

**PERSPECTIVES FROM THE DHS FRONTLINE:
EVALUATING STAFFING RESOURCES AND
REQUIREMENTS**

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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CONTENTS

Opening statements:	Page
Senator Johnson	1
Senator McCaskill	2
Senator Lankford	17
Senator Carper	20
Senator Tester	22
Senator Heitkamp	25
Senator Harris	29
Senator Hoeven	32
Senator Daines	35
Prepared statements:	
Senator Johnson	41
Senator McCaskill	42

WITNESSES

WEDNESDAY, MARCH 22, 2017

Brandon Judd, President, National Border Patrol Council (testifying on behalf of Border Patrol Agents, U.S. Customs and Border Protection)	5
Anthony M. Reardon, National President, National Treasury Employees Union (testifying on behalf of Office of Field Operations Officers, U.S. Customs and Border Protection)	7
Chris Crane, President, National Immigration and Customs Enforcement Council (testifying on behalf of Enforcement Removal Operations Officers, U.S. Immigration and Customs Enforcement)	9

ALPHABETICAL LIST OF WITNESSES

Crane Chris:	
Testimony	9
Prepared statement	64
Judd, Brandon:	
Testimony	5
Prepared statement	47
Reardon, Anthony M.:	
Testimony	7
Prepared statement	51

APPENDIX

Photo referenced by Mr. Reardon	63
Chart submitted by Senator McCaskill	70
DHS Memorandum submitted by Senator McCaskill	71
American Association of Port Authorities Statement for the Record	77
U.S. Customs and Border Protection Statement for the Record	79
National Immigration Forum Statement for the Record	86
Responses to post-hearing questions for the Record	
Mr. Judd	93
Mr. Reardon	100
Mr. Crane	106

PERSPECTIVES FROM THE DHS FRONTLINE: EVALUATING STAFFING RESOURCES AND REQUIREMENTS

WEDNESDAY, MARCH 22, 2017

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

The Committee met, pursuant to notice, at 10:02 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Hoeven, Daines, McCaskill, Carper, Tester, Heitkamp, Peters, Hassan, and Harris.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

I want to thank our witnesses for taking the time to testify and for taking the time to write your testimonies, which I think were very interesting and provided a lot of good information that we are going to need as we try and develop policy to secure our border and properly enforce our immigration laws.

Now, 3 weeks ago, we held a hearing, “The Effects of Border Insecurity and Lax Immigration Enforcement on American Communities.” We had witnesses telling some pretty grim stories. Julie Nordman’s husband, Randy, was the fifth—the last person killed in a five-person murder spree. Jill Marie Sundberg was brutally murdered up in Washington State. We all know the well-publicized case of Kate Steinle. Unfortunately, in the intervening period, another horrific case has come to mind.

Now, I will be the first to acknowledge crimes are committed—horrific crimes—by U.S. citizens. There is no doubt about that. But, it is small comfort to the family of Kate Steinle, to Julie Nordman and her family, and to the family of the other victim in Washington that, well, American citizens commit crimes, too. Their family members were murdered by people in this country illegally, because we have not, in many cases, enforced our immigration laws.

The most recent horrific example—and I am going to read just segments. I can only read segments of this news story about a 14-year-old girl at Rockville High School in Rockville, Maryland. Jose Montano, a 17-year-old from El Salvador, and Henry Sanchez-Milian, an 18-year-old from Guatemala—here is the account: “The

victim, the 14-year-old girl, was walking in a school hallway when she met two male students identified as Montano and Sanchez. They forced her into a boys' bathroom and then into a stall. Court records describe the merciless and brutal assault by both Montano and Sanchez, who allegedly raped the young girl multiple times."

According to U.S. Department of Homeland Security (DHS) databases, an agent from the U.S. Border Patrol (USBP) stopped Sanchez-Milian in August of 2016 in Rio Grande Valley (RGV), Texas, and determined he had entered the country illegally from Mexico. That was in August of 2016. He was ordered to appear before an immigration judge, but the hearing had not yet been scheduled. That is just a fact. There is another victim—and a victim because we failed to enforce immigration laws.

The purpose of this hearing, now, is to hear from those of you who are on the front lines. This is about laying out the reality that you are facing, in terms of having proper staff—proper allocation of staff. And, today, we have three witnesses. And, I will introduce each of you prior to your testimony, but we obviously have somebody from Border Patrol. We have a witness with 20 years of experience, by the way—boots on the ground. We also have a witness from the United States Customs and Border Protection (CBP) Office of Field Operations (OFO). So, Border Patrol is between the ports. Office of Field Operations is the ports of entry (POEs). And, by the way, that is 25 years of experience with that individual. And, we have another witness from U.S. Immigration and Customs Enforcement (ICE)—14 years of experience enforcing our laws in the interior. These are gentlemen that have been in these positions over multiple Administrations and that can tell us exactly what has happened over time, where we are today, and what we need to do to effectively enforce our immigration laws and try and keep our homeland safe.

So, again, I want to thank the witnesses. I appreciate your testimonies. I am looking forward to it. And, with that, I will turn it over to our Ranking Member, Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you. I would ask for my formal opening statement to be made part of the record,¹ Senator Johnson, if I could.

Chairman JOHNSON. Without objection.

And, can I ask to have mine²—

Senator MCCASKILL. Absolutely.

Chairman JOHNSON. Thank you.

Senator MCCASKILL. Let me just riff for a moment.

First of all, thank you all for the work you do. As a former prosecutor for a lot of my career, I was honored to work shoulder to shoulder with law enforcement—and I understand the duty you have, the risks you take, and the sacrifices that both you and your families make. And, it is important to note that you are here, representing many more just like you, in your roles as officers in your

¹ The prepared statement of Senator McCaskill appears in the Appendix on page 42.

² The prepared statement of Senator Johnson appears in the Appendix on page 41.

unions. I am proud to see union leaders at this table—especially public-sector union leaders.

There has been a war on public-sector unions in my State, and I do not get it. I think you all see the value of being able to represent the front line in an organized way, where their voices can be heard. And, I appreciate that very much.

All of us want to secure the border. The question is not whether or not we want to secure the border or whether or not we all agree that crimes committed by anyone, including people who are not in this country legally—we have to do everything we can to prevent them. The question is: How do we do that? The question is: What is the right strategy to really get at this problem?

And, what I would like to hear today is, whether or not what is being proposed is, in fact, the right strategy and whether we have put enough time into the analysis of the right strategy, going forward.

For example, I was down on the border. I was in McAllen, Texas, and I spent time with dozens and dozens of Border Patrol agents (BPAs). And, every single one of them—I asked them—frontline folks, not—I mean, the management were all hovering. That is another question. I think you guys are way too management heavy. I just do not think there is any question that you have way too many managers and not enough frontline folks. And, I kept asking them, “What do you need?” And, time after time, I heard the same things.

I heard, “Lateral roads—access—so that, when our technology identifies, we can get there.”

I heard about technology. I was blown away by the fact that the Border Patrol had figured out how to jury-rig a night vision set of goggles on a pickup truck with an arm that extended it up. Now, they did not buy this off of the shelf. They kind of designed it—you guys kind of designed it, yourselves, in order to get eyes up above, when the floating eyes cannot fly, for whatever reason, or for the fact that the topography down there really needs eyes up above. The idea that you all are having to jury-rig this together—rather than getting the latest technology that is available.

And then, I heard that you do not even have enough bandwidth at the processing center in McAllen to use the kiosks that we bought.

So, I hear all of these things, and then I try to figure out why a wall across the entire border. I did not have one border agent tell me that we needed a wall across the entire border. I think I was told 55 more miles in that sector would be helpful—or 75 more miles would be helpful, but not across the entire border.

I also want to know: Why 10,000? Why 5,000? Who did this analysis? Why do we not restructure or get rid of some of the managers? We cannot even hire the ones that are authorized now. We are not even at full capacity for the ones that are authorized.

So, it does not seem like, to me, that either the wall or the number of people that are being requested in the budget has undergone the kind of scrutiny that it would go through in the private sector—the kind of analysis to really determine what is the most efficient and effective way to deploy our resources to help you all and

to give you the support you need. And, that is what I want to try to dig into today.

I am disappointed no one from the Department of Homeland Security is here, today, because we are being asked, right at this moment—I know the Chairman says that it is early and that it is too early to get them here—and he has not joined me in inviting the officials from the Department of Homeland Security to these hearings. But, they are asking for billions of dollars right now in the supplemental, and I think these questions need to be posed to them—not just questions posed to you all, who are in the important job of representing your membership, in terms of the voice of your union members, to management, within your specific operations.

And, finally, I will close with this: The notion that the number-one killer in our country—more than car crashes and more than homicides—is, in fact, opioids—the notion that we are going to hire 15,000 more agents, for both ICE and Border Patrol, and we are going to leave the ports uncovered—all that is going to do is squeeze all of those drugs to the ports—and you guys know it. But, they are not requesting any officers to go to the ports. And, they are cutting the U.S. Coast Guard (USCG) to build the wall.

Now, if this is about getting the opioids—the deadly poison that is killing our country—in addition to securing the border—and securing the border does not just mean illegal people coming across. It also means drugs. It does not appear to me that this is a well-thought-out plan. It appears to me that this is political and not solid policy. And, I look forward to the chance to question you about that and get your responses to that. I know what you guys want. You want the resources you need. I want to help you get those. I just want to make sure we are not engaging in campaign promises instead of policy that will actually secure the border and take the money away from the cartels that are making as much money on the peso as they are making on drugs right now, in terms of the per head tax that people pay to get the illegals—the smugglers pay to get through those various cartel territories—I want to get after that.

And, the Drug Enforcement Administration (DEA) is also, I assume, going to be cut, because the U.S. Department of Justice (DOJ) is being cut. So, it just does not make sense to me—that the policies have been well thought out, and I look forward to questioning you about that.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator McCaskill. And, of course, that is the purpose of this hearing—to scrutinize these proposals, so that Congress is well informed and so that we can actually work with the Administration to actually secure the border and enforce immigration laws. So, I am completely flexible, in terms of my approach. I want to see what works.

Senator MCCASKILL. Well, I would love it—if it is about the policies, it would be great to question the people who are setting the policies.

Chairman JOHNSON. And, I was just—

Senator MCCASKILL. And, the next hearing, on the wall—once again, I have asked DHS to come as the Minority witness, and you have not joined me in the invitation to have the Department of

Homeland Security here to talk about the wall. And, I do not understand how we can get at questioning the policies if we do not have people at the table that are responsible for the policies.

Chairman JOHNSON. Having solved a lot of problems, you first lay out the reality, which is what we are doing here in these hearings. I think this is our 20th or 21st hearing on border security—laying out the reality—and, of course, as I think you are aware, the Secretary of Homeland Security will then be here the day after our hearing on the wall and the fencing. So, you will have your chance. And, we are going to give the Secretary a chance to also get prepared to testify before the Committee.

So, again, we are laying this out in a very organized fashion. We are going to lay out the truth. We are going to lay out the reality and, hopefully, then design policies that will actually work once and for all, in terms of securing our border and enforcing our immigration laws.

It is the tradition of this Committee to swear in witnesses, so if you will all rise and raise your right hand, I would appreciate it. 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. JUDD. I do.

Mr. REARDON. I do.

Mr. CRANE. I do.

Chairman JOHNSON. Thank you. Please be seated.

Our first witness is Brandon Judd. Mr. Judd serves as the president of the National Border Patrol Council (NBPC). Mr. Judd joined the Border Patrol in 1997 and served in multiple positions at the Northern and Southwest borders. Mr. Judd.

TESTIMONY OF BRANDON JUDD,¹ PRESIDENT, NATIONAL BORDER PATROL COUNCIL (TESTIFYING ON BEHALF OF BORDER PATROL AGENTS, U.S. CUSTOMS AND BORDER PROTECTION)

Mr. JUDD. Chairman Johnson and Ranking Member McCaskill, I really appreciate the opportunity to testify before you today. I am going to go off script. You have my written testimony, but, based upon the comments that you gave today, I would like to speak to that.

Senator, had we have done our job, that 14-year-old girl would have never been raped. Period. That is all there is to it. Had we have held those individuals in custody—or that one individual in custody, pending a determination on whether that person should be allowed to remain in this country, that rape would not have happened.

We failed the citizens of this great Nation by not securing the border. Not only did we have the “catch-and-release” program that completely and totally demoralized the rank-and-file agents in the Border Patrol, but we also had an arrest rate where, for one out of every five individuals that crossed the border illegally, we only arrested one out of every two. We only had a 50-percent effectiveness rate. That is a problem. So, not only were the individuals that

¹The prepared statement of Mr. Judd appears in the Appendix on page 47.

we were actually arresting—not only were we releasing those individuals, but we were only apprehending one out of every two that were crossing the border illegally.

There is no private company in the United States that can operate and be successful if they have a 50-percent success rate. They would go out of business. Senator, you were in the private sector. Your business would have—I have to assume that your business would have gone under if you only had a 50-percent effectiveness rate.

As far as the wall goes, Senator McCaskill, I agree with you 100 percent. We do not need a great wall of the United States. We do not need 2,000 miles of border wall. I will tell you, however, that a wall, in strategic locations, is absolutely necessary. The fencing that we currently have can be defeated. Anybody can come up to that fence with a welding torch and cut a hole in it. In fact, they have. I, personally, was assigned to find holes in the fence. My brother was assigned for 3 years to patch holes—as a Border Patrol agent—to patch holes in the fence—and that was a daily activity that he was doing. So, yes, we absolutely have to have a barrier that cannot be defeated. And, if we do a wall—and we do it properly—on the border, we can, in fact, effectuate a better arrest rate. We can, in fact, secure the border. I am 100 percent positive that that can happen.

Before we do that, we have to address the current issues that we have. According to CBP's own figures, in order to bring Border Patrol up to the Congressionally-mandated floor—add 5,000 new agents and account for historical 6-percent rate of attrition—the Border Patrol will need to hire over 2,700 agents every year for the next 5 years. The 6-percent attrition—we lose over 1,000 agents per year because they do not like to work for the Border Patrol. We have seen a huge increase in morale since November 8th, and that increase in morale has been based upon the promise that we will be allowed to enforce the laws the way the laws were written on the books. And, that morale is going to be contingent upon whether or not we do, in fact, enforce the laws properly. But, it is also contingent upon whether or not we fix the problems that we have had in the past.

The first and foremost problem that we have had is, we do not have pay parity with other law enforcement Agencies. Even though I am a General Schedule (GS)–12 and an ICE agent is a GS–12, the ICE agent gets paid more, because they have Fair Labor Standards Act (FLSA) overtime. We do not. And, that overtime was cut due to management—the illegal use of the Administratively Uncontrollable Overtime (AUO) by management in 2014. And so, we have to address pay parity. And, if you are looking at seriously securing the border and if we are looking at a comprehensive border security bill, we have to look at how we can bring back parity in pay with our sister Agencies. Otherwise, you are going to see a mass exodus. When ICE starts hiring, you are going to see a mass exodus of Border Patrol agents over to ICE—and that is the last thing that I want to see.

We also have to fix the morale problem. If we look at it and we say that morale is strictly contingent upon enforcing the laws, we are going to miss all of the indicators of the past 20 years. We have

enforced the laws before. We enforced the laws under the George W. Bush era and the Bill Clinton era. Yet, we still had a 6-percent attrition rate. So, we have to look at the underlying reasons for that—and we have to address that.

I really look forward to answering your questions. I want to bring out what the frontline agents have seen every day to address the opioid issue. Senator McCaskill, I was a K-9 handler. I have seen, firsthand, exactly how the drug problem works. But, we are talking about Border Patrol agents in the field. And, you brought up that we are talking only about areas between the ports of entry. We are currently deploying Border Patrol agents to the ports of entry. It makes no sense. It absolutely makes no sense. We should not be using Border Patrol resources at the ports of entry. We need to address that issue and look at that and say, “OK, if we are going to get 5,000 agents to the Border Patrol, we also have to address the port of entry issue as well, because, otherwise, we are only addressing one small part of the problem.”

But, Senator McCaskill, as a K-9 handler, I can tell you that the drugs that are coming across our border—we do not even have a minute handle on what is happening across our borders, as far as the drugs go. And so, we have to address those issues as well.

I appreciate the time, and I look forward to answering your questions. Thank you.

Chairman JOHNSON. Thank you, Mr. Judd. And, I saw Mr. Reardon shaking his head when you said that we need to have more staff at the ports of entry, which I think we all agree on.

Our next witness is Mr. Anthony “Tony” Reardon. He is the president of the National Treasury Employees Union (NTEU), where he represents the Office of Field Operations. Those are agents at the ports of entry. During his time with the organization, Mr. Reardon has worked on initiatives to increase staffing levels at air, sea, and land ports of entry. Mr. Reardon.

TESTIMONY OF ANTHONY M. REARDON,¹ NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION (TESTIFYING ON BEHALF OF OFFICE OF FIELD OPERATIONS OFFICERS, U.S. CUSTOMS AND BORDER PROTECTION)

Mr. REARDON. Chairman Johnson and Ranking Member McCaskill, thank you for the opportunity to testify on behalf of over 25,000 frontline CBP employees at 328 U.S. air, sea, and land ports of entry and at preclearance operations overseas.

There is no greater roadblock to legitimate trade and travel efficiency and to stopping illicit trafficking in people, drugs, illegal weapons, and money than the lack of sufficient staffing at ports. The current CBP officer shortage is indeed staggering. There is a vacancy rate of nearly 1,400 funded CBP officers at the ports. And, according to CBP’s own workload staffing model, an additional 2,100 CBP officers must be funded and hired in order to meet 2017 staffing needs. A total CBP officer staffing shortage of 3,500 exists today.

The economic cost of this shortage is staggering as well. For every 33 additional CBP officers hired, the United States can po-

¹ The prepared statement of Mr. Reardon appears in the Appendix on page 51.

tentially gain over 1,000 private sector jobs. Understaffed ports lead to long delays in travel and cargo lanes and result in a significant hardship for frontline employees. Both involuntary overtime and involuntary work assignments far from home destroy morale and disrupt the lives of CBP officers.

One factor hindering CBP hiring is the high failure rate of the polygraph. NTEU is working with CBP and Congress on improving the process. This poster¹—and I believe you all have a picture as well—shows a typical day at the San Ysidro, California port of entry. As you can see, there are 26 primary vehicle lanes, with up to 2 booths at each lane—a total of 50 booths. Approximately 60,000 vehicles and 25,000 pedestrians apply for entry each day.

In the photo insert, you can see the pedestrian crossers. Today, this port has over 350 CBP officer vacancies. By the summer of 2019, this port will expand to 32 lanes, with 62 booths. But, the proposed fiscal year (FY) 2018 budget recommends no funding to hire any additional CBP officers for this or any other of the Nation's 328 short-staffed ports of entry. Imagine working up to 16 hours a day here, for days on end, with no relief in sight.

An example of the negative impact staffing shortages have on CBP officers can be found at San Ysidro and Nogales, Arizona, where CBP has instituted involuntary temporary duty assignments (TDYs). Forced TDYs, caused by ongoing staffing shortages, undermine employee morale and overall recruitment efforts, because the very best recruiters should be CBP officers.

Just last week, I heard from a female officer at a Texas airport who has been involuntarily assigned to a 90-day TDY assignment in Arizona. Her husband works for ICE and, at times, has to go on TDYs, himself. They have small children, and if he is called for a TDY while she is in Arizona, they are going to be in a significant bind. CBP has refused to give this CBP officer an excusal from this involuntary TDY. And, based on experiences such as this, many officers would not encourage their family members or friends to seek employment with CBP. Neither the President's January Executive Order (EO), nor the President's FY 2018 budget request, include any new funding to meet CBP's staffing needs at the ports of entry. This is despite the fact that CBP officers at the ports of entry, in 2016, encountered over 274,000 undocumented immigrants as well as seized over 600,000 pounds of illegal drugs and over \$62 million in illicit currency—while processing over 390 million travelers and \$2.2 trillion in imports through the ports.

Both CBP and Congress need to step up. It is critical that CBP fix its broken hiring process, which has delayed the hiring of the 2,000 officers funded in 2014. And, if Congress is truly serious about job creation, it should fund the hiring of the remaining 2,107 CBP officers and the 631 agriculture specialists—identified in CBP's 2016 workload staffing model—in order to address the ongoing CBP staffing shortages.

Thank you very much, and I look forward to answering your questions.

Chairman JOHNSON. Thank you, Mr. Reardon. I think we would ask ICE not to steal from Border Patrol, but I understand exactly

¹ The photo referenced by Mr. Reardon appears in the Appendix on page 63.

what is—I understand that. Again, I think that is a really good issue to point out here.

Our final witness is Christopher “Chris” Crane. Mr. Crane currently serves as the president of the National Immigration and Customs Enforcement Council. He joined U.S. Immigration and Customs Enforcement in 2013, and has served as an immigration enforcement agent and a deportation officer. Mr. Crane.

TESTIMONY OF CHRIS CRANE,¹ PRESIDENT, NATIONAL IMMIGRATION AND CUSTOMS ENFORCEMENT COUNCIL (TESTIFYING ON BEHALF OF ENFORCEMENT REMOVAL OPERATIONS OFFICERS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT)

Mr. CRANE. Good morning, Senator Johnson and Ranking Member McCaskill. President Trump and DHS Secretary John Kelly have been unapologetic in their commitment to enforce the laws enacted by Congress. We believe that the recent statistics released by CBP, showing a sharp decline in illegal entries, is a direct result of their leadership—and that illegal entries will continue to decline if strong interior enforcement continues.

While many have tried to make the strategy for stopping illegal immigration a complicated matter, it is not. Border security must continue. But, in addition to that, the United States must enforce its laws on the interior of the country and, as a Nation, send a very clear message to the rest of the world that illegal entry into the United States—and overstay—will not be condoned or permitted. The United States must stop dangling a carrot, drawing people into this country and encouraging them to violate U.S. laws. Interior enforcement is key to border security.

During my career at ICE, I have never had the opportunity to commend a sitting U.S. President or DHS Secretary. Today, I am here to do just that. Amidst all of the hammering from the media and the protests from special interest groups, President Trump and DHS Secretary John Kelly have not waived, but, instead, continued steadfast in their support of the rule of law and our officers in the field. If they continue that course, we believe countless lives will be saved, and the victimization now seen so often—as the result of illegal immigration—will dramatically decline.

We need more officers and staff in ICE Enforcement and Removal Operations (ERO). Currently, ERO has around 5,000 officers to police approximately 11 million illegal aliens, as well as millions of other lawfully admitted foreign nationals, nationwide. We are set up for failure from the word “go.”

We enthusiastically support the additional officers identified in President Trump’s Executive Order on interior enforcement. However, we have little faith in the ability of ICE leadership to most effectively implement the additional staff. As staffing increases are considered and planned, ICE leadership should be thinking outside of the box and innovating, looking at new ways to have our officers do less paperwork and data entry and more law enforcement. However, from what we have seen thus far, that is not happening. No changes, no innovation, and no improvements. Business as usual.

¹ The prepared statement of Mr. Crane appears in the Appendix on page 64.

While there is no question that morale within ICE is at the highest that it has been for many years, the President's emphasis on enforcing the Nation's laws will not completely solve the overall morale crisis within the Agency. As with DHS in general, ICE is suffering from a toxic and failed management culture—an absolute absence of leadership. In 2014, ICE was dead last in morale among 314 Federal Agencies surveyed. In 2015, ICE was second from last—and, last year, sixth from last.

“Screw up and move up” is the general term used by many ICE employees to describe their supervision. Most employees have no trust in DHS and ICE internal affairs offices to effectively carry out investigations against ICE supervisors. At ICE, it is a “good ol’ boy network”, in which supervisors cover for supervisors, and only rank-and-file employees are held accountable. Supervisors are permitted to harass, discriminate, and retaliate at will. Established in 2003, ICE has practically no policies. The Agency generally depends on Immigration and Naturalization Service (INS) policies from 20 years ago or more—or they just have no policy at all. Law enforcement officers within ICE generally do not believe they have the full support of ICE leadership in carrying out the Agency mission.

During the last 8 years, ICE employees and officers have been publicly demoralized by their own government. These actions continue as ICE officers and their arrest activities are incorrectly portrayed and described publicly, in the media, by political pundits as “gestapo” tactics and other Nazi references. It is pretty hard every day to maintain morale when your own government and the media turn on you for enforcing the laws enacted by Congress.

Perhaps more importantly, this rhetoric places the safety and lives of our officers at risk. When our Nation's lawmakers and government show no respect for the rule of law and the officers who enforce it, criminals feel empowered to become resistant and aggressive—and likewise lose respect for law enforcement officers.

At the Congressional level, our officers and employees desperately need your support. We need your support in terms of additional officers, staff, and equipment, but we also need you to support the rule of law and the officers who enforce it. Everything you say and do has consequences. Talk of amnesty will create another run on the border. Disparaging comments about our officers will put their safety at risk.

We can significantly stop the flow of illegal immigration into the United States—and with it much of the needless death and victimization that accompanies it—if we have the support of our government in supporting its laws.

Thank you, and that concludes my testimony.

Chairman JOHNSON. Thank you, Mr. Crane.

First of all, I think I speak on behalf of everybody at the dais here. We do recognize that, just like policemen and firefighters, the men and women that work in your Agencies are putting their lives at risk and putting themselves on the line, trying to enforce our laws—so we certainly want to thank you for that.

And, that brings up my first question. Mr. Judd, a recent report by Border Patrol said that attacks from October 2016 through February 2017 are up, involving weapons, projectiles, and close-quarter

fighting—in other words, violent attacks against Border Patrol agents are up 179 percent. Can you just give me your feeling on why that is?

Mr. JUDD. Yes. When we empower individuals to believe that they can, in fact, break our laws and there are no consequences to that, what we do is, we escalate the violence that exists on the border. I believe that figure that you just mentioned came out yesterday from the Rio Grande Valley. Assaults on Border Patrol agents are up by 150 percent, over this same time last year. And, again, what we have done, unfortunately, is, our own Federal Government has empowered criminals to feel that they are untouchable, that they can come to our country and do what they want to do, and that they can act with impunity to what the laws actually are.

Chairman JOHNSON. Mr. Crane, we have heard, repeatedly—and I am, quite honestly, shocked, coming from the private sector—the retaliation from management across the government—and certain Agencies are worse than others. There is obviously a real problem with management within these Agencies. What is your solution? I mean, if you have to clean house, how thoroughly do you have to clean house?

Mr. CRANE. Well, sir, thank you for the question. First of all, I would like to add to what Mr. Judd said—that I do not know that ICE collects the data, but we have been saying this for years. And, we have testified on this. Under the Obama administration, we have absolutely seen the aggression and the assaults against our officers climbing as well. It is out of control. So, I just wanted to make sure that we had that in there.

I think what law enforcement, in general, in the country is now experiencing is what we have been feeling for a long time. When your government does not support you, the people sense that, and they cease to respect your authority.

