LEAHY: Would you welcome an independent study and assessment of any potential health hazard for the screening?

SEC. NAPOLITANO: Well, absolutely. We've already had it. We've had it through the National Institute of Standards, we've had it through Johns Hopkins University. They have all concluded that the machines are more than safe. The amount of radiation is approximate to about two minutes in the air.

SEN. LEAHY: I'll mention I'm glad you delayed implementation of REAL ID Act. I've said for years now the best way to encourage the states to make improvements in the drivers' licenses is make them a partner

in this. Now there have been Homeland Security grants that have been used by states to meet some of the REAL ID benchmarks.

If REAL ID were repealed and replaced with an alternative program, would that result in a waste of taxpayers' money, or would we be able to build on what's already been done?

SEC. NAPOLITANO: Actually, Mr. Chairman, I'm now hearkening back to my days as a governor. I never saw an issue unite Republican and Democratic governors so much as REAL ID as a huge unfunded mandate that really didn't recognize how motor vehicle divisions actually work state by state by state. We worked with the governors and with the National Governors Association shortly after I became secretary to devise an alternative that would meet our nation's security needs --

SEN. LEAHY: PASS ID.

SEC. NAPOLITANO: PASS ID. It did not move forward in the Congress, I suppose with the press of other things. We would ask that the Congress take a fresh look at that.

SEN. LEAHY: Now as I wrap up my first round, can you tell me what are the emerging threats facing us today from the perspective of your department, and if the House-passed cuts become law, what effect would that have on your programs?

SEC. NAPOLITANO: Well, the House-passed budget is -- to say the least, it is not helpful in any number of regards. It will require cutting 250 ICE agents. It will reduce our ability to deploy new technology and also technologies like explosive trace detection machinery into our nation's airports. It will delay our ability to deploy EINSTEIN 3, which is the cyber protection program for our nation's civilian networks -- particularly the federal government's civilian networks. It will cut our ability to provide support to state fusion centers, which are a key part of our homeland security architecture. And it will cut grants to state and local first responders by almost a billion dollars, and in this era of their constrained budgets, that will have a real and discernable impact on the ground.

SEN. LEAHY: Thank you.

Senator Grassley?

SENATOR CHARLES GRASSLEY (R-IA): Yeah. Thank you, Madame Secretary.

Over the past month I've been investigating serious allegations regarding Bureau of Alcohol, Tobacco, Firearms. The allegations that thousands of guns were intentionally allowed to flow through known straw purchasers near the southwestern border into Mexico, and those allegations are stunning. As of now I have received nothing but denials from Acting Director Melson or Attorney General Holder. Now, I'm not sure I expect you to know what happens at the grass roots in everything in your department, and this isn't "gotcha" -- (inaudible) -- it's kind of what do you know and what you didn't know. So these are my questions: Are you aware that one of your Immigration and Custom agents was working on this case out of Phoenix called Operation Fast and Furious, and if so, when and how did you learn about it?

SEC. NAPOLITANO: I'm not aware of that -- a particular agent. I am aware of the ATF operation generally and have become aware in the wake of the murders of Agent Terry and Agent Zapata.

SEN. GRASSLEY: Did you sign off on this operation, and if so, when?

SEC. NAPOLITANO: No. It's an -- this is within the Justice Department, sir.

SEN. GRASSLEY: OK. Did anyone ever express concern to you about the Bureau of Alcohol, Tobacco and Firearms purposely allowing gun traffickers to purchase through straw buyers, and if so, what did you know about it?

SEC. NAPOLITANO: No, no concerns were expressed to the secretary.

SEN. GRASSLEY: OK. Did you ever discuss with anyone anything similar to the strategy described by whistleblowers in this case, that of allowing guns to walk to make a bigger case against the cartels? And if so, I'd like an explanation.

SEC. NAPOLITANO: No, I was not so informed, and I know that, however, the attorney general has asked his inspector general to look at the operation.

SEN. GRASSLEY: OK. I'd like to ask you how you feel about the fact that another agency's decision to put hundreds of guns into the hands of criminals on both sides of the border may have contributed to the death of Border Patrol Agent Brian Terry.

SEC. NAPOLITANO: Well, Senator Grassley, to date -- and I have asked that question -- my understanding is that the whole Terry matter is under investigation, including the source of the guns that were held. So I think it would be immature -- premature, not immature -- premature and inappropriate for me to comment on that right now.

SEN. GRASSLEY: Part of the reason I ask that question is because the family is not very satisfied with the information that they're getting. And I don't blame you for that, but I want you to know that there is that dissatisfaction.

Let me go on. When Border Patrol Agent Brian Terry was killed, his tactical unit used thermal binoculars to spot at least three bandits sneaking across the border carrying AK-47s. Yet according to a story -- a sworn affidavit from an FBI agent, when the bandits refused to drop their weapons, our agents fired nonlethal beanbags, like this. The bandits responded with gunfire of this type -- the bullets that I'm showing the picture of. These are .762-caliber cartridges. I'd like to ask you, according to Agent Terry's family, federal officials told them in family briefing that two of the agents in his group carried only these beanbag guns while two others had regular weapons. Do you know if that's true or not?

SEC. NAPOLITANO: I don't know if that's true, but I would like the opportunity to talk about our lethal force policy because I think there's a lot of misinformation in the blogosphere and other places.

The head of the Border Patrol, Chief Fisher, actually comes out of special operations. So he comes out of the same group that Agent Terry was in when he was murdered. Our lethal force policy is the same as

virtually every law enforcement department I know of in the country. That is, if you are under threat of serious injury or death, you may use lethal force. And like any other law enforcement agency, there is usually a mix of lethal and nonlethal devices that are carried, particularly when you have a multi-agent event. So while I know holding up the pictures is very dramatic, the plain fact of the matter is that the lethal force policy of our Border Patrol is that they are entitled to use lethal force if they are under such a threat.

Now, the particulars of the Agent Terry operation are still under investigation, and I think the facts will come out over time.

SEN. GRASSLEY: I sent a letter on Friday asking for a copy of the use of force policy. Would you be able to provide that to us very soon?

SEC. NAPOLITANO: Sure.

SEN. GRASSLEY: OK. You may have answered this question, but let me ask it anyway. Is it true that Agent Terry's team was under standing order to use nonlethal force even against armed bandits refusing to drop their weapons? And if not, how would you explain reports that he was under that kind of order?

SEC. NAPOLITANO: They were -- I have asked that question, and my information is absolutely not. Our lethal force policy is what I have described to you.

SEN. GRASSLEY: OK. I will continue my questions on the second round.

SEN. LEAHY: Senator Kohl?

SENATOR HERB KOHL (D-WI): Thank you very much, Mr. Chairman.

Secretary Napolitano, I have heard from several businesses in my state of Wisconsin about visa processing delays that hinder their ability to do business with international customers. These companies manufacture and sell complex machinery, bringing business into the American economy. But when foreign buyers apply for short-term business visas to come to the United States for training on how to operate this complex machinery, they can face delays of more than 90 days. Companies in Wisconsin are concerned that when faced with this delay, foreign customers will be more likely to turn to overseas competitors who don't have such a cumbersome visa process. Therefore these visa processing delays have a real potential to harm the American economy and cost us jobs. Of course we need to maintain the highest level of national security in making visa determinations, but there must be a way to improve visa processing times while still fully protecting national security interests. What are you doing to protect -- to work with the State Department to shorten the amount of time these B1 visas take to process?

SEC. NAPOLITANO: Well, it's not just the State Department on those visas; it's also the Commerce Department, and I will be happy to share your concerns with them. We are always willing and able and we work with those departments on an ongoing basis. We have overall shortened visa times remarkably

over the past few years. We continue to work on efforts to meet the dual demands: You've got to move commerce; you've got protect security.

SEN. KOHL: With all due respect, that's not the answer, naturally, that I would like to hear. I seem to get the impression that there isn't going to be much priority placed on shortening the time to wait for --

SEC. NAPOLITANO: No, that's not what I said, Senator. And if that was the suggestion, that would be inaccurate. What I'm suggesting is that we are working not just with the State Department but also with the Commerce Department on those kinds of visas to shorten the amount of time as much as we possibly can.

SEN. KOHL: All right. Madame Secretary, as you know the dairy industry is critical to Wisconsin and its economy. Wisconsin produces more dairy products than any other state except California, and it does lead the nation in cheese production. Often immigrants are the only workers dairy farmers can find to keep their dairies running 24 hours, seven days a week. It is important to ensure that dairy farmers have access to the workers they need. Currently farmers may bring in seasonal immigrant workers on H-2A visas, but dairy farmers cannot use this visa program because dairy farming is not considered to be seasonal. I believe we must revise the H-2A visa program to allow year-round agriculture such as dairy farming or sheep herding to have access to yearlong agricultural visas.

As you know there are legislative proposals to address this problem but in past oversight hearings before this committee -- are you committed to look into whether this problem can be fixed by a rule or regulation rather than by legislation?

Assuming you've completed that review, what are the results and what can you do administratively to ensure that dairy farmers have access to the workers that they so desperately need?

SEC. NAPOLITANO: Senator, I appreciate that need and I have looked into it. And the answer is that this would require a statutory fix because of the distinction between seasonal and non-seasonal labor.

