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S. Hrg. 116–476

NOMINATION OF HON. CHAD F. WOLF

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 23, 2020

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Printed for the use of the
Committee on Homeland Security and Governmental Affairs

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NOMINATION OF THE HON. CHAD F. WOLF

WEDNESDAY, SEPTEMBER 23, 2020

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

The Committee met, pursuant to notice, at 10:03 a.m., in room SD–342, Senate Dirksen Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Romney, Scott, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. This hearing will come to order. Let me first apologize for not being there in person. I came in close contact with somebody last Monday that tested positive. That individual is doing very well, with very mild symptoms. I have had no symptoms and tested negative this Monday as well. But I am here in Oshkosh and having to do this remotely so I apologize for that.

Today we are meeting to consider the nomination of Acting Secretary of Homeland Security, Chad Wolf, to be the confirmed Secretary of the Department of Homeland Security (DHS), which is an enormous task. I have stated this in the past. I truly appreciate anybody who is willing to undertake such an enormous responsibility.

I would ask that my written opening remarks be entered into the record.[1] Without objection we will do that.

I will keep it short because I know we have time constraints here. But a quick description of what an enormous challenge this is. The Secretary of Homeland Security manages 240,000 people in the Department. The responsibilities for Homeland Security are vast. I will start with Federal Emergency Management Agency (FEMA), that has to deal with hurricanes and wildfire and now coronavirus disease (COVID), amongst many other responsibilities. Border security, a huge issue. We have not fixed that problem, not by a long stretch. But this administration has done a pretty good job of stopping the out-of-control, illegal entry that we were experiencing over a year ago.

Cybersecurity and Infrastructure Security Agency (CISA). This Department is concerned about cybersecurity, election security, security over our critical infrastructure. As we witnessed with some of the protests that have sprung into riots, also protecting our Fed-

[1] The prepared statement of Senator Johnson appears in the Appendix on page 37.

eral buildings, and, of course, we tragically lost David Patrick Underwood in Oakland, California, a member of the Federal Protection Services (FPS).

Again, the responsibilities are enormous. I do not envy any Secretary of Homeland Security's task. I truly appreciate anybody willing to serve in this capacity.

One quick word. I do want to talk about, from my standpoint, what an extraordinary job DHS and, quite honestly, this administration has done in dealing with COVID. I know that is not the narrative in the mainstream media, and from many of my colleagues, but the fact of the matter is I come from a manufacturing background. I understand a difficult situation.

COVID is an act of God, and if you think back to the beginning of this, when we were concerned about running out of ventilators, we did not. The President invoked the Defense Production Act and we have produced ventilators at a record pace, and nobody ran out.

Personal protective equipment (PPE). I know it was not perfect. I know people did not get everything they wanted. But again, nobody ran out, and that was dealing with a very difficult situation where demand outstripped supply by two to three times. We heard that in testimony before this Committee.

I know the Acting Secretary. I know Pete Gaynor. I know the men and women throughout the Federal agencies that are dealing with COVID. They have been working 24/7, and from my standpoint they have done a pretty extraordinary job dealing with a very difficult situation.

What is unfortunate, someone like Acting Secretary Wolf, I said the exact same thing with Louis DeJoy in a hearing with the Postmaster General. Not only is it a thankless task but it is a task that unfortunately opens you up to character assassination as well. I find that very unfortunate. Personally, I want to thank you and the men and women that serve with you in the Department for working tirelessly to try and keep our homeland secure, keep this nation safe, and dealing with all these enormous issues that you are dealing with, day in and day out, like I said, 24/7.

Again, Acting Secretary Wolf, thank you for your past service. Thank you for your willingness to serve in this capacity as well, and I welcome you and any guests that you might have brought to the hearing room. If you did, I hope you can introduce some of your family members.

With that I will turn it over to Senator Peters.

OPENING STATEMENT OF SENATOR PETERS[1]

Senator PETERS. Thank you, Mr. Chairman, and thank you, Acting Secretary Wolf, for being here and for your willingness to serve. Today we are considering the nomination of Chad Wolf to be the Secretary of Homeland Security, and under this administration we have seen, unfortunately, an unprecedented willingness to abandon the norms of Senate-confirmed Cabinet officials. This has been a particular problem at the Department of Homeland Security, the country's third-largest agency and an absolute critical part of safeguarding our national security.

[1] The prepared statement of Senator Peters appear in the Appendix on page 39.

Vacancies and acting officials are part of every administration, but they should be rare. This administration has abused vacancies to the detriment of this Department. The President refused to formally nominate a leader for the DHS for more than 500 days, a move that was not only legally questionable but created chaos and confusion at the agency charged with addressing numerous threats to our national security.

The Department cannot successfully tackle the serious challenges it faces without strong, steady, and independent leadership. While Mr. Wolf has experience at the Department, primarily as a chief of staff but also as an Under Secretary and now Acting Secretary, he has been involved in some of the most controversial and concerning decisions the Department has made. These decisions warrant a critical review of Mr. Wolf's record and call into question whether he is the right person for this critical role.

Under Mr. Wolf's leadership, the Department has faced daunting challenges, asylum seekers at our Southern border, the pandemic, civil unrest, and deadly wildfires and hurricanes. While these challenges would strain even the most prepared staff, I am concerned by reports of slow decisionmaking and the sidelining of experts, reports that raise serious questions about the judgment and independence of agency leaders.

I am also concerned by how the Department has failed to adequately address the rise of domestic terrorism and white supremacist violence.

As you can see, I have a graph[1] here behind me. As you can see from this graph, the data shows that extremism based in white nationalism, anti-Semitism, and other ideologies account for more than 77 percent of domestic terror murders in the United States. Yet recent reports and statements from former DHS employees have indicated that the White House, in cooperation with Mr. Wolf, have downplayed this threat in public risk assessments. Rhetoric and political ideology cannot drive intelligence reports, and it should not predetermine the actions of any Federal department.

While the threat of domestic terror is not new, the Department's necessary shift from focusing mainly on the foreign threats that have dominated the Department's origins, or since the Department's origins, it has been 18 years since Congress passed legislation to establish this massive agency, and so much has certainly changed since then.

Our country faces persistent threats, both longstanding and new, including foreign and domestic terrorism, election security, natural disasters, cyber attacks, and now a pandemic. It is this Committee's responsibility to ensure that any nominee to lead this colossal Department has the experience, temperament, and leadership to address these threats head-on to protect the American people.

Before I wrap up my remarks I want to take a moment to acknowledge the severe toll that the pandemic has taken on the Department of Homeland Security. Hundreds of frontline personnel have been infected while working every day to keep us safe. We have also tragically lost six Transportation Security Administration

[1] The graph referenced by Senator Peters appear in the Appendix on page 414.

(TSA) officials to the pandemic. Our hearts go out to all of those who have suffered because of this terrible disease.

I would also like to recognize a Border Patrol agent who is fighting for his life now, after being attacked in Arizona while on duty Monday night. I wish him a speedy recovery, and I thank him and his fellow Border Patrol agents for the work that they do each and every day to keep us safe.

Again, Mr. Wolf, thank you for your willingness to serve and for being here today to answer our questions. I look forward to having a thorough discussion about the many pressing issues that face the Department and our country, so welcome.

Mr. Chairman, I would also like to ask unanimous consent (UC) to enter a letter received yesterday from House Homeland Security Committee Chairman Bennie Thompson,[3] outlining his concerns with Acting Secretary Wolf's lack of compliance with requests for information.

Chairman JOHNSON. Without objection.

Senator PETERS. Thank you.

Chairman JOHNSON. Thank you, Senator Peters. Now it is our pleasure to have Senator Ted Cruz, who is going to introduce Mr. Wolf. Senator Cruz.

OPENING STATEMENT OF SENATOR TED CRUZ[2]

Senator CRUZ. Thank you, Mr. Chairman. Thank you to the Committee for welcoming me here. I have to say, Mr. Chairman, as you self-isolate from home this may actually be an historic moment in that this may be the first Senate committee hearing ever with a pool table in the background, as I can see you have a lovely pool table in your living room. I will say, at this time of deep and contentious division, perhaps if the Senate gathered around the pool table with a beer we might be able to get more done than sitting in hearing rooms yelling at each other. But that may not be happening today.

With that it is a real pleasure to introduce Chad Wolf, who is a fellow Texan and a dedicated public servant. He is an individual that I believe is eminently qualified to be the next Secretary of Homeland Security.

Chad was born in Jackson, Mississippi, but he very quickly made his way to the great State of Texas, and he grew up in Plano, Texas. He earned a degree in American history from Southern Methodist University and began his career working for not one but two Texas Senators, Phil Gramm and my predecessor, Kay Bailey Hutchison.

Chad left the Hill after the September 11 attacks to serve our country and to protect us from terrorist threats, going to work at the newly created Transportation Security Administration in 2002. He became an early leader at the TSA, finishing out his first run of service there in 2005 as Assistant Administrator for Transportation Security Policy.

After over a decade in the private sector, Chad returned to the TSA as Chief of Staff in 2017, before becoming Deputy Chief of

[1] The letter referenced by Senator Peters appear in the Appendix on page 298.
[2] The prepared statement of Senator Cruz appear in the Appendix on page 41.

Staff and eventually Chief of Staff at the full Department of Homeland Security. He has been Acting Secretary of Homeland Security since November 2019, and in that role he has shown strong leadership. That leadership, I believe, has been tested, in particular, by the protests that became riots and the violence that we have seen across the country. Nowhere was that violence, were those riots worse than in Portland, Oregon, where night after night thousands of angry protesters physically assaulted Federal law enforcement officers (FLEO), attacked the Federal courthouse, threw fire bombs, attempted to wreak havoc.

Mr. Wolf took his responsibility to protect Federal facilities and to protect Federal personnel with the gravest seriousness. He did so at a time when political divisions in this country made it much more difficult to do so. He did so at a time when the mayor of Portland and the Governor of Oregon both told him to, in no uncertain terms, get the hell out.

Mr. Wolf was not cowed by political pressure. He was not cowed by the partisan anger of the moment. He was not willing to abandon a Federal courthouse which was still hearing cases, was still in operation. He was not willing simply to hand the courthouse over to the mob and allow them to burn the courthouse to the ground, nor was he willing to abandon the men and women who he has been entrusted to lead.

Federal law enforcement officers faced hundreds of violent physical attacks in Portland, having rocks thrown at them, water bottles thrown at them, having industrial-grade lasers fired in their eyes, resulting in numerous serious eye injuries. Having commercial fireworks thrown at them. Having fire bombs thrown at them. Protesters armed with guns, with knives, night after night after night attacking Federal law enforcement officers in a profoundly politicized context.

I will tell you, I have been impressed by Acting Secretary Wolf's steadfast commitment to do his job, to follow the law, to protect the Federal facilities he was charged to protect, and to stand with the men and women, the law enforcement officers who were risking their lives to do their job. I believe that record, in addition to his long history and experience, qualifies him well to be confirmed as Secretary of Homeland Security, and I am proud to introduce a fellow Texan.

Chairman JOHNSON. Thank you, Senator Cruz, for that introduction and your really powerful opening statement.

It is the tradition of this Committee to swear witnesses in, so Acting Secretary Wolf, if you will stand and raise your right hand.

Do you swear 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. WOLF. I do.

Chairman JOHNSON. Thank you. Please be seated.

The Honorable Chad Wolf is the Acting Secretary of the Department of Homeland Security. Mr. Wolf was appointed to the Acting Secretary position following his confirmation as Under Secretary for the Office of Strategy, Policy, and Plans in November 2019. While serving as the senior official overseeing the Department's policymaking process, Mr. Wolf led the development and coordina-

tion of strategies and policies to advance the Department's homeland security mission.

Mr. Wolf previously held numerous senior leadership roles in the Department, including serving as the Chief of Staff for the Department. Prior to joining the administration, Mr. Wolf served as Vice President and Senior Director at Wexler & Walker, a bipartisan public policy consulting firm. Mr. Wolf.

TESTIMONY OF THE HONORABLE CHAD F. WOLF[1] TO BE SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. WOLF. Good morning Chairman Johnson and Ranking Member Peters and other distinguished Members of the Committee. It is certainly an honor to appear before you today as the President's nominee to be the Secretary of Homeland Security. I am grateful to the President for the faith and trust that he has placed in me to serve the tremendous men and women of the Department, whose mission is now more important and more critical to the safety and security of the homeland than ever before.

Again, I would like to thank Senator Cruz for being here today to introduce me and for his kind words, but more importantly for his continued support for the Department and our mission.