In terms of what do we do about our management problem, I do not think it is rocket science. And, I am not stealing something here from President Trump, because we have been saying it for years to every Director and every DHS Secretary that comes in. We need somebody to come in and say, “There is a new sheriff in town and it stops now.”

Chairman JOHNSON. What stops?

Mr. CRANE. The retaliation—just the activities of management, in general. I actually talked to Secretary Kelly about this last week. We need some of that U.S. Marine Corps (USMC) leadership tradition brought over to our Agency—leadership by example. Leaders are held to higher standards—accountability—and really do it. I mean, right now, it is like a “good ol’ boy network.” Everybody knows it is going on. A lot of people have stopped reporting it. But, even when it is reported, nothing is done about it. And, it has to start at the top. And, I know this may sound like a simplistic answer, but, give me the keys to the house, and I will show you what it takes to fix the Agency. And, that is what it is. We have to have a boss that comes in and starts—we need policies. We have no policies to even follow. That is half of the problem. But, the other problem is—again, it is this “good ol’ boy network.” And, it has to go away.

Chairman JOHNSON. Well, again, a “good ol’ boy network” is populated by “good ol’ boys.” And, how many “good ol’ boys” are we going to, literally, have to send packing? And, I think the other part of that question, too, is—because I think we all recognize this—we see the statistics—the number of agents on the ground—the ratio of that to management has grown significantly over—I do not know what time period. Talk about both of those.

Mr. CRANE. We are tripping over managers out in the field. And, we have been saying this for a long time. And, when we speak to ICE about it, one of the few things that they seem to talk to us about, and actually track—they are in complete agreement that they have way more managers. But, it does not seem to stop them taking—they will take two officer positions and make another management position out of it. And, they just keep doing it.

Chairman JOHNSON. So, what caused that? Kind of go to the root cause. And, this is true across all three agencies, correct? We are management top heavy? So, when did this process begin? What caused it? Because, I think if we identify that, it is going to be easier to solve it.

Mr. CRANE. Sir, I do not know if I can speak to what caused it, because I do not think it is necessary. I think it is management that is a little out of control, that does not have enough oversight, and that is just kind of running amok.

Chairman JOHNSON. Mr. Reardon, can you comment on that?

Mr. REARDON. Well, in terms of when it started, what I can tell you—to kind of help add some information about that—is that, around 2000—at least in OFO, my understanding is—if I have these numbers correct—that there was one supervisor to 12 front-line employees. And now, that number has changed to one supervisor for every approximately six employees.

Now, what the actual catalyst was to changing that dynamic, I do not really know.

Chairman JOHNSON. Would one of the solutions simply be to go back to the 12:1 ratio and have managers get back into the operating position? Is that even possible? Have they lost their skills? Are they too old? Is that a possibility?

Mr. JUDD. To speak to that—the catalyst was what we call “kingdom building.” If you look at it—

Chairman JOHNSON. Government bureaucracy.

Mr. JUDD. It is. It is absolutely government bureaucracy—but the only way a manager can increase their GS level from, say, a GS-14 to a GS-15 is if their operations become more expansive. And so, in order to make your operations more expansive, you add additional people to your “team.”

Chairman JOHNSON. So, the pay structure within the government certainly drives that “kingdom building.”

Mr. JUDD. It is—and that is absolutely what drives it. If you look at my current sector, the Havre, Montana sector, we have a Chief Patrol Agent (CPA) who is a GS-15. He only oversees 137 agents. That is it. Why we have to have a GS-15 as a Chief Patrol Agent in the Havre sector—so what he did was, he expanded upon his “kingdom,” and he put intel agents in cities, like Billings, Montana, that are 4 hours away from the border. Those agents actually oper-

ate like FBI agents. They give us nothing, as far as the Border Patrol goes, but that is how he was able to get his GS-15.

Chairman JOHNSON. So, we really do need a top-to-bottom staffing review of every last one of these Agencies, providing a recommendation to the Secretary.

Mr. JUDD. We have to.

Chairman JOHNSON. Maybe we should do that through an outside Agency. There are plenty of human resources (HR) companies that could provide that type of a look, and we could take a look at that pretty quickly and get numbers on it. I mean, if you can take from your management rank and put that into boots on the ground rank, that will certainly help a little bit of the personnel shortage.

Mr. JUDD. Well, Senator—and I do not want to take up too much time—but, due to days off, we—again, the United States Border Patrol has about 19,700 agents right now. Every day, about 60 percent of those 19,700 are on duty. We operate 7 days a week. And, we operate three shifts. So, 60 percent are on duty. Of that 60 percent, it is estimated that only 25 percent are actually deployed to the field in an enforcement capacity. The other 35 percent are doing administrative jobs. That is ridiculous. That has to change.

Chairman JOHNSON. We will lay this all out. Again, I am an accountant. We are going to lay this out, so it is very apparent, in terms of what needs to happen. Senator McCaskill.

Senator MCCASKILL. I could not agree more, but, I will tell you, Mr. Crane, Mr. Judd, and Mr. Reardon, I am not probably as excited about hiring a contractor to figure this out. You guys know how to do it. You all should present plans to us on how to rework the management structure, so that we get people to the front line. It is not going to do us any good to hire 5,000 or 10,000 more if 50 percent of them are going to be doing administrative work and figuring out to get a higher GS ranking for pay. That makes no sense, whatsoever. And, the fact that we are not doing that first—I mean, think of the efficiencies we could get out of your Agencies if we listened to the frontline workers, through your representation. That is what I think is really an important takeaway from this hearing—that unions matter. And, what you guys represent, in terms of people on the ground, matters.

So, I would just tell you, I welcome your analysis on how we could rework management and how we could bring down the number of people doing administrative—versus the number of people that are on the front lines.

And, also, Mr. Crane, I want you to know our whistleblower protection is, I hope, well known in the Federal Government. I hope you will encourage your members to let us know when there is improper behavior by managers against your frontline officers that are out there doing the hard work every day. When you see waste and abuse, I hope you call us, so we can follow up. And, we are very protective of whistleblowers. Nobody needs to worry that we are going to throw them under the bus. We will not. So, please, let everyone know that we want to be helpful.

Mr. Crane, let me ask you about another part of the magnet—and this has been something I have been banging on since I got here. We know that there are employers in this country that are knowingly hiring illegal immigrants. We know—in fact, I bet if I

got a bunch of ICE agents in a room, in any given State, they even know who they are.

Mr. CRANE. Yes, ma'am.

Senator McCASKILL. You guys know who they are.

Mr. CRANE. We know who a lot of them are.

Senator McCASKILL. Why are we not prosecuting them? Why are we not going after the employers who are knowingly cheating? They are creating an unfair competitive advantage. They are, in fact, a magnet that is, in fact, helping draw people over the border. I mean, most of these people are not coming for a vacation. They are coming to try to find work. And, the issue is, if we never go after the employers—have you all, in terms of your union, ever presented a plan to management about how we could effectively enforce all of our laws—not just for those people who have entered this country illegally, but for the people who are hiring them illegally?

Mr. CRANE. Ma'am, I could not agree with you more strongly, I believe. But, I would want to be clear that, I think that, maybe, in the previous Administration, obviously, there was nothing really done on worksite enforcement.

Senator McCASKILL. Or the previous. When I got here, Secretary Michael Chertoff sat in your chair and said, "I have no idea how many employers." They could not even give me the numbers of employers—they had lots of photo opportunities of rounding up illegal immigrants in the workplace—but not one citation. And, somebody that ran ICE, at that point, actually had the nerve to tell me, "Well, these would be hard cases to make." I said, "No, they are not. If we have 10 workers working on the same Social Security number, give it to a jury and I will get a conviction in 10 minutes." People hate that people cheat on this.

Mr. CRANE. Well, but we cannot separate the two. I mean, if we are going to do worksite enforcement, then we have to do it with those people working there illegally. They have to be held accountable for what they have done.

Senator McCASKILL. Of course.

Mr. CRANE. We absolutely need to very aggressively go after these businesses and their owners. I could not agree with you more. Worksite enforcement—even though ERO participates in it—it is actually the mission of Homeland Security Investigations (HSI) to prosecute it. But, my understanding of some of the problem, on the prosecution side, is the wiggle room within the law, in terms of prosecuting the employers.

Senator McCASKILL. I do not think so. It is knowingly. All you have to prove is they knew it. And, I mean, if we can make circumstantial arson cases in this country and we can make the kind of cases we make on a routine basis in criminal courts across this country—and I know we have several prosecutors on the panel here. I was in that courtroom for years and years. Believe me, this is not a hard case to prove—that somebody knowingly hired illegal immigrants. You guys know who they are. It is common sense, and you can get the evidence. All you have to do is subpoena their work records and figure out pretty quickly that they are—just find that they have no payroll records and they are paying everybody under the table. There are apartment buildings in St. Louis, Missouri

that are full of illegal immigrants, stacked to the gills, where people are getting paid by cash every 2 weeks, absolutely—talking about taking American jobs away.

Mr. CRANE. Absolutely, ma'am. But, also, in some of those areas, we are prohibited from going in there. We have——

Senator MCCASKILL. Well, I need to know who is prohibiting you from going in there. And, we need to get to the bottom of that.

Mr. CRANE. OK.

Senator MCCASKILL. Because, I think, this is a place where, maybe, we can get some bipartisan agreement.

Mr. CRANE. Absolutely. Ma'am, I am telling you, you are so right on this. And, if we are able to do this worksite thing—and we actually do it, we are going to shut down so much of this illegal immigration and everything that goes with it.

Senator MCCASKILL. Absolutely. Talk about a deterrent.

Mr. CRANE. Yes.

Senator MCCASKILL. It is very hard to deter a woman and her children who think the only way they are going to live is to get to the United States of America. On the other hand, if you start taking businesses to court and actually punishing them for doing this, it is going to clean this up faster than all of the border agents in the world.

Mr. CRANE. Yes, ma'am.

Senator MCCASKILL. You covered the management questions, Mr. Judd. Let me circle back to the wall, just briefly. I am going to read a quote that I have of yours.

Mr. JUDD. OK.

Senator MCCASKILL. This caught my eye, because I agree with you, and I want to emphasize it. This was from November 17th on National Public Radio (NPR). "In fact, I was in discussion with the transition team yesterday. If you were to ask me, I would say that, right now, again, we have about 10 to 15 percent of our border has fencing or a wall. If I were to quantify an actual number, I would say that we need about 30 percent."

Do you still stand by that statement?

Mr. JUDD. I do. And, that is actually one thing that I appreciate about the Trump administration. They did, in fact, bring the boots on the ground in, to talk about and discuss this. He took it from a business point of view, understanding that he had an idea, but understanding that he did not know everything.

Senator MCCASKILL. So, do you believe they are only going to want to build 30 percent?

Mr. JUDD. I do not know. I do not know what the Administration——

Senator MCCASKILL. Because, we have not gotten that signal at all. The signal we have gotten is, this is going to be billions of dollars and they are going to——

Mr. JUDD. What I have gotten is that they are willing to take the expertise of those that know best. In fact, the Chief Patrol Agent that the Trump administration just installed, Chief Ronald Vitiello, just said that we do not need a wall across the entire United States. We need walls in strategic locations. All he did was parrot exactly what I have been saying for about a year.

Senator McCASKILL. Perfect. Well, let us hope that you all will dictate that policy and that we can do something that makes sense, in terms of the wall, where we need it. I would point out that one 54-mile section of fencing in South Texas required 400 land acquisitions—and 330 of those were condemnation by eminent domain—a lot of which is still litigating, because, as you know, your agents are sitting in pickup trucks by those open gates, because they are still in court after years and years and years. And, none of those costs have been figured in. All they have figured in on these costs is just the actual building. They have not figured in—one piece of land was initially offered at \$114,000 for 8 acres. In August 2012, it was settled for \$1 million. So, that is just one case, on one parcel of land. So, we are talking about hundreds of millions of dollars in land acquisition that is not even—and maybe even billions—that is not even being figured into this, when you count the litigation that is involved.

Thank you, Mr. Chairman.

Chairman JOHNSON. So, the good news is, we can influence these policies. That is the whole purpose of this hearing. So, we are getting a lot of good information.

Before I turn it over to Senator Lankford, I do want to follow up really quickly on the threat. And, maybe, you do not want to answer this—and I will agree with Senator McCaskill. We have a very good process of whistleblower protection here, in this Committee. But, who is prohibiting you from enforcing the law with employers?

Mr. CRANE. It is really kind of—it is a complicated kind of story, but, very quickly—under DHS, they combined Customs and Immigration to make ICE. There was kind of a turf war that took place after that. And, the bottom line is that the Customs folks kind of won. Their management won. And, they really, for the most part, do not want to do immigration work. That is part of the problem.

The other part of the problem, actually—when I was talking to Senator McCaskill about being prohibited to do things—for example, in my area, in Park City, Utah, we would be prohibited from going into certain—we get complaints from citizens—residents—about these giant apartment complexes full of all of these people and stacked with all of these people in these apartment buildings. And, the Park City Mayor basically said, “I do not want you guys up here in Park City enforcing the law.” And then, that would come down, kind of politically, through the channels. And then, the Field Office Director would tell us, “Stay out of Park City.” And, the Police Chief up there would be singing the same tune. The cops on the ground are not saying it. They would be begging for us to be up there. But, that is kind of how the politics play out.

And, I want to tell you right now, we have, in the past, had individuals in custody and had—at least what we were told was, “Senator such-and-such called or Representative so-and-so called, and you guys got to cut this guy today.”

Chairman JOHNSON. So, it is kind of—

Senator McCASKILL. We need to know about that.

Chairman JOHNSON [continuing]. Like an under-the-table sanctuary city.

Senator McCASKILL. That is a felony. And, if that is going on, we need to know about it. I mean, when you all hear that in the field, you have to call us, because that is—and, follow those people to work and arrest the guy who is hiring them. Follow them to work. I mean, I just think that is unbelievable.

Mr. CRANE. Well, I do want to say, on the tail end of both of those comments, that Enforcement and Removal Operations—that is who I work for—we are all about doing this immigration mission. And, anything that you can do to bring those—because we have half of the missions, basically. HSI has some of them. HSI does not want to do them, and they continually keep kind of moving them over to us. Somebody needs to look at, one, I think, making them do their immigration missions, but, long term, we need to look at bringing more of those immigration missions over to ERO—the folks that will actually do them—and expand our duties to where they actually include worksite enforcement and things like that—because we will get it done for you. We will get it done for the country. I am telling you. ERO—we do more with less than anybody, I think, in the Federal Government. Give us those immigration missions. Give us the people to do it, expand our duties, and we will make it happen for you.

Chairman JOHNSON. You will all be supplied our websites for whistleblower protection, so you can contact our Committee.

Mr. CRANE. Sir, if I could just say on that really quickly, the whistleblower part of it, though, is just a small piece of it. It is really kind of out in the field. It is anytime an officer or an employee says, “Hey, boss, I do not think this is safe. I do not think this is legal. I do not think this is right.” And, it does not always fit into that—in fact, it seldom does fit into that whistleblower thing. And, we have an Office of Special Counsel (OSC) case right now, where, it is our understanding, the Office of Special Counsel has found that, “Hey, this is one of the clearest whistleblower cases that we have seen,” and absolutely nothing is being done. That manager is still out there managing, if you will, harassing every single day these employees—and nothing happens with it. So, our folks—and I think all Federal employees—have completely given up on this whistleblower protection thing.

Chairman JOHNSON. Well, well beyond this hearing, we will work very closely with you and our staffs—

Senator McCASKILL. We should do a whole—

Chairman JOHNSON. Bipartisan. We have held whistleblower—we will do more. But, we will work very closely with our staffs and with your Agencies. And, we are going to get to the bottom of this.

Mr. CRANE. Thank you, sir.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Gentleman, thank you for being here. Thank you for the work on this. This is something Senator Heitkamp and I are working on as well, dealing with the Federal workforce and the gaps that are in there, as well as Inspector General (IG) reports and where Inspector Generals are doing the task and where they are not doing the task—and then, also the whistleblower comments, and trying to get information back up. So, I appreciate what

you are doing. We will continue to be able to stay on that task as well—as well as the Chairman and the Ranking Member here.

I need to ask a couple of questions here, just related to some of the testimony. There has been a lot of conversation about needing additional staff. Can you help me understand the places—as you look at it, obviously, you are not assigning each place. I am not talking about 12 here and 13 there. But, if you look at the key areas where additional staff are needed—I am guessing it is not in management. But, as you are dealing with locations and places—is it in the agriculture enforcement area? Is it, specifically, on fielding the border? Is it the ports? Where would you identify the key places that need additional staffing?

Mr. REARDON. Thank you for that question, Senator. I represent 25,000 employees in the ports of entry, and, right now, we are short 3,500 CBP officers around the entire country. I am not sure if you saw the photograph of San Ysidro.

Senator LANKFORD. I can see it.

Mr. REARDON. They are short 350 officers in San Ysidro. I would say that same kind of situation—though not at the same level—not the same numbers—is replicated really across a lot of the Southwest border—and, actually, we have the problem in other ports of entry as well. And, the problem that I really want to point out is that, when I travel around the country and talk to our people—and I do quite a bit—the number one thing that gets brought to my attention every single time is staffing and the impact that the lack of staffing has on those individuals—and more so even on their families. I mean, we are talking about people—I mean, I have heard stories about people falling asleep on their drive home, because they have worked days on end—16-hour days. That is just wrong—

Senator LANKFORD. It is.

Mr. REARDON [continuing]. To do to human beings.

Senator LANKFORD. Is this, specifically, ports of entry? Clearly, that is an area. Where are the other areas that we would look at and identify?

Mr. REARDON. I will let these gentlemen respond to that, because I represent the folks at the ports of entry.

Senator LANKFORD. Thank you.

Mr. JUDD. The Border Patrol is very fluid. We do not dictate where illegal immigration takes place—unlike the ports of entry. The ports of entry know how many airplanes are going to land at an airport. They have a good idea of how many vehicles are going to come. In Sweet Grass, Montana, they have a very good idea how many vehicles are going to come across that port. So, you can basically staff based upon history there.

With the Border Patrol, we have to constantly be fluid—and we have to address the problem where the problem lies. For instance, in the 2000s, it was all Tucson, Arizona. Now it is RGV, Texas. Next year, it could be Havre, Montana, simply because of the loose visa regulations in Canada now. So, we have to be fluid in addressing the problem as the problem arises.

Senator LANKFORD. OK. Do you have a comment, Mr. Crane?

Mr. CRANE. Sir, we need people everywhere. We have 5,000 people in 50 States, Guam, Puerto Rico, Saipan, and the U.S. Virgin

Islands. And, basically, all of our folks should be doing the same mission everywhere that they are at. And, just to give you kind of an example of what has been happening on the interior enforcement side—the attacks on September 11, 2001 (9/11) happened why? Because people came here on visas—they entered the country legally—they never would have been prevented from being here by the U.S. Border Patrol. But, the response from Congress was to triple the Border Patrol and make us smaller. And so, we are way overdue for some staffing adjustments. And, I promise you that, if we had 10,000 more officers tomorrow, we need them all. But, I think, with kind of what Senator McCaskill said, I think we need to take a look at—we have too many people—too many officers with guns, badges, and immigration arrest authority sitting in offices doing data entry all day long. And, they need to be out on the street.

Senator LANKFORD. So, that is an area we are hearing loud and clear. And, that is an area that we will work with Secretary Kelly on, to be able to try to determine what is happening and try to be able to push people out of the office—what is slowing down and what is requiring all of the data entry and the reporting—not allowing people to actually get into the field. I think that is extremely helpful. The E-Verify system and the enforcement structures—all of those things are in an ongoing conversation here. How do we actually strengthen that and be able to bring encouragement to it? All of these hiring issues, though, and the push to surge the hiring, I look at—and Senator Heitkamp and I have dealt a lot with the hiring measures. As many of you may know, Federal Government-wide, on average, in 2015, it took 90 days to hire a Federal employee. In 2016, it took 100 days to hire a Federal employee—except for you guys, where it takes 460 days to hire one employee—460 days. And, there is a 65-percent failure rate on the polygraph in the middle of that. So, I need help on both of those. Why does it take 460 days? Can some of those processes not be combined, so they are simultaneous, rather than linear, in order? And, why do we have a failure rate of 65 percent?

Mr. JUDD. ICE does not have a pre-employment polygraph. The Border Patrol does.

Senator LANKFORD. Right.

Mr. JUDD. I will tell you, right now, we are not administering the polygraph correctly. Period. We have police officers that have passed the polygraph for their Agencies that fail our polygraph. That means it is—one of two things happen. That police officer, upon entering in as a police officer, became corrupt, or we are not administering the polygraph correctly.

Senator LANKFORD. No one else is even close.

Mr. JUDD. Nobody comes close to having the three times—Senator Lankford, I will tell you—Senator McCaskill said to draw up a plan. I will tell you, we have drawn up plan after plan after plan for the Agency. And, the funny thing is, there is nothing in it for me. I cannot “kingdom build.” I cannot promote myself. So, when we draw up a plan, this plan is altruistic. Whereas, the Agency—when the Agency draws up a plan, it is based upon themselves. It is based upon, “How can I further my career based upon this plan?”

I will tell you right now, I have spoken with Commissioner Gil Kerlikowske and with Deputy Commissioner Kevin McAleenan until I was blue in the face about this polygraph issue. And, they just refuse—if they change it, they have to admit that they were wrong. And, they refuse to admit that they were wrong. We are not administering the polygraph correctly. If we do that, we will not have the kinds of problems that we currently face. And, Senator Flake is introducing legislation. Why does it take legislation to fix a problem that is this simple?

Senator LANKFORD. Pretty obvious.

Mr. JUDD. It is.

Senator LANKFORD. It should be obvious, and this is something that we will continue to be able to press on, in the days ahead, because this—I would hope any new Administration would step in, take a look at all of the previous things from decades back, and try to evaluate. DHS, obviously, is a merger of multiple Agencies to be able to come together—and there are still HR issues. There are still documents that are missing. There are still process issues that are missing. And, we will try to continue to be able to press on this, to be able to make sure it gets there.

I would say to you that, anything you can resubmit needs to be resubmitted, so it can get into a process, right now, in the conversation with a new Administration.

Mr. Chairman, thank you.

Chairman JOHNSON. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thank you. Thank you, Mr. Chairman. And, to our Ranking Member and to all of our witnesses, thank you for the work you do and for your leadership.

I am reminded that Senator Heitkamp was nice enough, a couple of years ago, to take me up along the border with Canada. And, Senator Levin did a similar thing, along the border with Canada over in Michigan. I learned a lot from both of those trips. And, I have been on the border with Mexico, from San Diego to Brownsville, Texas—and a lot of places in between. There are plenty more places I did not see. But, among the lessons that I learned is that what may work on our border with—first of all, I think everybody on this panel—I think everybody in the Senate agrees we need to have secure borders. I think most Americans agree we need secure borders. The big question is: How do we get them? And, what may work well on our Northern border with Canada may not be appropriate in Mexico. What may work in parts of Texas may not work in parts of California, along the Mexican border. What may work in one part of Texas may not work in another part of Texas.

The times that I have been on the border to talk with a bunch of the folks—your colleagues and compatriots, Mr. Judd—I do not remember many of them ever saying that we needed a wall. I just do not remember that. I remember them saying, “We need a fence. That might make some sense.” In some places, it does. In some places, it does not. But, what I have come back with is a focus on force multipliers—and force multipliers—I think of force multipliers—how do we make the men and women, who are doing the work on the ground, every day, on our border, for example, with

Mexico—how do we make them more effective? And, you ask them questions. And, they will give you ideas, as you know. In some cases, one of the things they said is, “Actually, we—need helicopters that are reliable.” And, maybe, it makes sense—instead of having a variety of different kinds of helicopters that would require different maintenance, different maintenance crews, different technologies, different maintainers, and different supply chains—maybe, we should have similar helicopters. Maybe, in some places, we need boats. In other cases, we need boat ramps. And, in some places, where the grass is really high along the border, horses actually work. In some places, we need stationary observation towers. In other places, we need mobile observation towers. In some places, we need an aerostat that goes up thousands of feet up in the air, with cameras, that will enable us to look deep into Mexico.

Almost everybody said that we need good intelligence—better intelligence. And, some people said that we need drones. Some said that we need fixed-wing aircraft. We need all the above. We need all of the above, and we need to figure out which works best. And, I always like to say, “Ask your customer.” In this case, the customers are the folks that are working on the border. And, they have given us some pretty good advice.

I would just say, Mr. Judd, if I could, do you believe that some of the alternatives that I have mentioned—the force multipliers that I have mentioned—make sense? Are there some that make more sense than others? Are there some that I have not mentioned—and there probably are—that you would like to bring to our attention?

Mr. JUDD. Force multipliers are extremely important. But, what I will tell you is that we do have an awful lot of technology that we are just flat out not utilizing. For instance, early in my career, helicopters flew at night. We had no problem getting night coverage. And, what is interesting is, the vast majority of the arrests that take place on the border happen at night. Right now, the Office of Air and Marine Operations (AMO) fly very little at night. In fact, in RGV, we had to use the Coast Guard to fly sorties in certain areas. And, when their apprehensions became so great, it is my understanding that AMO asked them not to fly anymore at night, in RGV, because it was making them look bad.

So, what we have to do is, we have to take the technology and the resources that we do have, and we have to utilize that technology and the resources correctly. But, the problem is, when we see AMO not utilizing the technology correctly—or the way that we have utilized it before—and yet, this individual, who was the head of AMO, is now the Acting Deputy Commissioner, we are rewarding ineptness that has happened under his watch.

Now, I do not know this individual, personally. But, I can tell you that, because we are a separate Agency—which never should have happened in the first place—in the past, the Border Patrol had their own air unit, and we got to dictate when the flight hours were—when the flight time was. But, because we created this huge bureaucracy—this “kingdom building” that I mentioned before—because we did that, we separated it out. And now, AMO has complete and total control. And, we have lost a lot of the flight time and flight hours.

So, we have to utilize the technologies that we currently have better. And, we are just not doing that.

Senator CARPER. All right. Thank you. Our Chairman, along with Senator Heitkamp and I, has traveled to parts of the “Iron Triangle”—Honduras, Guatemala, and El Salvador—and I am going to meet later today with the President of Honduras, President Juan Orlando Hernandez, to talk about some of these issues that we are talking about.

One of the things I have heard our Chairman say many times is, we need to focus on the root causes of illegal immigration. And, it goes back to our addiction, in this country, to illegal narcotics, which are trafficked through these countries—through Honduras, Guatemala, and El Salvador, as you know. And, if we do not focus on trying to make those places more habitable—to places where there is more hope and rule of law—then we can deploy all kinds of assets—human assets and other technology assets—along the border, and we will not really make the kind of progress we otherwise could make. When General John Kelly was before us a month or two ago, for his confirmation, he pretty much said the same thing.