It's one of the hundreds of areas we run into now where real needs cannot be met because we have not been able to address the underlying immigration law.

SEN. KOHL: Madame Secretary, the Urban Areas Security Initiative programs build local, regional and statewide capabilities to respond to threats of terrorism and other manmade or natural disasters.

While many people may not know this program by name, we are safer because it supplies first responders in the Milwaukee area, for example, with the ability to effectively coordinate and respond to our communities in times of need.

For example, during the catastrophic flooding in the Milwaukee area last summer this funding was used to train and dispatch volunteer rescue workers. I've heard from law enforcement back home that without this funding the Milwaukee area's ability to response to these events would be hamstrung. I'm sure that Milwaukee's situation is not unlike other mid-size cities.

The recent House spending bill included an amendment to eliminate Urban Areas Security Initiative funding for 39 of the 64 urban areas that now receive it. And under this plan, the Milwaukee area would no longer be eligible for any funding.

On March 4, the president called for nearly half of UASI funding to be cut, but he did not specify whether it would take a similar approach to some cities ineligible. I appreciate the need to make cuts and sacrifices but I'm concerned that Milwaukee and other mid-size cities will be cut out entirely as the House did in their bill.

Madame Secretary, do you support the president's cuts to these Urban Areas Security Initiatives? And if so, will you commit to insuring that cuts are shared more broadly instead of taking the House approach of singling out mid-size cities like Milwaukee to lose out entirely on the funding?

SEC. NAPOLITANO: Senator, I think that first of all the H.R.1, that the House passed budget cuts, grants a billion dollars. And it will affect our ability to train first responders and the like, and to support UASI and some of these other very important initiatives.

So, there needs to be -- I think there's a philosophical difference, perhaps, between the House and the Senate about the grants and the need to financially support our cities, our towns, our first responders, recognizing that all of them face risks of some nature. It seems to me that if reductions are to be made, and we have proposed, for example, consolidating 17 grant programs into nine, to eliminate administrative overhead both by us and by states, cities, and towns that we need to maintain flexibility so that we can evaluate every locale and every application on its own merits. And that -- you know, in exchange for some reductions, that flexibility is given.

So, without commenting on the House passed resolution beyond that, that's one of the things I think the states and cities would like to see is if grant funding overall is to be reduced, greater flexibility on how they can apply the monies.

SEN. KOHL: Thank you so much. Thank you.

Senator Kyl.

SENATOR JON KYL (R-AZ): Thank you, Mr. Chairman.

Madame Secretary, I'd like to turn very briefly to the Agent Terry issue. I was at the ceremony in Tucson and I can attest to the fact that there are still a lot of questions that people would like to have answers to.

You indicated that the case is still under investigation and were unwilling to describe whether or not you had been advised as to whether or not Senator Grassley's statement was correct; namely, that two of the agents were carrying firearms, two were carrying only weapons that could fire the beanbags. Have you asked that question and have you received an answer?

SEC. NAPOLITANO: Senator, I have received information about the investigation into Agent Terry's death.

I think that the murder of Agent Terry and the murder of Agent Zapata, these are outrageous acts against federal officers in the line of duty and they require our highest effort. However, because it's under criminal investigation in Arizona I think it inappropriate to comment on the facts as I know them.

SEN. KYL: Do you think that disclosing, publicly, whether or not the information that has been described is accurate would impede the investigation or the prosecution?

SEC. NAPOLITANO: I would prefer, Senator, before I talk about the details of the case to confer with the U.S. Attorney who is prosecuting it.

SEN. KYL: There's an affidavit from FBI agent Scott Hunter dated December 29, that is public. He's an FBI agent and he alleges that the denial by CPB (sic\CBP) that agents were under specific -- that agents were under specific order to use less than legal force; he says that is incorrect. Are you familiar with his affidavit?

SEC. NAPOLITANO: I have not seen that affidavit. I have, however, gone over the lethal force, use of force policies, extensively with the leadership of the border patrol who, as I said, come out of special ops.

SEC. KYL: If -- excuse me, but if, of course the agents don't have the weapons to use, then the ability under policy to use them is of little use.

SEC. NAPOLITANO: Senator, I think -- first of all, I've been -- as a U.S. attorney, as an attorney general, and now involved in many, unfortunately and tragically, many cases where an officer has died in the line of duty. In my judgment it's important to let the prosecutor handle the facts, produce the evidence, and at that point we will do our own internal investigation.

SEN. KYL: Well -- and I appreciate that.

You can understand the concerns of the family -- and I have been an advocate for victim's rights for a long time -- among which are to understand the facts of the case surrounding the death of a loved one. And too often, in my experience, prosecutors use the excuse of it's under investigation -- I shouldn't just say prosecutors, but government officials, to not disclose information to families.

There's another tragic case in Arizona involving U.S. military, and that involved a beloved military figure in Arizona. I'm speaking of Tillman, the --

SEC. NAPOLITANO: Oh, Pat Tillman?

SEN. KYL: -- Pat Tillman, the former Arizona Cardinal who was killed. And because information was not provided to the family that has remained to be a matter of great concern to the people in the state, and I don't want that to happen with regard to Agent Terry and his family as well.

SEC. NAPLITANO: Senator Kyl, if I might add, we have been in contact, my understanding is, with the family as has the Justice Department through their victim's assistance program, and we will continue to be so. My understanding as well is that this case is moving forward in the U.S. attorney's office there.

SEN. KYL: Was the Department of Homeland Security consulted by anybody in the House of Representatives prior to the reduction in funding carried in the continuing resolution? And if it was, can you share with us what advice the department gave?

SEC. NAPOLITANO: If it was, it was not at the higher levels.

SEN. KYL: You have -- DHS has an outside working group of advisors that has prepared a draft report that among other things deals with the terminology for referring to Islamist terrorists, although that term would apparently be banned as a result of the findings of this working group.

In fact, as I understand it, any reference to Islam or jihad would be inappropriate because it is alleged that the sociology regarding the motivation of these terrorists is still being studied.

Do you have any problem acknowledging the influence of their faith on the various Muslim terrorists who have been arrested during your two-plus years as secretary?

SEC. NAPOLITANO: Senator, you know, I do not. I mean, there is in fact a small group of Muslims, Islamists would be a better way -- or jihahists would be a better way to describe them -- who target the United States and are the focus of a lot of the work that we do at the Department of Homeland Security. But that should not be used to tar the entire Muslim community.

I believe, and I don't see it, and it's hard to respond to something you don't have before you, but we have focused -- you know, the question for the Department of Homeland Security is how do we prevent a homegrown terrorist, a homegrown extremist, Muslim motivated or not, from being able to actually commit an act of violence.

How do we detect and prevent. And we believe that one of the most effective ways we can do that is through supporting trained community policing departments, who are on the front lines in the neighborhoods, know the people, have built bridges into communities.

And so our strategy is really based on, from a security level, what can we do within the homeland that would be most effective. This is the strategy that was used a lot in the '80s and '90s to break up some of the major gangs that were plaguing our cities and the like. The strategy was devised -- or advised by an outside group that included a lot of chiefs and we have been field-testing it as FLETC with other police and sheriff leaders from across the country over the past two weeks.

So really what we are trying to do is, recognizing that we have -- and this has evolved over the past two years -- people who are actually U.S. persons who have become motivated to become jihadists or who have become motivated to commit violent acts in the name of an extremist ideology, Muslim-based or other -- and there are others -- what is the best way that we can devise, have a homeland security architecture that would prevent such an act from being committed.

SEN. KYL: Mr. Chairman, if I could, just a final comment. I appreciate that. Obviously that makes sense. It is important in dealing with an enemy here -- and these are not just crimes, these are people who have a larger purpose in mind and they are worldwide. And of course they do not represent anywhere near the majority of the Muslims of the world, but I think it is appropriate, in fact, it's necessary to know who your enemy is in order to prevail against them.

And acknowledging that in these cases people are influenced by their view of their faith, and that some of them are therefore Islamists, jihadists -- both of those, I think, are accurate terms -- I think is important. And I appreciate your answer and would strongly encourage you to ensure that others in the department don't shy away from, when it is appropriate, referring to terrorists by their real name. Thank you.

SEN. KOHL: Thank you, Senator Kyl. Senator Franken.

SENATOR AL FRANKEN (D-MN): Thank you, Mr. Chairman. Thank you, Secretary Napolitano, for your testimony. I want to talk a little bit about, and probably pick up a little bit on Senator Kyl's last few questions about the Somali community in Minnesota.

About a couple of years ago now a very small number of members of that community went back to Somalia, young -- very young men, to train with al-Shabab, the terrorist organization.

My experience is that no one was more upset about what happened than the Somali community in the Twin Cities itself. But yesterday I heard a member of Congress on television say very categorically that there had been no cooperation from the Somali community or from community leadership, including imams in the Twin Cities, with federal authorities. But my understanding from federal authorities themselves, including in Minneapolis, is that there had been real cooperation from that community in Minnesota, including imams and the mosques. Is that your understanding?

SEC. NAPOLITANO: My understanding, Senator, is that there has been very active interaction between the Somali community in the Twin Cities and different aspects of the federal government, yes.