As each of you personally understand, service to one's country means dedication, hard work, and commitment. That dedication often means less personal time with family and loved ones, which is a sacrifice felt by all of us in public service. For many years, my family has made tremendous sacrifices so that I could serve our Nation. I would like to take this time to recognize them for their ongoing encouragement, patience, and support as I continue my journey at the Department.

Please allow me to introduce my wife of 16 years, Hope. She is my rock and without her I would not be here today. I would also like to acknowledge our two children, Tucker and Preston, who keep me grounded and focused on the important things in life like Little League. Without their support, I would not be here today.

I would like to recognize my parents, Jim and Cinda, who are unable to travel to D.C. today, but who are proudly watching these proceedings in real time. From an early age they instilled in me a sense of service and commitment and they have been immensely supportive of my desire to pursue public service throughout my career.

I would also like to thank the Members of this committee and their staffs for the important work that you do each day. I have had the privilege to meet many of you throughout the past several years, and if confirmed I look forward to the opportunity of continuing to work closely together to advance the mission of the Department.

Finally, I would like to thank the DHS workforce for what they do every day keeping the homeland safe and secure. Most Americans do not understand the sacrifices they make, the unfair criticism that they endure, and the complexities of their job. But from one employee to another I say thank you for your service.

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[1] The prepared statement of Mr. Wolf appears in the Appendix on page 43.

Like many Americans, my personal call to service began on September 11th, when I was congressional staffer here on Capitol Hill. At that time, I had no idea that the events of that morning would forever shape my future as well as the future of our Nation.

Heeding the call to service, I joined, again, as Senator Cruz indicated, the Transportation Security Administration, the very agency tasked with securing our airways and for ensuring that another event like 9/11 never happened again. I was proud to serve at TSA during its inception as well as its integration into the larger Department.

Over the past several years, I have held several positions at DHS, including, among others, as the Department's Chief of Staff, Assistant Secretary, and Under Secretary position, as well as the current Acting Secretary position.

Over the past 10 months, while serving as the Acting Secretary, our nation and the Department has experienced some of the most difficult challenges of our lifetime, but I could not be prouder of the accomplishments we have achieved. We have faced a global pandemic head-on and led the Federal Government's unprecedented response efforts to include the coordinated distribution of billions of items of life-saving PPE.

We have aggressively pushed back against malign foreign actors and nation-states who have sought to interfere in our elections, and we have worked together with all 50 States and territories to protect our election infrastructure. We have been tireless in our efforts because we believe that free and fair elections are the foundation of our democracy.

We have taken extraordinary measures to protect the American people from a broad array of threats, to include homegrown violent extremists (HVE), domestic violent extremists, human traffickers, transnational organized crime (TOC), illegal narcotics, COVID–19 fraud, and more.

We have stood firm against civil unrest and violence, much of which had been directed toward our nation's Federal properties and law enforcement officers themselves. The Department has surged resources as needed, provided mutual aid to State and local partners as appropriate, and has done so with the respect and professionalism I have come to expect from the dedicated men and women of DHS law enforcement.

Finally, we are supporting our State and local partners as they continue to combat historic wildfires and prepare and recover from numerous hurricanes.

Against each of these challenges, the Department has marshaled our assets, exercised our authorities, and unified our efforts to safeguard the American people and our way of life. But despite the challenges of today, our eyes are remaining firmly on the horizon. As the strategies of our enemies evolve, DHS will adapt at every turn to defeat those who seek to do our nation harm.

As the men and women of DHS can attest, our mission is anything but simple or easy. It is one that is increasingly complex and expansive, one that transcends borders, mission sets, and threat streams. Answering the call, often in the most arduous of environments and difficult of circumstances, has been my sole focus since day one.

It has been the greatest honor of my life to serve alongside the 240,000 men and women of the Department, and if I am fortunate enough to be confirmed, I look forward to continuing our progress to secure and protect the lives of all Americans. Thank you.

Chairman JOHNSON. Thank you, Acting Secretary Wolf, and again, thank you for your service. I also want to express my sincere gratitude to your wife and your children. I am sure they do not see you a whole lot, particularly not since you started serving this role. Thank you very much.

There are three questions the Committee asks of every nominee, for the record, so let me ask you to respond to each one.

No. 1, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. WOLF. No.

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

Mr. WOLF. No.

Chairman JOHNSON. Do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. WOLF. Yes.

Chairman JOHNSON. Frequently I will reserve my time and pass the questioning, but maybe it is because I have been the target of a number of false allegations here over the last few weeks and months, I know you are having to endure many charges as well. I am going to basically give you my time to address four current attacks against you or your office. I will list them and then you can respond to each of the four.

First, if you would respond to the allegations about the order of succession issue, if you could respond to some charges about events occurring at an U.S. Immigration and Customs Enforcement (ICE) detention facility, if you could respond to a whistleblower complaint from Brian Murphy, the former Acting Under Secretary for Intelligence and Analysis (I&A), and then just today a brand new charge about contracts that were let out by DHS to your wife's firm.

If you can just take your time, take as much time as you want, and just address these for the Committee, please.

Mr. WOLF. Thank you, Chairman. I will take those in order. We are certainly aware of the Government Accountability Office (GAO's) opinion regarding the order of succession at the Department. I will say that we very strongly disagree with that opinion. I will continue to say I respect the role that GAO plays, but that, again, does not dismiss the fact that we believe they have a faulty decision, and the legal logic that they used is very inaccurate.

We will continue to talk about that. That is a nonbinding decision that the GAO has made. Again, we will continue to state our position. We have stated it pretty emphatically, about that, and so we will continue to operate as we have, using our existing authorities, using our authorities under the Homeland Security Act (HSA) to designate successors. The Department has unique authority to

do that. We did that, in this case, not under the Vacancy Reform Act but under the HSA, which, again, GAO did not comment on. That is the first one.

The ICE whistleblower complain, let me just say at the outside whether it is the ICE whistleblower complaint or any whistleblower complaint, we take whistleblowers very seriously. They have certain right, and we are going to certainly make sure that those investigations by the Office of Inspector General (OIG) are played out, and we will be fully cooperative with that.

Regarding the ICE whistleblower complaint, it is my understanding that the OIG has individuals on the ground in that facility in Georgia. They will be talking with those individuals today and tomorrow. I look forward to that investigation. Some of what we have seen thus far on some of the most, I would say, dramatic allegations in that complaint regarding certain medical procedures, some of the facts on the ground and the facts that we have seen do not back up those allegations. But again, I am going to let the OIG process play out.

But if there is a kernel of truth to any of that, you can guarantee that I will hold those accountable and will take very decisive action. But at this point they are allegations and we need to make sure that we fully investigate them so that all sides have a chance to be heard.

Regarding the intelligence and analysis whistleblower complaint from Mr. Murphy, it is patently false. It is a fabrication, completely. I reject any claim that I attempted to influence or retaliate against any individual at DHS, but specifically Mr. Murphy. I removed or reassigned Mr. Murphy at the beginning of August for a very specific reason, that I issued a statement on it, I talked about it in the media. It was very clear.

Because I had received credible allegations that he abused his position, he abused his authority, and possibly violated numerous legal requirements when he personally directed the collection of information on U.S. journalists. I have referred that to the OIG. There is an OIG investigation. I told him at the time that I needed to reassign him to ensure that that process, that investigation could go on through I&A without any appearance of influence by him leading that organization. Obviously he disagreed with that, and we see what is occurring at the time.

For me it was a bright line. If there was even any indication that information was being collected on journalists I had to take that action before any type of investigation was completed. I will continue to talk about everything that I have done with I&A, the conversations I have had with Mr. Murphy. I am happy to go in further on that as well.

Mr. WOLF. Then, of course, just recently, I think overnight, there was a news story about some contract that DHS awarded to my wife's firm. I guess it was in 2018. I just found out about it last night, when the media inquiry came in. Whether I was Chief of Staff, whether I was the Acting Secretary, the Under Secretary, or any other position at the Department, I have no role in procurements. I do not even see procurements until they are released, until they are in the news and on the street. If I was involved in procurements, which I am not, I have recusals in place to not only

include her firm but also clients that I had before arriving at the Department.

So again, fabricated story. There is obviously no evidence of anything, but that is not going to stop folks.

I appreciate the opportunity to address each of those, Chairman.

Chairman JOHNSON. Thank you, Acting Secretary Wolf. Senator Peters, I will reserve the balance of my time. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman. Mr. Wolf, as we learned from the faulty intelligence related to the search for weapons of mass destruction (WMDs) in Iraq following 9/11, using intelligence to confirm preconceived beliefs or biases can clearly have some devastating consequences. Trust in institutions is especially essential when you are dealing with national security issues. It takes years to cultivate trust and only one error of judgment for all of that trust to go away.

Mr. Wolf, my question is, would you agree that accurate intelligence reports are absolutely crucial for law enforcement and other stakeholders to effectively address and counter threats to our nation?

Mr. WOLF. Yes.

Senator PETERS. Is it true that in July you personally withheld from release an intelligence bulleting calling out a Russian attack on Vice President Biden's mental health?

Mr. WOLF. No.

Senator PETERS. You did not withhold it?

Mr. WOLF. I did not withhold it. I asked for the product to be improved, which they did over a period of time, and then that product was released at the beginning of September.

Senator PETERS. It was held for a time. In fact, how long was it withheld before the product was improved?

Mr. WOLF. I saw that product at the beginning of July. I outlined my concerns, not with the underlying intelligence. The intelligence I agreed with. The intelligence has been backed up from the intelligence community (IC) and others. It was the quality of the product itself that was lacking. Again, any product that comes out of the Department I am very specific on making sure that that is a professional document.

When I brought this to the attention of career officials at I&A they agreed with me. They had not seen that product before it was about to go out. They agreed that it could be improved. I asked them to improve that, and then it came back as a better document, at the beginning of September. Underlying intelligence remained the same. It was better sourced, better put in context for our State and local partners, and then it was issued, I believe, on September 4th.

It took a couple of months for it to—you looked at it for it to basically come out. Does it normally take about close to 2 months for you to bring a two-page intelligence report up to the quality standards that you think are necessary? Does it really require that much time?

Mr. WOLF. No, it does not. Again, I had sent it back to I&A, and relied on them to improve the product. At that time we did have a leadership change at the beginning of August. This is back to my earlier comments about Mr. Murphy being reassigned. There was

a leadership change. We had new acting leadership that has come into that office that was reviewing that office and reviewing a number of their reports. It was part of that process——

Senator PETERS. But you are saying it does not normally take 2 months for a normal two-page report to go through, or does it take 2 months for it to go through? You are saying that doesn't——

Mr. WOLF. I cannot comment on how long it takes I&A to produce each of their documents. What I asked them to do was improve upon that product. It went from essentially a page and a half to about 3½ page, and it was again, better context and a better product at the end of the day. But I think the important part is the underlying intelligence did not change. I did not direct them to change it.

I was focused on the quality of the product itself.

Senator PETERS. I understand that, Mr. Wolf. It just seems to be a real long time to do that kind of change, and it is curious that the report was only issued after news broke about it. So here we go. A couple-page report does not get out. News breaks that there is an issue, and then suddenly it comes forward.

My understanding is that there have been a number of potentially problematic products coming from I&A. You and I have spoken about that in the past. But is it possible that your staff chose to elevate this particular report to you—because there are a lot of reports that come out—is it possible that your staff elevated this report, that you withheld from release for some time, because it was about the President's opponent?

Mr. WOLF. No.

Senator PETERS. Not possible. How many intelligence reports have you reviewed and put a hold on?

Mr. WOLF. I have reviewed—again, they do not come to me for approval. We make sure of that. I want to see those as they are released to our State and local partners, and I have probably reviewed a half a dozen to a dozen of I&A's products, again, as they are going out the door, to make sure that I understand what they are, make sure they are up to my standards. Then as we have talked, this one has not. I asked them to look at a number of those reports, this one specifically, to improve on the product. Again, not the underlying intelligence but the product itself.

Senator PETERS. But still, it sounds like a relatively small number coming to your attention. Will you commit to sharing those held reports, including pre-released drafts that you reviewed with the Committee?

Mr. WOLF. Previously released drafts of——

Senator PETERS. Of the other reports that you said you have reviewed.

Mr. WOLF. I can go back and see which ones that they have sent up.

Senator PETERS. So you will provide those to the Committee that we can take a look at?

Mr. WOLF. Sure.

Senator PETERS. I appreciate it.

To your knowledge, has Mr. Cuccinelli ever directed or encouraged staff at the Department to withhold, issue, or alter intel-

ligence reports to align with the White House's messaging and rhetoric?

Mr. WOLF. No.