Let me just ask for the three of you just to react briefly to what I have just said and what General Kelly said. Just very briefly.

Mr. JUDD. We have to be proactive. We cannot be reactive. Our intel is reactive, instead of being proactive. If we take a proactive approach, we will be much more successful.

Senator CARPER. All right. Thank you.

Mr. Reardon, any comments?

Mr. REARDON. Yes, I would agree with that—that we need to be proactive.

Senator CARPER. All right.

Mr. REARDON. Absolutely.

Senator CARPER. Mr. Crane.

Mr. CRANE. We definitely do need to be proactive on the intel side. We have been telling ERO for a long time that we need to do more intel gathering. We are encountering these people. We are interviewing them, and we are not really gathering intelligence on them. We are not asking, “Hey, where are these fraud document houses at?” or “What kind of drug trafficking information could you have for us—things that we could pass up the pipeline?” We are just not doing it.

And so, there are a lot of simple answers out there that, really quickly—to where we could be more proactive and more aggressive in our law enforcement.

Senator CARPER. All right. Thank you all.

Chairman JOHNSON. Senator Tester.

OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thank you, Mr. Chairman. And, I want to thank all of the representatives for being here, today. It is good to see some union boys at the table.

I sent a letter off yesterday to Acting Commissioner Kevin McAleenan—you said it better than I did, Brandon—and they plan to hire 5,000 folks for the Southern border. The Northern border is kind of important to me, and I am sure it is important to all of

you guys, too. So, just to get a baseline, we were talking about, on the Northern border—Brandon, I know you talked about how your guys and gals have to be fluid. But, just overall, do you guys have any numbers on what you might be short on for the Northern border?

Mr. JUDD. Absolutely. In fact, this is talking about being proactive, instead of reactive. What I am scared of is that we are going to throw all of our resources down on the Southwest border and we are going to leave our Northern border wide open.

Senator TESTER. Yes.

Mr. JUDD. If you look at the cost that a smuggler charges to bring somebody up through Mexico now, it is actually more cost-effective to fly them into Canada. And so, we are creating a situation where we are not going to have enough agents up on the Canadian border. If we hire 5,000 new agents, we must at least put 1,500 of those agents on the Northern border—not all down on the Southwest border.

Senator TESTER. OK. Thank you for that. I will get to the ports in a second, with you, Mr. Reardon. But, we talked about hiring and the polygraph issue. This is not the first time I have heard about it either. And, I do not know about you guys, but I have made plenty of mistakes, and you need to admit them and move on, or you never get it fixed. And, I would expect the leadership within the Agency would do that, to do the right thing here.

But, the question becomes—and you brought it up a little earlier, Brandon—that there is new immigration—I guess that is the word you would use—policy up in Canada. I mean, I think the statistics show that there have been a lot more detentions happening over the last 6 months, since this policy went into effect. Does this shift your priorities or not? And, if you know this—because I think you do—do the folks above you know this? Because, I think, truthfully, everybody focuses on that Southern border. You just pointed it out—when, in fact, they will go to the weakest link. And, if the Northern border is the weakest link, that is where it will happen. Could you comment on that?

Mr. JUDD. Well, yes, just really quickly, in the mid-1990s, the problem area for illegal immigration was San Diego and El Paso, Texas.

Senator TESTER. Yes.

Mr. JUDD. And so, what the Border Patrol did was, they threw all of their resources there, thinking that they were not going to create this funnel through Tucson, Arizona. But, in fact, they did create that funnel. And, they are doing the exact same thing, right now. They are creating this vacuum where they are going to force illegal immigration to start coming through Canada, because it is too cost-prohibitive to come up across the Southwest border.

The leaders do know that. But, again, our leadership is always reactive. They are very rarely proactive.

Senator TESTER. OK. Let us talk about the ports just for a second. And, I will start with Mr. Reardon. You talked about being short about 3,500 folks. And, you seemed to indicate that was on the Southern border, alone. And, correct me if I am wrong. Go ahead.

Mr. REARDON. That was actually just in San Ysidro, the 350—3,500 is nationwide.

Senator TESTER. OK. So, how many of those folks are needed on the Northern ports?

Mr. REARDON. Well, I can give you, certainly, an example. We are short nearly 100 people in Boston, in Buffalo, and in the Seattle Field Office.

Senator TESTER. And, those are each 100 in each one?

Mr. REARDON. Yes, 100 each.

Senator TESTER. OK. And, this applies to any one of you. I mean, right now, I believe CBP needs about 1,700 just to get up to the levels we are at now. Now we are talking about another 5,000 above that. You talked about the polygraph. I am asking this question, honestly. Why are we not getting even up to staffing? Is it just the polygraph? Is it pay? Is it working conditions? What is it? Why are people not wanting to go to work there?

Mr. JUDD. It is all of the above. Senator McCaskill, I want to tell you right now, I pray that you do not stop Border Patrol agents from going to ICE. That will kill morale, exponentially.

Senator, the problem is, agents do not want to work for the Border Patrol, because we have this issue—if you look at the Federal Employee Viewpoint Survey (FEWS), we are at the bottom—and we have always been at the bottom. If we are not dead last, we are always somewhere right at the bottom.

Senator TESTER. But, why are you dead last?

Mr. JUDD. Because we have this management structure that is so over-heavy and that is so overbearing that agents just do not like it. When I came into the Border Patrol, I had to show up for work an hour before work. And, as a trainee, I spent that hour just getting yelled at. That is all I did. I just got yelled at.

And so, when you have that culture—we brought in—Commissioner Kerlikowske brought in Chief Mark Morgan to fix the culture of the Border Patrol. And, all he did when he came in was surround himself with the exact same people that were the problem in the first place. And so, we have to fix that.

Senator TESTER. OK. Do you have an estimate of how many people on the Northern or the Southern border are nearing retirement?

Mr. JUDD. Yes. And, that is another problem that we are going to face. We already have this high attrition rate. And, on top of that, in a couple of years from now, we are going to start seeing the people that we hired in the mid-1990s—we are going to start seeing them start to retire. I am going to be eligible for retirement in just a couple of years—and I am young. And so, we have a lot of individuals that are coming up that are going to be retirement eligible. And so, that is going to add to the attrition as well.

Senator TESTER. OK.

Mr. JUDD. We have problems.

Senator TESTER. I came in right as Senator McCaskill was asking her questions on the wall, so I did not hear it all. But, I will just tell the Committee this: You are right, we do need to massage this stuff. But, right now, the Administration is asking for a reprogramming of \$20 million—not to look at technology, not to look at drones, and not to look at anything other than a concrete wall.

And, if we allow this to happen without getting input from the folks that are sitting at that table, we are not doing the American taxpayer justice—and we are not doing justice to the folks who want to see this country secure, which is all of us. So, thank you very much.

Mr. JUDD. Senator, may I address that?

Senator TESTER. Yes.

Mr. JUDD. I was just told a couple of days ago by a very high leader that union bosses should not be involved in certain processes. Now, I was very offended, because I am not a union boss. I am a Border Patrol agent. Period. I am a Border Patrol agent that was elected to represent Border Patrol agents. And, to have somebody tell me that I should not be involved in certain processes, especially when I am a Border Patrol agent and when I am in every single area speaking with agents almost on a daily basis—and to be told that I should not be involved in that process—that is a problem.

Senator TESTER. We are missing out on information that we need to have to make good decisions. If you do not have good information, you do not make good decisions. You all delivered good information. Thank you, guys, for being here.

Chairman JOHNSON. Again, there is a reason you are involved in this process here, today. So, we appreciate your testimonies.

I will also say that, in terms of walls and fences, one of the reasons I went to Israel, right before Christmas, was to inspect their fence. Very effective—\$2.9 million per mile—it works. It cut their illegal immigration rate from, I think, 16,000 to 18—one, eight. So, fencing does work in the right spots—and that is why we are looking at this, so we can provide better guidance for better policy. Senator Heitkamp.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you so much, and thank you for everything that you do every day. I have spent a lot of time on both borders. And so, I want to kind of get right to it.

Number one, I have to stick up for my friends at AMO. They are short on pilots, they are short-staffed, and they have the same—I think the pilots would give you the same argument that you are giving us, about how people up here do not understand. And, they want to be in the mission. It is clear to me they want to be in the mission. And, the guys who are flying are trying to assert the kind of inputs that they think they need. So, I just have to kind of stick up a little bit for the AMO guys.

The Northern border—last Congress we passed a Northern border bill that says that you have to tell us the threat and you have to tell us what we are going to do about it. I want you guys to inject yourself into that process. I want to see that threat assessment and that plan reflect the ideas that you have. We have huge staffing problems on the Northern border.

Let me tell you a couple of stories. We have a Border Patrol agent who lives 50 miles from Portal, North Dakota. They make him drive his private car 50 miles to Portal, to pick up his Border Patrol car to patrol the border, and go 100 miles, so he can drive back to Portal to pick up his personal car, because they changed

the policy on whether you could take the car home. Now, that is something that is ridiculous, but it affects morale.

And, let me tell you about Customs and Border Protection. I have done a lot of discussing and talking, especially on the Northern border. We have a gentleman up there in Portal, who has worked for Customs and Border Protection for 30 years. He has a family in Kentucky or Tennessee—one of those States. He wants to go home. He wants to do just a quick transfer and go home. They will not let him go home, and they work him 16 hours a day. And, he is in the mission and he is not giving up, and he is kind of a grandfather to a lot of the new guys coming on. And, I think that is one of the reasons why they will not let him go, because he is a mentor to the new agents and keeps morale up. But, why would we abuse this person, who has given so much to our country and so much to border protection?

Those stories need to be told, and they need to be told clearly. We have a bill called the Flexible Hiring and Improving Recruitment, Retention, and Education Act of 2016 (Flexible HIRE Act), which would get beyond the Office of Personnel Management (OPM) kind of nonsense, and that goes there and says that, if you have a need, we have to give the ability to hire directly to the Agencies—and we have to speed up this process. I hope you guys will take a look at that. I hope your unions will take a look at that and weigh in.

Senator Lankford is absolutely correct. We are on this. We are concerned that you have somebody that came out of the military—a veteran, who wants to continue serving the country. Guess what? We make them retake a polygraph. And, even though they have the highest clearance, they do not pass the polygraph. That is crazy. It is insane. We have to get beyond these problems.

We also have an opportunity—regardless of what you think has happened politically—to hit the reset button—to rethink how we are going to do this and what we view to be situational awareness in this country on the border. We cannot hit that reset button unless we do some of the things that you have heard here, which are talking to employers and doing some white-collar investigations, which should help quite a bit—doing something, in terms of verifying citizenship, when people are being hired—making that easier. And then, obviously, figuring out a plan to deal with the overstaying of visas. I think, Mr. Crane, you clearly made that point, in terms of 9/11 and what we need to do to have interior enforcement.

But, with all of that said, we need to get politics out of border protection. And, we need to start talking about what works and what does not work. And, I can tell you, I have spent a lot of time on the Southern border. Building a wall—a concrete wall—across the Southern border will not enhance border security. Will fencing and walls help? My biggest concern is what is happening at the ports of entry. When you have a line like that, what are you missing? Because, most of you guys would say most of the really horrible drugs—whether it is fentanyl or whether it is heroin coming across that border—are going to come in through the ports of entry.

I also know that we have a lot of people walking across the border and jumping over Normandy fences. That is not particularly helpful, either.

And so, I want you guys to commit to us that you are going to once again—and we can help you with this—be involved in that reset button, be involved in the Northern border strategy, be involved in the Southern border strategy, and think about the ports of entry.

Mr. Reardon, I think you want to comment.

Mr. REARDON. I do. And, thank you very much, Senator. NTEU was very interested in playing a role in that process. I will tell you that, number one, I have been very appreciative of you, in terms of the pay flexibilities that you have talked about. And, I have testified in front of you before about things that have gone on in the Bakken region. And, I think we need to pay attention to some of the opportunities that we have for the utilization of pay flexibilities, right now, to take care of some of these situations that we have, where people do not want to go to work at San Ysidro. It is very difficult to get people to want to go down there and deal with what you see every day in that picture. I think, to be able to use recruitment awards and those kinds of things are important.

But, I also think that we need to make sure that we are paying attention to the hiring process. I do not remember who, but somebody mentioned the length of time that it takes to bring somebody on board. The numbers that I have heard—and they vary, but I will give you the range that I have heard. At CBP, it takes anywhere from 105 applicants to 150 applicants to generate a new employee. That, to me, is just incredible. I have gotten the stories. I have heard the horror stories, candidly, from folks who have taken the polygraph. And, they have been sitting in a polygraph for 8 hours, in some cases. The fact that 65 percent—and we heard that number earlier—are failing, when the expected failure rate is somewhere in the 25 percent to 30 percent range, is outlandish. So, I think we do need to fix that.

In terms also related to hiring, I have heard horror stories where an individual has to go to an interview in one location, and then several weeks later or a month later, they have to go somewhere else in a different part of the country. They have to pay for that. And, that makes it very difficult for people. And, they say, “I do not need this,” and they go work somewhere else—at their local sheriff’s office or wherever.

The fact is that it takes, in some cases, 16 months to 18 months to bring a new hire on board. How many people in this country can afford to sit around for 16 months to 18 months before they can be brought on board? So, the hiring process has to be looked at very carefully as well. So, thank you very much.

Mr. JUDD. May I jump in? You touched on something that is very interesting. You talked about vehicle assignments and how you have to drive so far to get to—this is something that I have been pressing the Agency on forever. We could save millions of dollars if we would actually use the industry best practice, which is to have the agents deployed to the field directly from their homes—instead of showing up to a Border Patrol station, where we pay millions of dollars—that we actually do not use—other than just to

show up there. We could actually deploy, and it would actually save time. We would get more time on task of our agents if they self-deployed straight from their home, just like any department of public safety (DPS) officer, just like any sheriff's officer, and just like any police force.

Industry best practices have shown—but the Border Patrol seems to be behind the curve, because we always say that we have never done it that way, so we are just not going to.

Senator HEITKAMP. Well, they may seem like small things, but they are huge things to the personnel. And so, stay engaged at a very high level, and we will help you do that.

Mr. CRANE. Ma'am, could I comment on this vehicle thing? I was—to throw this in there—and it is a whistleblower thing, I think. At ICE, we have kind of done the complete opposite thing. They have taken our vehicles—Congress gave us money to buy undercover vehicles—basically unmarked vehicles—to do our law enforcement mission out in the field. Managers have taken the majority of those vehicles and their personal take-home rides at taxpayer expense. They have no mission-based need to take them. They do not respond to things. While our officers then do not have enough vehicles out in the field to perform the mission, and we literally have people in—do you know how big a 13-passenger detention van is?—a great big marked—they are out there trying to do undercover work in 13-passenger detention vans with ringers on them when they go in reverse, right? And so, at 5 o'clock in the morning, when you went too far down a one-way and you need to back up, every window is opening up, going, "Hey, there is ICE," because our managers have taken all of our vehicles. And, it has been reported to the Office of Inspector General (OIG) and OSC. And, it has been in the media. And, they just continue to do it, because they can.

Chairman JOHNSON. So, Senator Heitkamp, let me tell you what we are going to do here. Again, I got a smile on my face when you said "crazy" and "insane." It is. I mean, you are defining bureaucracy. And so, what we are going to do is, as a Committee and as Members, we are going to sit down with folks like these three—and more—and we are going to find out the crazy and insane things—and rather than have to worry about legislation, because, as Mr. Judd said, the Department can do these things under their own authority. We will find out what they can, but we are going to highlight it, we are going to provide the oversight, and we are going to make sure the Department actually does these things—get rid of these crazy and insane policies that they have enacted that prevent these good men from actually fulfilling their missions.

So, this is not rocket science. This is not hard. And, we are just going to get this done, OK? Because, there are a lot of areas of agreement here, and I think we can make some significant improvements without having to try and pass a law—because you know how hard that is. But, again, I think we have a good Secretary in General Kelly. I think he will work with us, and so this is what we will do as a Committee. And, we are going to hop on this.

Senator McCASKILL. And, I would assume—Mr. Judd and Mr. Crane, I saw you at rallies. I know you were big supporters of

President Trump. I think you guys have a lot more power than I do. Trust me, you guys have a lot more stick with this Administration than a whole bunch of us on this Committee. So, hopefully, with that, in addition to our work on this Committee——

Chairman JOHNSON. We will work together.

Senator MCCASKILL [continuing]. Maybe we can actually move the needle on this management problem. And, I think we are all in.

Chairman JOHNSON. So, again, I am dead serious about this. It should not be this hard, and we are going to make sure it is not. Senator Harris.

OPENING STATEMENT OF SENATOR HARRIS

Senator HARRIS. Thank you. I want to thank all of you for your candor this morning. You represent the rank-and-file, and they deserve to have a voice at the table. So, I appreciate that.

Mr. Crane, starting with you, you have been very candid about what is going on with your troops. Tell me, how many members do you have?

Mr. CRANE. We represent approximately 5,000 employees.

Senator HARRIS. OK. And, it would be to that number that the request has been made—that there would be 10,000 added to that number, correct?

Mr. CRANE. Yes, ma'am.

Senator HARRIS. So, you have described a “good ol’ boy network.” You have described rank-and-file folks tripping over managers in the field. You have described the morale issue being one of the worst of any Agency. You have described something that concerns me greatly—and all of us, which is the officer safety issues. Tell me something. How long do you believe that it will take to fix the dysfunction in the Agency?

Mr. CRANE. It is going to depend on who we have as a leader. If we get a good Director——

Senator HARRIS. Let us say we have the best leader possible. How long do you think it will take to fix it? Because, it sounds like it is pretty systemic.

Mr. CRANE. It is very systemic, but I think that, once you come in and you say, “There is going to be accountability and this is how it is”—and when people do not follow that direction and we start getting rid of people—then you are going to see changes very quickly.

I watched a hearing that they did with the U.S. Secret Service (USSS)—with Chairman Jason Chaffetz on the U.S. House Committee on Oversight and Government Reform (OGR), and I think they said something to the effect that they had something around 13 directors, and out of them, 12 of them were fired. I mean, those are the types of actions—I am not saying we need to fire all of our managers, but I am saying that you can make changes, I think, fairly quickly.

Senator HARRIS. OK. Well, based on the number of 5,000 members—and you also mentioned that ICE has no policies—I would suggest that it is going to be, probably, at least a couple of years before whatever the leader wants to have happen actually hits the ground. So, I am going to ask you—in light of that reality, it seems

to me that it is not necessarily a good idea to bring on 10,000 more members, when those policies are not in place. And, I would ask you to tell me your candid concerns about doing that, as it relates to ongoing morale issues.

For example, I am going to assume that you have members who have come in, as we have heard from Mr. Judd—folks who have dedicated their careers to this issue, came in when standards were high, when their morale was good, and they have been doing a good job and working in earnest on behalf of the people of our country. If you start bringing in 10,000 more folks, who have not been adequately trained and are coming into an institution where there is dysfunction—do you not see continuing morale problems for your members?

Mr. CRANE. The morale problem is actually—it is absolutely always going to continue—there is no doubt about that—until we make a change on that end. But, we have to get some more officers out in the field, and I do not believe at all that it is going to be anything but positive, in terms of the mission, which is always—yes, we are union folks, but we got into this because we care about the Agencies and the mission first. And, getting some more officers and employees out in the field—that is going to help us do our mission. It is incredible what you see out in the field. It is like our employees are on autopilot. They are almost without leadership.

Senator HARRIS. Right, but let us get into that a little bit more specifically, please. The chief justice of the California Supreme Court put in a request to Secretary Kelly that ICE stop deportation agents from making apprehensions at State courthouses. Can you tell me—is there a policy, a directive, or a training for your members on safe zones and where they can and cannot—or may or should not—detain folks? And, in particular, let us talk about courthouses. Let us talk about schools. Let us talk about places of worship. Is there, to your understanding, an understanding among your members about what is a safe zone and where they should not go?

Mr. CRANE. So, there are a couple of different policies, and there is actually one that deals with—they are called “sensitive locations,” and they would talk about the proximity to a school or something like that, where we might—

Senator HARRIS. OK. What about places of worship?

Mr. CRANE. Yes, that is also on the list of sensitive locations.

Senator HARRIS. And, what about courthouses?

Mr. CRANE. Well, I want to say to you, on the courthouse part, that we recently had, in our area, a situation where—and there is a guidance on it, but our officers were forced to try to apprehend this person on the street, instead of inside the courthouse, with the bailiffs and—

Senator HARRIS. Are you and I talking about the domestic violence victim that was contacted? Because, that is one I have in mind.

Mr. CRANE. No, ma’am. What happened then is that the officers got outside and tried to make the arrest. The subject then assaulted them. It, from my understanding, came close to that individual almost getting one of their guns that could have, obviously, been used on them. So, it is a very dangerous situation to put our

officers in, when it is so much easier for them to be able to go into a court and actually make the arrest in the court.

Senator HARRIS. OK. But, here is the concern I have. In an Agency that you have described as being “highly dysfunctional,” how can I be sure—because I actually am not satisfied—that your agents know what to do, in terms of the policies that have been enunciated by this Administration? For example, there are, from a memo—I think it was February 20th—seven priorities—when Elaine Duke was here, in her testimony to become the Deputy Secretary of Homeland Security, I asked her about those seven priority enforcement areas. And, she said to me that they are in descending order of priority. Is that your understanding—that those seven factors are in descending order of priority for enforcement?

Mr. CRANE. I am sorry, ma’am. What list are you looking at?

Senator HARRIS. The list that was issued February 20th—the memo through DHS.

Mr. CRANE. The Secretary Kelly memo?

Senator HARRIS. Yes. Are you familiar with it?

Mr. CRANE. I am.

Senator HARRIS. Are you familiar with the seven factors? And, are you familiar with the policy of the Department, as it relates to the priority of each of those seven factors? And, are your members aware of the priority?

Mr. CRANE. Can you tell me what page you are on, so I can look at exactly what you are talking about?

Senator HARRIS. It is a memo that was issued by the Department of Homeland Security. It has been widely published, and it was part of the Executive Order, as it relates to new policies for DHS. It includes: one, people convicted of a criminal offense; two, people charged with a criminal offense; three, people that may have committed an act that is chargeable, which sounds to me like the standard of there is suspicion of committing a crime. You are not familiar with this?

Mr. CRANE. Well, I am, ma’am. I have it right here.

Senator HARRIS. So, tell me, what is your understanding about the instruction your members have received about the prioritization of this list?

Mr. CRANE. Well, my understanding of these priorities is that they are, of course, priorities, but—

Senator HARRIS. Are they each equal in weight?

Mr. CRANE. I would say that they are probably not all equal in weight, but—

Senator HARRIS. And, what has the training been for your members about the prioritization of these seven factors? Elaine Duke, like I said, in testifying before this Committee, said that they are in descending order. Is that your understanding—that it is a descending order of priority?

Mr. CRANE. I think the priority would be in that descending order, but—

Senator HARRIS. Have your members been trained on that?

Mr. CRANE. I am not aware of any specific training on this memo, ma’am, no.

Senator HARRIS. So, does this speak to, again, the concern that you have about dysfunction in the Department? I would believe,

and it has been my experience in law enforcement, that when troops on the ground have not been trained, it leads to dysfunction, because there is a lack of consistency, accountability, and direction. So, I am concerned about this—and I would like to know whether you are concerned about it.

Mr. CRANE. Ma'am, we have some great employees—great officers—

Senator HARRIS. That is not my question.

Mr. CRANE. Well, it is part of the answer.

Senator HARRIS. I am not talking about looking into the hearts of the agents. I am talking about whether they are trained.

Mr. CRANE. I am not looking at their hearts, either. I am talking about the jobs that they do every day in the field for you and everybody else in this country, right?

Senator HARRIS. Yes. Are you concerned about their training?

Mr. CRANE. Oh, I am always concerned about training. We always want more training.

Senator HARRIS. Have you made a request—and if not, I would request that you do make a request—of Secretary Kelly that your members are trained on the policy priorities for the Department, as it relates to those seven factors? Because, they are varied. And, to your point, your folks are barely doing the job that they want to do, because they do not have the resources. So, there are going to have to be priorities, and they are going to need to know what the Agency's priorities are, so they can have some level of job satisfaction.

Mr. CRANE. But, priorities do not work the way on the street that people in—for example, in the Obama administration—I think you are trying to box us into. It does not work that way. It is not real life.

Senator HARRIS. No, sir. I am talking about these seven factors.

Mr. CRANE. I understand what you are talking about, and I am talking about—

Senator HARRIS. Perhaps, Mr. Chairman, I would ask that—

Mr. CRANE [continuing]. Applying them in the field—

Senator HARRIS [continuing]. We could follow up to these conversations, and I would like something in writing from these witnesses about what training is happening, consistent with Elaine Duke's testimony before this Committee, about the priorities.

Chairman JOHNSON. You will always be able to submit additional questions for the record (QFRs), so be prepared to do that.

Senator HARRIS. Thank you.

Chairman JOHNSON. Senator Hoeven.

OPENING STATEMENT OF SENATOR HOEVEN

Senator HOEVEN. Thank you, Mr. Chairman. I would like to thank all three of you for being here. And, I would like to thank all three of you for the work your members do—and know how much we appreciate you and the hard job that you do. I chaired the Homeland Security Subcommittee on the Senate Appropriations Committee for the last several years and was down—and I have seen your work on the Northern border. Of course, I am from the Northern border. But, I have also seen your work on the Southern border.

And, I agree, the sentiment that I got from your people is, they really want to do the job—and the same with ICE on an interior mission. Invariably, when I talked to them, they wanted to do the job. As you said, they signed up because they believe in what they are doing. So, thank you for that, on the front end.

I would like to ask each one of you just your top three priorities, in terms of addressing the personnel issues in each area for Border Patrol, for CBP, and for ICE—top three things you think really work in addressing the personnel issues.

Mr. JUDD. First, we have to have pay parity. That is the first thing that you have to give us. If you do not give us pay parity, you are always going to have agents looking to other Agencies that will pay them more.

Second, we have to address the morale issue, and that morale issue has existed even when we did have pay parity. We have to address the morale issue.

Senator HOEVEN. And, the main thing in addressing the morale issue—

Mr. JUDD. Accountability from the top down, instead of from the bottom up.

Senator HOEVEN. Accountability.

Mr. JUDD. That has to be done. And, the third issue, as far as the hiring goes, we have to start administering these polygraphs correctly. We have to. If we do not, we are just not going to be able to hire people.

Senator HOEVEN. And, the reason for the disparity—the main reason for the disparity in the polygraphs is?

Mr. JUDD. I believe that Commissioner Kerlikowske had an initiative that he put forward, and I believe that, to show that initiative, he had to have a high failure rate. And so, now that Commissioner Kerlikowske is no longer around—I am sorry, the anti-corruption initiative is what he put forth. Now that we are going to have a new Commissioner, I believe that we get to hit the reset button—as Senator Heitkamp said—and we can actually do it right, because if he was to change the way he did the polygraphs, he would have to have admitted that he was wrong. And, we know people just do not like admitting that they are wrong.

