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NOMINATION OF HON. JEH C. JOHNSON

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

NOMINATION OF HON. JEH C. JOHNSON, TO BE SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

NOVEMBER 13, 2013

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NOMINATION OF HON. JEH C. JOHNSON

WEDNESDAY, NOVEMBER 13, 2013

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Thomas R. Carper, Chairman of the Committee, presiding.

Present: Senators Carper, Levin, McCaskill, Tester, Begich, Heitkamp, Coburn, McCain, Paul, and Ayotte. Also present: Senators Menendez and Booker.

Chairman CARPER. The hearing will come to order. Thank you. Before Dr. Coburn and I give our opening statements, I just want to welcome Mr. Johnson, I want to welcome his family, and we will have an opportunity, I think, to meet a couple of them here in a few minutes, but you all are good to come. We are happy that you are here.

Senator Menendez is going to be joining us shortly. But I think it is fitting, since Cory Booker is a new kid on the block, that we let him go first. We are happy that you are here, literally and figuratively.

Senator BOOKER. Thank you very much.

Chairman CARPER. Welcome. Thank you. Have you done this before? Is this the first time you have introduced a witness?

TESTIMONY OF THE HONORABLE CORY A. BOOKER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BOOKER. This is my first time introducing a witness, and it is appropriate that I should introduce somebody of such extraordinary caliber. So, Mr. Chairman, I appreciate that, you giving me the opportunity, and obviously in deference to the senior Senator of New Jersey, Senator Menendez—Senator Coburn, obviously it is good to see you as well and thank you for this opportunity.

I am really thrilled today to have the chance to join Senator Menendez in introducing someone who I have known for quite some time, who is well-known in the State of New Jersey, and the opportunity to support the nomination of this fellow New Jerseyian, Jeh Johnson, as the next Secretary of the Department of Homeland Security (DHS).

But out of deference, as I see the senior Senator from New Jersey walk in—who is instructing me to continue, so I shall do what I am told.

Chairman CARPER. He is on a roll. You do not want to stop him. Go right ahead, please. Welcome, Senator Menendez.

Senator BOOKER. So I know all of the Senators here have seen many of letters urging the Senate confirmation of Jeh Johnson. They were penned not only by me, but by many others, many of the most respected men and women in the military intelligence communities. I am thrilled to see people like former Chairman of the Joint Chiefs, Mike Mullen; former Secretary of Defense, Bob Gates; and three previous DHS Secretaries, Tom Ridge, Michael Chertoff, and Janet Napolitano.

Those letters reflect the respect and admiration of people who have worked long hours with Jeh, often on difficult and very complex issues. But the support that caught my eye comes from America's police organizations. They say something really important about Jeh.

I may be new to the Senate, but as a former Mayor, I know that there are difficult issues facing our country, and specifically, we have a nation that has been targeted by terrorists. Indeed, the city that I represented for 7 years had some specific facilities targeted by terrorists. We are in a State that also has been hit by one of America's most costly natural disasters. And we have a region that remains a key node for immigration.

I know how vitally important close coordination between Federal, State, and local agencies are. As a former Mayor, I can provide firsthand testimony to the strength of that coordination in recent years. We have made a lot of progress.

I have spent time with Jeh and I know this is something that he gets, the urgency, the importance, the critical nature of this coordination and these partnerships. He understands that to keep community safe, the relationship between Federal law enforcement and local cops, first responders, and elected officials is crucial.

That is true for DHS's counterterrorism mission where intelligence must be shared between cops on the beat and agencies at the Federal and State level. It is true for its work enforcing our Nation's immigration laws as well. And it is also true for its role in preparing for and responding to disasters.

I witnessed that during Hurricane Sandy. During the response to that disaster, it was officials working together at every level that helped to limit the loss of life and to begin the recovery process. There is still a long way to go, as I discussed last week with Administration officials. But with Jeh at the helm of DHS, I am confident that New Jersey and communities all over America will have another partner and advocate here in Washington.

I am proud to introduce Jeh today, as you learn more about him, about his strengths, about his character, about his ability to lead, and about his love of country. He has a true commitment to keep American communities safe and strong. Thank you.

Chairman CARPER. Thank you very much. One former Mayor follows another. A lot of people know Robert Menendez is a former Congressman, currently a Senator. Not everybody remembers you were a Mayor, and so, you bring me out to that perspective as well. We are delighted that you are here.

Mr. Chairman, please proceed.

TESTIMONY OF THE HONORABLE ROBERT MENENDEZ, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator MENENDEZ. Well, thank you, Mr. Chairman, and to distinguished Ranking Member and distinguished Members of the Committee. I appreciate this opportunity to join Senator Booker in introducing a gentleman from Montclair, New Jersey, to be our next Homeland Security Secretary. He is a constituent, a friend, and a highly qualified former chief Pentagon lawyer who would, in my view, be as effective in his new role as he has been in every role he has taken on in the past.

Mr. Chairman, as a member of the House of Representatives, I sat on the Select Committee that created the Department of Homeland Security. I was the author on the House floor of implementing the 9/11 Commission's recommendations in its totality.

My memory is seared by the fact of the 700 New Jerseyians who lost their life on that fateful September day. I know what this Department means to our country, and I would not come before you to support a candidate, even if he was from my State, if I did not think he had the intellect, the analytical ability, and the management capacity to ultimately run the Department that is so critical to the Nation's security.

That is why I strongly support Jeh Johnson for the position of Secretary of Homeland Security. Jeh has been an acclaimed attorney at the Defense Department where he oversaw 10,000 lawyers, and all of the case management that flowed from that. So when we talk about organizational ability, he clearly has that in a department as large and as diverse as the Department of Homeland Security.

He is a former chief counsel as well for the U.S. Air Force, an Assistant U.S. Attorney for the Southern District of New York. But beyond his extensive and impressive paper credentials, he has taken on the difficult issues at critical times. He has earned the trust of everyone who knows him, worked with him, seen him in action.

His intellect and his deep analytical thinking skills, I think, will be critical to a department as large, as complex, and as important as this. That is why Secretary Gates and Panetta have been so supportive of his nomination. He developed very close relationships with them in the roles that he played and they came to rely upon his abilities.

He is a leader who is not afraid to make his unvarnished opinions known and to make tough but intelligent decisions, and he has always exercised his best judgment. I have no doubts whatsoever that he will do the same as Secretary of Homeland Security.

Jeh has had a long and illustrious career in and out of government. I think he will bring a profound sense and sensibility about national security issues to the table. I think the Associated Press summed up the essence of his qualifications to lead the Department of Homeland Security saying simply and clearly, Jeh Johnson has spent most of his career dealing with weighty national security issues as a top military lawyer. What better combination of qualifications, what better experience, I would say, is there for a potential Secretary of Homeland Security?

So I strongly support Jeh as someone who would oversee the 240,000 employees who help this Nation secure itself from many threats that we face, and I am very thankful to the Committee for the opportunity to introduce Jeh Johnson, and I urge a unanimous vote for his confirmation.

Chairman CARPER. Mr. Menendez, thank you very much for joining us. Senator Booker, you are welcome to stay for as long as your schedules permit. I know you have a lot going on as well and your other obligations, so feel free to leave when you need to.

OPENING STATEMENT OF CHAIRMAN CARPER

Chairman CARPER. Today we meet to consider the nomination of Jeh Johnson to serve as Secretary of the Department of Homeland Security. As we all know, the President has asked Mr. Johnson to take on a difficult and demanding job. The Department is comprised of 22 distinct agencies spread across various locations throughout this greater Washington, D.C., area and, indeed, throughout the country.

Although progress has clearly been made in bringing these 22 agencies together, 10 years after its creation, the Department of Homeland Security still lacks cohesion and a strong sense of team. Employee morale at the Department of Homeland Security remains perhaps the lowest among major Federal agencies.

Moreover, the Nation's fiscal challenges and the effects of sequestration mean that DHS will face even more obstacles that make working toward getting better results with fewer Federal dollars even more important. All in all, even on a good day, serving as the Secretary of the Department of Homeland Security is a really hard job.

Fortunately for Mr. Johnson, there are few better places to learn how to manage a complex national security bureaucracy than at the Department of Defense (DOD). Mr. Johnson has been confirmed by the Senate twice before, once as the Air Force's top lawyer and once as the top lawyer for the entire Department of Defense.

In part because of his experience in these positions and other demanding roles, Mr. Johnson is prepared to face the challenges that will await him if he is confirmed by the Senate. For 4 years, he was a major player in running the Defense Department. He provided key advice to not one, but two exceptional Defense Secretaries, Bob Gates and Leon Panetta, both of whom we know and respect. They have given him invaluable experience for the huge task to which he has been nominated.

Mr. Johnson has received high praise from many. The Committee received a joint letter of recommendation, just in the last day or so, from the three individuals who have actually held this position before, Tom Ridge, Judge Chertoff, and former Governor Napolitano. Each of them touted Mr. Johnson as, quote, an eminently qualified nominee, and urge the Committee to quickly approve his nomination.

Here is what former Defense Secretary Gates, a strong manager himself, said about Mr. Johnson and his time at the Department of Defense. This is a quote. Take my word for it. Jeh Johnson has successfully managed an array of major initiatives across the big-

gest bureaucracy in the government, and in so doing, won the esteem of virtually everyone with whom he worked. Those are Bob Gates's words.

Former Chairman of the Joint Chiefs of Staff (JCS), Admiral Mike Mullen, has also expressed his deep confidence in the nominee. Here is what he had to say about Jeh Johnson. Jeh is as fine a person and professional as I have ever met. I am confident in his choice, and that he will succeed in leading this most complex organization at a critical time in our country.

In a similar letter, former U.S. Attorney General Michael Mukasey, added, Jeh Johnson will bring to the Department of Homeland Security not only experience, but also a frame of mind that should be a source of assurance to anyone concerned with the security of this country. He understands both the issues and the stakes and will make an excellent Secretary.

Mr. Johnson has also received encouraging words of praise from Fran Townsend, former Homeland Security Advisor to President Bush, as well as from former Secretary of Defense, Leon Panetta; General John Allen, the former Commander of U.S. forces in Afghanistan; and a number of law enforcement groups.

Mr. Johnson, of course, will not be alone in his task of leading DHS. It is critically important Mr. Johnson be allowed to surround himself with a capable leadership team. We can help. Indeed, we need to. Currently at DHS there are 13 Presidentially appointed positions that are without a permanent replacement. Of these, nine require Senate confirmation. I describe this as Executive Branch Swiss Cheese.

As we consider Mr. Johnson's nomination, we must remember that protecting the homeland is a team sport, and those of us in the legislative branch are critical members of this important team. Once Mr. Johnson is confirmed, we need to do our part to expeditiously vet and hopefully confirm his leadership team as well.

Before I turn to Dr. Coburn for his remarks, let me again offer to Mr. Johnson the same advice publicly that I shared with him when we met in my Senate office recently. I said to him, eagerly seek the counsel of former DHS Secretaries. Talk to Tom Ridge, Michael Chertoff, Janet Napolitano, as well as former Deputy Secretary Jane Holl Lute. Spend a lot of time with the Government Accountability Office (GAO) Comptroller General Gene Dodaro.

They want you and the Department to succeed. Ask for their help. Do not be shy about asking for their advice again and again. The same should hold true for reaching out to former DOD Secretaries Bob Gates and Leon Panetta. They hold you in very high esteem, obviously. They also know what you are up against. Lean on them. Their collective advice will prove invaluable to you as you take on the role and the tasks that lie ahead.

In closing, let me reiterate my strong support of Mr. Johnson's nomination and my appreciation for his willingness to serve the people of this country in this new role. I want to call on my colleagues, both Democrat and Republican, to join me in voting to confirm him as soon as possible.

Mr. Johnson, if you are fortunate enough to be confirmed, I look forward to working with you in the coming months and years to better protect our homeland and its people.

And I would just say to your family, who is gathered here today, your wife and your two children, a sister or two, others in your family that I suspect you will probably acknowledge when you make your comments, I just want to say especially to your immediate family and to your parents—your parents especially, thank you for raising this man. Thank you for instilling in him the values that we need in leadership roles in our country.

And to his immediate family, his wife and children, thank you for sharing with our country once again a very good man.

Dr. Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Well, thank you, Mr. Chairman. I have a lengthy opening statement and I apologize for that, but I think it is necessary in this case.

Mr. Johnson, welcome. We have had great visits. I thank you for being here today. I personally want to thank you for stepping forward to fill this position. I think it is the most difficult position of all the Cabinet Secretaries. I can not think of one that comes anywhere close to it, because of the difficulties, but also because of the responsibilities.

It is clear to me that you are an honorable man, from all the people that I have heard from, also from my encounter in terms of your intelligence. It is far above mine and most of the Members of Congress, which is exactly what we want. I have appreciated your commitment to being transparent with us and working with our Committee to address the fiscal and structural issues that are facing the Department of Homeland Security.

And when you are confirmed—I am not going to say if, I think you are going to be confirmed—I surely hope we can work together through the upcoming years to fix the Department of Homeland Security, where it is broken, and to make our Nation much more secure.

Some people may consider the nomination process a series of formalities, but it is important for us to understand one's experience and qualifications. I am extremely disturbed by the responses to the questionnaire because the staff, either the legislative staff or the White House, has cut and pasted the identical answers to 23 questions in your response, identical responses to that of other nominees before this Committee.

So they are not your answers; they are their answers. And the shoddy work associated with that does not serve the Committee well. I would like to enter these into the record now to show the duplications and the exact words that have been thrown before this Committee before, and the whole purpose for the questionnaire is for us to get your thoughts, not legislative assistants' thoughts at Homeland Security or somebody at the Office of Management and Budget (OMB) but your thoughts.[1]

So until those are corrected and we actually have Mr. Johnson's response, I will not consider that his questionnaire has been completed.

[1] The information provided for the Record by Senator Coburn appears in the Appendix on page 146.

Chairman CARPER. Without objection.

Senator COBURN. That does not serve Mr. Johnson well and that is one of the problems at Homeland Security, is sometimes the Secretary is not served well by their staff. So I look forward to our hearing today, but I also look forward to hearing those responses. And by hearing your own responses and views about the Department and, there is nothing wrong with an "I do not know," because we cannot expect you to know everything now.

There is nothing wrong with that and that is the kind of footing I want to start out with. We certainly do not know a lot of answers and we could not expect you to know all the answers until you get into it. You stand to be the fourth Secretary of Homeland Security. The three previous were highly intelligent and dedicated public servants with significant experience.

If they were here today, I would expect they would be the first to admit they have not adequately fixed all the known challenges that face the Department of Homeland Security. Through oversight work of both this Committee and others, we have identified a series of problems at Homeland Security's programs that I would like to bring to your attention and ask that you focus on if you are confirmed.

We may not be right in our assessments, but as you and I have spoken privately, it is important for you to get input from all sources. And so, I have prepared a binder for you, which I will give to you today. I do not expect you to read it in the next week or two, but it is a different viewpoint than what you are going to hear inside the organization.

I can tell you, for us to be successful in Congress in getting Homeland Security what it needs and the resources it needs, there has to be confidence in Congress on a lot of these problems. But let me just highlight a few of them.

Establish the proper balance between freedom and security. That is a real issue at Homeland Security. The American people understand that we cannot achieve 100 percent security without sacrificing some of their freedoms and Constitutional rights. But our goal and our responsibility is to strike the right balance.

DHS has committed to working, in its Office of Privacy and Civil Liberties (OPCL), but our oversight work has found that it is often unable to do so. Customs and Border Protection (CBP) owns ten cutting-edge drones and surveillance equipment for them.

As required by law, before putting those in the air, they were supposed to do individual civil liberties protections and have a plan for those. None of that was done. It still has not been done and if it has been done, it has not been communicated back to the Committee. So that is a balance between law and responsibility that the Department has failed on.

Evaluate what DHS is spending on counterterrorism and intelligence programs. We had a terrorist attack in 2001. Everybody knows that led to the creation of the DHS. But after 10 years, it is not clear that DHS's intelligence and counterterrorism initiatives are making this country measurably safer.

The preparedness grants, the fusion centers are all areas that have highly questionable effectiveness in terms of preventing further terrorism.

The third area is to prove to the American people that the Department of Homeland Security can secure our borders and enforce our Nation's immigration laws. And I understand that one of your priorities, if confirmed, is to prepare DHS to handle its responsibilities if comprehensive immigration reform were to pass. Frankly, the best way we could do that would be to prove to the American people that DHS is capable in securing the border now and handling the responsibilities that they have now, which they are not. Over the past 10 years, we have spent $90 billion on border security; yet, we know that our Southern Border is not secure.

An independent analysis from the Council on Foreign Relations estimated the apprehension rate at the Southern Border was 40 to 55 percent, versus DHS's own numbers of 75 to 80. We know that millions of people are living here in violation of our immigration laws, having overstayed their visas and some of those are in violation of our current criminal laws as well. Yet, DHS has done little to address that problem.

And frankly, we have heard from frontline personnel that DHS is not actively enforcing our immigration laws or deporting people who are known to be a risk to public safety right now.

The fourth area, the Department needs to prove that it can work with the private sector and provide value in addressing key threats like cybersecurity before expecting new responsibilities. And I will not go into the details of that and I will try to hurry, Mr. Chairman.

The fifth area that DHS has not managed effectively is major acquisition programs. There are many areas that we have made inquiries on that and we have yet to get a response. One of the things that encourages me in our conversations is the commitment that you will be responsive and transparent to us. And yet, we have waited months, and sometimes years as the Committee of jurisdiction, to get answers to our questions.

The Federal Emergency Management Agency (FEMA) Disaster Declaration process needs to be fixed. One of the areas that we have seen marked improvement is in FEMA, and I congratulate the Department. Another one of the areas we have seen marked improvement is the Coast Guard, which I congratulate the Department on.

To be clear, being Secretary of the Department of Homeland Security is one of the most challenging positions in our government, and I believe you will be confirmed.

But my hope is, that you will, in fact, renew your commitment to the Committee and to me personally that you will run a transparent shop, being responsive to us and our concerns, not only giving us an opportunity to have education from you on what the facts really are, but also to receive information, in turn, on what we are seeing in the respective areas across the country.

There is too much at stake for us not to work together to fix the Department of Homeland Security. As Senator Carper noted, morale is at the lowest level, by the surveys done by the Office of Personnel Management (OPM), of any department within the Federal Government. That is a function of leadership, and I think you have those qualities to instill that, to rebuild this organization, and to put it in a place where it needs to be.

The American people are counting on us, but they are going to be counting on you, and there is simply too much at stake for us to fail. I hope that you will earn this Committee's trust. You have earned mine thus far and I look forward to working with you in this very important job.

Chairman CARPER. Let me say to my colleagues, as you know on this Committee, we work under the early bird rule and after the Chair and the Ranking Member have given statements, we turn to the witnesses to testify, and then we recognize the Members in order as they have come in to ask questions.

Ms. McCaskill was the next one here, and Senator Tester, Senator Heitkamp, followed by Senator McCain. Others may come as well.

I just want to say just a quick followup to Tom's comments. We take seriously the opportunity to engage with you and really to understand you better as a human being, your priorities and really your values and how they were developed, and your approach to managing a big department like this.

I want to say thank you for your willingness to meet with all of us who serve on this Committee. I understand you have tried to meet with Senator Paul and, I think, Senator Portman, and not been able to get onto their schedules yet, but I appreciate your trying and I hope you will continue to do that. I am sure you will.

I am told by our bipartisan staff—that you spent some 2 hours or more in meeting with them privately and answering, as I am told, every question that they asked. And you stayed until the last man or woman standing and answered all their questions. Some very well, maybe some not so well, and we would not expect you to know everything, that is for sure.

We will have the opportunity today to ask you questions and we will stay here, basically, until we run out of questions and you run out of endurance, and I do not think it will take too long.

But if you would, I think, it is not uncommon for—I think you had over 100 questions to answer and a lot of those questions are multi-part. Some of those questions, I do not expect you to be able to answer, and it is not surprising that you would not rely on, to some extent, on the folks who are at the Department and their job is to help the nominees.

I would just ask that you go back through the information, the questions that Dr. Coburn is going to send to you. Go through them and edit them, just mark them up, and give them back to him promptly and we can move forward.

Senator McCaskill has to run and I am going to ask, if my colleagues do not mind, just to let her go out of order. If you would, just go ahead.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you so much. I really appreciate it, Mr. Chairman. I will just take a minute. I actually have to leave, Mr. Johnson, to go to the outside panel within the DOD that we appointed to look at the problem of sexual assault in the military, and they are having a technical session today and the complexities and the technical nature of that problem is one that I feel com-

pelled to go over and address them on, so I cannot stay for the duration of the questioning of you and your testimony.

I just want to briefly put in the record the five areas that our Subcommittee on Financial and Contracting Oversight has worked on the most in terms of issues at Homeland Security, and those will be ones that I would hope to work with you to address continuing serious problems that plague DHS.

The first is right-sizing DHS and balancing the contractor and Federal workforce; the ability of DHS to function as a single cohesive department; the role of DHS Science and Technology Directorate and whether or not it is a pass-through or whether it is an effective organization based on what its mission was intended to be; the role of DHS in the procurement of bioterrorism countermeasures; and finally, the inability of DHS to obtain a clean audit.

Those are the five areas that we will continue to work on in our Subcommittee and continue to work with your agency to see if we cannot do much better. There is a lot of room for improvement. I think we are thrilled that you are willing to continue to serve your government. You have done so in an honorable and competent, in fact, stellar fashion for many years. And I also want to thank your family for making the sacrifices necessary for you to lead this important agency, and I look forward to working with you after confirmation.

Chairman CARPER. All right. Senator McCaskill, thanks for joining us. And my thanks to our colleagues for indulging her in those remarks.

I think the next thing I want to do is to introduce our witness. It will just take a minute or two. As I mentioned in my opening statement, Mr. Johnson has been confirmed by the Senate not once, but twice before. In October 1998 in the Clinton Administration, Mr. Johnson became the General Counsel of the Department of the Air Force following nomination and confirmation by the Senate. Do you recall what the vote was on your confirmation?

Mr. JOHNSON. I am sorry?

Chairman CARPER. Do you recall what the vote was on your confirmation?

Mr. JOHNSON. I suspect it was, voice vote.

Chairman CARPER. Nail biter. By voice vote, it probably was. In February 2009, you became General Counsel of the Department of Defense following nomination and confirmation by the Senate. In this capacity, he served as the chief legal officer of the Department of Defense and the legal advisor to the Secretary of Defense, indeed to two of them.

Mr. Johnson's previous public service included serving as an Assistant U.S. Attorney for the Southern District of New York. The nominee has also been and currently is a successful attorney at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison.

Mr. Johnson, you may proceed with your statement and introduce your friends and your family that are with you here today. Again, thank you for being here.

TESTIMONY OF THE HONORABLE JEH C. JOHNSON,[1] NOMINATED TO BE SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. JOHNSON. Thank you very much, Mr. Chairman, Ranking Member Coburn, Senators of this Committee. Thank you for scheduling this hearing to evaluate my nomination. I want to thank Senators Menendez and Booker for taking the time to be here to offer their remarks and I appreciate their generous words.

I would like to introduce my immediate family: my wife, Dr. Susan DiMarco; my daughter, Natalie Johnson; my son, Jeh Charles Johnson, Jr.; and my sister, Marguerite Johnson Crocker of Birmingham, Alabama. I am pleased that they can be here. I think the public officials in the room will appreciate and know that the burdens of public office are made lighter by the support and engagement of your family.

I am honored by the trust and confidence that President Obama has placed in me by nominating me to be Secretary of Homeland Security. I appreciate the letters of support addressed to this Committee from the law enforcement organizations, retired senior military officers, former officials of both the Bush and Obama Administrations.

I respectfully submit that I am ready, willing, and able to lead the Department of Homeland Security. I have experience in law enforcement. As a Federal prosecutor in New York, I worked with law enforcement officers of the Secret Service, what was then called the Immigration and Naturalization Service (INS), the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and other Federal, State, and local law enforcement agencies.

I have experience as a key member of the management team of a large and complex government agency. For 27 months, I was part of the senior management team of the Department of the Air Force. For 4 years I was part of the senior management team of the Department of Defense. During that time, I sat at the right hand of, learned from, and supported two outstanding Americans in Secretary of Defense, Robert Gates and Leon Panetta. At the same time, as the senior lawyer in the Department of Defense, I led a legal community of over 10,000 civilian and military lawyers.

During the 4-years of President Obama's first term, I was at the center of the development and execution of many of this Administration's counterterrorism policies. Last year I worked closely with Secretary Panetta as he coordinated the Department of Defense's contributions to the response to Hurricane Sandy.

The missions of DHS are to prevent terrorism and enhance security, secure and manage our borders, enforce and administer our immigration laws, safeguard and secure cyberspace, and ensure resilience to disasters. If confirmed, I will vigorously pursue all of these missions. They represent the most basic and important services a government can provide for its people.

If confirmed, I will work to reinforce, among all the women and men of the Department, the common unifying mission that binds them together, homeland security. If confirmed, I pledge to be a

[1] The prepared statement of Mr. Johnson appears in the Appendix on page 49.

champion for every man and woman of the Department of Homeland Security and their families.

I will mourn the death of any man or woman in the Department, including those killed in the line of duty like the Transportation Security Administration (TSA) Officer Hernandez on November 1. Those at the Department of Defense know that I worked hard to earn the respect of all the men and women in uniform from the Chairman of the Joint Chiefs of Staff, our four-star combatant commanders, to the more junior officers and enlisted personnel who risk their lives in special operations.

My family and I spent Thanksgiving 2010 at a military hospital in Landstuhl, Germany. I spent Thanksgiving 2012 with the troops at a remote command outpost in Afghanistan in the mountains near Pakistan. I was honored when an elite team of Navy SEALs attended my farewell at the Pentagon.

If confirmed, I will devote time and attention to the management issues that I know DHS faces. As this Committee knows, there are leadership vacancies within DHS of alarming proportions. As I speak, the department of government charged with the vital mission of homeland security has no Secretary, no Deputy Secretary, and a number of other senior positions are vacant. If confirmed as Secretary, my immediate priority, starting the day I take the oath, will be to work with the White House and the Senate to fill the remainder of these key leadership positions.

The other management challenges faced by DHS are also well known to this Committee. If confirmed, I intend to continue the progress toward unqualified audited financial statements. I will work to get DHS off the GAO high-risk list. I will be a hawk when it comes to identifying fraud, waste, and abuse in the use of taxpayer dollars.

If confirmed, I pledge not to shrink from difficult or controversial decisions. Those at the Pentagon and in the field know my track record in this regard, ranging from politically charged matters of personnel policy to the legality of lethal force.

If confirmed, I will work to implement all legislation enacted into law. Like President Obama, many in Congress, the business community, and most of the American public, I support comprehensive, common sense immigration reform. If reform is enacted into law, I will work to prepare DHS to administer the changes in law and ensure that DHS has the staff resources and capability to do so.

If confirmed, I intend to be transparent with the American people about our efforts on their behalf. While the senior lawyer for the Department of Defense, I made the extra effort to publicly explain and defend U.S. national security policies, including in speeches at the Heritage Foundation in October 2011 and the Oxford Union in November 2012. I supported the declassification of the military's counterterrorism efforts in Yemen and Somalia in the War Powers Report submitted by the President to the Congress in June 2012.

And if confirmed, I pledge transparency and candor with Congress. Those of you from the Armed Services Committee know that these are not just words from me. Here again I have a track record. From Secretaries Gates and Panetta, I learned that a little bipartisan candor goes a long way and promotes goodwill among all of

us who came to Washington for the common purpose of serving the Nation.

I have tremendous respect for the U.S. Senate and its prerogatives. Thirty-five years ago, I worked in this very building as a summer intern for Senator Daniel Patrick Moynihan. I was an impressionable 20-year-old college student then. All summer I sat in a back office with the Senator's press secretary, Tim Russert, clipping press, literally, running errands, and researching legislation. The experience was exciting and formative and it did much to inspire my public service.

There is another thing that motivates me to leave private life one more time to accept this particular assignment. In my family photo album is a childhood picture of me and my sister standing next to my dad's red 1966 Buick convertible in what was then the public parking lot in front of the U.S. Capitol. The most striking thing about the photo is that our car is parked just a few feet away from the steps to the Eastern front of the Capitol building. I look at the photo today and realize that it captures a period in our history that is probably lost in my lifetime and perhaps forever.

September 11 and the other terrorist attacks here changed all of that. As I said in the Rose Garden on October 18, I am a New Yorker and September 11 happens to be my birthday. I was present in Manhattan that day and was an eyewitness to the events of that day. I know the shock and the potential for death and destruction that a breach of our homeland security can cause. I also recall the sinking feeling of guilt and uselessness that I personally felt in the face of that tragedy because I had left public service at the Pentagon just 8 months before. September 11 changed me, it changed millions of us, it motivates me to answer this call to lead the men and women of the Department of Homeland Security.

Thank you for your time and attention and I look forward to your questions.

Chairman CARPER. Thank you very much for that testimony. I read the testimony going home on the train last night and got to the last part and it was very moving, still is very moving.

Our Committee rules require that when you answer our questions you need to be under oath. You have done this before a time or two, so I am going to ask you to stand and I will administer this oath and then we will jump right into the questions. Would you please stand? Raise your right hand.

Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. JOHNSON. I do.

Chairman CARPER. Please be seated.

I am going to start our questions with the three standard questions that we ask of all nominees, and if you would just answer each one after I have asked that question. First question, is there anything you are aware of in your background that might present a conflict of interest for the duties of the office to which you have been nominated?

Mr. JOHNSON. No, sir.

Chairman CARPER. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. JOHNSON. No, sir.

Chairman CARPER. And finally, do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Mr. JOHNSON. Yes, sir.

Chairman CARPER. Thank you. Take just a minute and talk to us about your parents. Tell us, if you will, specifically about the values that they instilled in you, and maybe your sister, but the kind of values that they instilled in you that have enabled you to have, I think, a remarkable career today and have prepared you that might even help you in the days that lie ahead of you if are confirmed.

Mr. JOHNSON. Thank you for that question. My parents could not be here today. They are in my hometown, Wappinger Falls, New York. They live in the same home that they and I have lived in for almost 50 years. I am sure they are watching right now.

Chairman CARPER. I thought they might be.

Mr. JOHNSON. They are, I am sure, if my dad could find the right C–SPAN channel.

Chairman CARPER. Maybe we will have a lot of reruns.

Mr. JOHNSON. From my dad, stability, I think the right values set. My mother, a positive outlook, never give up, never accept limitations on your own abilities. She encouraged me to do that when I was a C and D student in high school. My guidance counselor told her, your son should go to a 2-year college. She refused to accept that and continued to push me harder, and I have tried to do the same with my own kids.

Chairman CARPER. Dr. Coburn and I had a chance to meet them and I would say you have imparted some pretty good values in them as well.

The Department of Homeland Security just turned 10 years old this year, and although the Department has certainly experienced growing pains, clearly it has come a long way in improving our homeland security and maturing the Department.

Let us talk a little bit about vision. If confirmed, what is your vision of where you want to take this Department in the years to come? So what is your vision? Where do you want to take the Department? What would be some of your key priorities? And finally, what do you think are the most significant challenges that you would face?

Mr. JOHNSON. Every time I have accepted a public service position, my overriding goal is to leave the position a little bit better than I found it. I believe you are correct that DHS has had some growing pains over the last 10 years, this is a very large bureaucracy, 22 components with rather different missions. My first priority will be to work to fill the remainder of the management vacancies, if I am confirmed.

The substantive priorities are well known. I hope to be vigilant with respect to counterterrorism, border security, the effective ad-

ministration of our immigration laws, responding to natural disasters. I also believe we need to move the ball forward on cybersecurity. Cybersecurity is something I became acquainted with at DOD.

The other management issues that are well known to this Committee I recognize I must devote time and attention to. I would like to see DHS get off the GAO high-risk list. I read that report. I have read much of Dr. Coburn's writings on DHS, on management efficiency. I agree with much of it. I agree with what he had to say about the Pentagon, for example, in many respects.

So the management issues are things that I expect to devote time and attention to. But we need to be vigilant in respect to Homeland Security. I recognize the issues with morale. I saw the most recent report. I hope to be a visible leader, remind people of the importance of the overriding unifying mission of Homeland Security, and I will work very hard, all my energy, to pursue all these missions, because I do believe that homeland security, protection of public safety and the American public is the core mission of the U.S. Government.

Chairman CARPER. All right. Thank you. As I mentioned earlier, and others have alluded to it, you are the former General Counsel to the Air Force, the Department of Defense as well. You have had the privilege of advising and working closely with some outstanding leaders and very gifted managers. Bob Gates and Leon Panetta are among those. You have also had the honor of working alongside literally thousands of brave men and women who put on the uniform every day and go out there and serve our country.

Could you just share with us some of the lessons that you have learned about in those years, particularly working closely with Bob Gates and Leon Panetta, especially some of the lessons you have learned about leadership, some of the lessons you have learned about managing a large organization, and some of the lessons you have learned, maybe, about public service that will help better equip you to lead this Department? So leadership, management, and public service.

Mr. JOHNSON. Secretary Gates and Secretary Panetta had, in my view, two distinct styles of management, which were both very effective in their own respects. DOD is larger that DHS, but it is very different in certain respects. I thought that they were both very disciplined, very focused, delegated when they needed to, focused on certain issues closely when they needed to. I expect to follow that model.

Being able to monitor the events of what is going on in a very large bureaucracy with a lot of different components is a challenge. I recognize the importance of regular communication with component leaders. I also recognize, and I hope this goes to some of Dr. Coburn's questions, I recognize that sometimes the bureaucracy can be totally wrong.

I recall in particular receiving—it was a personnel action that was very old and everybody up the chain said, coordinate, coordinate, coordinate, coordinate, coordinate, and I took a look at it myself, read the file very carefully, and concluded, Well, I just do not think this is right.

And I remember bringing together, around my conference table, everybody who had coordinated, let us do it, on this particular action and challenged a lot of the assumptions that had been gone into this issue literally for years. And after the meeting, everybody who had coordinated on it before said, Gee, maybe we ought to take a second look at this. And whether it was that kind of thing or some of our counterterrorism operations, every once in a while I felt like it was 11 to 1 and I was the one, and said to myself, this is why the President put you here.

So I recognize that even with the large staffs that we have around us, that we surround ourselves with, every once in a while you have to take an independent look at something and not be afraid to realize that maybe the bureaucracy has this wrong and you happen to be right. I did that on a number of occasions at the Pentagon.

Chairman CARPER. As I prepare to yield to Dr. Coburn, I am reminded—we have all heard many definitions of leadership. One of my favorite—what you just said reminds me of it and it goes something like this: Leadership is the courage to stay out of step when everyone else is marching to the wrong tune. Leadership also requires some folks to lead and to help you lead the Department.

My colleagues and I know, as you said earlier, this position has been vacant for months. The deputy position, Deputy Secretary, has been vacant for, I think, over half a year. And there are a number of other positions that need to be filled. The Administration has an obligation to nominate good people, to vet them, and we have an obligation to act on them.

I hope that we will move promptly to confirm you and then I hope we will move promptly to making sure you have the team around you that you need. Dr. Coburn.

Senator COBURN. Well, thank you, and again, welcome and thank you for your willingness to serve in this position. This Committee and my office have struggled to receive timely responses from the Department of Homeland Security to our inquiries and to reports that the Department is mandated under law to provide to us.

For example, Congress passed a law in March requiring DHS to turn over certain reports to our Committee. They are just now complying with that, but only after I threatened to hold every nomination. So here is a law written on the books and yet, no compliance until we have to use a bigger stick.

What I am wanting to know is, will you publicly commit today to give us your word that under your leadership, you will require the Department to respond to congressional inquiries in a timely fashion?

Mr. JOHNSON. Yes, sir.

Senator COBURN. And specifically, let me just detail a couple of them that I am asking for because I do not want there to be any surprises. We have requested mission logs for CBP's use of drones within the United States. Are you willing to provide those to the Committee?

Mr. JOHNSON. I am generally sympathetic to that kind of request and I will take a careful look at it. I would be inclined to respond to your request, Senator.

Senator COBURN. We have requested data on the Department's use of grants to fund State and local law enforcement purchases of cell phone intercept devices, license plate readers, and more. Are you willing to provide that to the Committee?

Mr. JOHNSON. I will, if confirmed, promptly take a look at it and be inclined to get you what you request, yes, sir.

Senator COBURN. We have requested internal reviews and other information about the United States Citizenship and Immigration Service (USCIS) Investor Visa Program, which appears to raise alarms along criminal and national security weaknesses in the program. Are you willing to provide those documents to us?

Mr. JOHNSON. Same answer. Yes, sir.

Senator COBURN. We have requested contracts, incident logs, project plans, and other documents showing how DHS conducts its cybersecurity programs. Are you willing to provide those to the Committee?

Mr. JOHNSON. Same answer. Yes, sir.

Senator COBURN. We have asked the Department, for a sector by sector border security plan. As a matter of fact, the former Secretary promised to get me that within 2 days of a breakfast meeting Senator Carper and I had with her. We are still waiting on that. Our inquiries have been met with stiff resistance. Are you willing to provide those to the Committee?

Mr. JOHNSON. If confirmed, I will take a prompt look at that request. I would be inclined to give you what you need.

Senator COBURN. We are still waiting for responses to questions from the record from several hearings that we held several months ago. Are you willing to insist that members in your organization respond to the questions for the record?

Mr. JOHNSON. Yes, emphatically.

Senator COBURN. Thank you. In your prehearing questions, I asked you if you had used or read DHS's intelligence products and whether you thought they were valuable. You mentioned that you did not recall specifics about any of the DHS intelligence products that you may have read.

You also wrote, if confirmed as Secretary, you intend to personally assess the Office of Intelligence and Analysis (OIA) products and that you would provide your feedback. Many of us on this Committee have questions about DHS's intelligence initiatives.

Will you commit today to provide your assessment of DHS's intelligence products as well as DHS intelligence programs, including the fusion centers, within 6 months of taking the helm of the Department?

Mr. JOHNSON. Yes, sir.

Senator COBURN. On border security and comprehensive immigration reform, you said that one of your priorities, if confirmed, is prepare for DHS's possible new responsibilities if that reform becomes law. However, many of us and many of the American people have questions about whether DHS is effectively managing its current responsibilities and currently upholding our Nation's immigration laws. Will you commit to reviewing the status of DHS's border security and immigration enforcement programs?

Mr. JOHNSON. Yes.

Senator COBURN. And specifically, all of the programs and report to us within a reasonable time—I know you are going to be loaded, so 90 days to 6 months. Would you give us your word that you will give us your assessment on that?

Mr. JOHNSON. Yes, sir.

Senator COBURN. Thank you. The other thing that I am impressed with you is your background in the field of law, specifically national security and counterterrorism from your time at the Pentagon. I know you have been getting up to speed on Homeland Security issues and the Department's program. As you prepared for this hearing, did you identify any programs that you think were unnecessary within the Department?

Mr. JOHNSON. I have some questions about our Intelligence and Analysis component, and I would want to be sure that we are not——

Senator COBURN. I am not going to ask you for a commitment on specific programs today, but the fact that you are looking at them and will take the input. I think it is important to have you do an analysis of that from where you stand with your experience and then get back to us within 6 months on what your thoughts are.

Mr. JOHNSON. Happy to do that.

Senator COBURN. That will help us. I have a whole lot of other questions. I think I will ask this question in a question for the record rather than spend time, and it has to do with the EB–5 Visa Program. I am very worried about that program, both from a national security standpoint and from an effectiveness standpoint. So I will ask that question to you for the record. I have about a minute and 20 seconds left.

DHS has been given the significant responsibilities for cybersecurity, including working with critical infrastructure owners and operators and helping Federal agencies secure their networks. But the latest DHS Inspector General (IG) reports have raised questions about whether DHS has been effectively managing its own cybersecurity programs.

For example, last week, a DHS Inspector General report identified several problems at DHS's Cybersecurity Center, including weak or nonexistent information sharing and lack of specialized training, poor communication and performance during a cyber-emergency simulation.

And the DHS Inspector's most recent audit of DHS's compliance with Federal Information Management Security Act (FISMA), standards found many problems, including that DHS components and headquarters office of DHS were not adhering to DHS's own guidelines on FISMA, including the installment of patches in a timely fashion or fixing known security threats.

So it raises the question, if Homeland Security cannot apply the very rules to itself it is asking other agencies to comply with, what authority can they have in executing cybersecurity at other agencies if they do not even follow their own rules for their own agency? So that is a big issue and it is one of competency and confidence. What I want to do, under your leadership, is to see that competency and that confidence restored.

You have some great people under you in that area, and what we have to do is we have to make sure Homeland Security is doing

it well before we ask everybody else to do it well. Will you commit to working with us to make DHS an example of good cybersecurity before seeking new authority?

Mr. JOHNSON. Yes.

Senator COBURN. I am over time and I guess we will have a second round, so I will pause with that and come back. Thank you.

Chairman CARPER. Before I yield to Senator Tester, obviously you have just committed to doing a whole lot of stuff.

Mr. JOHNSON. I know. Somebody is taking notes.

Chairman CARPER. And this guy will make sure you do it.

Mr. JOHNSON. Right.

Chairman CARPER. And you need some help to actually deliver on what you have committed to doing, and we have to help you get that team around you. So I would just again remind my colleagues that there are a lot of vacancies in this Department. Deputy Secretary is one of them.

I just want to say, Dr. Coburn mentioned the EB–5 program, which most people have never heard of, but it is a way to enlist foreign investment for projects in this country that hopefully create a bunch of jobs. I think the program was reauthorized about a year ago, I think the leads on it were Senator Leahy and Senator Grassley.

They did not include some of the program integrity recommendations from your Department that Mr. Mayorkas, I think, had championed. That did not end up in the reauthorization language. That did get into the Immigration Reform Bill, which has passed the Senate and is pending in the House. But we will have more conversation, I am sure, about that program, but I just wanted to mention that.

Mr. Tester, you are on. Thanks very much.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thank you, Mr. Chairman. I want to thank Ranking Member Coburn, also, and, Jeh, thank you for being here and thank you for being willing to serve again.

You are taking over an agency that is barely 10 years old, 22 different agencies. Dovetailing on the question that Senator Coburn talked about, my guess is, when it was established, it was established for two reasons, to increase effectiveness and to get the biggest bang for the buck.

I think it is critically important that you go back, set turf aside, and make sure that the agencies and the departments that are there minimize overlap so that there is a bigger level of accountability. I am confident you will do that. So I thank you for your willingness to take a look at that.

Also, I will say that I think it is important that we do find a balance between securing the borders, defending the homeland, and civil liberties of law-abiding Americans. That will be something that will be front burner, hopefully, for a long time to come.

What I want to talk about with you now is morale. You have talked about repeatedly reforming DHS management would be your No. 1 priority. I think that should be a top priority. In recognizing that there is a high rate of attrition right now in DHS, what

ideas do you have to help cultivate future leadership at all levels of the agency?

Mr. JOHNSON. In my experience, if people are excited about the mission, people believe in the mission, the importance of the mission, they are willing to make a change, possibly leave the private sector, possibly leave more lucrative positions in the private sector to come serve the country.

And I was fortunate when I was at the Pentagon to have some really capable people working around me who were Rhodes Scholars and Ph.D.s that I was able to recruit that helped with the overall effort, and I would hope to be able to do that at DHS.

When it comes to morale, in my experience, you remind people of the importance of the mission, you remind people that they are serving the Nation. These are things that I think touch a lot of people at their core. I also recognize from experience that morale is driven in large part by just basic economic issues.

When somebody has not had a pay raise in a long time and they are threatened with sequestration or government shutdown, that it takes its toll. So I expect to address morale, but there are limits to what you can do without giving people some basic relief.

Senator TESTER. This is an understatement. This is a huge agency and one thing that I think impacts morale is people thinking what they are doing is really worthwhile, that they are actually being effective in their job. Any ideas in that particular realm, how you can give folks a sense of responsibility so that they know what they are doing really does make a difference?

Mr. JOHNSON. In my experience, complimenting people for a job well done, cannot say thank you too many times when somebody deserves it, making them feel good about their work goes a long way.

Senator TESTER. Senator McCain and I recently introduced a bill to reform the pay structure for Customs and Border Patrol agents, make the borders more secure while allowing more consistent hours overtime potentially could save a billion over 10 years. The Border Patrol currently uses an antiquated pay system that is over 40 years old. I do not know if you have had a chance to take a look at this legislation. Have you?

Mr. JOHNSON. I have not yet, no, sir.

Senator TESTER. Well, I would just say this, and you have enough commitments with Senator Coburn, but I would hope that you get a chance to take a look at the legislation and work with Senator McCain and myself to make sure that this pay reform happens, because I think there is a lot of money that is being wasted at this point in time. You do not have to make a verbal commitment on that. I think it is common sense.

DHS, like DOD, makes huge investments in enterprisewide technologies, billions of dollars in just one system. You have mentioned that the use of technology in managing our borders, whether it is with low-level radar, fiber-optic cables, the list goes on.

How will you work with CBP, DHS, science and technology, and the private sector to ensure that we are utilizing technology at the Northern and Southern Borders? Me, living on the Northern Border with little emphasis on northern, to aid where human resources either are not effective or not cost-effective?

Mr. JOHNSON. First of all, I have learned a lot about the Northern Border in the last couple of weeks. Thank you. And as we move to more advanced technology, I think we also need to be sensitive to privacy, civil liberties concerns that people who live along these borders may have. I think that is important.

And as the border security professionals talk to me about risk-based strategies, I want to be sure we do not have any blind spots, that we are constantly vigilant in identifying where the high risks are and where we need to focus our technology.

Senator TESTER. I want to talk about the private sector and I want to talk about contracting in the private sector for those kind of technologies. Something that has been very frustrating for me—and if you have a different opinion on this, please let me know—is that oftentimes when it comes to contracting, we assume the big companies have all the good ideas and the little guys are cut out of the system. A lot of the little guys have some incredibly good ideas, especially as it applies to regional problems.