SEN. FRANKEN: I just found it very disturbing as I was watching this, the mischaracterization that I saw. And on behalf of my constituents who are in the Somali community in the Twin Cities, I took some umbrage.

SEC. NAPOLITANO: Senator, we have within the department a section that goes by the name civil rights, civil liberties. But they have been doing a lot of outreach to different Muslim communities around the United States and have done a lot of work in the Twin Cities itself with the imams, with others in the Somali-American community. So I know from our department's perspective -- I can't speak with a lot of personal knowledge about Department of Justice and so forth, but from our department's perspective we have had good and healthy interaction with the Somali-American community there.

SEN. FRANKEN: I've talked to people from the Department of Justice on this as well. Now you've talked about combating this trend of recruitment by, and this is a quote, "using many of the same techniques and strategies that have proven successful in combating violence in American communities." My

question is how you're putting this idea into practice. For example, it seems to me like it would make sense to have a Somali face on some of our counterterrorism efforts in the Somali community in Minnesota. Is that something you're working on?

SEC. NAPOLITANO: Yes. And as I mentioned, Senator, one of the things we have done is devise a training curriculum to counter violent -- on how to detect, prevent violent extremism from being able to successfully carry out an attack, looking at tactics, looking at techniques and the like, and we are field-testing that right now.

SEN. FRANKEN: Madame Secretary, I want to talk about enforcing immigration laws and how they're enforced, and I know you have an important job in doing that. I'm worried about making sure that our nation's children don't suffer unnecessarily because of this. This is from a recent report from the Women's Refugee Commission. It talks about a Haitian woman from Florida named Jean who had four U.S. citizen children, and this is what happened to her kids after she was detained.

Her abusive boyfriend made a 9/11 call and she was taken away and it was kind of a -- well, it doesn't matter. But here it says, "Jean was unable to make arrangements for her children and for months had no idea where they were. When a nonprofit attorney was able to get her out of detention after six months, Jean discovered the children also had no idea where she had been or how to contact her. One child spent most of his time in his abusive father's taxi cab, even sleeping there. One was found living with an unknown family that had taken him in, and a third was living with a school friend's family after having been kicked out of her abusive father's home."

Madame Secretary, at least 100,000 parents of U.S. citizen children have been deported over the past 15 years. I know that you have worked to protect children. There is a policy for nursing mothers, for worksite raids of 25 or more people, and for cases where an ICE agent has actually seized a child during a raid. But we still don't have a single comprehensive policy on how to identify kids that might get left behind, how to make sure they know where their parents are and how to make sure they don't get lost in the system.

Now last year I introduced a bill called the Help Separated Children Act, with six other colleagues, including five on this committee, to fix this. So we've thought about this problem, and I just want to make a simple request of you. Would you and your staff commit to working with me to try to find a way to improve the way kids are treated by this immigration system?

SEC. NAPOLITANO: Absolutely.

SEN. FRANKEN: Thank you. And thank you so much. I'm looking forward to working with you very much.

Mr. Chairman, thank you.

SEN. LEAHY: Thank you. As we go to border states again, Senator Cornyn.

SENATOR JOHN CORNYN (R-TX): Thank you, Mr. Chairman. Good morning, Madame Secretary. According to the General Accountability -- the Government Accountability Office, last fiscal year 2010

there were 445,000 individuals detained at the Southwest border. The Government Accountability Office points out that of the 2,000 miles along the southern border that 1,120 of those miles were not yet under operational control by the federal government.

And of the 873 miles that were under, quote, "operational control," they differentiated between controlled at 15 percent of that 873, and 85 percent, which they called managed, which means that, basically, they are in a position to try to detect and detain illegal aliens within 100 miles of the border.

I raise that issue because you made the statement, I believe, earlier that you think the administration's approach is working when it comes to border security. And you can correct me if I'm wrong.

I would just give you one other bit of data, and that is from the Border Patrol, the apprehensions during fiscal year 2009, up to April the 30th, 2010 -- that out of the 445,000 individuals detained at our southwestern border, there were 45,000 detained coming from a total of 140 different countries. In other words, these are not just individuals coming from Mexico and points south.

SEC. NAPOLITANO: These are what are known -- the category known as "other than Mexico."

SEN. CORNYN: That's correct.

I noted in looking at these statistics and these numbers, which I will in a moment ask to be made a part of the record, that at least four countries are represented on this list of 140 countries that have been designated by the U.S. Department of State as state sponsors of terrorism. How can you possibly claim that the approach of the administration is working when it comes to border security in light of these statistics?

SEC. NAPOLITANO: Well, I think you have to look at the entire picture, Senator. You have to understand first of all that operational control is a term of art by the Border Patrol. It doesn't include all of the assets that are being deployed to the border, the technology and so forth.

And you also have to look at all of the numbers, and while our efforts need to be sustained and move forward, we think we're on the right path. The numbers that need to go up are going up dramatically; the numbers that need to go down are going down dramatically. We are not done. We are continuing to work that border and work it hard.

I have, as Senator Kyl knows --

SEN. CORNYN: (Inaudible) -- think more needs to be done.

SEC. NAPOLITANO: Well, we at the minimum need to be able to financially sustain what we are doing at the southwest border, and that I think is something we'll need to work with the Congress on.

SEN. CORNYN: Well, Madame Secretary, sustaining the current effort means about a half-million people coming across the border a year that are detained. And of course if -- this is a strange way to keep statistics because, as you know and I know, how many are detained tells you nothing about how many

who got away. And of course there are many guesses about whether that's two get away for every detained, three, or four.

But I also want to ask you, in the GAO report -- which I'll ask be made part of the record in a moment -- dated February 15th, they say that Customs and Border Patrol does not have an estimate of the time and efforts needed to secure the border. Do you have a estimate of the time and efforts needed to secure the border?

SEC. NAPOLITANO: Well, first of all, let me go back to your earlier point, Senator Cornyn. When I say sustained, I mean sustained -- the trends: sustain our downward trend on illegal immigrants getting across our border; sustain our upward trend on the seizures of drugs and illegal guns and cash. So when I say sustained, I don't mean steady state, I mean sustain the kind of trend lines that we have developed over the past two years.

SEN. CORNYN: I understand, but do you have a estimate of the time and efforts needed to secure the border that the -- that Customs and Border Patrol said they were unable to provide?

SEC. NAPOLITANO: Well, I'm -- if I might, Senator, this is not one of those projects where you say, well, by April 1 we're going to secure the border. This has to be --

SEN. CORNYN: Madame Secretary, I'm asking -- I'm asking you a simple question. Do you or do you not have an estimate of the time and efforts needed to secure the southwestern border? Yes or no?

SEC. NAPOLITANO: Well, my answer, Senator, is that our efforts to secure the border will be continuing, and what I'm afraid of is if I give you a date, at that point, then, resources will be taken away and put somewhere else. This will need to be a sustained effort over time.

SEN. CORNYN: I would suggest, to the contrary, Madame Secretary, you know that you have members of this committee who have been very active in the effort to provide your department the resources that are necessary to finish the job. And I would just say that you mentioned the issue of immigration reform, and I join you in your observation that our immigration system is broken and needs reforming.

But I have to tell you that as long as the American people have no confidence that the federal government is doing its job when it comes to securing the border based on enforcement of the rule of law, which is basic to our national creed, but as also a national security threat, with our porous border admitting people coming from 140 different countries other than Mexico, including four nations that are state sponsors of international terrorism -- this is a national security threat. So we need to regain the confidence of the American people before they're going to allow us to move forward on the sorts of things that you know and I know we need to do to fix our broken immigration system.

SEC. NAPOLITANO: If I might, Senator, we have invited bipartisan leadership of the Congress to come down to the southwest border to see all the activities that at a bipartisan level have been supported across this border. I would suggest --

SEN. CORNYN: Madame Secretary, you don't need to invite a Texan or an Arizonan to come to the border.

SEC. NAPOLITANO: I would suggest, however -- I know that. And I've spent almost my entire life on the border. I was raised in New Mexico; I spent my adult life in Arizona until I moved here. So I know that border very, very well.

But there are other members of the Congress who do not, and I think once they see what is down there and what is coming -- because more and more keeps coming -- they will understand both the enormity of the task but also all of the operations that have been put into place.

SEN. CORNYN: Mr. Chairman, I'd ask unanimous consent to make part of the record the GAO study that I referred to dated February the 15th, as well as the statistics I referred to with regard to apprehensions of aliens from countries other than Mexico. If I could make both of those part of the record --

SEN. LEAHY: Without objection, they will be made part of the record.

SEN. CORNYN: Thank you. I see my time has expired. Thank you.

SEN. LEAHY: It has. And we'll go to Senator Franken.

SEN. FRANKEN: I think actually we're going to Senator Blumenthal.

SEN. LEAHY: That's right. You've already asked. I'm sorry.

Senator Blumenthal.

SEN. FRANKEN: Obviously very memorable. (Laughter.)

SEN. LEAHY: I saw that look on Senator -- I had stepped out on another matter, and I apologize.

SENATOR RICHARD BLUMENTHAL (D-CT): I would, needless to say, be happy --

SEN. LEAHY: I saw that look on Senator Blumenthal's face and I realized just as I said that. Man, the chairman is slipping terribly.