Senator HOEVEN. Right. I understand. OK. That is helpful. Thank you. Mr. Reardon.

Mr. REARDON. Thank you, Senator. I would say the number one issue in the ports is the staffing—the number of staff that are—

Senator HOEVEN. Staffing numbers?

Mr. REARDON. Staffing numbers, yes, sir.

The second thing is to fix the segmented hiring process. I think that needs to be tightened up.

Senator HOEVEN. That means what, “segmented hiring process?”

Mr. REARDON. Well, for example, there are many cases where an individual has to go to one location on one day to go through some initial interviews and that sort of thing. And then, a couple of weeks later—or several weeks later, they have to go somewhere else. There is a lot of expense and a lot of time that is involved with that. And, to the extent possible, where you can get people to be able to go to one location and in a more concise period—

Senator HOEVEN. Yes, more coherence in the hiring process.

Mr. REARDON. Absolutely.

Senator HOEVEN. I got you.

Mr. REARDON. And then, I would also suggest that the polygraph process needs to—

Senator HOEVEN. OK. So, we doubled up on one there.

Mr. REARDON. Yes, that is a significant problem.

Senator HOEVEN. And, do you like Mr. Judd's general explanation of how to address that on the polygraph?

Mr. REARDON. Yes.

Senator HOEVEN. OK. Mr. Crane.

Mr. CRANE. Sir, just so everybody knows, we do not have a polygraph right now, but it is on our horizon. I think they are going to implement it in 2018 or something—is the plan. But, for our three things—if I understand your question correctly—on the hiring process, one, I think, for us is that we want the Agency to innovate. We want them to look at the best way to do this to get these officers that are in a detention center or doing data entry out on the street—replace them, maybe, with lower-paid administrative type people—I am sorry. Did you have a question, sir?

Senator HOEVEN. Yes, well, this is interesting. Innovate, and I am trying to catch up with you on what you mean by that. So, keep going.

Mr. CRANE. So, what I mean by that, again, is that we have too many officers out there now that are sitting in offices with a gun and a badge and this limited immigration arrest authority—that everybody wants task forces and all of these different things—and they are in our offices doing data entry all day long. We need to replace them with administrative folks, who can do that data entry work for them. Yes, police work is a lot of paperwork. They are still going to have a lot of paperwork as officers when they make arrests and things like that—prosecutions. But, the data entry and some of those other things, we can bring in people that are paid less—that do not have arrest authority—to take their place and do a lot of that work.

Senator HOEVEN. Well, that would indicate that you need more non-officers, in essence—you need more administrative assistants. That is, I think, a very important point, in terms of how you attack the hiring process.

Mr. CRANE. Absolutely. In part, we do need more administrative folks. We need a shift in our perspective, though, about how we get work done in general. Right now, I think ICE is just wanting to do things as business as usual. We are saying, “No, let us take a look at what we do and how we do it—and if we can do it better.”

Senator HOEVEN. So, I think you are making a strong point here. Is that happening?

Mr. CRANE. No.

Senator HOEVEN. I mean, is the Agency looking at saying, “Hey, it is the mix of workers that can make a real difference here, too. We can make our resources go further, and we can make our agents much more effective if they are on the street doing their job and they have some administrative backup or assistance that gets the clerical aspects done?” I mean, that is true of every law enforcement agency, so I think that is a very compelling point—you are

talking to General Kelly, the Administration, DHS, and, obviously, in ICE.

Mr. CRANE. And, we have conveyed this very briefly to General Kelly last week, but, to be clear, we are still going to need more officers, in addition—

Senator HOEVEN. I understand. I am not saying that you do not need more officers.

Mr. CRANE. Right.

Senator HOEVEN. I am just saying that the mix you hire matters. And, it seems to me that that goes to the point the Chairman, our illustrious leader here, just made a minute ago. And, that is, instead of passing a law, we can help you become more effective with those kind of changes.

Mr. CRANE. Right. And, I think that, in that innovation, we need to look at expanding the duties of the ERO officers, so that they can better perform their mission out on the street.

There are a lot of things that we could be doing right now, but I think there is kind of this attitude at ICE that everybody needs to stay in their lanes—HSI does that, so ERO should not. And, trust me, there is plenty of criminality out there to go around for everybody. We could have something, where there is a right of first refusal or something for HSI, but it does not need to mean that everybody stays in their lanes and they are in these little boxes, right? So, there is a lot that we need to do—so that is what I mean by innovation.

The other two things, I think, that we need to make sure that we do through this process, is not only maintain our standards, but I think, in a few areas, we need to up them. And, the other part of that is, we need the time to do this right. Yes, we can run some people through the academy fairly quickly. We know that. But, there is a sweet spot in there, and we need to hit that. And, we do not want all of these newbies coming out in the field too fast, because, when they come out of the academy—and I am not saying anything bad about the academy—the training that they get—but they do not know a whole lot. And, they are going to have to be shadowing somebody for quite a while before they really know what they are doing.

And so, that is kind of what we are looking for: innovation, maintaining our standards—maybe raising them—and having the time to do it right.

Senator HOEVEN. Very good. I think, in all cases, your recommendations are extremely helpful. And, it seems to me, if followed, they will make a real difference for the Agency. Thank you.

Mr. CRANE. Thank you.

Chairman JOHNSON. Senator Daines.

OPENING STATEMENT OF SENATOR DAINES

Senator DAINES. Thank you, Mr. Chairman and Ranking Member McCaskill. And, thank you all for testifying today.

Mr. Judd, it is good to see you again, and thank you for your service on Montana's border. It is very much appreciated.

You all touched on some similar needs—and that is to enforce existing law. Mr. Judd, under the last Administration, the Border Patrol had disappointingly low morale. In fact, you mentioned it was

the lowest of the three Administrations you had served under. In addition to pay and polygraph challenges, my understanding is, one of the root causes has been the inability to enforce existing laws.

How will President Trump encouraging law enforcement to enforce the law help morale?

Mr. JUDD. First off, Border Patrol agents signed up for a job to be law enforcement agents. They did not sign up to be humanitarian specialists. That is the first thing that we have to look at. In enforcing the laws and actually allowing us to do our jobs, you are allowing the employee to do what the employee signed up for in the first place. A lot of these individuals grew up always wanting to be in law enforcement. They wanted to serve and protect the public. And, if we allow them to do that, morale will increase exponentially.

In fact, Senator Daines, I will tell you that there has been a huge spike in the morale—on November 8th, there was a huge spike in the morale of the Border Patrol, simply because we knew that this new Administration was going to actually allow us to do our jobs—take the handcuffs off of us and put the handcuffs on the criminals.

Senator DAINES. So, I know recruitment can be a challenge. What will that mean for recruitment and, frankly, probably most importantly, our national security?

Mr. JUDD. Oh, I think that it is going to help with recruitment. But, I will tell you right now, we do not have a problem with recruitment. We have plenty of people that want to be Border Patrol agents. We have a problem hiring those individuals, once they apply for the job.

Senator DAINES. And, why is that?

Mr. JUDD. Several factors. The main factor is the three times the national average of polygraph failures. We just do not administer the polygraph correctly.

Senator DAINES. Is that fixable?

Mr. JUDD. It is. It is fixable. And, now that we can hit the reset button and now that we have new individuals, we can actually fix the polygraph.

Senator DAINES. I want to switch gears and talk about drug flow. Virtually all of the methamphetamines in Montana are now coming from south of the border and are trafficked through our interior. We have seen the price drop in half with this influx, and now more than 90 percent of all drug offenses in Montana are methamphetamine-related. This impacts our communities, increasing violent crimes. We are seeing a disturbing rise in child endangerment and foster care caseloads. It is a tragic, negative spiral that we are seeing.

Mr. Crane, in your testimony, you mentioned that interior enforcement is the key to effective border security. In addition to more personnel, what can we do to stop the movement of drugs?

Mr. CRANE. Well, sir, I think, for us, really, it is just always a big-picture thing, on the ERO side. That is something that we could use—is Title 21 authority, probably, at ERO—and somebody to let us be more involved in drug prosecution. We have, basically, through policy within the Agency, this little turf war going on, where they do not want ERO agents doing a lot of different types of things, I think, like drug interdiction and worksite firearms

prosecution. While some of it does happen in a limited amount, it is very rarely. And so, we need to expand the duties of these ERO officers. They are fully capable of doing it, and they are out on the street coming in contact with things.

But, in addition to that, when we start enforcing a law on these businesses and on the interior, sending that message to the rest of the world, I think what you are going to find is that law enforcement—from the patrol—from everybody sitting here—we are going to be able to get more and more focused as time goes on—on things like drug interdiction, because we are going to be dealing less and less with just this mass flow right now of illegal immigration coming into the country.

So, I am not saying it is going to happen overnight, but I think, from our perspective, we are going to slow down this immigration flow—and it is going to make it easier for all of us to concentrate on issues like that.

Senator DAINES. That is a pretty important consequence to dealing with immigration flow, in terms of the resources now to stop the drug trafficking, which, as we see, is just devastating our communities across Montana as well as across this country. I appreciate that insight.

Mr. JUDD. Senator, may I jump in just really quickly on that?

Senator DAINES. Yes, please, Mr. Judd.

Mr. JUDD. One of the things that we have to do is, we have to be proactive in our intel. Our intel needs to be driving the operations and how we try to interdict the drugs before they get into the United States. We do not want Mr. Crane and his officers to have to even deal with the drugs on the interior. What we need to do is, we need to stop that flow at the border. And, that has to be done by stopping illegal immigration, because, when we tie our hands up—when Border Patrol agents' hands are tied in dealing with people that are crossing the border and asking for asylum—we create the holes that allow these criminal cartels to bring the drugs across the border. So, we have to be proactive in our intel to address this issue.

Senator DAINES. Thank you for that insight.

I want to shift gears now and talk about sanctuary cities. Sanctuary cities willfully violate Federal law. And, they allow illegal immigrants to remain in the United States. These cities forbid their local law enforcement from sharing information on illegal immigrants with ICE or complying with an immigration detainer.

Mr. Crane, what challenges does this create for your job?

Mr. CRANE. Oh, the challenges are many, but, I think, most importantly, it is so much easier and more effective for us to apprehend these individuals while they are in somebody else's custody. They have been arrested by somebody else. They place the detainer, they get done with them and turn them over to us, and we are putting them into proceedings or making a removal happen. So, it is a "day and night" difference.

Then what happens, though, with these hundreds and thousands of people that do not get turned over to us in sanctuary cities—instead our officers are out on the street chasing ghosts. These guys rarely leave much of a fingerprint. And, yes, we have people out there, like the U.S. Marshals Service, that are out looking for these

guys. But, it is so much more time-intensive. We may never catch them again, until they actually get arrested for something else.

Senator DAINES. So, let me, if I could, ask one final question. Believe it or not, in my home State of Montana, there are some Montana cities—including my home town—looking at this—considering enacting sanctuary city policies. In fact, we have two Congressional candidates right now. We only have one that is for sanctuary cities.

What advice do you have for those elected officials?

Mr. CRANE. They need to open their eyes up and look around. And, I know we see something in the press, every once in a while, about—and one of the Members brought up this morning the incident in Maryland. That type of stuff is happening all over the country every day. And, like I said earlier in my testimony, everything that the Members here say has a consequence. And, these folks back in your home State, what they do has a consequence, too—and that consequence is that they are stopping law enforcement and they are putting bad guys back on the street, who are going to commit crimes and who are going to victimize and harm people in their communities. And, there are no ways around it. Please cooperate with law enforcement. Please follow the laws of our country. That would be my message.

Senator DAINES. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Daines.

I just want to underscore the point. Mr. Crane, you said that it is easier for your agents to apprehend these individuals. Can I say that it is safer?

Mr. CRANE. Oh, absolutely.

Chairman JOHNSON. It is a whole lot safer. You are going to put your agents' lives on the line less often, if you are doing it this way?

Mr. CRANE. Absolutely.

Chairman JOHNSON. Again, yes, it is easier. I think it is more important to say that it is safer.

Mr. CRANE. Absolutely correct, sir.

Chairman JOHNSON. Senator McCaskill would like to make a comment.

Senator MCCASKILL. Yes, I just wanted to—Mr. Judd, on the polygraph thing—I have tried to look at this. As you know, most law enforcement—FBI uses a polygraph. The use of the polygraph is very widespread in any law enforcement employment situation. What I learned is, the difference is that the FBI does it at the end. You all do it at the very beginning. So, a lot of the people who are weeded out during the process of a background investigation or other vetting of a potential agent or police officer—that has already occurred, before the polygraph. And, one of the reasons that was given as to why the polygraph was at the beginning is, you save all of those resources, if you weed out at the beginning, as opposed to going through all of that and doing the polygraph at the end. Does that have any validity, as far as you are concerned?

Mr. JUDD. It really does not. But, simply put—and, again, I am not advocating not having a polygraph.

Senator MCCASKILL. Right.

Mr. JUDD. We have to have a polygraph.

Senator McCASKILL. Right.

Mr. JUDD. We need it. In the past, we have hired criminals—I am sorry, we have hired convicted felons into the Border Patrol.

Senator McCASKILL. Right.

Mr. JUDD. So, we do have to have a polygraph. But, where we do the polygraph—whether we do it on the front end or whether we do it on the back end—if it is not administered correctly, it does not matter.

Senator McCASKILL. Right.

Mr. JUDD. We are just not going to get employees into the service.

Senator McCASKILL. And, Mr. Crane, finally, the heartbreaking case of the murder in Missouri—that was a situation that was not a sanctuary city. ICE was contacted, and ICE did not get there. ICE ended up sending the paperwork to the wrong jail. I mean, it was a series of errors that was not for lack of willingness to cooperate by local law enforcement, but it was a problem with ICE being there when they were called. So, I hope you will continue to inform the Committee about how we can help with that issue, because that woman's husband would still be alive if ICE had responded timely to the request from law enforcement in that case.

Mr. CRANE. Yes, ma'am. And, I currently do not have all of the finite details about that situation, but, if you do, I would be happy to take a look at it.

Senator McCASKILL. That would be great. ICE was not at the hearing. I had hoped ICE would be at the hearing to talk about the problems with that case. But, they were not, and so, hopefully—we will be glad to share those details with you. And, maybe, you can shed some light on what went wrong and why ICE did not respond in a way that was timely.

Mr. CRANE. I would love to do it. And, if need be, we will reach out and ask other questions and see what else we can find out.

Senator McCASKILL. And, I think it would be great if you could help facilitate—I do not think anybody in ICE has ever told this woman that they are sorry.

Mr. CRANE. I would love to.

Senator McCASKILL. OK, great. Thank you, Mr. Crane.

Mr. CRANE. Yes, ma'am.

Chairman JOHNSON. Thank you, Senator McCaskill.

Again, I want to thank all of our witnesses. I think, from just the standpoint of providing us action items that I think can have a real impact and real effect, this is probably one of the best hearings we have held—certainly, as I have been Chairman in the last couple of years. And, it does not surprise me. I come from a manufacturing background. If I wanted to figure out what was happening on the shop floor, I went to the shop floor. I talked to the actual machine operators. And, because my managers knew I was going to do that, they also talked to the people on the shop floor.

So, I want to set up a process. I am 100 percent serious about this. I know that we have gotten great input from you. You have just demonstrated it here during this hearing. We will work with this Committee up front—immediately—to lay out all of these crazy and insane policies, so you can do your job more effectively and, Mr. Crane, more safely.

So, again, I want to thank you for your service. I know that you are—all of you and all of the people that work with you in your unions—are risking their lives trying to enforce our laws. The least we can do is support you and not denigrate your service as well as make sure that whatever policies we enact help you do your jobs, increase your morale, and keep you safe.

So, with that, the hearing record will remain open for 15 days, until April 6th at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 12:01 p.m., the Committee was adjourned.]

A P P E N D I X

**Opening Statement of Chairman Ron Johnson
“Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements”
Wednesday, March 22, 2017**

As prepared for delivery:

Good morning and welcome. Across our nation, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement agents and officers are working on the frontline to keep us safe. Every day, they help secure our borders and remove individuals who pose a threat to our communities. When we talk about border security, technology and fencing are important components, but manpower may be the most important part of the equation. Today’s hearing will examine the current conditions these agents are facing on the front lines.

President Trump’s recent executive orders on strengthening border security and immigration enforcement signal his firm commitment to secure our borders and enforce our immigration laws. The President’s call for an increase of 5,000 Border Patrol agents and 10,000 ICE officers is meant to improve the Department’s ability to enforce our immigration laws.

We have received early reports that morale is already on the rise. Chris Cabrera, a Border Patrol agent in the Rio Grande Valley Sector, recently stated, “The agents seem to be excited that something’s finally going to change, that we finally have somebody working for us as opposed to working against us.” Another agent, stationed in El Paso, Texas, similarly stated; “There is a feeling of excitement among Border Patrol agents that they finally will be allowed to do their jobs that they were hired to do.”

Beyond improved morale, early data might indicate that the President and Secretary Kelly’s tough stance on security could be resulting in fewer attempts to break our laws and enter this country illegally. In February alone, apprehensions at the southwest border decreased 40 percent—from 31,578 in January to 18,762 in February. This is noteworthy because apprehensions usually spike in February. As Secretary Kelly recently highlighted, “The decrease is also encouraging news because it means many fewer people are putting themselves and their families at risk of exploitation, assault and injury by human traffickers and the physical dangers of the treacherous journey north.”

Secretary Kelly has told Congress that he will hire more people quickly, without lowering standards and training. He also acknowledges that adding an additional 15,000 personnel is not easy and will take several years. Our Committee stands ready to assist the Department in meeting this staffing goal, while ensuring that we maintain the highest hiring and training standards.

Today’s hearing will provide a frontline perspective on the unique hiring and retention challenges these agencies face. We will seek to understand what is causing delays in the hiring process and discuss how Congress can help. We must ensure that the Department has the workforce to achieve its vital mission of securing the homeland.

I thank the witnesses for sharing their recommendations, and I look forward to their testimony.

U.S. Senate Homeland Security and Governmental Affairs Committee
“Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements”

March 22, 2017

Ranking Member Claire McCaskill

Opening Statement

Thank you Mr. Chairman.

Thank you for calling this hearing today to talk about this critical issue.

I want to start by thanking Border Patrol agents, Customs and Border Protection—or “CBP”—officers, and Immigration and Customs Enforcement—or “ICE”—personnel. I know that your jobs are not easy and not always appreciated.

In February, I went to see our southern border firsthand, and met some of the men and women tasked with our safety and security. I talked to these hardworking Border Patrol agents, CBP officers, ICE agents and Air and Marine personnel and I heard about the challenges that they face. Every day, these men and women have to secure a border that spans deserts, rivers and mountains, they have to process hundreds of thousands of people, cargo, and vehicles coming into our country, and they have to go toe to toe with cartels, who will stop at nothing to smuggle drugs and—for what is becoming even more obscenely profitable for them—people into this country. These men and women are understaffed, overworked, and seldom

receive the recognition they deserve. Ensuring that the men and women responsible for protecting our border and enforcing our immigration laws have the resources they need is an issue of national security.

When I was at the southern border I asked these men and women what they needed to do their jobs better. Was it resources? Was it technology? Was it additional staff? And yes, I asked if we needed a wall. And you know what they said? They said that they needed better roads to access the border, they needed double fencing in some areas that experience high traffic, they needed more electricity to power their equipment in remote locations, and they needed more agents to help ease some of the overtime. But not one said we needed a 2,000 mile long border wall, and not one said that a wall by itself could secure the border.

We need to think carefully about these men and women and what we can do to help them do their jobs and keep us safe. We should give them more resources, we should give them more roads, and yes we should give them more staff, but we shouldn't just go and build a wall without thinking about it first. These people know firsthand what we need, and they should be listened to.

As everyone here knows, the President has signed executive orders calling for an additional 5,000 border patrol officers and an additional 10,000 ICE agents. And let me just say, that I am for giving these agencies the staff they need, but did

anyone stop and think before the President decided that an additional 15,000 agents alone was the answer? What about 14,000? Or 16,000?

If the President's goal is to increase the number of apprehensions of people crossing the border illegally, simply increasing the number of Border Patrol Agents may not be the most effective strategy. In fact, since 2000, the number of Border Patrol agents has increased by 115%, while the number of apprehensions along the southern border by those Border Patrol agents has decreased by 75%.

Mr. Chairman, I believe that I am going to sound like a broken record on this point, but I would like to see the cost-benefit analysis. Did anyone take the time to calculate how many people we need to do the job right? Right now we have management problems in CBP and ICE where agents are stuck behind desks doing administrative tasks, and the manager to officer ratio needs review. Do we need an additional 15,000 agents, or do we need a shift in structure, or more support staff so that agents can be out there doing their jobs? These are the questions we need to answer.

The other glaring problem with this rush to hire an additional 15,000 agents is that the administration has completely overlooked our ports of entry. Yes, that's right, according to these executive orders not one additional person will be added to the CBP officer ranks. CBP officers serve a critical role screening cargo and

visitors at more than 300 ports of entry. In 2015, CBP collected \$46 billion from duties, taxes and fees at ports of entry across the country. That same year CBP officers arrested 8,246 individuals wanted for serious crimes and seized more than 3.3 million pounds of narcotics at points of entry. Despite this their critical role in securing our border, and the fact that they are understaffed based on CBP's own models, the administration plans to do nothing to ease the burden on them.

I'd like to ask the administration why it made that decision. I'd like to ask the administration how long it will take to hire its new officers and agents. I'd like to know how they plan to use them around the country...but they are simply not here to answer our questions.

Unfortunately, this is the second hearing in a row where, when given an invitation, the administration has failed to provide a witness. I invited the Department to send anyone—anyone!—to testify at today's hearing, and DHS has failed to provide a single representative. The lack of responsiveness by DHS to this Committee is incredibly troubling. I know the Department has already begun issuing acquisition requests to contractors for the President's proposed border wall, yet I am still waiting for information from the Department on the cost-benefit analysis they are supposedly conducting. I refuse to accept that stonewalling is the new normal.

During the past two months the Trump administration has proposed huge changes would impact our budget, our policies, and our national security, but they have shown an unwillingness to answer any questions about them. Our system of government works because there is oversight; because we have checks and balances.

I want to make sure that the CBP and ICE officers and agents out there securing the border, manning our ports of entry, and enforcing our laws have the resources that they need and deserve. I look forward to hearing from our witnesses today about those needs and how we can work to meet them. And after this hearing is done, I will continue to ask the administration questions, and believe me I plan to get answers.



National Border Patrol Council

**Testimony of Brandon Judd
President of the National Border Patrol Council
Before the Senate Homeland Security and Government Affairs Committee
March 22, 2017**

Chairman Johnson and Ranking Member McCaskill, thank you for allowing me to testify before this Committee today. My name is Brandon Judd and I am pleased to testify today from my personal experience as a veteran Border Patrol Agent and on behalf of all rank-and-file Border Patrol Agents whom, as the President of the National Border Patrol Council ("NBPC"), I was elected to represent.

Personal History and Experience

Although I currently serve as the NBPC President, I am first-and-foremost a Border Patrol Agent with 19 and a half years of experience.

As a Border Patrol Agent, I've worked under three different administrations: Clinton, Bush and Obama. President Trump's Administration is now my fourth. I spent the majority of my career in the Tucson Border Patrol Sector, which is the busiest sector in the history of the Border Patrol. As an Agent in the field, I've served as a Canine Handler, Field Interdiction Team Leader, Field Training Officer and Intel Agent.

Background

As you know, the Administration proposed the hiring of 5,000 additional Border Patrol Agents as well as making major investments in border infrastructure. This is welcome news and is a step in the right direction to securing the border.

The Congressionally mandated floor for manpower at Border Patrol is 21,370 Agents. We are currently 1,743 Agents below this floor. To put this figure in perspective, 1,743 Agents is about the size of the St. Louis Police Department and slightly smaller than the Milwaukee Police Department. This lack of manpower is already impacting our operations and the smuggling cartels are exploiting the fact we do not have full coverage.

According to CBP's own figures, in order to bring Border Patrol back up to the Congressionally mandated floor, add 5,000 new Agents and account for our historical 6 percent rate of attrition, the Border patrol will need to hire over 2,700 Agents every year for the next 5 years. Last year we hired, trained and deployed 485 new Agents so you see the cause for my concern this morning.

Although the news of hiring new agents and infrastructure is welcome, we have to take a realistic approach in understanding the hiring and retention challenges Border Patrol has faced over the last 20 years.

Challenges Going Forward

It is one thing to mandate the hiring of Border Patrol Agents, it is another thing to actually do it. Not only is the Federal Government facing a huge problem with the hiring of new Agents, it is facing the larger problem of retaining those they have already hired. There are three main reasons the hiring and retaining of Border Patrol Agents is going to be difficult.

1. Pay Parity
2. Morale
3. Improper administration of the polygraph examination

Pay Parity

Border Patrol Agents are the only Federal Law Enforcement Agency I am aware of that suffered a pay cut over the past several decades. We took this pay cut due to the widely publicized illegal use of Administratively Uncontrollable Overtime (“AUO”) by management. In 2014, Agents had their AUO cut from 25 percent to 20 percent with further cuts that were coming because of its illegal use and because of sequestration.

To address this issue and to try to keep as much pay as possible, this Committee passed the Border Patrol Agent Pay Reform Act (P.L. 113-277) two years ago. This legislation was authored by Senators Tester and McCain and I cannot thank them enough for all their hard work to get this legislation enacted. Well and truly we are eternally grateful for their efforts.

However, through the legislative process, CBP and the Border Patrol refused to support the legislation unless Border Patrol Agents were exempted from the Fair Labor Standards Act (FLSA). Making Border Patrol Agents FLSA exempt cost your average Agent \$5,000 yearly.

ICE Agents on the other hand are not FLSA exempt and this lack of pay parity with a sister agency within DHS is going to be problem. Although Border Patrol is slated to hire an additional 5,000 agents, ICE is also gearing up to hire an additional 10,000 officers. In the last two years Border Patrol has lost 500 Agents to ICE. When ICE starts hiring in earnest, the Border Patrol will lose several thousand Border Patrol Agents overnight if we do not take corrective action. As Congress considers making additional investments in border security, I strongly urge you to consider restoring pay parity with ICE.

Morale

As previously stated, I’ve worked under the past three administrations and I’ve never seen the morale lower than it has been over the past four years. Please understand I do not mean that as a political statement, it is simply a fact. The men and women that I represent felt under resourced and underappreciated.