What are your thoughts about improving competition and opportunities for the little guy, the smaller people within the Department, or is that a priority for you?

Mr. JOHNSON. In my experience, competition generally leads to a better result for the taxpayer and for the agency. In my personal experience, sometimes the big guy on the block can also be the most complacent guy on the block. It is sometimes good to find somebody who is kind of up and coming, a little hungrier and a little more innovative. So bigger is not necessarily better.

Senator TESTER. So the question is, and I do not want to categorize, but I will. In the past, the big guys have pretty much gotten the contracts. The little guys have not. How do you fix that, if you think that is a problem, which you have indicated you do?

Mr. JOHNSON. Encourage competition. Encourage people to put forward their request for proposals (RFPs). In my experience, when there is a competition, it will depend upon how you write your specifications, how you write your requirements.

Senator TESTER. Correct.

Mr. JOHNSON. There are ways to write requirements such that only one company in America can put forward an RFP.

I am not an acquisition expert. I do not live in that world. There are people who are. But I do know that a lot of times it depends on how you write the specifications for the job.

Senator TESTER. And that is a very good point, and I will tell you, you might not be an acquisitions expert, but you are probably going to be heading this Department up and your philosophies should be able to filter down through all the different sectors of the agency. Thank you very much for being here.

Senator COBURN. [Presiding]. Senator McCain.

OPENING STATEMENT OF SENATOR McCAIN

Senator MCCAIN. Thank you. Mr. Johnson, I have known you for a number of years and I am very pleased that you will be taking on these new responsibilities, and I view you as an outstanding public servant, and I am confident that your nomination process and confirmation will be very smooth.

I want to talk about the border with you. Your predecessor stated frequently, the border is more secure than ever, citing the reduction and apprehensions as a proof of that progress being made, and she said it for a number of years. Do you agree with that statement?

Mr. JOHNSON. Senator, I have seen the same numbers. I noted that the numbers are going down. There might be a recent trend upward, but one of the things, if I am confirmed, I want to look at is exactly how we should define border security and whether those numbers are an accurate reflection of border security.

Senator MCCAIN. Well, in reality, over the last 2 years, there has been a 20 percent increase in apprehensions along the border. Now, when your predecessor made those statements, I used to just get—I cannot tell you the frustration that I felt because I knew, and those of us who are familiar with the border, that the real reason why those apprehensions went down was because of the economy. And now that the economy is getting stronger, apprehensions are up. So if they are up 20 percent, that means that the border is less secure.

Now, as we work—the eight of us—to complete this comprehensive immigration reform, which is stalled, as you know, in the House, and one of the major reasons why it is stalled is because of the lack of confidence in border security of not only Members here, but of Members of the House of Representatives. So now, for years, the Secretary of Homeland Security said, Well, apprehensions are up so that the border is more secure because there was a reduction in apprehensions. Now the apprehensions are up.

And so, here we are faced with a situation where the border is still not secure. When we were trying to develop this legislation, we went time after time to the Department of Homeland Security to get what was needed to get the borders secure, what measures were needed to be taken. We never got that from the Department of Homeland Security, never.

We had to go directly to the Border Patrol and got some very good information which we included in the legislation, specific sector by sector the technology that was needed. Can you tell this Committee that you will not repeat what happened to us and the frustration that we experienced?

And I want to know what, from you, what is required for us to have 90 percent effective control of the border. Can you assure this Committee of that?

Mr. JOHNSON. Senator, I will commit to you to working with you——

Senator MCCAIN. No, I am not asking you to work with me. I want to know if you will give this Committee the exact metrics that are needed, sector by sector, so that we can obtain 90 percent effectiveness on the border. Not working with me. Answer yes or no, please.

Mr. JOHNSON. I am inclined to give you what you need.

Senator MCCAIN. I am not asking for your inclination. I am asking for a yes or no answer. I do not think that is a lot to ask. We have our responsibilities here, and one of them is to have a secure border. Unless we get the right information from you and your bu-

reaucracy, we are not able to ascertain how we can secure our border.

So as much as I admire and appreciate you, unless you can tell me that you will give the information which this Committee has the right to have, I cannot support your nomination.

Mr. JOHNSON. I am really inclined——

Senator MCCAIN. I am not asking for——

Mr. JOHNSON [continuing]. To give you what you need, sir.

Senator MCCAIN. So let the record show you will not give a yes or no answer. Therefore, I will not support your nomination until I get a yes answer. This Committee and Members of Congress, particularly those of us who are on the border, have the right to have that information. It is our responsibility and our obligation to our constituents.

I have constituents in my State who every night there are people who are crossing their border illegally. I have constituents that every day, drug smugglers are going across their property and their homes. So they certainly have the right, as citizens, to know what measures need to be taken in order to have a 90 percent effective control of the border.

I ask you one more time. Will you or will you not give that information to this Committee?

Mr. JOHNSON. I have been through this process enough to know that a Senator asks a question like that and somebody afterward is going to tell me six reasons why I should not do it, and in those instances, I have said, Senator, and I think you know this from me, Well, the Senator really needs it, we are trying to get to the same place, let us give it to him.

So before I commit unequivocally to your question, and part of me very much wants to do that, I think I need to talk to people at DHS to better understand the issue. I have read the letter you wrote in February and I am strongly inclined to give you what you need, Senator, and I think you know that from me from my track record at Armed Services.

Senator MCCAIN. Well, sir, again, I have an obligation to the citizens that I represent. Right now, in their view, our border is not secure. Without your cooperation as to informing the Congress as to what measures need to be taken in order to assure 90 percent effectiveness, then I cannot serve my constituents and I hope you understand that.

Mr. JOHNSON. Senator, you will have my cooperation, I promise that.

Senator MCCAIN. I am not asking for cooperation. I am asking for information.

Chairman CARPER. [Presiding]. Senator McCain, do you yield back your time? OK. Let me just make a suggestion. Months ago, earlier this year, Senator McCain was good enough to host me in his State, and we spent a lot of time meeting with his constituents, traveling along the border, talking with the folks from the Department of Homeland Security, the Border Patrol.

I would urge you, early in your tenure, if confirmed, see if you cannot head down there and spend some time, especially in Arizona and in the eastern part of Texas. I thought it was illu-

minating for me, very helpful, and I think it would be for you as well.

Senator MCCAIN. Could I thank the Chairman for traveling down there? I thank Dr. Coburn who also has traveled and spent extensive time down there. And both of you understand very well the frustration that my constituents feel when they live in an environment where nightly people are crossing their property, where ranchers have been killed. This is not an academic exercise.

And it seems to me that an obligation to the Congress of the United States would be to provide us with information that we could not get when we were putting the comprehensive immigration reform together and we had to go direct to the Border Patrol to get the required information.

Now, I was told that was because the White House had said that the Department of Homeland Security should not provide us with that information. But how can we carry out our functions of oversight if we do not get the kind of information we need to make the decisions that this Committee is responsible to make?

Senator COBURN. I would just say that it would relate to the fact that when we were promised information and did not get it by the former Secretary.

Chairman CARPER. OK. Thanks, Mr. McCain. Senator Levin.

Senator LEVIN. Thank you.

Chairman CARPER. Senator Levin and then Senator Begich.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you very much, Mr. Chairman. First, let me thank you, Mr. Johnson, for your answer to the call to public service again, and for the answer being yes, and to your family. We thank them for the support which is so essential to all of you who have taken these jobs with such responsibility.

You and I have talked in my office about a number of things, and one of them I want to get into some detail on this morning has to do with the fact that we have about two million corporations that are created every year in the United States by our 50 States. That is more than the rest of the world combined.

The States approve these incorporations without ever asking who the real owners of the corporations are, who are the beneficial owners of these corporations. Some of these corporations get involved with Medicare fraud, tax evasion, terrorism, smuggling, drug trafficking, and other wrongdoing.

Now, just a few months ago, in June, at the Group of 20 (G20) summit, 20 leaders, including President Obama, reached the consensus that it was time to stop creating corporations with hidden owners. All 20 leaders, including President Obama, committed to changing the way they do things in this regard.

And in response to that international commitment, President Obama, in June, issued what is called, quote, a national action plan, which, among other measures, calls for enactment of Federal legislation to require our States to include on their incorporation forms the one question asking for the names of the real owners of the corporation being formed.

Now, that is very different from the owners of record, which are too often simply shell corporations themselves, in secrecy jurisdic-

tions. But this is a need for the beneficial owners who actually control and benefit from the corporation. Senator Grassley and I have introduced a bill which would do that, and we have been fighting for enactment of this bill for years.

President Obama was an original co-sponsor when he was in the Senate. Law enforcement is the biggest supporter. Groups that have endorsed this bill include the Federal Law Enforcement Officers Association, National Association of Assistant U.S. Attorneys, Society of Former Special Agents of the FBI, and so forth.

Federal Law Enforcement Officers Association, which represent 26,000 Federal law enforcement officers, explained their support for the bill this way, quote, suspected terrorists, drug trafficking organizations, and other criminal enterprises continue to exploit the anonymity afforded to them through the current corporate filing process. Hiding behind a registered agent, these criminals are able to incorporate without disclosing who the beneficial owners are for their companies, and this enables them to establish corporate flow-through entities, otherwise known as shell companies, to facilitate money laundering and narco-terrorist financing.

So our bill, the Levin-Grassley bill, is endorsed by huge numbers of law enforcement, public interest groups, good government groups, and I will put the list in the record if that is agreeable with our Chairman.

Now, Mr. Johnson, right now in the United States it takes more information to get a driver's license or to open a U.S. bank account than to form a U.S. corporation. And what I am asking you is, whether or not, in light of the President's national action plan calling for legislation that would require States to request beneficial ownership information and the impact on our homeland security, that the negative impact that exists when we do not have that information and law enforcement does not have it, will you support the Levin-Grassley Incorporation Bill, Senate Bill 1465?

Chairman CARPER. If I could just interject, I love Carl Levin. But the legislation that he has been championing is opposed by most of the States, and I would just urge you to be careful in your response.

Senator LEVIN. I would urge you to be careful in your response as well. [Laughter.]

The President of the United States wants beneficial ownerships listed. The only opposition we have is from a whole bunch of secretaries of State. At any rate, we will not debate that here. I have asked you to become familiar with this issue and I want to know whether or not you have become familiar with it and whether or not you will support it.

Mr. JOHNSON. Senator, after my visit with you a couple weeks ago, I began to look at this legislation. I am impressed by the number of law enforcement organizations and public interest organizations that support it. I am sympathetic with the law enforcement/homeland security interests. I would want to understand, if the States and the business community have objections to it, what those objections are.

Senator LEVIN. Not the business communities, a number of Secretaries of the State and I think their association.

Mr. JOHNSON. I would be interested to hear their views. I would be interested to hear the business communities' views.

Senator LEVIN. Will you get back to us after you have done that?

Mr. JOHNSON. Yes, sir.

Senator LEVIN. Promptly?

Mr. JOHNSON. Yes.

Senator LEVIN. Thank you. The report of the GAO called border security, enhanced DHS oversight, and assessment of interagency coordination is needed for the Northern Border. It said that DHS reports that the terrorist threat on the Northern Border is higher than it is on the Southern Border given the large expanse of area with limited law enforcement coverage.

I am glad you have become familiar with the Northern Border, as you suggested a few minutes ago, and we obviously are very much concerned with the problems on the Southern Border, which Senator McCain has mentioned. But my question, as a Northern Border State is, will you keep the needs of all of our borders in mind after you are confirmed?

Mr. JOHNSON. Yes, sir, absolutely.

Senator LEVIN. I have a statement about helicopters and the need of helicopters in a number of our Coast Guard Air Stations. I will have that for the record. My time is up, so I will ask you that for the record. There has been a commitment to an upgrade of helicopters in Traverse City, one of our Coast Guard stations, that has not yet been kept. So we will try to get you to put some—place some attention on that long-standing commitment.

Hopefully you will be confirmed soon and that will occur after that confirmation. Thank you.

Senator COBURN. We need those Coast Guard helicopters.

Senator LEVIN. Yes. You have already got yours, I understand.

Senator COBURN. Landlocked.

Senator LEVIN. Yes.

Chairman CARPER. Before I turn to Senator Begich and Senator Ayotte, I will just go back on a quick P.S. on the issues that Senator Levin has raised. Dr. Coburn was the ranking Republican on the Permanent Subcommittee on Investigations with Carl Levin for a number of years, and I have had the pleasure of serving with him for over a dozen years. He is tenacious. He is a dog with a bone.

And on the issue that he has raised, there is real validity to the concerns that he has raised. What we have tried to do is to encourage the States, particularly the Secretaries of the State, to work with law enforcement to see what can be worked out in a way that the States can administer it or are agreeable to doing that.

They have been having some meetings. I am told that they are actually good exchanges. And we are going to continue to nurture that and hopefully facilitate something so that we can get it done. I can sit next to this man, whom I love, and arm in arm resolve this issue with him. And then we can turn our attention to spring training, our beloved Detroit Tigers returned to Lakeland, Florida, and we are again friends.

Having said that, let me turn to Senator Begich for any questions.

OPENING STATEMENT OF SENATOR BEGICH

Senator BEGICH. Thank you very——

Senator COBURN. What is your ball team's name?

Senator BEGICH. We have many. We believe in all of America's teams because we do not have one. But I will say that, just as they mentioned, I will get into my Arctic issue in a second, but they may need helicopters, I need helicopters, ships, and a few other things in Alaska for the Arctic. So we will get to that in a second.

Let me, if I can, we have a very specific issue I want to put on your radar screen. It is with the CBP and it is regarding a request that was made by a tourism company, a pretty large, significant company to move folks from Fairbanks, Alaska to Dawson City, which is in Canada. It obviously requires Customs and Border Patrol approval. They denied it. In their answer, the reason they denied it, was inefficient use of our existing resources.

Here is what is troubling about this. First off, it could bring about 19,000 visitors to Alaska. The fees alone that the Customs and Border Patrol would get would be about $144,000. The cost to do the service is about $120,000. In other words, they would make money on this opportunity, excluding all the other revenue streams that might come to the Federal Government through other types of expenditures, those almost 20,000 visitors.

So they denied it based on inefficient use of their resources. Well, first off, they do not have the resources. That is why if this was in place they would have $140-plus thousand dollars to actually purchase those resources, and Homeland Security would make—I will carefully use this word—about a 20 percent profit on it.

So it seems if this was a business, it would make a lot of sense. So their idea was, "Well, why do they not just re-jigger the flights, do them from Anchorage to Dawson," which makes no sense because part of the trip is to go to Denali Park. It would add 400-plus air miles and cost to the traveler.

I know it is a big issue, and I know they pay a lot of attention to the Southern Border, but actually, Alaska has a border, too, and we have actually good cooperation with Canadians in regards to our border. So I just do not think CBP understands the logistics of this and how large Alaska is.

I know sometimes everyone puts Alaska in a little box off the coast of California, but they forget it is one-fifth of the size of this country. And so, I would hope that you could look into this. I think you would make a very good Secretary. And I think, because you come from a variety of fields, but also, from my conversation that we have had, and others, you are practical. You look at these issues.

It just seems they have given what I would call a classic bureaucratic response, inefficient use of resources, despite the fact when you do the numbers, it actually makes them money and puts more people on the payroll to do a service that grows our economy in Alaska. So if you could look at that, we would be happy to share information with you at a certain point, but the office is clearly aware.

We have written a letter last week and made it very clear this is good for our economy, good for Alaska, and good for Homeland Security, and it is a good relationship builder with our great ally

of Canada. So I would hope that you would put that on your radar screen.

I do not know if you have a quick comment on that. I know it is under appeal so you cannot say anything legally, but would you at least look into this if the opportunity arises?

Mr. JOHNSON. Yes.

Senator BEGICH. OK. Let me also go to the issue of the Coast Guard on the Commerce Committee. I chair the Subcommittee on Oceans, which has oversight on the Coast Guard, and as we move toward the Arctic and as more Arctic development occurs, with oil and gas, tourism, shipping, science, research, all that requires the Coast Guard to be a partner there in the sense of security and safety, not necessarily oil spill technology, but really the whole issue around safety on the water and what could happen.

My worry is this, that we will just shift resources around, kind of move the chairs on the deck around the country with the Coast Guard, when in reality what we have to do is look at what is needed in the Arctic and the Bering Sea, which has now an enormous amount of traffic moving through there, international traffic.

Can you give me your thoughts in how you would address this situation that we have within the Coast Guard of limited resources, but a huge, growing, new area of responsibility that will be significant for our country?

Mr. JOHNSON. I think we need to be agile in terms of evolving needs with the resources we have. I know the Coast Guard is undertaking a recapitalization program which I have begun to learn about. I have talked to the Commandant about that. I have also talked to him about your part of the world, Senator. I think the Commandant himself agrees that this is an area of the world where the Coast Guard needs to be vigilant.

I agree with you—and I agree with him—that this is a part of the world where we need to pay attention to and it is one I expect to do so if I am confirmed.

Senator BEGICH. Very good. Let me move to another issue and that is, as you know, more and more domestic drone activity is being considered, both private and public sector, and I guess my question would be, how do you see the Homeland Security Department engaged in that in the sense of policy or otherwise?

Mr. JOHNSON. As we move to a more risk-based strategy, which is what the professionals who deal with border security have told me about, technology is an important component of that. Surveillance technology is an important component of that. As we rely more and more on it, I think we also need to be very concerned about the privacy and civil liberty issues associated with that.

DHS has an office, two offices dedicated to this. I think we need to further develop and refine our policies as the technology moves further along.

Senator BEGICH. Very good. And as you move forward, assuming your appointment, you will share that and continue to work with the Committee in regards to that policy?

Mr. JOHNSON. Yes, sir.

Senator BEGICH. One last question. This is a very specific one. I just had a hearing here. I chair the Subcommittee on Emergency Management in this Committee in regards to Hurricane Sandy and

the devastation that occurred, we just passed the 1-year anniversary, and one of the issues that came up is some complaints I have received regarding houses of worship that are unable to access certain grants, even though non-profits can access them. Let me give you an example.

Let us say you are a house of worship, but you ran a day care center or you leased it out to someone who ran a day care center. The day care center was wiped off the face of the earth. They get no capacity to go after grants, but yet, a day care center down the street that may be run by an independent non-profit that has a different lease with a private sector landlord can get those grants.

There seems to be an imbalance there. Recognizing that the house of worship, it is not about the house of worship, it is about the facility that was being used. I know as a former mayor, we worked with a lot of these Camp Fire, for example, was doing after-school programs within some of these facilities because that was the only place and location we could do it.

What I am asking you is, would you be willing to look into this issue, assuming that you receive confirmation? I think it is important to provide the services needed and not put people at risk because where they put the facility or the service they are providing to the community. Does that make sense, that question?

Mr. JOHNSON. I would be happy to look into it, yes, sir.

Senator BEGICH. Fantastic. Thank you. I will end there, and thank you, Mr. Chairman.

Chairman CARPER. I am not sure if the issues that Senator Begich is raising is one—I think the legislation has actually been introduced in the House——

Senator BEGICH. That is correct.

Chairman CARPER [continuing]. That would allow houses of worship to receive directly, I believe, Federal grants for damage done to those houses of worship. We had the constitutional scholars look at that legislation carefully and there are questions that are raised, as you might imagine, about the separation of church and state.

So while we want to be supportive of whether it is a day school or a soup kitchen or something that is faith-related and has been damaged, we want to be supportive in that regard. I think we have to be mindful of separation concerns that are raised by that legislation.

Senator BEGICH. And I will just add, if I can, Mr. Chairman, I do not disagree with that, but I will tell you as a mayor, there are many times in communities where the facility is only available in a house of worship, run by, for example, Camp Fire. So I understand.

I am not a lawyer, never want to be one, to be frank with you, no disrespect to lawyers. We have plenty in this body. I am more interested in trying to figure out solutions to a problem. But I just want you to look at it and give me your response.

Mr. JOHNSON. Yes, sir. I am trying to get out of the legal business, too.

Senator BEGICH. I know, and I like that you are going into public service. Thank you.

Chairman CARPER. Sometimes Senator Begich and I refer to ourselves, he as a recovering mayor and me as a recovering Governor.

You can become a recovering lawyer. That will be good. All right. Speaking of recovering attorneys general.

Senator AYOTTE. I was going to say, exactly, Mr. Chairman. I am a recovering attorney general.

So thank you, Mr. Johnson, for being here, and I want to obviously thank you for your willingness to step forward to serve the country again, and your family.

So we have made some significant progress in taking out members of core al-Qaeda. Yet, we certainly have now factions and affiliates that are growing over a very large geographic region. I mean, when you look at al-Qaeda in the Islamic Maghreb (AQIM), al-Qaeda in the Arabian Peninsula (AQAP), al-Qaeda in Iraq to al-Nusra and al-Shabaab.

So what kind of threat do you believe that these groups pose to the homeland? Is the threat growing? Where do we stand with that, and which al-Qaeda affiliate do you believe is the biggest threat? And then as a subsequent question I have for you as well, how big a threat do we face from home-grown violent extremists to our nation?

Mr. JOHNSON. Senator, I have to preface my answer by saying that I have been away from the intelligence for almost a year now, and I know from my experience that threat streams can evolve week to week.

Senator AYOTTE. I understand the caveat, but I know you also had substantial involvement——

Mr. JOHNSON. Yes.

Senator AYOTTE [continuing]. With this issue.

Mr. JOHNSON. I would characterize it this way: I agree with you that we have had considerable success in taking out core al-Qaeda. I think during my time at the Department of Defense, we saw the rise of affiliates like AQAP, AQIM, the AQ-affiliated elements of al-Shabaab. We have had some success with respect to those affiliates.

And I believe that the way I would characterize it, we are moving to a third phase where the terrorist threat is becoming even more diffuse and we are seeing more lone wolf activity, more self-radicalization. Somebody reads a publication and they are not affiliated with AQ in the traditional manner of accepting formal command, direction, or training at the camps, but they are committing equally dangerous acts of terrorism.

Those types of threats are, in my view, harder to detect. And so, I think that this ties in with the Homeland Security mission. I think that as we see more of a rise of that kind of threat, we are going to have to be vigilant on the civilian side, in law enforcement, border security, and so forth.

Senator AYOTTE. And how do you envision—I mean, one of the issues, obviously, communication is key.

Mr. JOHNSON. Yes.

Senator AYOTTE. So from your prior experience at DOD, what would be your biggest priority when we look at preventing that threat to our country, which, by the way, you would agree with me is still a very real threat?

Mr. JOHNSON. Yes. I think working with, communicating with State and local law enforcement, first responders, is key. It is going

to be even more significant, I think, in the years ahead. I believe DHS is situated in that regard with vertical sharing of information, intelligence, and analysis, and the first responders are going to have to be in a position to deal with these kinds of situations.

Senator AYOTTE. One of the issues that you and I have talked about at length from your prior position and now that you are going to be in a very important position as the head of Homeland Security is this issue of interrogation.

How important is it that when we do capture a terrorist? For example, Ayman al-Zawahiri, if we get him tomorrow, how important is it that we are able to conduct a vigorous and sometimes lengthy interrogation of these individuals in terms of intercepting attacks and information about their networks?

Mr. JOHNSON. In my experience, interrogation of a terror suspect, somebody who is part of one of these groups, has been a gold mine for us in terms of what we learn through national security interrogations. That has been my experience in the first 4 years of this Administration.

Senator AYOTTE. So one of the challenges we face that is not directly under your purview now, but I think that given the important role you face, that you will certainly, I would imagine, be sought after for advice on this is, how do we deal with this issue in a civilian context of the challenge of, if we capture al-Zawahiri and if you bring him in, right into our civilian court system, then we have things like Miranda Rights, speedy presentment, which can interfere with the length of interrogation that you might need to find out what someone knows to make sure that we are getting everything we need to protect our country.

I feel like we are sort of in limbo-land right now where you and I talked about it in our meeting. Let me hear what you think about this issue and what are the challenges we face and how can we have a policy that allows us to gather information, while, obviously, I understand, we need to preserve future prosecution? But I am deeply concerned that we have a huge gap right now.

Mr. JOHNSON. As you and I have discussed, I believe there is currently legal authority for a national security intelligence interrogation pre-Miranda, pre-presentment when you have somebody who is in the category of a national security threat who is captured or arrested.

I also think that the Executive and the Congress ought to look at codifying some of this into law to reflect the practice, because I think it is going to become an increasingly important practice and there will be an increasing need for this type of interrogation. I think the authority exists already, but it might be a good idea to try to codify it.

Senator AYOTTE. Well, thank you very much. I appreciate your insight on that, and I think right now we are in a place where we do not have really a detention and interrogation policy to address the situation where if tomorrow we capture the head of al-Qaeda, where is he detained and how long will he be held for interrogation? I look forward to working with you on this issue because it is one, I think, that is going to continue to present itself, as you have raised.

I want to ask you as well, just in terms of issues that you will be asked to address, there are many issues of waste, fraud, and abuse that I know Dr. Coburn and certainly Chairman Carper have asked you about. I look forward to working with them. One that has been raised recently has to do with overtime issues, and that is employees abusing the administratively uncontrolled overtime pay system, and therefore, amassing millions in unearned pay. It is an issue I have been interested in. And how would you go about addressing that?

Mr. JOHNSON. It is obviously an issue of concern. I have read about it and I have had it explained to me. I know the Acting Secretary has undertaken a review, and if I am confirmed, I would be very interested in the results of that. I worry that it could be a systemic problem, and it is obviously one that should trouble whoever the head of DHS is, should trouble Congress, and trouble the taxpayer.

Senator AYOTTE. Thank you very much.

Chairman CARPER. Thank you. Senator Ayotte, thanks for those questions. Senator Paul, nice to see you, welcome. You are recognized.

OPENING STATEMENT OF SENATOR PAUL

Senator PAUL. Thank you, Mr. Johnson, for your testimony. I was wondering, do you think the Fourth Amendment applies to my Visa purchases?

Mr. JOHNSON. I do not have a legal opinion on that, Senator. I think that there may be a privacy interest there, but I do not have a legal opinion for you right now.

Senator PAUL. I hope you will think about it and I think it is something we all need to think about. And I think the current Supreme Court law actually probably says no. I think it is a tragedy, but that is the way the law has gone. With my Visa bill, you can tell what books I read, what magazines I read. You can tell whether I go to a psychiatrist. You can tell what medicines I buy. You can tell virtually everything about my life because everything I buy I put on my Visa card.

People say, I do not have any expectation of privacy because it is a third-party record. I gave it up to someone. I think this is a big issue for us and, frankly, the Administration has not been very supportive of the Fourth Amendment and we are going to press these issues. But I want you to know that we will be watching and those of us who believe in the Fourth Amendment will be continuing to watch.

Do you think that a single warrant can apply to millions of records and millions of individuals?

Mr. JOHNSON. I understand that may be an issue with regard to certain surveillance programs. I do not have a legal opinion on that for you, Senator.

Senator PAUL. Pretty important issue. It is going to be one of the biggest issues, and hopefully it will get into the Supreme Court.

Do you think that it is due process to have a court trial where only one side is represented? Do you think that is due process where only one side would have a lawyer?

Mr. JOHNSON. In the context of a litigation, or a courtroom proceeding, no.

Senator PAUL. We do have a court. That is where we are deciding now Constitutional questions, the Foreign Intelligence Surveillance Act (FISA) court. There is no advocate on the side of the Constitution. There is no adversarial proceeding, and I think there could be no justice. There is also reviewing of Constitutional questions done in secret. Do you think we should decide the scope of the Fourth Amendment in a secret court?

Mr. JOHNSON. I think we in the Executive Branch and in the FISA court need to be skeptical. We need to have robust discussion. I have been a part of that in making certain use of force decisions. And I am skeptical of simply a lot of yeses in the room and I believe somebody needs to ask the hard questions.

Senator PAUL. And I do not doubt, and I am not questioning your integrity, but what I would say is that due process is not a bunch of people, good people in a room, discussing whether we should kill people with drones or something. The President has mistakenly said that is somehow due process. That has nothing to do with due process.

It may be a good idea, but it is not due process. Due process is in a court and it is debate back and forth with both sides being represented and with, hopefully, an impartial justice or impartial justices deciding this in an open court. So there is a lot of things going on in our country which really do not meet due process.

And frankly, whether you are a good or bad person or whether you are in a room discussing this or whether you give vigorous debate, is not due process. It is important that this be said over and over again because we are making important decisions, which gets to my next question.

Do you think we should target American citizens overseas for killing who are not involved in combat? I am thinking of propagandists, other people who may have committed treason but have not been charged or convicted. Do you think that a bunch of lawyers in a room from one Administration, from one political party, can decide the guilt or innocence of American citizens? These are ones who often, if not always, are mostly not engaged in combat.

Mr. JOHNSON. As you pose it, I think my answer would be no.

Senator PAUL. But you realize that a lot of the drones are directed against people just walking down the street or eating or doing something. I do not have any problem, if an American citizen is over there fighting and they are in the middle of a war and they are shooting at our soldiers, by all means use a drone or whatever other means you have to kill them. But we are killing people sort of walking down the street.

So what I am arguing for, and nobody really seems to be making the point that I am, is that, for example, Adam Gadahn. We indicted him. He probably has committed treason. You probably would convince me if I were on the jury to convict him of treason. Why not? Why not go ahead and try these people for treason? Al-Awlaki, we had him listed for years and years.

If you have to redact some testimony or go into private session, do it. Give him a chance if he wants to come home. My guess is he was not coming home to be tried for treason. But go ahead and

try him for treason. And then I think you at least have due process, because then you have a real court, a real process.

You would probably have a lawyer on both sides. I mean, the whole idea that justice comes about through representation and through a court trial and through a jury is something too important—and I know this is an unusual circumstance, we have only had like three or four citizens killed—but the principle of it is pretty important.

And I think we should all be aware that there were times in our history when we did not do justice to a lot of people for various reasons, for race, the Japanese-Americans. Imagine what happened to them when they did not get processed during World War II.

Also imagine what happened to—or what would have happened to an African-American in 1910 in the South accused of a crime. So I think there are all kinds of reasons that a lot of us should be a little more concerned about due process and not be so careless about this.

So I just hope you will think about these questions, the scope of the Fourth Amendment, but also what due process is, and that if you are head of Homeland Security, you and a bunch of lawyers getting together and deciding it is fine to collect data on every American through one warrant, that is a Constitutional question and it is also not due process.

And I hope that you will be somebody you will facilitate getting Constitutional questions into a real court and not a mock court. Thank you.

Chairman CARPER. Thank you, Senator Paul. Let me turn, if I can, I mentioned earlier in my comments on GAO, and Dr. Coburn and I have used GAO's high-risk list. Most of it is a to-do list for a subcommittee that we used to take turns leading, and also for this Committee as well. Every year GAO promulgates its high-risk list. People say to me, what is a high-risk list? It is high-risk ways of wasting money, our taxpayers' money, which is in short supply as you know.

One of the things that Jane Holl Lute, who was the last confirmed Deputy Secretary, used to do, she used to go over to the GAO. I do not know if she went every week, but she went pretty often, and would meet with Gene Dodaro, the Comptroller General, meet with others who worked for him, and say, Let us go through your high-risk list and let us see what we have to do to get off of it. They made a whole lot of progress.

And hopefully, later this year, the Department of Homeland Security will complete a clean audit and leave us only one large department, and that is the Department of Defense, that has not actually received a clean audit.

But I want to urge you, and when we get a Deputy confirmed, hopefully soon, to take to heart what Jane Holl Lute used to do, and I am sure Janet Napolitano, as the Secretary, did it as well. With that having been said, let me just ask you what you believe to be some of the major management challenges in the Department. What do you see your role as the Secretary in addressing those management challenges?

Mr. JOHNSON. Senator, I have read the GAO report. I saw the 31 issues that GAO identified. I was pleased to see that according

to GAO, DHS is moving in the right direction with respect to these issues and resolving a number of them. In terms of management issues, there are vacancies, ensuring an efficient procurement process, getting an unqualified audited financial statement, and dealing with some of the internal control issues that lead to an unqualified opinion.

I also think that with six different accounting systems, we need to be sure we have what the financial people call business intelligence so you can identify things like unobligated funds across your bureaucracy. And I think DHS is moving in the right direction, but it is only going to continue to move in the right direction if somebody is pushing it, and sometimes making people feel uncomfortable about deadlines and about the status quo.

I understand that is good leadership and I understand that a bureaucracy is a large, sluggish aircraft carrier that will, if you let it, just kind of chug along in a certain direction. I think good leaders need to push it, sometimes in different directions which can be uncomfortable for a lot of people.

Chairman CARPER. Good. Well, when you have the opportunity to bring new people onto your leadership team, who will have, in some cases, a lot of direct contact with GAO and the work that GAO is doing or has done, I would urge you to sensitize them early on what your expectations are.

Our expectation as an oversight Committee is to make sure that Federal departments throughout the Federal Government do not ignore the work that GAO is doing. So I would ask you, do you fully subscribe to that as well?

Let me just turn and talk a little bit about State and local stakeholders. As you know, a lot of the work that the Department of Homeland Security does involves partnerships, it involves cooperation with State and with local governments and with non-profits like the Red Cross.

In fact, our Nation's homeland security is dependent on these partners. I am reminded every time I talk with our Red Cross folks in Delaware and our emergency responders, because they are sometimes first on the scene to respond to disasters and try to help people in some tough situations, making sure that these relationships work is an important responsibility of the Secretary.

And if confirmed, let me just ask you, what are some of the steps that you would take to make sure the Department continues to work ever better with its State and local partners?

Mr. JOHNSON. I recognize the importance of this. Given the nature of the DHS mission, given the nature of the homeland security mission, working effectively with State and local law enforcement, State and local governments, the private sector in the border security, national security, homeland security, cybersecurity realms are important. I have been struck by the emphasis that people up here, people within DHS have placed on it.

And the attention that, if I am confirmed, they would want me to pay to it. It is pretty apparent to me that it is part of the mission. When I was a Federal prosecutor, I worked a lot with the New York City Police Department, not just the Federal law enforcement agencies, and some of my most enduring relationships from those days are with the cops, New York City Police Depart-

ment that I worked with building narcotics cases. So I think I get that.

Chairman CARPER. OK, good. One more and that involves the tragedy that occurred out at Los Angeles International Airport (LAX) a couple of weeks ago where three transportation security officers, Gerardo Hernandez, James Speer, and Tony Grigsby, were all shot, as you will recall, during an attack at the airport. And sadly, Mr. Hernandez died. He left behind a widow and two children.

We are deeply troubled by reports that the shooter specifically sought out TSA employees during the attack. I know it is not possible to protect against every threat, every Department of Homeland Security front line agent, but a bunch of them do face threats. But I believe we should carefully review this incident and see if there is anything more we can do to protect TSA employees.

Let me just give a shout out to TSA. I know they take criticism from a lot of folks. It is a hard job. It is a job that they have a good leader in John Pistole. They are working hard to try to do it better, so they need a little bit of support and some sympathy for the loss of one of their colleagues and we extend that. But I want to say to the folks out there at TSA, under John Pistole's leadership, that are working hard, trying to do the right thing, trying to improve every day the work that they do, we appreciate that effort and we urge them keep it up.

But if you are confirmed, what will you do to mitigate the risk that a TSA or a Department of Homeland Security employee could be the target of an attack like the one visited on Officer Hernandez and his colleagues?

Mr. JOHNSON. Senator, I read something about that attack that was really upsetting, which was that apparently, allegedly, the shooter shot Hernandez, left, went up an escalator, and then came back when he realized he was not dead and shot him again. That is really bad.

And I think that given the visibility of these people, their interaction with the public, we need to look at how to provide for their safety. I do not know that the answer is screening everybody that comes into an airport. That would be a very long line. But I think we need to look at better ensuring their safety one way or another, and it is something I expect I will be focused on if I am confirmed.

Chairman CARPER. I think in this instance, the family in New Jersey knew that something was wrong with their son and tried to reach out, I believe, to the authorities in the Los Angeles area. I think someone—the police may actually have gone and visited this person's apartment and he was gone. He had already left and was apparently on his way to the airport.

And it just reminds me, we do not always agree on gun-related issues, but I think one of the things we can agree on first is we do not want guns to be in the hands of people that are mentally unstable or are likely to use them to harm other people. I think we can all agree on that. We need to do a better job on background checks and get the correct answer, fast answer, but the right answer.

And the second thing that comes to mind here is the adage, if you see something, say something. Folks, when you see your room-

mate or a member of your family is in this kind of situation, this kind of condition, you have to say something, you have to speak up, and not just ignore it or brush it aside. If that had happened maybe sooner, this perhaps could have been averted. Dr. Coburn.

Senator COBURN. Thank you. I would add my congratulations to John Pistole. I think he has made remarkable improvements. We have a long ways to go, but there is progress being made there.

I will address Tom's other issue, our problems with mental illness in this country. We are not handling it. We are limiting practicing physicians' ability to notify. Through the Health Insurance Portability and Accountability Act (HIPAA) laws, we are forbidden to do that when we know, in fact, somebody is dangerous. So that is an area I agree we can work on and we are negligent that we have not addressed that as a Congress and as a country.

One of the questions that has surrounded a lot of Homeland Security spending is whether we spend the money on risk or we spread the money out. It is my feeling that the vast majority of our monies ought to go where the risk is the greatest. What are your thoughts on that?

Mr. JOHNSON. I think I agree with that, Senator.

Senator COBURN. So we ought to be risk-based. We have spent $37 billion on grants, which is another high-risk program, for Department of Homeland Security, and probably less than 25 percent of that has gone to the highest risk areas. And part of that is the parochial bent of Congress that wants to make sure we get our fair share for each parochial representative. But it is a real problem.

The President proposed, and I actually agree with this—not very many Members of Congress agree—of consolidating all the grant programs at DHS. I think that is a wise thing to do. And then to base it on risk. What are your feelings about that?

Mr. JOHNSON. It is an issue that a number of people have raised with me, how we dispense grant money. It is taxpayer money. I used to be on the board of a community trust that did nothing but give out grants, and an important part of the job of that fiduciary responsibility was ensuring that once we gave out the money, the recipient is making effective use of the money.

I think that in general, the professionals who I have consulted over the last couple of weeks seem to feel that we need to move in the direction of a risk-based approach to homeland security. And that probably entails focusing our grant money in the same direction as well.

So I would be inclined to agree with you, if what you are saying is we need to make efficient use of our taxpayer dollars for purposes of homeland security.

Senator COBURN. The other part of the grant program that is not present at Homeland Security is performance metrics and followup and elimination of grants on people who do not perform. The GAO has done a lot of work in terms of the unspent fund, the bogus expenditures, and the inappropriate expenditures. We have actually highlighted them.

I am sorry Senator Ayotte is not here because New Hampshire and one of its small towns has a Bear Cat for its Pumpkin Festival paid for with a DHS grant, $80,000 that could have made a real

difference somewhere else with a higher risk. And they know I am critical of it. But that is the kind of lack of control we have.

Grant reform is a big deal to me because I think with the dollars that we are going to spend, ought to be spent to actually reduce risk rather than to satisfy or make a politician look good. I know that is antithetical to some of my colleagues, but that is what we are charged to do.

I do not care if Oklahoma never gets another dollar of Homeland Security grants as long as the dollars that are spent are spent on high-risk areas, and that is the way it should be. Will you work with our Committee to reform the grant program? And will you answer my question as far as the President's proposal of consolidating all the grant programs?

Mr. JOHNSON. Yes. I want to study that issue and I will answer that. Yes, sir.

Senator COBURN. Thank you. There was one other thing that came up in your staff interview about which I had some concerns, and I have not had a chance to visit with you about this personally, but it was brought to my attention. In your questionnaire responses, you stated, I believe, that one of DHS's many counterterrorism priorities should be to better detect what the experts call broken travel outside the United States.

We must do a better job and partnership with foreign governments of tracking the foreign travel of suspicious individuals before they return to the United States. When you were asked about this, you were asked if you meant DHS should track individuals under investigation or high-risk watch list individuals, and your response was, I am not necessarily referring just to suspicious individuals.

Later you added, I would like know more from a Homeland Security perspective, where you have gone while you are away. Can you state for this Committee what role you envision for DHS in tracking the travel of U.S. persons, at home or abroad, that are not on a suspicious list or on a high-risk list? What do you mean by that?

Mr. JOHNSON. Well, first of all, I may not have—I probably did not state it as artfully as I could have in the staff interview. I think that there are some real privacy and civil liberties concerns associated with travel and I appreciate that. I do recognize that we have a problem when it comes to suspicious individuals laundering their travel. That is a problem. It is a fact.

I saw it happen on my watch at DOD. I think it is a blind spot. I am not necessarily saying we therefore need to insist that we track the travel of every person who leaves this country. There are real privacy interests associated with that, and I suspect we would have a real uproar if we tried to do that.

But I think this is a blind spot. I think it is a real problem, but getting to a better place, obviously, involves a balance. So I recognize that.

Senator COBURN. All right. You have some significant experience with acquisitions. As a matter of fact, you alluded to Senator Tester you know how the game is played. If you want a certain vendor to get it, you write the RFP so only that vendor can get it. We have problems across the Federal Government because some of our most experienced acquisition specialists have retired or are retiring.

What do you envision trying to install at Homeland Security to, No. 1, improve our acquisition process; No. 2, hold it accountable; and No. 3, also in terms of information technology, which is a problem across all the Federal Government, 50 percent of what we buy we waste. It is two and a half times worse than that in the private sector.

Can you comment at all on what you would envision of firming up our acquisition protocols and our capability, and also holding people responsible for when they flub up?

Mr. JOHNSON. I think it starts with quality personnel. At the Department of Defense, I saw a statistic that suggested that we were losing quality personnel in the acquisition community there, and it was reflected in some of the results we had. So I think quality personnel for starters.

Information technology is a world we are getting into with increasing frequency and we have some issues there across the entire Federal Government. I recognize the importance of an efficient quality acquisition program and quality acquisition community for the benefit of the taxpayer, and so, I know it is something I am going to have to focus on. I have read enough about some of the problems DHS has had over the last 10 years, Senator.

Senator COBURN. Thank you. I am through. I will have a couple of questions for the record.

Chairman CARPER. One of our colleagues who was unable to be with us today is Senator Mary Landrieu of Louisiana, whom I know you have met with.

Mr. JOHNSON. Yes.

Chairman CARPER. She is chairing a hearing on the Small Business Committee at the same time. She had hoped to be able to come and ask some questions and express her support for your nomination.

Two issues that we really have not drilled down on, one of those is cybersecurity, and it is a very important issue. And it is one I am not going to drill down into a great extent today, but I talked to you earlier about Homeland Security as a team sport. I used the term sport loosely, but it is a team effort.

Cybersecurity is as well. It is not just the government, it is not just the Federal Government. It is the private sector. It is State and local as well and for us as individuals. But the Department of Homeland Security does play on that field, as you know, has real responsibilities. We are working with the Administration, working with the private sector to try to charter a path forward.

I think one of the smartest things the Administration did when the President promulgated his Executive Order on cybersecurity almost a year ago now, was to put in charge the National Institute of Standards and Technology (NIST), in charge of the Department of Commerce to actually reach out to the private sector, and especially with those that are dealing with critical infrastructure and say, What are your best ideas? What do you think the best practices are for protecting especially our critical infrastructure?

The private sector has been concerned that the government is just going to come in and tell them what to do and mandate best practices. The private sector, for the most part, is not interested in that. They want to be fully involved as partners, and I think NIST

is doing a very nice job of that outreach. They are working on their framework, as you probably know, and even the U.S. Chamber of Commerce, which earlier proposed last year comprehensive cybersecurity legislation says the Department of Commerce, through NIST, is actually doing a good job.

There are things that the Department of Homeland Security needs to do. Dr. Coburn and I and our staffs have been working literally for months on issues including the Federal Information Security Modernization Act (FISMA), on issues involving the ability of the Department of Homeland Security to track the kind of skilled and talented employees they need in this arena, the kind of investments that we should be making in terms of research and development to better defend ourselves in the cybersecurity space.

And also, just, how do we do a better job of sharing good ideas and making sure that we are prepared should there be an attack on our electric grid, on our utility systems, on our telecommunication systems, financial services systems? How do we better protect those critical infrastructures? The Department of Homeland Security plays in all those arenas.

So, once you have a chance to get confirmed, get your feet wet, Dr. Coburn and I will probably want to spend some time with you, especially to talk about that, and even though we did not today, it is real important, as you know.

The other thing you raised a little bit, and I think in one of your comments, you talked about lone wolves. I worry about al-Qaeda, I worry about their affiliates, we all do. I also worry about the folks that become radicalized, are home-grown right here, and then go off maybe to other countries, or maybe do not, and then they come back here and visit real horrors on our people. That is a tough one. That is a tough one to deal with. And so, that is one of the balls we need to keep our eye on. I am glad you have.

Usually when I conclude a hearing like this, I will ask the witness if they have a closing comment that they might like to make, something that has come to mind. You have been asked questions, you have had a chance to reflect on what we have not asked, and if you would like to just make not a long closing statement, but a relatively short one, I think this might be a good time to do that, and then I will say some words I am supposed to say at the end of a hearing.

And if Dr. Coburn does not have anything else, we will call it a day. But just say any closing thoughts you would like to share with us.

Mr. JOHNSON. Senator, thank you for your time and attention. Working with your staff to get to today has been a real pleasure. All the staff of this Committee have been very professional. I have learned a lot from the courtesy visits I have had with the Members of this Committee and their staffs.

Some people think this process is a formality, it is a burden. I actually believe in this process because, for the benefit of the nominee, you learn the issues that Congress is concerned about, what is on your mind, what your priorities are. Occasionally you are able to extract from the nominee certain pledges, which is probably a good thing. You have my attention.

And if I am confirmed, I pledge to have a very open, transparent relationship with the Chair and the Ranking Member and the other Members of this Committee. I look forward to working with you, and I will dare to predict that after my tenure, the people on this Committee will say that Johnson was somebody that worked well with us and in a bipartisan fashion.

So I hope you will vote to confirm me. Thank you.

Chairman CARPER. Dr. Coburn.