Senator Blumenthal, go ahead.

SEN. BLUMENTHAL: Well, I am sure that Senator Franken's questions would be much more enlightening than mine, but I appreciate his deferring.

First of all, let me begin, Madame Secretary, by thanking you for your extraordinary service to our nation and to the state of Arizona as a federal official, as United States attorney and then as attorney general, and now in your present position. And let me ask you, since we're here to talk about the readiness and oversight of your department, what would be the impact of a government shutdown on the Department of Homeland Security?

SEC. NAPOLITANO: Well, you know, our department -- since we didn't exist in 1995 when the last shutdown occurred, we've actually had to go and develop a plan and -- for that. We would have some aspects of the department that would shut down totally. We would -- the operational aspects that people see -- the TSA officers, the Border Patrol officers, the port officers -- they would continue, but all of the backroom work that is necessary to support and maximize their efforts would probably also have to shut down. So I think that it would be a very destructive event should it occur. I know that and hope that both sides are working to avoid it.

SEN. BLUMENTHAL: And fair to say you would do everything possible -- you would hope we would do everything possible to avoid a shutdown?

SEC. NAPOLITANO: Yes. Absolutely.

SEN. BLUMENTHAL: Going to the issue of immigration reform, you've spoken very compellingly about the architecture of security enforcement involving state and local police. Do you foresee greater authority, which probably would require greater training, for local and state police in the enforcement of our immigration laws?

SEC. NAPOLITANO: We actually think that greater authority in that sense is not needed, nor particularly desirable. Immigration fundamentally is a federal responsibility with some partnerships with state and locals in the enforcement arena. The most successful of those we call secure communities, which is an agreement between DHS and the Department of Justice where, when somebody is arrested and booked, their fingerprints are run not just through the DOJ criminal databases but through the immigration databases as well, so that after an individual has served their time, they go immediately from whatever state system there is or local system right into removal proceedings.

SEN. BLUMENTHAL: So the direction you would foresee is providing greater resources at the federal level, maybe even greater authority to enable local enforcement to be a partner but not take more authority from the federal government.

SEC. NAPOLITANO: That is right, and the federal government always needs to retain the authority to enter into the partnership and to describe the parameters of the partnership.

SEN. BLUMENTHAL: Thank you. Going to a different subject, as you know, this past winter has been really pretty brutal in many parts of the country.

SEC. NAPOLITANO: Indeed.

SEN. BLUMENTHAL: And a number of them have applied for emergency disaster relief, including Connecticut, and I know that many of us in the Congress have in mind those applications and measures that can be taken to expedite them. So I would ask you whether there are steps being taken to expedite those applications for relief, in particular, the application from Connecticut for two of our counties. We thank you for approving many of our counties, but in particular two, Windham and Middlesex still have not been approved. So I wonder if you could comment on when you foresee other decisions being made with respect to them and perhaps other areas of the country that have similarly made application.

SEC. NAPOLITANO: Senator, I think we've been actually moving those emergency declarations through very, very rapidly. Sometimes in a jurisdiction, when it applies, they don't meet the criteria and it may be that our FEMA regional individuals -- at that time they will work with the local officials to say, go back and look at x, y and z because right now you don't satisfy the criteria. That could cause some delay. But my understanding is that with respect to Connecticut and basically all of the Northeast snow-impacted states and counties and towns and so forth, that those applications have been moving forward.

SEN. BLUMENTHAL: Thank you, and perhaps I could pursue a number of these areas with you or your staff after this session. I know even Vermont may have an application judging by the snow that it received over the weekend.

SEC. NAPOLITANO: We've had quite a few.

SEN. BLUMENTHAL: Well, thank you very much.

SEC. NAPOLITANO: Thank you, Senator.

SEN. LEAHY: Thank you, and Senator Graham?

SENATOR LINDSEY GRAHAM (R-SC): Thank you, Mr. Chairman. Thank you, Madame Secretary. I appreciate your service to the country at a very important time in a tough job. You've got a big portfolio. I just got back from Laredo, Texas, just I guess last week. It was a fascinating trip. I understand from the local community, senator Cornyn's people were incredibly helpful -- that the points of entry, the crossings in from Mexico to Texas, that a lot of technology is 30, 40 years old and the point of entries are -- should in my view be considered part of border security and I'm going to ask the chairman that we have a hearing about upgrading our points of entry. What's your view of the status of points of entry and how efficient they are -- (cross talk).

SEC. NAPOLITANO: Yeah, thank you, Senator. Laredo is actually one of our largest land ports along either border and a lot of truck traffic has to go through there as well as vehicle traffic. They have been and we are, as quickly as the Congress approves it, replacing and updating technologies. VACIS machines, mobile bag scanners, handheld devices, K-9 teams and couple with additions for port of entry officers who are the people that actually have to manage the ports. So we would be happy to brief you offline or I don't know about a hearing but we would be happy to brief you offline.

SEN. GRAHAM: Well, I think it'd be good to have the people from the community come up and talk. Senator Cornyn has done a very good job on his bill. One of the things I learned too is, you know, the border really goes right through towns and there's a way to secure our side of the border without having a fence for the whole 22 miles if you listen to the local community and I would like to maybe talk with you at a later time about security and population areas where the river basically cuts through two towns and making it more secure but at the time same not killing commerce. I think you can do both. Generally speaking, from 2007 to now, how would you evaluate the security situation in Mexico? Has it gotten worse or better?

SEC. NAPOLITANO: I would say first of all I think that we all have to appreciate what President Calderon is trying to do in Mexico. This is tough, tough work. These cartels have existed for a long time and they're entrenched and they're large and they're powerful. He has put much of his country's resources into this battle. We are providing any assistance we can and we will continue to do that. That being said, I think it's fair to say that at least in several of the states in Mexico and I would suggest Chihuahua, Tamaulipas, Nueva Leon and perhaps even now Sonora that the trend line has not gone in the right direction.

SEN. GRAHAM: Yeah, I think that's a fair statement. From listening to border communities, people on our side, they used to routinely go across to meet their Mexican neighbors, go hunting. There are people who have been doing this all their life but stopped that activity in the last four or five years because they're, quite frankly, afraid. So I think the observation is pretty clear to me that the trend lines are going in the wrong area, the wrong way and has there been any suggestions of joint operations with Mexico to go after some of these violent gangs?

SEC. NAPOLITANO: There are joint operations, senator, underway at the request of Mexico and there are a number of agreements and things that we are doing with Mexico at the federal level, particularly focused on the cartels.

SEN. GRAHAM: Well, I think border security is more important than ever because the violence has increased. But I think, you know, being flexible in how to do it makes sense. Now, about Guantanamo Bay, that's back in the news again. If someone were captured tomorrow in Yemen or Somalia, a high value al Qaeda target were captured by U.S. forces, what would we do with that person?

SEC. NAPOLITANO: Well, I assume that if they're on the field of battle, they would be held by DOD.

SEN. GRAHAM: Where would they hold them?

SEC. NAPOLITANO: I do not know the answer to that question.

SEN. GRAHAM: Okay. I think the facts are that we don't have a jail. I'm not blaming anybody. That's just a fact. If you caught someone tomorrow in Yemen or Somalia, they're not going to go to Bagram Air Base. The Afghan government is not going to allow that. We're not sending people to Gitmo.

So we're in a situation where we have no jail for future captures. So you're either killing them rather than capture them or you wind up renditioning them and that's exactly what we're doing. Would you support transferring a Guantanamo Bay detainee to the countries of Yemen, Somalia or Pakistan? Do you think that would be a wise, safe move, to repatriate a Guantanamo Bay detainee to those three countries?

SEC. NAPOLITANO: Senator, I think that the issue of the Gitmo detainees has to be evaluated on a case-by-case basis. So I think that's the way you have to look at it. Each person there has a different file and a different set of facts.

SEN. GRAHAM: You would be willing to send somebody to Yemen?

SEC. NAPOLITANO: Senator, it depends on what that person is and what that person allegedly has done.

SEN. GRAHAM: Do you think Yemen is safe -- they won't go back to the fight if they go to Yemen?

SEC. NAPOLITANO: I think there are legitimate and concerns with Yemen. But again, I think that is up to the department of Justice and an evaluation of each of the facts of each detainee.

SEN. GRAHAM: Thank you for your service.

SEN. LEAHY: Senator Schumer?

SENATOR CHARLES SCHUMER (D-NY): I would also like to thank you for your service, Madame Secretary. My question's first on northern border and the radar system there. On December 17, 2010, the GAO issued a report on the state of security on the northern border in which it indicated that, quote, "the northern air border is vulnerable to low-flying aircraft that, for example, smuggle drugs by entering U.S. airspace from Canada," unquote.

A month ago, I, along with many of my colleagues from northern border states sent you a letter asking DHS to use military-grade radar along the northern border to detect low-flying planes. This technology was successful used, as you know, in Washington State during Operation Outlook in 2008. Does the department plan on using this radar and will the radar be deployed on the northern border in short order to deal with the drug smuggling which is rapid increase in my state and many others?

SEC. NAPOLITANO: Senator, we are working with DOD and with NORTHCOM on radar and other related issues and technologies and efforts on the northern border.