Over the past 10 years, the Department of Homeland Security has consistently been ranked as one of the worst places to work in the Federal Government and the Border Patrol during this time has been at or near the bottom of DHS. Two examples of the dysfunction are captured in two questions on the most recent Federal Employee View Point Survey, a survey mandated by Congress that all Federal Agencies must administer. When asked if Border Patrol Agents believed their agency was successful in completing its mission, only 39 percent of the

respondents answered in the affirmative. Government-wide this answer was 74 percent. When asked if Border Patrol Agents believed their organization's senior leadership maintain high standards of honesty and integrity, only 32 percent of Agents responded in the affirmative. The government wide average was 52 percent.

Furthermore, the survey paints a harrowingly bleak picture of the Border Patrol as an agency. In almost every survey question, the Border Patrol was ranked lower than CBP, who was ranked lower than DHS, who was ranked lower than the rest of the Federal Government. The results of the survey are manifesting themselves in our current and historical attrition rate.

A lot of the recent attrition issues are being placed on operations, and while partly true, it ignores the whole picture. If tackled alone, operations will only yield part of the solution as evidenced during both the George W. Bush and Bill Clinton Administrations. During this time operations were sound and for the most part Border Patrol Agents were allowed to do our jobs, but we still had an extremely high rate of attrition.

This trend obviously must stop, but unless all aspects of the problem are addressed, history shows the trend will continue.

Improper Administration of the Polygraph

It is well documented that the Border Patrol has a polygraph problem. My understanding is that the latest numbers have us failing approximately 70 percent of the applicants. This failure rate is almost three times higher than other federal agencies and unfortunately CBP has been treating prospective job applicants as if they were criminal suspects. We have had police officers who have passed a polygraph for their agency, fail our polygraph. We have had military veterans with impeccable service fail our polygraph. We have even had former Border Patrol Agents who left for other law enforcement agencies fail our polygraph upon trying to return.

Senator Flake of Arizona is currently trying to fix the issues through legislation and I want to thank him for taking an interest in this issue. However, I am left wondering why it takes legislation to fix a problem? Where is the accountability at CBP? I raise this because I want the Committee to know that this is not a new revelation. We, the NBPC, have been raising this issue with CBP for years.

Closing

Being a Border Patrol Agent is an incredibly difficult job. Operationally, we work in some of the most challenging environments imaginable. I have worked in 120 degree heat in Arizona and the dunes of California and 20 degrees below zero in Montana.

The job is physically hard on your body given the terrain we operate in and a career of shift work takes a toll on your family. Sadly, of the 48 Agents who I graduated with from the academy, only 21 are still with the Border Patrol.

All of that being said, I love being a Border Patrol Agent. The work I do is important and I feel lucky beyond words that I have been afforded the opportunity to contribute to its mission.

Although I am sometimes critical of my agency, it is because I believe that we can and must do better.

I want to thank the Committee for having this important hearing and I am happy to answer any questions that you might have about border security, manpower, or concerns we have with the Administration's proposed wall.



TESTIMONY OF ANTHONY M. REARDON
 NATIONAL PRESIDENT
 NATIONAL TREASURY EMPLOYEES UNION
**PERSPECTIVES FROM THE DHS FRONTLINE:
 EVALUATING STAFFING RESOURCES AND REQUIREMENTS
 BEFORE THE COMMITTEE ON HOMELAND SECURITY AND
 GOVERNMENTAL AFFAIRS
 UNITED STATES SENATE**

March 22, 2017

Chairman Johnson, Ranking Member McCaskill, distinguished members of the Committee; thank you for the opportunity to deliver this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 25,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement personnel stationed at 328 land, sea and air ports of entry (POE) across the United States (U.S.) and 16 Preclearance stations currently in Ireland, the Caribbean, Canada and United Arab Emirates airports.

In addition to CBP's trade and travel security, processing and facilitation mission, CBP employees at the ports of entry are the second largest source of revenue collection for the U.S. government. In 2016, CBP processed more than \$2.2 trillion in imports and collected more than \$44 billion in duties, taxes, and other fees. Thank you for this opportunity to address ongoing issues that affect CBP in fulfilling its critical mission—hiring and funding challenges that contribute to ports of entry being chronically understaffed.

There is no greater roadblock to legitimate trade and travel efficiency and stopping illicit trafficking in people, drugs, illegal weapons and money than the lack of sufficient staff at the ports and the current CBP Officer shortage is staggering. There is an existing vacancy rate of nearly 1,400 funded CBP Officers at the ports and, according to CBP's analytic workload staffing model (WSM), an additional 2,100 CBP Officers need to be funded and hired in order to meet 2017 staffing needs—translating into **a total CBP Officer staffing shortage of 3,500 today.**

The economic cost of this shortage is also staggering. **For every 33 additional CBP Officers hired, the U.S. can potentially gain over 1,000 private sector jobs. If Congress fully staffed the ports with the needed 3,500 additional CBP Officers, 106,000 private sector jobs could be created.** Understaffed ports lead to long delays in travel and cargo lanes and also create a significant hardship for frontline employees. Both involuntary overtime and involuntary work assignments far from home disrupt CBP Officers' family life and destroy morale. Ongoing

CBP staffing shortages directly contribute to CBP's perennial low ranking in federal employee workforce satisfaction surveys.

As you know, the President's January Executive Order calls for hiring 5,000 additional Border Patrol Agents (BPAs) and 10,000 new Immigration and Customs Enforcement (ICE) Agents, **but does not ask for one additional CBP officer new hire, despite the fact that CBP officers at the ports of entry in 2016 interdicted over 274,000 undocumented immigrants and seized over 600,000 pounds of illegal drugs, and over \$62 million in illicit currency, while processing over 390 million travelers and \$2.2 trillion in imports through the ports.**

CBP employees at the ports of entry are not only the frontline for illegal trade and travel enforcement, but their role of facilitating legal trade and travel is a significant economic driver for private sector jobs and economic growth (see attachment 1.) According to CBP Fiscal Year (FY) 2013 data, for every 1,000 CBP officers hired the following estimated outcomes could be expected:

- \$2 billion increase in Gross Domestic Product (GDP)
- \$642 million in opportunity costs saved (the quantification of time that a traveler could be using for other purposes than waiting in line, such as working or enjoying leisure activities)
- 33,148 annual jobs added

If the full 3,500 CBP Officers were funded and hired according to the same study, the impact could be as high as:

- \$7 billion increase in GDP
- \$2 billion in opportunity costs saved
- 115,000 annual jobs added

Noting the positive impact of hiring additional CBP officers, it is troubling that even though Congress actually appropriated funding to hire 2,000 additional CBP Officers in FY 2014, CBP has only realized a net gain of less than 600 Officers as of January 2017, due to attrition and the amount of time it takes to onboard new CBP Officers.

CBP Officer Hiring Challenges

NTEU continues to have significant concerns about the slow pace of hiring at CBP. CBP has struggled to fill the initial 2,000 positions Congress authorized in 2014. One factor that may be hindering hiring is that CBP is not utilizing available pay flexibilities, such as recruitment awards and special salary rates, to incentivize new and existing CBP Officers to seek vacant positions at these hard to fill ports, such as Nogales.

Another major impediment to fulfilling CBP's hiring goal is that CBP is the only federal agency with a congressional mandate that all front-line officer applicants receive a polygraph test. Two out of three applicants fail its polygraph—about 65 percent—more than double the average rate of eight law enforcement agencies according to data provided to the Associated Press. The eight law enforcement agencies that supplied information showed an average failure rate of 28 percent. As an example, the U.S. Drug Enforcement Administration failed 36 percent of applicants in the past two years.

NTEU commends Congress for including in the FY 2017 Defense authorization bill a provision that authorized the CBP Commissioner to waive polygraph examination requirements for certain veterans applying for CBP job openings. NTEU also commends the Chairman, and Senators McCain (R-AZ) and Flake (R-AZ), for introducing S. 595, a bill that expands the authority to waive polygraph examinations to expand exemptions for veterans and allow exemptions for existing state and local law enforcement officers who apply for these positions at CBP.

NTEU does not seek to reduce the standards used by CBP in their hiring process, but believes that there is a problem with how the polygraph is currently administered. We ask for CBP to review its current polygraph policy to understand why CBP is failing applicants at a much higher rate than individuals applying to work at other federal law enforcement agencies. Also, because ICE does not require polygraphs for job applicants, it is likely that CBP will not be competitive with ICE in attracting new hires.

Improving the current polygraph program should help in expediting the CBP Officer hiring process so that the existing 1,400 vacancies can be filled and CBP can move forward with funding and hiring the 2,107 additional Officers as required by the WSM. NTEU also recommends that CBP allow immediate polygraph re-testing opportunities to those with a No Opinion or Inconclusive result, including those with a No Opinion Counter Measures finding.

Lastly, the best recruiters are likely current CBP Officers. Unfortunately, morale continues to suffer because of staffing shortages. In addition to being overworked due to excessive overtime requirements, temporary duty assignments are a major drag on employees, especially those with families. Based on their experiences, many officers are reluctant to encourage their family members or friends to seek employment with CBP. I have suggested to CBP leadership that they look at why this is the case.

CBP Officer Overtime

Also due to this ongoing current staffing shortage of over 3,500 CBP Officers, CBP Officers nationwide are working excessive overtime to maintain basic port staffing. Currently, CBP Officer overtime pay is funded 100% through user fees and is statutorily capped at \$35,000 per year. All CBP Officers are aware that overtime assignments are an aspect of their jobs. However, long periods of overtime hours can severely disrupt an officer's family life, morale and ultimately their job performance protecting our nation.

Because of the ongoing staffing shortages, CBP Officers are required to regularly work overtime which results in individual Officers hitting the \$35,000 overtime cap very early in the fiscal year. This leaves no overtime funding available for peak season travel, holidays and other times when CBP Officers are expected to work overtime resulting in critical staffing shortages in the third and fourth quarter of the fiscal year that usually coincide with peak travel at the ports.

At many ports, CBP has granted overtime exemptions to over one half of the workforce to allow managers to assign overtime to Officers that have already reached the statutory overtime cap, but cap waivers only force CBP Officers already working long daily shifts to continue working these shifts for more days. Officers are required to come in hours before their regular shifts, to stay an indeterminate number of hours after their shifts (on the same day) and compelled to come in for more overtime hours on their regular days off as well. Both involuntary overtime--resulting in 12 to 16 hour shifts, day after day, for months on end--and involuntary work assignments far from home disrupt CBP Officers' family life and erode morale.

There are some CBP Officers who want to work as much overtime as possible, but are thwarted from this goal because of the \$35,000 cap on overtime. Last Congress, the House Homeland Appropriations Committee approved a raise of the overtime cap to \$45,000, but the Senate did not include this provision in its FY 2017 appropriations bill. Neither bill made it to the floor in either the House or Senate.

NTEU supports raising the annual overtime cap to \$45,000 and asks Congress to add this provision to its FY 2018 appropriations legislation.

Temporary Duty Assignments at Southwest Land Ports of Entry

Due to CBP's ongoing hiring delays, CBP has been diverting CBP Officers from other air, sea and land ports to the severely short-staffed Southwest land ports, such as the San Ysidro land POE (see attachment 2.) Since 2015, CBP has diverted Officers from their assigned ports to San Ysidro and more recently to Nogales POEs for 90-day temporary duty assignments (TDYs.) In November 2016, CBP issued an updated TDY solicitation that directs 14 CBP Field Offices to provide 200 CBP Officers for TDYs to the San Diego and Tucson Field Office. For example, in this solicitation, CBP directed the Detroit Field Office to send 7 CBP Officers to the San Diego Field and 6 CBP Officers to the Tucson Field Office from January 9 through April 7, 2017.

To encourage volunteers for these TDYs and avoid forced TDYs, NTEU suggests Congress ask CBP to supplement the TDY solicitation to include:

- The size of the TDY pool should be immediately increased by including non-bargaining unit personnel such as qualified Headquarters staff, supervisors, and other employees on special teams such as the Tactical Terrorism Response Team and the Strategic Response Team, and by including all Officers who have graduated from the Federal Law Enforcement Training Center and who have received a sufficient amount of post-academy training;

- CBP should schedule TDYs in such a way that the supplemental staffing through TDYs remains constant, so there is not a gap between the departure of one round of TDYs and the arrival of the next;
- CBP should establish an advertised cash award for individuals who volunteer for a TDY and should offer available incentives such as student loan repayments, overtime cap waivers, and home leave;
- A surplus of volunteers for a TDY from one Field Office should be allowed to make up for a shortage of volunteers in another Field Office; and
- Approved leave should continue to be allowed during a TDY.

Impact of Staffing Shortages

As cited in a 2008 GAO report, "[CBP] officers and managers told us that not having sufficient staff contributes to morale problems, fatigue, lack of backup support and safety issues when officers inspect travelers--increasing the potential that terrorists, inadmissible travelers and illicit goods could enter the country." (See GAO-08-219, page 7.)

"Due to staffing shortages, ports of entry rely on overtime to accomplish their inspection responsibilities. Double shifts can result in officer fatigue...officer fatigue caused by excessive overtime negatively affected inspections at ports of entry. On occasion, officers said they are called upon to work 16-hour shifts, spending long stints in primary passenger processing lanes in order to keep lanes open, in part to minimize traveler wait times. Further evidence of fatigue came from officers who said that CBP officers call in sick due to exhaustion, in part to avoid mandatory overtime, which in turn exacerbates the staffing challenges faced by the ports." (See GAO-08-219, page 33.)

These impacts, as reported to Congress by GAO, have changed little as CBP Officer staffing continues to lag far behind pedestrian, vehicle and commercial traffic volume at the ports. In fact, with 1,400 vacancies and 2,100 CBP Officer positions yet to be authorized and funded, the situation is even worse today.

Staffing shortages have also reduced the number of CBP Officers available to conduct more in depth secondary inspections. In the past, there were three inspectors in secondary processing for every one inspector in primary processing. Now there is a one to one ratio.

Without adequate personnel at secondary, wait times increase and searches are not done to specification. This is a significant cargo security issue. For example, a full search of one vehicle for counterfeit currency will take two officers on average a minimum of 45 minutes. Frequently, only one CBP Officer is available for this type of search and this type of search will then take well over an hour.

Ongoing staff shortages directly contribute to CBP's perennial ranking at the very bottom of the Partnership for Public Service's "Best Places to Work" Survey--291 out of 305 agency subcomponents on the latest survey.

Diversification of Customs User Fees

In addition to appropriated funding, CBP collects customs user fees which include fees authorized by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to recover certain costs incurred for processing, among other things, air and sea passengers, and various private and commercial land, sea, air, and rail carriers and shipments. The source of these user fees are commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers and barge/bulk carriers.

COBRA fees are deposited into the Customs User Fee Account and are designated by statute to pay for services provided to the user, such as 100% of inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. **Of the 23,775 CBP Officers currently funded, customs user fees fund 2,859 full-time equivalent CBP Officers.**

In addition to the ongoing staffing shortage of over 1,400 CBP Officer funded positions, CBP estimates that it would need an additional 2,107 CBP Officers, over and above the 2,000 Officers funded in FY 2014, through FY 2017 to meet optimal staffing. In the Administration's past budget submission, CBP proposed to pay for these additional Officers with a \$2 increase in both the immigration and customs user fees. NTEU reiterates that any increases to the Customs User Fee Account should be properly used for much-needed CBP staffing and not diverted to unrelated projects and should not result in any reduction in CBP appropriated funding.

The highway bill enacted into law in 2015, indexed customs user fees to inflation, but diverted this increase in fees to pay for infrastructure projects and not to CBP Officer pay and staffing, as intended. Indexing customs user fees to inflation raises \$1.4 billion over ten years--creating a \$140 million per year funding stream that could have helped pay for the hiring of additional CBP Officers to perform CBP's national security, law enforcement and trade and travel facilitation missions.

By diverting this fee, while \$140 million a year in additional customs user fees are still being collected, CBP is not receiving one additional dime to fund much needed new CBP Officer personnel needed to provide inspection and enforcement services to the users of these services.

On February 1, 2017, Senator Deb Fischer (R-NE) introduced a bill that diverts the first \$21.4 million of annual customs user fees collected to the Highway Trust Fund beginning in 2020. NTEU strongly opposes any attempts by Congress to raid customs user fees to pay for infrastructure projects.

If Congress is serious about border security, wait times, international trade, travel enforcement, and job creation, Congress must reject any further attempts to divert custom user fees to fund other programs and restore the use of the fees collected from indexing to inflation to their original purpose.

Agriculture Specialist Staffing

CBP employees also perform critically important agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. For years, NTEU has championed the CBP Agriculture Specialists' Agriculture Quality Inspection (AQI) mission within the agency and has fought for increased staffing to fulfill that mission. The U.S. agriculture sector is a crucial component of the American economy generating over \$1 trillion in annual economic activity. According to the U.S. Department of Agriculture, foreign pests and diseases cost the American economy tens of billions of dollars annually.

NTEU believes that staffing shortages and lack of mission priority for the critical work performed by CBP Agriculture Specialists, CBP agriculture detector dog teams and CBP Technicians assigned to the ports is a continuing threat to the U.S. economy.

NTEU worked with Congress to include in **the recent CBP Trade Facilitation and Enforcement Act (P.L. 114-125) a provision that requires CBP to submit, by the end of February 2017, a plan to create an agricultural specialist career track that includes a "description of education, training, experience, and assignments necessary for career progression as an agricultural specialist; recruitment and retention goals for agricultural specialists, including a timeline for fulfilling staffing deficits identified in agricultural resource allocation models; and, an assessment of equipment and other resources needed to support agricultural specialists."**

CBP's FY 16 Agriculture Resource Allocation Model (AgRAM), shows a need for an additional 631 frontline CBP Agriculture Specialists and supervisors to address current workloads through FY 2017; however, even with the 2016 increase in AQI user fees, **CBP only will fund a total of 2,414 CBP Agriculture Specialist positions in FY 2017, not the 3,045 called for by the AgRAM.**

Because of CBP's key mission to protect the nation's agriculture from pests and disease, NTEU urges the Committee to exempt CBP Agriculture Specialist positions from the hiring freeze and authorize the hiring of these 631 CBP Agriculture Specialists to address this critical staffing shortage that threatens the U.S. agriculture sector.

CBP Canine Program

The CBP Canine Program is also critical to CBP's mission. The primary goal of the CBP Canine Program is terrorist detection and apprehension. The working CBP canine team is one of the best tools available to detect and apprehend persons attempting entry to organize, incite, and carry out acts of terrorism. The Canine Program's secondary goal is detection and seizure of controlled substances and other contraband, often used to finance terrorist and/or criminal drug trafficking organizations.

Currently, there are 1,500 authorized canine teams but, as with all CBP resources, there is a shortage of canine teams at the ports of entry. At one high-volume southwest border port, NTEU was told that they only have 24 of the 38 authorized canine teams. By CBP's own

allocation, this port is short 14 dogs and handlers. NTEU supports Congress fully funding and staffing the CBP canine detection program.

Reimbursable Service Agreements

In recent years, in order to find alternative sources of funding to address serious CBP Officer and Agriculture Specialist staffing shortages, CBP received authorization and has entered into Reimbursable Service Agreements (RSAs) with the private sector as well as with state and local governmental entities. These stakeholders reimburse CBP for additional inspection services including overtime pay and the hiring of new CBP Officer and Agriculture Specialist personnel that in the past have been paid for entirely by user fees or appropriated funding. According to CBP, since the program began in 2013, CBP has entered into agreements with 36 stakeholders, providing more than 106,000 additional processing hours for incoming commercial and cargo traffic.

The Cross-Border Trade Enhancement Act signed into law on December 16, 2016, amended the Homeland Security Act of 2002 to expand CBP's RSA program by making CBP's ability to enter into RSAs permanent; removing the annual limit on the number of agreements at air ports of entry; and allowing small air ports of entry with fewer than 100,000 international passenger arrivals annually to offset CBP for the salaries and expenses of up to five full-time officers.

NTEU's RSA Concerns

NTEU believes that the RSA program would be entirely unnecessary if Congress, when it authorized CBP user fees collected to be indexed to inflation, had provided that the \$140 million a year funding stream be used to increase CBP overtime, staffing and other resources, as set forth in existing statute. NTEU also believes that the RSA program is a band aid approach and cannot replace the need for Congress to either appropriate new funding or authorize an increase in customs and immigration user fees to adequately address CBP staffing needs at the ports.

Further, NTEU strongly believes that CBP should not enter into a RSA if it would negatively impact or alter services funded under any Appropriations Acts, or services provided from any Treasury account derived by the collection of fees. **RSAs simply cannot replace CBP appropriated or user fee funding--making CBP a "pay to play" agency. NTEU remains concerned with CBP's new Preclearance expansion program that also relies heavily on "pay to play".**

NTEU also believes that the use of RSAs to fund CBP staffing shortages raises significant equity and other issues, which calls for an engaged Congress conducting active oversight.

For example:

- How does CBP ensure that RSAs are not only available to ports of entry with wealthy private sector partners? (When RSAs were first considered, there was a proposal to require 30% of the total RSA funds collected be reserved for ports with greatest need, not just those that have partners with the greatest ability to pay.)
- How does CBP ensure that RSA funds pay for the hiring of new CBP Officer and Agriculture Specialist personnel and are not simply used to pay for relocating existing CBP personnel from other ports (robbing from Port A to staff Port B without hiring additional staff)?
- How does CBP ensure a long-term public-private funding stream? (When RSAs were first considered, there was a proposal to have RSA pay up front for ten years over 3 installments.)

Ratio of Supervisors to Frontline Personnel

Another concern is that CBP continues to be a top-heavy management organization. In terms of real numbers, since its creation, the number of new managers has increased at a much higher rate than the number of new frontline CBP hires. CBP's own FY 15 end of year workforce profile (dated 10/3/15), **shows that the Supervisor to frontline employee ratio was 1 to 5.6 for the total CBP workforce, 1 to 5.7 for CBP Officers and 1 to 6.6 for CBP Agriculture Specialists.** Prior to 2003, supervisor to frontline ratio was closer to 1 supervisor to 12. It is also NTEU's understanding that nearly 1,000 CBP Officers are serving either at CBP headquarters or non-Office of Field Operations locations. This means that nearly 4,000 CBP Officers are serving in supervisory positions.

The tremendous increase in CBP managers and supervisors has come at the expense of national security preparedness and frontline positions. Also, these highly paid management positions are straining the CBP budget. CBP's top heavy management structure contributes to the lack of adequate staffing at the ports, excessive overtime schedules and flagging morale among the rank and file.

FY 2017 Supplemental Appropriations and FY 2018 Budget Requests

The Administration released its FY 2018 budget submission to Congress that recommends \$44.1 billion in discretionary budget authority for DHS. This is an increase of \$2.8 billion or 6.8 percent over the 2017 annualized Continuing Resolution level.

The bill requests \$314 million to recruit, hire and train 500 new Border Patrol Agents and 1,000 new Immigration and Customs Enforcement Agents and support personnel. There is no mention of new funding to hire additional CBP Officers at the ports of entry.

In addition to the FY 2018 budget request, the Administration submitted a \$30 billion supplemental appropriations request for the remainder of FY 2017. This appropriations request

would provide an additional \$3 billion for DHS implementation of the President's January 25, 2017 "Border Security and Immigration Enforcement Improvements" Executive Order. Of this \$3 billion increase, \$1.4 billion will be used to fund planning, design and construction of a physical wall along the southern border, \$1.2 billion to increase immigration detention and removal facilities, and \$286 million for CBP's border surge operations. The remainder of the \$3 billion supplemental appropriations request will be used to fund other programs related to meeting the goals of the President's January 25th Executive Order.

NTEU is asking Congress to also prioritize and fund CBP staffing at the nation's air, sea and land ports by appropriating additional funding in the final months of FY 2017 and in the FY 2018 DHS appropriations bill to fully meet CBP staffing, resource and new mission needs at the 328 U.S. ports of entry.

Recommendations

To address the dire staffing situation at the Southwest land ports, as well as other staffing shortages around the country, it is clearly in the nation's interest for Congress to authorize and fund an increase in the number of CBP Officers, CBP Agriculture Specialists and other CBP employees as stipulated in CBP's WSM.

Over the years, NTEU has worked with Congress on a variety of proposals that would increase CBP's funding to support additional personnel, as well as to address other hiring challenges that create barriers to adding staff in a timely and efficient manner. For instance, we are hopeful that the recently enacted NTEU-supported legislation that allows recent military personnel to be hired as CBP Officers without undergoing a polygraph will result in an increase in new hires.

In order to achieve the long-term goal of securing the proper staffing at CBP to address workloads, NTEU recommends that Congress take the following actions:

- Fix the broken and segmented hiring process;
- Address the reason for excessive (60%) applicant polygraph failures;
- Fill 1,400 CBP Officer current vacancies;
- Fund the additional 2,100 CBP Officer needed new hires;
- Fund 631 CBP Agriculture Specialists needed new hires;
- Restore recruitment and retention awards, and other incentives;
- Raise the yearly CBP Officer overtime cap from \$35,000 to \$45,000; and
- Restore cuts in mission support personnel that will free CBP Officers from performing administrative duties such as payroll processing, data entry and human resources to increase the numbers available for trade and travel security and facilitation.

Congress should also redirect the recently enacted increase in customs user fees from offsetting transportation spending to its original purpose of providing funding for CBP Officer staffing and overtime and oppose any legislation to divert additional fees collected to other uses or projects.

The employees I represent are frustrated and their morale is indeed low. These employees work hard and care deeply about their jobs. The more than 25,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs, and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea and land ports, but frontline CBP Officers and Agriculture Specialists at our nation's ports of entry need relief. These men and women are deserving of more staffing and resources to perform their jobs better and more efficiently.

Thank you for the opportunity to deliver this testimony to the Committee on their behalf.

Attachment 1

Table 8

Studies of the Costs of Border Wait Times and Congestion to U.S. and Mexican Economies						
Region of Crossings	Region of Economic Impact	Wait Time (min.)	Year of Potential Impact	Cost to Regional Economy (billions of USD)	Costs in Jobs	Source
San Diego - Tijuana	U.S. and Mexico	...	2007	\$7.2	62,000	SANDAG, 2007 Update
Imperial Valley - Mexicali	U.S. and Mexico	...	2007	\$1.4	11,600	HDR/HLB IVAG 2007
Tijuana	Mexico	180	2007-2008	\$1.9	\$7,000	Del Castillo Vera, COLEF, 2009
Ciudad Juarez	Mexico	132	2007-2008	\$1.5	87,600	Del Castillo Vera, COLEF, 2009
Nuevo Laredo	Mexico	174	2007-2008	\$3.7	133,900	Del Castillo Vera, COLEF, 2009
Nogales	Mexico	66	2007-2008	\$0.2	18,000	Del Castillo Vera, COLEF, 2009
US-Mexico Border	U.S.	63	2008	\$5.8	26,000	Accenture Draft, March 2008
US-Mexico Border	U.S.	99	2017	\$12.0	54,000	Accenture Draft, March 2008
El Paso/Cd. Juarez	El Paso/Cd. Juarez	2008 peak times: -45 - 220	2035	\$54.0	850,000	Cambridge Systematics Inc., June 2011

Note: Year of Potential Impact refers to the year in which the listed monetary and employment effects take place. For dates before 2008, this refers to the estimated costs for the year of the study. For future years, this refers to the estimated cost that will take place if the border is not made more efficient.