Senator COBURN. I just have two final comments. One of the things I have noticed in my years in Washington is when we get somebody great in a position, as soon as we have an Administration turn over, we lose them. And so, one of the things I would like for you to think about, and your family to think about is, as you get into this role, as I know you will, and you become excellent at it, is the very well consideration of staying there when, in fact, there is another Administration come 2016 so that we do not lose all this tremendous experience and gray hair and have to retrain another leader.

I do not expect you to make a commitment to that, but I want to put that in your mind to think about. When we see quality people in quality positions, it should not matter what party they are in if they are doing an effective job. We ought to take advantage of what they have learned and their leadership.

The second comment I would have for you, I told you I would have an alternative viewpoint for you and I am going to present what I think it should be, your reading, to hear some of our thoughts on what is going on, and it is a countervailing view. Some of it you have probably already read, but I would appreciate it if you would take a look at it, and it is what we have looked at on Homeland Security through the last 6 years.

Mr. JOHNSON. I am happy to——

Senator COBURN. So I have a present for you.

Mr. JOHNSON. Thank you, sir. Thank you very much. On your first point, at this point, that is all them. That is all up to them. Thank you.

Chairman CARPER. I was watching your wife's lips carefully as Dr. Coburn suggested a second tour, and I thought she was saying, don't you dare. I remember when we were having a confirmation hearing for Lisa Jackson at the Environmental Protection Agency a couple of years ago, I said to her—she had children just a little younger than your son and daughter. And I remember I said to her, at the end of the hearing—her husband was with her, too, and their two children.

I said to her, take a good look, Lisa. Take a good look at your children because this is the last time you are going to see them until Christmas. And they kind of blanched and I said—I told her, I was just kidding, but they were not sure. You will see them before Christmas. You will hopefully see them well before Thanksgiving.

But this is, as we know, a demanding job, a really important job. Dr. Coburn leaned over to me early in the hearing and he said, I think he has the potential of being the best Secretary for this Department we have ever had. That is saying a lot, because you fol-

low some very good people. And Tom Coburn does not always say that about the people who appear before us.

After we get you confirmed, I am encouraged that we will be able to—you need to go to work, we need to go to work to get the team around you that you need. And given to deal with stuff like this, to read and all these requests that you have gotten from my colleagues, you are going to need all the help you can get just to keep your word on the pledges and promises that you have made. So there is a lot to do and a lot to do beyond all of that.

Again, if your mom and dad are out there watching this, tell them they done good in raising their kids and we are grateful to them and to you for your family to be here with you today. It is just great to meet all of you. We look forward to working and doing good things for our country for the security of our homeland, but really for security of our people.

The last thing, the people who work at DHS, morale is not good. We are going to work hard to make sure it gets better, and when they do a good job, to make sure they get some credit for that and see if we cannot do a little better job, a better job in consolidating folks. We have people spread out all across the place, in Washington and across the country. We want to try to get some of them on the same campus so they actually can feel more like a team, too.

Mary Landrieu, I mentioned. Mary is not here. She chairs the Appropriations Subcommittee on Homeland Security. She is a huge piece of this and the idea of maybe you and Dr. Coburn, Senator Landrieu, and myself meeting together from time to time just to see how we are doing, see what we can do better, I think that might be of great value to you and the folks you lead in our country.

Mr. Johnson has filed responses to biographical and financial questionnaires, answered prehearing questions submitted by the Committee, and had his financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data which are on file and available for public inspection in the Committee offices.

Without objection, the record will be kept open until noon tomorrow for the submission of any written question or statement for the record. Unless, Dr. Coburn, you have anything?

Senator COBURN. I have a present to give him.

Chairman CARPER. All right. I know it is not Christmas yet, and you will get other presents. Maybe ones that you will welcome even more than this one, but there is probably some good in this one, too.

Dr. Coburn, thank you very much. Mr. Johnson, good luck and God bless. We are adjourned.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

APPENDIX

Opening Statement of Chairman Thomas R. Carper
Nomination of Hon. Jeh C. Johnson to be Secretary
of the Department of Homeland Security
November 13, 2013

As prepared for delivery:

Today, we meet to consider the nomination of Jeh Johnson to serve as Secretary of the Department of Homeland Security (DHS). As we all know, the President has asked Mr. Johnson to take on a difficult and demanding job.

The Department is composed of 22 distinct agencies spread across various locations throughout the country. Although progress has clearly been made in bringing these 22 agencies together, ten years after its creation, DHS still lacks cohesion and a strong sense of team. Employee morale at DHS remains perhaps the lowest among major federal agencies.

Moreover, the nation's fiscal challenges and the effects of sequestration mean that DHS will face even more obstacles that make working towards getting better results with fewer federal dollars even more important.

All-in-all, even on a good day, serving as Secretary of DHS is a really hard job. Fortunately for Mr. Johnson, there are few better places to learn how to manage a complex national security bureaucracy than at the Department of Defense.

Mr. Johnson has been confirmed by the Senate twice before--once as the Air Force's top lawyer and once as the top lawyer for the entire Department of Defense. In part because of his experience in these positions and other demanding roles, Mr. Johnson is prepared to face the challenges that will await him if he is confirmed by the Senate. For four years, he was a major player in running the Defense Department. He provided key advice to two exceptional Defense Secretaries--Bob Gates and Leon Panetta--giving him invaluable experience for the huge task to which he has been nominated.

Mr. Johnson has received high praise from many. Our Committee received a joint letter of recommendation from former DHS Secretaries Ridge, Chertoff and Napolitano that touted Mr. Johnson as an "eminently qualified nominee" and urged the committee to quickly approve his nomination.

Here's what former Defense Secretary Gates, a strong manager himself, said about Mr. Johnson and his time at DOD: "Take my word for it: [Jeh Johnson] has successfully managed an array of major initiatives across the biggest bureaucracy in the government – and, in so doing, won the esteem of virtually everyone with whom he worked."

Former Chairman of the Joint Chiefs of Staff Admiral Mike Mullen has also expressed his deep confidence in the nominee, stating, "Jeh Johnson is as fine a person and professional as I have ever met. I am confident in his choice and that he will succeed in leading this most complex organization at a critical time in our country." In a similar letter, former U.S. Attorney General Michael Mukasey added: "Johnson will bring to DHS not only experience but also a frame of

mind that should be a source of assurance to anyone concerned with the security of this country. He understands both the issues and the stakes, and will make an excellent Secretary."

Mr. Johnson has also received encouraging words of praise from Fran Townsend – the former Homeland Security Advisor to President Bush – as well as from former Secretary of Defense Leon Panetta, Gen. John Allen, the former Commander of US forces in Afghanistan, and a number of law enforcement groups.

Mr. Johnson, of course, will not be alone in this task of leading DHS. It is critically important that Mr. Johnson be allowed to surround himself with a capable leadership team. We can help. Indeed, we need to. Currently at DHS, there are 13 Presidentially-appointed positions that are without a permanent replacement. Of these, nine require Senate confirmation. I call this "Executive Branch Swiss Cheese." As we consider Mr. Johnson's nomination, we must remember that protecting the homeland is a team sport and those of us in the legislative branch are critical members of this important team. Once Mr. Johnson is confirmed, we must do our part to expeditiously vet and – hopefully – confirm his leadership team, as well.

Before I turn to Dr. Coburn for his remarks, let me again offer to Mr. Johnson the same advice publicly that I shared with him when we met in my Senate office recently. Eagerly seek the counsel of former DHS Secretaries Ridge, Chertoff and Napolitano, as well as former Deputy Secretary Lute and GAO Comptroller Gene Dodaro. They want you and the Department to succeed. Ask for their help and don't be shy about asking for their advice again and again. The same should hold true for reaching out to former DOD Secretaries Gates and Panetta. They hold you in very high esteem. They also know what you're up against. Lean on them. Their collective advice will prove invaluable to you as you take on the task that lies ahead of you.

In closing, let me reiterate my strong support of Mr. Johnson's nomination and my appreciation for his willingness to serve the people of this country in this new role. I want to call on my colleagues – both Democrat and Republican – to join me in voting to confirm him as soon as possible. Mr. Johnson, if you are fortunate enough to be confirmed, I look forward to working with you in the coming months and years to better protect our homeland and its people.

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Sen. Coburn's Opening Statement
Nomination of Hon. Jeh C. Johnson to be Secretary, U.S. Department of Homeland Security
November 13, 2013

Thank you, Mr. Chairman. I have a rather lengthy opening statement, and I apologize for that, but I think it's necessary in this case.

Mr. Johnson, welcome.

We've had great visits. Thank you for being here today. And I personally want to thank you for stepping forward to fill this position. I think it is the most difficult position of all the cabinet secretaries. I can't think of one that comes anywhere close to it, because of the difficulties but also because of the responsibilities.

It's clear to me that you are an honorable man from all the people that I've heard from, my encounter my encounter in terms of your intelligence, it's far above mine and most of the members of Congress, which is exactly what we want.

I've appreciated your commitment to being transparent with us and working with our committee to address the fiscal and structural issues that are facing the Department of Homeland Security.

And when you are confirmed -- I'm not going to say, if, I think you're going to be confirmed -- I surely hope we can work together through the upcoming years to fix the Department of Homeland Security before it's broken, and to make our nation much more secure.

Some people may consider the nomination process a series of formalities, but it is important for us to understand one's experience and qualifications.

I'm extremely disturbed by the responses to the questionnaire, because—either the legislative staff or the White House—has cut and pasted identical answers to 23 questions in your response. Identical responses to that of other nominees before this committee.

So they're not you're answers. They're their answers.

And the shoddy work associated with that does not serve the committee well. And I'd like to enter these into the record now to show the duplications and exact words that have been thrown before this committee before.

The whole purpose for the questionnaire is for us to get your thoughts, not a legislative assistant's thought at Homeland Security or somebody at OMB's thoughts, but your thoughts.

So until those are corrected and we actually have Mr. Johnson's response, I will not consider that his questionnaire has been completed.

That doesn't serve Mr. Johnson well. And that's one of the problems at Homeland Security. Sometimes the secretary is not served well by their staff. So I look forward to our hearing today, but I also look forward to seeing those responses.

And there's nothing wrong with an "I don't know," because we can't expect you to know everything now. There's nothing wrong with that.

And that's the kind of footing I want to start out with. We certainly don't know a lot of answers, and we wouldn't or couldn't expect you to know all the answers until you get into it.

You stand to be the fourth secretary of homeland security. The three previous secretaries were highly intelligent and dedicated public servants with significant experience.

If they were here today, I would expect they would be the first to admit they have not adequately fixed all the known challenges that face the Department of Homeland Security.

Through oversight work of both this committee and others, we've identified a series of problems at Homeland Security's programs that I would like to bring to your attention, and ask that you focus on if you're confirmed.

We may not be right in our assessments, but as you and I have spoken privately, it's important for you to get input from all sources. And so I have prepared a binder for you which I will give you today. I don't expect you to read it in the next week or two, but it's a different viewpoint than what you're going to hear inside the organization.

And, I can tell you for us to be successful in Congress in getting Homeland Security what it needs, and the resources it needs, there has to be confidence in Congress on a lot of these problems.

But let me just highlight a few of them.

First: Establish the proper balance between freedom and security.

That's a real issue at Homeland Security. The American people understand that we can't achieve 100 percent security without sacrificing some of their freedoms and Constitutional rights, but our goal and our responsibilities is strike the right balance.

DHS has committed to working in this privacy and civil liberties office, but our oversight work has found that it's often unable to do so. Customs and Border Protection owns 10 cutting edge drones and surveillance equipment for them. Before -- as required by law -- before putting those in the air, they were supposed to do individual civil liberties and have a plan for those.

None of that was done.

It still hasn't been done.

And if it has been done, it has not been communicated back to the committee. So that's a balance between law and responsibility that the Department has failed on.

Second: Evaluate whether DHS's spending on counterterrorism and intelligence programs is making us safer.

We had a terrorist attack in 2001 that led to the creation of the DHS. But after 10 years, it's not clear that DHS' intelligence and counterterrorism initiatives are making us measurably safer.

The preparedness grants, the fusion centers are all areas that have highly questionable effectiveness in terms of preventing further terrorism.

Third: Prove to the American people that the Department of Homeland Security can secure our borders and enforce our nation's immigration laws.

And I understand that one of your priorities if confirmed is to prepare DHS to handle its responsibility -- responsibilities if comprehensive immigration reform were to pass. Frankly, the best way we could do that would be to prove to the American people that DHS is capable of securing the border now and handling the responsibilities that they have now, which they are not.

Over the past 10 years, we've spent $90 billion border security, yet we know that our southern border's not secure. An independent analysis from the Council on Foreign Relations estimated the apprehension rate at the southern border was 40 percent to 55 percent versus DHS's own numbers of 75 percent to 80 percent.

We know that millions of people are living here in violation of our immigration laws, having overstayed their visas, and some of those are in violation of criminal laws, as well. Yet, DHS has done little to address that problem.

In fact, we've heard from frontline personnel that DHS is not actively enforcing our immigration laws, including deporting people who are known to be a risk to public safety right now.

Fourth: The department needs to prove that it can work with the private sector and provide value in addressing key threats, like cyber security, before accepting expecting responsibilities.

I won't go into the details of that now. And I will try to hurry Mr. Chairman.

Fifth: The fifth area is DHS has not managed major acquisition programs effectively. And there're many areas that we've made inquiries on that, and we have yet to get a response.

One of the things that encourages me in our conversations is the commitment that you will be responsible and transparent to us, and yet we have waited months and sometimes years as the committee of jurisdiction to get answers to our questions.

Sixth: The FEMA disaster declaration process needs to be fixed.

One of the areas that we've seen marked improvement is in FEMA, which I congratulate the department on. Another area we've seen marked improvement is the Coast Guard, which I congratulate the department on.

To be clear, being secretary of the Department of Homeland Security is one of the most challenging positions in our government, and I believe you will be confirmed.

My hope is that you will in fact renew your commitment to the committee and to me personally that you will run a transparent shop, being responsive to us and our concerns, not only giving us an opportunity to have education from you on what the facts really are, but also to receive information in turn on what we're seeing in the respective areas across the country.

There's too much at stake for us not to work together to fix the Department of Homeland Security.

As Senator Carper noted, morale is at the lowest level, according to surveys, of any department within the federal government. That's a function of leadership, and I think you have those qualities to instill that, to rebuild this organization and to put it in a place where it needs to be.

The American people are counting on us. But they're going to be counting on you, and there's simply too much at stake for us to fail.

I hope that you will earn this committee's trust; you've earned mine thus far. And look forward to working with you in this very important job.

Statement of Jeh Charles Johnson
before the
U.S. Senate Homeland Security and Governmental Affairs Committee
on His Nomination to Serve as
Secretary of the U.S. Department of Homeland Security
November 13, 2013

Mr. Chairman, Ranking Member Coburn, and Senators of this Committee, thank you for scheduling this hearing to evaluate my nomination.

Senator Menendez and Senator Booker, thank you for taking time out of your schedules to be here for me, and for your generous words.

I'd also like to introduce my family: my wife, Dr. Susan DiMarco, my son Jeh Charles Johnson, Jr., and my daughter Natalie Johnson. As the public officials here know, the burdens of office are made lighter by the support and engagement of your family.

I am honored by the trust and confidence President Obama has placed in me when he nominated me to be Secretary of Homeland Security. I also appreciate the letters of support addressed to the Committee from the law enforcement organizations, retired senior military officers, and former officials of both the Bush and Obama Administrations.

I respectfully submit that I am ready, willing and able to lead the Department of Homeland Security.

I have experience in law enforcement. As a federal prosecutor in New York, I worked with law enforcement officers of the Secret Service, what was then called the Immigration and Naturalization Service, the FBI, the DEA, and other federal, state, and local law enforcement agencies.

I have experience as a key member of the management team of a large and complex government agency. For 27 months, I was part of the senior management team of the Department of the Air Force. For four years, I was part of the senior management team of the Department of Defense. During that time, I sat at the right hand of, learned from, and supported two outstanding Secretaries of Defense, Robert Gates and Leon Panetta.

At the same time, as the senior lawyer in the Department of Defense, I led a legal community of over 10,000 civilian and military lawyers.

During the four years of President Obama's first term, I was at the center of the development and execution of many of this Administration's counterterrorism policies.

Last year I worked closely with Secretary Panetta, as he coordinated the Department of Defense's contributions to the response to Hurricane Sandy.

The missions of DHS are to:

(1) prevent terrorism and enhance security;
(2) secure and manage our borders;
(3) enforce and administer our immigration laws;
(4) safeguard and secure cyberspace; and
(5) ensure resilience to disasters.

If confirmed, I will vigorously pursue all of these missions -- they represent the most basic and important services a government can provide for its people.

If confirmed, I will work to reinforce, among all the men and women of the Department, the common, unifying mission that binds them together –homeland security.

If confirmed, I pledge to be a champion for every man and woman of the Department of Homeland Security, and their families. I will mourn the death of any man or woman in the Department, including those killed in the line of duty, like TSA Officer Hernandez on November 1.

Those at the Department of Defense know that I worked hard to earn the respect of all the men and women in uniform, from the Chairman of the Joint Chiefs of Staff and our four-star combatant commanders, to the more junior officers and enlisted personnel who risked their lives in special operations. My family and I spent Thanksgiving 2010 at a military hospital in Landstuhl, Germany. I spent Thanksgiving 2012 with the troops at a remote command outpost in Afghanistan, in the mountains near Pakistan. I was honored when an elite team of Navy Seals attended my farewell at the Pentagon.

If confirmed, I will devote time and attention to the management issues that I know DHS faces. As this Committee knows, there are leadership vacancies within DHS of alarming proportions. As I speak, the department of government charged with the vital mission of homeland security has no Secretary, no Deputy Secretary, and a number of other senior positions are vacant. If confirmed as Secretary, my immediate priority, starting the day I take the oath, will be to work with the White House and the Senate to fill the remainder of these key leadership positions.

The other management challenges faced by DHS are also well known to this Committee. If confirmed, I intend to continue the progress toward unqualified, audited financial statements. I will work to get DHS off the GAO "High Risk" list. I will be a hawk when it comes to identifying fraud, waste and abuse in the use of taxpayer dollars.

If confirmed, I pledge not to shrink from difficult or controversial decisions. Those at the Pentagon and in the field know my track record in this regard – ranging from politically-charged matters of personnel policy to the legality of lethal force.

If confirmed, I will work to implement all legislation enacted into law. Like President Obama, many in Congress, the business community and most of the American public, I support comprehensive, common-sense immigration reform. If reform is enacted into law, I will work to prepare DHS to administer the changes in law and ensure that DHS has the staff, resources and capability to do so.

If confirmed, I intend to be transparent with the American people about our efforts on their behalf. While the senior lawyer for the Department of Defense I made the extra effort to publicly explain and defend U.S. national security policies, including in speeches at the Heritage Foundation in October 2011 and the Oxford Union in November 2012. I supported the declassification of the military's counterterrorism efforts in Yemen and Somalia, in the War Powers report submitted by the President to Congress in June 2012.

And, if confirmed, I pledge transparency and candor with Congress. Those of you from the Armed Services Committee know that these are not just words for me. Here again, I have a track record. From Secretaries Gates and Panetta, I learned that a little bipartisan candor goes a long way, and promotes good will among all of us who came to Washington for the common purpose of serving the Nation.

I have tremendous respect for the United States Senate and its prerogatives. Thirty-five years ago I worked in this very building as a summer intern for Senator Daniel Patrick Moynihan. I was an impressionable 20-year-old college student then. All summer, I sat in a back office with the Senator's press secretary, Tim Russert, clipping press, literally, running errands, and researching legislation. The experience was exciting and formative, and it did much to inspire my public service.

There is another thing that motivates me to leave private life one more time to accept this particular assignment.

In my family photo album is a childhood picture of me and my sister standing next to my Dad's red 1966 Buick convertible in what was then the public parking lot in front of the U.S. Capitol. The most striking thing about the photo is that our car is parked just a few feet away from the steps to the eastern front of the Capitol building. I look at the photo today and realize that it captures a period in our history that is probably lost in my lifetime, and perhaps forever.

September 11 and other terrorist attacks here changed all that. As I said in the Rose Garden on October 18, I am a New Yorker and September 11 happens to be my birthday. I was present in Manhattan then and was an eyewitness to the events of that day. I know the shock and the potential for death and destruction that a breach of our homeland security can cause. I also recall the sinking feeling of guilt and uselessness that I personally felt, in the face of that tragedy, because I had left public service at the Pentagon just eight months before.

September 11 changed millions of us, it changed me, and it motivates me to answer this call to lead the men and women of the Department of Homeland Security.

I look forward to your questions. Thank you.

REDACTED

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	Date of Nomination
Secretary of Homeland Security	October 28, 2013

Current Legal Name			
First Name	Middle Name	Last Name	Suffix
Jeh	Charles	Johnson	

Addresses					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: Paul, Weiss, Rifkind, Wharton & Garrison, LLP 2001 K Street NW		
City: Washington	State: DC	Zip: 20007	City: Washington	State: DC	Zip: 20006

Other Names Used						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)

Birth Year and Place	
Year of Birth (Do not include month and day.)	**Place of Birth**
1957	New York, NY

Marital Status					
Check All That Describe Your Current Situation:					
Never Married	**Married**	**Separated**	**Annulled**	**Divorced**	**Widowed**
☐	X	☐	☐	☐	☐

Spouse's Name (current spouse only)			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Susan	Maureen	DiMarco	

Spouse's Other Names Used (current spouse only)						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)

Children's Names (if over 18)			
First Name	Middle Name	Last Name	Suffix
Jeh	Charles	Johnson	Jr.

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Morehouse College	College	August 1975	May 1979	B.A.	May 1979
Columbia Law School	University	August 1979	May 1982	J.D.	May 1982

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
Non-Government Employment	Paul, Weiss, Rifkind, Wharton & Garrison, LLP	Partner	Washington, DC	Jan 2013	present
Other Federal Employment	Department of Defense	General Counsel	Washington, DC	Feb 2009	Dec 2012
Non-Government Employment	Paul, Weiss, Rifkind, Wharton & Garrison, LLP	Partner	NY, NY	Jan 2001	Feb 2009
Other Federal Employment	Department of the Air Force	General Counsel	Washington, DC	Oct 1998	Jan 2001
Non-Government Employment	Paul, Weiss, Rifkind, Wharton & Garrison, LLP	Associate then Partner	NY, NY	Jan 1992	Oct 1998
Non-Government Employment	Columbia University Law School	Adjunct Lecturer in Trial Practice	NY, NY	Jan 1995	May 1997
Other Federal Employment	Department of Justice	Assistant U.S. Attorney	NY, NY	Jan 1989	Dec 1991
Non-Government Employment	Paul, Weiss, Rifkind, Wharton & Garrison, LLP	Associate	NY, NY	Nov 1984	Dec 1988
Non-Government Employment	Sullivan & Cromwell	Associate	NY, NY	Sept 1982	Oct 1984
Non-Government Employment	NAACP Legal Defense & Education Fund, Inc.	Summer intern	NY, NY	May 1981	Aug 1981
Other Federal Employment	Congressman Hamilton Fish, Jr.	Summer intern	Poughkeepsie, NY	June 1980	Aug 1980

Unemployed			Wappingers Falls, NY	May 1979	Aug 1979
Other Federal Employment	Senator Daniel P. Moynihan	Summer intern	Washington, DC	May 1978	Aug 1978
Other Federal Employment	Congressman Hamilton Fish, Jr.	Summer intern	Washington, DC	July 1977	July 1977
Non-Government Employment	Sears & Roebuck	Salesman	Wappingers Falls, NY	May 1977	June 1977
Non-Government Employment	Sears & Roebuck	Toy salesman	Wappingers Falls, NY	June 1976	Aug 1976

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
CIA	Advisory Group to the CIA General Counsel	May 2013	Present
2008 Presidential Transition Team	Team Responsible for DoD	November 2008	December 2008

4. Potential Conflict of Interest

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

None.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

To the best of my recollection:

Honorary Doctorate of Laws from Fisk University (May 2013)
Honorary Doctor of Laws from Bloomfield College (May 2012)
Blue Wave NJ National Public Service Award (April 2013)
Lotus Club Award of Distinction (Jan 2013)
Columbia Law School Assn. of Washington, DC Distinguished Alumni Award (2012)
Department of Defense Medal for Distinguished Public Service (Dec 2012)
Department of the Navy Distinguished Public Service Award (Dec 2012)
Columbia Law School Medal for Excellence (Feb 2012)
Department of Defense Medal for Distinguished Public Service (June 2011)
Lawrence A. Wien Prize for Social Responsibility (Nov 2009)
Practicing Attorneys Law Students Program Service Award (Nov 2009)
Milton S. Gould Award for Outstanding Public Advocacy (Oct 2007)
Columbia Black Law Students Association Distinguished Alumnus Award (April 2005)
Benjamin E. Mays Service Award, Morehouse College (Feb 2003)
Department of Defense Decoration for Exceptional Civilian Service (Jan 2001)
Alpha Pi Alpha, Alpha Upsilon Lamba Chapter Distinguished Leader Award (Jan 2000)
Robert H. Brisbane Award in Political Science, Morehouse College) (1979)

6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of $1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate.)	Position(s) Held
Sigma Pi Phi Fraternity	1996 to present	Archon
Bradford Swim & Tennis Club, Cedar Grove, NJ	2003-2009	Member
Morehouse College Alumni Association	1979 to present	Member
Nisi Prius, New York, NY	2004 to present	Member
American College of Trial Lawyers	2004 to present	Fellow
Rockefeller Center Club, New York, NY	2001-2009	Member
Council on Foreign Relations, New York, NY	2001 to present	Member
Federal Bar Council, White Plains, NY	1983 (approx.) to present	Member
New York City Bar Association	1982 (approx.) to present	Member
New York State Bar Association	1982 (approx.) to present	Member
American Bar Association	1982 (approx.) to present	Member

DC Bar	1999 to present	Member
American Law Institute, Philadelphia, PA	2001 to present	Member
New York State Bar Foundation	2006-2009	Fellow
ABA Standing Committee on the Federal Judiciary	2013- to present	Member
Franklin & Eleanor Roosevelt Institute	2005-2009	Member, Board of Governors
Fund for Modern Courts,	2005-2009	Director
National Institute of Military Justice	2005-2009	Board of Advisors
New York Community Trust and	2002-2005	Trustee
Adelphi University	2001-2005	Trustee
Delta Research & Education Fund	2007-2009	Trustee

7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
Delegate, Democratic National Convention	Elected	2008	

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
Obama for America	National Finance Committee, Advisor, Lawyer, Delegate, Volunteer	Fundraising, advisor, lawyer, delegate, surrogate TV and appearances, canvassing	2007-2008
John Kerry for President, Inc.	Volunteer, Lawyer	Volunteer, lawyer, surrogate TV and appearances, fundraising	2003-2004

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

None.

Name of Recipient	Amount	Year of Contribution

8. Publications and Speeches

I have done my best to identify titles, publishers and dates of books, articles, reports or other published materials and formal or relevant speeches, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

Title	Publisher	Date(s) of Publication
Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell"	Department of Defense	November 30, 2010
"Mock Juries, Why Use Them?"	Litigation Magazine	January 2009 (est.)

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

Title/Topic	Place/Audience	Date(s) of Speech
Fisk University Commencement address: "Faith and Future"	Nashville, TN	May 6, 2013
Keynote address at the Center on National Security, Fordham Law School "Drone Court"	New York, NY	March 18, 2013
Keynote address at Harvard Law School BLSA Conference: "Their Cause is Our Cause"	Cambridge, MA	March 2, 2013
"The Conflict Against al Qaeda and its Affiliates: How Will it End?"	The Oxford Union, England	November 30, 2012

LGBT Pride Month Event Keynote Event: "A Remarkable Story"	The Pentagon	June 26, 2012
Acceptance of Honorary Degree	Bloomfield College	May 24, 2012
Dean's Lecture, Yale Law School	New Haven, CT	February 22, 2012
Acceptance Speech, Medal of Excellence Award Luncheon	New York, NY	February 3, 2012
Prepared testimony on the subject of the proposed "National Guard Empowerment and State-National Defense Integration Act of 2011"	Senate Armed Services Committee	November 10, 2011
Speech on national security law	Heritage Foundation, Washington, DC	October 18, 2011
Prepared statement of William J. Lynn, Deputy Secretary of Defense, and Jeh Charles Johnson, General Counsel of the Department of Defense on the subject of U.S. detention policy	House Armed Services Committee	March 17, 2011
Keynote remarks at the Martin Luther King, Jr. Observance Day	The Pentagon	January 13, 2011
Prepared testimony on "Don't Ask, Don't Tell"	Senate Armed Services Committee	December 2, 2010
Statement at press availability on the Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell"	The Pentagon	November 30, 2010
"Evolutions in Law, and the Consistent Application of Law to Meet Evolving Threats"	Naval Academy	November 17, 2010
"Evolutions in Law, and the Consistent Application of Law to Meet Evolving Threats"	West Point	November 1, 2010

Accompanying witness without prepared testimony for hearing entitled "Don't Ask Don't Tell"	House Armed Services Committee	March 3, 2010
"Answering the Call"	Speech to freshman class at Morehouse College, Atlanta, GA	October 22, 2009
Speech on national security law	ABA Committee on Law and National Security, Washington, DC	September 10, 2009
Luncheon speaker at the Public Contract Law Section of the ABA	ABA Convention, Chicago, IL	August 1, 2009
Prepared Testimony "Proposals on Reform to the Military Commission System"	House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties	July 30, 2009
Prosecuting Terrorists: Civilian and Military Trials for GTMO and Beyond	Senate Judiciary Subcommittee on Terrorism and Homeland Security	July 28, 2009
Prepared Testimony "Reforming the Military Commissions Act of 2006 and Detainee Policy"	House Armed Services Committee	July 24, 2009
Paul Weiss Diversity Event	New York, NY	July 22, 2009
Prepared testimony on military commissions reform	Senate Armed Services Committee	July 8, 2009
High school commencement address	Roy C. Ketcham High School, Wappingers Falls, NY	June 27, 2009
Air Force JAG "Dinning Out"	Washington, DC	April 3, 2009
Keynote address at a national security law conference	Georgetown Law School	March 19, 2009
Testimony in connection with nomination to be General Counsel of the Department of Defense	Senate Armed Services Committee	January 15, 2009
Opening Remarks John Gardner Lifetime Achievement Award	New York, NY	December 2, 2008

Remarks at Air Force JAG Keystone Conference	Atlanta, GA	October 25, 2007
Remarks at a reception honoring Mark Alcott, incoming president of the New York State Bar Association	New York State Supreme Court, New York, NY	June 1, 2006
Martin Luther King, Jr. Day address	Chubb Insurance headquarters, Warren, NJ	January 13, 2006
Speech to the 11th Annual Paul Robeson Dinner	Columbia University, New York, NY	April 1, 2005
Testimony on behalf of Robert S. Smith, nominee to the New York State Court of Appeals	New York State Senate, Albany, NY	January 12, 2004

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

Title	Place/Audience	Date(s) of Speech
Nomination acceptance speech for DHS Secretary	The White House	October 18, 2013
Legal Reflections on the Past, Present, and Future of National Security	The Carnegie Council	May 23, 2013
On Being a National Security Lawyer	Harvard University	April 5, 2013
Address by Defense Department General Counsel Jeh Johnson	NY Bar Association	February 24, 2011

9. Criminal History

Since (and including) your 18th birthday, has any of the following happened?

Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than $300 and did not include alcohol or drugs.)

Yes.

Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?

No.

Have you been charged, convicted, or sentenced of a crime in any court?

No.

Have you been or are you currently on probation or parole?

No.

Are you currently on trial or awaiting a trial on criminal charges?

No.

To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

No.

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

A) Date of offense: July 2008

   a. Is this an estimate (Yes/No): Yes.

B) Description of the specific nature of the offense:

I received a speeding ticket on Route 3 in Clifton, NJ. My recollection is that the fine was over $300.

C) Did the offense involve any of the following?
   1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: No.
   2) Firearms or explosives: No.
   3) Alcohol or drugs: No.

D) Location where the offense occurred (city, county, state, zip code, country):

   Clifton, New Jersey, Hunterdon County, 08809, USA

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes.

   1) Name of the law enforcement agency that arrested/cited/summoned you: Clifton, NJ Police Department.

   2) Location of the law enforcement agency (city, county, state, zip code, country): Clifton, New Jersey, Hunterdon County, 08809, USA

F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: No, I paid the fine.

   1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):

   2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:

   3) If no, provide explanation: I paid the fine.

G) Were you sentenced as a result of this offense: No.

H) Provide a description of the sentence: N/A

I) Were you sentenced to imprisonment for a term exceeding one year: No.

J) Were you incarcerated as a result of that sentence for not less than one year: No.

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated: N/A

L) If conviction resulted in probation or parole, provide the dates of probation or parole: N/A

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: No.

N) Provide explanation: N/A

10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

None.

Date Claim/Suit Was Filed or Legislative Proceedings Began	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

Date Claim/Suit Was Filed	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding
April 8, 1991	Texas state court	Danny Nugent vs myself and various other federal officials in our official capacities	Civil lawsuit	The matter was subsequently dismissed 1992 (est.)

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. The lawsuit was a frivolous pro se action against me (as the AUSA prosecuting Mr. Nugent), the trial judge, the U.S. Supreme Court, the Congress and numerous others.

11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

Name of Agency/Association/ Committee/Group	Date Citation/Disciplinary Action/Complaint Issued/Initiated	Describe Citation/Disciplinary Action/Complaint	Results of Disciplinary Action/Complaint
FBI and DOJ Office of Professional Responsibility	1992 (approx.)	Complaint that, while a prosecutor, the government witnesses we utilized had all conspired to lie about the defendant, in *United States* v *Occhipinti* (S.D.N.Y.) No. 91-cr-0168	Allegations determined to be unfounded
Departmental Disciplinary Committee of the NY State Supreme Court, First Department	Nov 10, 1993	Complaint that I "harassed" an adversary in a civil dispute by sending her a threatening, overly aggressive letter (No. 93-2941).	Committee determined to take no action on March 28, 1994
Departmental Disciplinary Committee of the NY State Supreme Court, First Department	March 1996	A woman named Laura Goldman, who was blackmailing a client of my firm filed a complaint against me and my partner Arthur Liman alleging a variety of things stemming from our representation of the client (Nos. 96-460, 96-461).	The complaints were dismissed, and Ms. Goldman was subsequently prosecuted and convicted of extorting and threatening to kill the client.

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by

mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No.

12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

REDACTED

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

In 2007, I briefly registered as a lobbyist with the New York City government on behalf of a law client. Upon further research, I determined that it was not necessary for me to register, and I promptly de-registered.

14. Outside Positions

☐ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Name of Organization	Address of Organization	Type of Organization (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	Position Held	Position Held From (month/year)	Position Held To (month/year)

15. Agreements or Arrangements

☐ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)

16. Additional Financial Data

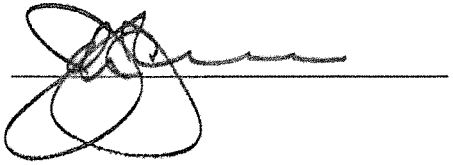
All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 1st day of November, 2013

Edith L. B. Parker
Notary Public, District of Columbia
My Commission Expires 5-14-2015

This 1st **day of November 2013**

United States
Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

NOV - 5 2013

The Honorable Thomas R. Carper
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Jeh C. Johnson, who has been nominated by President Obama for the position of Secretary of the Department of Homeland Security.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Walter M. Shaub, Jr.
Director

Enclosures **REDACTED**

October 29, 2013

Joseph Maher
Designated Agency Ethics Official
Department of Homeland Security
Washington, D.C. 20528-0485

Dear Mr. Maher,

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Secretary, Department of Homeland Security.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter that has a direct and predictable effect on my financial interests or those of any person whose interests are imputed to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b) (1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b) (2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

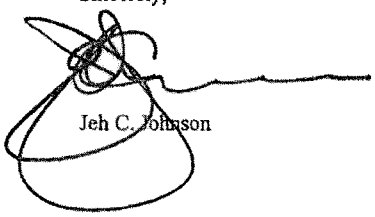
Upon confirmation, I will withdraw from my position as a partner with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, LLP. For a period of one year after my withdrawal, I will not participate personally and substantially in any particular matter involving specific parties in which the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). I will not participate personally and substantially in any particular matter involving specific parties in which a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

In addition, I will continue to participate in the Paul, Weiss, Rifkind, Wharton & Garrison, LLP defined benefit pension plan. I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Paul, Weiss, Rifkind, Wharton & Garrison, LLP., to provide this contractual benefit, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. §552, on the website of the U.S. Office of Government Ethics with other ethics agreements of Presidential nominees who file public financial disclosure reports.

Finally, I understand that as an appointee I am required to sign the Ethics Pledge (Exec. Order No. 13490) and that I will be bound by the requirements and restrictions therein in addition to the commitments that I have made in this and any other ethics agreement.

Sincerely,



Jeh C. Johnson

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the Nomination of
Jeh Johnson to be
Secretary of the Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. **Why do you believe the President nominated you to serve as Secretary?**

   I believe President Obama nominated me to serve as Secretary of Homeland Security because I agree with him that our government's "most solemn responsibility is the safety and security of the American people." I also believe the President nominated me because of my track record in national security (as General Counsel of the Department of Defense and General Counsel of the Department of the Air Force) and in law enforcement (as a federal prosecutor). The President knows that while I was part of the senior leadership team at the Defense Department, I had the opportunity to observe and assist Secretaries Gates and Panetta lead that very large bureaucracy, and he knows that while there I earned the trust and respect of our men and women in uniform ranging from the Joint Chiefs of Staff, our combatant commanders, to more junior officers and enlisted personnel in special operations. Finally, the President knows he can count on me, if I am confirmed, for honest, unencumbered advice, strong leadership, and a forthcoming working relationship with those on both sides of the aisle in Congress.

2. **Were any conditions, express or implied, attached to your nomination? If so, please explain.**

   No.

3. **Have you made any commitments with respect to the policies and principles you will attempt to implement as Secretary? If so, what are they and to whom have the commitments been made?**

   No.

4. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.**

   In the event of potential conflicts of interest, I would consult the Department of Homeland Security's Designated Agency Ethics Official (DAEO). Any conflicts of interest would be resolved in accordance with the terms of an ethics agreement that I have entered into with the DAEO and that has been provided to this Committee by the Office of Government Ethics.

II. Background of Nominee

5. What specific background and experience affirmatively qualifies you to be Secretary?

I have had considerable experience in national security and in law enforcement. I was an Assistant United States Attorney in the Southern District of New York (1989-1991), General Counsel of the Air Force (1998-2001), and General Counsel of the Department of Defense (2009-2012).

Most recently, for the four years I was General Counsel of DoD. I was part of the inner circle of the senior management of DoD, the largest and most complex agency in our government. During that time, I worked closely with two Secretaries of Defense, Robert Gates and Leon Panetta. I observed their management style and helped them execute it. As the lawyer for DoD, I was one of the few people required to sign off on almost all of the action items that flowed to the Secretary for approval – whether it was a condolence letter, a change in personnel policy, a troop deployment, or a sensitive military operation. I sat in on and participated in almost every discussion of consequence. Both Secretaries Gates and Panetta looked to me for my views on matters that were not squarely in the legal lane, and often depended upon me to take the lead on implementing many of their decisions.

At the same time, as the senior lawyer in the Department of Defense, I was the leader of a legal community of over 10,000 civilian and military lawyers.

I also worked hard to earn the respect of all the men and women in uniform, from the Chairman of the Joint Chiefs and our four-star combatant commanders, to the more junior officers and enlisted personnel who risked their lives in special operations. I spent last Thanksgiving with the troops at a remote command outpost in Afghanistan, in the mountains near Pakistan. In 2010, my family and I spent Thanksgiving at the military hospital in Germany.

At DoD, I did not shrink from difficult or controversial decisions.

Finally, as a New Yorker present in Manhattan on September 11, 2001, I am motivated to accept responsibility of our homeland security. I agree with the President that our government's "most solemn responsibility is the safety and security of the American people."

6. How would you describe your leadership and management style? What past experiences do you believe best demonstrate your approach and style in personnel management?

I delegate where I believe I can. I try to give competent subordinates the space and motivation to do their jobs, and believe strongly in saying "thank you" for a public service job well done, and building morale. At the same time, I am very hands on with regard to difficult decisions and matters of great concern to the President, Congress, and the public. I believe knowledge is power, and in being well prepared for meetings in the White House Situation Room and elsewhere.

While General Counsel of DoD, I made an extra effort to earn the trust and support of men and women in uniform, and would do the same with respect to all personnel within DHS. At DoD, I spent considerable time in the field learning how military operations were executed, and the risks and the training that went into them. Ultimately, I believe the military respected the legal judgments I made on operations, including those where the answer was "no."

I had a good working relationship with Congress and staff, and would want the same at DHS. At DoD, I was responsive to the questions from the Hill and made sure Members and staff understood the manner in which I construed the legal authorities provided.

Finally, I made the extra effort to publicly explain and defend the legal architecture for U.S. national security policies, including in speeches at the Heritage Foundation in October 2011, Yale Law School in February 2012, and the Oxford Union in November 2012.

7. **If confirmed, what experiences and lessons learned from your time in private practice and government will you bring to the position of Secretary?**

As a lawyer in private practice, I have learned the ability to master a very complex subject quickly, and understand it as well as my clients and subordinates. As a lawyer in both private practice and in government, I also believe I have developed a strong sense of right and wrong. As General Counsel of the Department of Defense, I was the legal advisor to two Secretaries of Defense, Robert Gates and Leon Panetta. I observed their management style and helped them execute it. I sat in on and participated in almost every discussion of consequence. Both Secretaries Gates and Panetta looked to me for my views on matters that were not squarely in the legal lane, and often depended upon me to take the lead on implementing many of their decisions.

From the perspective of both private practice and public service, I learned to appreciate the sacrifices of those in public service, and have always been grateful for those sacrifices.

8. **Please describe your experiences in management. What is the largest number of people that have worked for you? How have your past experiences prepared you to manage an approximately 240,000 person Department?**

As General Counsel of the Department of the Air Force, I was responsible for the legal work of about 3,000 lawyers. My immediate staff was about 60-70 lawyers. As General Counsel of the Department of Defense, I was responsible for the legal work of over 10,000 lawyers. My immediate staff was about 200 lawyers. As General Counsel of DoD, I was also part of the Secretary's inner circle that helped him manage the Department of Defense. I met with him almost daily for this purpose. I was one of the few people required to sign off on almost all of the action items that flowed to the Secretary for approval. Like the Secretary, every component of DoD was within my area of responsibility. I sat in on and participated in almost every discussion of consequence. Both Secretaries Gates and Panetta looked to me for my views on matters that were not squarely in the legal lane, and often depended upon me to take the lead on implementing many of their decisions.

9. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

My professional obligations as a lawyer preclude me from disclosing specific, private legal advice I provided. Over the course of my career I have not hesitated to advocate my views, including to superiors and clients who, at times, have disagreed. Sometimes I have succeeded in persuading them, at other times, I have not.

10. Please list and describe examples of when you made politically difficult choices that you think were in the best interest of the country.

1. The report and findings General Ham and I made concerning the risks of repeal of Don't Ask, Don't Tell on overall military effectiveness, which were made public in November 2010.

2. Legal guidance to military chaplains on the issue of gay marriage in 2011, advice which I believe was compelled by the First Amendment.

3. Urging the reform of the military commissions system at Guantanamo Bay in 2009; many believed the system should have been discarded entirely.

4. My speech at the Oxford Union in England in November 2012: "The conflict against al Qaeda and its affiliates, how will it end?

III. Role of the Secretary

11. A number of the Presidential Policy Directives (PPDs) and Homeland Security Presidential Directives (HSPDs) issued by President Obama and President Bush implement or elaborate on the responsibilities given the Secretary of Homeland Security under the Homeland Security Act of 2002.

a. Have you reviewed the existing PPDs and HSPDs?

Yes, I have reviewed a number of them and am generally familiar with their contents. In addition to this preliminary review, if confirmed, I will undertake a more in-depth review of these Directives.

b. Are the roles and responsibilities of the Secretary of Homeland Security described by these PPDs and HSPDs consistent with your view of the appropriate role of the Secretary of Homeland Security?

As noted, my familiarity with these directives at this point is still quite general. However, if confirmed, I will review these critical documents with the Department's interagency partners to determine whether the existing PPDs and HSPDs accurately and appropriately delineate the role of the Secretary in the overall homeland security enterprise. My primary goal in this review will be to ensure that these Directives provide

the Secretary with adequate authority and resources to satisfy the broad statutory mission of the Department and to work effectively with the Department's many federal, state, local, tribal, and private sector partners in protecting the homeland.

c. **What, if any, PPDs or HSPDs, if any, would you recommend be modified or rescinded?**

My knowledge of the PPDs and HSPDs is not at this point extensive enough to offer an informed answer to this question. If confirmed, I intend to review these Directives in greater detail. My recommendations for modifications or other changes to existing PPDs or HSPDs will come after I complete this review. I welcome the Committee's views on this subject as well.

d. **What additional topics do you believe it would be useful for PPDs to address?**

That is another question I intend to address when, if confirmed, I review all existing Directives in greater detail and in conjunction with the Department's interagency partners. I welcome the Committee's views on this subject as well.

12. **In many areas, the responsibilities of the Department of Homeland Security (DHS or the Department) intersect with those of other cabinet departments. For example, work on biodefense and threats to public health may have to be coordinated with the Department of Health and Human Services; intelligence analysis may have to be coordinated with other members of the intelligence community; critical infrastructure protection involves working with other agencies that may be leads for particular infrastructure sectors; disaster response often requires calling on the assets of a range of other agencies; agrosecurity involves coordination with the Department of Agriculture; matters implicating issues of national defense and law enforcement, respectively, may require the involvement of the Departments of Defense and Justice; and the efforts of the Department's Domestic Nuclear Detection Office to prevent a nuclear terrorist attack involves the coordination of the work of several federal agencies. How do you view the role of DHS vis-à-vis other cabinet departments?**

I agree with the assessment in the question. The Secretary of DHS must be prepared to work extensively in the interagency with others that share aspects of DHS's mission and where DHS supports implementation of the missions of other departments. In four years as General Counsel of DoD, I have had extensive experience with interagency consultation and collaboration. DHS coordinates the protection, prevention, mitigation, and recovery from a wide range of threats, including natural disasters and cyber incidents in both the .com and .gov worlds. FEMA has the lead role to coordinate the federal government's response to disasters. DHS is also the lead coordinating U.S. government agency in a number of contexts involving threats to the homeland. I am prepared to provide leadership in that regard.