Senator PETERS. Mr. Wolf, I sent you a letter last week asking that you and any staff named in Mr. Murphy's whistleblower complaint, as well as other staff with knowledge or involvement in the activities cited in the report meet with Committee staff for a transcribed interview. As of today you have not responded to that request.

Can I get your commitment that you and your staff will make yourselves available for interviews as part of the investigation into these allegations of political interference within DHS intelligence reporting?

Mr. WOLF. What I want to say is that we are currently doing that for various committees at the moment, so we have——

Senator PETERS. I appreciate that, but——

Mr. WOLF [continuing]. House Intelligence, we are beginning transcribed interviews. Senate Intelligence Committee has also expressed an interest, although they have not asked for transcribed interviews. We are going through a process. I believe three individuals have been transcribed, have sat for transcribed interviews in the House thus far. We received your letter last Friday so I think we are on the third or fourth business day. We will respond to that. I look forward, again, to working with the Committee as a whole to make sure that you have the information that you need to do your oversight responsibilities.

Senator PETERS. As you said, I appreciate you working with other committees. This Committee has primary oversight, particularly when it comes to your fitness to serve as Secretary of Homeland Security. This is very relevant information and I would expect that you would be willing to do that, and I have today your commitment that they will be made available to us.

Mr. WOLF. Again, I am happy to work with the Committee as a whole to make sure that you have all the information to do your oversight responsibilities.

I also want to indicate there also is an Office of Inspector General investigation into this as well, so we need to make sure that we are also providing information to them at the same time. We have multiple levels of review in this whistleblower complaint.

Senator PETERS. I am running out of time here, but an important issue you and I have spoken about a lot, and I wanted to spend a little time getting some direct answers from you relating to work toward dealing with white supremacist violence and activities. I showed the chart that was here earlier.

Can you confirm that the Department assesses white supremacist violence to be the most deadly threat now facing our nation today?

Mr. WOLF. I think when you talk about domestic terrorism—so I want to be clear on that front. When you talk about domestic terrorism, when we talk about home-grown violent extremists, which are folks that are inspired, motivated, or directed by foreign terrorist organizations, and then we talk about domestic violent extremists. Within that category are racially and ethnically motivated individuals, and certainly white supremacist extremists, from

a lethality standpoint over the last 2 years, particularly when you look at 2018 and 2019, are certainly the most persistent and lethal threat when we talk about domestic violent extremists.

But I think your question was all of the threats facing the homeland, I do not think I would agree that, out of all the threats facing the homeland, from nation-state threats to pandemics to hurricanes and the like, that is the most——

Senator PETERS. Yes, and that was my intent, that you answered, is dealing with those terrorist attacks. That was the intent of the question.

Mr. WOLF. I do want to say that it is important as we talk about domestic violent extremists, and we talk about historically, 2018, 2019, we cannot ignore what has been occurring over the past 4 months, when we talk about anti-government extremists, anarchist extremists, anti-law enforcement folks. It is very important that we continue to look at and address the threat that has been occurring in the country over the last 4 months.

Senator PETERS. I agree, and just one quick question here. I know the Department finally released your public action to implement strategic framework for countering terrorism and targeted violence. A long time coming. It is out now. But specifically, what actual steps has the Department taken, in addition to this report, what action steps has the Department taken to reduce the threat communities face from white supremacist actors? I know there are some grant programs out there. Please do not talk about the grant programs. What specific actions has the Department taken, given the fact, as you just mentioned, given the threat posed by white supremacist groups?

Mr. WOLF. Understanding you do not want to talk about the grant programs but that is a big part of what we do, at least in the prevention space.

Senator PETERS. Yes, and I am granting that. I am giving you that. I want to know what else.

Mr. WOLF. We also do community awareness briefings and we do other types of briefings that our Office of Technology Development and Deployment Program (TDDP) does as well, in conjunction with the Office for Civil Rights and Civil Liberties (CRCL) and others. So part of our mission is to make sure that we are educating folks. We are sharing information. We are also pushing out, probably I believe since April I&A has pushed out roughly 20 or so products regarding white supremist extremism to our State and local law enforcement officers. So those are two of our fusion centers. We are pushing intelligence out, but then we are also providing those community awareness briefings and the like, and a big part of that are the resources that we put behind that, which are the grant programs themselves.

Senator PETERS. I appreciate it. Thank you. My time is up.

Chairman JOHNSON. Thank you, Senator Peters. As long as you brought up the issue of domestic terror threats and white supremacists, I will reclaim a couple minutes of my time. Acting Secretary Wolf, you seem to make the distinction between what has happened over the last couple of years as it relates to the violent extremism and what has transpired over the last 4 months. Over the weekend I saw pretty interesting videos, a press conference put on

by the chief of police in Chicago that showed what happened in Grant's Park, where peaceful protestors took a left-hand turn, went into a park, were either shielding the people that then started throwing frozen water bottles and industrial type of fireworks and that type of thing at the Chicago police officers.

When you were before our Committee a couple of weeks ago I asked, what is your assessment in terms of who is really fomenting the peaceful protests that then end up in transition into riots? Senator Peters seems to try and link those and conflate it is the white supremacist groups. I do not think that is the case. But what do you say in terms of—what is the main thrust? Who are the main groups? What is the main ideology behind what we have seen in the last 4 months where a peaceful protest turned into pretty destructive riots? I do not know the exact count of how many businesses were burned in Kenosha, Wisconsin, but, the city shut down. It has been devastating for the downtown. Can you just comment on who is fomenting that violence over the last 4 months?

Mr. WOLF. Sure, absolutely, Chairman. What I will say at the onset is the Department is focused on countering any forms of violent extremists. So let me just say that from the outset. When we produced the framework that the Ranking Member mentioned back in September 2019, we specifically pointed to two threats when we talk about domestic terrorism, domestic violent extremists. Specifically, we talk about white supremacist extremists, but we have also talked about anarchistic extremists. We specifically mentioned again, back in September 2019, Antifa and concerns that the Department was seeing at that point.

This is not anything that the Department has come to in the last 4 months. The last 4 months have certainly highlighted what we have seen specifically in Portland. I will talk very specifically about Portland, which I have in this room and before this Committee again, where we had over a 60-day period law enforcement officers, specifically targeted, a courthouse specifically targeted, a seat of justice in downtown Portland, specifically tried to be burned down. The intel that we received out of Portland, that we received elsewhere across the country as well, has this anarchist sort of ideology.

But I want to be clear, and I believe Director Ray has made it clear from the Federal Bureau of Investigation (FBI), is we do not look at specific groups. We are looking at the criminality coming out of the activities of groups. We are looking at the criminal activity, and of course the FBI is the lead investigator of any type of criminal activity that is coming out.

What we saw in Portland was night after night after night criminal activity occurring at that courthouse against law enforcement officers and against that courthouse, which is protected by DHS. So specifically in Portland we saw 3, 4 months of activity being organized. It was coordinated. It was not spontaneous every night. That is what we saw very firsthand. We have seen that in other communities around the country as well.

Chairman JOHNSON. Thank you, Acting Secretary Wolf. Let me just give the Members the order of questioning. Senator Portman, then Hassan, then Lankford, then Rosen, then Scott, then Romney. Senator Portman, are you available?

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. I am, Mr. Chairman. Thank you very much for holding the hearing, and Secretary Wolf, as you and I talked about in our conversation recently, I appreciate your service. This is a tough time for our country in many respects. COVID–19, the demonstrations and rioting that we have seen. You are in the middle of it. Our condolences from this entire committee go to the family and to the colleagues of Dave Underwood, a Federal Protective Service officer who was killed outside the Oakland courthouse in California.

You have lost a couple of officers recently to COVID–19 contracted on duty, Marco Gonzalez and Lucas Saucedo, and we think of them too, and then recently another officer injured along the border.

These men and women are doing the work for all of us, who make our country safer and more secure. Your people are also responding to the wildfires in California and throughout the West, and then also obviously the recent hurricane.

So you are in the middle of a lot, and I think it is really important that we have confirmed leadership at the Department right now. For some time, I had been concerned about the lack of leadership positions being filled, not just at the top, but through the ranks. I know the Chairman shares that concern as does the Ranking Member and we have been working on it. But we need a confirmed Secretary. Some had said to me, well, we are at the end of the first term of the President. Why are we focused on this? We are focused on it because we believe that the men and women of the Department deserve to have that kind of certainty and accountable leadership.

I am delighted we are having the hearing today. I want to get you confirmed as quickly as possible. I also think it helps to head off some of these court battles that we talked about earlier, which are obviously a huge distraction for the agency at a critical time.

In our conversation we talked about the whistleblower complaints. You have addressed those again today. I appreciate the fact that you are taking those complaints seriously, and that you are asking the Inspector General (IG) to complete the investigation independently and thoroughly. I think that is appropriate, and I do not want to belabor that issue because again, it seems like not only in private have you talked to me about this, but in public testimony this morning, you have made a personal commitment to that.

You have also made a commitment to make sure our elections are safe, and that is really important. We have already started voting in some States. We start soon in Ohio. We need to be sure there is a unified and streamlined Federal effort to help our States and our local efforts to secure our elections.

Let me give you a second to expand a little on that. You mentioned it in your testimony, but can you talk about specifically what DHS has done in this regard?

Mr. WOLF. Absolutely. Again, at DHS, when we talk about election security, we are focused on cyber threats to election systems and election infrastructure. Over the past 3½ to 4 years, we have been working with all 50 secretaries of States, thousands of local jurisdictions, technology vendors, and the like, making sure that

our election here in November is going to be the securest election that we have had to date.

Obviously we saw the concerns in 2016. We continued to work throughout 2018 and the midterms. We saw 2018 elections is probably some of the securest elections that we have held to date, and we continue to build on that work as we go into 2020. So very proud of the work that CISA has been doing on election security.

We know in this election cycle, the IC has said that they have not attributed any cyber campaign against any election infrastructure from a nation-state adversary. I think that speaks to the type of work that we have done over the past 3½ to 4 years, because at this time, going all the way back to 2016, there were indicators and warnings that they were targeting our election infrastructure. We do not see that today as I sit here today, and I think that is because of all of the work that not only CISA has done, but the entire interagency has done, as well as the work the administration has done, is calling out individuals that we have identified that are trying to——

Senator PORTMAN. Secretary Wolf, can you address briefly the recent report that came out, I think it was from Microsoft, about various countries trying to interfere in the election. They mentioned, as I recall, Russia, China, Iran. Can you address that?

Mr. WOLF. Absolutely. When we talk about nation-state threats to our election systems, we talk about three, specifically. We talk about Russia, we talk about China, and we talk about Iran. They all come about this differently, but all three are a threat. I have been very consistent about that. The intelligence assessment put out by the Director of National Intelligence (DNI) in early August was very consistent about that. Again, the Microsoft report, Senator, that you mentioned, also talks about all three of those nation-states being a threat.

I know that there continues to be a lot of focus on Russia as there should be, but you cannot do that at the exclusion of making sure that we continue to address the threats that are from both China and Iran.

Senator PORTMAN. What the Microsoft report says is not inconsistent with what you are saying in terms of infrastructure not being under attack?

Mr. WOLF. That is correct. They are not focused, or we do not have any specific intelligence that they are focusing on election infrastructure. That is not to say they cannot or will not. But as I sit here today they are not focused on election infrastructure. They are looking at those influence campaigns that we see them——

Senator PORTMAN. Let me change subjects if I could, and I am going to ask you about something we did not talk about in our private conversation, and that has to do with your Disaster Relief Fund (DRF).

Since the $600 Federal supplement on unemployment insurance ended, many people have not been able to have access, therefore, to unemployment insurance, who lost a job through no fault of their own. The President and his administration stepped in. You stepped in and provided help at $300 Federal supplement on top of the State supplement, per month. That has been a 6-week program. It actually just ended last week.

But you took the funding out of the Disaster Relief Fund to be able to do that. I personally believe that that $300 extension is good idea. I think it should be done until the end of the year. I think that is about the right amount. There is no magic number, but that is not disruptive to the labor market as the $600 was.

However, my understanding is that the Disaster Relief Fund has now reached its cap. In other words, you set a number that was based on some analysis that left enough money in the Disaster Relief Fund to respond to true and actual disasters.

Two things have happened. One is we have had a lot more natural disasters, even in the last couple of months. Certainly the hurricanes and the wildfires are at the top of that list. So more demand for the assets in the fund. Second is, we have, as I understand it, depleted the entire amount that was set aside for the unemployment insurance. I have a legislative proposal, in fact, offered as an amendment to the CR and we will see what happens, but to try to replenish that fund. Unfortunately is not fully replenished in the CR.