Sources: Cambridge Systematics, *El Paso regional Ports of Entry Operations Plan*, Texas Department of Transportation and Cambridge Systematics, June 2011; Gustavo Del Castillo Vera, "Tiempo de espera en los cruces fronterizos del norte de México: una barrera no arancelaria," *Comercio Exterior*, Vol. 59, No. 7, July 2009, 535; SANDAG, *Economic Impact of Wait Times in the San Diego-Raja California Border Region / Fact Sheet: 2007 Update*, Accenture, Draft, Improving Economic outcomes by Reducing Border Delays, Accenture and Department of Commerce, March 2008; HDR/HLB, *Imperial Valley - Mexicali Economic Delay Study*, HDR, Imperial Valley Association of Governments and California Department of Transportation, District 11, November 19, 2007.

Source: Resource Optimization at Ports of Entry, CBP, April 10, 2013

San Ysidro Port of Entry



By the summer of 2019, the San Ysidro port of entry expects completion of an expansion project that will increase its northbound vehicle lanes from 26 to 32 and primary inspection booths from 50 to 62. The proposed FY 2018 budget recommends no new CBP Officer hires.

- 50,000 northbound vehicles processed each day
- 25,000 northbound pedestrians cross each day
- The port has over 350 CBP Officer vacancies
- The port has a maximum of 26 vehicle lanes with 50 primary inspection booths and 20 pedestrian lanes
- The port lacks staff to keep all 50 booths open daily causing backups
- The economic cost in lost commerce due to staffing shortages is in excess of \$7.2 billion and 62,000 jobs

Statement by Chris Crane, President,
National Immigration and Customs Enforcement Council 118
of the
American Federation of Government Employees

Before the
Senate Committee on Homeland Security and Government Affairs

March 22, 2017

Good morning,

President Trump and DHS Secretary John Kelly have been unapologetic in their commitment to enforce the laws enacted by Congress. We believe that recent statistics released by CBP showing a sharp decline in illegal entries is a direct result of their leadership, and that in the long term illegal entries will continue to decline if strong interior enforcement and proper international messaging on U.S. immigration policy continues.

For the last eight years, our organization has communicated clearly to the American public and members of Congress regarding what we believe is needed to stop illegal immigration into the United States. While many have tried to make the strategy for stopping illegal immigration a complicated matter, it is not. Border security must continue, but in addition to that the United States must enforce its laws on the interior of the country, and as a nation send a very clear message to the rest of the world that illegal entry into the United States and overstay will not be condoned or permitted. The United States must stop dangling a carrot and drawing people into this country, encouraging them to violate U.S. laws. Interior enforcement is the key to effective border security, which up to this point has been ignored.

During my career at ICE I have never had the opportunity to commend a sitting U.S. President, or DHS Secretary, but I'm doing so today. Amidst all of the hammering from the media, and protests from special interest groups, President Trump and Secretary Kelly haven't wavered, but instead continued steadfast in their support of the rule of law and our officers in the field. If they continue on that course, countless lives will be saved and the victimization now seen so often, as the result of illegal immigration, will dramatically decline. Law enforcement saves lives. If Congress will support ICE officers and allow them to perform their mission, they'll prove it to you.

We need more officers and staff in ICE Enforcement and Removal Operations (ERO) – the group within ICE carrying out the majority of ICE’s immigration mission. Currently ERO has around 5,000 officers to police approximately 11 million illegal aliens, as well as millions of other lawfully admitted foreign nationals, in 50 states, Guam, Puerto Rico, Saipan and the U.S. Virgin Islands. We are set up for failure. Compare ICE ERO’s 5,000 officers to the approximately 35,000 officers on the New York City Police Department alone.

We enthusiastically support the additional officers identified in President Trump’s executive order on interior enforcement. However, we have very little faith in the ability of ICE leadership to most effectively implement these additional officers and support staff. From our perspective, ICE should be making every effort to provide U.S. taxpayers the biggest bang for the buck. As staffing increases are considered and planned, ICE leadership should be thinking outside the box and innovating – looking at new ways, for example, to have our officers do less paperwork and data entry, and more law enforcement. ICE needs to adjust duties and change position descriptions for certain support staff, allowing for the expansion of the law enforcement duties our officers currently perform in the field. These types of changes could dramatically affect staffing models and costs submitted to Congress. However, from what we’ve seen thus far, proposed staffing increases at ICE have simply become a numbers drill at ICE. No changes, no innovation, and no improvements, just basically double our staffing numbers and call it a day. The only positive takeaway for us at this point is that the agency and union appear in agreement conceptually on the need to not only maintain our current hiring and academy standards, but increase standards in some areas prior to the beginning of any significant hiring.

While there is no question that morale within ICE is at its highest in many years, the President’s emphasis on enforcing the nation’s laws will not completely solve the overall

employee morale crisis within the agency. As with DHS in general, and other component agencies within DHS, such as TSA, the Secret Service and Border Patrol, ICE is suffering from a toxic and failed management culture; an absence of leadership. In 2014 ICE was dead last in morale among 314 federal agencies surveyed; in 2015 ICE was second from last, and last year sixth from last. As a point of comparison, while many DHS agencies like ICE hover at the bottom of government wide morale, around the 300 range in surveys, last year the U.S. Marshals Service was ranked 80th, and the DEA and FBI tied for 90th place. Congress, the American public, incoming DHS leadership, and indeed the White House, should all be alarmed by the state of morale within DHS and its law enforcement agencies that are all so critical to America's public safety and national security.

“Screw up and move up” is the general term used by many ICE employees to describe their supervision from their first-line supervisors all the way up to the Director of ICE. “Screw up and move up” obviously denoting that our worst employees are the ones promoted to supervisory and leadership positions. Most employees refuse to report misconduct committed by supervisors because employees have zero trust in DHS and ICE internal affairs offices to effectively carry out investigations against ICE supervisors. Likewise, most employees have zero faith in the integrity of ICE leadership to issue appropriate discipline to subordinate managers who have committed misconduct. At ICE it's a “good ol' boy network” in which supervisors cover for supervisors, and only rank and file employees are held accountable. Subordinate supervisors are not managed by their superiors; supervisors are permitted to harass, discriminate and retaliate at will. The workplace in many areas within ICE is toxic. Established in 2003, ICE has practically no policies. The agency generally depends on INS policies from 20 years ago or

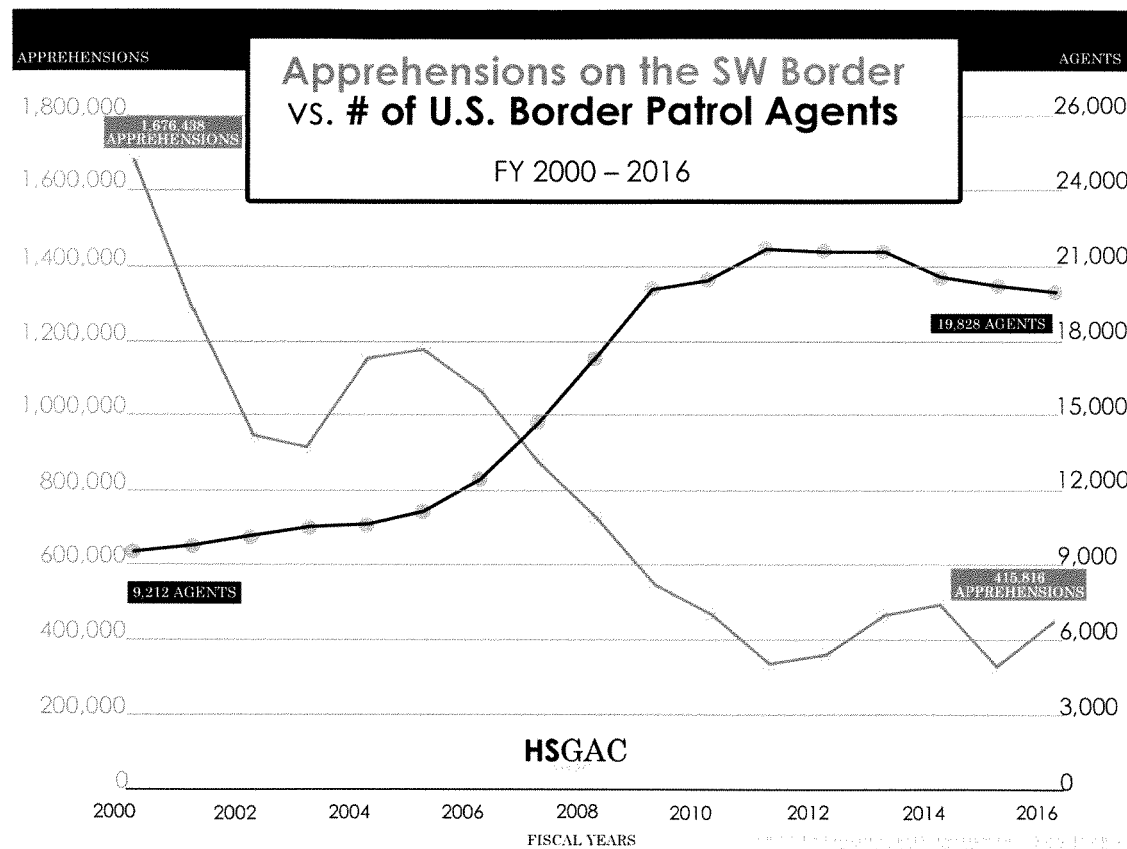
more, or no policy at all. Law enforcement officers within ICE generally do not believe they have the full support of ICE leadership to carry out the agency mission.

During the last eight years, ICE employees and officers have been publicly demoralized by their own government. Many lawmakers, pundits for political parties, and the previous Administration, have consistently made disparaging remarks about ICE employees, their mission, and the laws they are sworn to uphold. In fact, these actions continue as ICE officers and their arrest activities are incorrectly portrayed and referenced publicly in the media by political pundits as “gestapo” tactics and other Nazi references and false and hateful accusations. It’s pretty hard every day to maintain morale when your own government and the media turn on you for enforcing the laws enacted by Congress. Perhaps more importantly, this rhetoric places the safety and lives of our officers at risk. When our nation’s lawmakers and government show no respect for the rule of law and the officers who enforce it, criminals feel empowered to become resistant and aggressive, and likewise lose respect for law enforcement officers. As Secretary Kelly spent 40 years of his life leading within an organization with one of the world’s greatest leadership traditions, we are hopeful that he will work hand in hand with us in making dramatic changes to the leadership and management cultures within ICE. We hope that he will have the full support of the President in doing so. We need our piece of the swamp drained.

At the Congressional level, our officers and employees desperately need your support. We need your support in terms of additional officers, staff and equipment, but we also need you to support the rule of law and the officers who enforce it. Everything you say and do has consequences. Talk of amnesty will create another run on the border. Disparaging comments about our officers will put their safety at risk. If you don’t show respect for the laws enacted by Congress, neither will our state level leaders, citizens, or those from other countries. We can

significantly stop the flow of illegal immigration into the United States, and with it much of the needless death and victimization that accompanies it, if we have the support of our government in enforcing our nation's laws.

Thank you and that concludes my testimony.



1300 Pennsylvania Avenue NW
Washington, DC 20229

FEB 17 2017



U.S. Customs and
Border Protection

MEMORANDUM FOR THE DEPUTY SECRETARY

FROM:

Kevin K. McAleenan
Acting Commissioner

SUBJECT:

Request for Approval: Executive Order Hiring Surge Plan

Upon the release of the Executive Order on Border Security and Immigration Enforcement Improvements, U.S. Customs and Border Protection (CBP) conducted a thorough analysis of the authorities, resources, and changes needed to meet the staffing provisions directed within the order. The purpose of this plan is to clearly articulate where CBP is today, what our hiring projections are, and how additional funds and authorities can be directed effectively toward achieving the Executive Order hiring mandate.

In addition, during Fiscal Year (FY) 2016, the U.S. Border Patrol (USBP) conducted a comprehensive analysis of staffing allocations, capabilities, capability gaps, and requirements. The analysis, which considered direct and indirect hours as well as law enforcement program management and law enforcement duties, showed an additional 5,000 Border Patrol Agents (BPA) to be an appropriate increase based on current operations. CBP is working to enhance and update its analytical staffing model, the Personnel Requirements Determination, to account for the Border Patrol Agent Pay Reform Act of 2014 (BPAPRA), as amended¹, and potential increased use of contractors. Accordingly, an adjustment of the total Border Patrol Agent requirement in future budget years is likely.

As of January 2017, CBP's workforce included 19,627 BPAs. Given the new staffing target of 26,370 agents, this represents a gap of 6,743. However, in order to close this gap, CBP must also account for attrition. With a projected annualized attrition rate of 6 percent (approximately 1,380 losses per year), CBP must hire about 2,729 BPAs per year to achieve full BPA staffing in 5 years.

From FY 2013 to FY 2016, CBP achieved a gross average of 523 annual BPA hires, while also experiencing an average of 904 losses per year. Despite aggressive

¹ Pub. L. No. 114-13

Request for Approval: Executive Order Hiring Surge Plan
Page 2

recruitment efforts and hiring process improvements, CBP hired a total of 485 BPAs, approximately 40 new hires per month, in calendar year 2016.

CBP must compete with Federal, state, and local law enforcement organizations for applicants, as well as with our partner agencies in the Department of Homeland Security (DHS). Since FY 2014, 490 BPAs have departed CBP for U.S. Immigration and Customs Enforcement (ICE), with a quarter of those leaving within the first quarter of FY 2017 (101 BPAs). ICE's concurrent requirement to hire 10,000 law enforcement personnel will greatly hinder CBP's efforts to hire, since ICE holds the recruitment advantage in several key areas, including:

- **Lack of Polygraph Mandate:** Unlike CBP, ICE does not require a polygraph examination, which has been identified as both a significant deterrent and point of failure for CBP law enforcement applicants.
- **Desirable Duty Locations:** CBP's mission requires BPAs to be assigned to geographically remote or hard-to-fill locations, which are often a great distance from amenities and services such as medical care, childcare, schools, and employment options for spouses. ICE is hiring in major metropolitan areas.
- **Higher Compensation:** As of January 2016, all BPAs are covered under BPAPRA. ICE Deportation Officers are covered under Administratively Uncontrollable Overtime (AUO). While both BPAPRA and AUO offer up to a 25 percent supplement to an agent's salary, individuals under AUO are also covered by the Fair Labor Standards Act, and can earn more annually as a result.

CBP also needs to be able to reduce attrition and increase the overall number of applicants, which, in light of ICE's simultaneous hiring efforts, would require significant enhancements to recruitment and retention efforts. The equation to reach full BPA staffing also calls for a 25 percent increase in BPA applicants (from the current annual average of 60,000 to 75,000) and a 10 percent decrease in attrition (from 5.5 percent to 5 percent). At a minimum, pay parity with ICE will be essential, as will enhanced mobility for CBP personnel.

CBP therefore requires additional resources to implement policies that will increase the number of applicants who apply to BPA positions, while decreasing the attrition of our current workforce. CBP has identified the authorities and funding gaps below for your consideration. In order for these funding and authorities to make the most significant impact, CBP would need to receive them within the next six months.

Request for Approval: Executive Order Hiring Surge Plan
Page 3

AUTHORITIES

CBP requests the authorities from the below entities in order to meet the provisions of the President's Executive Order. By obtaining these authorities, CBP will be able to swiftly execute any agreed-upon process improvements, which could expedite the Agency's ability to achieve the staffing targets and assist in recruiting and retaining qualified personnel. Therefore, CBP requests the delegation of the following authorities:

OPM

- Direct hire authority;
- Authority to regulate CBP polygraph program (currently regulated under E.O. 137654);
- Authority to set pay;
- Authority to establish and approve qualification standards;
- Authority to establish and approve classification standards;
- Authority to determine the type and level of background investigation needed for CBP positions, to include what alternative requirements are acceptable in lieu of the background investigation requirements; this would also include the ability to identify who can conduct the investigation and the authority to determine who would conduct a background investigation;
- Authority to set special salary rates; and
- Return to a two-year probationary period.

DoD

- Support is needed from the Department of Defense (DoD) to provide Joint Personnel Adjudication System (JPAS) access to CBP for the purposes of streamlining the polygraph and suitability reciprocity processes within the federal government;
- Insert CBP recruiters at military recruitment offices for veterans and transitioning soldiers; and
- Based on the authorities that Office of Personnel Management (OPM) will delegate to CBP, as stated above, require DoD to work with CBP on a guaranteed placement program for frontline occupations for qualified veteran and transitioning soldiers.

FBI

- CBP requests that the FBI delegates to CBP the ability to conduct National Agency Checks, or permissible alternative, to streamline the suitability process.

DHS

- CBP is requesting delegated authority to establish social media accounts specifically for hiring and recruiting, and

Request for Approval: Executive Order Hiring Surge Plan
Page 4

- As a matter of policy, CBP is requesting that the Chief Security Officer requires all departments to share polygraph results for the purposes of facilitating the onboarding of personnel between component agencies.

POLYGRAPH EXAMINATION REQUIREMENT

STATUTORY CHANGES

Recently, Congress passed the National Defense Authorization Act (NDAA), which provided authority for CBP to waive the polygraph for any veteran who has a current/active Top Secret (TS) clearance and is able to access sensitive compartmented information (SCI), a current Single Scope Background Investigation, and was not granted any previous waivers to obtain the clearance. CBP will pursue Congressional or Executive Order avenues to expand the waiver authority for some or all of the following categories of applicants, applicable to those with at least two years in service:

- State and Local Law Enforcement Officers (in good standing) who have successfully completed a polygraph administered by state/local authorities;
- Federal Law Enforcement Officers (in good standing, has a current/in-scope Tier 4 or Tier 5 background investigation); and
- Transitioning Members of the military, veterans, or members of the Reserves/National Guard (veteran or nonveteran), who meet specific criteria (has a current or previously held a Secret, TS, TS/SCI or is eligible to hold a TS/SCI clearance, has a current/in-scope Tier 4 or Tier 5 background investigation, received or is eligible to receive a honorable military discharge, and was not granted any other waivers to obtain clearance).

PILOT

CBP is looking to pilot an alternative polygraph examination for a six-month period. The National Center for Credibility Assessment (NCCA) has offered an option to utilize a counterintelligence format with additional questions related to corruption, the Test for Espionage, Sabotage, and Corruption (TES-C). The TES-C would provide added capacity for our onboard examiners as it is shorter in duration and would require no immediate resources. Should an applicant test inconclusive to the corruption-related questions on the TES-C format, the examiner could conduct the standard LEPET suitability test that we use currently. All applicants would remain subject to a Tier 5 (formerly SSBI) investigation.

Further research and analyses are being conducted by CBP to determine whether any additional requests for funding and authorities are required to hire the additional 5,000 BPAs and accounting for high attrition levels. CBP remains fully committed to staffing the frontline in accordance with the expanding complexity and demands of its mission and maintaining its high standards.

Request for Approval: Executive Order Hiring Surge Plan
Page 5

FUNDING

CBP has determined that the costs of executing this hiring plan and recruiting, hiring, supporting and retaining the agents necessary to implement the Executive Order is \$328 million in Fiscal Year 2017 and \$1.884 billion in Fiscal Year 2018. The required funding not only includes hiring costs, but also accounts for requirements related to agent salaries and benefits, facilities, training, IT, and associated air support. Detailed costs are shown in an attachment to this memo. The duty locations of the agents are also attached.

CONCLUSION

Although external factors make it difficult to precisely predict the impact these changes will have on the BPA rate of hire, CBP optimistically projects an increase from a baseline of 485 BPA hires annually (~40 per month) to 917 BPA hires annually (~76 per month). This assumes an increase in the yield rates for the BPA entrance exam phase, the polygraph phase, and fitness test.

CBP will continue to examine its frontline hiring process and related staffing challenges to ensure the Agency is positioned to meet staffing requirements. Although we do not expect to see the impact of the aforementioned process improvements this fiscal year, CBP anticipates that with the requested funding and authorities we will be able to make significant strides toward achieving our hiring goals.

PRELIMINARY STAFFING DISTRIBUTION COAs														
Region	Sector	Acronym	Authorized Staffing			Current Staffing			COA 1: *SK Agents Southwest Border Only			COA 2: Threat & Need Based		
			Agents	Support	Total	Agents	Support	Total	Increase	In Agents	Priority	Increase	In Agents	New Total
Southwest Border	San Grande Valley	SGV	3201	243	3444	3147	222	3369	1000	4201	1	800	4601	
	Laredo	LRT	1852	148	2000	1653	120	1773	700	2552	2	700	2552	
	Del Rio	DRT	1642	131	1773	1422	120	1542	500	2142	5	200	1842	
	Big Bend	BBT	640	54	694	509	37	546	400	1040	4	100	740	
	El Paso	ELP	2415	191	2606	2236	183	2419	700	3115	3	5	2615	
	Tucson	TCA	4075	303	4378	3819	274	4093	300	4393	9	17	200	4275
	Yuma	YMA	792	61	853	824	78	902	600	1982	8	16	450	1242
	El Centro	ELC	1120	91	1211	916	76	992	400	1520	7	14	200	1320
	San Diego	SDC	2484	201	2685	2305	165	2470	5000	2884	6	10	500	2984
	Northern Border	Houston	HUT	212	35	247	183	35	218			2	7	150
San Antonio		SWB	313	43	356	294	44	338			1	2	225	538
Buffalo		BUN	288	42	330	283	41	324			3	11	100	388
Detroit		DTM	417	50	467	411	48	459			4	12	125	542
Grand Forks		GFN	201	35	236	181	34	215			6	15	75	276
Haver		HVM	217	35	252	179	30	209			8	20	75	292
Spokane		SPW	247	36	283	233	35	268			3	15	125	372
Blaine		BLW	317	43	360	292	36	328			5	13	100	417
Banney Puerto Rico		RAY	41	12	53	36	16	52			2	9	175	216
Miami		MIP	99	23	122	106	24	130			3	3	225	324
Coastal Border	New Orleans	NCL	51	12	63	66	18	84			5	18	100	151
	Speed Ops Group		146	35	161	118	17	135						
	National HQ		255	155	410	256	138	374						
	OTD		288											
OTD CIP Offices		57												
			21370	19459	22884	19499	1791	21240					5000	26370



Seaports
Deliver
Prosperity

March 21, 2017

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC, 20510

Re: AAPA Comments re Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements

Dear Chairman Johnson and Ranking Member McCaskill,

The American Association of Port Authorities (AAPA) is the unified and collective voice of the seaport industry in the Americas. AAPA empowers port authorities, maritime industry partners and service providers to serve their global customers and create economic and social value for their communities. Our activities, resources and partnerships connect, inform and unify seaport leaders and maritime professionals in all segments of the industry around the western hemisphere. These comments are on behalf of our U.S. members.

Today, international trade through seaports accounts for more than a quarter of the U.S. economy—and is projected to reach 60 percent by 2030. At the center of trade and transportation are America's seaports, which handle approximately \$6 billion worth of import and export goods daily, generate more than 23 million jobs, and provide more than \$320 billion in tax revenues. A key component, and often overlooked resource, to our national freight network is the Custom and Border Protection (CBP) staff that work with our maritime partners.

In order for America's international gateways to function more efficiently, effectively and safely, CBP must be adequately funded and staffed. In FY 2015, when CBP was funded to hire 2000 additional staff, fewer than 20 agents were assigned to seaports. This inequity of CBP resources cannot continue. Our nation's ports are in partnership with CBP in securing our supply chain and providing vital support in moving freight safely through our ports and out onto the national freight network. Currently, CBP estimates it is short 500 staff in the maritime environment.

Each year, roughly \$1.4 billion tons of foreign trade cargo, including more than 11 million maritime containers, arrive at our seaports. Additionally, over 11 million international passengers

begin their cruises at U.S. seaports. CBP is on the front line when cargo and passengers enter our country. CBP officers meet the ships at all ports of entry to check the manifests, screen incoming cargo, operate non-intrusive inspection (NII) equipment (including radiation portal monitors), provide specialists to examine imported fruits, vegetables and flowers for potentially harmful diseases, and other missions at our busy gateways. CBP is also responsible for screening all foreign visitors and returning American citizens and passenger ships that enter U.S. seaports.

Oddly, money is an issue even though revenues from inspection activity continue to grow. In the past year alone, we have seen the indexing of customs fees by Congress and the diversion of the revenue from CBP to fund the Highway Trust Fund in the FAST Act. Over a half billion dollars in user fees was imposed by the Animal and Plant Health Inspection Service (APHIS) with no guarantee that adequate inspection staffing will be available to administer these services when they are needed. Additionally, CBP is asking more and more of the industry to pay for traditional services through its reimbursable services program. This is not a sustainable program as CBP officers can only work so much overtime. Calls for deployment of more CBP resources to land borders are frequently heard. We urge the Committee to also hear the call for more CBP resources for U.S. ports.

As Congress looks to expend resources for CBP officers, we ask that Congress and the Administration remember that seaports are international borders and must utilize and share the same CBP resources. As we move forward, we recommend that more CBP resources for maritime operations be made available that are in proportion to and meet the needs of our national economy.

Thank you for the opportunity to submit these comments to the record.

Sincerely,



Kurt J. Nagle
President and CEO



STATEMENT FOR THE RECORD

U.S. Customs and Border Protection
Department of Homeland Security

BEFORE

U.S. Senate Committee on
Homeland Security and Government Affairs

ON

"Perspectives from the DHS Frontline:
Evaluating Staffing Resources and Requirements"

March 22, 2017
Washington, DC

CBP Statement for the Record: Perspectives from the DHS Frontline

Chairman Johnson, Ranking Member McCaskill, and Members of the Committee, thank you for the opportunity to provide a statement for the record in response to the testimony of the National Border Patrol Council President, Brandon Judd.

Staffing*USBP Attrition*

Mr. Judd testified to the Committee in his opening remarks,

"According to CBP's own figures, in order to bring Border Patrol up to the congressionally mandated floor add 5,000 new agents and account for his historical 6 percent rate of attrition, the Border Patrol will need to hire 2,700 agents every year for the next five years. The 6 percent attrition, we lose over 1,000 agents per year because they don't like to work for the Border Patrol."

On January 25, 2017, the President signed Executive Order 13767, "*Border Security and Immigration Enforcement Improvements*." Section 8 of the Executive Order states that "subject to available appropriations, the Secretary, through the Commissioner of U.S. Customs and Border Protection (CBP), shall take all appropriate action to hire 5,000 additional Border Patrol agents, and all appropriate action to ensure that such agents enter on duty and are assigned to duty stations as soon as is practicable." As of February 8, 2017, the number of Border Patrol Agents onboard at CBP was 19,602, which is 92 percent of the statutorily required 21,370 agents.