13. **What are the highest priority items you intend to focus on if confirmed as Secretary of Homeland Security? What do you hope to accomplish during your tenure as Secretary?**

First, there is a leadership vacuum within DHS of alarming proportions. DHS has no Secretary, no Deputy Secretary, and vacancies in a number of other senior-level positions. If confirmed as Secretary, my immediate priority will be to be push to fill the remainder of these key leadership positions.

Second, there are other management challenges faced by DHS well known to this Committee. Morale is low in many parts of the Department. If confirmed, I will push to continue the progress toward resolving the issues cited by GAO in its February 2013 "High Risk Series" report. I will work toward a more mature and effective procurement process, identify inefficiencies in headquarters functions, better integrate the 13 different accounting systems, and continue to work toward unqualified audited financial statements. I realize that, if confirmed, I must devote time and energy to these matters, by drawing upon best practices at other agencies, and, in some cases, from the private sector.

Third, the counterterrorism mission: I believe we have crossed into a new phase in the terrorists threats we face. We found bin Laden, we have degraded al Qaeda's core, but in my time at DoD we saw the rise of al Qaeda affiliates who attempted on numerous occasions to export terrorism to the homeland. The terrorist threat against the United States has become even more diffuse and harder to detect; it is not limited to those who follow conventional al Qaeda chains of command, or train at overseas al Qaeda camps, like the underwear bomber from Christmas Day 2009. We see more cases of self-radicalization. If confirmed, I will remain vigilant in detecting terrorist threats against the homeland. For example, I believe that one of DHS's many counterterrorism priorities should be to better detect what the experts call "broken travel" outside the United States. We must do a better job, in partnership with foreign governments, of tracking the foreign travel of suspicious individuals before they return to the United States.

Fourth, border security: I welcome the doubling of the number of border patrol agents from 10,000 to 20,000 since 2004 and the deployment of proven, effective technology tailored to the operational needs of its agents on the ground. There has been a decline in the number of border arrests, from a high of about 1.6 million in 2000 to 365,000 in 2012. I am advised that the decline is due to three things: (i) our increased border presence, (ii) the decline of job opportunities in the United States, and (iii) the improving economy in Mexico. As the U.S. economy improves, we need to continue to improve border security. I will work to continue to secure the land and maritime borders, strengthen and improve infrastructure at ports of entry, and expand smart enforcement efforts in partnership with border communities and law enforcement.

I am pleased to see that the Border Security, Economic Opportunity, and Immigration Modernization Act included similar provisions that would help us accomplish these efforts. These provisions will allow us to sustain and build on our progress and ensure a border region that is safe and thriving.

Fifth, safeguarding and securing cyberspace: From my experience as General Counsel of the Department of Defense, I am acquainted with the cyber threats to our Nation, and our own government's cyber capabilities to respond. The cybersecurity threat is real. DHS coordinates the protection, prevention, mitigation, and recovery from cyber incidents in both

the .com and .gov worlds. If confirmed, I pledge to be a visible leader in this effort.

Sixth, I am familiar with FEMA's role as coordinator of the U.S. response to disasters. I understand the importance to the American public of a government that can respond quickly and effectively to their urgent needs in times of a disaster. Under the leadership of Administrator Craig Fugate, I believe FEMA has come a long way from the days of Katrina in its ability to coordinate the government's response to natural disasters. If confirmed, a priority for me will be to continue this progress.

Seventh, I support common-sense immigration reform. I believe that common-sense reform must be comprehensive and include provisions that allow the federal government to continue efforts to strengthen our border security, crack down on employers who hire undocumented workers, and modernize the immigration system itself. I also believe that, as part of reform, undocumented immigrants should have a clear path to earned citizenship in this country. If comprehensive reform is enacted, and if I am confirmed, a priority for me will be the implementation of that reform. I will work to prepare DHS to administer the changes to the law and ensure that DHS has the staff, resources, and capability in place to successfully implement immigration reform. I will support continuing efforts to strengthen and focus interior enforcement and improve the legal immigration system so that it serves individuals, workers, business, families, and others within the confines of the law. These are important goals of the agency that should continue irrespective of the enactment of legislative reform. I will also work to improve the immigration system generally.

14. **If confirmed, how will you work towards aiding the President in nominating qualified individuals for the Senate-confirmed vacancies at the Department, the majority of which fall within the jurisdiction of this Committee?**

    If confirmed, this will be a top priority, as noted above. I will work to identify qualified individuals, not just from within DHS, but from the private sector and in other agencies of government. Many people in the private sector have approached me about going into public service. I believe there are many good people who want to serve the country. We just need to identify and recruit them.

15. **One of the challenges facing the DHS Secretary is balancing the competing interests and priorities of the Department's components. How will you work to ensure areas of overlapping responsibility do not result in inter-agency jurisdictional turf wars?**

    Each of the components have a piece of the homeland security mission. While the components must continue to implement their statutory requirements, I will look across the department to maximize coordination in overlapping areas and adjudicate conflicts between components as they arise.

16. **What lessons learned during your tenure as General Counsel at the Department of Defense can help you establish or maintain and manage effective working relationships with all DHS components and with other agencies?**

As General Counsel of DoD, I had the opportunity to be part of a management team that supported two great Secretaries of Defense, Robert Gates and Leon Panetta. I watched the two of them forge and maintain effective working relationships with the various DoD components, including the Army, Navy, Air Force, and Marine Corps, through regular engagement, staff meetings, and clear and honest messages. I intend to emulate much of their management styles. For myself, I also worked hard to earn the trust and respect of the men and women in uniform. I believe I was successful.

17. What actions will you take to ensure better cohesion and cooperation among all DHS components?

I do not believe that more bureaucracy at the DHS headquarters level is necessary to accomplish this task. However, I believe that regular and on-going coordination on matters ranging from policy to operations promotes a mission-focused workforce, while also being respectful of the distinct cultures, tasks, and strong leadership at the component level.

18. What role do you believe the rule of law should play generally in our nation and, if confirmed, specifically in the execution of your duties as Secretary of the Department of Homeland Security?

I firmly believe that adherence to the Constitution and laws are paramount, over and above political loyalty or expediency. In the long run, there is a huge cost to a failure to adhere to the rule of law, and erosion to the credibility of leadership if the public perceives a lack of dedication to the rule of law.

IV. Policy Questions

Policy, Management, and Integration of the Department

Management

19. In 2003, the Government Accountability Office (GAO) placed the integration and transformation of the Department on its "High Risk" list. In February of this year, GAO narrowed the focus of the Department's "High Risk" designation. In doing so, GAO explained that DHS has implemented key homeland security operations and has made considerable progress in transforming its component agencies into a single cabinet-level department. However, despite finding the Department has made important strides in strengthening management, continued progress is needed in improving acquisition, information technology, financial management, and human capital management functions.

a. What role do you believe the Secretary should play in addressing the "High Risk" management weaknesses that have been identified by GAO?

Together with the Deputy Secretary and the Under Secretary for Management, I believe the next Secretary needs to be very involved in resolving this level of management weaknesses in the Department. Like GAO, I am pleased to note that the Department has made significant progress in addressing the "High Risk" management weaknesses identified in GAO's report. If confirmed, I will continue to endorse efforts to strengthen engagement, oversight, and alignment. When necessary, I will also engage with Congress, OMB, and GAO to support the continued transformation of the Department.

b. What do you believe are the most important actions the Department should take to strengthen the overall management of the Department?

First, fill the existing vacancies in senior level positions with capable, energetic, motivated leaders;

Second, improve employee morale;

Third, complete the integration of business intelligence systems across the management lines-of-business and multiple accounting systems to ensure valid data informs critical business decisions;

Fourth, resolve the weaknesses that have resulted in qualified, audited financial statements for the Department, and ensure that the necessary support infrastructure (e.g., people, processes, systems) is in place to sustain an unqualified opinion for multiple years; and

Fifth, assess and identify other ways to improve the procurement system, streamline headquarters functions, and, overall, improve the effectiveness of the Department's ability to pursue its missions.

20. What do you believe will be your top three challenges in managing the Department of Homeland Security, which was created from over 22 agencies, the integration of which created management challenges?

First, fill the existing vacancies in senior level positions with capable, energetic, motivated leaders;

Second, improve employee morale, and restore a sense of the overall, unifying homeland security mission of the Department, which was created in the wake of 9/11; and

Third, complete the integration of business intelligence systems across the management lines-of-business and multiple accounting systems to ensure, and resolve the weaknesses that have resulted in qualified audited financial statements.

21. What experience did you have at the Department of Defense in working on management issues? What similarities, or differences, do you see between the management challenges at the Department of Defense and those at DHS?

As the General Counsel of DoD, I was part of the Secretary's senior management team and his inner circle. I observed the Secretary make decisions, with my advice, and I helped implement those decisions across every component of DoD. I was one of the few in the Department of Defense who, like the Secretary, was responsible for every aspect of the Department. I sat in on numerous strategic planning sessions involving various commands and components of Department. I was involved with the Secretary in discussions concerning personnel, budget, procurement, military operations, deployments, and participated with him in routine, weekly briefings from our commanders in Iraq and Afghanistan.

Like DHS, DoD has numerous components with their own leadership and bureaucracies, and there are inefficiencies and unnecessary complexities in both. DoD is larger and older than DHS. Accordingly, DoD's management inefficiencies are likely to be larger and more entrenched. The headquarters bureaucracy at the Pentagon alone is enormous. On the other hand, DHS's management challenges are in certain ways more significant because the organization is less mature, and the components – ranging from FEMA, to the Secret Service, to U.S. Customs and Border Protection – have a more diverse mission set. There is no formal "Joint" command of purple like there is in DoD.

22. Given the serious financial difficulties facing the Government, what steps do you believe DHS can take to ensure that federal funds expended by the department are free from duplication and waste?

a. Do you believe there are any programs within the Department, which you think can be eliminated because they are ineffective, duplicative, wasteful, unnecessary, or have outlived their purpose? Please provide examples, if any.

I am advised that Secretary Napolitano and others in the Department have worked very hard for almost five years to eliminate waste, inefficiencies, and duplicative functions wherever possible. The Department's Efficiency Review program, which began in 2009, as well as other cost-saving initiatives, have allowed for the identification of more than $4 billion in cost avoidance and reductions. This funding has been redeployed to mission-critical initiatives across the Department. Further, it is my understanding that the President's FY 2014 Budget includes a compilation of programs that are low priority or considered candidates for elimination. If I am confirmed, I will closely examine the Department's operations and programs on a firsthand basis for greater efficiencies and costs savings.

b. **How do you plan to ensure accountability and transparency in the grant making process?**

During courtesy visits, several Senators have expressed concern to me about this issue.

I am advised that DHS will continue to comply with OMB guidance and post on a monthly basis grant award data on the USASpending.gov website, and that the data will be tested for quality on a monthly basis prior to it being posted to the public website. I am also advised that, beginning this fiscal year, DHS will test the internal controls for grant transaction to ensure DHS can be reasonably assured of the accuracy, integrity, timeliness and reliability of our grant-making process. If confirmed, I will look for ways to further ensure accountability and transparency in the grant making process.

c. **Do you have any specific recommendations for reforms for grant management?**

I do not have an informed opinion on this issue at this time. If confirmed, I intend to assess reforms to the grant management process. I will carefully consider the grant reform efforts identified by the current OMB Council on Financial Assistance Reform.

23. **Congress enacted the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282) to improve transparency of federal grants, contracts, and loans. Will you support efforts to provide greater transparency and information relating to sub-recipients of Department awards?**

Yes.

<u>Acquisitions</u>

24. **In examining the Department's governance of its major acquisitions, GAO has found the Department's acquisition polices are generally sound and, if implemented, would help mitigate the risks of cost growths and schedule slips. However, GAO also has found the Department has authorized and continues to invest in many major acquisitions even though the acquisitions lack the key foundational documents needed to manage risks and measure performance, such as reliable cost estimates. What role should the Secretary play in ensuring that the Department's major acquisitions**

conform to the Department's policies throughout the acquisition lifecycle, and in ensuring that major acquisitions meet performance goals while remaining in schedule and within projected costs?

a. **What steps do you believe need to be taken to continue to strengthen management of DHS' acquisition framework?**

I already recognize improving DHS's acquisition framework is a priority for new leadership. I understand that the Under Secretary for Management has taken a number of steps to enhance acquisition oversight. If confirmed as Secretary, I know I must work with the Deputy Secretary and the Under Secretary for Management to ensure we continue on the path to reform and continue to enhance our ability to make acquisition decisions which result in the best value for the taxpayer.

b. **Do you believe that roles and responsibilities for acquisition management are currently divided appropriately between the department and the components?**

I do not have an informed answer to this question at this point. If confirmed as Secretary, this is one of the acquisition-related issues I will consider.

c. **How do you define good performance when it comes to acquisition programs? What metrics would you use to measure good performance?**

On time performance, best price combined with best value for the taxpayer.

In my experience, a robust acquisition oversight process with early and continuous verification of system requirements, planning, and execution throughout the entire development and acquisition lifecycle that substantiates each programs cost, schedule, and performance relative to their acquisition program baseline is the most appropriate way to measure good performance.

d. **If confirmed as Secretary, what course of action would you take to address acquisitions that don't meet your definition of good performance?**

I intend to continually hold acquisition program managers and contractors accountable. Simply put, if acquisitions do not meet to the appropriate standard, they will quickly be amended or cancelled in order to ensure we are wisely spending our taxpayer dollars.

25. **DHS manages several law enforcement and security agencies which require similar types of equipment. This includes firearms, ammunition, rotary and fixed wing aircraft, and small maritime vessels. However, in most cases, each agency is individually responsible for procuring the equipment its personnel need to carry out its mission. In some cases, it may be appropriate for the Department to try to strategically source some of this equipment, to leverage the Department's superior purchasing power to reduce cost and improve performance. If confirmed, how will you determine what, if any, agency acquisition programs could be coordinated or strategically sourced?**

I recognize the importance of strategic sourcing, especially in our current fiscal environment. Not only does it provide savings, but it also improves acquisition efficiency and enhances mission performance. If confirmed, I will ensure that the Department continues to increasingly leverage its purchasing power by identifying and prioritizing new strategic sourcing opportunities. I will ensure that DHS does this through a structured and rigorous process that analyzes the amount DHS spends, the number of components procuring the product or service, the commonality of requirements, and the complexity of strategically sourcing the commodity.

I am advised that the current DHS strategic sourcing program has achieved savings of over $1.8 billion since its inception in 2005, with over $1.2 billion of this occurring in the last four years. Some examples include: body armor, ammunition, and tactical communications equipment. Over the past three years DHS has implemented on average 13 new strategic sourcing initiatives each year, and I will ensure DHS continues to employ strategies to identify new initiatives going forward and that it remains a leader in strategic sourcing in the federal space.

Financial Management

26. For the first time, the Department obtained a qualified audit opinion on its Fiscal Year 2012 financial statements. What role should the Secretary play in ensuring that the Department achieves and sustains a clean audit opinion?

If confirmed as Secretary, I will be committed to the increased transparency and accuracy in accounting for the Department's resources that an unqualified – or "clean" – audit opinion would provide. Sustaining the progress DHS has made with its audit opinion over the past few years is an important priority.

27. Throughout its ten-year history, the Department has struggled with its efforts to modernize and integrate the numerous financial management systems on which the Department and its components operate. What do you see as the most viable path forward for the Department to develop real-time, accurate, and comprehensive data on its finances and to use this data to inform decisions on optimal use of scarce resources?

If confirmed, I will consider this issue thoroughly. Based on what I know now, from briefings by DHS senior leadership and staff, I believe DHS should continue to follow OMB best practices by modernizing financial systems as needed and using shared service providers where possible. DHS should continue to standardize the way data is held within these DHS systems and collect Department-wide financial information in a central data repository. I am advised that DHS has such a repository now, and is continuing to add more data sources and capabilities as time goes on. Reports and displays of key financial information that can be generated from this repository will allow myself and other DHS leaders to assess management health, make better decisions, and—ultimately—improve efficiency and effectiveness within the Department.

Workforce

28. Workforce surveys have consistently found the Department's employees are less satisfied with their jobs than the government's average.

a. What do you consider to be the principal challenges in the area of human capital management at the Department?

The greatest resource of the Department of Homeland Security is its personnel. These are dedicated men and women with a very important mission, many of whom put their lives on the line in dangerous conditions to fulfill the Department's mission.

I know from my experience at the Department of Defense that a three-year pay freeze, sequestration, reduced operating budgets, and the threat of furlough are having an impact on employee morale across the entire federal government. I believe DHS must strengthen its efforts to recognize and reward employees; grow the leadership skills of the workforce, including training for managers to encourage opportunities for creativity, innovation, and empowerment among their employees; and facilitate new job opportunities for employees within the organization. I will work with DHS components to focus on these areas.

b. What steps would you take, if confirmed, to identify and address the root causes of the low workforce morale?

I recognize this as a major issue, and, if confirmed, I intend to consult a wide array of DHS and other personnel about this.

At the department-wide level, I believe DHS should do all it can to assist the components with their efforts to improve morale based on component and subcomponent root cause analysis, a process I am told the components are currently engaged in. I also support: (1) a mandate that all component heads prioritize employee engagement and are accountable to me for doing so; (2) improved employee communication, training, inclusion, and employee recognition; and (3) strengthening the leadership skills and capacity of supervisors, managers, and senior leaders within DHS.

c. What experience from your past positions best equips you to address the workforce challenges at DHS?

During 1998-2001, while I was General Counsel of the Department of the Air Force, I oversaw the legal work of about 3,000 military and civilian lawyers. By the time I left, I believed morale within the Air Force legal community had improved substantially.

During 2009-2012, while I was General Counsel of Department of Defense, I oversaw the legal work of over 10,000 military and civilian lawyers. During that time, I worked hard to repair the breach that had existed previously between the JAG community and civilian leadership.

For the four years I was General Counsel of DoD, I was also part of the inner circle of the senior management of the DoD, the largest and most complex agency in our government. During that time, I worked closely with two great Secretaries of Defense, Robert Gates and Leon Panetta. I observed their management style and helped them execute it. A number of the issues we grappled with included matters of personnel and workforce challenges. In February 2010, Secretary Gates appointed me to co-chair, with General Carter Ham, a review of the risks of repeal of the Don't Ask, Don't Tell law on overall military effectiveness. As directed by Secretary Gates, this involved a "systematic engagement" of a military force of over one million people. I personally came face to face with between 5,000-10,000 service members on this difficult, emotional issue.

I also worked hard to earn the respect of all men and women in uniform, from the Chairman of the Joint Chiefs and our four-star combatant commanders, to the more junior officers and enlisted personnel who risked their lives in special operations. I spent last Thanksgiving with the troops at a remote command outpost in Afghanistan, in the mountains near Pakistan. In 2010, my family and I spent Thanksgiving at one of the military hospitals in Germany.

d. **If confirmed, how would you continue to build a culture which ensures all Departmental personnel comport themselves in the manner expected of them?**

I will constantly remind DHS personnel of the importance of the homeland security mission. I also believe in values-driven leadership. Those who do not meet standards must be held accountable. Meanwhile, employees should also feel that they are provided with the resources and support they need to successfully perform their jobs.

29. **In December 2012, the Government Accountability Office (GAO) released a report entitled, "DHS Strategic Workforce Planning: Oversight of Departmentwide Efforts Should Be Strengthened." GAO made two primary recommendations—DHS should "(1) identify and document performance measures to assess workforce planning efforts and (2) document policies and procedures regarding the use of internal audit results." These recommendations should help improve the implementation of DHS workforce planning and provide a method for DHS to assess the effectiveness of this strategic planning. According to GAO, DHS has concurred with these recommendations, but none have been implemented. If confirmed, what specific steps will you take to implement policies that address these concerns and close the GAO recommendations?**

During briefings I received during the confirmation process, I've learned that DHS requested that GAO close the two recommendations provided in the report "DHS Strategic Workforce Planning: Oversight of Department-wide Efforts Should Be Strengthened" on June 5, 2013. I understand that DHS is currently working to provide GAO with additional documentation to show the progress made since the report was published in order to close the recommendations. I am advised that, since the report was published in December 2012, DHS has implemented several methods to measure, monitor, and evaluate component efforts to implement the DHS strategic workforce planning process. These include, but are not limited

to, publishing a revised Workforce Planning Guide with improved tools to assist components with creating consistent, comprehensive workforce plans.

Policy

30. In 2007, Congress amended the Homeland Security Act to require the Department to produce, every four years, a Quadrennial Homeland Security Review (QHSR). The review is intended to provide comprehensive strategies and priorities for the nation's homeland security, and ensure that strategies are clearly linked to plans, missions requirements, and budgeting activities.

a. What should be the role of the Secretary in developing the QHSR?

Based on my experience at the Defense Department and the Quadrennial Defense Review (QDR), I believe that the Secretary should provide overall direction to the QHSR and final decisions on strategic direction. In terms of the process, the Secretary should convene meetings of the DHS component heads as necessary, meet with other stakeholders at the conclusion of the review, and address QHSR issues at the National Security Staff Principals Committee as necessary.

b. In what ways should the next QHSR, which the Department is drafting this year, differ from the first QHSR, which was delivered to Congress in early 2010?

I do not have a fully informed view at this point. I understand the first QHSR answered the question, "What is homeland security?" I imagine that, building on this foundation, the second QHSR should focus on how DHS, together with partners across the homeland security enterprise, will build smarter, more dynamic, risk-based approaches to homeland security that engage the broadest possible range of partners.

c. What best practices will you bring from the Department of Defense to inform the development of the QHSR at DHS?

I do not have a fully informed answer to this question at this point.

DoD has learned many lessons in conducting quadrennial reviews, beginning with the Bottom-Up Review in 1993 and continuing through four subsequent QDRs. It is important to note that DHS is a different organization than DoD, with a different mission, a broader mix of organizational cultures, and a responsibility for much greater engagement with state, local, territorial, and tribal governments, private sector and non-governmental organizations, and international governments. Therefore, DHS needs to balance its adoption of practices from DoD with practices best suited for its own unique mission responsibilities. I am advised that DHS has incorporated a number of lessons from the QDR in terms of conducting strategic environment assessments, following a formal strategy development and analysis process, and consulting with Departmental and stakeholder leadership throughout the process.

31. Ten years have passed since DHS was created. In your view, how has the Department's core mission evolved, if at all? What do you think its core mission should be for the next ten years? How do you define homeland security?

Preventing terrorism remains the cornerstone of DHS, though the terrorist threat against the United States has evolved considerably since 2003. Since 2003, the cybersecurity threat has grown and become more sophisticated, in my view. Comprehensive immigration reform, including border management and immigration enforcement, is, in my view, a key priority for the President, the Congress and DHS. All-hazards emergency management remains a critical homeland security mission responsibility that involves multiple DHS components.

Put another way, DHS's core mission responsibilities endure, but its posture towards these threats and hazards must necessarily change to meet evolving threats.

DHS Consolidation

32. For many years, DHS leadership has stated that having a unified headquarters in one location is vital to operations and the maturation of a cohesively functioning DHS. The St. Elizabeths' campus was envisioned as the headquarters for DHS, but the pace of the renovations has slowed due to reductions in available funding.

a. How important is the consolidation of DHS headquarters to improving the operations and efficiency of DHS?

I have visited St. Elizabeth's. Based on my firsthand experience at the Pentagon, I believe that a consolidated headquarters would help enhance the sense of the over-arching homeland security mission. I know from experience that a consolidated headquarters is vital to developing a unified department similar to the DoD "One-Team, One Fight" ethos. If confirmed I look forward to working with Congress to finish the job we began in building St. Elizabeth's.

b. How will you continue efforts to consolidate DHS headquarters operations and management in the interim?

I understand that, in the constrained budget environment, DHS has proposed to continue the development of St. Elizabeth's in smaller scaled projects that may be more fiscally possible in these tough times. This plan will allow continued measured progress while assuring sufficient resources are available to support the mission. If confirmed, I look forward to advancing consolidation at the headquarters level to provide mission ready facilities at a manageable cost for the taxpayers.

Federal Emergency Management Agency

33. FEMA has struggled with a number of longstanding management difficulties. Over the past several years, GAO and the Department's IG have called attention to problems FEMA faces in financial management, human capital, information technology, and performance management. For example, GAO has reported that FEMA's financial

system suffers from serious stability issues. These problems have slowed efforts to modernize the system and hampered financial reporting. FEMA has also faced shortfalls in cost and schedule for a major information technology investment, the Disaster Assistance Improvement Plan. Moreover, FEMA has struggled with severe morale problems. In 2012, it ranked 257 out of 292 among agency subcomponents in the Partnership for Public Service's Best Places to Work survey. If left uncorrected, these management problems could hinder FEMA's ability to respond to disasters and also lead to opportunities for waste, fraud, and abuse. If confirmed, what will you do to ensure that these problems are addressed?

Obviously, FEMA performs one of the key responsibilities of the Department – supporting Americans in the wake of disasters. Ensuring this important agency continues to perform at a high level, and continue ongoing efforts to build on the progress made in recent years will be a priority. This includes ensuring the sound financial management, human capital management, information technology management, and performance management of the agency. These tools are important to any agency, but they are particularly important in the case of FEMA.

From what I understand, under Administrator Fugate's leadership, FEMA has also made important reforms to its disaster workforce and instituted the FEMA Qualification System and Reservist program. FEMA additionally incorporated the DHS Surge Capacity Force into disaster response operations and, instituted the FEMACorps volunteer program, and established the Incident Management Assistance Teams Pilot Program – all of which are now assets that can be called on in disaster to support response efforts.

FEMA has also recently instituted changes designed to address deficiencies identified by the DHS Office of the Inspector General and the GAO. If confirmed, I will remain committed with FEMA to ensuring that continued progress is made and that management attention is appropriately focused on these and other important infrastructure issues that will further enable FEMA to respond effectively to disasters.

34. **Since 2003, the Department has issued nearly $40 billion in preparedness grants. While the Post-Katrina Emergency Reform Act and the Implementing Recommendations of the 9/11 Commission Act of 2007 require FEMA to develop performance measures and a comprehensive assessment system to evaluate their effectiveness, FEMA has yet to meet these requirements. As a result, we lack systematic analysis of grant effectiveness and are unable to gauge how much the grants have contributed to strengthening preparedness. If confirmed, what will you do to ensure that FEMA finally meets these requirements?**

One of the key responsibilities of the Department of Homeland Security is to support our state and local partners, both as they respond to events, and also as they work to prepare ahead. As part of this responsibility, I believe it is important that DHS continues to strive to implement the Grant Program as effectively as possible. Over the past ten years, DHS, through FEMA, has provided $37 billion in grant funding to help improve the preparedness of our state and local partners. Through these federal investments, grantees have developed significant capabilities at the state and local levels. Responses to recent events have shown

the value and significant return on investment of homeland security grants. Homeland security preparedness grants directly supported the development and sustainment of state and local capabilities, helping to save lives and minimize property damage during events such as Hurricane Sandy, Hurricane Irene, devastating tornadoes in Alabama and Missouri, the response to the Boston Marathon bombing, and countless other disasters.

FEMA's strategy for developing metrics and assessing performance begins with the National Preparedness Goal. The National Preparedness Goal defines the core capabilities necessary to prepare for the threats and hazards that pose the greatest risk to the security of the Nation, and it includes concrete, measurable objectives to manage that risk. The National Preparedness Goal capability targets provide concrete statements of the Nation's requirements in each core capability. As part of the National Preparedness System, FEMA conducts performance assessments that measure progress toward achieving the National Preparedness Goal. FEMA's strategy is to base assessments on the principles that the Nation needs to understand the risks it faces, use those risks to determine the capabilities it needs, assess its current capability levels against those requirements, and track its progress in closing capability gaps.

It is my understanding that FEMA has been putting the tools in place that are needed to assess effectiveness of grant funding, and, if confirmed, I will work with the Congress and with FEMA to ensure this progress continues in this important area for the Department.

35. As part of the President's Budget request for both Fiscal Years 2013 and 2014, the former DHS Secretary proposed the consolidation of the existing suite of preparedness grant programs managed by FEMA into a single National Preparedness Grant Program.

a. What is your view of the purpose and role of the preparedness grant programs?

One of the key responsibilities of the Department of Homeland Security is to support our state and local partners, both as they respond to events, and also as they work to prepare ahead. As part of this responsibility I believe it is important that DHS continues to strive to implement the Grant Program as effectively as possible. In the FY 2013 budget proposal, the President proposed implementing the National Preparedness Grant Program (NPGP), to replace the various, individual preparedness grants. As I understand it, the proposed NPGP would consolidate current state and local preparedness grant programs into one overarching program (excluding EMPG and Assistance to Firefighters Grants programs) by removing stovepipes, and encouraging collaboration among disciplines and across levels of government.

If confirmed, I will further assess this question. I am advised by DHS that the effectiveness of preparedness grants should be measured by how they assist the federal, state, and local government, as well as our whole community partners, in meeting the National Preparedness Goal; that the Goal defines the core capabilities necessary to prepare for the threats and hazards that pose the greatest risk to the security of the Nation; and it includes concrete, measurable objectives to manage that risk. I am also advised that FEMA requires grantees to implement the National Preparedness System by

supporting the building, sustainment, and delivery of core capabilities, and tracks the grantees' progress in closing capability gaps. Additionally each year, FEMA reports in the National Preparedness Report (NPR) on grantees' and our whole community partners progress in achieving national preparedness.

b. What is your view on consolidation of the existing preparedness grant programs?

Please see consolidated response in part a.

c. What performance metrics do you believe are appropriate for assessing the effectiveness of the preparedness grants?

Please see consolidated response in part a.

36. In July, FEMA released its Hurricane Sandy After-Action Report. The report found that FEMA performed well in many ways. For example, the agency was successful in using an online crisis management system to coordinate federal response operations, and it developed new programs to help survivors find shelter, repair their homes, and receive aid more quickly. But the report also found some areas for improvement, such as FEMA's ability to deploy sufficient numbers of credentialed personnel as well as to support its deployed personnel. In your view, what are the key lessons learned from Hurricane Sandy and what steps will you take to build on the successes and address the shortcomings?

As a resident of New Jersey, I experienced firsthand the impacts of Hurricane Sandy. My home was damaged by Hurricane Sandy. At the Defense Department, I also observed firsthand Secretary Panetta coordinate DoD's contributions to the response effort. I saw the importance of a robust and coordinated federal, state, and local response. I also know that each disaster is unique and offers its own set of challenges. So, it is critically important that FEMA conduct after action reviews, like the review following Hurricane Sandy, to ensure that they identify what worked and what areas presented challenges and opportunities for improvement.

If confirmed, I will work with Administrator Fugate and his team to build upon the innovative approaches they have employed to ensure effective disaster response and recovery. I will ensure that FEMA has the resources it needs, and the support it requires from federal interagency partners, to support our state and local partners in a crisis.

37. According to GAO, the number of federal disaster declarations has grown substantially in recent years. As the lead federal agency for implementation of the provisions contained in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, FEMA is responsible for coordinating and spending funds that have been appropriated for federal response activities. In hearings before this committee, the DHS Secretary and FEMA Administrator both stated that there is a need to reform the federal disaster declaration process.

a. **What do you believe the role of the federal government should be with regard to response and recovery from natural disasters?**

FEMA does not do it all alone. Disaster response and recovery is a shared responsibility with FEMA's "whole community partners" – federal, state, local, and tribal governments as well as non-governmental entities and individuals.

A key responsibility of the Department of Homeland Security is to support our state and local partners when natural disasters strike. Central to our mission is ensuring that when an event exceeds the ability of a state or locality to respond, we are there to assist those in need. It is important to note that these efforts often begin long before disaster strikes, as DHS and FEMA help build capacity at the local level for the first responders who are the front lines in disasters.

In accordance with the Stafford Act, FEMA provides assistance – in support of states or tribal areas – when the combined local, county, and state resources are insufficient and the situation is beyond their own recovery capabilities.

Every disaster is different, and therefore decisions about specific disaster declarations must assess an array of criteria, from each state's capabilities to the amount of insured losses that were incurred, when making a decision regarding a Stafford Act declaration.

b. **What steps if any do you think should be taken if any in the short- or long-term to reform the federal disaster declaration process?**

I do not have an informed answer to this question at this point. I look forward to further consultations with Congress and FEMA on this issue.

c. **What measures do you think would be effective for determining when state and local capacity to respond to a disaster is overwhelmed?**

I do not have an informed answer to this question at this point. I look forward to further consultations with Congress and FEMA on this issue.

Counterterrorism, Intelligence, and Information Sharing

38. In a November 12, 2012 speech you discussed the use of force against Al Qaeda and associated forces.

a. **Is the United States currently at war with al Qaeda or any other specific group?**

The 2001 Authorization for the Use of Military Force authorizes armed conflict against al Qaeda, the Taliban and associated forces, and, so far as I know, those forces are still active in efforts to conduct terrorist attacks against the United States. So, I believe that at present the answer is yes.

b. **Do you believe there will be an end to hostilities with al Qaeda such that the 2001 Authorization for Use of Military Force expires as it relates to al Qaeda? What do you believe triggers the end of the conflict with al Qaeda?**

Yes, at some point, when so many of the leaders and operatives of al Qaeda and its affiliates have been killed or captured, and the group is no longer able to attempt a strategic attack against the United States, such that al Qaeda as we know it, one of the organizations that Congress authorized the military to pursue in 2001, has been effectively destroyed.

DHS Relationships with State and Local Governments

39. **The Homeland Security Act of 2002 expressly gives the Secretary of Homeland Security responsibility for coordinating with state, local, and tribal governments on a wide range of matters including information sharing and preparedness activities.**

a. **How would you assess the current relationship between DHS and state, local, and tribal governments?**

I have observed that state, local, and tribal governments are among DHS's most critical partnerships and built into almost all of the activities that DHS undertakes. DHS has provided and should continue to provide support to state, local, and tribal governments through training, grants, information sharing, and analysis to enhance their ability to prevent, protect, respond to, recover from, and mitigate critical incidents. I am advised that the Department has worked hard to build strong ties with state, local, tribal, and territorial governments, as well as the national associations that represent those stakeholders. When this administration took office, former Secretary Napolitano made it a point to move the DHS Office of Intergovernmental Affairs, whose mission is solely to support these stakeholders, as a direct report to the Secretary. This office provides state, local, tribal, and territorial governments with a direct line of communication to the Secretary and a conduit through which the Secretary can coordinate with these stakeholders. Recognizing the importance of state, local, tribal, and territorial governments to the success of the shared homeland security mission, if confirmed I plan to further build upon the strong relationships that have been developed.

b. **If confirmed, what specific steps would you take to improve the relationship between the Department and state, local, and tribal officials?**

If confirmed as Secretary, I pledge to have an open line of communication with governors and mayors. I will make sure that I am responsive to the needs of our state, local, tribal, and territorial partners is something I will insist on throughout the Department and our components, many of whom have direct front-line engagement with state and local partners every day in the field. I will also respect the nation-to-nation relationship with Tribes and will commit to the consultation processes required by Executive Order 13175.

c. **If confirmed, what steps will you take to improve information sharing among federal, state and local officials?**

As stated above, if confirmed as Secretary, I pledge to have an open line of communication with governors and mayors. I will make sure that I am responsive to the needs of our state, local, tribal, and territorial partners is something I will insist on throughout the Department and our components many of whom have direct front-line engagement with state and local partners every day in the field. More specifically, if confirmed I will support DHS, through the Office of Intelligence and Analysis, continuing to provide intelligence analysis to DHS's state, local, tribal, and territorial partners, as well as through continued grants, technology, and other things.

DHS Office of Intelligence and Analysis

40. **The DHS Office of Intelligence and Analysis is a critical part of DHS, serving as the Department's primary interface with the broader Intelligence Community, supporting state and local fusion centers, and integrating the intelligence-related activities of the DHS component agencies. What would be your key near-term priorities to improve the effectiveness of the Office of Intelligence and Analysis?**

As I understand it, I&A occupies an important role as a two-way conduit between the federal intelligence community and state, local, and tribal law enforcement officials. If confirmed, within the near term I will support I&A continuing to provide intelligence analysis to the Department's state, local, tribal, and territorial partners. I will also assess whether I&A can better conduct their operational activities intended to mitigate threats to the homeland, and ensure that I&A continues to provide the financial assistance, technology and other support to its partners.

Additionally, if confirmed I will continue I&A efforts to build and sustain common DHS intelligence standards as well as build privacy and civil rights protections into its operations, policies, programs, and technology deployments from the outset of their development.

Lone Wolf Terrorists

41. **In a speech in November 2012, you noted that the U.S. is engaged in armed conflict against members of Al-Qaeda and associated forces. However, you also stated that the U.S. is not engaged in armed conflict with lone wolf terrorists who have been inspired by Al-Qaeda.**

a. **Can you please explain this differentiation?**

The United States is engaged in an armed conflict against al-Qaeda, the Taliban, and associated forces. Under law of war principles, a "lone wolf" who does not train with al-Qaeda or follow orders from al-Qaeda, but is inspired by al-Qaeda and is self-radicalized, is not part of the enemy force.

b. If confirmed, how would you seek to better prepare the Department of Homeland Security to better address the threats from lone wolf terrorists?

For starters, information and intelligence sharing, in both directions, with state, local, tribal, and territorial law enforcement; continuing to work closely with our interagency partners in the federal government, including the National Counter Terrorism Center, DOJ, and the FBI; understanding the behaviors and indicators of violent extremism through analysis and research; and supporting law enforcement and community oriented policing efforts through training and grant prioritization.

Surveillance Technology

42. The Department of Homeland Security uses a variety of advanced surveillance technology to carry out its mission, including unmanned aerial surveillance systems. What are the key differences in surveillance policy between DHS and DOD? How would you seek to ensure that our frontline personnel have the tools they need to work effectively while simultaneously respecting the law and safeguarding the privacy of Americans?

The principal difference between DHS and DOD's surveillance policy is derived from the fact that they operate under different authorities, with different legal restraints. Among other things, the United States military is specifically prohibited from conducting search, seizure, arrest, and similar activity inside the United States by the Posse Comitatus Act except for narrow congressionally-approved exceptions. The U.S. Customs and Border protection (CBP) is a law enforcement organization and currently the only DHS component that owns and operates unmanned aerial surveillance systems. It does so in support of the missions assigned to it by the President and Congress, primarily border security operations, and in limited circumstances, in support of federal, state, and local law enforcement agencies, and crisis and disaster relief.

If confirmed, I will ensure that DHS carefully evaluates the potential impacts on privacy of DHS's surveillance activity and will ensure that there are clear limits and data minimization protocols.

Risk Management

43. The nation faces a wide range of potential threats and events, but DHS has finite resources to address them.

a. What principles will guide your decision-making regarding the use of risk-analysis and risk-based resource allocation to set priorities within the Department?

I know that sound analysis must be used to help define strategic priorities, in order to manage homeland security risk. My understanding is that DHS is currently looking at risk through the lens of three risk categories: (1) strategic risk (risks within the external strategic environment that could affect U.S. homeland security); (2) operational risk (risks that could impede the successful execution of DHS operational- and tactical-level

activities); and (3) institutional/execution risk (risks related to the successful acquisition and management of DHS capabilities and programs, on the basis of factors such as cost, schedule, and performance). I will look to continue to evolve and enhance DHS's use of risk analysis in its decisions, including planning, programming, budgeting, and major acquisition oversight.

b. **How will you determine if some threats or events require enhanced emphasis and investment or have already received sufficient focus?**

I don't have an informed answer to this question at this point. I do believe the level of attention or investment should be and is currently determined by intelligence and operational capability and experience.

c. **How will you ensure that Department resources and grants are used to buy-down risk and yield measurable increases in safety?**

It is important to continue the work the Department has done in this area – while the level of our resources is determined by threat, risk and intelligence – it is of paramount importance that we are prepared to deal with incidents as they arise. As such, the Department should continue its work to buy down and mitigate risk.

Comprehensive Immigration Reform

44. **There is general consensus that the nation's current immigration system is broken, with would-be immigrants waiting decades to enter legally, too many employers relying on undocumented workers or going without certain workers they need, and an estimated 12 million people living in the shadows without documentation. The Senate-passed immigration reform bill (S. 744) addresses many aspects of our current immigration situation including: improving border security; establishing a mandatory employment eligibility verification system; creating a path to legalization and citizenship for undocumented aliens who meet certain criteria (i.e., passing background checks, remaining employed, learning English and paying fines); reducing backlogs of applications for family-based and employer-based visas; and establishing more temporary visas for workers with a range of skills. Do you believe these elements are essential to effectively reform our immigration system?**

Yes.

45. **One of the largest challenges in passing immigration reform is the status of 12 million undocumented aliens currently residing in the United States. What are your recommendations for handling this situation?**

If confirmed this will be a focus of my work. I agree with the President, the growing number of bipartisan leaders, and the American public who support common-sense immigration reform that we should provide a pathway to earned citizenship for undocumented immigrants in this country. I also agree that this pathway should include a background check, learning

English, paying taxes, paying a penalty, and getting in line behind everyone who is trying to come to the United States through existing legal processes.

46. If the Senate-passed comprehensive immigration reform legislation advances, the Department will face daunting implementation challenges across a range of issues and agencies. For instance, the Department would need to undertake multiple large scale acquisitions, rulemakings, and hiring efforts.

a. Please discuss some of the key challenges you believe the Department would face in implementing comprehensive immigration reform and what you believe the Department would need to do to prepare properly and to execute the requirements of the bill.

At this point I do not have a fully informed answer to this question. I do recognize that implementing S. 744's requirements would be a significant undertaking for DHS, and DHS must be prepared to accept it. S. 744 contains numerous requirements with statutory deadlines, and the Department will have to plan appropriately to ensure that those deadlines are met. Some of the key undertakings by DHS would include, but are not limited to, acquiring the infrastructure, technology, and equipment necessary for the strategies called for in the bill; the establishment of the registered provisional immigrant status program; and, the implementation of the mandatory employment verification system. Implementation of S. 744 – particularly the reforms to the legal immigration system – will also require strong interagency coordination. If confirmed, I will ensure that DHS, both at the headquarters level and the component level, will be fully engaged to ensure that any comprehensive immigration reform legislation is successfully implemented if enacted.

b. Do you believe the Department would need new or enhanced oversight mechanisms to accompany such an effort?

I am not now in a position to assess this, but it is a very important question. If confirmed, I intend to quickly assess the capabilities of the existing oversight mechanisms. I will not hesitate to promote new or enhanced oversight mechanisms if I conclude they are necessary for this effort.

c. How important do you believe that coordinating the actions of the various components at the Department will be to successfully implementing the reforms? What role would you expect to play in this coordination?

Given the nature of the requirements of S. 744, I believe it will be vitally important to coordinate across the Department – and with other departments as necessary – to ensure that the legislation, if enacted, is implemented consistently, efficiently and effectively. Coordination is also necessary to avoid duplication of effort and resources. If I am confirmed as Secretary, I expect to be integrally involved in monitoring the components' progress implementing the legislation.

47. Many immigration experts believe that the weak link in U.S. immigration policy is our ability to address the demand for undocumented workers. Despite a 1986 law making it a crime to hire undocumented immigrants, it is still too easy for workers and employers to operate outside the rules. As a result, jobs continue to pull undocumented workers to the U.S. There is a strong need for a more effective way to verify which job applicants are citizens or immigrants with valid work authorization. Many people believe E-Verify, the agency's electronic worker verification pilot program, can provide the solution. It is currently a voluntary program, but would become a mandatory program under S. 744, the immigration reform bill that passed the Senate earlier this year.

a. Are you familiar with the E-Verify program and, if so, how do you rate its success thus far?

In preparation for my confirmation I have received some background information on this important program. I know that E-Verify is a free, web-based service that lets participating employers electronically verify the eligibility of their new employees to work in the United States. DHS officials have indicated they are committed to continuing the expansion of the E-Verify program while ensuring the accuracy, efficiency, and integrity of the system.

I also know that the Senate passed S.744 CIR bill calls for a phased-in approach to the mandatory use of the E-Verify system. I support that course of action, and if confirmed will work to insure that USCIS is ready to meet the challenges if broader mandatory use of E-Verify becomes a reality.

b. What are some of the key issues DHS must confront if it seeks to convert the program into a national, mandatory verification system?

I know the Administration supports a phased-in approach to the mandatory use of the E-Verify system. I am advised that USCIS is prepared to implement the phased-in approach, but will need additional resources to ensure that the expansion of the system is effective and efficient. It will also be critical for employers and workers – including tens of millions of U.S. citizens who will be required to interface with E-Verify – to be educated on the mandatory verification system to ensure it is properly deployed in the workplace.

c. What other measures should DHS pursue to ensure that workers and employers follow the law with respect to eligibility for employment?

There are those who believe that S.744 provides DHS with the tools it needs, like mandatory electronic employment verification, to level the playing field and ensure that all workers and employers follow the law with respect to employment eligibility. I am not now in a position to disagree with that.

48. Would you prioritize any particular set of immigration policies, whether addressed in S. 744 or not, as a first step toward comprehensive reform? If so, what would those be?

What do you believe to be the most important immigration challenge facing the Department?

Creating a reformed immigration system will require the implementation of common-sense reforms throughout DHS's components. Today's immigration system is interconnected. We must address border security, interior enforcement, enhancing our legal immigration system, and providing a pathway to earned citizenship comprehensively.