Can you talk about that for a moment? Again, it is not something I raised before with you, and I do not expect you to have all the details. But my understanding is the fund—there is $24.7 billion left in it, and that that is not enough to handle the natural disaster challenges we face plus being able to try to extend this $300 Federal supplement program. Can you talk about that?

Mr. WOLF. Yes, Senator. As of today, FEMA has obligated around $49.5 billion in DRF funding to support COVID–19 relief efforts. And that includes about $39.6 billion in supportive lost wages, Senator, which you certainly articulated. Obviously the DRF is also used to respond to a disaster. Hurricanes Laura and Marco, about $581 million, Hurricane Sally is $2.4 million thus far, and we will see again how that continues to roll out.

Our balance in the DRF is a little north of $25 billion, so there is still funding inside our Disaster Relief Fund to continue to address, as you know, hurricane season goes all the way through November, as well as to address the wildfires out in the West. We do have funding as of today in the DRF to continue to support—that FEMA has to continue to support efforts around the country.

Senator PORTMAN. Right. My time has expired. Just one quick answer—do we have enough or not?

Mr. WOLF. We do not have enough as we sit here today. Now if we are additional hurricanes, depending on size and category of those hurricanes, as well as the wildfires, we may have to have continued discussions with Congress and the Office of Management and Budget (OMB) about additional funding for the DRF.

Senator PORTMAN. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Portman. Senator Hassan?

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chairman and Ranking Member Peters for this confirmation hearing. Thank you, Mr. Wolf, for being here for your testimony, for your willingness to serve, and for the conversation we had last week. I will join my colleagues in of-

fering condolences to your entire workforce for the loss of the officers you have all suffered and to their families.

Mr. Wolf, the Islamic State of Iraq and Syria (ISIS) and affiliated forces are gaining strength worldwide, launching more than 100 attacks in Iraq last month, seizing more land in Afghanistan, and increasing threats on the African continent. This potential resurgence of ISIS in the Middle East, Africa, and Afghanistan is alarming, and we obviously cannot ignore it. What steps has DHS taken to strengthen its counterterrorism capabilities in the event that ISIS continues to grow in these regions and pursues external operations against the United States?

Mr. WOLF. Our counterterrorism portfolio is sort of the core capability of what the Department has done over its tenure. We have a layered approach when we talk about counterterrorism policies and procedures that we put in place, from keeping individuals out of the country to identifying individuals as they come into the country and then to make sure that we are removing individuals as we see fit. We do that with a number of policies. We do that with in close coordination with our foreign partners, we do that through travel restrictions that we have put in place over the years, but making sure our screening and vetting programs are really at the heart of our counter-terrorism programs. I would say that our screening and vetting programs at the Department are probably some of the best in the world.

We share that, we share those partnerships with our allies across the world, making sure they have programs like Visa Waiver Program (VWP), our automated targeting system global (ATSG), our secure real-time platform (SRTP). These are all biometric programs that we share with them, so that we are able to share information, that we are able to share that real-time, again, information, so we know who is transiting certain countries and making sure. If we see individuals that are returning from the battlefield, perhaps back to the United States or back to Europe or other places of the world, that we are able to identify them and we are able to work together.

Senator HASSAN. Thank you for that, and I would look forward to continuing to work on visa security teams as well, appropriately balanced.

I have heard from many constituents regarding FEMA's recent policy statement that personal protective equipment and cleaning supplies purchased by schools are not eligible for reimbursement through the public assistance program. While these items may not typically fall within the program, schools have been operating under the impression that they would be reimbursable during the pandemic, and have acted accordingly. In New Hampshire, the communities of Salem and Londonderry must now find another way to pay for $350,000 in COVID related expenses.

There has been a bipartisan outcry, urging FEMA to reconsider this position. These are obviously extraordinary times and schools need this support to help ensure that students, teachers, and their families can be safe if they are able to return to the classroom. Will you commit to reversing this decision and allowing reimbursement for schools who purchase PPE and cleaning supplies?

Mr. WOLF. Again, I have talked to the FEMA administrator about this, and this really has to do with authorities that FEMA has versus making sure they use that for emergency protective measures versus just sort of your traditional operating expenses. What I will say though, is that there is funding outside of FEMA to address some of these concerns that schools have. We have over 39 different agencies that have over $3 trillion in funding from COVID related packages——

Senator HASSAN. I am going to interrupt you for just a second, because I know how sparsely those resources have already been spread in my State, and there is nothing routine about needing personal protective equipment and sanitation equipment in schools to combat a pandemic. There is absolutely nothing routine about that. I would like you to——

Mr. WOLF. The Deportment of Health and Human Services (HHS) is distributing again about 125 million cloth facemasks in the month of September as well.

Senator HASSAN. I appreciate that, but I will also just point out that FEMA led schools to believe they would be able to get reimbursed. They have therefore deployed the resources from other agencies in other ways.

Let me move on to another question. For months, my staff and I have been trying to get updates from the Federal Emergency Management Agency regarding—oh, sorry. That was the question I just asked you. This happens.

Let me move on to the last question I have for you. With less than 2 months until a Presidential election, the Nation is being bombarded with disinformation and propaganda coming from Russia. DHS's own intelligence and analysis shop has said this, and yesterday report surfaced that President Putin and his top aides are probably directing the operation. Based on everything you have seen, do you think that the Russians are seeking to advance propaganda against Vice President Biden?

Mr. WOLF. I think on everything that I have seen, that there are three nation-states that we have to be very concerned about. One is Russia, one is China, and one is Iran, and they all have different ways and different motivations of doing this. We have seen what the intelligence community assessment has said again in early August was that Russia looks to denigrate Former Vice President Biden. China prefers Vice President Biden, and Iran prefers Vice President Biden. So we have to——

Senator HASSAN. But the answer is that that Russia is in fact seeking to advance propaganda against Vice President Biden. Thank you for reaffirming that.

Mr. WOLF. All three nation-states are.

Senator HASSAN. Because I do have a little bit more time, let me go back to one other issue. We have been trying to get updates from the Federal Emergency Management Agency regarding its role in the purchasing and distribution of personal protective equipment. I understand that many of the tasks handled by your Department this spring have now transitioned back to HHS and the Department of Defense (DOD). But how precisely is the work being shared and what agency is handling it remains pretty

opaque. Can you tell the Committee in a straightforward way what FEMA's current role is in the pandemic response?

Mr. WOLF. Sure. They still continue to coordinate a number of activities when we talk about making sure that PPE gets to certain places. I talked about earlier about the lost wages program that FEMA continues to administer. Again, that is a COVID relief type of activity. They continue to coordinate the vast majority of activities.

I will say, as you indicated, certain activities have transitioned back to HHS as they are medical in nature. As we continue to fight this, happy to get you more information, happy to have FEMA come up and brief you on exactly what they are doing. This is not a secret. It is very clear and we have been very upfront about what their role is.

Senator HASSAN. I appreciate that, but it has been very difficult, for instance, to get precise information about projections, for instance, on the amount of PPE needed, and what tends to happen is people say, HHS is dealing this or FEMA is dealing with that. I think it is really imperative that we be able to exercise oversight and get precision from you all.

Mr. WOLF. I agree 100 percent. I have to say, as from March all the way probably to present day, FEMA has been overwhelmed with the number of letters that they have received, and they are processing them as quickly as possible. We are being as responsive as humanly possible. As you can imagine, they have a deluge of letters from Members of Congress.

Senator HASSAN. Right. I know I am over time, Mr. Chair, so I will just close with this. The letters from Congress obviously should be responded to, but if you have a structure in place and clear communication, clear lines of responsibility and constant communication with us, some of those letters might not be necessary. Thank you, Mr. Chair.

Chairman JOHNSON. Thank you, Senator Hassan. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Chairman, thank you, and Acting Secretary Wolf, it is good to see you again. Thanks for being back in this room once again. The last time we were here we were talking about what was happening in Portland and Federal law enforcement that was under assault there by the individuals that were rioters that were attacking the Federal courthouse and attacking Federal law enforcement. At that time, you had said there were about 277, if I remember the number correctly, Federal law enforcement that had been injured in those attacks. Can you give us an update on those on our Federal personnel and the injuries that have been sustained and how they are doing?

Mr. WOLF. We have had a to date about 349 separate injuries to DHS law enforcement officers there in Portland. Many of those have recovered, so the bones have healed, broken bones have healed, stitches have come out, and the like. We have about 125 DHS personnel that have eye injuries of one manner or another, from those lasers that were pointed, and we do not believe any of them will be permanent. There will be some damage, and some of

those are still undergoing evaluation to see what is the extent of that damage.

What occurred in Portland in June and July, we are still dealing with that today from a law enforcement officer perspective. Again, we not only talk about the physical injuries, but again, we talk about the doxing of personal information that is out there on the Internet of these law enforcement officers, and they are having to deal with that with their families.

Some of the attention may not be on Portland today, but I can guarantee you, Senator, that our efforts at the Department is still continuing to support those law enforcement officers.

Senator LANKFORD. Would you tell them thank you from us?

Mr. WOLF. Yes, sir.

Senator LANKFORD. They were asked to do something by our nation to be able to protect Federal facilities and they stepped up and did it at the cost of their own blood at times. Their families have paid an incredible price for them to step up and do what is right to be able to protect our country. Please do pass on our thank-you to those folks.

Let me head down South. I have seen some of the numbers and the statistics that during the time of the pandemic the cartels have altered their methods for trying to be able to move illicit drugs into the United States. They have changed techniques, they have changed locations, and the quantities have gone up significantly during the time of the pandemic. We have seen this with people that are in isolation, that have struggled with drug abuse in the past. The isolation of the pandemic has caused a severe strain for mental health for many of those individuals and driven some people back into their drug addictions or deeper into drug addiction, and the cartels are taking advantage of that.

What are you seeing on the Southern border now, as far as the movement of drugs and how our interdiction process is going to be able to protect Americans?

Mr. WOLF. I think there are a couple of dynamics that are going on at the Southwest border, not to obviously include COVID. We have talked about a new border wall system going up. We have over 320 new miles of that new border wall system, and those are in very trafficked areas that we are putting that border wall system up. So that is causing cartels and transnational criminal organizations (TCOs) to try to find new pathways, new avenues into the country.

At the same time, we have DOD personnel, DOD assets that are on the Southwest border. We are moving those to areas where we do not have the border wall system. You have more cameras, you have more eyes, and you have more agents in areas that have been difficult or historically difficult to patrol. That is again causing disruption to, again, those cartels and those TCOs.

We are seeing more movement through ports of entry (POEs), which is exactly where we want to push this sort of illegal contraband. We want to push them to ports of entry, where we have people, where we have resources, where we have technology, and it is on our terms on how we interdict these folks.

Now what we are seeing as we put in travel restrictions, because of COVID, we are seeing some of their tactics change. They are

using and recruiting a lot more U.S. citizens today than they have historically, because we have cut down on that land, the traffic across those land ports of entry. U.S. citizens and legal permanent residents can still come freely, and so we are seeing much more of that traffic. We are seeing more individuals trying to smuggle illegal narcotics in as well.

So we continue to catch more. We continue to deploy more technology at our ports of entry, our non-intrusive inspection (NII) technology, designed to look inside cars and vehicles as well as individuals.

Senator LANKFORD. What do you need to continue that work, based on the transition and the flow and the effectiveness of the border wall and moving people to other areas where we have additional cameras and additional inspections? What do you need now?

Mr. WOLF. I would say two things: additional resources for personnel, for Customs and Border Protection (CBP) personnel, specifically the Office of Field Operations (OFO) personnel, as well as border patrol personnel. We have requested that in the past, I believe, three to four President's budgets, and that has not been approved to date.

Some of our fees that we normally see, some of our sort of normal fees help to increase our personnel, as those fees are down because of COVID, less travel, the fees are down, so we are not able to hire as many folks that we would like to see. We would like to see more individuals at our ports of entry, more time looking at cars, vehicles, individuals, as well as continued funding. I know Congress has been very supportive of that non-intrusive inspection program that we have.

We are trying to increase our inspections for commercial vehicles from a very low percentage, I do not have it offhand, upwards to about 70 percent by 2023, and for personal vehicles up to about 40 percent in 2023. So continued support and funding for that initiative as well, and again, continued support for that new border wall system. Again, as we continue to put that in places we continue to funnel human traffickers, TCOs and others to ports of entry, or at least in areas that we prefer to encounter them.

Senator LANKFORD. The individuals that are crossing the border illegally, do you see some trend changes from 2020 to 2019? Obviously, COVID has had a pretty dramatic effect on that.