SEN. SCHUMER: How soon can we expect -- can we expect to get it at some point?

SEC. NAPOLITANO: Senator, I would prefer to answer some of those questions offline but I will simply say for open hearing purposes that this is, you know, moving very rapidly.

SEN. SCHUMER: Good, and it's a good idea.

SEC. NAPOLITANO: Yes.

SEN. SCHUMER: Thank you.

Next: FEMA flood maps -- going from one to the other. This is an issue of real importance in my state.

SEC. NAPOLITANO: Many states, yeah.

SEN. SCHUMER: Yeah. FEMA's been updating the flood maps. They're placing thousands of Long Island homeowners in high-cost insurance zones. It raises the cost of their living up to \$3,000 a year. These are average middle-class people. They haven't had a flood ever in their area. Some live as far as five miles from the water and they're getting soaked with these increases. It's amazing.

And what we found out -- and FEMA admits this -- they used information gathered in Suffolk County to draft Nassau County's flood maps. FEMA rejected requests to conduct a Nassau-specific study, even though Nassau's geography should have been subject to a separate study.

Madame Secretary, the Army Corps district commander advised me yesterday that the Corps who does the basic studies was not consulted when FEMA mapped Nassau County. The commander went so far to say that FEMA should have used Nassau-specific Army Corps data. It's shocking news, particularly given that FEMA was mapping not some rural area that had a few people on it, but a densely populated area. There are 25,000 people new to the flood zone who want to know if the government used the most appropriate data when mapping their community.

I've requested an IG investigation to get to the bottom of this. My question to you is: Will you help me fix these maps if the investigation shows that we should start over? Would you be willing to work with the Army Corps, who's very willing to work with FEMA to get this right, to develop a Nassau-specific storm surge model so Nassau can be mapped accurately? This is not a little area. Nassau County, as you know, has 1.5 million people.

SEC. NAPOLITANO: I know that.

SEN. GRASSLEY: (Off mic.)

SEC. NAPOLITANO: With respect to --

SEN. SCHUMER: Both Chucks have the same question. (Laughter.)

SEC. NAPOLITANO: I am delighted to receive a bipartisan inquiry from the committee.

Senator, if the facts are as you state them with respect to Nassau County, I don't think I need to wait for an IG inspection. I will go back and asked FEMA right now what happened; why they didn't use Nassau-specific maps. And if there are better maps and better data available -- they should be using the best data available.

With respect to Iowa and to other states -- and I confronted this when I was governor of Arizona and they put some cities and towns into the flood plain -- we are working with communities, towns, counties saying, look, if you have better data we will review it.

SEN. SCHUMER: They might in Nassau have to do a survey for Nassau. They didn't have the survey. It wouldn't cost that much, but they took Suffolk's data instead -- even though the Army Corps, we were told, told them don't.

SEC. NAPOLITANO: I can't -- I don't know whether that's true or false. But what I can say is look, if there's better data to use, we should use it.

SEN. SCHUMER: Right, thanks.

Finally -- well, I'm over my -- nope, I have a little time left. This is on southern border security -- something we've talked about a great deal. I hope to take a trip with you soon and my colleagues -- I know Senator Graham is interested in that -- so we can see with our own eyes. Even though there's still work to be done, the border is much more secure than when you became secretary. You're familiar with this very intimately as governor of -- former governor of Arizona. And we passed, as you know, this help -- the \$600 million appropriation bill last August.

But unfortunately, the long-term continuing resolution passed in the House -- the seven month -- cuts border security infrastructure. And much worse, Border Patrol agents at a time when violence from Mexico is at an unprecedented level and a growing economy is likely to produce more desire by individuals to illegally immigrate in the U.S. Senator Kyl, who graciously co-sponsored the bill on border security last year -- along with Senator McCain -- has also recently criticized these cuts.

Can you unequivocally say today to my colleagues that if we pass the House's proposed 2011 Continuing Resolution, our border will be less secure than it is today and we'll be going backward instead of forward?

SEC. NAPOLITANO: Yes. It's a bad border bill on the House side. And I think even Representative King, who's the chair of the House Homeland Security Committee, said that last week when we had our appropriations hearing.

So we would hope that as the budgets moves forward and these negotiations move forward, that the numbers in that part of the House resolution not be accepted.

SEN. SCHUMER: Thank you, Madame Secretary.

SENATOR SHELDON WHITEHOUSE (D-RI): All right. Just to recap where we are: Senator Coons is next, Senator Klobuchar, then myself -- unless and until Senator Durbin returns, in which case he jumps ahead. And I think all of the Republican senators have been heard.

So from now on out, it's just us, Madame Secretary.

Senator Coons.

SENATOR CHRISTOPHER COONS (D-DE): Thank you, Senator Whitehouse.

Madame Secretary, great to see you again; thank you for your service. And the early predictor that service as a Truman Scholar can lead to later success in life. Thank you for your service both in Arizona and leading a very complex and critical agency at this time.

Just to follow up on some of the questions raised in the previous colloquy: I too as a former county executive saw a great deal of challenges with FEMA maps and am coming from a meeting with Delaware's counties who raised that same question with me -- Kent and Sussex in particular have some concerns about FEMA flood plain mapping. So allow me to simply pile onto the concerns raised by the other two.

We also in Delaware happen to have a manufacturing company -- whose product I got to see in place in Afghanistan -- that makes a tethered balloon product that is designed to deliver down-looking radar that is used in border security very successfully in the field in Afghanistan and I believe is being considered for some use northern and southern border. And I'd just recommend them to you.

This is a bad border bill -- H.R.1. I think it's also a bad port security bill and I'd be interested in your comments. Your department has done a great deal of work in delivering port security funding and in making our ports safer in a particularly challenging global environment, a particularly difficult time.

Would you comment on what sort of impact the cuts in H.R.1 might have on the path forward for port security?

SEC. NAPOLITANO: Well, on particular impact will be a dramatic reduction in port security grants, which are used -- as you know, Senator -- for a lot of the on-the-ground efforts to secure port infrastructure.

SEN. COONS: And the Delaware Bay actually has a great deal of traffic through it that goes up to the New Jersey, to Pennsylvania as well as to my home state of Delaware. There's about \$14 million worth of port security funds that have been allocated since 2008, but haven't yet been spent because of the local match requirement. And the fiscal condition of some of our municipalities and state and local governments is preventing that.

Any input for me about the path forward on addressing or resolving this with funds that have already been allocated, but have not yet been spent?

SEC. NAPOLITANO: This is a -- it's a difficult area, because we do have some discretion to waive the 25 -- I think port security is a 25 percent match grant.

SEN. COONS: Yes.

SEC. NAPOLITANO: I would be happy to explore that particular aspect of it and get back to you after this hearing.

SEN. COONS: That'd be great. I'd appreciate it -- in particular, whether in-kind contributions of resources might be eligible to count towards that.

I was particularly interested in the conversation that was going on before about immigration. There are other ways that immigration, I think, positively contributes to job creation and to growth in this country and there's been some back and forth on the H1-B visa program and EB-5 investor visa program. As a former in-house counsel for a high-tech company, one of our challenges often was finding sufficiently trained folks in the United States at the very highest levels of technology.

How effectively are we using H1-B visas? What challenges are there? How can we strengthen enforcement -- particularly with the EB- 5 so that there isn't fraud -- and how can you help us assess their positive contributions to the American economy?

SEC. NAPOLITANO: Well, I think -- and Chairman Leahy has mentioned EB-5 to me several times as a job creation device -- we have actually increased the number of EB-5 visas over the last several years. We want to prevent fraud and abuse in these programs. And that is a concern. We have created a fraud unit with CIS. And we also have done a number of things. For example, we've increased the number of spot onsite inspections of companies -- of employers who say they are putting to work people to do certain things.

We're doing a lot more by way of follow up with employers and really more oversight of the visa recipients after they have -- after the visa recipients go to work.

So both on the EB-5 -- we're trying to increase it; but on the H- 1B, we want to make sure we use it as a country. We need it as a country, but we need to make sure that it is free of fraud and abuse.

SEN. COONS: Absolutely. Thank you for your hard work in that field.

And last, if you've got a moment, just -- there was a GAO report on high-risk areas that focused on cyberterrorism. Cyber terrorism and access to cyber attack is something that the financial services community in Delaware has a lot of experience in and is very strong in.

The National Guard actually nationally is standing up units that are specifically dedicated to fighting cyber terrorists that are a great resource.

I'm wondering what plans you have, what the path forward is for your department to strengthen and collaborate and partner with folks in our private sector and our Defense communities around being prepared to deal with cyber terrorists.

SEC. NAPOLITANO: Senator, we have an entire directorate within the department that is on cyber. We've done a lot of work on that in the last two years. It's probably our fastest growing area aside from the Southwest border security area.

And we are -- we have received permission from the Office of Personnel Management to do direct hire of 1,000 more cybersecurity experts. We've opened a national cyber security center in Virginia, we have entered into an agreement with the Department of Defense so that we can have people at the NSA helping us with work and use the technology experts at the NSA with lawyers and privacy individuals right there so that we don't cross the line; I'm very careful about that. And we are working with the private sector, financial institutions being key among them, on the things they need to do to protect their own systems and networks.