As I understand it, S. 744 facilitates the Department's ongoing efforts to secure the border, ensures that all employers play by the same rules through the adoption of new worksite enforcement measures, like mandatory electronic employment verification, and S. 744 modernizes our legal immigration system and allows the country to attract highly skilled entrepreneurs and additional workers needed by employers to continue to grow our economy. Finally, S. 744 makes everyone play by the same rules by providing a pathway to earned citizenship for those who are here illegally – one that includes passing a background check, learning English, paying taxes, paying a penalty, and getting in line behind everyone who has gone through the existing process to obtain legal status in the United States.

As stated before, implementing these reforms will be a significant undertaking for DHS, and, if confirmed, proper implementation will be a primary focus of mine as Secretary, along with others at the headquarters and component levels.

Border Security

49. **During the debate on S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act, the issue of how secure our borders are and how we can best measure that security was hotly debated. This Committee held three hearings this year to examine the historic gains in security that have been made in recent years. As you know, the Border Patrol has more than doubled in size since 2000 and apprehensions of undocumented immigrants at the border have decreased by roughly 80 percent over that same period, dropping to their lowest levels since the early 1970s. Keeping in mind that we will never be able to prevent all illegal entries along the border, in your view, what more needs to be done in order to secure the border?**

If I am confirmed, I will carefully assess this question. I want to thoroughly understand the current risk-based approach, and how that should interplay with DHS's increased border security personnel and improved technology. The answer to this question will be one of the most important issues to face the next Secretary.

50. **Over the past two years there has been an increase in the number of non-Mexican migrants that transit through Mexico in order to gain access to our border. Non-Mexican undocumented migrants account for the majority of apprehensions made in some parts of the border, such as south Texas. This represents a substantial departure from historical trends. Non-Mexicans apprehended at the border must be detained in detention facilities and ultimately flown back to their countries. The surge in non-**

Mexican migration led to overcrowded conditions at some Border Patrol temporary detention facilities, and to longer detention times at ICE facilities.

a. **What do you believe can be done to address the issue of non-Mexican migrants transiting through Mexico?**

If I am confirmed, I understand the need to carefully assess this question. I understand that CBP and ICE continue to make significant investments in technology and infrastructure across South Texas and today, CBP has more than 6,000 Border Patrol agents in the region, an increase of more than 80 percent since 2004. Additionally, as part of the South Texas Campaign aimed at identifying and addressing current and emerging threats along the South Texas border, CBP and ICE are targeting top alien smuggling organizations to prosecute smugglers and have been working together to establish hubs specializing in the processing and removal of individuals from Central America who are apprehended, in line with our enforcement focus on recent border crossers. Significant border-wide investments in additional enforcement resources and enhanced operational tactics and strategy have enabled CBP to address the changing composition of attempted border crossers, and maintain border security. Through CBP, DHS has worked with Mexico and some Central American countries to create public service campaigns that focus on both the dangers of coming to the United States without documentation and human trafficking awareness.

I understand that DHS continues to work with the Mexican government to encourage an increased focus on Mexico southern border with Guatemala in terms of both security and economic infrastructure. Additionally, though I am advised that, through CBP, DHS has worked with Mexico and some Central American countries to encourage public service campaigns designed to alert people to the potential danger of attempting to migrate to the United States without legal documentation. CBP leadership has engaged government officials and NGOs on how we can assist in getting a clear message that illegal migration can be dangerous and that legal consequences exist. Additionally, CBP has operated Operation Detour in the Southwest border region to specifically target youth that may be drawn to the drug cartels.

If confirmed, I will review this situation, and consider whether additional agents and technological resources to the South Texas border region may need to be deployed.

b. **What will you do, if confirmed, to ensure that ICE has sufficient detention capacity in place in order to ensure that undocumented migrants being apprehended by the Border Patrol can be processed and transferred to ICE's custody in a timely fashion?**

I can state that, if confirmed, I will undertake to ensure that ICE follows common-sense law enforcement priorities that focus resources on national security and public safety threats.

51. DHS has been criticized for not making more of its internal border-related performance measures available to Congress and the public. One of the expert witnesses at a HSGAC hearing earlier this year testified that as a result of this, in his opinion, data-informed answers to key questions are not available, including where the vulnerabilities for increased undocumented immigration are the largest: at the ports of entry, between ports, or through visa overstays. What will you do, if confirmed, to ensure that Congress, and the public, are provided with more data on the working of our immigration system so that we can answer the key questions raised by our witness?

As General Counsel of the Department of Defense, I made every effort to be transparent with Congress. I believe Members and staff of the Armed Services Committees will verify this. I also made a number of public speeches to explain the legal architecture of DoD's counterterrorism efforts. If confirmed, I will continue to ensure that the Department is transparent with Congress and the public about Departmental operations.

52. Similarly, will you agree to provide Congress with a detailed sector-by-sector strategy for securing the border?

My general inclination is to work to provide Congress with the information it seeks.

53. Since its creation, the Department has promoted efforts to push the border outward in order to stop dangerous people and goods from entering the United States. Many of these overseas activities are carried out by CBP, ICE, and USCIS.

a. What do you believe the priorities of the Department should be in its engagement with foreign governments and international organizations?

As I understand it, DHS priorities in international engagement should be to further its overall mission, as defined in the Quadrennial Homeland Security Review: to prevent terrorism, secure U.S. borders, enforce and administer immigration law, secure cyberspace, and ensure resilience to disasters. Achieving success in these missions often requires international engagement. For instance, international information sharing is vital to our counterterrorism, cyber, and other missions. If confirmed as Secretary, I will advance policies, practices, and principles—such as risk management and advance information—in our international engagement.

b. What factors and analysis would you consider in deciding whether to station DHS personnel overseas?

I do not now have an informed answer to this question. My general inclination would be to consider a number of factors, including, foremost, the security risks to the personnel involved, and the Department's ability to achieve its missions with its foreign counterparts at that location or region and cost, especially in a constrained fiscal environment.

c. **Do you believe the Department should develop a strategic plan for determining where personnel should be stationed overseas? Why or why not?**

I do not now have an informed answer to this question. I will consider this if confirmed.

54. **Identifying individuals who overstay the terms of their admission is a difficult proposition, but it is a critical one given that an estimated 40 percent of the undocumented population in the United States entered the country legally and overstayed. The implementation of biometric entry inspections through the US-VISIT program, implemented after the terrorist attacks of 9/11, has been one of the most notable achievements of the Department. However, despite a number of Congressional mandates DHS has been unable to implement a biometric exit system. And DHS has only recently been able to begin implementing a viable biographic exit system based on the identifying information contained in airplane and sea vessel passenger manifest data.**

a. **What do you believe would be the benefit of a biometric exit system, as opposed to a biographic system?**

I do not now have an informed view on this question. If confirmed, it is an issue I will study. As I understand it, DHS made several improvements to its entry/exit system over the last several years, and today manages a fully-functioning entry/exit system in that it tracks and identifies overstays using biographic information in the air and sea environments, and is continuing to enhance capability for land. In 2010, Secretary Napolitano directed the Department to move forward with an enhanced biographic system, while continuing research and development toward a future biometric exit system that is cost effective and feasible.

b. **In your opinion, would these benefits be worth the cost of deploying a biometric system?**

As I understand it, a biometric entry/exit system that is operationally feasible within existing infrastructure would be beneficial, if it could be implemented in a cost-effective manner.

c. **Should a biometric exit system be a long-term goal for the Department?**

Based on what I know, I would say yes, and that, in fact, a biometric exit system that is cost effective and operationally feasible is the goal for the Department.

d. **Do you believe a biometric exit system should be deployed at land, sea and airports? Why or why not?**

I do not at this point have an informed answer to this question. If confirmed, I intend to review the work that experts at the Department have done on this issue, particularly the strides they have made during the last several years. Once I have a better understanding

of what is feasible, cost-effective, and affordable in this fiscally constrained environment, I will be better able to discuss the extent to which I believe there may be value in pursuing biometric exit in all three environments—air, sea, and land.

Prosecutorial Discretion

55. In June 2011, Immigration and Customs Enforcement (ICE) Director John Morton announced new guidance on the use of prosecutorial discretion in immigration matters.

a. What are your views on the use of prosecutorial discretion in general?

Based upon my experience as a federal prosecutor, I know that some level of prosecutorial discretion is inherent in almost every law enforcement activity. The exercise of that discretion should be based on considerations of resource allocation, public safety, and other matters; it should never be arbitrary or perceived as arbitrary, and it should never amount to a wholesale abandonment of enforcing the law. Executing and enforcing the laws is the core executive branch function.

b. As general counsel at the Department of Defense, were there any particular situations in which you had to make decisions regarding the use of prosecutorial discretion? If so, please provide examples, including your reasoning for your decision.

As General Counsel of the Department of Defense, I was responsible for the oversight of the military commissions process at Guantanamo Bay. I did not make individual charging decisions, and left it to the chief prosecutor in the system to do so.

In 2009-2010, the Obama Administration conducted a case-by-case review of the detainees at Guantanamo Bay. This included a fresh look at identifying cases that should be designated for transfer, detention, release or prosecution. For those detainees who were designated for prosecution, there were then decisions made about whether to prosecute them in the federal civilian system or in the military commissions system. I was part of this review process.

c. As Secretary, how would you endeavor to review policies on the use of prosecutorial discretion across the Department of Homeland Security, including as it relates to immigration?

I do not have a fully informed answer to this question. My general inclinations are reflected in response to question 55a above.

d. Under what circumstances, if any, would you recommend changes to the 2011 Morton memo, as well as the historical use of prosecutorial discretion in general at the Department of Homeland Security?

I do not have a fully informed answer to this question. My general inclinations are reflected in response to question 55a above.

56. By some estimates, individuals who come to the United States legally and overstay their visas make up approximately 40 percent of the illegal immigrant population in this country. Current law provides for civil penalties for those who overstay their visas for six months or more with, among other things, either a 3— or 10—year ban from admission into the United States after their removal or voluntary departure from the United States. Yet, an April 2011 Government Accountability Office (GAO) report (GAO-11-411) suggested that there are limited enforcement resources for visa overstays. In addition, those who overstay their visa may not fit into one of the priority categories identified in the June 2011 memo by then Director Morton on prosecutorial discretion.

a. Do you believe it is important for those who overstay the terms of their visas to be held accountable for those violations? Why or why not?

Those who overstay their visas should be held accountable for their actions. Our chief priority is to apprehend and remove those who threaten our national security and public safety. But it is neither practical nor possible to remove all who have overstayed their visas long ago and present no threat to our communities. That is why I support common-sense immigration reform that provides these individuals a firm but fair path to earned citizenship if they meet several requirements, including those, who are otherwise present unlawfully, to register, pay taxes and a penalty, pass background checks, learn English, and go to the back of the line.

b. How should ICE approach its legal responsibilities with respect to those who overstay their visas, and the cross cutting issues of prosecutorial discretion identified in the Morton memo?

I do not have an informed answer to this question at this point. If confirmed as Secretary, I will devote significant attention to ensuring that DHS uses its resources to protect national security and public safety and to continue to strengthen border security. This will include building on the already strong relationships across the Department to leverage shared expertise and combine forces wherever appropriate.

Coast Guard

57. The U.S. Coast Guard is entrusted with a diverse maritime mission set, including the responsibility to protect marine environments, interdict illicit drugs, rescue persons in distress, and provide coastal and port security. To do so, agency personnel must frequently rely on assets that are more than thirty years old. As GAO has testified, the Coast Guard has faced challenges meeting expected mission performance requirements because of the declining condition of its fleet. However, the Coast Guard is working to recapitalize its aviation and surface fleets to ensure the Service can continue to carry out its missions safely now and in the future.

a. **Do you believe the recapitalization of the Coast Guard's aviation and surface assets should be a Departmental priority?**

The current budget environment is extremely challenging across the federal government and within the Department we have a variety of competing concerns across all components. Within these constraints, I understand that the Department has supported the Coast Guard's highest recapitalization priorities and I stand ready to continue that support with the resources available. If confirmed, I expect to study this question more closely.

b. **The acquisition of new vessels and aircraft typically requires a significant budgetary commitment. However, maintaining aging assets typically grows more expensive each year. Do you believe any efficiencies or savings could be gained from replacing older assets more quickly?**

I do not have an informed answer to this question at this point. However, I am familiar with the general issue from my experiences at the Department of Defense.

I have been advised that some of the Coast Guard's offshore cutters are approaching 50 years old, more than double the average age of the Navy's fleet, and that acquiring new vessels and aircraft as quickly as possible will reduce the costs required to maintain the Coast Guard's aging assets. If confirmed, I expect to study this question more closely.

58. **The Coast Guard's unique authorities and capabilities make it a vital component for securing our borders, preserving maritime security along the coast and in offshore environment. Both the maritime and land aspects of our borders must be addressed to ensure border security. There are indications that the Department has seen an increase in maritime drug interdiction adjacent to the Southwest Border as a result of tightening border security.**

a. **With the proposed cuts to the Coast Guard's capital budget and the pending DHS portfolio review, how do you see a declining or prolonged investment period for Coast Guard recapitalization impacting our Nation's maritime security, including areas adjacent to the Southwest border?**

I understand from my briefings that the U.S. Coast Guard is in the midst of a recapitalization effort that spans a broad range of its assets, and includes major acquisition programs that replace or modernize ships, boats, aircraft, and other systems. Declining or prolonging this recapitalization effort will likely require cancellation of recapitalization projects, significantly degrading near and long-term operational capabilities and mission readiness to address the highest priority risks. I am advised that prolonging the effort will also likely impact Southwest border security, and mean a significant reduction in operational capacity in the Western Hemisphere Transit Zone, creating a more permissive environment for the Transnational Organized Crime networks.

b. **How should the Coast Guard address threats posed by Transnational Organized Crime networks in this fiscally constrained environment?**

I do not have a fully informed view on this issue at this point. If confirmed, I look forward to working with the Coast Guard and Congress to combat the TOC networks and all other threats that the USCG sees in ensuring the safe and security of the Nation's waterways.

Maritime and Supply Chain Security

59. **Much of the United States' maritime critical infrastructure is owned or operated by State or local authorities, or the private sector. DHS manages a Port Security Grant Program to help augment local maritime security activities, including enhancing maritime domain awareness, supporting training and exercises, and enhancing the physical security of port facilities. The program requires recipients share some of the costs for eligible projects, which has limited the reach of the program since some local authorities have been unable to provide the required matching funds. The Department has also shortened the period of performance for these grants, and eliminated the ability of applicants to apply for grants through a local fiduciary agent, who can help coordinate regional maritime security programs.**

a. **Not all homeland security grant programs require a cost share. Do you believe the Port Security Grant Program should continue to require a cost share?**

While I am not fully versed in this issue at this point, it seems to me that cost-share requirements make sense. They ought to help ensure that the federal government is working in partnership with a grant applicant. With these requirements, each party has "skin in the game" and is invested in a common goal. I understand also that cost-share requirements can be a challenge for those applicants that have limited financial resources. In those instances, it is my understanding that FEMA can work with applicants on case-by-case basis, and that, if needed, FEMA has the flexibility to waive the cost share requirement based on an applicant's financial needs.

In FY 2012, FEMA transitioned to a two year period of performance to ensure grantees expedite their funding. FEMA understands that the periods of performance for many grant programs can also be a challenge for some applicants, especially those who are pursuing long-term capital improvement projects. FEMA manages period of performance extension requests from grantees to ensure grant funds are used expeditiously and expended and drawn down within the initial period of performance. FEMA has issued clear criteria for granting extensions and has established a review process that applies those criteria in a rational, defensible, transparent, and consistent manner.

b. **In your opinion, could a longer period of performance and the permissible use of a fiduciary agent improve regional port security and coordination among applicant?**

Please see consolidated response in (a) above.

60. GAO has continued to highlight areas for improvement with access control for U.S. ports, particularly with the management of the Transportation Worker Identification Credential (TWIC) program. TSA and the Coast Guard are responsible for the implementation and enforcement, respectively, of the TWIC program to manage the access of maritime workers to regulated maritime facilities. Earlier this year, under a proposed rule for TWIC card readers, the Department proposed mandating electronic card readers only for a small subset of port facilities, while most other facilities would continue enforcement using spot checks. However, in the past GAO has reported that its investigators were successful in accessing ports using counterfeit TWICs, authentic TWICs acquired through fraudulent means, and false reasons for requesting access. In addition, a 2013 GAO review of the TWIC card reader pilot program raised questions about the effectiveness of card readers. Do you believe the TWIC program would benefit from additional management at the Departmental level given that it's a program which cuts across multiple agencies and offices?

DHS manages a broad set of credentialing responsibilities. As Secretary, if confirmed, it will be incumbent upon me to oversee and manage initiatives to ensure that the Department's programs function at optimal levels and increase the safety and security of the public.

I am advised that the TWIC program is one of the Department's largest credentialing programs. To fulfill a security mission of such scale, DHS leverages the expertise of its components to evaluate the entities that comprise the maritime domain and design security measures to counter potential threats. As the TWIC program continues to evolve, multiple offices within DHS will be involved in guiding this high-profile security program to ensure that TWIC provides security benefits to the Nation and proper customer service to maritime workers and industry. TSA and the Coast Guard continue to implement and identify improvements to the program to reduce the burden on workers while maintaining the security objectives of the program.

Aviation Security

61. DHS has made substantial progress improving the security of our domestic and international aviation networks since 9/11, including the implementation of the Secure Flight and Air Cargo Advance Screening programs. The Department has also recently begun moving away from a one-size-fits-all approach to passenger screening toward a more nuanced approach tailored to the different levels of risk posed by particular passengers. Trusted traveler programs, such as CBP's Global Entry and TSA's Pre-Check, are designed to identify low risk passengers and process them separately so that the Department can focus more of its attention and resources on high-risk and unknown travelers. In your view, how can risk-based screening processes improve efficiency or effectiveness?

As I type, I am learning today of the death of TSA Officer Gerardo Hernandez at LAX. I recognize the enormity of the task that we have asked the men and women of TSA to do. TSA is probably the agency of government that has most direct contact with the American public. Not only must TSA ensure that a catastrophic attack on the aviation system does not occur, but TSA must also quickly and efficiently screen passengers and cargo, providing the best experience possible. I commend TSA for creating a layered aviation security system, and wish to continue to promote that philosophy. Because of a more sophisticated ability to operationalize current intelligence and analyze risk, as well as using additional information that passengers voluntarily provide, TSA can now make determinations of low risk status for a large segment of the traveling public. Therefore, in the judgment of the experts, one-size-fits all approach to the approximately 1.8 million passengers who fly commercially each day is no longer necessary. It seems to me that an approach to security that operationalizes current intelligence, and employs sophisticated risk assessments to tier screening, is inherently more effective than a system that treats every passenger as equal risk receiving identical screening. If confirmed, I look forward to learning more about TSA's plan to expand its initiatives.

62. Do you support allowing airports to participate in the Screening Partnership Program?

I do not now have an informed view in answer to this question. If confirmed, I intend to study this issue carefully.

63. In addition to the Global Entry and Pre-Check programs, DHS manages several other trusted traveler and transportation worker vetting programs, including CBP's U.S.-Mexico and U.S.-Canada expedited travel programs, and TSA's Crew Vetting and HAZMAT Endorsement Threat Assessment programs. Do you believe the Department should look for ways to improve the efficiency and effectiveness of its threat assessment and vetting programs, which could include consolidating one or more of these programs?

My preliminary assessment is that, wherever possible, DHS has sought to employ a risk-based approach to its programs incorporating multiple layers of security measures and better prioritizing its resources. The Department is constantly exploring ways to improve the efficiency and effectiveness of its threat assessment and vetting programs, including, for example, its pre-screening for trusted traveler programs. DHS's trusted traveler programs expedite customs and domestic aviation security processing for pre-approved "low-risk" trusted travelers, allowing CBP and TSA to focus on unknown, potentially higher risk travelers. If confirmed as Secretary, I will work to continue the progress made by CBP and TSA to harmonize, where appropriate, aspects of the DHS portfolio of trusted traveler programs while finding new opportunities to expand participation.

Surface Transportation Security

64. After September 11th, 2001, the federal government moved quickly to improve the security of commercial aviation. As terrorists continued to target this mode of transportation, using explosives devices hidden on bodies or in cargo, the Department has adapted to address the evolving threat to aviation. The Department has also built

and strengthened its maritime security programs to address concerns that seaports and cargo supply chains were vulnerable to smuggling of people and WMDs. Following terrorist attacks on rail and transit systems in Madrid, London, and Mumbai, Congress included a number of provisions in the 9/11 Commission Recommendations Act to address perceived vulnerabilities affecting domestic rail and transit systems. However, DHS and TSA defer operational responsibility for the security of rail and transit systems to local authorities, and some security experts and members of Congress have expressed concern that DHS insufficiently prioritizes rail and transit security. What are your priorities for strengthening surface transportation security?

I am a native New Yorker, home to the Nation's largest and most comprehensive mass transit system. At one time or another in my life, I have traveled on every NYC subway line except one. I am a regular consumer of Amtrak, NJ Transit, the NYC subways, the Lincoln Tunnel, Port Authority Bus Terminal, Penn Station in NYC, Penn Station in Newark, Union Station in Washington, DC, and the Washington Metro. I therefore have some understanding of the complexity of protecting open transportation systems used by millions of people every day.

I understand that surface transportation systems, whether mass transit and passenger rail, freight rail, highways, or even pipelines – all areas that TSA has authority to help secure – differ greatly from the tightly controlled and limited access systems in place at airports. These systems are based on the ability of the passenger to move quickly and freely. It is important to our economy and it is line with the expectations that our citizens have come to expect. I also understand that while there is federal support for some aspects of surface transportation, these systems are fundamentally different than aviation systems and securing them requires a different strategy. Most of the infrastructure that makes up these systems is owned by private industry, state, and local governments, and is dispersed widely across urban and rural areas. As a result, DHS's strategy of securing these systems is more reliant on a partnership with our state, local, and private sector partners who own and operate the systems. For example, I understand that DHS has awarded approximately $1.9 billion in grant funds since fiscal year 2006 under its Transit Security Grant Program, including over $138 million allocated to Amtrak for through the Intercity Passenger Rail Security Grant Program. It is also my understanding that TSA provides threat and risk assessment information to surface transportation security providers, and also shares best security practices with that community.

If confirmed, I look forward to working with Congress on this important issue, as part of our effort to ever improve security in the face of ever evolving threats.

Relationship with the DHS Office of General Counsel

65. What do you believe is the proper relationship between the Secretary and the DHS General Counsel? If confirmed, are there any aspects of your prior relationship as DOD General Counsel with the Secretary of Defense that you would seek to bring to or avoid in your new role and relationship with the DHS General Counsel? If so, please provide examples.

If confirmed, I will do my best not to practice law or render legal advice as the Secretary. I am grateful that the Senate recently confirmed a highly-credentialed lawyer, Steve Bunnell, to be the next DHS General Counsel. In my experience as General Counsel of DoD and the Air Force, I have had the experience of working with lawyers serving in the roles of President, Vice President, Secretary of Defense, Deputy Secretary of Defense, Secretary of the Air Force, Under Secretary of the Air Force, National Security Advisor, Secretary of State, Secretary of Homeland Security, and CIA Director. In my observation, most have been very good at refraining from lawyering in favor of the legal officials. If confirmed, I will seek to emulate their examples.

Infrastructure Protection

Cybersecurity

66. For years there have been significant vulnerabilities in our cyber networks. These vulnerabilities have led to massive identity and intellectual property theft, monetary loss, and leaks of classified information. Additionally, cyber threats to Supervisory Control and Data Acquisition (SCADA) systems – which control industrial processes – have the potential to cause devastating impacts on critical infrastructure, including the electric grid and the water supply.

a. Please discuss your familiarity and experience with cyber security issues.

As General Counsel of DoD, I was exposed to cybersecurity capabilities, and the policy and legal issues that accompany them.

b. What do you view to be the most significant current and potential cyber security threats facing our nation?

The potential is very real for a future cyber attack resulting in significant national and economic security impacts. Working to strengthen our Nation's security and resilience to prevent, and if necessary, respond to such an event will continue to be a focus of the Department if I am confirmed. While I believe state actors possess the most sophisticated cybersecurity capabilities that could threaten our Nation, we must be vigilant to ensure that none of our adversaries can exploit cyber vulnerabilities to cause our Nation great harm.

c. What do you think is the most important contribution DHS and the federal government can make to mitigate these threats?

DHS coordinates the national protection, prevention, mitigation, and recovery from cyber incidents. This requires DHS to contribute its own cybersecurity expertise, and work to leverage unique cybersecurity capabilities and knowledge across public and private entities. The Department works daily to enhance situational awareness among its partners at the federal, state, and local level, as well as in industry, through the provision of critical cyber threat, vulnerability, and mitigation data.

The Department's significant, ongoing contributions include: its operational responsibilities for securing unclassified federal civilian government networks and working with owners and operators of critical infrastructure to secure their networks through cyber threat analysis, risk assessment, mitigation, and incident response capabilities; coordination of the Federal Government response to significant cyber or physical incidents affecting critical infrastructure; offering Continuous Diagnostics and Mitigation tools to move from compliance-based cybersecurity reporting to risk-based mitigation activities; and combating cyber crime by leveraging the skills and resources of the USSS and ICE and working in cooperation with partner organizations to investigate cyber criminals.

d. If confirmed, what steps do you intend to take to improve the nation's cyber security, both with respect to the government and private networks?

DHS's information sharing and partnership efforts have helped strengthen federal and national cybersecurity. If confirmed, I will engage my interagency counterparts to address key cybersecurity policy and operational issues and will ensure DHS continues improving upon information sharing and close collaboration among government, industry, and individuals to detect, prevent, mitigate, and respond to evolving threats. I will also work with Congress to ensure DHS has updated authorities, where necessary, which better reflect its current cybersecurity responsibilities and ensure that DHS is able to more effectively and efficiently carry out that mission.

e. How do you see the Department's efforts adapting in the coming years as the cyber threat evolves and likely increases? Specifically, how do you see the implementation of the President's Executive Order on *Improving Critical Infrastructure Cybersecurity* (13636) fitting into the Department's overall efforts?

As I understand it, the goal of EO 13636 is to increase the sharing of cybersecurity information from the government to the private sector, and to foster the adoption of cybersecurity best practices more widely across critical infrastructure. If successful, this will lead to higher cybersecurity capabilities across our Nation's critical infrastructure, and a more efficient process to get operational cyber threat information from the government to private sector partners defending key networks.

DHS is executing much of its work to implement the President's Executive Order 13636 on Improving Critical Infrastructure Cybersecurity and PPD21 on Critical Infrastructure and Resilience through an Integrated Task Force made up of a number of working groups with representation from the public and private sectors as well as advocacy community and academia. However, the effectiveness of these efforts is dependent upon collaboration with a variety of partners; most importantly, the owners and operators of the Nation's critical infrastructure. DHS is continually working to improve its outreach to this important community, and have undertaken a number of steps to ensure that our stakeholders have meaningful input into our work. I understand that the initiatives within

the Executive Order will complement other efforts that the Department is undertaking. For instance, the update to the National Infrastructure Protection Plan will inform the Department's focus on strengthening the security and resilience of critical infrastructure through an updated and overarching national framework that acknowledges the increased role of cybersecurity in securing physical assets.

While implementation of EO 13636 and PPD-21 is a key step towards securing and making more resilient our Nation's critical infrastructure, continued progress will require sustained effort by both public and private partners, and a recognition of the rapidly evolving risk environment. Though the private sector and government often have different calculations of risk, our continued partnership will enhance our mutual understanding of those calculations and allow us to work more closely and more effectively to protect and preserve the American way of life.

67. The vast majority of critical infrastructure in the United States is owned and operated by the private sector, making the security of our nation's critical infrastructure a shared responsibility. To help secure our nation's critical infrastructure, DHS conducts a broad array of cybersecurity missions, including providing technical assistance and sharing cyber threat information.

a. What can owners and operators of critical infrastructure do to better protect their information systems?

Through EO 13636 and the efforts of the Integrated Task Force and private sector partners, a Cybersecurity Framework by the National Institute of Standards and Technology is being developed that will provide a baseline for infrastructure owners and operators to follow a deliberate risk-based approach in order to better protect their cyber information systems. This effort is intended to capture the most essential and effective protective cybersecurity measures deployed by public and private network defenders, and increase the number of critical infrastructure owners and operators who use these practices to secure their networks. DHS has drafted performance goals that are applicable to organizations adopting the Framework, which are intended to encourage progress toward national-level outcomes achieved in part by widespread adoption of the Framework, and stress the importance of an enterprise risk management strategy that associates cybersecurity investments with enterprise business plans. DHS will also establish a voluntary program to support the adoption of the Cybersecurity Framework by owners and operators of critical infrastructure and any other interested entities. The application of the Framework is coupled with outreach, education, and assistance in completing assessments of systems and sites to better inform and enable owners and operators to protect their systems.

b. How can the Department better partner with the private sector to improve the cybersecurity at our nation's critical infrastructure?

If confirmed as Secretary, I will ensure that DHS continues working directly with our private sector partners to identify the cybersecurity threats that most directly impact their networks by fostering collaboration at all levels. I will also work to provide timely and

actionable information to inform those decisions and mitigate risk through programs such as the Cybersecurity and Information Sharing Program and Collaboration Program (CISCP) and the Enhanced Cybersecurity Service Program (ECS). I will continue to engage them in strengthening our public private partnership by participating in trusted communities to enhance collaboration and build shared threat knowledge.
It is my understanding that DHS has made significant progress in expanding information sharing activities with the private sector.

c. **What have you learned about cybersecurity from your time at the Department of Defense, particularly as it relates to working with the Defense Industrial Base?**

While I was General Counsel of the Department of Defense, we worked to establish a pilot program to enhance cybersecurity for the Defense Industrial Base. It was time-consuming, fraught with legal questions and issues, but eventually we got there. That program provided a legal and operational basis for the CISCP and ECS programs that DHS is deploying more broadly across critical infrastructure.

68. Addressing today's cyber threats often requires an all-of-government approach. The relationships among DHS, the Federal Bureau of Investigation, and the Department of Defense, including the National Security Agency are particularly important in the cyber realm. How will you work to cultivate relationships with senior leaders at the FBI, DOD, and other agencies involved in cybersecurity?

I could not agree more that successful response to cyber threats requires a whole-of-government approach to mitigating cyber risk. This means leveraging all homeland security, law enforcement, intelligence, and military authorities and capabilities. DHS, DOD, and the Department of Justice (DOJ) each bring distinct cybersecurity capabilities to the overall effort. The current Director of the FBI, James Comey, and I were colleagues as federal prosecutors in New York in 1989-1991. I know the current Director of NSA, General Keith Alexander, very well. I will engage these counterparts to address the key cybersecurity policy and operational issues and ensure that we support each other with our unique capabilities to address the key cyber threats facing the Nation.

Federal Civilian Network Cybersecurity

69. What do you believe is the appropriate role for the Department in cybersecurity for federal civilian networks ("dot gov")?

I believe the Department of Homeland Security must actively collaborate with its public sector partners every day to respond to and coordinate mitigation in the face of continued attempts to disrupt the Nation's critical cyber and communications networks. DHS is the lead for securing and defending Federal civilian unclassified IT systems and networks against cyber intrusions or disruptions. Although departments and agencies retain primary responsibility for securing and defending their own networks and critical information infrastructure, DHS assists Federal Executive Departments and Agencies by performing data and report analysis to reduce cyber threats and vulnerabilities, disseminating cyber alert and

warning information to promote protection against cyber threats, coordinating with partners and customers to attain shared cyber situational awareness, and providing response and recovery support. Though sophisticated and determined actors pose a challenging threat, the Department is committed to reducing risk and enhancing the security.

a. What authorities do you believe the Department needs to execute that role?

Although I do not now have an informed view to definitively answer this question, I believe that the Administration has proposed legislation that clearly and appropriately defines the Department's cybersecurity missions. For example, the Administration has proposed updating the Homeland Security Act, and the Federal Information Security Management Act, both of which should accurately reflect the operational role that DHS plays in securing Federal networks. If confirmed, I intend to carefully consider this question further in consultation with Congress and the DHS General Counsel. I will work with Congress to ensure that DHS has the statutory authority to efficiently execute its cybersecurity missions.

b. In September, GAO issued a report on Federal Information Security, which included an assessment of government-wide compliance with the Federal Information Security Management Act (FISMA), as well as DHS and OMB's work to oversee and manage FISMA compliance. The report determined that "while OMB and DHS have continued to oversee agencies' FISMA implementation, they have not included all FISMA requirements; developed effective measures; or, as we have recommended, established performance targets for many of the metrics agencies and inspectors general use to report on agencies' progress, making it more difficult to accurately assess the extent to which agencies are effectively securing their systems." What will you do to strengthen DHS's delegated role in overseeing FISMA compliance?

I am advised that DHS's role in overseeing FISMA compliance can be strengthened through continuous stakeholder engagement. I have been told that the Department is focused on moving its current federal information security management practices from a compliance-based framework to one that establishes targets for acceptable security and measures performance and outcomes as part of Continuous Diagnostics and Mitigation (CDM). The advent of CDM will strengthen compliance by focusing on security outcomes and risk prioritization. Federal agencies, the Office of Management and Budget, federal inspectors general, the Government Accountability Office and Congress should continue to work together to protect agencies' missions and programs from cyber risks. As Secretary, I will work with our partners at other federal agencies to reinforce the communications that regularly occur between staff at DHS and the rest of the federal enterprise. I will also work with Congress to modernize FISMA to reflect DHS's responsibilities and take advantage of these new technologies.

<u>DHS Cybersecurity</u>

70. Do you believe that DHS's networks are secure?

At this point, I do not have an informed assessment in answer to this question. Experience suggests that there is likely room for improvement, as cybersecurity requires constant vigilance. I understand that DHS continues to enhance its cybersecurity posture and believe that DHS, as with all federal agencies and network owners, is working to provide as secure of an environment as possible in order to carry out its essential homeland security functions.

71. In an October 2012 report the DHS Inspector General highlighted weaknesses in some of DHS's components' compliance with the Department's security guidelines. For example, the IG's most recent independent evaluation of the DHS's security program and practices under the Federal Information Security Management Act (FISMA) reported that, while DHS has made progress, "components are not executing all of the Department's policies, procedures, and practices." If confirmed, what actions would you take to require DHS components to adhere to the Department's information security program under FISMA?

DHS directly supports federal civilian departments and agencies in developing capabilities that will improve their cybersecurity posture in accordance with FISMA. As the OIG noted in its report, DHS has continued to improve and strengthen its security program in Fiscal Year 2012. The DHS Fiscal Year 2013 Information Security Scorecard utilize continuous monitoring data feeds from Component tools to monitor the implementation of United States Government Configuration Baseline (USGCB) settings and security patching of databases and servers. DHS also revised its enterprise security authorization tool with streamlined templates and controls in an effort to improve the quality of the security packages reviewed by the Information Security Officer and to ensure the required security tools and controls are completed, addressing an OIG recommendation. As Secretary, my responsibility would be to fully support the DHS Chief Information Officer (CIO), the Chief Information Security Officer (CISO) as well as the DHS component leadership, as they collaboratively implement the corrective actions that are responsive to the Office of Inspector General's recommendations.

Private Sector Cybersecurity

72. What do you believe is the appropriate role for the federal government in private sector cybersecurity?

Critical infrastructure is the backbone of our country's national and economic security. In addition to the federal buildings where millions of Americans work and visit each day, it includes power plants, chemical facilities, communications networks, bridges, highways, and stadiums – facilities which by and large are in private sector hands. I believe that our federal government must work with industry, individuals, state, local, and international government partners to defend critical infrastructure, and to share actionable intelligence regarding specific threats and vulnerabilities.

a. What authorities do you believe the Executive Branch needs to carry out that role?

Although I do not now have an informed view to definitively answer this question, I believe that the Administration and Congress should continue to explore legislation that appropriately facilitates the government's efforts to support critical infrastructure cybersecurity. If confirmed, I intend to carefully consider this question in consultation with the DHS General Counsel, and I will work with Congress to achieve these goals and enhance the security and resilience of our critical infrastructure. I would also like to note that legislation is not a panacea, and the government must continue to build relationships, trust, and collaborative efforts with the private sector to be successful under current or future statutory authorities.

b. What steps will you take to encourage private sector companies to act to protect critical cyber infrastructure pursuant to the *Framework to Reduce Cyber Risks to Critical Infrastructure* being developed by the private sector through the National Institute for Standards?

I believe that any approach to the Cybersecurity Framework should facilitate industry coming together to develop solutions, and broadly adopt the solutions already deployed by industry leaders. If confirmed, I will work with the private sector to support the best approach for implementing the Framework for their businesses. To that end, I understand that DHS has drafted performance goals that are applicable to organizations adopting the Framework and are intended to encourage progress toward national-level outcomes achieved in part by widespread adoption of the Framework while stressing the importance of an enterprise risk management strategy that associates cybersecurity investments with enterprise business plans. I also understand DHS will establish a voluntary program to support the adoption of the Cybersecurity Framework by owners and operators of critical infrastructure and any other interested entities. The application of the Framework is coupled with outreach, education, and assistance in completing assessments of systems and sites to better inform and enable owners and operators to protect their systems.

Chemical Security

73. Congress authorized the Department's chemical site security program, now known as the Chemical Facility Anti-Terrorism Standards (CFATS), as part of the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295). While the program has faced a number of challenges during its implementation, significant progress has been made over the past eighteen months. That said, problems still remain. If confirmed, how would you work with the National Protection Programs Directorate to improve the program and what would you focus on? If necessary, what programmatic changes would you suggest?

Although the CFATS program has had challenges in the past, I understand that in recent years the program has made significant progress in key areas and is on a more stable path. I am advised that considerable work has been done to improve the program, including completing 91 of 95 items in the Action Plan designed to address past challenges, and the Department remains on track to complete the remaining items in this fiscal year. The

Department has also dramatically increased the pace at which it is approving security plans, and recently completed the first compliance inspection – a significant milestone for the program. There is still much work to be done, such as improvements to the tiering methodology, ensuring all CFATS-covered facilities are aware of the program and are complying with regulations, and continuing to increase the pace of inspections, approvals, and compliance inspections for all security plans. If I am confirmed as Secretary, I will provide executive level leadership to ensure that programs like CFATS have the resources and proper oversight in place for continued success.

Federal Facility Security and the Federal Protective Service

74. Recent shootings at the Washington Navy Yard and the federal courthouse in Wheeling, West Virginia are stark reminders that federal facilities – whether they are military bases, courthouses or civilian federal buildings – are targets for violence or acts of terrorism. A component within DHS, the Federal Protective Service, is responsible for protecting 9,000 civilian federal facilities and safeguarding the millions of workers and visitors who enter these buildings on a daily basis. The Federal Protective Service uses approximately 900 federal law enforcement officers, who oversee 13,000 contract security guards, to carry out its mission.

a. Federal workers or federal facilities could be a target for a shooter, like the recent incident at the Navy Yard, or a target for an improvised explosive device, as was the case in 1995 with the Oklahoma City bombing of the Murrah Federal Building. What do you see as the primary threat(s) to federal workers and facilities, and do you believe the FPS has the necessary authority and resources to address the threat(s)?

The shooting death of TSA officer Gerardo Hernandez at LAX on November 1 is a reminder of the importance of this question. While I worked at the Department of Defense, the Pentagon was the target of multiple shooting attacks. I agree that U.S. government facilities and personnel are subject to a variety of threats. We most worry about the use of a firearm or explosive device in a federal building, and we must also focus on threats made against federal employees, often related to decisions they make in their official capacity. The Federal Protective Service investigates approximately 1,600 such cases each year. FPS has the authority to protect federal facilities, employees, and the public through conducting assessments, recommending countermeasures, and providing law enforcement response to incidents or threats. I will, if confirmed, work with FPS and Congress to review our practices and whether any additional authorities could enable FPS to more effectively carry out its mission.

b. Do you believe the FPS is properly assessing the risks for federal facilities?

I do not now have a personal, informed answer to this question. I have been told that FPS continues to make progress in implementing a risk management process for the federal facilities it protects. In the past year and a half, FPS has developed, trained, and implemented a new Facility Security Assessment (FSA) process, using the

Modified Infrastructure Survey Tool (MIST), to assess vulnerabilities and make countermeasure recommendations in order to help its stakeholders meet Interagency Security Committee standards for federal facility security. I understand that FPS remains committed to working through these challenges to enhance FPS operations to assess and manage risk.

Weapons of Mass Destruction (WMD)

75. The use of nuclear, radiological, biological, and chemical weapons by terrorists and other groups continues to be threat to the United States. What are your thoughts for making improvements in the way DHS addresses chemical, biological, radiological and nuclear threats?

I understand that the Senate Explanatory Statement accompanying the FY 2013 DHS Appropriations Act (P.L. 113-6) directed the Department to conduct an "in-depth review of its organization, operations, and communications in carrying out its [CBRN] programs," citing "the need to elevate and streamline the Department's focus on efforts to address [CBRN] threats and deter and counter...WMD." My understanding is that review is complete, and former Secretary Napolitano and Acting Secretary Beers have given guidance and direction. If confirmed, I will consult with Department leadership, my interagency colleagues, and with Congress to determine any necessary improvements in the way DHS addresses chemical, biological, radiological and nuclear threats.

The Threat to Critical Infrastructure from an Electro Magnetic Pulse (EMP) or Solar Storm Event

76. Some analysts have raised concerns about the potentially significant disruptions of critical infrastructure that would occur in the event of an Electromagnetic Pulse (EMP) attack or a significant solar storm event, such as a Carrington Event. For example, the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack found that "an electromagnetic pulse generated by a high altitude nuclear explosion is one of a small number of threats that can hold our society at risk of catastrophic consequences." Do you believe that the United States is safe from such an attack or event? What are DHS's responsibilities for preparing for and/or mitigating these threats?

I do not now have an informed assessment on this issue. If confirmed, it will be an obvious question for me to carefully consider.

I have been told that DHS is working collaboratively, both internally and with external stakeholders, to reduce the risk from EMP and solar storms. Specifically, DHS has worked to model and assess EMP effects, and to conduct research and propose solutions to understand and mitigate EMP risks.

Domestic Nuclear Detection Office

77. Coordinating federal efforts to prevent a nuclear terrorist attack against the civilian population of this nation is among the most important and complex challenges that the Department faces. DHS's Domestic Nuclear Detection Office (DNDO) is charged with coordinating these federal efforts and developing an overall architecture to keep radiological and nuclear materials from entering the country. DNDO, however, must rely on implementation by other agencies and does not have the authority over the budgets of these agencies or the ability to ensure that they spend their money effectively. DNDO also faces a number of other management and technological challenges; the problems that have plagued the effort to develop and deploy the Advanced Spectroscopic Portal radiation monitor represent one of the more prominent reminders of these difficulties. If confirmed, how would you address the challenges faced by DNDO and enhance its ability to help prevent nuclear terrorism?

In briefings for my confirmation, I've learned that DNDO has made significant progress, particularly in the conduct of its research, development and acquisition programs, and that DNDO has substantially increased the ability of federal, state, and local law enforcement partners to detect and interdict radiological and nuclear materials that are outside of regulatory control.

78. Several pieces of key screening equipment used by DHS, such as Radiation Portal Monitors and Vehicle and Cargo Inspection Systems used to checkpoints, airports, and in other transportation modes for security screening, are close to being obsolete and show degrading performance. They are operating well beyond their equipment lifecycle, and at an increased operations and maintenance cost. Do you think upgrading this technology is important to improve the efficiency and effectiveness of our vital cargo screening mission?

Yes. If confirmed as Secretary, I will encourage DNDO to continue working closely with industry, sharing technical requirements and advances in research, and development projects that could potentially be integrated into next-generation systems. This will ensure that the necessary technological upgrades will be deployed in the most efficient and effective manner.

Science and Technology Directorate

79. We know that harnessing the nation's research and development expertise is essential to hardening our domestic defenses against chemical, biological, radiological and nuclear weapons of mass destruction. DHS's Science and Technology (S&T) Directorate has been given the responsibility for directing research and development efforts and priorities in support of the Department's mission. The S&T Directorate must think strategically about where to invest its limited research and development funding to help ensure that these investments make the nation safer from terrorism and other catastrophic events. What is your vision of the role that the S&T Directorate can play in the development of advanced technologies and their successful use to carry out challenging homeland security missions?

DHS confronts a global landscape in which technology is both a key driver of evolving threats and an essential source of solutions to these threats. The breadth and diversity of DHS's missions requires an organization like S&T to address a wide range of programs including the DHS components' near-term needs for new operational capabilities and improved operational effectiveness, efficiency, and safety. S&T also has responsibilities related to understanding and creating solutions to biological and chemical threats, and to conducting the R&D required to meet homeland cybersecurity needs. S&T also manages national laboratories that provide unique homeland and national security capabilities and has direct access to the Department of Energy's extensive national laboratory system. In addition, the Directorate's capacity to engage R&D activities worldwide is greatly augmented by S&T's university-based Centers of Excellence and bilateral international agreements. I recognize the importance of these missions.

Research and Development

80. During your tenure at the Department of Defense did you interact with the Departments research and development (R&D) components, including the Defense Advanced Research Projects Agency (DARPA)? If confirmed, what lessons from your work with R&D components at the Defense Department can you apply to overseeing R&D at DHS?

Yes, I interacted with DARPA and its Director. I was very impressed with the DARPA model, which encourages highly talented and innovative individuals in the private sector to join DARPA for a short period and then return to their private lives. In my view, this talent and innovation enriched our government, and is important in the Homeland Security context as well.

Office of Health Affairs

81. For the past several years the Office of Health Affairs has been working to develop the next generation in biodetection sensors. The current BioWatch Gen-2, is currently functioning, however, the use of filters and outside laboratories to test specimens leads to a delay in identifying any potential aerosolized biological or chemical threat. BioWatch Gen-3 would test the specimens within the system, cutting down the length of time for identifying a potential attack. However, this acquisition has been rife with problems and the Acquisition Review Board is requiring an analysis of alternatives before any progress can continue. What are your thoughts on the importance of biodetection equipment and how you think we can best achieve timely and accurate notice of pathogens?