Mr. WOLF. Right.

Senator LANKFORD. The Northern Triangle countries have closed down their borders there. What are you seeing on the border as far as the flow of people?

Mr. WOLF. We have seen a different flow. In 2019, it was mainly unaccompanied alien children (UACs), as well as family units from the Northern Triangle. We put a number of policies and procedures in place. Today, what we see are mainly single adults from Mexico, not exclusively, but that is the highest percentage by far. What we have seen, obviously, that sort of hearkens back to the 1980s and 1990s of seeing that same trend and that same flow. The vast majority almost exclusively are coming here for economic reasons.

Now, the good news is we were able to repatriate them back to Mexico pretty quickly, but the different dynamic that we see today in 2020 versus 2019, in 2019 folks were coming across the border

and they were sitting down. They were sitting down waiting for Border Patrol to come up, because they knew that they would be released within a matter of hours, if not days into the interior of the United States, and that was the goal. Today, we see they are running from Border Patrol. They are trying to get away. So that obviously increases risk on Border Patrol injuries and things of that nature.

So the dynamic has changed, the demographics have changed, and we are trying to change with that.

Senator LANKFORD. The things that you cover and that you have worked on already, both as a Deputy Chief of Staff, Chief of Staff, then Acting Director, natural disasters, border security, terrorism, cybersecurity, election security, it is a pretty remarkable portfolio of the things that you are having to be able to manage day to day.

Thanks to you and your team, the work that you have already done. Thanks to your wife and your kids for loaning you out to the Nation. I hope you get a chance to catch some Little League games with the kids as well while you are also getting a chance to be able to serve us. Thanks for doing it.

Mr. WOLF. Thank you, Senator.

Chairman JOHNSON. Thank you, Senator Lankford. Senator Rosen?

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you, Mr. Chairman, Ranking Member, for holding this hearing. Of course, thank you, Acting Secretary Wolf for being here today. Thank you for the conversation we were able to have last week before this hearing. I really appreciate it.

I want to go back to your confirmation hearing for Under Secretary position that was before this committee on June 12, 2019. I asked if you were involved in developing the family separation policy, and you answered me, "Unequivocally no, ma'am." I asked how you became aware of the policy and you told me, "Through discussions with staff, discussions leading up to the Attorney General's announcement in April 2018."

After that hearing an email exchange became public in December 2017. You emailed the Justice Department (DOJ) spokesman, attaching a memo with the file name, and I quote, "UAC options," UAC, of course, meaning unaccompanied children. You wrote in the email to the other official that you worked with others to pull the memo together and that the purpose of the memo was to give then DHS Secretary Nielsen, quote, "An idea of what she can do right away versus actions that will take months-plus to implement," and I end quote.

When you open the attached political memo, it is called "Policy options to respond to a broader surge of illegal immigration," and out of 16 policy options, family separation is No. 2 on the list.

Let me ask you this. I asked if you helped develop this policy and you told me no. Is that correct?

Mr. WOLF. That is correct.

Senator ROSEN. You and several others, quote, "You pulled together a memo for the DHS Secretary that discussed the family separation policy," and this policy was implemented. You know

children were separated from their parents at the hands of our government.

Let's go back over the cover email. You said the purpose of this memo was to give Secretary Nielsen, the DHS Secretary, the person whose Chief of Staff that you were, an idea of what she could do immediately versus what would take months. Is that correct?

Mr. WOLF. That is correct.

Senator ROSEN. At your confirmation hearing, when I asked you if you helped develop the policy, you did not mention this memo. Is that also correct?

Mr. WOLF. I do not believe the memo was discussed at that hearing, no.

Senator ROSEN. Thank you. So let's talk about your memo. Here is what it says for the No. 2 policy option. Again, I am going to quote, "Announce that DHS is considering separating family units, placing adults in adult detention and placing the minors in custody of HHS as unaccompanied alien children." But those children you recommended classifying as UACs were not actually unaccompanied, were they, Mr. Wolf?

Mr. WOLF. I am sorry. Can you repeat your question?

Senator ROSEN. You said you were going to separate—this is what you said in your memo, and I am quoting—you considered separating family units and treating the children as unaccompanied. They were not unaccompanied. They were part of family units. That is what you said in your memo. You called them unaccompanied, but they were not.

Mr. WOLF. Again, unaccompanied as a legal terminology. Let me just say it was not my memo. You keep referring to it as my memo. As I said last year that the Secretary, Secretary Nielsen, relied on not only her operators but also her policy, her immigration attorneys to develop policy options. Of course, they did that——

Senator ROSEN. But you were part of the team, and as her Chief of Staff you have direct relationship and responsibility.

Mr. WOLF. I had direct——

Senator ROSEN. You were part of the series of memos that went on deciding to separate children and treat them as unaccompanied.

Mr. WOLF. I had a responsibility to make sure that the Secretary was fully staffed. Any time we talk about immigration within the Department, I appreciate it may sound simple but it is anything but simple in making sure that we pull the U.S. Citizenship Immigration Services (USCIS), ICE, CBP, general counsel policy office, and any number of other individuals——

Senator ROSEN. I understand, but——

Mr. WOLF. Inside the Department together——

Senator ROSEN [continuing]. I have a Chief of Staff. Anyone who has a chief of staff understands that it a complex job.

Mr. WOLF. That was not my portfolio. It was not my issue set at that time.

Senator ROSEN. Let me ask you this question. You have been Acting Secretary for 10 months. Do you now consider it your job to speak the truth to power when utterly abhorrent policies like this get proposed? Do you support ending family separation? Do you stand by that? You testified for that.

Mr. WOLF. As I testified last year, I testified again this year, I support the President's decision when he issued an Executive Order (EO) to stop that practice as the Department did, and we executed that Executive Order, I believe, in June 2018.

Senator ROSEN. Thank you. I would like to talk about the ending of temporary protected status (TPS) quickly.

Mr. WOLF. Yes.

Senator ROSEN. Nevada is home to more than 4,000 TPS holders and their families. Seventeen hundred of those are essential, critical infrastructure workers, meaning they provide services that Americans depend on to operate during this COVID–19 pandemic and they are in all of our response efforts, according to DHS guidance. We know what happened last week, the decision to deport a TPS recipients. In light of the Federal appeals court decision, what are your plans for deporting TPS holders from the countries of El Salvador, Haiti, Nicaragua, and Sudan?

Mr. WOLF. We are not taking any measures at this time. As you know, we cannot do that, I believe, until about 52 days after that court decision. Forty-five days of that is allowed for individual parties to appeal that decision. We certainly expect that decision to be appealed. So basically it starts from that 52nd or 53rd day. We then look at a number of those TPS decisions that have been issued. But you are probably looking, at the earliest, 180 days out before any TPS orders are enforced.

It is still very much in the courts, unfortunately. We will continue to play it out in the courts, even though we did have a ninth circuit decision last week. They are still very much, and there are other lawsuits, I would say, and other court cases, depending on the country that we are talking about regarding TPS. So all that is to say there is not one answer on how we are addressing TPS. The decision was made——

Senator ROSEN. But would you consider speaking now——

Mr. WOLF [continuing]. In 2017——

Senator ROSEN [continuing]. Particularly——

Mr. WOLF [continuing]. To end TPS.

Senator ROSEN [continuing]. Of protecting those essential workers that are critical to our pandemic response?

Mr. WOLF. We will continue to look at that. Again, we have about 180 days before there is going to be any action taken. But these are temporary programs. TPS is a temporary program. We litigated, we talked about this in 2017. Policy decisions were made by former Secretaries at that time regarding TPS. If this is a population that the U.S. Congress feels very passionate about, very much like Deferred Action for Childhood Arrivals (DACA), very much like some of these other temporary populations, then I would encourage Congress to find a lasting solution for these individuals.

Senator ROSEN. I would love for us to do that too, and in the meantime we are very short of those essential workers in many of our communities across this country and during a pandemic. I would just urge special consideration of those families who are putting their own lives on the line to save others as we this week hit over 200,000 families whose lives are forever altered by the death of someone that they love. Thank you, Mr. Chairman.

Mr. WOLF. Yes, Senator.

Chairman JOHNSON. Thank you, Senator Rosen. Senator Scott?

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thank you, Chairman Johnson. Secretary Wolf, thank you for being here. Talking about TPS, twice in the last year I took a bill to the floor, all Republican Senators supported it, which would completely revamp the TPS program, which, after it expired, would come back to Congress and Congress would actually make the decision of what should happen with regard to TPS.

Mr. WOLF. Right.

Senator SCOTT. It would immediately have granted TPS to Venezuelans, which is very important, especially in my State. Unfortunately the Democrats blocked it both times. So it is interesting that, there is this interest in doing something about TPS, but the Democrats do not want to fix it.

First of all, I just want to thank you for what you are doing. I was just down in Pensacola with—FEMA was down there with the hurricane that just hit.

Mr. WOLF. Right.

Senator SCOTT. The individual that runs the Southeast for FEMA, Gracia Szczech, does a great job. I just want to thank FEMA for their efforts. I know they are not doing it just in Florida, but they are doing it around the country, as we have had different disasters, and the people that work at FEMA do a great job.

Mr. WOLF. I appreciate that. That is-obviously, when we talk about FEMA, we talk about the COVID response a lot, but outside of that, their normal every day-to-day work, responding to wildfires in California and Oregon, Hurricane Laura in Southeast Louisiana, they are still there, still onsite, and obviously, in Pensacola and elsewhere. We are into the Greek alphabet on named storms.

Senator SCOTT. I know.

Mr. WOLF. It is a very active season, and I appreciate the support.

Senator SCOTT. Yes. I have been up here—this will be I think my 21st month, along with Senator Hawley. I just want to tell you my experience with Homeland Security and the people that work for you, they are very responsive. Your legislative affairs team is very responsive.

Mr. WOLF. Yes.

Senator SCOTT. You get an answer. It is not always exactly what you want, but I can tell you what. Everybody I have talked to, they are trying to be very responsive.

One thing I know that is important to you is law enforcement, and I just want to ask you how you, I do not know if you saw what happened last week. I did a unanimous consent that all the Republican Senators signed off on to just—it was just a resolution in the Senate supporting our men and women in law enforcement. It shocked me, but the Democrats blocked it. I cannot imagine not supporting that. And have a lot of wonderful men and women that work in law enforcement and how does it make the people that work with you feel when you see that people do not recognize that they put their lives on the line?

In my 8 years as Governor, we lost 51 members of law enforcement in the line of duty while I was Governor. I mean, these people

are putting their lives on the line every day. How do you think it makes the people feel?

Mr. WOLF. Yes. It is extremely difficult. DHS is the largest law enforcement agency in the country, from Border Patrol to ICE to Secret Service and everything in between. We have an extensive law enforcement community at the Department. It is not the only thing that we do, but it is a big portion of what we do. Everywhere I go and I travel and I get the opportunity to talk with those law enforcement officers, the first thing they say, and they can say a lot of things to me, the first thing they say is, "Thank you. Thank you for talking about what we do and how we protect the homeland."

They put on a badge, they put on a uniform every day at great risk to themselves, and now to their families—I talked about doxing earlier—and they are just trying to go to work and do their job and protect their communities. When they see some of the dialogue that is out there, and trying to paint them a certain way with a broad brush, obviously there are bad actors in every profession to include law enforcement, we need to hold those individuals accountable. But when they start talking about law enforcement across the board as being racist or whatever it might be, it impacts these individuals. They are not robots. They are humans.

I try to talk to them a lot about, making sure that they understand the support that they have at the various highest levels of the Department, making sure that we are supporting them, not only through training and resources and PPE and in COVID environment, but I think a lot of what we do in supporting them is what we say publicly and making sure that we have their back. We need to hold individuals that abuse that accountable, and I will do that from my position. But Federal Protective Service, and, we have talked about Portland here a little bit, I do not think most people knew about the Federal Protective Service, 5 months ago.

Senator SCOTT. Right.

Mr. WOLF. They know about them now. They know about the work that they do being unfairly targeted and the like. I appreciate those comments, and I will keep talking very specifically about the law enforcement mission that the Department has.

Senator SCOTT. Thank you for doing that. I had the opportunity to visit the U.S. Customs and Border Protection International Mail Facility in Miami, I guess it was before COVID, so I think it was last fall. They went through and talked about how they are trying to combat counterfeit goods from Communist China. We have seen unbelievable human rights abuses. There is an article today. I have not looked at the background of it, but on top of what they are doing to the Uighurs, they are doing something similar with the Tibetans in Communist China and it is disgusting.