And finally, we have been growing US-CERT, which is the response team, and their efforts to be able, when an intrusion is detected or something, a virus, or something of that sort that they can immediately connect with critical infrastructure in the country, which would include the financial services sector.

SEN. COONS: Well, thank you. And, Madame Secretary, thank you for your diligent and disciplined service to our country.

I see my time's expired.

SEN. WHITEHOUSE: Senator Klobuchar.

SENATOR AMY KLOBUCHAR (D-MN): Thank you very much, Mr. Chairman.

Thank you, Secretary, for coming. I'm going to take you from the southern border to the northern border.

And as you know, on the northern border of our country is Fargo, Moorhead, the scene of some floods in the past. And I wanted to --

SEN. : The Red River.

SEN. KLOBUCHAR: The Red River, that's good; we like that you know that.

The -- I wanted to thank you for your help in the past. For you, personally, getting involved when we had that close call in 2009. And just to let you know that there's a lot of concerns right now, FEMA has been working with us, but we're looking at a 35 percent chance now that the flood level could exceed what it did in 2009.

SEC. NAPOLITANO: Senator, thank you.

And yes, in fact with the amount of snowfall we've had this year we expect some severe spring flooding. FEMA is already leaning forward into it before flooding occurs, working with locales, making sure that equipment and so forth are predeployed so that we can respond as quickly as possible.

SEN. KLOBUCHAR: Yeah. Thank you very much.

And then I had two other issues that I'm going to put into writing because I don't really expect you to answer them right now. One is about our town of Owatonna, Minnesota, is problems -- issues with the FEMA's hazard mitigation grant program, it's in southern Minnesota. The city has been working with my office, Congressman Walz's office, to work through some red tape to access discretionary funds, and they're having some issues on removing hazards that contribute to flooding.

The second is Browns Valley, Minnesota, which is an even smaller town; it's on the South Dakota border. This is incredibly complicated. They're caught in a jurisdictional fight between the states and two FEMA regions. South Dakota is in FEMA Region 8, Minnesota is in FEMA Region 5, and so they're having some issues with funding there.

And so I'm going to put this in writing and I won't call you out on an answer right now about Browns Valley, but --

SEC. NAPOLITANO: I appreciate that consideration. But I will tell you, we will -- as soon as we get your request we'll work with it as fast as we can.

SEN. KLOBUCHAR: OK. Very good. Thank you very much.

Secondly, as you know, I've worked very hard in the area of international adoptions and with the help of your department and the help of Senator Sessions and Senator Inhofe, we were able to pass a really groundbreaking bill last year that solves some of the issues with the inter-country adoptions and made it so that one, kids could get immunized here. There was a lot of concern about that. And secondly, that orphans who are between the ages of 16 and 18, who are overseas can be adopted if a younger sibling is adopted.

And so we have been working with your department to try to get this bill implemented. We have, for instance, one family, the McCories (sp. 4:47.26), who are adopting nine siblings from the Philippines, one family who have been orphaned when their mom died and they have -- the older kids have held this family together. And they want to bring them all home together, not just the young kids that are younger than 16.

And so that's just a real example of how we need to get this bill implemented through the embassies and our agencies so we can get this done. And I just urge you to move on that as soon as possible.

SEC. NAPOLITANO: I believe, Senator, actually -- and this was not done because of this hearing, but it was just -- it's moving that there's a meeting this afternoon on that very subject at our department.

So, thank you.

SEN. KLOBUCHAR: OK. Just picture the nine children. We're trying to get them over.

The last thing I wanted to raise was that I saw in mid-February that DOJ and DHS announced the execution of seizure warrants against 10 domain names of website engaged in the advertisement and distribution of child pornography as part of "Operation Protect Our Children", which is a joint operation between DOJ and DHS to target sites that provide child pornography. And I looked at this, as a former prosecutor -- I know you used to do that job too -- and I'm not sure that people realize that DHS through ICE, that your agency plays a role in protecting kids from exploitations over the Internet. Do you want to talk about that work that's being done?

SEC. NAPOLITANO: Well, ICE is doing a terrific amount of work in this area to protect children from exploitation in the pornography area and also in the human trafficking area; a real problem globally, a problem in our country. We have special units that are assigned to this, we have some new technology that we're using. Actually the Secret Service has some state of the art technology that they are using. And we are working with the organization, the Center for Missing and Exploited Children, that is, I think, located actually in Virginia, in the suburbs.

So, we have a lot of work ongoing in this area. And because we have international reach, we are able to do a lot of different things. And we intend to, if anything, expand those efforts. I might add, however, that if the House budget, H.R. 1, becomes basically the budget for '12 -- in other words, we finish '11 with that and it rolls into and becomes the budget for '12 -- some of those efforts will have to be cut back, particularly on the Secret Service side.

SEN. KLOBUCHAR: I understand that you were talking earlier with Senator Leahy and Senator Coons about this and that it could result in, just on the first responder side, if you look at H.R. 1, a \$1 billion cut to state and local first responders. Could you just elaborate on that?

SEC. NAPOLITANO: I'll be very short. H.R. 1 cuts state and local grants by a large amount, it's about \$1 billion.

SEN. KLOBUCHAR: OK.

Thank you very much.

SEN. WHITEHOUSE: Madame Secretary.

SEC. NAPOLITANO: Senator.

SEN. WHITEHOUSE: I'd like to follow up a little bit on cyber security. I assume you are familiar with the status of the interagency process that is taking place within the executive branch?

SEC. NAPOLITANO: Yes. And we are participating in it.

SEN. WHITEHOUSE: Can you give us any information on when it might draw to a conclusion?

The Commerce Committee has pretty much completed, I think, its work on its bill. Homeland CSecurity has completed its work on its bill. Intel, which I was on through all this, has been looking at this very carefully, and on Judiciary we'll be looking at it as well, if we're going to proceed legislatively we need input from the executive branch in order to sort out the differences between the different committees. There's no point sorting it out if we don't know where the executive branch is going to stand.

As I understand it the interagency process has lasted more than a year already. During which we have been basically cut out of discussions between the executive and legislative branches. So, in the legislative branch we are now probably a year into a stall on preparing the legislation that I think we urgently need in order to protect our country from cyber attack. I don't think it's purely an executive administrative function and that shuffling things around within the executive branch under existing authorities is adequate.

So the time that it's taken to get through the interagency process, I think, creates a real risk for the country because I think we are not going to be really secure until we can get some new legislation passed. And frankly, it has to be good legislation to boot.

So, if you could let me know when you think this interagency process might come to an end so that we can get to work with you on joint bipartisan legislation that moves this process forward, at the moment I think the ball is in your court and it just has stayed there quite a while.

SEC. NAPOLITANO: Well I think it's in the interagency process if I might be precise. And what I will do --

SEN. WHITEHOUSE: Yeah. By you, I was referring to the executive branch generally. I apologize for loading the entire executive branch onto you.

SEC. NAPOLITANO: That being said, I think your communication of urgency is very clear.

We have been moving forward without that, but I think, you know, cyberspace and the authorities and jurisdictions that govern cyberspace and our ability to protect our networks is key and so very, very important. So what I will do, Senator, is --

SEN. WHITEHOUSE: But when will it end?

SEC. NAPOLITANO: -- yes. So what I will do is communicate your concern to the White House and get an answer to you.

SEN. WHITEHOUSE: Based on your familiarity with the process so far, just from your observation of it, do you think we're anywhere near an end to it? Are you seeing, are we kind of in -- you know, I've done interagency stuff at different levels before and you kind of know when you're getting near the end and you kind of know when you're not near the end. From your vantage, what do you see in terms of the proximity of a resolution to the interagency process?

SEC. NAPOLITANO: Well, I hope that we're near the end, in part because I know both the Homeland Security Committee and the Commerce Committee are drafting legislation.

SEN. WHITEHOUSE: Well, they drafted it actually, I think, a year ago. We're kind of on hold now.

SEC. NAPOLITANO: Senator, all I can say is, let me find out. I just don't know the answer to that question.

SEN. WHITEHOUSE: So as far as you know, we are at least not close to the conclusion of that interagency process.

SEC. NAPOLITANO: I didn't say that. I said I didn't know the answer, so let me check and get back to you.

SEN. WHITEHOUSE: But since you're involved in it, presumably you have some visibility into it, and all I'm trying to get -- I mean, you're the secretary of Homeland Security. That's the central agency for cybersecurity, other than NSA, which provides the technical assist to everybody. You've got to have a sense of how close this is. When you say you're going to get me an answer from the White House, I appreciate that and I would love to have an answer from the White House, but I'd also like your sense of when this is going to come to an end because you have to be involved in this and have some familiarity with it.

SEC. NAPOLITANO: Senator, I think it is fairly close, but I hesitate to give you a deadline because I don't know that there is one. But we share the sense of urgency.

SEN. WHITEHOUSE: OK. Do you share the belief that the -- that there are in fact legislative changes that are necessary in order to adequately protect the country from this threat?

SEC. NAPOLITANO: I think -- I'm sorry. Senator, I think that clarity in terms of authorities and jurisdiction in this new and developing area is -- clarity always facilitates operations and we are on the operational

side in terms of the actual protection aspect of our civilian networks. And so if we can work with the Senate and get to a bill that clarifies authorities and jurisdictions, I think that would be very helpful.