With nearly 60,000 CBP employees in the United States and abroad, CBP is the Nation's largest federal law enforcement organization and requires a highly skilled workforce capable of successfully meeting the agency's mission requirements. CBP employs a rigorous hiring process necessary to meet its mission requirements. The Agency works diligently to recruit, hire, and retain the men and women serving in frontline positions that secure the Nation's borders and facilitate lawful trade and travel. However, CBP recognizes the challenges regarding hiring and attrition and over the years, has taken steps to address. CBP continues to make some progress in meeting frontline hiring goals, however, work remains. CBP remains committed to its hiring goals and aggressively addressing these challenges.

CBP Statement for the Record: Perspectives from the DHS Frontline

The attrition rate for Border Patrol agents in Fiscal Year 2015 was 5.5 percent. CBP remains focused on reducing attrition by employing a multifaceted approach. As a result of the agency's efforts, attrition decreased to 4.3 percent in Fiscal Year 2016.

CBP continues to carefully study attrition rates and reasons why employees may choose to leave CBP employment, particularly to join other federal agencies or state and local law enforcement. In Fiscal Year 2016, 27 percent of attrition was from retirements. During the first six months of Fiscal Year 2017, retirement remains among the top reasons employees leave CBP.

After retirement, the top reasons for leaving the position are: 1) inability to relocate to a location considered more desirable and 2) a desire to be closer to family. We have also noted in the last several fiscal years, an increase in attrition due to losses to other agencies. Several agencies have the ability to offer higher levels of compensation and frequently offer employment in locations that are considered "metropolitan areas" which are highly competitive to many of the CBP's remote locations.

To address these issues, CBP is looking at a spectrum of steps to make the work environment more attractive for current employees, to include the greater use of retention incentives. CBP is also focused on exploring opportunities to utilize pay and compensation flexibilities such as special salary rates, relocation and retention incentives, tuition assistance, and student loan repayments to incentivize mission critical personnel to remain with CBP. Because mobility and assignment diversity are important to CBP's law enforcement personnel, CBP is also exploring new ways to utilize rotational assignments and reassignment opportunities.

The recent Federal Employee Viewpoint Survey showed improved trends for CBP relative to job satisfaction, leadership, and results-driven performance culture from Fiscal Years 2015 to 2016 and while this is a positive, the agency is studying additional avenues to address the retention challenge.

CBP greatly values the commitment of employees; however, we must find ways to address compensation and mobility concerns if we are to continue to improve.

Polygraph

CBP Statement for the Record: Perspectives from the DHS Frontline

Mr. Judd testified to the Committee in response to questions from Senator Lankford (R/OK) on pre-employment concerns.

"I will tell you right now we have -- I have spoken with Commissioner Kerlikowske, with Deputy Commissioner McAleenan and tell them and blue in the face about this polygraph issue and they just refused. If they change it, they have to admit that they were wrong. And they refused to admit they were wrong. We are not administering the polygraph correctly. If we do that, we will not have the kinds of problems we currently face. And Senator Flake is introducing legislation. Why does it take legislation to fix a problem that's this simple?"

Further, Mr. Judd responded to questions from Senator Hoeven (R/ND) on the disparity in the polygraph examination results:

"I believe that that Commissioner Kerlikowske put forth his anti -- he had an initiative that he put forward and I believe that to show that initiative, he had to have a high failure rate. And so now that we -- now that Commissioner Kerlikowske is no longer around -- I'm sorry -- the anti-corruption initiative is what he put forth. Now that we are going to have a new commissioner, I believe that we get to hit the reset but as Senator Heitkamp said, we can we can actually do it right because if he was to change the way he did the polygraphs he would have had to admitted that he was wrong. And we know people just don't like admitting that they're wrong."

U.S. Customs and Border Protection (CBP) continues to seek improvements to the polygraph program both internally and externally. Secretary Kelly has made clear that we will not lower standards to increase hiring, and ensuring our frontline personnel are of the highest integrity and trustworthiness is critical.

The *Anti-Border Corruption Act of 2010* ("ABCA") mandates that CBP polygraph its law enforcement applicants. The purpose of the ABCA was to effectively scrutinize and prevent corrupt individuals from being hired into frontline law enforcement positions within CBP. Though our standards remain uncompromising, CBP is taking a systematic approach toward addressing the Agency's staffing requirements under the Executive Order without compromising quality for quantity.

CBP is currently working to improve the administration of the polygraph examinations, including benchmarking against other agencies to look at ways to improve our protocols. As part of this effort, Acting Commissioner McAleenan recently approved the testing of a new polygraph protocol that is accredited by the National Credibility Certification Authority for testing with the next hiring announcement for Border Patrol Agents.

CBP is also considering whether to pursue flexibility to waive the polygraph requirement for certain candidates who have a demonstrated track record of integrity and service, such as

CBP Statement for the Record: Perspectives from the DHS Frontline

military veterans, federal, state, or local law enforcement personnel in good standing, who maintain current background examinations and in some cases have completed polygraph examinations previously.

CBP is also working with the Committee, providing technical assistance, on Senator Flake's (R/AZ), "Boots on the Border Act of 2017" (S. 595).

Air and Marine Operations

Mr. Judd testified to the Committee in response to Senator Carper's (D/DE) question on force multiplier solutions to obtain border security:

"Force multipliers are extremely important. What I will tell you is that we do have an awful lot of technology that were just flat-out not utilizing. For instance, early in my career helicopters flew at night. We had no problem getting night coverage and what's interesting is the vast majority of the arrest that take place on the border happen at night. Right now the Office of Air and Marine, they fly very little at night. In fact in RGB, we had to use Coast Guard to fly sorties in certain areas and when their apprehensions became so great, the officer, it's my understanding the officer at Air and Marine asked them not to fly anymore at night in RGB because it was making them look bad.

So, what we have to do is we have to take to the technology and the resources that we do have and we have to utilize that technology and resources correctly. But the problem is when we see on the Office of Air and Marine not utilizing the technology correctly or the way that we've utilized it before, and yet this individual who was the head of the Office of Air and Marine is now the acting deputy commissioner, you know, we're rewarding ineptness that's happened under his watch."

The total number of flight hours in coordination with U.S. Border Patrol has risen steadily since the creation of Air and Marine Operations (AMO). Since the merger in 2006, AMO's manned and unmanned enforcement flight hours dedicated to the USBP in the Rio Grande Valley (RGV) Sector has nearly quadrupled, from 1,905 to 7,412 in Fiscal Year 2016. Air and Marine Operations' night flight hours in the RGV area during Fiscal Year 2016 totaled approximately 2,560 or 31 percent of enforcement hours. Additionally, from 2006 thru 2016, approximately 95 percent of AMO's enforcement flight hours in RGV were dedicated to U.S. Border Patrol.

CBP maintains a positive, coordinated, and collegial relationship with the U.S. Coast Guard. U.S. Coast Guard aircraft have not been requested by the U.S. Border Patrol for land border operations. Through the Regional Coordinating Mechanism (ReCoM), the Coast Guard supports and executes many coastal and offshore aviation efforts in close coordination with CBP, but none on the land border. Further, Air & Marine Operations has not asked the U.S. Coast Guard to cease any operations. Through Joint Task Forces, JTF-W and the South Texas Corridor / Rio Grande Valley and associated ReCoMs, CBP and U.S. Coast Guard are confident that are

CBP Statement for the Record: Perspectives from the DHS Frontline

working relationship is where it needs to be and a lot of good work has resulted from our joint efforts."

Rockville, MD Case

Mr. Judd testified to the Committee in his opening remarks,

"Senator, had we have done our job, that 14-year-old girl would have never been raped, period. That's all there is to it. Had we have held those individuals in custody or that that one individual in custody pending a determination whether that person should be allowed to remain in this -- in this country, that rape wouldn't have happened."

CBP enforcement efforts were not compromised as it relates to the two juveniles who came into USBP custody last year. The juveniles were apprehended by CBP USBP Agents and processed pursuant to legal obligations under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 or "TVPRA" (Pub. L. 110-457), as amended, that requires all children under the age of 18 from Central America, to be turned over to the Department of Health and Human Service's Office of Refugee Resettlement (ORR). CBP had no role in the custody determination by HHS-ORR, and these processes are driven by statute. Although Mr. Judd alleges that "had we done our job" this horrible crime would have not occurred, we must clarify the record that CBP apprehended these individuals and turned them over through ICE to HHS. CBP enforced the law to the fullest extent.

Border Patrol Operations at Ports of Entry

Mr. Judd testified to the Committee in his opening remarks,

"...And you brought up that we're talking only about between the ports of entry. We are currently deploying Border Patrol agents to the ports of entry. It makes no sense. It absolutely makes no sense. We should not be using Border Patrol resources at the ports of entry."

The temporary deployment of Border Patrol agents (BPAs) to the Ports of Entry (POEs) are for short periods of time with minimal U.S. Border Patrol staffing to address counter-network objectives that benefit operations across the border. The deployments are centered around specific border security operations, like outbound currency or weapons smuggling, and/or for intelligence purposes. It is at the discretion of each Sector Chief Patrol Agent to consider any request for assistance to the POEs. Currently, CBP has a small number of BPAs assigned temporarily from within the following sectors for limited operations: Rio Grande Valley; Laredo;

CBP Statement for the Record: Perspectives from the DHS Frontline

Del Rio; Big Bend; Detroit and Tucson. The Havre Sector as well as the Buffalo and Houlton Sectors do not have any BPAs permanently assigned to any POE, however, in order to facilitate integrated operations and for additional work experience for the K9 teams, schedule permitting, K9 teams are assigned a POE on a limited basis. These K9 teams are still available for between the port operations if needed. Further, CBP does not have BPAs assigned to POEs within the following sectors: Yuma; El Centro; San Diego; Blaine; Spokane; Grand Forks; Ramey; New Orleans; and Miami.

Effectiveness Rates

Mr. Judd testified to the Committee in his opening remarks,

"We [USBP] only had a 50 percent effectiveness rate. That's the problem. So, not only were the individuals that we were actually arresting, not only were we releasing those individuals, but we were only apprehending one out of every two that was crossing the border illegally."

The Fiscal Year 2017 first quarter Interdiction Effectiveness Rate (IER) was 82.94. This measure takes into account three elements: apprehensions, turnbacks, and gotaways. Each day, stations review the data within their areas of responsibility to reconcile the data that makes up Border Patrol's IER.



Statement for the Record

**U.S. Senate Homeland Security & Governmental Affairs Committee
Hearing on**

**“Perspectives from the DHS Frontline: Evaluating Staffing Resources and
Requirements”**

March 22, 2017

The National Immigration Forum (Forum) advocates for the value of immigrants and immigration to the nation. Founded in 1982, the Forum plays a leading role in the national debate about immigration, knitting together innovative alliances across diverse faith, law enforcement, veterans, labor and business constituencies in communities across the country. Coming together under the Forum’s leadership, these alliances develop and advocate for legislative and administrative policy solutions. Through our policy expertise and work with diverse constituencies, the Forum works to uphold America’s long-standing tradition as a nation of immigrants and builds public support for comprehensive immigration reform, sound border security policies, balanced enforcement of immigration laws, and ensuring that new Americans have the opportunities, skills and status to reach their full potential.

Introduction

The National Immigration Forum thanks the Committee for the opportunity to provide its views and expertise on the matter of staffing resources and requirements at the Department of Homeland Security (DHS), particularly U.S. Customs and Border Protection (CBP). The Forum also thanks the dedicated men and women of CBP who work every day to keep our nation’s borders secure and facilitate commerce and travel into the United States. We acknowledge and appreciate the complexity and importance of CBP’s mission, which is charged every day with implementing a comprehensive approach overseeing customs, travel, immigration and border security responsibilities with a \$13.2 billion budget in fiscal year (FY) 2016 and more than 60,000 employees.¹ At the same time, we believe that creating a secure border takes more than just investing resources on one or a few components of CBP’s approach to border management and control. We urge the members of the Committee to address the on-going need to invest in a comprehensive approach to secure our borders and in policies that are humane, transparent, encourage commerce, and consider the impact these policies have on the tens of millions of Americans who live along our borders.

Congress should also consider the need to fix our broken and out-of-date immigration system. Leading national security officials agree that having a 21st century immigration system that promotes safety and security, benefits American workers and our economy, and provides earned legalization for otherwise law-abiding undocumented immigrants would have the most significant impact in promoting security at our borders.² We must choose policies that keep us safe, but that also facilitate trade, tourism and the economic health of the United States. With a

21st century immigration system, we can develop effective border security policies that promote safety along our borders and improve border management, while staying true to our principles as a nation of immigrants, economic innovation and common-sense laws.

Invest in Personnel and Infrastructure at Ports of Entry

CBP Office of Field Operations (OFO), which oversees the flow of commerce and immigrants at all 328 ports of entry in the United States, requires additional investments. CBP OFO plays a critical role in the economic health and national security of our country. In FY 2016, CBP OFO welcomed more than 1 million travelers each day – or 390 million for the year – and processed a total of nearly \$2.3 trillion in trade and more than 27 million cargo containers.ⁱⁱⁱ Yet, through FY 2014, CBP OFO identified a shortage of 3,811 OFO officers.^{iv} The magnitude of the shortage is amplified by the fact that adding a single CBP OFO officer to a port of entry would result in annual benefits of a \$2 million increase in our country's Gross Domestic Product (GDP), \$640,000 saved in opportunity costs, and 33 jobs added to the economy.^v While staffing for the Border Patrol nearly doubled between FY 2004 and FY 2014 (increasing from 10,819 to 21,381), CBP OFO staffing at ports of entry increased less than 25 percent during this period (from 18,110 to 22,274).^{vi} Investments to increase personnel levels at ports of entry can help better manage the flow of commerce and immigrants through our borders.

We also need to invest in infrastructure at our ports of entry to keep pace with increasing demand and security requirements. The revenue gained from trade at the border generates jobs for Americans – in fact, nearly six million American jobs depend directly on trade with Mexico.^{vii} Yet, wait times to cross the border are often long, sometimes up to a 55 minute delay for commercial vehicles,^{viii} which can detract from commerce and lead to billions of dollars in spoiled goods and opportunity cost. Furthermore, research shows that because enforcement resources have been so focused *between* ports of entry with Border Patrol agents, processing *at* ports of entry is often lacking. Individuals entering the United States without documentation through a land port have about a 1 in 4 chance of being apprehended, compared to 90 percent for those entering between ports of entry.^{ix} The need to invest in infrastructure, combined with CBP OFO understaffing, leave our ports of entry more susceptible to transnational drug, weapons and human smuggling. We believe that investment at our ports of entry, including in personnel and infrastructure, is an important and pressing aspect of border security and management.

Invest in Body-Worn Cameras for CBP

In addition, we encourage Congress to invest in funds to implement use of body-worn camera technology at CBP. The use of body-worn cameras in law enforcement has gained significant momentum in recent years as a best practice of 21st-century policing. CBP has already started the process of implementing body-worn cameras by requesting quotes to purchase 108 body-worn cameras.^x By fully investing in body-worn cameras, Congress would allow CBP to finally fund its implementation of body-worn camera technology in the agency's operating environments and to develop an agency-wide policy on the technology. Overall, the implementation of body-worn cameras in the agency would provide an additional layer of protection for CBP agents and officers and the millions of Americans who live in communities across the border. The evidence indicates that body-worn cameras lead, in one study, to 88 percent fewer complaints against officers^{xi} and fewer assaults,^{xii} creating a win-win solution for the public and law enforcement. Not only could body-worn camera technology reduce complaints, but it could also reduce use-of-force incidents,^{xiii} provide scenario-based training for future law enforcement agents and officers,^{xiv} and quickly resolve officer-related incidents.^{xv} The technology could also strengthen accountability and transparency on both sides, helping CBP to gain the

public's trust in border communities. CBP has a significant opportunity to be a leader in 21st-century policing by implementing body-worn cameras across the agency.

Invest in Fencing and/or Technology Where Effective

Congress should invest in funding to build barriers on the Southwest Border only where the use or placement of such a barrier is the most appropriate solution and fencing has not already been built. CBP has already built fencing or other physical barriers on the areas that they have determined are operationally necessary. In 2011, the Border Patrol identified a total of 652 miles of the Southwest Border as operationally necessary for fencing and barriers.^{xvi} By 2015, the United States had built border fencing along 653 miles of the Southwest Border, including 353 miles of primary pedestrian fencing, 300 miles of vehicle fencing, 36 miles of secondary fencing behind the primary fencing, and 14 miles of tertiary pedestrian fencing behind the secondary fence.^{xvii} As a result, it is important that Congress provide DHS with the discretion in consultation with local communities to determine whether a fence is the most appropriate option to secure any additional areas of the border, since constructing a wall spanning the entire Southwest Border would cost between \$25 billion to \$31.2 billion.^{xviii} It is estimated that it would cost about \$274 million to maintain the fence already built along the Southwest border. A fence that is nearly three times longer is estimated to cost at least \$750 million a year to maintain.^{xix} Congress should support barriers on the Southwest Border where DHS, with the input from local communities, determines it is appropriate.

Congress should also continue to provide appropriations for CBP to use modern technology to monitor areas on the Southwest Border and elsewhere in which a physical barrier is not the most appropriate solution to secure the border. CBP already relies heavily on technology, which at times serves as a better force multiplier than a fence, in order to secure the United States' borders and ports of entry. In 2015, CBP had at least 273 remote video surveillance systems with day and night cameras deployed on the Southwest Border.^{xx} In addition, the agency used 49 mobile surveillance systems, which are truck-mounted infrared cameras and radar.^{xxi} CBP also has applied mobile surveillance systems, remote video surveillance systems, thermal imaging systems, radiation portal monitors and license plate readers in the Southwest Border and operates at least 10 Predator B unmanned aerial drones, which provide surveillance of the border along Arizona, New Mexico and Texas.^{xxii} Congress should continue to assess the effectiveness of these technologies and to invest in technology to monitor areas of the border where building a fence is not appropriate and such monitoring is necessary.

Invest in a Federal Program to Remove Carrizo Cane and Salt Cedar Plants

Another investment to ensure safety at our borders is to fund a federal program to eradicate the invasive and nonnative Carrizo cane and salt cedar plants along the Rio Grande Valley in Texas, which would provide the Border Patrol with greater visibility and access to the Rio Grande.^{xxiii} As border community residents like Dennis E. Nixon, the CEO of International Bank of Commerce in Laredo, Texas, have noted before, the density of the Carrizo cane and salt cedar plants allows the plants to become a hiding place for immigrants and criminals who unlawfully enter the United States and, in that process, makes the Border Patrol and other law enforcement agents vulnerable to criminal groups.^{xxiv}

These plants, which cover between 30,000 and 60,000 acres, must be removed from the riverbanks and re-populated with native prairie grasses that have limited growth potential and can be easily and economically maintained. Estimates indicate that it would cost approximately \$200,000 to remove 700 acres of the Carrizo cane and salt cedar plants. The total cost to remove

up to 60,000 acres of cane would be approximately \$17.1 million.^{xxv} Once the Carrizo cane and salt cedar plants are eradicated, the Border Patrol will have access to patrol the riverbank and full view of the area. Furthermore, the Border Patrol's visibility of the riverbank can be enhanced with more investments in modern technology. Unlike a wall or obstructive fence, which would limit physical access to the riverbanks and block Border Patrol agents' visibility, eradicating the Carrizo cane and salt cedar plants is a faster, more affordable and more effective approach to patrol and control the Rio Grande. This approach grants Border Patrol agents the physical access and visibility to protect the border.

Don't Change Security Standards

We urge Congress to maintain DHS' current security requirements related to the hiring and onboarding of new personnel. On February 20, 2017, DHS Secretary John Kelly issued a memorandum directing CBP to begin the process of "immediately hiring" 5,000 additional Border Patrol agents.^{xxvi} This proposed hiring surge would be the largest since Congress doubled the number of Border Patrol agents from nearly 10,000 in FY 2001 to nearly 20,000 in FY 2008.^{xxvii} During that hiring surge, the Border Patrol had trouble screening candidates, leading to a spike in internal corruption cases.^{xxviii} In response, Congress passed the Anti-Border Corruption Act in 2010, which led to polygraph testing as a requirement for all Border Patrol agents.^{xxix} CBP now adheres to established best practices to ensure those selected for duty can carry out the responsibilities that are expected of them. However, changes to the hiring process, such as loosening the requirement for polygraph examinations that candidates undergo as part of a background investigation, increase the risk for corruption. To assist the dedicated CBP agents who work every day to keep our nation's borders secure, we must maintain the current security requirements to help CBP regain the public trust and strengthen its ties with communities along the border.

Carefully Examine Whether More Border Patrol Agents are Needed

Congress provided funds in FY 2016 to station 21,370 Border Patrol agents -- an all-time high level and more than double from FY 2000 -- along our country's borders.^{xxx} Yet, on February 20, 2017, DHS Secretary John Kelly directed CBP to begin the process of hiring 5,000 additional Border Patrol agents.^{xxxi} We urge Congress to carefully examine whether spending money to hire and station more than 21,370 Border Patrol agents along our country's borders is the most effective investment to secure our borders. At the moment, CBP has not hired the 21,370 personnel authorized by Congress. CBP had 19,828 Border Patrol agents in FY 2016, which means that the agency still has to hire an additional 1,542 agents with the funds already obligated by Congress last year.^{xxxii}

In addition, investing in additional Border Patrol agents may not be the most appropriate use of American taxpayer funds. The Border Patrol's budget increased from slightly more than \$1 billion in FY 2000 to almost \$3.6 billion in FY 2016, or about 245 percent in fifteen years.^{xxxiii} As the Border Patrol's budget expanded, the amount spent by the Border Patrol per apprehension at the border increased almost 1,300 percent from \$630 per migrant in FY 2000 to over \$8,760 per migrant in FY 2016.^{xxxiv} Meanwhile, the average annual number of apprehensions for each border patrol agent dropped from 182 in FY 2000 to just less than 21 in FY 2016.^{xxxv} Investment in additional Border Patrol agents to secure the border will not provide significant returns on border security, partly because the number of apprehensions at the border has dropped from about 1.6 million in FY 2000 to less than 416,000 in FY 2016, a 75 percent decrease.^{xxxvi} We encourage Congress to carefully examine whether adding an additional 5,000 Border Patrol agents is the most effective solution for border management and control.

Conclusion

We thank the Committee for holding this hearing and considering the best policies related to CBP staffing resources and requirements while facilitating trade, tourism and the economic health of the United States. We support investment in policies that are thoughtful, effective, and improve border management, including investments at ports of entry, in body-worn cameras for CBP agents and officers, in modern technology at the border, and in a program to remove Carrizo cane and salt cedar plants along the Rio Grande Valley in Texas. In conclusion, one of the most important and cost-effective aspects to ensuring that our borders are secure is to pass legislation that would create a 21st-century immigration system.

ⁱ *Consolidated Appropriations Act of 2016*, Public Law No. 114-113, 129 Stat. 2242 (December 18, 2015): <https://www.congress.gov/114/plaws/publ113/PLAW-114publ113.pdf>.

ⁱⁱ Chertoff, Michael, Janet Napolitano and Tom Ridge, "8th Anniversary of the Department of Homeland Security (DHS) Roundtable," interview by Andrea Mitchell, Georgetown University (March 2, 2011): <https://www.dhs.gov/news/2011/03/02/8th-anniversary-roundtable-transcript>.

ⁱⁱⁱ "CBP Facilitates Record Level of Travelers and Modernizes Trade Systems in FY 2016," U.S. Customs and Border Protection (January 12, 2017): <https://www.cbp.gov/newsroom/national-media-release/cbp-facilitates-record-level-travelers-and-modernizes-trade-systems>.

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^v "CBP's Role in Strengthening the Economy," U.S. Customs and Border Protection (May 2014): <https://www.cbp.gov/sites/default/files/documents/Fact%20Sheet%20ROS%20CBP%20Strengthening%20Economy.pdf>.

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^{xi} "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," Police Executive Research Forum (2014):

http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf. Citing: Farrar, William, "Operation Candid Camera: Rialto Police Department's Body-Worn Camera Experiment," *The Police Chief* (January 2014): 20-25.

^{xii} Michael D. White, Police Officer Body-worn Cameras: Assessing the Evidence 6, Office of Justice Programs Diagnostic Center, Department of Justice (2014):

<https://www.ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

^{xiii} Ibid.

^{xiv} "Implementing a Body-Worn Camera Program," 8.

^{xv} Lopez, James, Jacinta S. Ma and Josh Breisblatt, "Body Cameras and CBP: Promoting Security, Transparency and Accountability at Our Nation's Borders," National Immigration Forum (November 6, 2015): 13. <http://immigrationforum.org/wp-content/uploads/2015/11/Body-Cameras-and-CBP-Report-11062015.pdf>.

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Post-Hearing Questions for the Record
Submitted to Brandon Judd
From Senator Claire McCaskill
“Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements”
March 22, 2017

1) Are an appropriate number of Border Patrol agents physically patrolling the border every day? If not, how many Border Patrol agents are needed on patrol to secure the southern and northern borders?

A1) There are not. As I stated, we are 1,700 Agents below the Congressional mandated floor and our current rate of hiring is not even keeping up with attrition. Already, we are seeing how the lack of manpower is impacting our ability to counter the cartels. I believe we need a total force strength of 26,370 Agents. Furthermore, as uniformed law enforcement agents we do not have traditional weekends. We work 7 days a week and 24 hours a day requiring us to assign days of duty during the entire week. Because of this structure, on any given day we have approximately 40% of our manpower off duty. Approximately 30% of our manpower are performing administrative duties, while only 30% are assigned patrol duties. I'll explain how this can be fixed in my answer to your second question.

2) At the hearing and in meetings with Committee staff, you mentioned that there are inefficiencies within Customs and Border Protection (CBP) that include high management to agent ratios, and the unproductive use of Border Patrol agents' time. What do you think are the most pressing inefficiencies facing CBP with regard to the Border Patrol? How, if at all, can these inefficiencies be remedied?

A2) Let me give you three examples:

1. We have twice the number of managers as we should. There is no reason why, through attrition, we could not go from our current ratio of about 4.5:1 to 9:1. A good number of our managers are nearing retirement age and as they depart, I believe we should not back fill the position until we reach a proper ratio. Doing this would put another 2,000 Agents into the field. This does not negate our need for 5,000 new Agents. Our recommendation of 5,000 was predicated on us “right sizing” a bloated agency.
2. We currently task law enforcement agents to perform administrative processing duties of all individuals we apprehend. This is incredibly time consuming and a waste of resources. Administrative processing could be contracted out or government employees could be hired at a lower GS level without law enforcement authority. Under INS, we used to have Detention Officers who performed a lot of our administrative duties, but when DHS was created, we lost Detention Officers.
3. When I first joined the Border Patrol and we were part of the Department of Justice, we had our own air support. The pilots were all Border Patrol Agents. They knew their areas of operation like the back of their hand, they knew the Border Patrol, and when you called for help you got it. When Congress created the Department of

Homeland Security, our air support was eventually spun off into what is now AMO. Having AMO as a separate organization in my opinion was a mistake. We do not have the same flight hours we once had and the bulk of the flight hours take place at times when we have the least amount of illegal border crossings. Instead of acting as a supporting organization, AMO is attempting to carve out a distinct mission. I believe that AMO should be put under Border Patrol's control.