Can you talk a little bit about what you are doing to try to crack down on goods that are produced with the State-sponsored Uighur forced labor, and how you are able to do that, and how difficult it is for your mail centers to try to stop some of this counterfeiting and try to even deal with human rights abuses?

Mr. WOLF. Yes. I have been to the same mail facility in, or sorry, mail facility in Miami, and it is quite an impressive operation that they have, as they screen parcels coming in.

When we talk about China and forced labor, the Department took some action recently, along with the administration in putting in withhold removal orders for specific companies operating in China that have been identified of using forced labor. From a CBP perspective, we can put these orders in place that are actually fairly effective because we simply do not let the product come in. It allows companies that are using those, that have relationships with these companies, they are going to have to shift. They are going to have to adjust. They are going to have to make sure that subcontractors and folks that they are using in China are not part of this order, or have not been identified as having these abuses, having this forced labor, having products made from forced labor.

Mr. WOLF. We think that they are very effective. Obviously, there are other things that the administration can do as far as sanctions and other activities. But from a DHS perspective, we think that these withhold orders are actually very effective, and we are very proud of sort of the piece of the pie that we play there, and we are very forceful and leaning forward and making sure that we identified these companies that are using this forced labor in China and calling them out.

Senator SCOTT. Yes. I just want to finish by thanking you. I have had the opportunity to meet with DHS individuals in Central America. I have met with them along the border with Mexico, and I can just tell you they are a class act, trying to do their job, and they need the support of Congress. Thank you very much.

Mr. WOLF. Appreciate it.

Chairman JOHNSON. Thank you, Senator Scott. I think Senator Romney is next on the list, but I think he might have logged off. Senator Romney, are you there? If not, we will go to Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks, Mr. Chairman. Mr. Wolf, welcome. Good to see you. Thank you for joining us today.

I have mentioned this to you before but I think it bears remembering, the name Jane Holl Lute may or may not mean anything to you.

Mr. WOLF. Yes.

Senator CARPER. But she used to be Deputy Secretary of the Department, and she has testified before us in that capacity any number of times. I remember once when she said to us that one of her foremost goals as the Deputy Secretary was to get the Department of Homeland Security off of GAO's high-risk list. She would go meet with Gene Dodaro, the Comptroller General, on like a monthly basis, and say this question like, "How can we get off your high-risk list?" They would lay out the steps that the Department of Homeland Security needed to take, and ultimately succeeded.

I learned the other day from my staff that DHS is now one of three capital-level agencies with over 400 open GAO recommendations awaiting action, joining the Department of Defense and the Department of Health and Human Services with this high number of open recommendations. Among those recommendations are 26 priority recommendations related to emergency preparedness, re-

lated to border and transportation security, infrastructure, and cybersecurity, among others.

We have talked a little bit about this before on the phone, but I just want to gauge your interest in if you are confirmed as our Secretary to have the same kind of passion that Jane Holl Lute held for these issues when she was Deputy Secretary?

Mr. WOLF. Yes, Senator, and I appreciate the conversation that we had on this. We do have about 434 open GAO recommendations. That is about a 50 percent decrease from a high that the Department had in January 2011, and it is only slightly above our all-time low that we had in September 2018.

As you know, and I am sure Ms. Lute said, our practice at the Department is we actually do not close out any GAO recommendation until both we and the GAO agree that it is closed out. So that may not be the practice across the government writ large, but that is the practice at DHS.

I also point to an April 2020 letter that we received from the Comptroller General, highlighting the remarkable effort that DHS has implemented, about 83 percent of all GAO recommendations during the past 4 years, and that exceeds the overall average of most Federal agencies. So that is not to say that we do not have more work to do. We do. We get a lot of recommendations given our breadth and our mission, and we will keep plugging along. It continues to be a focus of mine, not only making sure that we respond to the GAO, but also to the IG.

Senator CARPER. Good. Thank you. That is encouraging. The preamble to the Constitution starts off with these words: "In order to form a more perfect union," and the goal of our Founding Fathers was perfection, knowing that we would never get there, and I think that is a good goal for us in this Committee and certainly a good goal for Homeland Security. I would urge you to maintain the attention and the commitment there.

Second, a number of us have been down to Central America and with a special focus, as you know, on Honduras, Guatemala, and El Salvador, the Northern Triangle countries. One of the countries, among the three, where we are seeing the most illegal migration, as you know, is Guatemala, and a lot of folks are coming out of the highlands.

Mr. WOLF. Yes.

Senator CARPER. I asked my staff, when we were down there, I said, "Why are so many people come out of the highlands?" They said, "They are farmers. They are agrarian people, and they have been going through a series of droughts that have decimated their ability to raise crops, including coffee."

My colleagues know I am a big root-cause guy, and I do not just look at the symptoms of problems. I say, "What is the cause of the problems?" Do you have any thoughts about a connection between the illegal migration of folks out of the highlands of Guatemala and what is going on in terms of our climate?

My son, our oldest son, lives out in California. They have just been through firestorms from one end of the State to the other. My wife was down in Antarctica back in, gosh, in January, where they set record temperatures, 70 degrees in Antarctica. We are seeing, I think, a record number of maybe hurricanes expected to come to

our country this year. Something is going on here. As it turns out, I think something might be going on in Guatemala. What do you think?

Mr. WOLF. I appreciate the question. We have done extensive work with the Northern Triangle countries, with the government of Mexico and others over the past 3½, almost 4 years now. I am trying to think of where to start.

We have signed a number of agreements back in 2019, from asylum and cooperative agreements to security agreements, to biometric agreements, making sure, from a departmental perspective, that we continue to help them from a security perspective. Now we work with the interagency. We work with the State Department. We work with the United States Agency for International Development (USAID) and others to help with things like food insecurity. We also address corruption. There are a number of other issues that the Northern Triangle countries, the countries that you mentioned specifically, are dealing with.

The Department plays a specific role when it comes to security. We send teams down there. We have had embedded teams in Guatemala, Honduras, El Salvador—obviously, this is pre-COVID—building up their capacity. Because what we know and what they have said to me, officials have said to me specifically, is that the more stability that they have in their country, so whether that is security, whether that is food security, whether that is an economic environment that allows individuals to stay there, is best not only for their country, but for our country as well.

We are working as an interagency, as a sort of a full-government response, and DHS has a piece of that, making sure that we provide the resources, the support, the capacity-building for Central America, for those Northern Triangle countries.

Senator CARPER. Thank you. Five or 6 years ago they had a Presidential election where, in Guatemala, and there was a newcomer who was running. He has actually had his own television show. He is a very popular guy. His name is Jimmy Morales. His campaign motto was "Neither a thief, nor a crook." He got elected to be President. I remember working with him from afar, from down there, from afar, trying to mentor him and encouraging him to surround himself with excellent people and not to follow the same bad path that a number of his predecessors had followed, corruption, that sort of thing. He ended up leaving in, maybe not disgrace, but in just being greatly discredited. It was a huge disappointment.

There is a woman named Thelma Aldana, who was the attorney general (AG) in Guatemala, who wanted to run for President. She was in El Salvador meeting with a guy named Bukele, who is now the President there, and figuring out how he got elected President in El Salvador and how that would help her in her campaign in Guatemala. Then she was not allowed to come back into her country. Could not come back, was denied as attorney general. She was death on crime, death on corruption.

Why do you suppose we never stood up for her? Not to say that they ought to elect her, but at least to try to encourage the authorities in Guatemala to let her come back and run?

Mr. WOLF. I am not sure I can answer that question, Senator. It was before my time, so I am not specifically familiar with that

individual. What I can tell you, though, is that the relationship that we have with President Giammattei's administration in Guatemala is good. They are a strong partner. They understand. They want to continue sort of the agreements that we have put in place with Guatemala, as well as the other countries. They have committed to that and we continue to build on that progress.

When we talk about the administration there today, they are good partners. We continue to work with them. We think we can always do more. Then obviously COVID has been a challenging time for all of us, particularly the Northern Triangle. We have provided resources to increase their testing, to increase some of their quarantine capacity as well. We continue to try to support them on a number of fronts.

Senator CARPER. All right. Thanks very much.

Mr. WOLF. Thank you.

Chairman JOHNSON. Thank you, Senator Carper. Senator Hawley?

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you, Mr. Chairman. Mr. Wolf, thank you for being here. I enjoyed speaking with you last week in anticipation of this hearing.

Let me talk to you a little bit about Operation LeGend, which the Department is participating in, which is so important to my home State. Just last week with another tragic shooting death in the city of St. Louis, that marked that city's 195th death this year, 3 months to go, of course, in a year that already surpasses, though, last year's total, which was itself horrific, 194 killings in 2019.

We are seeing a surge in violent crime across my State, unfortunately, and across the United States. This is one of the reasons why I so appreciate your Department's cooperation and help with Operation LeGend, which is itself named for a Missouri resident, LeGend Taliferro, a 4-year-old boy who was killed sleeping in his home in Kansas City, Missouri.

Can you give us an update? When you were here in August you talked a little bit about, actually talked at some length, about the Department's involvement in Operation LeGend. Can you just give us an update of where those efforts stand?

Mr. WOLF. Sure. Absolutely. We continue to support the Department of Justice. I talked a little bit about mutual aid support, as far as from a law enforcement perspective. Any time the Department of Justice, calls up tells us they need additional investigators, so mainly we are talking about ICE, Homeland Security investigators that are involved every day with criminal organizations, illicit crime, firearms, anything that comes across the border and has a nexus inside the United States, they get involved in. They are the primary response as we work with Operation LeGend in various cities throughout the country, to include in Missouri. We are happy to do that. ICE Homeland Security Investigations (HSI) is happy to lend their expertise and specifically focus on some of that violent crime activity that is occurring in those areas.

Obviously, Senator, the idea of Operation LeGend is surge resources in there so that you can close cases quicker. You can get them to the investigative stage quicker. You can get them through

that investigative and prosecutorial stage. You want to speed up the timeframe, because as you know being the Attorney General, it takes time to get through all this. And so you want to flood the zone with resources to address the issue, and we are happy to be a part of that.

Senator HAWLEY. Thank you for what you are doing, and as someone who served as the Attorney General of my State, my State's former chief law enforcement official, I can tell you that having additional resources—I mean, we always welcomed prosecutorial help, investigative help. I know that Missouri law enforcement officials are very grateful. They told me that. They have said that on the record. I am very grateful for what you are doing, and thank you for your partnership with DOJ and your help to our local officials, who oftentimes are very strapped for resources. I mean, that is just the fact of the matter in all times, but especially in these times. Thank you for that Federal help.

I want to shift topics and talk for a second about human trafficking. Earlier this year, the Department announced a new strategy to end human trafficking and recognize that issue as a priority for the Homeland Security Department. I really applaud this new focus. I have introduced legislation in this Congress to authorize a comprehensive study to determine how widespread human trafficking is now in this country. We have not had a comprehensive study of this sort in over a decade. I think it is time we found out.

Can you just give us an update on the implementation of the Department's strategy on human trafficking and what progress has been made?

Mr. WOLF. Sure. Absolutely. This is an area I do not know that the Department has really talked about it in length. Obviously, we have a blue campaign and again, ICE HSI does a lot of work in this human trafficking area. But it is not an area the Department has traditionally talked about. I think we are trying to change that. We have tried to change that specifically over the past year, but even if you go back 2 to 3 years, we have a strategy, as you talked about at the beginning of this year.

In October we will be opening a human trafficking center at the Department. Again, we are trying to signal that this is a threat. This is sort of a threat line that we continue to focus on at the Department, making sure that we are applying all of the resources throughout the Department into one center to attack this issue head on.

I can get back to you on the specific updates from the strategy itself, but let me just leave you with the fact that we take this seriously. We are devoting extensive resources to it. This is not just a one-off issue that we like to tack on at the end of the sentence. This is an issue that we care deeply about, and we are putting a lot of time and effort into it.

Senator HAWLEY. I certainly appreciate your focus on it and I think that the Department did so much last year to raise awareness about the levels of human trafficking we were seeing on the Southern border and cartels' involvement in human trafficking, and the horrific details about the use of children, the selling, the renting of children and how trafficking rings were doing this on the Southern border. That awareness, I mean, getting those facts out

there and then coming up with a strategy to combat that, I think, is so key and the Department, I think, is stepping up to that. I encourage you to continue to make that a focus.

Mr. WOLF. I appreciate that. We continued that along the Southwest border with our fraudulent family unit program, which is making sure that as individuals come across that border and they do claim to be a family that we hold those individuals accountable. We are doing that a couple of different ways, Rapid deoxyribonucleic acid (DNA) and elsewhere. We continue to find a high amount of fraud.

Senator HAWLEY. Yes.