SEN. WHITEHOUSE: It would take legislation, for instance, to establish a secure domain for critical infrastructure, would it not?

SEC. NAPOLITANO: It would.

SEN. WHITEHOUSE: OK. My time is expired. I know that the ranking member, and I assume the distinguished senator from Arizona both are interested in a second round because they have been faithful and patient about staying through, so we will go on to that second round. And instead of going back and forth, since I'm here for the duration, we'll go directly from the ranking member to Senator Kyl, and then if I have anything further I can wrap up.

SEN. GRASSLEY: Just three things I want to discuss. One would be one little follow-up on Terry. Number two, the Farooq case. And then number three about the amnesty memos.

According to CBP agents who spoke to the Terry family, the standing order to use non-lethal force first was reportedly given by former Tucson sector chief and the order was not withdrawn when the chief was transferred to El Paso. Are you aware of any other sector chiefs who have given similar orders?

SEC. NAPOLITANO: Senator, as I have said, I have inquired. I have been informed that the standard policy, the training and the practice in the Border Patrol on use of force is as I have stated earlier.

SEN. GRASSLEY: On November 3rd last year I wrote to you requesting information on Farooq Ahman -- Ahmed, I guess it's pronounced -- a naturalized citizen who was arrested by the FBI for planning terrorist attacks in the Washington, D.C. subway. Three months later, one of your assistant secretaries responded, quote, "Unfortunately, the department is legally prohibited from disclosing the information you requested." The department claimed that the Privacy Act prohibits the disclosure of information unless there is a formal request from a chairperson.

Instead of asking about 10 questions, I want to make some statements and ask one question. The Privacy Act contains an express exemption for members of Congress. The exemption states that disclosures are exempt from the Privacy Act if they are made to, quote-unquote, "a committee or subcommittee." So I don't think the Privacy Act says anything about needing the request from a chairman. There is case law directly on point holding that a disclosure to a member of Congress in his or her official capacity falls, quote, "squarely within the ambit of the exemption."

So my question is, in regard to your assistant secretary saying that the Privacy Act would not allow us to get the information requested, and giving you the background that I know about the Privacy Act, and in a sense the denial of ours, saying in a sense go get your information under the Freedom of Information Act, do you believe that the Privacy Act should be used to withhold important information from Congress regarding an alleged terrorist?

SEC. NAPOLITANO: Senator, I believe we are bound by the law, and I believe we must have a disagreement because we have Department of Justice guidance that the Privacy Act applies to the chairman only in terms of the exemption that you described and not to all members of Congress. So I think we just have a plain disagreement, and we have abided by DOJ's advice.

SEN. GRASSLEY: Well, it's impossible under -- it's even impossible under average citizens' freedom of information. It's a terribly complicated process to get information. But we have *Devine v. the United States*, that the Justice Department is ignoring the case law as far as *Devine v. the United States* is concerned.

But, you know, it makes it practically impossible for Congress to do its oversight work, and I know when I had discussions with you prior to your confirmation we got all these promises -- not just from you but from everybody that comes before us -- that they're going to cooperate on Congress' constitutional responsibility of oversight.

And this just makes it impossible, and how ludicrous it is for us not to know about something about how a person got into this country, got naturalized, and then he's going to turn against the very country that he becomes a citizen of and wants to blow up -- or kill everybody in the subways of the United States. It just isn't reasonable.

Let me go on to another, this amnesty memo, because I'm holding up my colleagues. You're fully aware of the internal documents that surfaced last August that outlined the administrative option to keep undocumented aliens from being removed from the United States. Since then this administration has ignored repeated requests to answer questions about this memo. And so I hope to get some answers today from you, and I have three of them.

Who directed the four officials at the U.S. Citizenship and Immigration Service to write the internal amnesty memo that my office obtained last year?

SEC. NAPOLITANO: Senator, first of all on the Privacy Act issue, let me, if I might, your question number two. We will be happy to look at the case. We will be happy to look at the exemption.

In terms of oversight, if there's anybody that has oversight, it's the Department of Homeland Security. In the 111th Congress we provided over 3,000 briefings to the Congress. We've provided over 250 testimonies at hearings, 140 from leadership. I think I testified myself over 20 times. We have responded -- we get the most FOIA request of any department by far. So we have a lot of oversight.

I think over 100 committees and subcommittees of the Congress have oversight of the Department of Homeland Security, and one of our asks -- and the reason I make this point -- of the Congress is that when it created the department it didn't similarly reorganize its own oversight structure to match the Department of Homeland Security. And one of the recommendations, Senator, of the 9/11 Commission, and virtually the only one on which no movement has been made, is an effort by the Congress to try to streamline our oversight because it takes a huge amount of manpower.

Now with respect to the memo, question three to which you referred, I'm unaware that it was directed by anyone. And I will tell you that in the department people come up with ideas and that's not a bad thing for people to be thinking. They may be ideas that are bad, they may be ideas that are unworkable, they may be ideas that have no force other than employees thinking about their area of expertise. But as our process works through it gets ultimately up to the assistant secretary, under-secretary, deputy secretary and myself, those ideas get winnowed down.

So the memos to which you refer -- and I think we've been very, very clear about this -- have never been acted upon, were never accepted, and are not the policy or practice of the department.

SEN. GRASSLEY: Well, I have a draft copy of a memo. By the way, it appears to me to be quite complicated and a lot of effort went into it and not a lot of -- people that knew what they were doing. So it's just not somebody out there looking for some idea to bring some idea forth through a memo. But I have a draft copy of the memo written February 26, 2010, that was intended for you, Madame Secretary.

Did you at any time since you became secretary review memos or proposals that describe administrative options such as deferred action or parole to get around Congress' inaction on the immigration reform bill? And some of these memos, or this memo, referred to efforts that we aren't getting anything done on immigration in the Congress so maybe we ought to take some action through the executive branch.

SEC. NAPOLITANO: Well, I can understand the senator's concern there. All I can say is, Senator, we have been very clear. We are not going to give deferred action to large groups as opposed to on a case-by-case basis which is what I believe the statute permits. However, I will say that the president is very committed and asks, again, for the Congress on a bipartisan level to take up the overall issue of immigration because even some of the questions that were asked of me today about visas for dairy farmers and what we do with H1B and how do we handle this and how do we handle that.

We are, as a department, we are enforcing the law as it currently exists. We took an oath to do so. We're doing that. However, we think that law -- and I think there is a lot of agreement by different aspects -- the business community, others who think the law needs to be revised.

SEN. GRASSLEY: Well, I think that you do state -- correctly state that the law does allow on a case-by-case basis. But the impression you get from these memos that we receive is that Congress wasn't acting. We need to do something to make a massive amount of people that came here illegally, to make them legal.

And that gets way beyond a case-by-case basis if you're talking about, you know, I don't know how many people. But it sounds to me like thousands of people. Let me ask the last point. Would you commit to providing me by the end of this week with statistics that we've asked for about the number of deferred actions and paroles granted since you became secretary?

SEC. NAPOLITANO: Well, I think, if I might, let me -- I have some. As you say, we can create -- we can do deferred action on a case-by-case basis. The law permits that and it's usually for compelling

humanitarian concerns and those are done. Now, in FY 2010 we removed over 395,000 aliens. We exercised deferred action in fewer than 900 cases which was actually fewer deferred actions that were granted in the years prior to that. So I'll be happy to put that in writing for you, Senator. But those are the FY '10 numbers.

SEN. GRASSLEY: That was deferred actions. Does that also include what we call paroles, and I assume deferred actions and paroles are different. And I'm done.

SEC. NAPOLITANO: My understanding is it does not include the paroles. We will provide that for you.

SEN. GRASSLEY: Thank you very much

SEC. NAPOLITANO: Oh, if I might -- I'm sorry, Senator. I left out one category for which we grant deferred actions. It's humanitarian, but the vast majority of these will be requests by law enforcement to defer action on individuals who are witnesses and needed for prosecution.

SEN. GRASSLEY: One last commentary to something you said five minutes ago about all the oversight you have and I don't doubt that you do and it's probably very complicated for you. But it shouldn't have taken three months or more to get a one-line statement that you can't answer because of the privacy act. Thank you, Mr. Chairman.

SEN. WHITEHOUSE: Thank you, Senator Grassley. Senator Kyl?

SEN. KYL: Thank you. I'd like to go back to two things, obviously you and Senator Cornyn --

SEN. WHITEHOUSE: Yes, sir, of course.

SEN. KYL: And GAO have somewhat different definitions of operational control. I want to get away from the semantic about operational control in the Southwest border. Let me just ask you three questions. I think we're in total agreement on these. Would you agree that not enough of the border is under enough control?

SEC. NAPOLITANO: I would agree and I would put it this way, that there are more efforts at this border than ever before in our history and we are going to continue and we hope grow those efforts.

SEN. KYL: Because not enough of the border is under enough control.

SEC. NAPOLITANO: Well, we want to sustain the control that we have.

SEN. KYL: No, we want to increase the control we have until we have total control as much as we can possibly get. Wouldn't that be the goal?