3) If CBP were to address some of its management problems and inefficiencies, such as the use of agent time to perform administrative tasks, how many additional Border Patrol agents would the Border Patrol need to fulfill its mission? How many additional support staff would be needed?

A3) As I stated earlier, if we can reform the management structure at Border Patrol and shift some of the administrative tasks to civilians, such as processing, I believe we would still need an additional 3,500 Agents on the southwest border and an additional 1,500 agents on the northern border.

One of the things that I would like to point out is that staffing at OBP is very different than OFO. For example, OFO knows exactly how many planes are landing at Dulles International Airport on a given day and how many officers it will take to process the passengers in a reasonable amount of time. Their staffing model is relatively straight forward. This is not the case with OBP because we are always being probed by the cartels. Ground zero for illegal immigrants and drug smuggling used to be San Diego and El Paso. When the Border Patrol addressed those two key smuggling corridors, traffic shifted to the Tucson, Arizona Border Patrol Sector because we had very little manpower in that sector. We no sooner plugged one hole in the dike when another one opened up. If we do not comprehensively address border security, we will never get a handle on the problem, this includes the northern border.

4) If Border Patrol hires 5,000 additional agents, should they all be stationed at the southern border? If not, where should they be stationed?

A4) Absolutely not. We are recommending that 3,500 go to the southern border and 1,500 to the northern border. We are woefully understaffed at the northern border and at any given time we only have approximately 350 Agents covering 4,000 miles of some of the toughest terrain in this country.

Border Wall

President Trump has ordered that a 2,000 mile concrete border wall be built on the southern border.

5) At the hearing you stated that improving existing fencing instead of building a 2,000 mile concrete wall could help secure the border. Why would this be more efficient and/or effective?

A5) Right now we only have 350 miles of primary border fencing along the southern border. Before we build one more mile of primary fencing, we need a secondary fence behind what we already have. A secondary fence allows us to maximize our manpower.

In areas where we only have only a primary fence, it takes approximately one Agent to control one mile of the border. Where we have a secondary fence one Agent can control approximately 3 miles of the border.

In terms of additional primary fencing, I believe we need approximately 300 additional miles. Priority areas for me would be Del Rio and Laredo Texas and the Tohono Odom Indian reservation in Arizona.

Whistleblower protections

During the hearing on March 22, 2017, hearing participants discussed instances of retaliation against whistleblowers and reluctance amongst agents and officers to report waste, fraud and abuse.

6) Have any of your members reported similar problems? If so, please provide details.

A6) Yes we have and let me give you one example relevant to this Committee. On March 17, 2015 Border Patrol Agent Chris Cabrera testified under oath before the HSGAC Committee that the Border Patrol was manipulating the statistics on apprehensions. Specifically, Border Patrol management was requiring that if an Agent detected more than 20 sets of foot prints they were required to call a supervisor to the scene to verify the number. This supervisor call out requirement often times took over an hour and in many instances meant the entire group of illegal immigrants or drug smugglers evaded capture entirely. Agents who regularly called out groups larger than 20 were subsequently assigned undesirable duties as punishment.

The reason that management was doing this is because a key metric that the Border Patrol considered and used at the time to tout their effectiveness was “got aways”. For example, if you see 30 footprints and you catch 20 individuals you know that 10 individuals “got away”. Management knew that if they artificially suppressed the true size of the groups that illegally crossed the border, it would lower the number of “got aways” and make the Border Patrol appear more effective than it actually was. Border Patrol regularly asserted that it was apprehending nearly 75 to 80 percent of the illegal traffic. However, if you ask any field Agent what the apprehension rate was they would tell on a good day it was less than 50 percent.

Within 48 hours of Agent Cabrera’s testimony, he was issued what is known as a Notice to Appear (NTA) by DHS. NTAs are issued to Agents facing disciplinary action so that they can be questioned. The Border Patrol Council informed the Committee immediately of the NTA and Senator Johnson personally called then Deputy Secretary Mayorkas. Senator Johnson made it clear that the Committee would not allow its witnesses to be intimidated. After the call, the NTA was immediately withdrawn.

Similarly, I testified before the House Judiciary Committee in 2015. During my testimony, I provided agency statistics that showed that we were approximately 50% effective in apprehending known illegal border crossers. Within a week of the hearing the agency retaliated against my agents by suspending their Health Improvement Program. They did not suspend the program for management, they only suspended it for the rank-and-file who I was elected to represent. They suspended it after my testimony even though they knew their operations were

unsuccessful due to the months and months of data they had. The agency knew the rank-and-file would take out their ire on me – an elected official – which they did.

It was also right after this testimony that I was informed that the agency was looking into the possibility that I and other NBPC officers were corrupt. The allegations, which came from management were completely unfounded.

I want to raise these issues because there is legislation that has passed the Oversight Committee in the House (H.R. 1364) that may eventually come before this Committee. H.R. 1364 is an attack on official time and specifically prohibits federal employees from educating Congress on official time. It also denies any retirement credit for employees who are 100 percent official time.

If Congress does pass H.R. 1364, it will effectively be cutting off a valuable source of information about what is really going on in the Executive Branch. This legislation would preclude, in my opinion, Congressional testimony or even answering your staff's questions related to border security. In case of Agent Cabrera's testimony, the fact that he has 100 percent official time does afford him a small measure of protection against retaliation. Although we are eternally grateful that Senator Johnson acted so quickly to defend Agent Cabrera that is not a long term solution. At the hearing you were adamant that whistleblowers can come forward and be protected. I appreciate your willingness to stand behind people who want to do the right thing however, many potential whistleblowers are 20 years away from retirement. They need more than the personal assurances from an individual Senator that they will be protected.

Lack of hiring plan

7) Does CBP need additional Human Resources (HR) staffing to hire 5,000 additional agents? What other staff (polygraphists, security specialists etc.) would be necessary in addition to HR staff in order to onboard additional agents?

A7) This is something that would be best addressed by the agency. I am unsure whether their current manpower can process the hiring of 2,700 new Agents every year for next 5 years. I do know that there will be through put issues at the academy which I believe can handle approximately 1,200 prospective Agents per year.

8) What does CBP management need to do to prepare for onboarding an additional 5,000 agents?

A8) I think one of the things that CBP needs to do is take a look at the training at the academy. During the Bush Administration, the academy was cut from about 20 weeks to as little as 55 days if you spoke Spanish. This was a critical mistake and we need to return to a 20 week academy like the rest of federal law enforcement.

9) What problems currently exist with the polygraph process? How should they be addressed?

A9) Let me address this in a larger sense. The goal of the whole hiring and training process is to onboard individuals who have both the personal character and the judgement to be in federal law enforcement. Law enforcement is not for everyone and the hiring and training process ideally should be there to make sure undesirable applicants are not hired.

Personally I think we have put too much weight on the polygraph and it should be an element in the hiring process, but not the deciding factor. You can have an individual pass the polygraph who is dishonest person, but bluffs their way through. This dishonestly can come to light during the background investigation. You can have a person pass the polygraph, but makes all the wrong tactical decisions in the field. Finally you can have a person pass the polygraph who is lazy and does the bare minimum.

What I would advocate for is a polygraph, a vigorous background investigation, and then a difficult training academy. All three of these measures will not only weed out malfeasance, but also give us a workforce that is worthy to serve in the Border Patrol.

Enforcement Priorities

10) What kind of guidance or training has CBP provided to Border Patrol agents outlining Secretary Kelly's enforcement priorities? Was this guidance sufficient? Have Border Patrol agents had trouble implementing or understanding these priorities?

A10) The agency has provided little to no training on the enforcement priorities. In my sector for instance, the only thing provided was a "read and sign" of the Border Security Executive Order. In other words, we were instructed to sign a log indicating that we read the Executive Order. We didn't have to understand it, we just had to read it. In short, our training on priorities or how to go about our mission has been nearly non-existent. Yes, agents have had a difficult time understanding the priorities, so much so that I had to send an email to Acting Commissioner McAleenan and Chief Patrol Agent Vitiello outlining the difficulties.

Post-Hearing Questions for the Record
Submitted to Mr. Brandon Judd
From Senator Kamala Harris

“Department of Homeland Security Staffing Resources and Requirements”

April 6, 2017

The President’s executive order requires that CBP hire an additional 5,000 border patrol agents, an increase of nearly 25%. On February 17, CBP Acting Commissioner Kevin McAleenan issued a memo suggesting that the current hiring standards for CBP be lowered by loosening the polygraph testing standard currently in place.

Q1 Do you agree that loosening current hiring standards, particularly as CBP looks at a significant hiring surge, would leave the agency more vulnerable to corruption and security risks that could impede the integrity and safety of the entire workforce?

A1 I would not categorize what CBP is proposing as loosening standards or threatening the integrity of the agency’s workforce. CBP’s current process is simply not working and last year we were able to hire only about 500 new Agents. The reforms being suggested by CBP frankly make sense. If an applicant, for example, is currently serving as a local law enforcement officer and passed that agency’s polygraph recently I do not see why we could not accept that.

Q2 Do you agree that we can expect drug cartels and other bad actors to use this hiring surge as a means of infiltrating the CBP just as they did during the previous hiring surge?

A2 I do not think that this hiring surge, if done correctly, will present any greater danger than the danger we already face. To be clear, the cartels are always looking for vulnerabilities and they have never stopped trying to undermine the Border Patrol. Personally, I think the greater danger is the lack of manpower. We are currently 1,700 Agents below the Congressional mandated floor. That is approximately the size of the entire Tucson or El Paso Police Department and is a greater threat to our security.

President Trump has proposed building a wall across the southern border that could cost upwards of \$66 billion based on current per-mile cost information provided by the CBP. The Administration made a supplemental request of \$999 million for FY17 and \$2.6 billion in FY18 to move forward with construction on the wall. In a January 26, 2017 NPR interview when asked about President Trump’s plan to build a wall, you stated “but what we’re talking about is a wall in strategic locations. We’re not talking about a great wall of the United States. We’re not talking about a continuous wall from California down to Texas. We’re talking about a wall in strategic locations which then helps the Border Patrol agents do their job better.”

Q3 Do you still believe a continuous wall along the southern border is not necessary?

A3 I do. Right now we currently have 350 miles of primary fencing along the southern border. Before we build one more mile of primary fencing, we need a second fence behind what we already have. This secondary fencing will allow us to maximize our manpower. In areas where

we only have a primary fence, it takes one Agent to control one mile of the border. Where we have a secondary fence, one Agent can control approximately 3 miles of the border.

Q4 Which specific “strategic locations” are you referring to where you believe that a wall will help agents do their job better?

A5. In terms of additional primary fencing, I believe we need approximately 300 miles. Priority areas for me would be Del Rio and Laredo Texas and the Tohono Odom Indian reservation in Arizona.

**Post-Hearing Questions for the Record
Submitted to Anthony Reardon
From Senator Claire McCaskill
“Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements”
March 22, 2017**

Whistleblower protections

During the hearing on March 22, 2017, hearing participants discussed instances of retaliation against whistleblowers and reluctance amongst agents and officers to report waste, fraud and abuse.

- 1) Have any of your members reported similar problems? If so, please provide details.

I am not aware of any instances of retaliation against whistleblowers at CBP’s Office of Field Operations (OFO). By law, NTEU must represent the interests of all employees in the unit it represents, without regard to labor organization membership, including employees who face sexual harassment, hostile work environments, retaliation, and who want to act as whistleblowers.

NTEU presence in the workplace allows the union to represent employees who want to act as whistleblowers or who are retaliated against for whistleblowing activities. Consequently, there is less reluctance on the part of employees to report waste, fraud, abuse, and illegal activity without fear of retribution by management.

Recruitment

- 2) How can CBP improve the hiring process? Please provide examples of specific changes that you think should be implemented.

Besides the complaints about the polygraph process, NTEU has heard that CBP candidates frequently are subject to a segmented hiring process where they are required to travel hundreds of miles in some cases to fulfill the tests and procedures required under the application process, and there may be breaks between each of these activities. This can be a significant hardship for applicants that results in them dropping out of the hiring process.

In addition to improving the lengthy and segmented hiring process, NTEU believes that CBP should ask for the authority and use recruitment, retention and relocation incentives (3 Rs) to attract candidates to remote or hard-to-fill locations. When using a recruitment incentive to attract employees to a certain location, CBP must be mindful that this incentive should be used in conjunction with retention incentives. Otherwise, the agency has newly-hired employees working side-by-side with veteran employees that not only are denied the opportunity to transfer out, but may also now be paid less than new recruits. The 3 Rs are also needed to attract transfers to the most severely short staffed ports, such as San Ysidro, Nogales and Laredo.

Finally, if the hiring problems that have left over 3,000 funded CBP positions vacant are rectified and as CBP embarks on the hiring of additional frontline personnel as set forth in recent Executive Orders, CBP may need to expand their training classes. When experiencing a hiring surge in the past, the Federal Law Enforcement Training Center (FLETC) instituted a 6-day training program to accommodate the expanded classes. NTEU supports FLETC 6-day training, as long as the employees are paid for 6 days of training.

- 3) Are you concerned that the pending hiring surge at Immigration and Customs Enforcement (ICE) will pull a large number of CBP agents and officers away to become ICE officers and create further staffing shortages on the border and at ports of entry? What do you think can be done by CBP management to eliminate this issue?

One factor that makes applying for an ICE agent job more appealing than applying for a CBP Officer position is that ICE agent applicants are not required to take a polygraph.

NTEU has grave concerns about the Secretary's intent to unify pay systems at DHS. The number one recruiting and retention tool for CBP Officers and Agriculture Specialists that keeps these positions competitive with other federal law enforcement agencies is the Customs Officer Pay Reform Act (COPRA) pay system. COPRA contributes to the low OFO attrition rates, corresponding high retention rates, and the high-quality caliber of uniformed employees. CBP Officer and Agriculture Specialist morale would plummet if COPRA were replaced by another pay system.

- 4) Would eliminating the polygraph requirement improve the hiring process?

NTEU does not seek to reduce the standards used by CBP in their hiring process, but believes that there is a problem with how the polygraph is currently administered. We ask for CBP to review its current polygraph policy to understand why CBP is failing applicants at a much higher rate than individuals applying to work at other federal law enforcement agencies. Also, because ICE does not require polygraphs for job applicants, it is likely that CBP will not be competitive with ICE in attracting new hires. Congress should weigh requiring ICE applicants to also take the same polygraph required for CBP applicants.

NTEU commends Congress for including in the FY 2017 Defense authorization bill a provision that authorized the CBP Commissioner to waive polygraph examination requirements for certain veterans applying for CBP job openings. Congress is currently considering additional legislation that further expands the authority to waive polygraph examinations for veterans and allow exemptions for existing state and local law enforcement officers who apply for these positions. NTEU has asked to be included in these discussions and to work with CBP and Congress in drafting needed legislation.

- 5) Please describe any feedback that you have received from NTEU members on the necessity and effectiveness of CBP's use of the polygraph as a vetting tool.

NTEU has received considerable feedback on the polygraph. The majority of the comments are that the manner in which the polygraph is administered is unnecessarily grueling and abusive. Many applicants have walked out or declined to pursue a job at CBP, even after they have passed the polygraph. The current polygraph now serves as a deterrent to potential job applicants. Current CBP employees are the best recruiters for these jobs, but as they hear about the polygraph experiences from high caliber applicants that they know, they no longer recommend that family and friends apply for these jobs.

Enforcement Priorities

- 6) What kind of guidance or training has CBP provided to CBP officers outlining Secretary Kelly's enforcement priorities? Was this guidance sufficient? Have CBP officers had trouble implementing or understanding these priorities?

CBP Officers do their jobs as directed by law and policy. When a new policy goes into effect, it is always prudent for sufficient notice of any changes to be provided and for clear, precise, and uniform guidance to be issued. CBP Officers operate with professionalism and, when a citizen is flagged for secondary inspection, which usually consists of reviewing passport and other travel documents with CBP personnel at the national targeting center, Officers do their job as efficiently as staffing allows. Again, CBP Officer staffing shortages affect the time travelers spend in secondary inspection.

Then, as now, NTEU's primary concern is to make sure that staffing and resources at the port of entry are addressed. Whatever Congress does to address illegal crossings between the ports, with either increased BPA staffing and or a new wall or fencing, will funnel more illicit incursions into the POEs where there are already severe staffing shortages.

**Post-Hearing Questions for the Record
Submitted to Mr. Anthony Reardon
From Senator Kamala Harris
“Department of Homeland Security Staffing Resources and Requirements”
April 6, 2017**

President Trump’s recent budget proposal provides for hiring of 5,000 additional border patrol agents, 10,000 immigration enforcement officers, and over \$4 billion for the construction of a wall along the southern border. This budget request comes despite the fact that apprehensions at the border have decreased by 75% since 2000. Yet, as you noted in your testimony, the Administration’s budget proposal does not include any increases for Office of Field Operations (OFO) agents responsible for overseeing operations at the nation’s 328 official ports of entry. OFO plays a critical role in protecting our country from terrorism and national security threats.

1. In your assessment, what national security risks are we currently facing by continuing to underfund the OFO?

In fiscal year 2016, CBP officers at the ports of entry encountered over 274,000 undocumented immigrants, seized over 600,000 pounds of illegal drugs, as well as over \$62 million in illicit currency, while also processing over 390 million travelers and \$2.2 trillion in imports through the ports.

Whatever Congress may do to address illegal crossings between the ports, whether by increasing Border Patrol Agent staffing and/or by adding a new wall or fencing, would just funnel more criminals, terrorists, drug and human smugglers into the ports of entry where there are severe staffing shortages. There is currently a staffing shortage of 3,500 CBP Officers and 631 Agriculture Specialists.

Prior to the establishment of DHS, the only international terrorist trying to enter the country was the millennial bomber who was apprehended at Port Angeles, Washington. His car was pulled over for further inspection because the Customs Officer spotted anomalies in the car’s look and the driver’s behavior. Such observations take skill, experience and time. Short staffing at the ports undermine the Officer’s ability to use all three of these factors while performing their duties.

The risk of successful incursions through the ports of entry by terrorists, smugglers and other criminals increase when ports are under constant pressure to limit wait times while working short-staffed. Ports need to hire up to the level specified in CBP’s own workload staffing model in order to address existing trade and travel traffic. If this traffic increases significantly due to routing illegal activity, as well as undocumented individuals, into the ports, it will become impossible for CBP Officers and Agriculture Specialists to stop bad people and bad things from coming through the ports without significantly increasing overall wait times, which harms legal international trade and travel.

2. What are the public safety risks of underfunding and understaffing at OFO?

The public safety risks of underfunding and understaffing at OFO are overwhelming for CBP Officers, especially for those “drafted” to work up to 16 hours a day, day in and day out, at severely short-staffed ports, such as San Ysidro.

At short-staffed ports, drafting occurs during the Officers’ first shift. A supervisor will draft an employee for an additional 8 hours near the end of their first 8 hour shift. The Officer ultimately works 16 hours straight. This leaves 8 hours until their next shift. An Officer may get 5 hours of sleep before having to wake up and suffer more, physical, mental and emotional exhaustion.

Below is a testimonial from just one of dozens of CBP Officers at San Ysidro/Otay Mesa Passenger Operations that have contacted NTEU about the effect of short staffing on their physical and mental health and on the wellbeing on their family, coworkers and people that they serve:

The 16 hour shift in particular has me worried as an officer. There is no way an officer can make good decisions when working past 12 hours. We carry guns and have to make serious life threatening decisions while drafted and working 16 hours. When I work 16 hours it is usually after the 12th hour that I find myself losing focus and energy. It is not safe for me to be in a gun carrying position and work those long hours. Last year, a fellow CBP officer that worked on my shift crashed his vehicle on his way home after being drafted to work 16 hours. He fell asleep at the wheel a few blocks from his home and hit a couple of vehicles.

Speaking with fellow officers I have found that the overall morale of this port is extremely low. I feel that the number one reason for this is that nobody knows if they will be allowed to go home at the end of their shift because they might get drafted to stay another 8 hours. There is a revolving door for new officers. The new officers arrive, get drafted, look for a new job, and then leave. Most of the officers I work with are constantly looking for a new job so that they can leave this place. The crazy thing is that San Diego is a beautiful city to live in but when you don't have the time to enjoy your life, it is no wonder everyone wants to leave San Ysidro.

As you can see, this is a miserable, unrelenting experience and is unsustainable. With a vacancy rate of 350 funded Officer positions at the San Diego Field Office alone and with no improvement in sight in the hiring process or the funding of additional new hires, CBP OFO will continue to burn out and wash out existing employees and new recruits.

3. What is the economic impact to the United States through continuing to underfund the OFO and our ports of entry?

According to the Joint Economic Committee (JEC), “every day 1.1 million people and \$5.9 billion in goods legally enter and exit the U.S. at these ports of entry.” Increasing CBP Officer staffing at the ports of entry is an economic driver in the trade and travel industry. CBP OFO pursues a dual mission of safeguarding American ports, by protecting the public from dangerous people and materials, while enhancing the Nation’s global and economic competitiveness by enabling legitimate trade and travel.

The volume of commerce crossing our borders has more than tripled in the past 25 years. Long wait times lead to delays and travel time uncertainty, which can increase supply chain and transportation costs. According to the Department of Commerce, “border delays result in losses to output, wages, jobs and tax revenue due to decreases in spending by companies, suppliers and consumers.” JEC research finds border delays cost the U.S. economy between \$90 million and \$5.8 billion each year.

CBP estimates that hiring an additional 1,000 CBP Officers at the ports of entry would increase economic activity by \$2 billion and result in an additional 33,148 jobs per year in the U.S. economy.

Congress must fund and hire the needed 3,500 CBP Officer and 631 CBP Agriculture Specialist positions to adequately staff the port of entry to mitigate the country’s national security threats, address public safety risks and to grow the economy.

**Post-Hearing Questions for the Record
Submitted to Chris Crane
From Senator Claire McCaskill**

“Perspectives from the DHS Frontline: Evaluating Staffing Resources and Requirements”

March 22, 2017

Lack of hiring plan

The hiring of an additional 10,000 ICE officers is a massive undertaking. It requires careful and deliberate planning, and staff to process applications and vet applicants. ICE has told us that in addition to the additional 10,000 officers and agents, they plan to hire an additional 6,000 additional support staff to fulfill their mission.

- 1) Do you think 6,000 additional support staff is an appropriate number to complete ICE’s mission?
- 2) Do you have concerns about ICE’s ability to recruit and onboard this many people while also trying to recruit and onboard the additional 10,000 officers? If yes, what do you think could be done to mitigate your concerns?
- 3) What is the current management culture at ICE? Can ICE sustain the onboarding and management of an additional 16,000 individuals?

Recruitment

In the past when hiring surges have moved too quickly, some officers with criminal backgrounds were hired.

- 4) Are you concerned that filling 10,000 new positions will force your organization to lower standards in exchange for filling these positions? What plans are currently in place to ensure this doesn’t occur?
- 5) Do you think ICE leadership would be willing to sacrifice training standards in order to gain large numbers of additional agents quickly?
- 6) Why does ICE struggle with recruiting women for front-line positions? What do you believe should be done to remedy this persistent problem?
- 7) Are you in favor of ICE adding the polygraph to its intake process? If so, what experiences have led you to this belief? What do you believe the polygraph adds and/or subtracts from the intake process?

Whistleblower protections

During the hearing on March 22, 2017, hearing participants discussed agency retaliation against whistleblowers.

- 8) Can you please share some specifics of any instances you are aware of?

Training of front-line agents and officers

- 9) How can ICE improve the hiring process? Please provide examples of specific changes that you think should be implemented.

Enforcement Priorities

- 10) What kind of guidance or training has ICE provided to agents and officers outlining Secretary Kelly's enforcement priorities? Was this guidance sufficient? Have officers and agents had trouble implementing or understanding these priorities?

**Witness responses to questions submitted for the record were not received
by time of printing.**

**Post-Hearing Questions for the Record
Submitted to Mr. Chris Crane
From Senator Kamala Harris**

“Department of Homeland Security Staffing Resources and Requirements”

April 6, 2017

During your testimony on March 22, you stated that you are not aware of any specific training that has been provided to ICE officers related to the seven enforcement priorities listed in Secretary Kelly’s memo issued on February 20 entitled “Enforcement of the Immigration Laws to Serve the National Interest.”

1. Have you since become aware of such training, and, if so, please describe the training and/or guidance that has been provided?
2. How is the training being furnished and communicated to officers and at what intervals?
3. If the training and/or further guidance is in writing, please furnish a copy of the same. If the training was verbal, please provide a written summary of the same.
4. You noted in the hearing on March 22, “the priorities don’t work on the street, the way they worked in the Obama Administration,” with regards to enforcement prioritization. Under the new enforcement priorities articulated by Secretary Kelly in his February 20th memo, do ICE agents now have the discretion prioritize enforcement decisions as they see fit based on their judgments in the field?

Applicants for ICE officer/agents positions do not go through polygraph testing. During your testimony on March 22, however, you noted polygraph testing is “on the horizon” for ICE and could be implemented in 2018.

1. What is the basis for this statement?
2. Please provide any information, including written communications from any person in the Department of Homeland Security or any federal agency that supports this statement.
3. Please provide any information as to your understanding of when and how new polygraph testing will be implemented at ICE?

During your March 22 testimony, you identified a number of systemic problems at ICE including low employee morale, unaccountable management, and calcified thinking from management. You also specifically said that President Trump’s “emphasis on enforcing the nation’s laws will not completely solve the overall morale crisis within the agency.”

1. Are you aware of any new policies or actions taken by ICE or DHS management to improve the systemic problems at ICE that you identified in your testimony, specifically:

- a. Low employee morale?
- b. Undue administrative tasks for frontline law enforcement officers?
- c. Unbalanced management to frontline officer ratios?
- d. Retaliation against whistleblowers from management?
- e. Non-mission use of unmarked cars?

During your March 22 testimony, you said, "ICE has practically no policies. The agency generally depends on INS policies from 20 years ago or more or they just have no policy at all." What specific issues would you like ICE to issue policies on?

My understanding is that ICE only separates children from their parents during detention under specific circumstances.

- 1. Under what circumstances does ICE separate mothers from their children during detention?
- 2. What approval processes are there for approving the separation of mothers from their children during detention?
- 3. When was the last time that ICE officers were issued guidance or communication related to this issue?
- 4. Please furnish any documentation related to the guidance or communication referenced in the previous question, or provide a written summary if such guidance or communication was issued verbally.

Witness responses to questions submitted for the record were not received by time of printing.