A key priority for DHS is preparing for and working to mitigate a range of threats – this includes the risk of a major biological event that could cause the tragic loss of human life, severe economic damage, and significant harm to our critical infrastructures and key resources. The first indication that the Nation has been attacked may arise through early detection and advance warning systems, such as the BioWatch program, the only

federally-managed, locally-operated, nationwide early warning system designed to detect the release of select aerosolized biological agents. I am advised that the Department, in partnership with the scientific community, continues to actively look for future technologies that will further enhance our ability to quickly detect biological threats, reduce the cost associated with operations, and improve the sensitivity and specificity of the systems.

82. Many of the response assets and responsibilities for countering biological incidents reside in other departments, such as the Department of Health and Human Services and the Department of Agriculture.

a. How do you assess the current level of coordination with interagency partners in developing biological and other WMD defense capabilities?

I do not now have an informed view of the answer to this question. Obviously, preparing for and responding to chemical, biological, and radiological/nuclear events requires a strong, multi-disciplinary approach incorporating the strengths and capabilities of a broad range of federal agencies. I am advised that the level of coordination among DHS and the federal interagency to develop the necessary capabilities to maintain national resiliency in the face of these dangers has been and continues to be substantial. While tremendous progress has been made in these areas, DHS's priority should be to continue to build these defense capabilities to stay ahead of ever evolving threats. If confirmed, I will continue the important coordination among DHS and the interagency to meet these critical goals.

b. If necessary, how do you plan to improve interagency coordination of these capabilities to prevent, prepare for and respond to a public health emergency?

I am advised that interagency coordination in this area is strong. That said, DHS should continue to prioritize the strengthening of these relationships with our federal partners as well as with those at the state and local level. One mechanism for this is the National Biosurveillance Integration Center. I am also aware of FEMA's work with HHS to develop and implement a robust Pandemic Crisis Action Plan with other federal departments and agencies, which represents a significant step forward regarding proactive federal government-wide preparedness for a pandemic crisis. Information sharing and coordination are central to the success of our efforts to prepare for and protect against these threats, and I will ensure that they will remain an important priority and central theme of this program if I am confirmed.

Privacy and Civil Liberties

83. Actions to prevent terrorist attacks have the potential to raise privacy and civil liberties concerns. As Secretary, you will frequently be required to evaluate programs to determine how best to protect the homeland while at the same time protecting individuals' privacy, civil rights, and civil liberties.

a. What basic principles do you believe should guide such evaluations?

By statute, one mission of the Department is to "ensure that the civil rights and civil liberties of persons are not diminished" by its efforts to secure the country. As President Obama has repeatedly emphasized, civil rights and civil liberties are not trade-offs for a strong national security. They are, rather, a vital part of what we are protecting. I understand that DHS uses the Fair Information Practice Principles (FIPPs), a widely accepted framework that is at the core of the Privacy Act of 1974 and is mirrored in the laws of many U.S. states, as well as many foreign nations and international organizations, to assess and evaluate the impacts of programs, systems, and initiatives on individuals' privacy. If confirmed, I intend to rely on these principles, as well as the advice and counsel of the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties, to assess the privacy and civil liberties implications of Department programs.

b. Can you identify areas where DHS needs to take additional steps to ensure the protection of privacy and fundamental liberties?

If confirmed, I will examine this question. I understand that both the DHS Privacy Office and DHS Office for Civil Rights and Civil Liberties are well-respected and looked to for best practices by both the public and private sectors and that they are involved at the earliest stages of program development to ensure the protection of privacy and fundamental liberties. I am pleased that there are newly appointed officers to lead these offices. DHS is unique among federal agencies in the breadth and diversity of its mission, which extends across civil and administrative functions, law enforcement, and intelligence, and it is unique in having separate privacy and civil rights and civil liberties officers directly reporting to the Secretary.

84. To ensure that privacy and civil liberties concerns are appropriately addressed at the highest levels of the Department, Congress created both a Privacy Officer and an Officer for Civil Rights and Civil Liberties. If confirmed, how will you seek to support the mission of these important offices and ensure that privacy and civil rights and liberties are appropriately supported throughout the Department?

The Department's mission is to protect the Nation, which includes protecting the ideals underlying our way of life, not just physical security. For this reason, protecting privacy, civil rights and civil liberties is both the Department's mandate (under the Homeland Security Act, as amended, the Department is required to "ensure that civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland") and integral to its mission. In furtherance of this mission, Congress wisely recognized the need to have two senior leaders at the Department with statutory mandates that are both distinct and complementary, and who report directly to and advise the Secretary and Deputy Secretary. The Privacy Officer and the Officer for Civil Rights and Civil Liberties are key members of the Department of Homeland Security's leadership team.

85. Many have expressed concerns regarding some of the National Security Agency's data collection policies following the recent leaks about such policies. At DHS, early and active involvement by the Privacy Office in the development of certain initiatives can

help avoid mistakes by building privacy protections into the various programs from the ground up. How will you ensure that privacy and civil liberties concerns are considered early on and throughout the development of new programs and policies?

I agree that that government programs are more protective of individuals' privacy and civil liberties when those considerations are raised at the beginning of the development of new programs, and revisited iteratively throughout the development of the initiative. DHS has developed a number of safeguards to ensure that its privacy professional are included early in the process, and to include privacy officers at not only all operational components but also supporting key offices and programs in the Department. If confirmed, I intend to continue these practices and to forge a close relationship with both the Privacy Officer and the Officer for Civil Rights and Civil Liberties.

Office of the Inspector General

86. What is your view of the role of the Department of Homeland Security Office of Inspector General (OIG)? Please describe what you think the relationship between the Secretary and the Department's Inspector General should be. If confirmed, what steps would you take as Secretary to establish a working relationship with the Inspector General?

From my experience as General Counsel of the Department of Defense, I believe I am familiar with the proper relationship between the Department's Secretary and its Inspector General. OIG is generally accountable to the Secretary, but must maintain independent judgment to credibly and effectively pursue its mission. If confirmed, I would hope to embrace this model.

87. Unfortunately, the Department's OIG has been plagued with problems in recent months, with some officials being subject to investigation and/or being placed on administrative leave. The Inspector General Act places great weight on the independence of an Inspector General within a department or agency, yet also places the Inspector General under the general supervision of the agency head. With that in mind, what role if any do you think the Secretary should play in ensuring that current problems at the OIG are resolved and helping to prevent future problems?

If confirmed, I intend to look into this question.

88. In your role as General Counsel at the Department of Defense (DOD), how extensively did you work with the Department of Defense Office of the Inspector General (OIG) and how would you describe that working relationship?

Fairly often, but not extensively. I often sat in on the IG's regular briefings to the Secretary and Deputy Secretary. I had a cordial and professional working relationship with the DoD IG, Gordon Hedell, and the Acting IG after Mr. Hedell's departure, Lynne Halbrooks.

a. **Are there any aspects of your working relationship with the DOD OIG that you would endeavor to replicate at the Department of Homeland Security, and are there weaknesses in that relationship that you would you seek to avoid at DHS?**

Yes. From my experience as General Counsel of the Department of Defense, I believe I am familiar with the proper relationship between the Department's Secretary and its Inspector General. OIG is generally accountable to the Secretary, but must maintain independent judgment to credibly and effectively pursue its mission. If confirmed, I would hope to embrace this model.

V. Relations with Congress

89. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

90. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress, if confirmed?

Yes.

91. A key provision of the Department of Homeland Security (DHS) Appropriations Act of 2013 requires the Department to provide this committee with copies of reports sent to the House and Senate Appropriations Committees. We understand DHS interprets this section to cover only those reports signed by the Secretary and excludes any reports issued to the Appropriations Committees by those underneath him like the Deputy Secretary and heads of the components. That pertinent section is included below:

"SEC. 574. Fourteen days after the Secretary of Homeland Security submits a report required under this division to the Committees on Appropriations of the Senate and the House of Representatives, the Secretary shall submit a copy of that report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives."

Do you believe Sec. 574 includes reports signed by other leadership in DHS who report to the Secretary, as well as those reports signed by the Secretary?

It appears from the provided language that section 574 applies to reports that the Secretary must submit. As a general matter, it seems that congressional committees with jurisdiction should have access to reports that Congress has instructed the Department to write. I am not familiar with the past history and practice associated with the subject of this provision, but would review the Department's interpretation of this provision if confirmed.

92. The Continuing Appropriations Act of 2014, Section 157 includes the following language:

Fourteen days after the Department Homeland Security submits a report or expenditure plan required under this division to the Committee on Appropriations of the Senate and House of Representatives, the Secretary shall submit a copy of that report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives.

What reports do you believe Section 157 obligates you to provide to the Senate and House Committees listed?

Section 157 of the Continuing Resolution appears to require the Department to submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives all reports and expenditure plans that are required to be submitted by Department to the Appropriations Committees under the Continuing Resolution.

VI. Assistance

93. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress, if confirmed?

Yes.

I, Jeh Charles Johnson, hereby state that I have read the foregoing Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

(Signature)

This 5TH day of November, 2013

HANK MILLER NOTARY PUBLIC EXP. 10-31-18 DISTRICT OF COLUMBIA

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 5 day of November, 2013

Hank Miller, Notary Public, D.C.
My commission expires October 31, 2018.

HANK MILLER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 31, 2018

The Minority of U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing questionnaire for the nomination of
Jeh Johnson to be
Secretary of the Department of Homeland Security

The U.S. Constitution

1. **How will you ensure that your entire team at DHS will understand that their loyalty is first to the Constitution, rather than a department, agency, political party or agenda?**

   This is implied in the oath all federal officeholders must take. If confirmed, I will also provide constant reminders to the DHS community of this basic principle, and set an example through my own actions.

2. **Do you believe the President has the constitutional authority as commander-in-chief to override laws enacted by Congress?**

   No.

   a) **Does the President have the authority to immunize people under his command from prosecution if they violate these laws passed by Congress?**

      No, not beyond the President's constitutional authority to pardon.

DHS's Intelligence Mission and Programs

3. **Questions have been raised about DHS's intelligence mission. For example, in 2012, this Committee's Permanent Subcommittee on Intelligence released a bipartisan report which found that DHS's "work with...state and local fusion centers has not produced useful intelligence to support Federal counterterrorism efforts." Others have questioned whether the DHS's Office of Intelligence and Analysis is providing timely and useful intelligence to its consumers. The next Secretary will have an opportunity to reform and strengthen DHS's intelligence mission.**

   a) **Did you or your employees use DHS intelligence when you were working at the Department of Defense? If so, what was your view of DHS's intelligence products?**

      I recall on occasion reviewing DHS intelligence products while at DoD, but I do not recall specifics.

   b) **Who do you think DHS's intelligence consumers are?**

      As it has been explained to me, the DHS Office of Intelligence & Analysis's primary consumers are:

- State, Local, Tribal Law Enforcement, and Homeland Security Organizations including States and major urban area fusion centers
- Private Sector Intelligence and Security Personnel
- DHS Operational Components
- DHS Leadership
- Intelligence Community
- Federal Departments and Agencies

c) **How can the DHS Office of Intelligence and Analysis better measure the utility of its intelligence products?**

If confirmed as Secretary, I intend to personally assess I&A's products myself. I&A will have my feedback concerning the utility of its intelligence products. Additionally, I have been told that DHS I&A uses multiple methods to evaluate the utility of its products -- direct customer feedback, along with direct engagement from its core customers, and customer support strategies.

d) **How do you think DHS could provide the greatest intelligence value for the national policymakers and state and local governments?**

I feel the most value in intelligence analysis and production occurs when the producer is well versed in needs and circumstances of the customer. DHS I&A is uniquely positioned within the IC to support the consumers identified in my answer to question 3b. Through its capacity to draw upon the analyses of other intelligence agencies and to produce organically finished intelligence that is tailored to and shared with those customers, I believe that DHS I&A serves a unique and valuable role within the federal government.

e) **Do you think that there should be any adjustment in the way that DHS's allocates resources to support its intelligence mission? Is the current resource allocation between the Office of Intelligence and Analysis and DHS's components appropriate?**

If confirmed, I intend to study this question. There is almost always room for greater efficiency and effectiveness. I am advised that the DHS "Intelligence Enterprise" recognizes the need to focus attention on collaborative analytical and collection programs to enhance its capabilities within its key mission set – including continuing to build capacity for state, local, and tribal partners.

Vulnerabilities in Federal Programs

4. **If you learned that a federal program under your direction was vulnerable to potential exploitation by terrorists, other adversaries, or criminals, what actions would you take?**

The shooting death of TSA Officer Gerardo Hernandez on November 1 at LAX is a reminder of the importance of this question. I believe robust force protection and counterintelligence

programs are necessary, given the type of work done at DHS. I have been briefed that DHS takes these issues seriously and if confirmed, I will ensure that Department continues to do so. If it were to come to my attention as Secretary that a program was under threat of exploitation, I would take the steps necessary to secure it.

DHS Law Enforcement Activities

5. **Please explain your understanding of how Department components handle investigations that involve straw purchasing of weaponry. Do you have recommendations for how DHS's Homeland Security Investigations should work to coordinate with other law enforcement agencies?**

   As I understand it, the U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has the primary authority to conduct investigations of straw purchases of firearms. DHS, through U.S. Immigration and Customs Enforcement, Homeland Security Investigations (HSI), is responsible for investigations related to transnational crime, including an illegal alien in possession of or exporting a firearm. In investigating both domestic and international firearms trafficking violations, collaboration and coordination between HSI and ATF is vital. I am also told that, in order to strengthen this collaboration and ensure appropriate de-confliction, the two agencies signed a Memorandum of Understanding in June 2009 to formalize their relationship and promote effective, coordinated, and collaborative law enforcement efforts nationally and internationally. I do not have any recommendations at this time for how ATF and HSI might better coordinate their efforts.

The Port Security Grant Program

6. **The Port Security Grant Program has faced challenges, including effectively using risk assessments or performance metrics to measure how effectively federal investments are buying down risk.**

   a) **Has the Department been successful or unsuccessful at utilizing Risk Analysis tools to develop quantifiable performance metrics to evaluate programs results?**

      One of the key responsibilities of the Department of Homeland Security is to support our state and local partners and work collaboratively with our other whole community partners, both as they respond to events, and also as they work to prepare ahead. As part of this responsibility, I believe it is important that DHS continues to strive to implement the Grant Program as effectively as possible. Having metrics to determine program results is obviously a worthy goal. I am advised that port security grant funds address risks and threats based on a risk analysis conducted at the nation's ports; that, in their current form, PSGP allocations are determined based on a yearly comprehensive risk assessment of the nation's port areas; and that this process complies with the requirements of the Security and Accountability For Every Port Act of 2006.

b) **In your opinion, how is this grant program capable of achieving sustainable success without established and credible performance metrics? How is grant program success determined?**

If confirmed, I will consider this question more closely. I am advised by DHS personnel that port security grant funds can address risks and threats based on the risk analysis conducted at the nation's ports, and that based on the results of that risk analysis DHS allocates grant funds to areas that face the highest risk of a potential terrorist attack, consistent with the requirements of the SAFE Port Act.

Transportation Worker Identification Credential (TWIC)

7. **The TWIC program has taken 10 years to implement; the 2008 pilot program is considered a failure; the most recent rule decision has been criticized by most of the maritime industry and 26,000 TWIC cards were recalled due to malfunctions, costing approximately $1.5 million. Should the Department reassess the effectiveness of the entire TWIC program?**

If confirmed, I will consider this question.

Chemical Facility Anti-Terrorism Standards (CFATS) program and Ammonium Nitrate Security Program (ANSP)

8. **Over the past six years the Department has attempted to implement an effective chemical security regime through its Chemical Facility Anti-Terrorism Standards (CFATS) program and Ammonium Nitrate Security Program (ANSP).**

a) **What lessons can be learned from the attempt to implement CFATS and ANSP, in order to improve DHS's approach to regulatory programs in the future?**

At this stage, I do not have a detailed understanding of CFATS and ANSP, and therefore do not have a firm view in answer to this question.

I am advised by DHS that various lessons can be learned from the challenges the Department has faced in developing and implementing CFATS and ANSP, and that they include: a clearly articulated vision and goals for the program's implementation; proper funding and resourcing of a program is essential to its successful development and implementation; establishing a stable, permanent leadership team and providing the organization with dedicated, qualified support staff to assist in areas such as hiring, budget, procurements, and facilities; and leveraging previous efforts and best practices to the maximum extent possible to enhance the cost-effectiveness of the program and allow the program developers to avoid repeating mistakes other programs have made in the past.

I also personally believe from experience that engaging stakeholders of all kinds early and often helps engender credibility in the program, and assists in the early identification of both potential challenges/roadblocks and solutions to overcoming them.

b) **What indicators, if any, do you believe foretold the CFATS program's early challenges?**

I am told by DHS that a lack of permanent statutory authority for CFATS continues to undermine the stability and credibility of the program. In addition, I understand that the ability to hire and retain the best employees and the willingness on the part of the regulated community to make necessary investments to comply with the regulation created some challenges early in the program. The lack of a permanent, stable leadership team and the resulting recurring shifts in vision and direction seem to have foretold future challenges.

Research and Development

9. **R&D at DHS is fragmented and the Department has failed to track and coordinate R&D effectively across all of its components, according to multiple GAO reports. One contributing factor is that multiple components have authority to conduct independent R&D or engage with research laboratories on R&D projects. Another likely culprit for this failure is the lack of a single individual with sufficient authority and standing to set a Department-wide definition of R&D and compel components to coordinate their R&D activities with the other components. As a result there is an increased risk of unnecessary duplication.**

a) **If confirmed, what will you do to ensure coordination and accurate reporting of R&D across the Department?**

I am familiar with this phenomenon at DoD. Duplication of efforts, and lack of leadership to de-conflict those efforts, is a waste of taxpayer dollars, time, and resources. If confirmed, I will study this question and ensure the maximum efficiency of the R&D efforts across DHS.

b) **Do you support consolidating all of the Department's R&D functions, including those at the Science & Technology Directorate, Domestic Nuclear Detection Office, Coast Guard, and Office of Health Affairs into a single component? Why or why not?**

I do not at this point have an informed judgment in answer to this question, and will consider it if confirmed. I understand that the Department is examining its CBRN R&D functions as part of the CBRN organizational study directed by the Senate Explanatory Statement accompanying the FY 2013 DHS Appropriations Act (P.L. 113-6), and that the Department will be submitting the results of the review in the forthcoming DHS CBRN Organization Report.

U.S. Secret Service

10. **Former U.S. Secret Service Director Mark Sullivan highlighted the challenge that the USSS has faced in balancing its dual missions, given the increasing staffing and travel demands for the security mission.**

    a) **Do you believe the U.S. Secret Service's dual missions are compatible and complimentary?**

    I have worked with the Secret Service in its law enforcement role, when I was an Assistant United States Attorney in 1989-1991, prosecuting a counterfeit currency case. The Secret Service manages risks and threats to key leadership, events, and critical infrastructure such as our nation's financial system. I am advised that the dual missions of the Secret Service are complementary and mutually reinforcing, and that the Secret Service has adapted its techniques, skills and methods in order to be successful in carrying out its authorities to counter emerging threats and challenges in both its criminal investigative and protective mission spaces. I am told that the Secret Service believes a Special Agent's career path first ensures they serve as a criminal investigator conducting investigations in a Secret Service field office, and that this provides agents the opportunity to obtain critically important investigative skills and experience. The expertise, maturity and judgment Special Agents develop as criminal investigators are essential to their transition into the next phase of their careers – protecting our Nation's highest leaders. From my own law enforcement experience, this makes sense to me. It is important to recall that part of the Secret Service mission is to investigate threats against the President and other Secret Service protectees. Having obtained essential skills from conducting criminal investigations, Secret Service Agents are thereby equipped with the experience and expertise to investigate and evaluate threats made against protectees.

    b) **How should they be prioritized?**

    The Secret Service's protective mission preserves the continuity of government and ensures the security of national leaders and events of national significance. I also understand that the Secret Service's investigative mission seeks to identify the most serious threats posed to the financial sector and disrupt those threats through criminal investigations. The investigative skills that Secret Service Special Agents develop in the field enhance and improve their abilities as they advance to a full-time protection detail. Both missions are complementary and mutually reinforcing.

Department of Defense Organization, Management, Mission

11. **The creation of the Department of Homeland Security has been called the most significant reorganization of government since the National Security Act of 1947, which included the creation of the Department of Defense. Some have compared DHS's efforts over the past decade to DOD's early years, which included significant legislative reorganizations to improve management and coordination—the Department of Defense Reorganization Act of 1958. Given your DOD experience, and knowledge of DHS, do you think that DHS would benefit from a similar reorganization? If so, do you have any preliminary thoughts of what the reorganization could look like?**

I do not have an informed judgment on this question at this point, but recognize that it is an important one. I do know from my DoD experience that, since 1947, DoD has periodically undergone fundamental restructuring for the better. DoD was not perfect at its inception. I recognize that for any large and complex organization with multiple components and missions, there is always room for improvement. Department leadership and Congress must be prepared to reassess and re-examine assumptions once in a while, for the sake of the effectiveness of the mission and the best expenditure of taxpayer dollars, time and resources.

12. **In November 2012, Sen. Coburn released a report examining DOD's broad mission: "*The Department of Everything: Department of Defense Spending That Has Little to Do With National Security.*" The report found that the Pentagon's original mission of fighting and winning the nation's wars had significantly expanded. During your time working at the Department of Defense, did you see areas where you believed the Pentagon could refocus its efforts? If so, please describe them.**

    My answer is yes. I have seen Senator Coburn's report.

    The Department of Defense has a broad range of missions that are not directly related to war fighting but do support national security, including in counterterrorism and homeland defense. That said, the Department of Defense has been looking at ways to greater achieve efficiencies through the Strategic Choices Management Review. While I was at DoD, Secretary Gates recognized that changes could be made to the Pentagon bureaucracy.

Use of Military Force in Libya and Termination of Military Operations

13. **In 2011, President Obama determined he did not need congressional approval under the War Powers Resolution for the United States' continued involvement in the air strike on Libya. According to public reports, he made this decision over your belief congressional approval was necessary for the United States' continued involvement. We understand the Department of Justice Office of Legal Counsel ("OLC") shared your view.**

    a) **We understand the process for President Obama to arrive at this decision differed from the traditional process of OLC compiling views from various agencies and issuing a formal legal opinion. Please explain your role in developing the OLC opinion, including why the process was less formal than in other instances.**

    In a public report to Congress dated June 16, 2011, the White House indicated:

    > "The President is of the view that the current U.S. military operations are consistent with the War Powers Resolution and do not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of 'hostilities' contemplated by the Resolution's 60- day termination provision."

This statement was issued after consultation between and among interagency lawyers, including myself. As is true for many other legal issues that arise within the interagency, OLC participated informally, without issuing a formal, written opinion. This is not unusual.

b) **Please explain whether you believe the deviation from the traditional OLC process was appropriate.**

See my answer above. It is not unusual for OLC to be consulted informally on a legal question, along with lawyers from other agencies.

c) **Please explain your specific role in providing advice on this issue, including whether you issued a formal or informal recommendation to the president on behalf of the Department of Defense.**

I personally provided my advice on this issue to senior leadership in the Department of Defense, interagency lawyers, and National Security staff.

d) **In April 2011, OLC issued a formal opinion on the Authority to Use Military Force in Libya. Please explain why you believe OLC avoided issuing a formal opinion to the president on the continued use of force in Libya, including whether you advocated for a formal OLC opinion to be issued.**

OLC normally will not issue a formal opinion unless requested by someone else within the Executive Branch. I did not request one. I respectfully refer you to the Department of Justice for any further answer to this question.

e) **If confirmed, what actions would you take in response to an opinion issued by OLC with which you disagreed as a matter of proper interpretation of the law?**

I would raise the matter with the Attorney General. As the head of the U.S. Department of Justice, the Attorney General has the prerogative to overrule OLC, though this is rare. I respect OLC and recognize that unless it is overruled, OLC's formal opinions are binding on the Executive Branch, including DHS.

Terrorism and Military Commissions

14. In your opinion, is the United States currently at war? Why or why not?

The 2001 Authorization for the Use of Military Force authorizes armed conflict against al Qaeda, the Taliban and associated forces, and, so far as I know, those forces are still active in efforts to conduct attacks against the United States and U.S. persons. So, I believe that at present the answer is yes.

15. Two of the primary missions of the Department of Homeland Security, as outlined in the Homeland Security Act of 2002,[1] are to "prevent terrorist attacks within the United States [and] reduce the vulnerability of the United States to terrorism." In carrying out this mission, do you believe the United States should process differently those arrested for domestic crime, such as rape or murder, and those who are prisoners of war or terrorists? Why or why not?

The Military Commissions Act of 2009 authorizes a system of military commissions for certain offenses. Additionally, I believe that if a terrorist is captured or arrested, national security personnel should be prepared to interrogate that individual, prior to any *Miranda* warnings, for intelligence collection purposes in the interests of national security, consistent with law and common sense. In my view, a pre-*Miranda* interrogation for this purpose is lawful, and experience shows that it is a valuable tool.

16. After President Obama took office in January 2009, he halted the use of military commissions under the Military Commissions Act of 2006 to review whether their use should be continued. In addition, the President issued an Executive Order requiring the closure of the Guantanamo detention facility within a year of the order. As a result, the Secretary of Defense also had to ensure proceedings before military commissions were halted in the interim. In 2009, the Administration decided to restart the military commission system with some changes, and the Department of Defense made modifications to the Manual for Military Commissions. Congress ultimately incorporated some of the Administration's changes to the system with its own recommendations by passing the Military Commissions Act of 2009.

a) What role, if any, did you play in the revival of the military commission system under the Administration? Did you contribute to the suggestions for changes that the Administration provided to Congress? If yes, please explain the suggestions you made and why.

I was an early proponent of retaining the military commissions system, with reforms. Early in 2009, I convened at the Pentagon a large group of JAGs and other DoD lawyers familiar with the system. We developed a set of proposed reforms to the system that could be accomplished administratively. Those reforms included:

(1) prohibiting the use of statements obtained by cruel, inhuman and degrading treatment;

(2) providing defendants with greater latitude to select defense counsel;

(3) afforded basic protections to those who refused to testify;

(4) reformed the use of hearsay by putting the burden of demonstrating reliability on the party trying to use the statement; and

[1] Homeland Security Act of 2002, §101, P.L. 107-296, Nov. 25, 2002.

(5) clarifying that military judges may determine their own jurisdiction.

Those reforms were accepted by the Administration and directed by the Secretary of Defense in May 2009. At around the same time, the President determined to retain a reformed military commissions system and work with the Congress to adopt additional reforms. Those reforms, which also included some of those outlined above, are reflected in the Military Commissions Act of 2009. I supported those reforms, and in the summer of 2009, I testified four times before Congress in support of them. I was pleased that these reforms were supported and adopted on a bipartisan basis by Congress.

b) **Of the Administration proposals included in the Military Commissions Act of 2009, which do you believe were the most important to include and why?**

Prohibiting the use of statements obtained by cruel, inhuman and degrading treatment. I heard loud and clear from many in 2009, including from JAG leadership, that enabling the use of such statements discredited the entire system.

c) **Do you believe any provision of the Military Commissions Act of 2009 is unconstitutional?**

I understand there have been some questions raised to this end, and I suspect courts will consider these questions.

d) **Do you believe there are further changes that should be made to the Military Commissions Act of 2009? If yes, please provide examples.**

I believe we should consider whether certain detention authorities should be clarified in the military commissions law.

e) **Do you agree with President Obama's Executive Order 13492 (January 22, 2009) which required the detention facility at Guantanamo Bay to be closed within one year of the order? Why or why not?**

I supported issuance of Executive Order 13492. I believe that the military detention facility at Guantanamo Bay should be closed. It is a secure facility, but as the detainee population declines, it is becoming an increasingly inefficient use of taxpayer dollars, and it continues to represent a black mark on American's reputation abroad and to be utilized as a recruiting tool for those who want to commit terrorist attacks against Americans.

f) **Given your experience working as a government attorney, including as an Assistant U.S. Attorney, do you agree with Attorney General Holder's announcement in November 2009 to transfer Khalid Sheikh Mohammed and the other 9/11 plotters to Manhattan for trial? Please explain.**

In 2009, I personally met with the Attorney General to review the issues I saw in connection with obtaining a conviction of Khalid Sheikh Mohammed in federal civilian court. Ultimately, Secretary Gates and I supported the Attorney General's decision to

transfer Khalid Sheikh Mohammed to civilian court, provided that the Attorney General was satisfied he could prosecute and convict KSM in civilian court. I note that, if confirmed as Secretary of Homeland Security, I would expect to see a threat assessment prior to the transfer of a detainee of KSM's stature to the United States.

Campaign Fundraising Activities and Actions Taken to Address Potential Conflicts of Interest

17. You reportedly raised as much as half a million dollars for the President's first campaign. According to the New York Times, you did this by "working connections," including relationships with many fellow lawyers.

a) Please describe any effort you made, at the time of your nomination to General Counsel to the Department of Defense, to determine whether any of the donors from whom you solicited campaign funds or their firms or employers, were involved with matters regarding the Department of Defense.

At the time I took office at DoD in 2009, I scrupulously followed all laws, regulations, Senate rules, the Obama Ethics Pledge, and my professional obligations as an attorney concerning potential conflicts of interest. This included: (1) identifying my former employer(s) and former clients for the period two years prior to my appointment; (2) committing in writing to avoid meeting or communicating with them on official DoD business for a period of two years after my appointment; and (3) implementing a screening arrangement reiterating and institutionalizing these requirements. In my previous position at DoD and my current nomination at DHS, I went through a rigorous process with the independent Office of Government Ethics and career ethics officials at DoD and DHS to ensure I was in compliance with all applicable ethics laws and regulations. Additionally, as the senior legal and ethics official of DoD, I served the American people and approached all matters without regard to political affiliation or support for any candidate or party. I wanted to set the example, adopt a values-based approach, and go above and beyond what the rules provided. I was mindful of appearances as well as the letter of the rules.

b) Please detail what actions you took, upon becoming General Counsel to the Department of Defense, to ensure that your involvement in legal or other matters as an official of the Department would not create actual or apparent conflicts of interest in light of your solicitation and receipt of political donations on behalf of the Obama campaign.

At the time I took office at DoD in 2009, I scrupulously followed all laws, regulations, Senate rules, the Obama Ethics Pledge, and my professional obligations as an attorney concerning potential conflicts of interest. This included: (1) identifying my former employer(s) and former clients for the period two years prior to my appointment; (2) committing in writing to avoid meeting or communicating with them on official DoD business for a period of two years after my appointment; and (3) implementing a screening arrangement reiterating and institutionalizing these requirements. Additionally, as the senior legal and ethics official of DoD, I wanted to set the example, adopt a values-

based approach, and go above and beyond what the rules provided. I was mindful of appearances as well as the letter of the rules.

c) **Please list any instance in which you recused yourself from a Department of Defense matter to avoid an actual or apparent conflict of interest.**

I recused myself from matters involving my prior law firm and its clients, as described above, and I complied in all other respects with all laws, regulations, Senate rules, the Obama Ethics Pledge, and my professional obligations as an attorney.

d) **FEC records show two donations made in your name which list your employer as "Busby Holdings." If this is correct, please explain the nature of Busby Holdings' operations and your responsibilities with regard to that entity.**

I believe such records are in error.

I, Jeh Charles Johnson, hereby state that I have read the foregoing Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

(Signature)

This 6th day of November, 2013

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 6th day of November, 2013
LaVonda M. Harley, Notary Public, D.C.
My commission expires November 14, 2016.

LAVONDA M. HARLEY
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2016

LAVONDA M. HARLEY NOTARY PUBLIC EXP. 11-14-16 DISTRICT OF COLUMBIA

Text in Mr. Johnson's Pre-Hearing Questionnaire Responses

Which Has Previously Appeared

In Content Attributed to Other Officials

1. DHS Efficiency Review

Johnson questionnaire – p. 11: "The Department's Efficiency Review program, **which began in 2009, as well as other cost-saving initiatives, have allowed for the identification of more than $4 billion in cost avoidance and reductions. This funding has been redeployed to mission-critical initiatives across the Department**."

DHS FY2014 Budget-in-Brief - Feb 26, 2013 – p. 9: "Through the Department-wide, employee driven Efficiency Review (ER), **which began in 2009, as well as other cost-saving initiatives, DHS has identified more than $4 billion in cost avoidanees and reductions, and has redeployed those funds to mission-critical initiatives across the Department**."

http://www.dhs.gov/sites/default/files/publications/MGMT/FY%202014%20BIB%20-%20FINAL%20-508%20Formatted%20(4).pdf

2. Quadrennial Homeland Security Review

Johnson questionnaire – p. 16: "I imagine that, building on this foundation, **the second QHSR should focus on how DHS**, together with partners across the homeland security enterprise, **will build smarter, more dynamic, risk-based approaches to homeland security that engage the broadest possible range of partners**."

HLSWatch.com, "DHS' Alan Cohn talks about the 2014 QHSR," June 19, 2013: "**The second QHSR will** build on this foundation and **focus on how DHS will build smarter, more dynamic, risk-based approaches to homeland security that engage the broadest possible range of partners**."

http://www.hlswatch.com/2013/06/19/dhs-alan-cohn-talks-about-the-2014-quadrennial-homeland-security-review/

3. FEMA

Johnson questionnaire– p. 18: "From what I understand, under Administrator Fugate's leadership, FEMA has also made important **reforms to its disaster workforce and instituted the FEMA Qualification System and Reservist program. FEMA additionally incorporated the DHS Surge Capacity Force into disaster response operations and, instituted the FEMACorps volunteer program, and established the Incident Management Assistance Teams Pilot Program** – all of which are now assets that can be called on in disaster to support response efforts."

Memorandum to all FEMA employees from FEMA Administrator W. Craig Fugate, "Subj: FEMA Administrator's Intent," 2013: " - Initiated **reforms to our disaster workforce, instituting the FEMA Qualification System (FQS) and establishing the Reservists program, DHS Surge Force, FEMA Corps, and Incident Management Assistance Teams (IMAT) Pilot Program.**"

http://www.fema.gov/media-library-data/20130726-1911-25045-2187/2015_2019_administrator_s_intent_final508.pdf

4. FEMA

Johnson questionnaire– p. 18: "**Through these federal investments, grantees have developed significant capabilities at the state and local levels.**"

FEMA Factsheet: National Preparedness Grant Program Vision Dialogue – March 2012: "**Through these federal investments, grantees have developed significant capabilities at the local level** to prevent, protect against, prepare for, respond to and recover from disasters of all kinds."

http://www.wsema.com/wp-content/uploads/2012/03/NPGP_Fact_Sheet_(1)_033012.pdf

5. National Preparedness Grant Program

Johnson questionnaire – p. 19: "As I understand it, **the proposed NPGP would consolidate current state and local preparedness grant programs into one overarching program (excluding EMPG and Assistance to Firefighters Grants programs) by removing stovepipes, and encouraging collaboration among disciplines and across all levels of government.**"

Testimony of FEMA's Tim Manning Before HSGAC, June 25, 2013: "Specifically, **the proposed NPGP would consolidate current State and local preparedness grant programs into one overarching program (excluding EMPG and Assistance to Firefighters Grants programs)** to enable grantees to collaboratively build and sustain core capabilities towards achieving the National Preparedness Goal. **By removing stovepipes, encouraging collaboration among disciplines and across levels of government**, State and local governments would be able to collectively prioritize their needs and allocate increasingly scarce grant dollars where they would have the greatest impact."

http://www.dhs.gov/news/2013/06/25/written-testimony-fema-senate-homeland-security-and-governmental-affairs

6. Intelligence & Analysis

Johnson questionnaire – p. 23: "Additionally, if confirmed I will continue I&A efforts to build and sustain common DHS intelligence standards as well as **build privacy and civil rights protections into its operations, policies, programs, and technology deployments from the outset of their development.**"

DHS Press Release, "Secretary Napolitano Releases Report on DHS Progress Fulfilling 9/11 Commission Recommendations," July 21, 2011: "**DHS builds privacy and civil rights and civil**

liberties protections into its operations, policies, programs, and technology deployments from the outset of their development."

http://www.dhs.gov/news/2011/07/21/secretary-napolitano-releases-report-highlighting-dhs-progress-fulfilling-911

7. Immigration Reform Oversight

Johnson questionnaire – p 26: "**If confirmed, I intend to quickly assess the capabilities of the existing oversight mechanisms. I will not hesitate to promote new or enhanced oversight mechanisms if I conclude they are necessary for this effort.**"

Mayorkas questionnaire: "**If I am confirmed, I would assess the capabilities of the existing oversight mechanisms before recommending new or enhanced ones. I would not hesitate to make the recommendations that I thought necessary based upon thorough assessment.**"

8. Immigration Reform Coordination

Johnson questionnaire – p. 26: "**Given the nature of the requirements of S. 744, I believe it will be vitally important to coordinate across the Department – and with other departments as necessary – to ensure that the legislation, if enacted, is implemented consistently, efficiently and effectively** … If I am confirmed as Secretary, **I expect to be integrally involved in monitoring the components' progress implementing the legislation.**"

Mayorkas questionnaire: "**Given the cross-cutting nature of the Senate-passed legislation, I believe it will be vitally important to coordinate across the Department – and with other departments as necessary – to ensure that the legislation is implemented consistently, efficiently, and effectively … I would expect that I would be integrally involved in monitoring the components' progress implementing the legislation** and resolving issues as they arise."

9. Immigration Reform Mandates

Johnson questionnaire – Nov. 5, 2013 – p. 26: "**Some of the key undertakings by DHS would include, but are not limited to, acquiring the infrastructure, technology, and equipment necessary for the strategies called for in the bill; the establishment of the registered provisional immigrant status program; and, the implementation of the mandatory employment verification system.** Implementation of S. 744 – particularly the reforms to the legal immigration system – will also require strong interagency coordination. If confirmed, I will ensure that DHS, **both at the headquarters level and the component level, will be fully engaged to ensure that any comprehensive immigration reform legislation is successfully implemented if enacted.**"

Mayorkas questionnaire: "**Some of the key challenges would include** hiring the additional border patrol personnel; **acquiring the infrastructure, technology, and equipment necessary for the strategies called for in the bill; the establishment of the registered provisional immigrant status program; and, the implementation of both the mandatory employment verification system** and an exit system

in international airports. The Department's leadership, **both at the headquarters level and the component level, will be fully engaged to ensure that any comprehensive immigration reform legislation is successfully implemented if enacted.**"

10. Border Security Investments

Johnson questionnaire, p. 29: "I understand that **CBP and ICE continue to make significant investments in technology and infrastructure across South Texas and today, CBP has more than 6,000 Border Patrol agents in the region, an increase of more than 80 percent since 2004.**"

Washington Post, quoting CBP spokesman Danny Tirado, June 18, 2013: "To address these changes, **CBP continues to make significant investments in technology and infrastructure across south Texas and today, has more than 6,000 BP agents in the region, an increase of more than 80 percent since 2004.**"

http://www.washingtonpost.com/blogs/fact-checker/post/obamas-claims-on-illegal-border-crossings/2013/06/17/051a0f70-d787-11e2-a016-92547bf094cc_blog.html

11. Border Security Investments

Johnson questionnaire, p. 29: "**Significant border-wide investments in additional enforcement resources and enhanced operational tactics and strategy have enabled CBP to address the changing composition of attempted border crossers, and maintain border security.**"

CBP press statement, March 2013: "**Significant border-wide investments in additional enforcement resources and enhanced operational tactics and strategy have enabled CBP to address the changing composition of attempted border crossers, and maintain border security.**"

http://freebeacon.com/the-perfect-amnesty-storm/

12. Cybersecurity

Johnson questionnaire, p. 40: "The Department's significant, ongoing contributions include: its **operational responsibilities for securing unclassified federal civilian government networks and working with owners and operators of critical infrastructure to secure their networks through cyber threat analysis, risk assessment, mitigation, and incident response capabilities; coordination of the Federal Government response to significant cyber or physical incidents affecting critical infrastructure**; . . .and **combating cyber crime by leveraging the skills and resources of the USSS and ICE and working in cooperation with partner organizations to investigate cyber criminals.**"

Written testimony of Acting Deputy Secretary Rand Beers before Senate Appropriations Committee, June 12, 2013: "DHS has **operational responsibilities for securing unclassified federal civilian government networks and working with owners and operators of critical infrastructure to secure their networks through cyber threat analysis, risk assessment, mitigation, and incident response capabilities**. The Department is also responsible for **coordinating the Federal Government response to significant cyber or physical incidents affecting critical infrastructure** consistent with Presidential Policy Directive (PPD) 21. In addition, the Department **combats cyber crime by leveraging the skills and**

resources of the USSS and ICE and working in cooperation with partner organizations to investigate cyber criminals."

http://www.dhs.gov/news/2013/06/12/written-testimony-acting-deputy-secretary-rand-beers-senate-committee-appropriations

13. Cybersecurity

Johnson questionnaire, p. 40: "**However, the effectiveness of these efforts is dependent upon collaboration with a variety of partners; most importantly, the owners and operators of the Nation's critical infrastructure.** DHS is **continually working to improve its outreach to this important community, and have undertaken a number of steps to ensure that our stakeholders have meaningful input into our work. While implementation of EO 13686 and PPD-21 is a key step towards securing and making more resilient our Nation's critical infrastructure, continued progress will require sustained effort by both public and private partners, and a recognition of the rapidly evolving risk environment. Though the private sector and government often have different calculations of risk, our continued partnership will enhance our mutual understanding of those calculations and allow us to work more closely and more effectively to protect and preserve the American way of life."**

Suzanne Spaulding questionnaire, Sept. 11, 2013: "**However, the effectiveness of these efforts is dependent upon collaboration with a variety of partners; most importantly, the owners and operators of the Nation's critical infrastructure.** We are **continually working to improve our outreach to this important community, and have undertaken a number of steps to ensure that our stakeholders have meaningful input into our work. While implementation of EO 13686 and PPD-21 is a key step towards securing and making more resilient our Nation's critical infrastructure, continued progress will require sustained effort by both public and private partners, and a recognition of the rapidly evolving risk environment. Though the private sector and government often have different calculations of risk, our continued partnership will enhance our mutual understanding of those calculations and allow us to work more closely and more effectively to protect and preserve the American way of life."**

http://www.federalnewsradio.com/pdfs/Spaulding-PreHearing-Questions-2013-09-11.pdf

14. Cybersecurity – CISCP

Johnson questionnaire, pp. 41-42: "**I will also work to provide timely and actionable information to inform those decisions and mitigate risk through programs such as the Cybersecurity and Information Sharing** Program **and Collaboration Program (CISCP) and the Enhanced Cybersecurity Service Program (ECS). I will continue to engage them in strengthening our public private partnership by participating in trusted communities to enhance collaboration and build shared threat knowledge.**"

Spaulding questionnaire, Sept. 11, 2013: "...**I will also work to provide timely and actionable information to inform those decisions and mitigate risk through programs such as the Cybersecurity and Information Sharing and CISCP and the ECS. Finally, I will continue to engage**

them in strengthening our public private partnership by participating in trusted communities to enhance collaboration and build shared threat knowledge."

http://www.federalnewsradio.com/pdfs/Spaulding-PreHearing-Questions-2013-09-11.pdf

15. Cybersecurity

Johnson questionnaire, p. 44: "**DHS directly supports federal civilian departments and agencies in developing capabilities that will improve their cybersecurity posture in accordance with FISMA.**"

Written testimony of DHS Sec. Napolitano before HSGAC, Commerce Committees, March 7, 2013: "**DHS directly supports federal civilian departments and agencies in developing capabilities that will improve their cybersecurity posture in accordance with the Federal Information Security Management Act (FISMA).**"

http://www.dhs.gov/news/2013/03/07/written-testimony-dhs-secretary-janet-napolitano-senate-committee-homeland-security

16. Cybersecurity

Johnson questionnaire, p. 44: "**As the OIG noted in its report, DHS has continued to improve and strengthen its security program** in Fiscal Year 2012. **The DHS Fiscal Year 2013 Information Security Scorecard utilize continuous monitoring data feeds from Component tools to monitor the implementation of United States Government Configuration Baseline (USGCB) settings** and security patching of databases and servers."