Mr. WOLF. Whether these are individuals and children that are being trafficked or being smuggled or the like, we are finding a high percentage of fraud there.

Senator HAWLEY. Human trafficking has to be the worst of human rights abuses. It truly is modern-day slavery. It is a travesty to have it in any form in this country. I applaud you and encourage you to continue the efforts to use the full weight of the Department to root it out and to bring those criminals who are perpetrating it, whether inside this country or outside, by pushing it into the country, to bring them to justice.

Let me talk to you about another form of human rights abuses going on in China. Senator Scott mentioned this and I just want to follow up. I was delighted to see the CBP take action last week by issuing five new withhold release orders on various consumer products made by companies in the Xinjiang region and one Chinese facility that is widely considered to be a concentration camp.

I think we need to do even more. I have introduced legislation that would require all major multinational corporations to certify that the whole of their supply chains are slave free. Can you just give us a sense? To your knowledge, is CBP currently weighing any more comprehensive bans, limits on the importation of goods from the region of Xinjiang rather than just bans on specific producers?

Mr. WOLF. The answer is yes to both of those. We continue to look at not only sort of a regional approach, but also additional producers. CBP also took similar actions, I believe, with a company out of Malaysia several months ago as well.

Again, China is obviously a big focus, but we are also looking across the globe, making sure that we hold folks that are participating in forced labor accountable. I believe so far this fiscal year (FY), CBP has issued 12 withhold release orders (WROs), including eight again from China itself. We will continue to lean in on that.

Senator HAWLEY. Very good. Again, I salute your work on that and hope that we will be able to push forward and to do our best to root out the sort of forced labor and certainly to end any American complicity in it.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Hawley. Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Mr. Chairman. I appreciate Acting Secretary Wolf for joining us today.

I want to focus my questions today on several issues related to border security and immigration, key issues, of course, in my home State of Arizona. I remain committed to finding bipartisan and common-sense solutions to secure Arizona's border and protect public health while also treating migrants fairly and humanely. Strong border security and a fair immigration system should be mutually reinforcing goals, and I am always ready to work with my colleagues in a bipartisan way to achieve these goals.

My first question for you, Mr. Wolf, is your Department has not completed environmental stewardship plans (ESP) for border barrier projects in Arizona, despite local stakeholders expressing significant concerns about the impact of these projects on water and cultural resources. While my office has received information from DHS that these reports will be available soon, construction began before mitigation plans were complete. I will note that my office received reports of dynamite blasting in Guadalupe Canyon yesterday related to wall construction.

Do you believe that ESP should be completed before DHS begins construction on a specific project or it takes action, such as blasting with dynamite that will have a permanent impact on our land? Could you explain why or why not?

Mr. WOLF. Sure. Thank you, Senator. We continue at the Department, mainly through CBP obviously, in conjunction with the U.S. Army Corps of Engineers (USACE) who is building our border wall, a new border wall system, to minimize or mitigate any impacts to natural cultural resources along the Southwest border. I will say the president did issue a national emergency to build a new border wall system, so where appropriate we are waiving regulations to make sure that that work does not slow down, is not delayed, and we continue to build a new border wall system. That is not to say, again, that we take our environmental responsibilities very seriously, and CBP continues to solicit information from the public on how to address environmental impacts.

Now, as we talked earlier, I believe last week, on the environmental stewardship plans, those are almost to completion. Those should be issued in October, and we are happy to share those with you, those specifically regarding the 137 miles in the Tucson sector. We will continue to abide by our responsibilities to make sure that we are good stewards of the environment, making sure that we are doing everything that we can to minimize and mitigate impacts to the environment as we build that new border wall system. But it has been very clear that that is a national security issue, and we are going to continue to build that new border wall system.

Senator SINEMA. Thank you. I just want to note that the reports are not available yet, and yet there was dynamiting in the Guadalupe Canyon yesterday. It seems like there is a cart-before-the-horse situation, and I do want to note that residents of Southern Arizona have expressed intense concern about this. I hope this is something that you would be willing to address in the order in which you move forward with these projects.

My second question is a common theme that I have raised in many of our conversations, is the insufficient communication between DHS stakeholders in Arizona and my office on a variety of issues. This includes the border barrier construction concerns we

just discussed, but it also includes a wide array of other topics like the use of hotels to retain migrant children, conditions in ICE detention facilities, consultation with Arizona's Tribal leaders, crossing restrictions at our ports of entry, and the use of Title 42 authority at the border.

My office has asked you and your office to provide the guidance that your Department uses to keep detainees safe and ensure that trafficking victims are not returned to danger in Mexico. I have also asked you to take some common-sense steps such as having proper back-and-forth consultation with Arizona Tribes on issues such as wall construction.

Can you tell me what the specific steps that you have taken to improve communication between DHS and our State, local and Tribal partners in Arizona?

Mr. WOLF. Sure, Senator. I have talked to leadership, both at ICE, based off of conversations that you and I have had, as well as CBP, making sure that those lines of communication, it starts at the local level. Obviously, there is only so much I can do from D.C., but I need to make sure that ICE area directors, CBP, port directors there in Arizona are making sure that they are communicating with their individual stakeholders. Obviously, I have gone to Arizona numerous times over the past 10 months, and every time I go I start off with a roundtable of DHS leadership, making sure that they understand what my priorities are.

The top priority, usually in all of those roundtables, is about communication, so making sure that they are communicating to their stakeholders why we are putting in a border restrictions at ports of entry and why we are doing what we do.

We addressed the issue, I believe, we had with the mayor of Phoenix, trying to understand more about the use of hotels for UACs. Again, that is a practice that DHS has been utilizing for a number of years, over a decade. But again, was able to get the ICE director on the phone with the mayor, and I think that issue has been resolved as well.

We will continue to make sure that we are communicating. I tried to meet with a number of Tribes in Arizona. It was unfortunately right at the beginning of the outbreak of COVID and I believe the reservation was closed at that time. So continuing to be willing to meet with any and all individuals, but it also starts there at the local level within the State of Arizona.

Senator SINEMA. Thank you, and I appreciate that. I know the mayor is eager to have constant communication and an open line of communication with folks representing DHS in the metro Phoenix community.

My last question. Currently, DHS provides a migrant who is going through Prompt Asylum Claim Review (PACR) or Humanitarian Asylum Review Process (HARP) with a 48-hour consultation window prior to their interview with a USCIS asylum officer. But migrants in CBP custody have inconsistent and limited ability to receive calls back from legal representatives or nonprofit organizations. Can you talk about how you plan to address this issue so that migrants in these programs can receive the phone calls from counsel?

Mr. WOLF. Absolutely, Senator. PACR and HARP are the two programs, I believe, you are referencing. Those are expedited removal programs. Obviously, that is authority granted to us by Congress to make sure that we do those removal proceedings in an expedited manner. We make sure that they have access to counsel, that they have all of their due process rights through that expedited process, but it is an expedited process, and we try to get that down to a certain number of days. We continue to make sure, again, that they have access to counsel or any other legal services that they may need to represent themselves or their clients.

But I think it is important to keep in mind that PACR and HARP are part of the expedited removal process the Department goes through every day. It is different than other removal proceedings where perhaps that will drag on for days, sorry, weeks and months, and there are multiple opportunities. The expedited removal process is again defined by Congress and we are trying to do that in a very expedited manner. We continue to allow them access to counsel and any other, again, legal services that they need.

Senator SINEMA. Last comment I will make, Mr. Chairman. I know that my time has expired. I just want to note that only 13 of over 2,000 HARP cases and only 18 of over 2,700 PACR cases have had a legal representative in their proceedings. And so there is clearly a lot of work that we have yet to do here.

Thank you, Mr. Chairman. I yield back.

Chairman JOHNSON. Thank you. Thanks, Senator Sinema.

Again, Acting Secretary Wolf, I want to thank you for your service and sacrifice. I want to personally thank your wife and your kids. They do not get to see you as much as I am sure they would like to. Again, I appreciate that.

Please convey not only my personal appreciation but I think the Committee's appreciation to all the men and women who serve with you, working day in and day out 24/7 trying to keep our homeland safe. God bless all of you. We really appreciate it.

The nominee has made financial disclosures and provided responses to biographical and pre-hearing questions[1] submitted by this Committee. Without objection, this information will be made a part of the hearing record with the exception of the financial data, which are on file and available for public inspection in the committee offices.

The hearing record will remain open until 5 p.m. tomorrow, September 24th, for the submission and statements and questions for the record. Like many of our Committee Members mentioned, it is important that we have a confirmed Secretary for the Department of Homeland Security. Acting Secretary Wolf, I will do everything I can to move this nomination along as expeditiously as possible.

So again, thank you. This hearing is adjourned.

Mr. WOLF. Thank you.

[Whereupon, at 11:49 a.m., the hearing was adjourned.]

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[1] The information for Mr. Wolf appears in the Appendix on page 46.

APPENDIX

Opening Statement of Chairman Ron Johnson
Nomination Hearing to consider the Honorable Chad F. Wolf
to be Secretary, U.S. Department of Homeland Security
September 23, 2020

As prepared for delivery:

Today, the Committee will consider the nomination of the Honorable Chad Wolf who has been nominated by the President to serve as the Secretary of Homeland Security. As I have told former nominees, I believe that serving as the Secretary of Homeland Security is one of the most difficult jobs in government. The challenges and threats facing our country are complex, and the Department plays a critical role in addressing many of these issues and keeping Americans safe.

The Department of Homeland Security was formed nearly two decades ago and tasked with extensive responsibilities. During the last six months alone, DHS and its components have responded to unprecedented challenges including the COVID-19 pandemic, violent riots, and natural disasters. Additionally, DHS and its components must continue its missions to protect our nation's infrastructure, safeguard our cyberspace, secure our borders, enforce our immigration laws and combat evolving terror threats.

The more than 240,000 men and women of DHS play a crucial role in keeping our country safe and secure. They need a leader who can effectively work with other Federal agencies, our neighboring countries, and can ensure coordination between components. Our Committee has held a series of hearings to examine the government's role in the COVID-19 pandemic response. While much work remains to be done, it is evident that the men and women of DHS have worked tirelessly to respond to this crisis. The Department has been involved in almost every aspect of the response, from securing and distributing personal protective equipment, to screening travelers, and targeting fraudulent activity.

In addition to responding to the ongoing pandemic, DHS has been instrumental in combating recent violent and destructive riots. Congress mandated that DHS protect our federal buildings and assets, and we have seen our men and women in law enforcement do just that. There is no room in this country for the acts of violence we have seen, and I commend Acting Secretary Wolf's decisive and effective leadership during these times.

The Department of Homeland Security benefits from confirmed leadership and it is an important role of this Committee to ensure it has an effective leader. The Secretary of Homeland Security must be willing to work with Congress as an active and willing participant to ensure effective oversight. Acting Secretary Wolf has done just that, as he has testified before our Committee multiple times this year despite the Department having more than 100 Congressional oversight committees.

The Department is not perfect by any means so we must ensure that the next Secretary of Homeland Security vow to work towards fixing its shortcomings and addressing problems as they arise. Acting Secretary Wolf's extensive management experience combined with his

leadership of the Department over the last ten months make him uniquely qualified to serve as the Secretary of Homeland Security.

Acting Secretary Wolf, I thank you for your service and your willingness to continue serving the Department. I look forward to your testimony.

U.S. Senate Committee on Homeland Security and Governmental Affairs
Nomination of Chad Wolf to be Secretary of Homeland Security

August 23, 2020

Senator Gary C. Peters, Ranking Member

Opening Statement As Prepared for Delivery

Thank you, Mr. Chairman, and thank you to Acting Secretary Wolf for being here and for your willingness to serve.

Today we are considering the nomination of Chad Wolf to be the Secretary of Homeland Security.

Under this Administration, we have seen an unprecedented willingness to abandon the norms of Senate-confirmed Cabinet officials. This has been a particular problem at the Department of Homeland Security, our country's third largest agency, and a critical part of safeguarding our national security.

Vacancies and acting officials are a part of every administration, but should be rare. This Administration has abused vacancies to the detriment of this Department.

The President refused to formally nominate a leader for DHS for more than 500 days, a move that was not only legally questionable, but created chaos and confusion at the agency charged with addressing numerous threats to our national security.

The Department cannot successfully tackle the serious challenges it currently faces without strong, steady, and independent leadership.

While Mr. Wolf has experience at the Department, primarily as Chief of Staff, but also as an Undersecretary, and now Acting Secretary, he has been involved in some of the most controversial and concerning decisions the Department has made.

These decisions warrant a critical review of Mr. Wolf's record and call into question whether he is the right person for this crucial role.