SEC. NAPOLITANO: I think so. I think that's a fair statement.

SEN. KYL: All right.

SEC. NAPOLITANO: Senator, but let me -- let me --

SEN. KYL: I don't want to get into semantics.

SEC. NAPOLITANO: I hope not because -- because one person's control is another person's actually sealing the border and as we know, that's not possible.

SEN. KYL: Control is a subjective phrase and that's why I just tried to state it in a general proposition. We need to do more than we're doing. We need to get it better than we have it today. That's all I'm trying to establish.

SEC. NAPOLITANO: Okay, yes.

SEN. KYL: Okay. I guess another way I was going to say this, we've got about a quarter of a million apprehensions which is a reflection, depending on how many other people come across illegally that are not apprehended. But it's a general indication of the degree of the problem and so that would indicate that it's too many and we have a ways to go. That would be another way of putting it.

SEC. NAPOLITANO: Well, and as you and I have discussed, my number one priority is the Tucson sector.

SEN. KYL: Right, I'm sorry, that's what I was talking about.

SEC. NAPOLITANO: I think so. That was the issue to which you referred and absolutely and we are pouring resources into that sector.

SEN. KYL: And then that was the final point, and resourcing -- adequate resources are part of the answer to this.

SEC. NAPOLITANO: Absolutely.

SEN. KYL: Other things that would help, for example, would be better enforcement of the hiring of illegal immigrants.

SEC. NAPOLITANO: That's' why we have focused our efforts on employers who continually hire illegal immigrants. I might suggest, Senator, one of the areas of the law we would hope the Congress would take up are the elements of proof you have to have to do a criminal prosecution of an employer.

SEN. KYL: Okay, would be happy to receive any recommendations that you have in that regard because clearly both the draw to this country as well as the kinetic energy there on the border are sides of the same coin with respect to control.

SEC. NAPOLITANO: I think that's fair. You have to look at demand as well as supply.

SEN. KYL: Right. Now, let me get to something specific. We've talked about this a lot. It's the Operation Streamline, the idea that for people who cross illegally there will be consequences, specifically jail time and in the Yuma sector we've gone through the numbers.

There has been a dramatic decline in attempted crossings and the agents there have over the last several years attributed that, among other things, to the effective use of Operation Streamline, the

incarceration for a relatively short period of time -- in most cases a week or two -- of people who cross. Alan Bersin on February 8th gave a speech in Tucson and one thing he said was no mas, no more returns without consequences and the ABC affiliate in Tucson KGUN9, a T.V. station followed up to find out exactly what the consequences would be and the station was told, and I'm quoting now, first-time arrestees would be charged with a misdemeanor for illegal entry and then will be bussed or flown to an area far away from where they crossed. Illegal immigrants arrested a second time will then face illegal recently charges, a felony that carries a prison sentence between six months to two years. Are you aware of that statement?

SEC. NAPOLITANO: Yes, I am.

SEN. KYL: Do you think that accurately describes the consequences that the department has in mind?

SEC. NAPOLITANO: I think it accurately describes some of the consequences.

SEN. KYL: And actually my question was not intended as a trap. I'll tell you that it seems to me that there is something in between and that may be the reason for your answer just now.

SEC. NAPOLITANO: Well, and as you and I have discussed, Streamline is an effective program, at least the initial data suggests that. We are also doing other types of consequences --

SEN. KYL: Right.

SEC. NAPOLITANO: s -- that do not have such a heavy burden on the justice system because Streamline is justice-focused that have consequences and, you know, we are still collecting data to see do those have the same as Streamline. In other words, is there a more cost-effective way to achieve what Streamline has achieved in a busy sector like the Tucson sector?

SEN. KYL: Right, and I appreciate that. The reason that I think your answer was correct about the consequences is that in the Yuma sector, even first-time crossers go to jail and generally the term of the first or second or third-time crosser is somewhere around a week or two weeks or it could be up to 60 days. But that has proved to be a very effective deterrent and that's not what's being applied in the Tucson sector, even in the relatively few cases where there are prosecutions.

Frequently they get time served which is a day or two and therefore it's not nearly as effective. In order to determine what is both cost-effective as well as -- throwing out the element of cost for a moment -- an effective deterrent, I think it's very important that we spend the relatively small amount of resources necessary to implement in a more aggressive way the elements of Operation Streamline in the Tucson sector. I provided you with estimates of the cost from Judge John Rohl

SEC. NAPOLITANO: You did.

SEN. KYL: You have those now and what I am going to ask you to do is to work with me and Attorney General Holder to identify the needs and to support those needs in requests for funding to Congress so that we can try to employ Operation Streamline in an effective way in the Tucson sector. You're

welcome to comment on it if you like but I'm going to make that request very specifically because I think that until we do that, we are not going to be able to get the Tucson sector under control and it's obviously been affected in other areas of the border, both in Texas and Arizona, and therefore it seems to me to be well worth pursuing, given the costs involved.

SEC. NAPOLITANO: Senator Kyl, we'll be happy to work with you and others in the Congress on Streamline. I would make a request as well -- is that as we gather data on how some of these other consequence regimes work in terms of particularly recidivism, that we be able to supply that data to you, that we keep an open mind.

SEN. WHITEHOUSE: Madame Secretary, back to cyber security for one moment, we have here a bipartisan desire to proceed with a substantial cyber security bill. It is a national security priority. Indeed, it was Director Clapper's number one priority in his testimony for his confirmation hearing. There is a need for legislation in order to adequately protect the country and the legislation has stalled for the interagency process. So what I would like to do is to bifurcate my question to you to pass to the White House and to try to get an answer to or to answer yourself.

One part of the question is what we asked already. When will this interagency process end and the second is if that can't be answered or if it is at a point so distant that it just does not make sense to hold back on legislating in the meantime, would there be a time when the executive branch would be willing to engage with the legislative branch even before the full conclusion of the interagency process in order to get the craftsmanship, the drafting of the legislation moving along.

At the moment, it's my understanding that there is a general stand-down on contacts with us from the executive branch while the interagency process proceeds. That stand-down presumably could be lifted separately from the conclusion of the interagency process if we were down to issues that were not particularly significant to the overall shape of legislation and it was not useful or significant to hold us back for that reason.

SEC. NAPOLITANO: Senator, we have -- I don't know if we have in this Congress since the beginning of the year, but in the 111th Congress we were providing direct input into both the commerce committee and the homeland security committee in terms of operations, how things actually work, what's going on in the cyber arena. And all I can suggest at this point, I understand and take your frustration to heart. I will take it to the White House and we will try to generate an answer for you.

SEN. WHITEHOUSE: And to both questions, when does the IAP end and is there a moment before its complete conclusion when engagement on the craftsmanship of legislation might commence.

SEC. NAPOLITANO: Indeed.

SEN. WHITEHOUSE: Got it, okay, thank you. Let me conclude with just an expression of personal gratitude and appreciation. As you will recall, about a year ago you were flying around Rhode Island in a Blackhawk helicopter looking down at the most devastating floods Rhode Island has ever seen and I appreciate your personal attention to that as does Senator Reed and we also appreciate the

extraordinary effort that FEMA put forward to reach out across Rhode Island to open temporary offices, to be everywhere from, you know, Cumberland to Westerly.

You were on the ground rapidly and widely and it was from that perspective very successful and we are very grateful for you. We are doing kind of an after-action report on what the lessons learned are. I think there are a few areas in which we can improve a little bit.

I think that some of the claims and denials that process seemed a little tough for some of our towns and there seems -- there's at least a sentiment from some of our municipalities that if they hired a contractor expert in coping with this kind of interagency engagement, that there was a penalty for that, that the FEMA folks would prefer to deal with the town manager not familiar with this stuff rather than the contractor hired by the town manager who actually knew his or her way through the process.

So we will get back to you on that. I think we need to engage the SBA because we found precious little for small businesses in all of this. Given how low interest rates have fallen, the statutory rate that the SBA is allowed to offer actually -- you had to be creditworthy to begin with and if you were creditworthy, given interest rates, people could go to their local bank and get a better deal. So what was set for SBA years ago when interest rates were higher has left us in this circumstance with SBA providing far less relief than it wished to in this circumstance.

So I will get back to you but I would ask that when the time comes that that receives at least a moment of your personal attention because we're going to try to be very serious about it on our end to make sure that you get as good a lessons-learned response from us as possible.

SEC. NAPOLITANO: I think that's fair. We're always seeking to -- thank you for your comments, by the way. But we're always looking for things that we can do to improve the process so that communities can recover as quickly and get back to normal as smoothly as possible.

SEN. WHITEHOUSE: Well, the energy, the dispatch, the immediacy, the breadth of your agency's response was really fabulous and these other things -- I think it's always good to make it better. But overall, we were just delighted at the way you all managed things and these other ones -- these other parts we'll work on.

SEC. NAPOLITANO: Fair enough.

SEN. WHITEHOUSE: But I appreciate your testimony here today. It's been a long morning for you. We will hold the record open for one week for anything that anybody wishes to add, and without any further ado, we are adjourned.

SEC. NAPOLITANO: Thank you.

SEN. WHITEHOUSE: Thank you, Madame Secretary.

END.

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