Memorandum to DHS OIG in response to Draft Report 12-017-ITA-MGMT, Oct. 1, 2012: "**We are pleased to note the OIG's positive recognition that the Department continues to improve and strengthen its security program … The DHS Fiscal Year (FY) 2013 Information Security Scorecard will be utilizing continuous monitoring data feeds from Component tools to monitor the implementation of United States Government Configuration Baseline (USGCB) settings.**"

http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-04_Oct12.pdf

17. Critical Infrastructure

Johnson questionnaire, p. 44: "**Critical infrastructure is the backbone of our country's national and economic security. In addition to the federal buildings where millions of Americans work and visit each day, it includes power plants, chemical facilities, communications networks, bridges, highways, and stadiums** – facilities which by and large are in private sector hands. "

Written testimony of Sec. Napolitano before HSGAC, March 7, 2013: "**Critical infrastructure is the backbone of our country's national and economic security. It includes power plants, chemical facilities, communications networks, bridges, highways, and stadiums, as well as the federal buildings where millions of Americans work and visit each day.**"

http://www.dhs.gov/news/2013/03/07/written-testimony-dhs-secretary-janet-napolitano-senate-committee-homeland-security

18. Cybersecurity Framework

Johnson questionnaire, p. 45: "To that end, I understand DHS has drafted **performance goals that are applicable to organizations adopting the Framework** and are intended to **encourage progress toward national-level outcomes achieved in part by widespread adoption of the Framework** while stressing **the importance of an enterprise risk management strategy that associates cybersecurity investments with enterprise business plans.**"

DHS press release, Nov. 5, 2013: "**The Performance Goals apply to organizations adopting the Framework, encourage progress toward national-level outcomes achieved in part by widespread adoption of the Framework,** and emphasize **the importance of an enterprise risk management strategy that associates cybersecurity investments with enterprise business plans.**"

http://www.isawwa.org/news/145014/DHS-Announces-Performance-Goals-for-Cybersecurity-Framework.htm

19. Science and Technology

Johnson questionnaire, p. 49: "**DHS confronts a global landscape in which technology is both a key driver of evolving threats and an essential source of solutions to those threats. The breadth and diversity of DHS's missions requires an organization like S&T to address a wide range of programs including the DHS components' near-term needs for new operational capabilities and improved operational effectiveness, efficiency, and safety. S&T also has responsibilities related to understanding and creating solutions to biological and chemical threats, and to conducting the R&D required to meet homeland cybersecurity needs. S&T also manages national laboratories that provide unique homeland and national security capabilities and has direct access to the Department of Energy's extensive national laboratory system. In addition, the Directorate's capacity to engage R&D activities worldwide is greatly augmented by S&T's university-based Centers of Excellence and bilateral international agreements. I recognize the importance of these missions.**"

Testimony of S&T Undersecretary Dr. Tara O'Toole before HSGAC, July 2013: "**DHS confronts a global landscape in which technology is both a key driver of evolving threats and an essential source of solutions to these threats ... The** extraordinary **breadth and diversity of DHS's missions requires S&T to address a wide range of programs including DHS Components' near-term needs for new operational capabilities and improved operational effectiveness, efficiency, and safety. S&T also has responsibilities related to understanding and creating solutions to biological and chemical threats, and to conducting the R&D required to meet homeland cybersecurity needs ... S&T also manages five national laboratories that provide unique homeland and national security capabilities and has direct access to the Department of Energy's extensive national laboratory system. In addition, the Directorate's capacity to engage R&D activities worldwide is greatly augmented by S&T's** nine **university-based Centers of Excellence** (COEs) **and** 13 **bilateral international agreements**."

http://www.dhs.gov/news/2013/07/17/written-testimony-st-senate-committee-homeland-security-governmental-affairs-hearing

20. DNDO

Johnson questionnaire – p. 48: "If confirmed as Secretary, **I will encourage DNDO to continue working closely with industry, sharing technical requirements and advancements in research, and development projects that could potentially be integrated into next-generation systems.**"

Questions for the Record from Rep. Dan Lungren for Huban Gowadia, Deputy Director, DNDO, April 19, 2012 Hearing Record: "**DNDO will work with industry closely, and share technical requirements and advances in research and development projects that could potentially be integrated into next generation systems.**"

http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg77379/pdf/CHRG-112hhrg77379.pdf (p. 83)

21. BioWatch

Johnson questionnaire – p. 49-50: "A key priority for DHS...The first indication that the Nation has been attacked may arise through early detection and advance warning systems, such as **the BioWatch program, the only federally-managed, locally-operated nationwide** early warning **system designed to detect the release of select aerosolized biological agents."**

DHS.gov, Office of Health Affairs, Health Threats Resilience Division: "**BioWatch is the only federally-managed, locally-operated nationwide** bio-surveillance **system designed to detect the** intentional **release of select aerosolized biological agents.**"

http://www.dhs.gov/health-threats-resilience-division

22. Reports to Congress

Johnson questionnaire –p. 53: "**It appears from the provided language that section 574 applies to reports that the Secretary must submit. As a general matter, it seems that congressional committees with jurisdiction should have access to reports that Congress has instructed the Department to write. I am not familiar with the past history and practice associated with the subject of this provision, but would review the Department's interpretation of this provision if confirmed.**"

Bunnell questionnaire: "**It appears clear from the provided language that section 574 applies to reports that the Secretary must submit. As a general matter, it seems that congressional committees with jurisdiction should have access to reports that Congress has instructed the Department to write. I am not familiar with the past history and practice associated with the subject of this provision, but would review the Department's interpretation of this provision if confirmed.**"

23. Privacy

Johnson questionnaire – p. 51: "I understand that DHS uses the Fair Information Practice Principles (FIPPs), **a widely accepted framework that is at the core of the Privacy Act of 1974 and is mirrored in the laws of many states, as well as many foreign nations and international organizations,** to assess and evaluate the impacts of programs, systems, and initiatives on individuals' privacy."

Memo from DHS Chief Privacy Officer Hugo Teufel III, Dec. 29, 2008: "The FIPPs are **a widely accepted framework that is at the core of the Privacy Act of 1974 and is mirrored in the laws of many U.S. states, as well as many foreign nations and international organizations.**"

http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2008-01.pdf

Post-Hearing Questions for the Record
Nomination of Jeh Charles Johnson to be Secretary,
U.S. Department of Homeland Security

COBURN

EB-5 Investor Visa Program

1. **Are you aware of any vulnerabilities in the U.S. Citizenship and Immigration Services (USCIS) EB-5 Investor Visa Program? If so, what are they and how do you plan to address those?**

   a. **If it became clear that the EB-5 Investor Visa Program was vulnerable to exploitation by national security threats or criminals, would you come forward to this committee with those problems and work with us to address any threats or vulnerabilities?**

   From what I know about this program, I believe it has value, but I also agree that we should be vigilant in monitoring it from a security standpoint. I am told that USCIS has in fact identified and worked to remedy some vulnerabilities in the program, and that USCIS has also provided some technical drafting assistance to Senators on legislation to strengthen the program, and that this language was included in S. 744. If confirmed, I am sure I will become more informed about this program, and will have a plan for continuing to address remaining vulnerabilities.

2. **In an August briefing to congressional staff, U.S. Citizenship and Immigration Services (USCIS) officials told us they could not shut down a regional center based on fraud or national security concerns. That is, even if they are worried a regional center is committing crimes or helping spies or terrorists enter the United States, they cannot shut it down.**

   a. **Under what circumstances do you believe USCIS has authority to deny a regional center application or investor application?**

   This strikes me as a legal question, for which I do not now have an opinion. If confirmed, I intend to consult the DHS General Counsel about this.

   b. **Even if USCIS only has the authority to deny these applications based on failure to demonstrate economic growth, do you believe USCIS *should* be able to deny applications on any other bases, such as the existence of an open investigation, findings of fraud, national security concerns or financial crimes? Why or why not?**

   I do not have a personal judgment about this. If confirmed, I will study this issue. I am advised that such authority is provided for in S. 744.

c. **Current immigration law makes inadmissible an alien who fraudulently or through willfully misrepresenting a material fact, seeks or has obtained a visa or other immigration benefit.[1] (8 USC § 1182(a)(6)(C)).**

Do you believe fraud in the EB-5 application process equates to such misrepresentation? Why or why not?

This strikes me as a legal question, for which I do not now have an informed opinion. If confirmed, I will consult DHS's General Counsel about this question.

If yes, regardless of whether the current EB-5 statute explicitly states the program's applications should be denied due to the existence of fraud, do you believe USCIS should deny EB-5 applications on the basis of fraud merely to comply with existing immigration law? Why or why not?

See the above.

DHS Leadership Vacancies

3. **You have said that addressing the leadership vacancies at DHS will be your top priority, if you are confirmed. We all agree DHS needs stronger leadership. And we look forward to working with you to fill those vacancies.**

   a. **What are the qualities you think successful leaders of DHS should have and why?**

   First, relevant experience;

   Second, ability to lead, delegate and motivate;

   Third, judgment and a strong sense of right and wrong;

   Fourth, ability to earn the respect of those who will work for him or her; and

   Fifth, the ability to "think out of the box" and not accept the status quo.

   b. **What kinds of issues would you consider to be disqualifying for any nominee for a DHS leadership position?**

   In my opinion, prior instances of bad conduct or indications that the individual regards public office as the occasion for personal aggrandizement, and lack of an ability to earn the respect of those who he or she will lead.

Private Sector and U.S. Competitiveness

[1] 8 U.S.C. § 1182(a)(6)(C)

4. **The U.S. Department of Homeland Security (DHS) has a tremendous role in both the national security and economic security of our great country. Almost all of the department's agencies work with the private sector for numerous issues, border security, supply chain security, trade facilitation, trade, travel, cyber security, ports of entry, air transportation, immigration, preparedness, resilience and many others. The interaction is constant, and DHS cannot achieve its goals without working in collaboration with the private sector. Looking at your background, we see a tremendous amount of legal experience.**

   a. **What is your experience in the private sector?**

      I have been a lawyer for over 30 years; about 21 of those have been in the private sector, representing individual and corporate clients. With each representation comes a requirement to understand the nature of the client's business in great detail and the legal problem the client faces. I have been exposed to a range of business sectors – from coal, music/songwriting, to financial services. I have also been a director/trustee of a number of not-for-profit organizations, such as the New York Community Trust, Adelphi University, and the New York Hall of Science.

   b. **If you were confirmed, how would you make working with the private sector a priority?**

      I am very comfortable in the business community, and it has become apparent that a large part of homeland security includes engagement with the private sector. This must be a priority. I would do this either directly or through organizations that represent the private sector. I would also leverage DHS's Private Sector Office and the existing programs DHS has for engaging the private sector.

TSA

5. **Do you support the expansion of the Secure Flight program, including implementing a computer program that would review data to assess whether an individual is a "high-risk" traveler prior to issuing a boarding pass?**

   I have received information about the program but do not now have an informed opinion about whether it should be expanded.

   a. **If yes, would that include assessing individuals even if they are not on a government watch list?**

      I do not have an informed opinion on this question at this point.

6. **What government intelligence and/or passenger flight information should the TSA use to make that determination? What about the ethnic origin of their name? Where they are from? Their criminal history? Their past flight itineraries?**

I do not have an informed opinion on this at this point. I do recognize that we must, however, respect privacy and civil liberties and avoid racial and ethnic profiling while doing what we need to do to enhance national and homeland security.

Oversight

7. **There are many areas in the Department of Homeland Security (DHS) that deserve a thorough review and significant reform. Investigations and reports by my office and others, such as the Government Accountability Office (GAO), the DHS Inspector General, and the Council on Foreign Relations, provide you with a starting point for such a review.**

   In the binder I provided to you at your nomination hearing, I listed many areas I view as ripe for reform – my version of a required reading list. Will you commit to review these reports and report back to me within 90 days on how you plan to ensure the Department will address the issues raised in these reports and how the Department has complied with GAO and DHS IG recommendations, where appropriate?

   Yes, and I will make my best effort to do so in 90 days.

8. **Which specific programs or initiatives within the Department, if any, do you think can be eliminated because they are ineffective, duplicative, wasteful, unnecessary, or have outlived their purpose?**

   I would like to reserve judgment on this issue, for when, and if, I am confirmed. As I said at my confirmation hearing, I do intend to be a hawk when it comes to fraud, waste and abuse in the use of taxpayer dollars.

9. **The Government Accountability Office (GAO) has issued several annual duplication reports, which can provide a starting point for identifying areas of improvement for DHS grant programs. I included these in the binder I provided to you at your hearing.**

   For example, in its 2011 report, GAO found DHS "could benefit from examining its 17 preparedness grant programs and coordinating their application processes...and eliminating redundant reporting requirements." In its 2012 report, GAO also found 4 of these 17 grants overlapped and "multiple factors contributed to the risk of FEMA funding unnecessarily duplicative projects."

   a. **Have you reviewed the GAO annual reports on duplication?**

      I do not believe I have seen these specific reports yet, but I will review them.

   b. **Would you agree these reports should inform your decisions regarding DHS grant reform?**

Yes; I respect GAO.

c. **Will you commit to review all of GAO's annual duplication reports and provide an update to this committee within 90 days on how the Department is complying with these recommendations?**

I will commit to reviewing these reports, and make best efforts to provide an update to the Committee within 90 days on how the Department is complying with these recommendations.

10. **When President Obama took office in his first term, he promised to conduct "an immediate and periodic public inventory of administrative offices and functions and require agency leaders to work together to root out redundancy." Should you be confirmed, do you plan to conduct such an inventory at the Department? If so, when can we expect you to complete it?**

I believe such a task is an implicit obligation of an agency head, to ensure best use of taxpayer dollars. I will continually advise the Committee of efforts to identify redundancy. I do not know what is involved in such a review, so I am not in a position to give you a timeline for completion. I understand that some type of review for redundancy within the National Capital Region is already underway.

Visa Overstays

11. **In your pre-hearing questionnaire and in the staff interview, you responded to questions regarding visa overstays. By some estimates, those who overstay their visas make up 40 percent of the illegal immigrant population in this country. In fact, *current* immigration law[2] provides for civil penalties for those who overstay their visas for six months or more with, among other things, either a 3—or 10—year ban from admission in to the United States after their removal or voluntary departure. You stated in your pre-hearing questionnaire it was important for those who overstay their visas to be held accountable, but the Department should dedicate resources to focus on those who represent national security and public safety threats to the country.**

a. **Regardless of whether the Senate-passed immigration bill or any other "path to earned citizenship" becomes law, do you believe all of those who have overstayed their visas and remain in the United States are in violation of current immigration law? Why or why not?**

In general yes, I believe, because current immigration law mandates that individuals maintain lawful status at all times while physically present in the United States, but I

2 Immigration and Nationality Act § 212(a)(9)(B)

understand that there can be exceptions and caveats. This is a legal question, and the DHS General Counsel is probably in the best position to provide the answer.

b. **A recent October 30th report by the Center for Immigration Studies documents the trends of Immigration and Customs Enforcement (ICE) deportation activity.[3] It reviewed raw DHS and ICE statistics and found interior enforcement has actually slowed significantly in the law few years. The report stated, "ICE is arresting and removing noticeably fewer illegal aliens from the interior now than was the case five years ago, and even two years ago." The report went on to note interior enforcement declined by 19 percent from 2011 to 2012 and is on track to decline another 22 percent in 2013. In fact, while DHS may claim it uses its resources "more effectively by guiding agents to hone in on criminals, [for example]...the number of criminal aliens removed from the interior also has declined...by 11 percent from 2012 to 2013."**

Finally, the report found "ICE is doing less enforcement with *more* resources." ICE's budget and staff has grown from $5.6 billion and 17,938 positions in 2008 to $5.9 billion and 20, 271 positions in 2012, a growth of 5 percent in funding and 13 percent in staff. Yet, the agency has deported 20 percent fewer aliens in 2013 than in 2012.

While I understand the importance of prioritization in times of tight budgets, this report finds not only does ICE do *less* with *more* resources, but ICE also does not truly focus on those areas of priority, such as those you suggest (aliens who are a threat to public safety or national security).

i. **Do you have any concerns with the current interior enforcement policies and efforts at ICE?**

I have reached no conclusion at this point, but I anticipate that, if confirmed, I will become fully immersed in this issue. I believe there is much to be learned beyond the numbers I have been given, and intend to research this issue.

ii. **How would you balance the need for enforcement at the border and in the interior?**

My answer is similar to the one provided just above.

c. **Do you believe the Department's prosecutorial discretion policies impose restrictions on ICE agents, the results of which ultimately allow thousands of illegal alien offenders, many of them criminals, to stay in the U.S. despite violation of our laws? Why or why not?**

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[3] Center for Immigration Studies, *Deportation Numbers Unwrapped*, October 2013, *available at* http://cis.org/ICE-Illegal-Immigrant-Deportations.

I accept the principle of prosecutorial discretion; I know from my days as a federal prosecutor that exercising such discretion is implicit in almost every law enforcement activity. I also recognize that prosecutorial discretion must involve prioritization, and should start with those who represent threats to national security and public safety. I agree that ICE should prioritize the removal of criminals and recent border crossers over those who do not represent public safety threats.

Abu Dhabi Preclearance Facility

12. **The United States airline industry argues that the Abu Dhabi preclearance facility would give Etihad, the UAE flag-carrier, a competitive advantage over U.S. network airlines by enabling international passengers who are seeking to fly to the U.S. from other points in the Middle East or Asia to clear customs while still in the UAE. It is our understanding, that former DOT Secretary LaHood and former DHS Secretary Napolitano did not so much as confer with each other on the impact of expanding preclearance in the Middle East, let alone to an airport no U.S. carrier serves. Given the lack of communication and consideration for the domestic industry impacted.**

    a. **Will you commit to significant discussions with DOT Secretary Foxx? And, as Secretary, will you commit to postponing any expansion of the existing preclearance programs (including Abu Dhabi) until a significant analysis is done to review the competitive impacts on the domestic airline industry?**

    I will commit to discussing this issue with Secretary Foxx. I am not now in a position to commit DHS to postponing an expansion of the preclearance program. I want to understand the overall issue better.

13. **As you may know, the Administration is finalizing an agreement with the United Arab Emirate (UAE) to open a Customs and Border Protection (CBP) preclearance facility in Abu Dhabi despite the fact that no U.S. airline currently serves that airport.**

    a. **As a general rule, given that we have less financial resources to adequately meet the CBP need domestically; wouldn't funds being used to establish Middle Eastern pre-clearance facilities be better spent in the United States?**

    I do not have an informed judgment on this issue. I commit to learning more about preclearance facilities, and how best to utilize CBP's budget for clearance facilities.

ENZI

Question #1: I have received numerous complaints about ICE enforcement from agricultural producers who act in good faith and make considerable investments to secure temporary foreign agricultural workers to help with their operations. In making these arrangements, these producers and their representatives, rely on and work with federal agencies to secure employment contracts and the appropriate visas to ensure that their

agricultural operations are lawful. However, when an employee on a temporary work visa breaks contract and leaves a job to work and reside elsewhere illegally, employers have reported these persons to their regional ICE officials. The result is that the employer is told that the agency refuses to enforce the law to detain those who break the law. How do you defend this double standard where an employer seeks to operate lawfully but agency officials refuse to enforce the law?

I understand that ICE is focused on sensible, effective immigration enforcement that prioritizes the removal of those who represent threats to national security and public safety. I would add that those employers who hire undocumented workers are breaking the law, and a single standard, not a double-standard, should apply to all employers. Those you heard from who are endeavoring to comply with the law should be encouraged to continue to do so. If all employers did this, it will discourage many illegal border crossings in the first place.

I also understand there are significant problems with our current immigration laws that make it difficult for today's agricultural employers to employ a legal workforce, and I agree that any package of comprehensive, common-sense immigration reform should provide an earned path to citizenship for undocumented immigrant workers and streamline the existing process for enabling agricultural employers to legally hire future workers.

Question #2: In several of the reported incidences above – ICE personnel were aware exactly where a temporary foreign worker breaking the terms of their visa was residing yet still refused to make a detention action. As Secretary of the Department of Homeland Security what will you do to improve enforcement of foreign workers who overstay or break the conditions of their visas?

ICE must prioritize the use of its resources to focus on the removal of those who represent threats to national security and public safety. I do believe that those who overstay or break the conditions of their visas should be held accountable in some fashion.

Question #3: The Department of Homeland Security and the Transportation Security Administration are implementing a number of traveler pre-screening initiatives that rely on extensive databases of personal information, including previous travel, property records, tax records, and other information that goes beyond what most travelers would expect in a pre-travel security background check. As Secretary of the Department of Homeland Security, how will you guarantee the protection of privacy rights for law-abiding individuals who may be subject to these profiling programs?

I believe that, in full consultation with DHS's Chief Privacy Office and Officer for Civil Rights and Civil Liberties, we must continue progress to ensure the privacy rights of law-abiding persons who are subjected to pre-screening programs. From experience, I know it is good to

have someone who is part of the development of a program with the mandate to ensure privacy, civil rights and civil liberties.

PRYOR

1. **The 9/11 Commission Report recommended that the Department of Homeland Security deploy a biometric entry-exit screening system to track all foreigners leaving the United States to address visa overstays and enhance national security. This recommendation remains unfulfilled. As Secretary, would addressing this recommendation be a priority for you?**
    a. **If so, how will you go about executing the recommendation?**

    I understand that DHS wants to expand the current biometric entry system to include biometric exit as soon as it can determine a cost-effective solution that will not hinder travel and trade. I support moving in this direction, and, if confirmed, will work to see that DHS does so.

2. **One of the greatest technological achievements that the Defense Department has achieved in the past decade is the use of mobile biometrics. On our Southern Border, the Border Patrol faces many similar challenges that our military has successfully overcome— namely, operating in austere, no connectivity environments which make it difficult to deploy communications and command and control capabilities. The Border Patrol could benefit greatly from mobile biometric identification technologies that are currently in use by the Department of Defense. Use of mobile biometric identification technologies would enable Border Patrol officers to know immediately how to handle any given individual. Should you be confirmed, would you consider taking successes from the Department of Defense and provide our Border Patrol with increased mobile biometric capabilities?**

    I am advised that the Border Patrol already uses several DoD mobile devices in the field, and I know the Border Patrol believes that wider access to biometric identification technology in the field would be beneficial. In general, I support learning from and in some cases relying upon what DoD has experienced with mobile technology. We should do so in a manner that is cost-effective and mindful of any privacy/civil liberties interests that might be implicated.

3. **As you may know, the biometric identification technology that has made the US VISIT program such a success is overdue for an update. While this technology continues to perform very well, it is important that the Department stay ahead of the curve in fielding the latest technology when it comes to its frontline, mission-critical programs such as US VISIT. If you are confirmed, would updating the technology supporting US VISIT be a priority for you as Secretary?**

Based on what I know, I believe so.

LANDRIEU

1. **Mr. Johnson, as you know, a primary mission of the Department of Homeland Security is to prepare for and respond to emergencies and incidents. This requires effective, secure and easy to use tools to collaborate with DHS partners. I'm sure that you have heard about the challenges that the Department faces related to its ability to effectively communicate. This applies to workers in the field and to managers back at headquarters.**

   I have heard about a DHS proof of concept called myHomeland that appears to be a promising application to address this problem. myHomeland is a secure social network that allows DHS to take advantage of commonly used capabilities like we see on Facebook, Twitter, YouTube and LinkedIn--and it's designed for mobile use in the field. I understand that it would be particularly valuable in responding to a Hurricane or other large event by allowing new users, such as state and local first responders and potentially volunteers to be invited into the system quickly and securely to make sure they have the information they need to do their job. They would only be allowed access to that information which they need. In addition to information sharing during large events, myHomeland can be used to find experts, stand up secure workspaces, share content, and access apps all from mobile devices.

   Could you provide additional information about the status of the myHomeland proof of concept, the status of its implementation across the various components, and its suitability to be scaled to support more users in a live production environment? In addition, I would be interested to know what other plans – if not through myHomeland – the Department has in place to get this essential communications capabilities into the hands of DHS personnel who primarily work in the field using mobile devices?

   I have no personal knowledge of this program. I am told that myHomeland was a CIO-sponsored pilot program that occurred from September 12, 2012, to Sept 11, 2013, and was managed by TSA and hosted by the National Technical Information Service, and that based on user feedback, certain features from the pilot may be incorporated into the Homeland Security Information Network, the Department's information sharing platform which provides secure collaboration for all Federal, State, local, tribal, territorial, international, and private sector partners for the law enforcement, critical infrastructure protection, intelligence, and homeland security mission.

2. **Mr. Johnson, I want to applaud the work that the Department is currently doing in regards to making the Nation's critical infrastructure more resilient to weather as well as security events. Having seen firsthand how critical it is to get infrastructure back up as soon as possible, I hope these efforts remain a top priority under your leadership. Again, given Louisiana's experience with weather events I am**

particularly supportive the Departments work on improving the electricity grid. I believe the Resilient Electrical Grid (REG) program, run out of the Science & Technology Directorate, holds particular promise. The Department also has several other projects currently underway to address these concerns.

Please comment on the role the Department is playing to facilitate the deployment of new technologies to address these long standing concerns.

I have no personal knowledge in response to this question. I am told that that REG program run by S&T takes advantage of valued partnerships with the private sector, that other projects such as these have been successfully demonstrated by S&T, but that transitioning large infrastructure projects can present challenges as they often require large capital investments from the private sector. If confirmed, I believe I should work to ensure that the Department continues to develop valuable partnerships with critical infrastructure owners and operators, gain a deeper understanding of the challenges and gaps for critical infrastructure resilience in the face of various hazards, and develop programs to address these issues and field new technologies.

3. **OMB is following the success of industry in moving agencies to consolidating the integration of information systems under single service centers. This promotes the elimination of duplication, supports reuse and dramatically improves federal efficiency while reducing federal cost. The OMB plan is for every agency to be either a service provider or acquire services from a shared service center. DHS has been working since their inception to integrate the information systems of their multiple agencies that were consolidated under DHS. Significant progress has been made but much work remains.**

Would you consider establishing a shared service center completely focused on the integration and standardization of information systems and critical information?

Yes, I would consider it. I am advised that DHS has already established two shared service centers – referred to as "Enterprise Data Centers" – that host IT systems and applications.

In your opinion, what is a realistic timeframe for DHS to stand up this center?

I must respectfully refer you to DHS for an answer to that question.

4. **DHS and the Pentagon have an agreement whereby DHS protects the civilian internet and DOD's cyber command protects military networks and conducts attacks. With an estimated 6 million probes or attacks on U.S. government networks a day, many conducted by approximately 140 foreign spy organizations, our networks are under constant assault. The escalation of data exfiltration and espionage make it necessary for DHS and DOD to work together.**

How do you view the role of both DHS and DOD in cybersecurity? How will you seek to clarify the roles for maximum efficiency and effectiveness?

I agree that it is necessary for DHS and DoD to work closely together in this important mission. (I understand the DHS Office of Infrastructure Protection and the DHS Private Sector Office support this mission.) I also believe that both agencies should continually evaluate whether the respective roles can be further clarified. I agree that, in general, DHS should have the lead for cybersecurity in the civilian .com and .gov world, and that DoD should have the lead for national defense, which includes defending the nation from attack and securing national security and military information technology systems. I am committed to continuing to work with Congress to advance these agendas.

Much of the cybersecurity work is concentrated in the DC metro area which drives up costs and limits recruitment. Is there a viable technical reason that all work should be focused in one area? What are the risks with this approach?

I understand there are certain synergies and efficiencies that can be achieved by the presence of many of the federal government's cybersecurities facilities in the DC area. However, as you and I discussed, cybersecurity talent is not located only in the DC area, and we must draw on that talent. I also agree there are likely risks associated with concentrating the government's cybersecurity capability in one geographic area, and we should evaluate those risks.

Cybersecurity education is critical to our ability to keep up with the evolving threat. The Cyber Innovation Center in Bossier City, LA has been successful in supporting the DHS's goal of educating 1.7 million students by 2021. Will you enforce this goal as Secretary? What are other critical education programs we need to keep pace with needs of our future workforce?

I have no personal knowledge of this specific goal, and will look in to it. I do agree, however, with the urgent need to recruit students for a cybersecurity education.

5. Biggert-Waters National Flood Insurance Reform Act of 2012 is flawed and the legislation should be repealed, amended or delayed so that it is affordable, accessible and self-sustainable. My current FY 2014 Appropriations bill contains a provision that delays raising rates for formerly grandfathered properties during the fiscal year. And I am working on a permanent fix, as well.

Will you commit to work with Congress to ensure both legislative and administrative solutions are used to ensure a sensible approach to the flood insurance program?

A number of Senators have raised this issue with me. I agree that there should be a sensible approach to the flood insurance program, and that economically distressed homeowners impacted by the 2012 law should be assisted in some way. If confirmed, I will work with you and others in Congress on this issue.

6. **Headlines from around the world and right here in the United States remind us constantly that natural disasters will wreak havoc for people. I noted it was number five on your list of priorities for the Department.**

   Hurricane Sandy struck on October 29th, 2012, as the largest-sized storm system in United States history. Unfortunately, thousands of my constituents in Louisiana know exactly what the people of New York, New Jersey, Maryland and other Sandy struck States are going through in their efforts to recover from the devastating storm. Substantial federal support was delivered to the Gulf Coast after Hurricanes Katrina and Rita in 2005 but navigating the federal bureaucracy to access that help was at time maddening. FEMA and the federal government simply did not have the right tools in place to support effective response and recovery for a catastrophic disaster. Through the Post Katrina Emergency Management Reform Act and the Sandy Recovery Improvement Act – which Congress passed in January of this year – Congress has sharpened the tools States can use for recovery.

   FEMA has worked hard implement the new and improved programs. There are 10 new policies in place – such as pilot programs for sensible public assistance alternative projects and expedited debris removal. However, there is still work to be done to fully implement the legislation - such as 8 major regulation development projects for items like streamlined mitigation programs and individual assistance factors.

   What specifically will you do to make sure FEMA stays on track to give the Nation the best programs available to support disaster response and recovery?

   I appreciate the critical importance of fast and effective responses to natural disasters in this country. While General Counsel of DoD, I visited areas in New Orleans affected by Katrina, and I will never forget the impact I saw that it had on people's lives. If confirmed, I will support Administrator Fugate's efforts to strengthen the Nation's resilience to disasters and meet the needs of those impacted by disasters, and I will pay close attention to after-action reports to ensure that we are constantly learning and improving. Ensuring resilience in response to disasters is clearly one of the most important responsibilities DHS has, and when disaster strikes our ability to support state and local partners as they respond is an obvious priority.

7. **Earlier this year, the Coast Guard submitted its five year Capital Investment Plan, which calls for significant funding reductions that will delay completion of the Offshore Patrol Cutter, decrease the number of Fast Response Cutters, end the acquisition of Maritime Patrol Aircraft, and scale back investment in deteriorating shore facilities. This is a major priority.**

   Coming from the Department of Defense – how do you view the sustainment of USCG fleet?

From my experiences as General Counsel of DoD and the Air Force, I know the importance of recapitalization of an aging fleet, and I have discussed this with the Commandant of the Coast Guard as well. I am advised that, through new acquisitions, the Coast Guard has been able to reduce risks in inland and coastal operating areas.

If confirmed, how does a modern and robust coast guard fleet augment and lend support to your other priorities?

I know there is a whole of government reliance on the Coast Guard. DHS is, for example, the lead agency for the interdiction of maritime threats in waters over which the U.S has jurisdiction and the Coast Guard is an essential element of that strategy. The Coast Guard also contributes to the government's overall counternarcotics strategy, and toward stabilizing overall border security.

8. **International air passengers are a significant contributor to the economy of our country, yet CBP staffing shortages at airports continue to cause lengthy and persistent delays for those entering the country. Similar staffing constraints slow the processing of people and goods crossing our border and entering our seaports. Due to budget constraints, the federal government lacks the resources to address these staffing shortfalls. The government must work with Congress and the travel and trade industry to creatively address this issue.**

   What is your plan to address the CBP staffing shortages and reducing waiting times at airports?

   I know from personal experience that CBP officers play a vital role, by welcoming passengers and processing trade. I know also that CBP is facing a shortage of officers and that the President's FY14 budget request asks for 2,000 additional CBP officers to help address wait times and staffing shortages at major airports. If confirmed, I hope to work with Congress to fulfill the President's request for additional CBP officers.

   To the extent that you have the resources to do so, how will you prioritize investment in technological solutions to support CBP operations?

   I believe generally in a risk-based strategy.

9. **Since 2011, the Transportation Security Administration has focused its efforts on risk-based security. Essentially, the concept is to let passengers TSA knows more about go through expedited screening at airports thereby allowing security officers to focus more attention on passengers we know less about. Former Secretary Napolitano and TSA Administrator Pistole set a goal of 1 in 4 members of the traveling public being eligible for expedited screening by the end of this year and 50 percent eligibility by the end of 2014.**

   Will TSA's risk-based security program be a priority of yours as Secretary?

I believe so at this point.

Do you support the goals TSA has set for expedited screening eligibility?

I believe so at this point.

10. **Less than two weeks ago, a gunman walked into the Los Angeles International Airport and killed a Transportation Security Administration (TSA) officer and injured two others. The shooting started on the public side of the airport before passengers go through security screening. This incident is being closely examined to determine if airport security policies and protocols need to be improved.**

    What steps do you believe need to be taken to improve security so a tragedy like this can be prevented in the future?

    Officer Hernandez's death is a tragedy. Before coming to a definite view in answer to this question, however, I would want to hear from TSA security experts what the options are, and what is the best way to protect personnel in the most cost-effective and practical way.

11. **I requested a report from DHS in my FY 14 Appropriations bill addressing the backlog of EB-5 visas being processed. In your opening statement, you mention immigration reform as one of your priorities if you are confirmed as the next Secretary of Homeland Security.**

    How do you plan to address the EB-5 backlog?

    I agree that all applications, including EB-5 applications, should be processed in a timely manner, while carefully screening all applications to address any potential security and fraud concerns. I understand that in recent years USCIS has hired additional personnel dedicated to the EB-5 program to not only address the backlog but also conduct thorough vetting of all EB-5 cases.

    Regarding immigration, how do you plan to approach the issue of immigration reform while maintaining robust enforcement and removal efforts?

    I believe that enhanced, more effective law enforcement and border security should be an integral component of comprehensive, commonsense immigration reform. Immigration reform legislation passed by the Senate, S. 744, recognizes this as well. I also recognize that DHS must engage in a robust planning process should immigration reform pass, to include managing the numerous requirements of the law.

12. **In your last major speech before leaving the Pentagon, you warned that ongoing, open-ended warfare against terrorism must not be the "new normal." You discussed a "tipping point" thanks to ongoing counterterrorism missions, after which U. S. efforts should no longer be considered an armed conflict.**

What role do you see DHS playing in counterterrorism policy now (we would argue it is a small, supporting role) and where he may steer the agency?

Combating terrorism and protecting the homeland from these threats is vital to DHS's mission.

Al Qaeda's core has been degraded. The terrorist threat is even less conventional than it was before, with less of a command structure. I believe that, as we move to the next phase of our Nation's counterterrorism efforts, in which (in my view) the terrorist threat becomes more diffuse, and includes the domestic, lone actor who self-radicalizes, "armed conflict" is less suitable. We must depend on a whole of government approach. This includes, prominently, the Department of Homeland Security. Given the current threats we face, I believe it is important, for example, that DHS continue to be in a position to share and analyze information with state and local governments, to raise awareness. DHS must also continually evaluate aviation standards, continue the work to secure the borders. These are just examples of the role DHS should play in counterterrorism.

HEITKAMP

1. **Securing and protecting our nation's borders is one of the key responsibilities of the Department of Homeland Security (DHS). At times, I worry that the challenges of the Southern border with Mexico overshadow all other border challenges, such as those which occur along the Northern border with Canada. I welcome your thoughts on several aspects of this issue:**

   What role can technology play to secure the Northern Border and also help ensure the efficient flow of trade with Canada? What are your plans to improve DHS's use of technology?

   In my meetings with Senators from northern states they have stressed the importance of the security of the Northern Border. If confirmed, I will focus attention on the Northern Border, and visit stretches of the Northern Border soon after taking office. I believe that technology can enhance and improve our performance both in securing the borders and facilitating trade. This is true for the Northern Border as well as the Southern Border. Technology also helps us speed up the inspection process, streamline the processes for filing import and export data, and analyze data to support our risk-based targeting strategies. If confirmed, I will continue to pursue effective investments in technology that will enhance our border security and trade facilitation at all our borders.

   The Northern Border features significant geographic challenges to monitoring – most notably the sheer length of the border, must of which is wide-open and flat. As you prepare for your new position, what are your initial thoughts on how to improve the use of Customs and Border Protection

(CBP) and DHS resources to ensure the Northern Border is adequately controlled?

During the course of my briefings leading up to the November 13 confirmation hearing, border security personnel have stressed the importance of the risk-based approach in making decisions regarding the deployment of personnel, technology, and other resources. If confirmed as Secretary, I recognize the need for continual risk level assessments of the Northern Border, to determine how existing and new resources are allocated. As Secretary, I hope to ensure that DHS prioritizes capabilities for the highest threats in an effective and efficient manner.

What is the proper role for local law enforcement entities when it comes to Northern Border protection?

I do not have a fully informed view at this point. I know DHS officials believe that DHS's relationship with state, local, tribal and international law enforcement agencies is critical to facilitating greater coordination with all regions of the border, and that joint operations and patrols with partner law enforcement agencies greatly assists in focusing operations and resources against shared threats. I recognize now that the intelligence received from these partnerships must be used continually to evaluate risks, resource alignment, and future requirements.

I have strong concerns that Native American reservations near the Northern Border are at risk to becoming havens for organized crime, especially in North Dakota with the expansion of the Bakken oil and gas fields. What is the right role for DHS in helping ensure our reservations don't become such havens?

I do not have an informed judgment in response to this question at this point. I am advised that (i) DHS and CBP continue to coordinate with federal, state, local, and tribal law enforcement officials in the area, (ii) share relevant information and intelligence with partner agencies through the National Network of Fusion Centers, (iii) that in 2012 DHS supported the development of an intelligence product produced jointly by the Montana All Threat Intelligence Center and North Dakota State and Local Intelligence Center, and (iv) this joint fusion center product examined the law enforcement impacts associated with the increased economic development in the Williston Basin Region, including the Bakken Oilfield

Do you feel DHS operations along the Northern Border are adequately staffed? What type of information or situation would cause you to consider transferring resources – personnel or otherwise – from the Northern Border to other border protection areas?

I do not have an informed judgment in response to this question at this point. If confirmed, I will commit to allocating resources where they are needed most along all of the borders.

What is the right approach regarding DHS use of Unmanned Aerial Systems (UAS) in border security efforts?

I believe that unmanned aerial systems for purposes of surveillance is useful in border security efforts, provided we also focus on protecting the privacy and civil liberties of our citizens. I was impressed by our conversation in this regard.

2. **The Department of Homeland Security recently selected 15 vendors for its Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE II) contract for information technology. Reports indicate it took three years to make an award and that during that period, some of the companies on the contract were acquired by other companies and another was briefly suspended from federal contracting. Also concerning is that a large number of companies, some of which successfully provide mission critical services to the Department under EAGLE I, were not selected for EAGLE II. Given the recent press about federal technology deployments gone wrong, the reports on IT acquisition at DHS greatly concerns me.**

If confirmed, will you commit to this Committee to thoroughly review the EAGLE II contract process and report back to the Committee how the Department plans to address the flaws in this acquisition process?

I have no first-hand knowledge of this matter, and I am advised that I must be careful in commenting on this matter, to protect the integrity of the procurement process. I am also advised that the Department's Chief Procurement Officer has received a similar inquiry from Chairman McCaul and Chairman Duncan of the House Committee on Homeland Security and is in the process of preparing a response, and that the Chief Procurement Officer will review the EAGLE II contract process and report back to this Committee as well. In general, if confirmed I will commit to paying close attention to DHS's procurement system, consistent with law and regulation.

Given that it took over three years to make an award in a market as rapidly changing as IT, why were vendors not given an opportunity to update their proposals before awards were announced?

See the response above.

We have often seen high profile IT projects fail or run far behind schedule costing taxpayers millions of dollars. To what degree was past performance considered when making the vendor selection under EAGLE II?

See the response above.

What plans does DHS have to either recompete the EAGLE II contract vehicle or allow agencies unrestricted use of waivers to allow them to select other vendors outside those selected on the EAGLE II vehicle?

See the response above.

LEVIN

Replacing H-65 Helicopters at Air Station Traverse City

The FY 2011 President's budget proposed replacing the five H-65 helicopters in Traverse City with four H-60 helicopters which have greater capabilities, such as deicing capabilities. Due to the size of its area of responsibility and its support of the seasonal Air Facility at Waukegan, Air Station Traverse City requires a minimum of five H60s.

Questions:

1. **Coast Guard Air Station Traverse City has been waiting for several years to have their current fleet of H-65 helicopters upgraded to H-60 helicopters. Will you seek to carry out this commitment?**

   I'm sorry that I have no personal knowledge of this issue. I am told that the FY13 President's Budget proposed the replacement of H-65s in Traverse City with H-60s, but that this proposal was not included in the FY13 enacted budget, and was not requested again in the FY14 President's Budget. I am also told that the Coast Guard believes that it maintains adequate operational capability with the current force laydown.

AYOTTE

(1) **In July 2013, the Coast Guard reversed a five year-old policy to now hold that servicing of an undersea telecommunications cable network in the Gulf of Mexico is Outer Continental Shelf Lands Act (OCSLA) activity, subjecting the sole US-controlled manufacturer and servicer of these systems, an operation based in New Hampshire, to expensive crewing requirements. This interpretation of the OCSLA effectively makes the maintenance provider non-competitive for future repair contracts in this region. What was the rationale behind this change?**

   I'm sorry that I have no personal knowledge of this issue. If confirmed I will look into this issue.

(2) **The Customs and Border Protection's Office of Field Operations currently conducts preclearance operations in 15 locations—nine of which are in Canada. What utility do you believe these operations serve, and what is your long-term vision for the Department's preclearance operations?**

My general observation at this point is that preclearance operations provide important security benefits by screening passengers outside the U.S., thereby mitigating the risk of dangerous people and goods traveling on aircraft bound for the United States.

If confirmed, I intend to review the further expansion of preclearance operations.

FLAKE

1. John Ladd's Ranch

On February 11, 2013, Senator Flake wrote a letter to then-Secretary Janet Napolitano bringing to her attention a major security concern along the southern border between the U.S. and Mexico. In that letter, Senator Flake challenged the persistent narrative that the border area is "safer than ever" and posed several questions about breaches along one specific stretch of border fence in Arizona adjacent the Ladd Ranch. The Ladd property is a 14,000 acre ranch that shares ten miles of US-Mexico border between Naco, Arizona and the San Pedro River. At the time the letter was written, Mr. Ladd reported witnessing 14 breaches with a total of 29 trucks over the previous 12 months. Now, nine months later, the problem has continued and Mr. Ladd now reports 43 trucks have breached the border fence and driven through his ranch in the past 21 months.

If confirmed, what will be your policy about responding to inquiries from Members of Congress? What steps will you expect the Border Patrol to take to address known issues like this along the southern border?

When I was General Counsel of DoD, I insisted on being made aware immediately of letters to me from Members of Congress, and timely responses to the concerns raised and questions asked. If confirmed, I will insist on timely responses to inquiries from Members of Congress.

As Secretary, I will also expect the Border Patrol to rapidly respond to and investigate the types of incidents you describe.

2. Condemnations

Technology is a critical element of CBP's border security strategy. The location where this infrastructure is placed is also critical. When the agency identifies privately-owned sites needed to provide necessary situational awareness for agents, the agency negotiates with landowners in an effort to acquire the property. In most instances, CBP has been able to acquire the property through a voluntary sale. However, in some situations CBP and landowners cannot reach agreement on a voluntary sale and CBP has initiated condemnation actions. There has reportedly been many such condemnations this year in Arizona. Several private land owners in the border area are concerned that the condemnation process was not well understood by local CBP officials and therefore not communicated well to landowners.

If condemnation is deemed necessary, what is the process CBP must follow? What role do local CBP officials, many of whom have spent years developing relationships with landowners, play in the process? If you are confirmed, will you commit to assuring that private property rights are always respected in the border region?

I am not familiar with CBP's process at this point. In general, I recognize the need for a process that respects property rights, and that the government should pursue all options to acquire properties before utilizing condemnation. I also believe it is important to engage in early outreach efforts to landowners and the broader community in order to assist in communicating the Agency's operational needs as well as our plans to address their concerns.

3. Border Region Prosecutions

Operation Streamline was initiated under the premise that it would criminally prosecute illegal entry as part of the consequence delivery program to help secure our southern border. We are aware that the number of people apprehended and eligible for prosecution under Operation Streamline far exceeds the resources available, at which point Customs and Border Protection has discretion over which detainees are processed for prosecution.

How would you address the issue of limited resources in terms of whom to prosecute through Operation Streamline?

I have a basic understanding of Operation Streamline, but I do not have an informed, detailed answer to your question. If confirmed as Secretary, I will work with the Attorney General to ensure that the Department of Justice is a strong partner with DHS, and that the right amount of resources are applied to prosecuting the worst offenders.

4. Border Community Index

Having moved away from the reporting of the level of operational control maintained along the border, the Border Patrol has been focused on the so-called "Border Condition Index" as a proxy for effectiveness in securing the border. As indicated in the 2012-2016 Strategic Plan, the BCI that is currently under development "includes important indicators of activity between the ports of entry; indicators of the amount, nature and flow of traffic at the ports of entry; and quality of life indicators in border communities." However, the effort to formalize the BCI as a border region index have been criticized of being overly broad, meaningless with respect to the actual security situation, and plagued with delays with little meaningful data reported in the interim.

If confirmed, what steps will you take to take a fresh look at the suitability of the Border Community Index? In your view, how important is it that the Department of Homeland Security have workable metrics that can provide a meaningful measure of agency performance and present day security issues along the border?

I am aware that the Department has been working on a Border Condition Index and that it is not yet complete. I have not yet had the opportunity to review this issue, but I understand the importance of measuring and communicating the state of the border. If confirmed, I intend to review the BCI as well as the Department's other efforts to define effectiveness measures.

5. ICE Detainee Release

In March of this year, Immigration and Customs Enforcement (ICE) officials released more than 2,000 detainees, purportedly due to reasons related to the agency's budget. While this move raised any number of legitimate questions, reports at the time indicate that local law enforcement officials were not informed of this decision beforehand and that ICE made no effort to coordinate with them.

If confirmed, what is your view of the role of cooperation and coordination between Department of Homeland Security entities and local law enforcement officials? In your view, do you believe local law enforcement should have been made aware of the prospective release in a timely fashion?

I fully agree that cooperation between DHS entities and local law enforcement agencies is crucial for accomplishing their shared law enforcement missions.

CARDIN

Question for the Record for DHS Secretary nominee Jeh Johnson (submitted by U.S. Senator Benjamin Cardin)

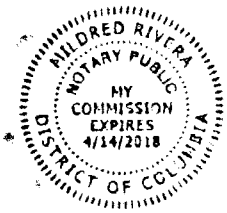
In your legal practice, you assisted an American citizen who is the subject of what appears to be a politically motivated Interpol Red Notice. Unfortunately, his case is far from the only example of authoritarian states using Interpol to harass political and business opponents. Aside from the harm this does to the targeted individual, it erodes the credibility of Interpol notices and hinders its ability to fight crime. As Secretary of Homeland Security, you will be an end user of Interpol's information, your agents will be our front line stopping those subject to such notices for further investigation and, in some cases, prosecution or extradition. What proposals can you suggest to address the problem of inappropriate and abusive notices and to ensure that the U.S. government does not unwittingly become the accomplice of a foreign state using Interpol to persecute opponents as opposed to apprehending real criminals and stopping dangerous terrorists?

I recall the representation. The bureaucracy seemed impenetrable and uninterested, and I was struck that there was little the individual traveler and I could do to get the notice removed. I do not have a firm view about the solution to this type of problem, but it seems to me there ought to added flexibility to address an Interpol notice that has been triggered by an underlying action that is "politically motivated."

I, Jeh Charles Johnson, hereby state that I have read the foregoing Post-Hearing Questions for the Record and the information provided therein is, to the best of my knowledge, current, accurate, and complete.

District of Columbia: SS
Subscribed and Sworn to before me
this 11 day of November, 2013

Mildred Rivera, Notary Public, D.C.
My commission expires April 14, 2018



Jeh Charles Johnson

November 18, 2013

The Honorable Tom Coburn
United States Senate
Washington, DC 20510

Dear Dr. Coburn:

As requested, attached is an appendix to the responses initially submitted to the Pre-Hearing Questionnaire.

Sincerely,

Jeh Charles Johnson

cc: The Honorable Tom Carper
United States Senate
Washington, DC 20510

U.S. Senate Committee on Homeland Security and Governmental Affairs
Appendix to Pre-Hearing Questionnaire for the Nomination of
Jeh Johnson to be
Secretary of the Department of Homeland Security 11/18/13

DHS Efficiency Review

22. Given the serious financial difficulties facing the Government, what steps do you believe DHS can take to ensure that federal funds expended by the department are free from duplication and waste?

a. Do you believe there are any programs within the Department, which you think can be eliminated because they are ineffective, duplicative, wasteful, unnecessary, or have outlived their purpose? Please provide examples, if any.

I am not now in a position to answer this question. But, if I am confirmed, I intend to take a close look at this question. As I said in my prepared testimony, I intend to be a hawk when it comes to identifying and eliminating fraud, waste, and abuse in the use of taxpayer dollars. This is crucial to the mission and public confidence in the mission.

b. How do you plan to ensure accountability and transparency in the grant making process?

During courtesy visits, several Senators have expressed concern to me about this issue.

I am advised that DHS will continue to comply with OMB guidance and post grant award data on a monthly basis on the USASpending.gov website, and that the data will be tested for quality on a monthly basis prior to it being posted to the public website. I am also advised that, beginning this fiscal year, DHS will test the internal controls for grant transaction to ensure DHS can be reasonably assured of the accuracy, integrity, timeliness, and reliability of our grant-making process. If confirmed, I will look for ways to further ensure accountability and transparency in the grant making process.

c. Do you have any specific recommendations for reforms for grant management?

I do not have an informed opinion on this issue at this time. If confirmed, I intend to assess reforms to the grant management process. I will carefully consider the grant reform efforts identified by the current OMB Council on Financial Assistance Reform.

Quadrennial Homeland Security Review

30. In 2007, Congress amended the Homeland Security Act to require the Department to produce, every four years, a Quadrennial Homeland Security Review (QHSR). The review is intended to provide comprehensive strategies and priorities for the nation's homeland security, and ensure that strategies are clearly linked to plans, missions requirements, and budgeting activities.

a. **What should be the role of the Secretary in developing the QHSR?**

Based on my experience at the Defense Department and the Quadrennial Defense Review (QDR), I believe that the Secretary should provide overall direction to the QHSR and final decisions on strategic direction. In terms of the process, the Secretary should convene meetings of the DHS component heads as necessary, meet with other stakeholders at the conclusion of the review, and address QHSR issues at the National Security Staff Principals Committee level as necessary.

b. **In what ways should the next QHSR, which the Department is drafting this year, differ from the first QHSR, which was delivered to Congress in early 2010?**

I do not have a fully informed view at this point. I understand the first QHSR answered the question, "What is homeland security?" I imagine that the second QHSR should build on this foundation and go further.

c. **What best practices will you bring from the Department of Defense to inform the development of the QHSR at DHS?**

I do not have a fully informed answer to this question at this point.

DoD has learned many lessons in conducting quadrennial reviews, beginning with the Bottom-Up Review in 1993 and continuing through four subsequent QDRs. It is important to note that DHS is a different organization than DoD, with a different mission, a broader mix of organizational cultures, and a responsibility for much greater engagement with state, local, territorial, and tribal governments, private sector and non-governmental organizations, and international governments. Therefore, DHS needs to balance its adoption of practices from DoD with practices best suited for its own unique mission responsibilities. I am advised that DHS has incorporated a number of lessons from the QDR in terms of conducting strategic environment assessments, following a formal strategy development and analysis process, and consulting with Departmental and stakeholder leadership throughout the process.

FEMA

33. **FEMA has struggled with a number of longstanding management difficulties. Over the past several years, GAO and the Department's IG have called attention to problems FEMA faces in financial management, human capital, information technology, and performance management. For example, GAO has reported that FEMA's financial system suffers from serious stability issues. These problems have slowed efforts to modernize the system and hampered financial reporting. FEMA has also faced shortfalls in cost and schedule for a major information technology investment, the Disaster Assistance Improvement Plan. Moreover, FEMA has struggled with severe morale problems. In 2012, it ranked 257 out of 292 among agency subcomponents in the Partnership for Public Service's Best Places to Work survey. If left uncorrected, these**

management problems could hinder FEMA's ability to respond to disasters and also lead to opportunities for waste, fraud, and abuse. If confirmed, what will you do to ensure that these problems are addressed?

Obviously, FEMA performs one of the key responsibilities of the Department – supporting Americans in the wake of disasters. Ensuring this important agency continues to perform at a high level, and continues ongoing efforts to build on the progress made in recent years will be a priority. This includes ensuring the sound financial management, human capital management, information technology management, and performance management of the agency. These tools are important to any agency, but they are particularly important in the case of FEMA.

From what I understand, under Administrator Fugate's leadership, FEMA has made important reforms to the manner in which FEMA responds to disasters.

34. **Since 2003, the Department has issued nearly $40 billion in preparedness grants. While the Post-Katrina Emergency Reform Act and the Implementing Recommendations of the 9/11 Commission Act of 2007 require FEMA to develop performance measures and a comprehensive assessment system to evaluate their effectiveness, FEMA has yet to meet these requirements. As a result, we lack systematic analysis of grant effectiveness and are unable to gauge how much the grants have contributed to strengthening preparedness. If confirmed, what will you do to ensure that FEMA finally meets these requirements?**

One of the key responsibilities of the Department of Homeland Security is to support our state and local partners, both as they respond to events, and also as they work to prepare ahead. As part of this responsibility, I believe it is important that DHS continues to strive to implement the Grant Program as effectively as possible.

It is my understanding that FEMA has been putting the tools in place that are needed to assess the effectiveness of grant funding, and, if confirmed, I will work with Congress and FEMA to ensure this progress continues in this important area for the Department.

National Preparedness Grant Program

35. **As part of the President's Budget request for both Fiscal Years 2013 and 2014, the former DHS Secretary proposed the consolidation of the existing suite of preparedness grant programs managed by FEMA into a single National Preparedness Grant Program.**

    a. **What is your view of the purpose and role of the preparedness grant programs?**

    I do not now have an informed view in answer to this question. I am advised that one of the key responsibilities of the Department of Homeland Security is to support our state and local partners, both as they respond to events, and also as they work to prepare ahead.

As part of this responsibility, I believe it is important that DHS continues to strive to implement the Grant Program as effectively as possible.

If confirmed, I will further assess this question.

b. What is your view on consolidation of the existing preparedness grant programs?

Please see consolidated response in part a.

c. What performance metrics do you believe are appropriate for assessing the effectiveness of the preparedness grants?

Please see consolidated response in part a.

Intelligence and Analysis

40. The DHS Office of Intelligence and Analysis is a critical part of DHS, serving as the Department's primary interface with the broader Intelligence Community, supporting state and local fusion centers, and integrating the intelligence-related activities of the DHS component agencies. What would be your key near-term priorities to improve the effectiveness of the Office of Intelligence and Analysis?

If confirmed, I will assess this question. As I understand it, I&A principally acts as a two-way conduit between the federal intelligence community and state, local, and tribal law enforcement officials. I will also assess whether I&A can better conduct their operational activities and ensure that I&A continues to provide the financial assistance, technology, and other support to its partners.

Immigration Reform Oversight, Coordination, and Mandates

46. If the Senate-passed comprehensive immigration reform legislation advances, the Department will face daunting implementation challenges across a range of issues and agencies. For instance, the Department would need to undertake multiple large scale acquisitions, rulemakings, and hiring efforts.

a. Please discuss some of the key challenges you believe the Department would face in implementing comprehensive immigration reform and what you believe the Department would need to do to prepare properly and to execute the requirements of the bill.

At this point I do not have a fully informed answer to this question. I do recognize that implementing S. 744's requirements would be a significant undertaking for DHS, and DHS must be prepared to accept it. S. 744 contains numerous requirements with statutory deadlines, and the Department will have to plan appropriately to ensure that those deadlines are met. If confirmed, I recognize that I, along with other senior leaders,

must be fully engaged to ensure proper implementation of this legislation, should it become law.

b. **Do you believe the Department would need new or enhanced oversight mechanisms to accompany such an effort?**

I am not now in a position to assess this, but it is a very important question. If confirmed, I intend to look into this.

c. **How important do you believe that coordinating the actions of the various components at the Department will be to successfully implementing the reforms? What role would you expect to play in this coordination?**

Very important, and I would expect to be involved in this coordination, along with other leaders in DHS management.

Border Security Investments

50. Over the past two years there has been an increase in the number of non-Mexican migrants that transit through Mexico in order to gain access to our border. Non-Mexican undocumented migrants account for the majority of apprehensions made in some parts of the border, such as south Texas. This represents a substantial departure from historical trends. Non-Mexicans apprehended at the border must be detained in detention facilities and ultimately flown back to their countries. The surge in non-Mexican migration led to overcrowded conditions at some Border Patrol temporary detention facilities, and to longer detention times at ICE facilities.

a. **What do you believe can be done to address the issue of non-Mexican migrants transiting through Mexico?**

If I am confirmed, I understand the need to carefully assess this question.

If confirmed, I will review this situation, and consider whether additional agents and technological resources to the South Texas border region may need to be deployed.

b. **What will you do, if confirmed, to ensure that ICE has sufficient detention capacity in place in order to ensure that undocumented migrants being apprehended by the Border Patrol can be processed and transferred to ICE's custody in a timely fashion?**

I can state that, if confirmed, I will ensure that ICE follows common-sense law enforcement priorities that focus resources on national security and public safety threats.

Cybersecurity

66. For years there have been significant vulnerabilities in our cyber networks. These

vulnerabilities have led to massive identity and intellectual property theft, monetary loss, and leaks of classified information. Additionally, cyber threats to Supervisory Control and Data Acquisition (SCADA) systems – which control industrial processes – have the potential to cause devastating impacts on critical infrastructure, including the electric grid and the water supply.

a. **Please discuss your familiarity and experience with cyber security issues.**

As General Counsel of DoD, I was exposed to cybersecurity capabilities, and the policy and legal issues that accompany them.

b. **What do you view to be the most significant current and potential cyber security threats facing our nation?**

The potential is very real for a future cyber attack resulting in significant national and economic security impacts. Working to strengthen our Nation's security and resilience to prevent, and if necessary, respond to such an event will continue to be a focus of the Department if I am confirmed. While I believe state actors possess the most sophisticated cybersecurity capabilities that could threaten our Nation, we must be vigilant to ensure that none of our adversaries can exploit cyber vulnerabilities to cause our Nation great harm.

c. **What do you think is the most important contribution DHS and the federal government can make to mitigate these threats?**

I believe the most important contribution DHS can make is to coordinate the national protection, prevention, mitigation, and recovery from cyber incidents.

d. **If confirmed, what steps do you intend to take to improve the nation's cyber security, both with respect to the government and private networks?**

DHS's information sharing and partnership efforts have helped strengthen federal and national cybersecurity. If confirmed, I will engage my interagency counterparts to address key cybersecurity policy and operational issues and will ensure DHS continues to improve upon information sharing and close collaboration among government, industry, and individuals to detect, prevent, mitigate, and respond to evolving threats. I will also work with Congress to ensure DHS has updated authorities, where necessary, which better reflect its current cybersecurity responsibilities and ensure that DHS is able to more effectively and efficiently carry out that mission.

e. **How do you see the Department's efforts adapting in the coming years as the cyber threat evolves and likely increases? Specifically, how do you see the implementation of the President's Executive Order on *Improving Critical Infrastructure Cybersecurity* (13636) fitting into the Department's overall efforts?**

I believe that, in the coming years, it will be vital to build relationships for the sharing of cybersecurity information with the private sector, and to foster the adoption of cybersecurity best practices more widely across critical infrastructure. I also believe that EO 13636, along with PPD21, is good and central progress in DHS's overall efforts in cybersecurity. If confirmed, I expect to have much more developed views on this important topic.

Cybersecurity – CISCP

67. The vast majority of critical infrastructure in the United States is owned and operated by the private sector, making the security of our nation's critical infrastructure a shared responsibility. To help secure our nation's critical infrastructure, DHS conducts a broad array of cybersecurity missions, including providing technical assistance and sharing cyber threat information.

a. What can owners and operators of critical infrastructure do to better protect their information systems?

One way or another, there should be continued development of best practices and standards to promote cybersecurity. Additionally, outreach, education, and assistance in completing assessments of systems and sites to better inform and enable owners and operators to protect their systems is important.

b. How can the Department better partner with the private sector to improve the cybersecurity at our nation's critical infrastructure?

EO 13636, PPD21 and the Framework are major steps in this direction, in my view. DHS should continue to work directly with our private sector partners to identify the cybersecurity threats that most directly impact their networks by fostering collaboration at all levels. Continued outreach, education, and assistance by DHS in completing assessments of systems and sites to better inform and enable owners and operators to protect their systems is also important. I am sure there is much more to be done, with which I will become acquainted if confirmed.

c. What have you learned about cybersecurity from your time at the Department of Defense, particularly as it relates to working with the Defense Industrial Base?

While I was General Counsel of the Department of Defense, we worked to establish a pilot program to enhance cybersecurity for the Defense Industrial Base. It was time-consuming, fraught with legal questions and issues, but eventually we got there. That program provided a legal and operational basis for the CISCP and ECS programs that DHS is deploying more broadly across critical infrastructure.

Cybersecurity

71. In an October 2012 report the DHS Inspector General highlighted weaknesses in some

of DHS's components' compliance with the Department's security guidelines. For example, the IG's most recent independent evaluation of the DHS's security program and practices under the Federal Information Security Management Act (FISMA) reported that, while DHS has made progress, "components are not executing all of the Department's policies, procedures, and practices." If confirmed, what actions would you take to require DHS components to adhere to the Department's information security program under FISMA?

I have reviewed sections of this report and noted that DHS leadership accepted the comments in a number of respects. Given the importance of the cybersecurity mission, if confirmed, I intend to monitor compliance with OIG's recommendations.

Critical Infrastructure and Framework

72. **What do you believe is the appropriate role for the federal government in private sector cybersecurity?**

I recognize that our country's national and economic security depends upon securing critical infrastructure, and that working with the private sector is central to the federal government's efforts to promote cybersecurity. I therefore believe that the federal government must work with industry, individuals, state, local, and international government partners to defend critical infrastructure, and to share actionable intelligence regarding specific threats and vulnerabilities.

a. **What authorities do you believe the Executive Branch needs to carry out that role?**

Although I do not now have an informed view to definitively answer this question, I believe that the Administration and Congress should continue to explore legislation that appropriately facilitates the government's efforts to support critical infrastructure cybersecurity. If confirmed, I intend to carefully consider this question in consultation with the DHS General Counsel, and I will work with Congress to achieve these goals and enhance the security and resilience of our critical infrastructure. I would also like to note that legislation is not a panacea, and the government must continue to build relationships, trust, and collaborative efforts with the private sector to be successful under current or future statutory authorities.

b. **What steps will you take to encourage private sector companies to act to protect critical cyber infrastructure pursuant to the *Framework to Reduce Cyber Risks to Critical Infrastructure* being developed by the private sector through the National Institute for Standards?**

I believe that any approach to the Cybersecurity Framework should facilitate industry coming together to develop solutions, and broadly adopt the solutions already deployed by industry leaders. If confirmed, I will work with the private sector to support the best approach for implementing the Framework for their businesses. If confirmed, I also expect to have a more developed view in response to this question.

DNDO

78. Several pieces of key screening equipment used by DHS, such as Radiation Portal Monitors and Vehicle and Cargo Inspection Systems used to checkpoints, airports, and in other transportation modes for security screening, are close to being obsolete and show degrading performance. They are operating well beyond their equipment lifecycle, and at an increased operations and maintenance cost. Do you think upgrading this technology is important to improve the efficiency and effectiveness of our vital cargo screening mission?

I would think so, but intend to study this question more closely, if confirmed.

Science and Technology

79. We know that harnessing the nation's research and development expertise is essential to hardening our domestic defenses against chemical, biological, radiological and nuclear weapons of mass destruction. DHS's Science and Technology (S&T) Directorate has been given the responsibility for directing research and development efforts and priorities in support of the Department's mission. The S&T Directorate must think strategically about where to invest its limited research and development funding to help ensure that these investments make the nation safer from terrorism and other catastrophic events. What is your vision of the role that the S&T Directorate can play in the development of advanced technologies and their successful use to carry out challenging homeland security missions?

See my response to Ranking Member Coburn's letter dated November 14, 2013.

BioWatch

81. For the past several years the Office of Health Affairs has been working to develop the next generation in biodetection sensors. The current BioWatch Gen-2, is currently functioning, however, the use of filters and outside laboratories to test specimens leads to a delay in identifying any potential aerosolized biological or chemical threat. BioWatch Gen-3 would test the specimens within the system, cutting down the length of time for identifying a potential attack. However, this acquisition has been rife with problems and the Acquisition Review Board is requiring an analysis of alternatives before any progress can continue. What are your thoughts on the importance of biodetection equipment and how you think we can best achieve timely and accurate notice of pathogens?

A key priority for DHS is preparing for and working to mitigate a range of threats – this includes the risk of a major biological event that could cause the tragic loss of human life, severe economic damage, and significant harm to our critical infrastructures and key resources. I am advised that the Department, in partnership with the scientific community, continues to actively look for future technologies that will further enhance our ability to

quickly detect biological threats, reduce the cost associated with operations, and improve the sensitivity and specificity of the systems.

Reports to Congress

91. A key provision of the Department of Homeland Security (DHS) Appropriations Act of 2013 requires the Department to provide this committee with copies of reports sent to the House and Senate Appropriations Committees. We understand DHS interprets this section to cover only those reports signed by the Secretary and excludes any reports issued to the Appropriations Committees by those underneath him like the Deputy Secretary and heads of the components. That pertinent section is included below:

> ***"SEC. 574. Fourteen days after the Secretary of Homeland Security submits a report required under this division to the Committees on Appropriations of the Senate and the House of Representatives, the Secretary shall submit a copy of that report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives."***

Do you believe Sec. 574 includes reports signed by other leadership in DHS who report to the Secretary, as well as those reports signed by the Secretary?

I believe the answer is likely yes, but I am not familiar with the past history, practice and legal interpretations associated with this provision. If confirmed, I will consult with the DHS General Counsel and Office of Legislative Affairs to review the Department's interpretation of this provision.

Privacy

83. Actions to prevent terrorist attacks have the potential to raise privacy and civil liberties concerns. As Secretary, you will frequently be required to evaluate programs to determine how best to protect the homeland while at the same time protecting individuals' privacy, civil rights, and civil liberties.

a. What basic principles do you believe should guide such evaluations?

I believe it is significant that, by statute, one mission of the Department is to "ensure that the civil rights and civil liberties of persons are not diminished" by its efforts to secure the country. As President Obama has repeatedly emphasized, civil rights and civil liberties are not trade-offs for a strong national security. They are, rather, a vital part of what we are protecting. I understand that DHS uses the Fair Information Practice Principles. If confirmed, I believe I would rely on these principles, as well as the advice and counsel of the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties, to assess the privacy and civil liberties implications of Department programs.

b. Can you identify areas where DHS needs to take additional steps to ensure the protection of privacy and fundamental liberties?

If confirmed, I will examine this question. I understand that both the DHS Privacy Office and DHS Office for Civil Rights and Civil Liberties are well-respected and looked to for best practices by both the public and private sectors and that they are involved at the earliest stages of program development to ensure the protection of privacy and fundamental liberties. I am pleased that there are newly appointed officers to lead these offices. DHS is unique among federal agencies in the breadth and diversity of its mission, which extends across civil and administrative functions, law enforcement, and intelligence, and it is unique in having separate privacy and civil rights and civil liberties officers directly reporting to the Secretary.

Jeh Charles Johnson

November 18, 2013

The Honorable Tom Coburn
United States Senate
Washington, DC 20510

Dr. Coburn:

I write in response to your November 14 letter concerning the R&D function at DHS.

I know the reality that large bureaucracies can include unacceptable and unnecessary duplication of effort. I know also that consolidation often means that someone must surrender people and resources, which many in bureaucracies regard as a threat to their very existence – exacerbated at times by a Congressional patron for the status quo. For these reasons, consolidation can be painful and emotional.

On its face, Dr. O'Toole's paper is compelling, and I know she was highly regarded within DHS. But my experience tells me that, before coming to a conclusion, I should also consult DNDO and OHA about such a potential change. If confirmed, I will undertake this task.

You can be assured that my general posture will be to find ways to limit unnecessary duplication when it comes to the expenditure of taxpayer dollars. I firmly believe this responsibility is implicit in the leadership of a government agency; it also promotes the credibility of the agency in the eyes of Congress and the American public.

Sincerely,

Jeh Charles Johnson

John Rutherford Allen
General, U.S. Marine Corps (Ret.)
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30 October 2013

The Honorable Thomas R. Carper, Chairman U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom A. Coburn, M.D., Ranking Member U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Coburn:

It is my great pleasure to offer this letter of support for the confirmation of Mr. Jeh Johnson to be Secretary of the Department of Homeland Security. He is a man of unimpeachable integrity who possesses in rare combination all of the very highest qualities we seek in our most senior national leadership. His confirmation as the Secretary will not only place the right person in this key national security position at a critical and challenging moment in our history, it will instill confidence in the American people that the greatest talent in America remains engaged in and committed to the service of our country.

I have known and worked closely with Jeh Johnson in crisis and in war while he served as the General Counsel of the Department of Defense. During that time, I was serving as the Deputy Commander of the US Central Command and as Commander of the US and NATO Forces in Afghanistan. This was a period of substantial challenge to the national security of the United States, which included piracy in the Indian Ocean, the emergence of Al Qaeda in the Arabian Peninsula, Iranian support for regional terrorism and its illicit nuclear program, difficulties with Pakistan, and the prosecution of two on-going wars in Iraq and Afghanistan.

To that end, I dealt frequently with Mr. Johnson on some of the most important and sensitive issues we faced. His calm leadership, his focused attention on the legal aspects of so wide a diversity of issues, and his utter commitment to the rule of law, played an enormously important role in ensuring the United States of America remained on the moral and legal high ground. As a

consequence, no one who dealt with Mr. Johnson on these myriad challenges could come away from the experience with other than the most profound respect for his knowledge and ultimate confidence in his sense of honor and purpose. He is THE selfless servant and humble leader.

There is very little ambiguity in how Marines view the security of America. After forty-two years in uniform, and having now retired, the enemies of our people have now passed beyond my reach. It is no small concern to me who will now protect my family and my new grandson. To that extent, the nomination of Jeh Johnson to this vital role fills me with confidence, for the world today has presented the United States and her allies with an unprecedented, and seemingly intractable array of threats which in a very real sense are aimed directly at the United States, at our incomparable way of life, and at our precious people. Securing the blessings of America will require much from us in the months and years ahead, and the Department of Homeland Security will be at the forefront of that struggle. The leadership of this Department will demand the ultimate combination of intellect, character, fortitude, and integrity. Jeh Johnson possesses all these qualities in abundance … and much more. In the strongest possible terms, I recommend and support his confirmation as the Secretary of Homeland Security.

With great and aiding respect,

John R. Allen
General, U.S. Marine Corps (Retired)

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JUSTICE
Bureau of Alcohol, Tobacco, Firearms & Explosives
Drug Enforcement Administration
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OIG
U.S. Attorney's Office-CI
LABOR- OIG & Racketeering
NATIONAL AERONAUTICS & SPACE ADMIN. - OIG
NUCLEAR REGULATORY COMMISSION - OIG
POSTAL SERVICE-OIG & Inspection
RAILROAD RETIREMENT BOARD - OIG
SECURITIES & EXCHANGE COMMISSION - OIG
SMALL BUSINESS ADMINISTRATION - OIG
SOCIAL SECURITY ADMINISTRATION - OIG
STATE DEPARTMENT
Bureau of Diplomatic Security & OIG
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November 1, 2013

The Honorable Thomas R. Carper
Chairman
Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Coburn
Senate Committee on Homeland Security & Governmental Affairs
344 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Coburn:

On behalf of the 26,000 members of the Federal Law Enforcement Officers Association (FLEOA), including federal law enforcement officers from all DHS components, I am writing to express our support for the nomination of Jeh Johnson for the position of Secretary of the Department of Homeland Security (DHS).

An objective review of Mr. Johnson's biography makes clear that he represents a conglomerate of relevant experience for the position. Rather than simply reiterate his lengthy accomplishments, I would instead prefer to draw your attention to the significance of his national security and defense experience. While the cabinet is entitled the Department of Homeland Security, it has been criticized for having a gap in its prior intelligence capabilities. Additionally, prior criticism has suggested that the working relationship between the Department of Defense (DOD) and the Department of Homeland Security has been less than symbiotic.

Mr. Johnson's unique skill-set will help bridge this divide, and empower DHS with the necessary intelligence perspective it needs to best fulfill its formidable mission. Given Mr. Johnson's sterling reputation as a "consensus builder," I am confident he will strengthen working relationships between DHS and DOD law enforcement components.

The dedicated law enforcement officers within DHS expect and deserve open-minded, strong leadership, and I am confident that Mr. Johnson will deliver on this front. There has been lingering controversy regarding the department's immigration enforcement policy, and I expect Mr. Johnson will exude the proper leadership to address and resolve this important issue. Furthermore, I anticipate his continuing Secretary Napolitano's dedicated working relationship with the DHS Federal Law Enforcement Advisory Board.

In recognition of the critical safety and security mission of the Department, and the fact that violent criminals don't take pause, I respectfully request that your committee review Mr. Johnson's credentials objectively, and vote to confirm him as our next Secretary of the Department of Homeland Security.

Respectfully,

Jon Adler

Jon Adler
FLEOA National President

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

5 November 2013

The Honorable Thomas R. Carper
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Thomas A. Coburn, M.D.
Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Coburn,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for the nomination of Jeh C. Johnson to be the next Secretary of the U.S. Department of Homeland Security.

Following graduation from Columbia University Law School, Mr. Johnson began his career in public service as an Assistant United States Attorney in the Southern District of New York, where he prosecuted public corruption cases. He left the U.S. Attorney's Office in 1991 and spent the next seven years in private practice before being appointed as General Counsel for the U.S. Air Force. He served in that post for more than two years. From 2001-2004, he chaired the Judiciary Committee of the New York Bar Association and then returned to public service in 2009 when he was confirmed by the Senate to be the next General Counsel for the U.S. Department of Defense (DoD). He served in this post until late 2012.

Mr. Johnson has shown himself to be a dedicated public servant with keen insight and experience on how to keep our nation safe from the overt and clandestine threats that we face. His hands-on knowledge of our anti-terrorism programs and efforts through the DoD make him uniquely qualified to assume the leadership of the Homeland Security Department. In his conversations with the Fraternal Order of Police, he has pledged to maintain an open-door policy as well as a commitment to consultation on homeland security issues and the vital role that State and local law enforcement play in keeping our nation safe. We believe that he will be a partner with whom we can work and rely on as Secretary.

On behalf of the more than 330,000 members of the Fraternal Order of Police, I am pleased to offer our strong support for the nomination of Jeh C. Johnson. We urge the Committee to act swiftly to approve the nomination and to send it to the Senate floor for a final vote. If I can provide any additional information in support of Mr. Johnson, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President

—BUILDING ON A PROUD TRADITION—

Robert M. Gates

October 29, 2013

Dear Chairman Carper and Ranking Member Coburn

I am writing to enthusiastically endorse and recommend confirmation of Jeh C. Johnson as the next Secretary of Homeland Security.

When I was secretary of defense under President Obama, Mr. Johnson was my general counsel. I came to rely heavily on his judgment and common sense, and looked to him for advice on many matters beyond his legal responsibilities. Navigating a bureaucracy far more complex and larger than DHS's, Jeh played a central role on cyber issues, counter-terrorism, relationships with other agencies and with foreign governments. He also co-led perhaps the most sensitive and culturally fraught issue I dealt with in four-and-a-half years as secretary – the repeal of Don't Ask-Don't Tell. This involved direct interactions with the leaders of all the military services and thousands of men and women in uniform, as well as recommending the training needed before implementation and changing or updating myriad Pentagon policies and regulations. In no small part due to Mr. Johnson's effort, this monumental change took place virtually without incident.

In all these endeavors, Jeh demonstrated great skill in dealing with both the White House and the Congress, as well as inside the Department of Defense. Take my word for it: he has successfully managed an array of major initiatives across the biggest bureaucracy in government – and, in so doing, won the esteem of virtually everyone with whom he worked.

I am totally confident Jeh Johnson's experience, temperament, judgment and character amply qualify him to be Secretary of Homeland Security.

Sincerely,

Robert M. Gates
Secretary of Defense, 2006-2011

International Association of Chiefs of Police

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Alexandria, VA

Deputy Executive Director Chief of Staff
James W. McMahon
Alexandria, VA

November 4, 2013

The Honorable Thomas R. Carper
United States Senate
Chairman
Committee on Homeland Security &
Governmental Affairs
Washington, DC, 20510

The Honorable Tom Coburn
United States Senate
Ranking Member
Committee on Homeland Security &
Governmental Affairs
Washington, DC, 20510

Dear Chairman Carper and Ranking Member Coburn:

On behalf of the International Association of Chiefs of Police (IACP), I am pleased to inform you of our support for the nomination of Mr. Jeh Johnson to serve as the next Secretary of the Department of Homeland Security (DHS). The IACP believes that the selection of Mr. Johnson is a logical decision and one that will enhance and strengthen the DHS's mission and ability to ensure our homeland is safe, secure, and resilient against terrorism and other hazards.

Prior to our endorsement we had the opportunity to review his resume' and it is quite impressive. In addition, the IACP performed its due diligence by having a number of meetings and conversations with leadership within the DHS and with those that had interaction with Mr. Johnson throughout his career. The response by those that worked with him, or had interactions with him, was very positive. The comments about Mr. Johnson were consistent; he is highly respected, pragmatic, intelligent, and understands the needs of the people that he serves and supports.

Although we would have enjoyed a face-to-face meeting with Mr. Johnson, the IACP was able to hold a conference call with him. Our conversation reaffirmed the sentiment expressed by others. We made clear the priorities of the IACP and the need for the continued support for the National Network of Fusion Centers, the Nationwide Suspicious Activity Reporting Initiative, information sharing, countering violent extremism, continued funding for the work of FEMA in the area of response and recovery, and an increased focus and training to prevent and address active shootings. We also spoke to him regarding Cyber Security and the significant threat that it poses to the national security of our country, and the need for the Department to take a leadership role in this area.

We were able to brief Mr. Johnson on the IACP's positive working relationship with the DHS, especially as it relates to the partnership, the responsiveness, and the feedback that is provided, not only with headquarters, but each of the components. Mr. Johnson stated that if nominated as Secretary of the DHS he would continue to work to strengthen and increase the partnership between the IACP and DHS.

It is the position of the IACP that that Mr. Johnson's prior experience serving as the General Counsel of the Department of Defense and General Counsel of the Department of the Air Force make him highly qualified to handle the unique and diverse challenges our country faces. Equally important is the time he spent serving as the Assistant United States Attorney in the Southern District of New York, where he worked closely with the New York City Police Department and also the surrounding law enforcement agencies. During our discussions, Mr. Johnson provided a sincere understanding and appreciation of the crucial role federal, state, local, and tribal enforcement agencies play and the support they need to continue to effectively and efficiently respond to natural disasters and criminal events.

As a result, we believe, he is well positioned to serve as the next Secretary of DHS. Therefore, the IACP urges you to rapidly confirm Mr. Johnson's nomination.

Please do not hesitate to contact me or Mr. Bart R. Johnson, Executive Director, if the IACP may be of further assistance.

Sincerely,

Chief Yousry Zakhary
President

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November 1, 2013

The Honorable Tom Carper
172 Russell Senate Office Building
Washington, DC 20510

The Honorable Tom Coburn
513 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Coburn,

On behalf of the Major Cities Chiefs Association, representing the 66 largest law metropolitan areas in the Nation, I am writing to support the nomination of Jeh Johnson as Secretary of the Department of Homeland Security.

We commend Mr. Johnson's distinguished accomplishments in public service, including his tenure as Assistant United States Attorney in the Southern District of New York, and General Counsel of both the Air Force and the Department of Defense. His past actions have demonstrated support for the Nation's law enforcement officers, and show a keen sensitivity to the issues we face every day.

The Major Cities Chiefs have interviewed Mr. Johnson, and we are confident that his policies and approach to homeland security issues are congruent with law enforcement needs and priorities. His presentation and responses to our questions demonstrate both a sensitivity and understanding that will serve the public well. We believe that he will work to forge an enduring partnership between the Department of Homeland Security and law enforcement agencies across America.

As our Nation continues to face threats from terrorism and natural disasters, we look forward to an even stronger partnership with the Department of Homeland Security under Mr. Johnson's leadership. Together, we will do all we can to protect the communities we are sworn to serve.

Sincerely,

Commissioner Charles H. Ramsey
Philadelphia Police Department
President
Major Cities Chiefs Association

DEBEVOISE & PLIMPTON LLP

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New York, NY 10022
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www.debevoise.com

Michael B. Mukasey
Partner
Tel 212 909 6062
Fax 212 909 7062
mbmukasey@debevoise.com

October 25, 2013

The Hon. Thomas R. Carper, Chairman
U.S. Senate Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Carper:

I write in support of Jeh Johnson's nomination to serve as Secretary of the Department of Homeland Security. I first came to know him when he served as an Assistant U.S. Attorney for the Southern District of New York from 1989 to 1991, at a time when I was a District Judge in that district. He appeared before me several times and was a notably able and responsible Assistant. He well understood that his job wasn't merely to win cases, and that he had a responsibility to turn square corners, which he fulfilled admirably.

Later, after I had served as Attorney General and he was counsel to the Department of Defense, he and I spoke frequently about matters relating principally to national security and detainee treatment. During those conversations and meetings, which included people with a diverse range of views, I came to appreciate his openness and soundness of judgment.

Based on that acquaintance I have no hesitation in supporting his nomination. He will bring to DHS not only experience but also a frame of mind that should be a source of assurance to anyone concerned with the security of this country. He understands both the issues and the stakes, and will make an excellent Secretary.

On a personal note, it is good to have the occasion to be in touch with you again. If there is any further information I can provide, please do not hesitate to contact me.

Yours sincerely,

Michael B. Mukasey

DEBEVOISE & PLIMPTON LLP

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New York, NY 10022
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Partner
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mbmukasey@debevoise.com

October 25, 2013

The Hon. Tom A. Coburn, M.D., Ranking Member
U.S. Senate Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Coburn:

I write in support of Jeh Johnson's nomination to serve as Secretary of the Department of Homeland Security. I first came to know him when he served as an Assistant U.S. Attorney for the Southern District of New York from 1989 to 1991, at a time when I was a District Judge in that district. He appeared before me several times and was a notably able and responsible Assistant. He well understood that his job wasn't merely to win cases, and that he had a responsibility to turn square corners, which he fulfilled admirably.

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If there is any further information I can provide, please do not hesitate to contact me.

Yours sincerely,

Michael B. Mukasey

The Honorable Thomas R. Carper, Chairman
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom A. Coburn, M.D. Ranking Member
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

October 31, 2013

Dear Chairman Carper and Ranking Member Coburn:

I write in strong support of the nomination of Mr Jeh Johnson by the President of the United States to be the next Secretary of Homeland Security. Mr Johnson is an enormously talented professional who possesses all of the skills needed to succeed in this most challenging post.

I came to know Mr Johnson when I was Chairman of the Joint Chiefs of Staff and he was the General Counsel for the Department of Defense, serving the then-Secretary of Defense Bob Gates. Participating with him in the most difficult and high-pressure circumstances, I had the opportunity to observe him in action, under fire, over time. He was always calm, measured and thoughtful in providing his counsel, which was always reasoned and meaningful. He addressed forthrightly the most sensitive issues we faced, including detention, interrogation, and the use of drones. And he was not afraid to be the only one in the room with a different view and to voice it.

Alongside the National Security emergencies he navigated, Mr Johnson was able to help guide the department through other critical issues. He led brilliantly throughout the process culminating in the repeal of Don't ask, Don't Tell, for example. Simply stated, this historic change would not have taken place without his counsel his wisdom, and his relentless attention to the details of implementation.

Jeh Johnson is as fine a person and professional as I have ever met. I am confident in his choice and that he will succeed in leading this most complex organization at a critical time in our country.

M. G. Mullen
Admiral, U. S. Navy (ret.)
17th Chairman Joint Chiefs of Staff"

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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EXECUTIVE OFFICERS

THOMAS J. NEE
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Boston Police Patrolmen's Association

MICHAEL McHALE
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Florida Police Benevolent Association

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Recording Secretary
Las Vegas Police Protective Association

SEAN M. SMOOT
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New Jersey State Policemen's Benevolent Association

JOHN A. FLYNN
Executive Secretary
Patrolmen's Benevolent Association of New York City

WILLIAM J. JOHNSON
Executive Director

October 21, 2013
The Honorable Tom Carper
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Carper:

On behalf of the National Association of Police Organizations (NAPO), I am pleased to inform you of our support for the nomination of Jeh Johnson to serve as the next Secretary of the Department of Homeland Security (DHS).

NAPO is a coalition of police unions and associations from across the United States that serves to advance the interests of America's law enforcement through legislative and legal advocacy, political action, and education. Founded in 1978, NAPO now represents more than 1,000 police units and associations, 241,000 sworn law enforcement officers, and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.

Mr. Johnson is one of the most highly qualified and respected national security leaders. Mr. Johnson served nearly seven years in senior leadership roles at the Department of Defense (DoD) during two Administrations. He was a critical member of President Obama's counterterrorism team. By advising the President and two Secretaries of Defense, Mr. Johnson was at the center of the development of some of the most sensitive and important national security policies and strategies during President Obama's first term.

Mr. Johnson has been a dedicated career public servant, and has continually evidenced his integrity and strong judgment. Throughout his career, Mr. Johnson has demonstrated that he is exceptionally qualified to handle the full range of challenges faced by DHS.

We urge the Senate Homeland Security and Governmental Affairs Committee to act swiftly in confirming Mr. Johnson for this critical position. If NAPO can provide any additional information to support Mr. Johnson's nomination, please do not hesitate to contact me at: (703) 549-0775.

Sincerely,

William J. Johnson
Executive Director

LEON E. PANETTA
15 PANETTA ROAD
CARMEL VALLEY, CALIFORNIA 93924

November 8, 2013

The Honorable Thomas R. Carper
Chairman
U.S. Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper:

I am writing to offer my full support of Jeh Johnson's nomination to lead the Department of Homeland Security. During my time as Secretary of Defense, Jeh proved himself many times over to be a trusted and highly capable advisor, a skilled manager and policy implementer, and a government servant fully committed to protecting his country. With incredibly strong judgment and instinct, Jeh has been an integral part of executing Department strategy and keeping our nation safe. I strongly recommend that Jeh be confirmed as the next Secretary of Homeland Security.

As General Counsel of the Department of Defense, Jeh was responsible for advising and helping shepherd our efforts on a number of major national security measures, including border security and cyber security. I am confident Jeh is the right person to continue the work of strengthening our borders and protecting our nation's critical infrastructure in this new role. Jeh was also part of the team that ensured that the National Guard was poised to assist FEMA and DHS in the aftermath of Hurricane Sandy. At this tragic and critical time in our nation's history, Jeh proved to be both a skilled manager and a leader in crisis.

Jeh worked hand in glove with the Joint Chiefs of Staff on operational issues, readiness issues, and on policy issues. Jeh was an integral player in instituting a significant change to Department Policy when the Pentagon implemented the repeal of "Don't Ask Don't Tell" throughout the armed services. Jeh was able to implement policy in a way that elevated the views of all stakeholders, including the views of our service members and their families. His inclusive and measured approach won bipartisan support for this major policy change.

Jeh's ability to reach across the aisle and build bipartisan consensus was also evident in his working with both Republican and Democrats on the issue of detention and interrogation of terror suspects. Jeh worked closely with Defense Department leadership and Congress to ensure our national security professionals were able to collect the intelligence necessary to protect the homeland, while also demonstrating his strong commitment to and stringent application of the rule of law.

Jeh has proven himself to be a talented, capable, bipartisan, and trusted public servant. I give my strongest recommendation and full support to his confirmation as our nation's next Secretary of Homeland Security.

Sincerely,

Leon E. Panetta

LEP:jb

LEON E. PANETTA
15 PANETTA ROAD
CARMEL VALLEY, CALIFORNIA 93924

November 8, 2013

The Honorable Tom A. Coburn, M.D.
Ranking Member
U.S. Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Coburn:

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Jeh has proven himself to be a talented, capable, bipartisan, and trusted public servant. I give my strongest recommendation and full support to his confirmation as our nation's next Secretary of Homeland Security.

Sincerely,

Leon E. Panetta

LEP:jb

November 12, 2013

The Honorable Thomas R. Carper,
Chairman U.S. Senate Committee
on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper:

We write to you as the three officials who have been tasked with the important responsibility of securing our nation's homeland. As the former Homeland Security secretaries, we understand firsthand the qualities and abilities that an individual must possess to perform this critical mission effectively. With this in mind, we express our strong support for the confirmation of Jeh Charles Johnson as Secretary of the U.S. Department of Homeland Security.

Leading a department the size and scope of DHS is a unique challenge. Mr. Johnson's experience and ability makes him an eminently qualified nominee. His service at the highest levels of the U.S. Department of Defense, the largest government agency in the world, provided him a keen understanding of and the logistics required to successfully execute large-scale, operational missions of varying complexity and purpose. His skill at coordination will be of prime importance at DHS as he will be in charge of overseeing its seven major operating components, including FEMA and other federal partners to help manage disaster response, the U.S. Coast Guard, the U.S. Secret Service, the TSA, and the three immigration and border enforcement components.

Further, Mr. Johnson's participation on the senior leadership team at the Department of Defense has provided him with invaluable and direct experience helping to lead an agency involved in combating the global terrorist threat, a perspective that will benefit him as he implements a key element of DHS' mission, combatting terrorism here at home.

In addition, through his previous service as an assistant U.S. attorney, Mr. Johnson has experience working directly with Federal, state, and local law enforcement and can continue to develop this critical DHS partnership.

These abilities have already been recognized by law enforcement organizations as well as bipartisan officials from both sides of the aisle currently and previously involved in ensuring our national security.

We resoundingly add our names to that list, and more importantly, believe that Mr. Johnson's abilities and experiences will not only continue the important effort the Department of Homeland Security is charged with, but build on the progress made over the last 10 years to combat an ever evolving threat, and make our communities more resilient.

We hope the committee will move quickly to approve this nomination.

Sincerely,

Tom Ridge

Tom Ridge

Michael Chertoff

Janet Napolitano

Janet Napolitano

November 12, 2013

The Honorable Tom A. Coburn
M.D., Ranking Member U.S. Senate Committee
on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Coburn:

We write to you as the three officials who have been tasked with the important responsibility of securing our nation's homeland. As the former Homeland Security secretaries, we understand firsthand the qualities and abilities that an individual must possess to perform this critical mission effectively. With this in mind, we express our strong support for the confirmation of Jeh Charles Johnson as Secretary of the U.S. Department of Homeland Security.

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Sincerely,

Tom Ridge

Tom Ridge

Michael Chertoff

Janet Napolitano

Janet Napolitano

MACANDREWS
&FORBES
HOLDINGS INC.

FRANCES FRAGOS TOWNSEND
EXECUTIVE VICE PRESIDENT
WORLDWIDE GOVERNMENT, LEGAL, AND BUSINESS AFFAIRS

October 30th 2013

The Honorable Thomas R. Carper. Chairman
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Tom Coburn, M.D., Ranking Member
U.S. Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington. DC 20510

Dear Chairman Carper and Ranking Member Coburn:

As a former Homeland Security advisor to President George W. Bush, I am writing to support the nomination of Jeh Johnson as Secretary of the Department of Homeland Security.

I commend Mr. Johnson for his distinguished career in public service, including as General Counsel for the Department of Defense and the Department of the Air Force, and as Assistant US Attorney for the Southern District of New York. While at the Department of Defense, Mr. Johnson was the senior lawyer for the largest government agency in the world, charged with undertaking the prior legal review and approval of every military operation approved by the President and Secretary of Defense. As an Assistant US Attorney, he has managed the investigation and prosecution of crimes that gravely threaten our nation each day. He executed these duties in an exemplary manner.

Mr. Johnson is uniquely qualified to lead the Department of Homeland Security. He possesses an in-depth understanding of the threats and challenges facing our homeland. He is also widely respected across our government as a team player, and will work well with state, local and tribal governments – and across the Federal government – to ensure cooperation and collaboration on issues affecting our national and homeland security.

I wholeheartedly support the nomination of Mr. Johnson and ask for his swift confirmation. Should you have any questions or wish to discuss this nomination further, please do not hesitate to contact me.

Sincerely,

35 EAST 62ND STREET
NEW YORK, NEW YORK 10065
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FAX: 212-572-5151
EMAIL: frances.townsend@mafgrp.com