Under Mr. Wolf's leadership, the Department has faced daunting challenges, asylum seekers at our southern border, the pandemic, civil unrest, and deadly wildfires and hurricanes.

While these challenges would strain even the most prepared staff, I am concerned by reports of slow decision-making and the sidelining of experts, reports that raise serious questions about the judgment and independence of agency leaders.

I am also concerned by how the Department has failed to adequately address the rise of domestic terrorism and white supremacist violence.

As you can see from this graphic, data shows that extremism based in white nationalism, anti-Semitism, and other similar ideologies accounts for more than 75 percent of domestic terror murders in the United States.

Yet recent reports and statements of former DHS employees have indicated that the White House, in cooperation with Mr. Wolf, have downplayed this threat in public risk assessments. Rhetoric and political ideology cannot drive intelligence reports, and should not predetermine the actions of any federal department.

While the threat of domestic terror is not new, the Department's necessary shift from focusing mainly on the foreign threats that dominated the Department's origins has not been smooth. It has been 18 years since Congress passed legislation to establish this massive agency and so much has changed.

Our country faces persistent threats, both longstanding and new, including foreign and domestic terrorism, election security, natural disasters, cyber-attacks, and now a pandemic.

It is this Committee's responsibility to ensure that any nominee to lead this colossal Department has the experience, temperament, and leadership to address these threats head on, to protect the American people.

Before I wrap up my remarks, I want to take a moment to acknowledge the severe toll that the pandemic has taken on the Department of Homeland Security. Hundreds of frontline personnel have been infected while working to keep our country safe. We have also tragically lost six TSA officers to the pandemic. Our hearts go out to all of those who have suffered because of this terrible disease.

I would also like to recognize a Border Patrol agent, who is fighting for his life, after being attacked in Arizona while on duty Monday night. I wish him a speedy recovery and thank him and his fellow Border Patrol agents for the work they do to keep us all safe.

Again Mr. Wolf, thank you for your willingness to serve and for being here today to answer our questions. I look forward to having a thorough discussion about the many pressing issues facing the Department and our country.

Prepared Statement of Senator Ted Cruz
Introduction for Chad Wolf
Nomination Hearing Before HSGAC – September 23, 2020

Thank you, Mr. Chairman. It is my pleasure today to introduce Chad Wolf, a fellow Texan and dedicated public servant.

I can tell you without hesitation that Chad is eminently qualified to be the next Secretary of Homeland Security.

Chad was born in Jackson, Mississippi but grew up in Plano, Texas. He earned a degree in American history from Southern Methodist University, and began his career working for Texas Senators Phil Gramm and Kay Bailey Hutchison.

Chad left the Hill after the September 11th attacks to serve our country and protect us from terrorist threats, going to work at the newly-created Transportation Security Administration in 2002. He became an early leader at the TSA, finishing out his first run of service there in 2005 as Assistant Administrator for Transportation Security Policy.

After over a decade in the private sector, Chad returned to the TSA as chief of staff in 2017 before becoming deputy chief of staff and eventually chief of staff at the Department of Homeland Security, dutifully working his way up.

He has been Acting Secretary of Homeland Security since November, 2019, and in that role he has shown excellent leadership. For example, in July when a few thousand rioters surrounded the federal courthouse in Portland, Oregon wanting to burn it down, Chad called the mayor of Portland and the governor of Oregon, offering them the help of DHS to quell the violence and prevent the courthouse from being destroyed. His offer was rejected, and those two Democratic politicians told him in no uncertain terms that DHS should leave Portland. They were fine with the federal courthouse burning to the ground – a courthouse, by the way, which was fully operating. People had been in and out of the courthouse everyday trying to conduct business despite the riots. Chad knew that if DHS left Portland, the mob would

burn the federal courthouse to the ground. So he held the line and made sure the courthouse was protected. Despite incredible resistance, Chad kept DHS personnel in Portland and kept the mob from burning the federal courthouse there to the ground. While the mayor of Portland and the governor of Oregon shirked their responsibility, Chad embraced his, and Portland has been safer during these riots because of his leadership.

This is a critical time for our nation's security. Not only do we have to be constantly vigilant about threats from abroad, we also have to be vigilant about threats to our peace and security from within our own country – not just from terrorists, not just from drug cartels and sex traffickers using our southern border as a portal into the United States, but also from violent rioters who have taken over parts of cities, destroyed businesses, put the American public in danger, and killed and injured law enforcement officers over the last seventeen weeks.

Chad's leadership in countering security threats and his experience working hand-in-hand with everyone from law enforcement officers and local mayors to the president of the United States will serve him well in this role.

I look forward to a swift confirmation so Chad can continue working to keep our country safe as Secretary of Homeland Security.

TESTIMONY OF

Chad F. Wolf
Acting Secretary of
U.S. Department of Homeland Security

BEFORE

U.S. SENATE

ON

"Nomination of Chad F. Wolf to Secretary of the Department of Homeland Security"

10:00 a.m., September 23, 2020
340 Dirksen Senate Office Building, Washington, D.C.

Good afternoon, Chairman Johnson, Ranking Member Peters, and other distinguished members of the committee. It is an honor to appear before you today as the President's nominee to be the Secretary of Homeland Security. I'm grateful to the President for the faith and trust that he has placed in me to serve with the tremendous men and women of the Department, whose mission is now more important and crucial to the safety and security of our Homeland than ever before.

As each of you personally understand, service to one's country means dedication, hard work, and commitment. That dedication often means less personal time with family and loved ones, which is a sacrifice felt by all of us in public service. For many years, my family has made tremendous sacrifices so that I could serve our Nation and I would like to take this time to recognize them for their ongoing encouragement, patience, and support as I continue my journey at the Department.

Please allow me to introduce my wife of 16 years, Hope, and our two children, Tucker and Preston. Without their support, I would not be here today.

I would like to recognize my parents, Jim and Cinda, who are unable to travel to D.C. today, but who are proudly watching these proceedings in real-time. They instilled in me a sense of service and commitment and have been enormously supportive of my desire to pursue public service.

I'd also like to thank the members of this committee and their staff for the important work that you do each day. I have had the privilege to meet many of you throughout the past several years and if confirmed, I look forward to the opportunity of continuing to work closely together to advance the mission of the Department to keep the American people safe.

And finally, I would like to thank the DHS workforce for what you do every day keeping the Homeland safe and secure. Most Americans don't understand the sacrifices you make, the unfair criticism you endure, or the complexities of your job. From one employee to another – thank you.

Like many Americans, my personal call to service began on September 11th, when I was Congressional staffer. At that time, I had no idea that the events of that morning would forever shape my future and the future of our Nation.

Heeding the call to service, I joined the newly created Transportation Security Administration, the very agency tasked with securing our airways and for ensuring that an event like 9/11 never happened again. I was proud to serve at TSA during its inception and its integration into the Department of Homeland Security.

Over the past several years, I have held several positions at DHS, to include among others, as the Department's Chief of Staff, Assistant Secretary, Under Secretary for Strategy, Policy, and Plans, and currently as the Acting Secretary, which has been the honor of a lifetime.

Over the past 10 months, while serving as the Acting Secretary, our Nation and the Department has experienced some of the most difficult challenges of the past generation, but I couldn't be prouder of the accomplishments we've achieved.

We've faced a global pandemic head-on and led the Federal Government's unprecedented response efforts to include the coordinated distribution of billions of items of life-saving PPE.

We've aggressively pushed back against malign foreign actors and nation states who have sought to interfere in our elections. We have worked together with all 50 states and territories to protect our election infrastructure. We've been tireless in our efforts because we believe that free and fair elections are the bulwark of our democracy.

We've taken extraordinary measures to protect the American people from a broad array of threats – to include homegrown violent extremists, domestic violent extremists, human trafficking, transnational organized crime, illegal narcotics, and COVID-19, and more.

We've stood firm against civil unrest and violence, much of which had been directed toward our Nation's federal properties, and law enforcement officers themselves. The Department has surged resources as needed, provided mutual aid to state and local partners as appropriate, and done so with the respect and professionalism I've come to expect from the dedicated men and women of DHS law enforcement.

And finally, we are supporting our states and their local governments as they combat wildfires and prepare and recover from hurricanes.

Against each of these challenges, the Department has marshaled our assets, exercised our authorities, and unified our efforts to safeguard the American people and our way of life. But despite the challenges of today, our eyes are remaining firmly on the horizon. As the strategies of our enemies evolve, DHS will adapt at every turn to defeat those who seek to do our Nation harm.

As our men and women can attest, the mission at the Department of Homeland Security is anything but simple or easy. It is one that is increasingly complex and expansive; one that transcends borders, mission-sets, and threat-streams. Answering the call, often in the most arduous of environments and difficult of circumstances, has been my sole focus since day one.

It has been the greatest honor of my life to serve alongside the 240,000 dedicated men and women that make up DHS. If I am fortunate enough to be confirmed, I look forward to continuing our progress to secure, protect, and enrich the lives of all Americans.

Thank you.

REDACTED

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	**Date of Nomination**
Secretary Department of Homeland Security	September 10, 2020

Current Legal Name			
First Name	**Middle Name**	**Last Name**	**Suffix**
Chad	Fredrick	Wolf	

Addresses					
Residential Address (do not include street address)			**Office Address** (include street address)		
[redacted]			**Street:** 2707 Martin Luther King Avenue, SE		
City: Alexandria	**State:** VA	**Zip:** 22302	**City:** Washington	**State:** DC	**Zip:** 20528

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

Birth Year and Place	
Year of Birth (Do not include month and day.)	**Place of Birth**
1976	Jackson, Mississippi

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

Spouse's Name (current spouse only)			
Spouse's First Name	**Spouse's Middle Name**	**Spouse's Last Name**	**Spouse's Suffix**
Hope	Solomon	Wolf	

Spouse's Other Names Used (current spouse only)						
First Name	**Middle Name**	**Last Name**	**Suffix**	**Check if Maiden Name**	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
Hope	Marie	Solomon		X	April 1976	July 2004

Children's Names (if over 18)			
First Name	**Middle Name**	**Last Name**	**Suffix**
N/A	N/A	N/A	N/A

2. Education

List all post-secondary schools attended.

Name of School	**Type of School** (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	**Date Began School** (month/year) (check box if estimate)	**Date Ended School** (month/year) (check box if estimate) (check "present" box if still in school)	**Degree**	**Date Awarded**
Villanova University	University	Est 2012 X	Est 2013 X	Master Certificate in Government Contract Management	2013
Naval War College	Military College	Est 2000 X	Est 2001 X	Selected courses covering National Security	N/A
Southern Methodist University	University	September 1996	December 1998	Bachelor of Arts, History	December 1998
Collin College	Community College	September 1994	May 1996	Selected Courses	N/A

3. Employment

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

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	**Name of Your Employer/ Assigned Duty Station**	**Most Recent Position Title/Rank**	**Location** (City and State only)	**Date Employment Began** (month/year) (check box if estimate)	**Date Employment Ended** (month/year) (check box if estimate) (check "present" box if still employed)
Other Federal Employment	U.S. Department of Homeland Security (DHS)	Acting Secretary	Washington, DC	November 2019	Present
Other Federal Employment	DHS/ Office of Strategy, Policy, and Plans (PLCY)	Under Secretary	Washington, DC	November 2019	November 2019
Other Federal Employment	DHS/PLCY	Senior Official Performing the Duties of the Under Secretary, Office of Strategy, Policy, and Plans	Washington, DC	February 2019	November 2019
Other Federal Employment	DHS/ PLCY	Assistant Secretary for Strategy, Policy, and Plans, Analysis & Risk	Washington, DC	February 2019	November 2019
Other Federal Employment	DHS	Chief of Staff	Washington, DC	January 2018	February 2019
Other Federal Employment	DHS	Acting Chief Staff	Washington, DC	August 2017	December 2017
Other Federal Employment	DHS	Deputy Chief of Staff	Washington, DC	July 2017	December 2017
Other Federal Employment	DHS/ Transportation Security Agency (TSA)	Chief of Staff	Washington, DC	March 2017	June 2017

Other Federal Employment	DHS/ TSA	Advisor	Washington, DC	January 2017	March 2017
Non-Government Employment	Wexler | Walker	Vice President & Senior Director	Washington, DC	October 2005	March 2017 (I took an unpaid leave of absence from January 2017- March 2017)
Other Federal Employment	DHS/TSA	Assistant Administrator, Transportation Security Policy	Washington, DC	September 2004	October 2005
Other Federal Employment	DHS/ TSA	Deputy Assistant Administrator, Transportation Security Agency	Washington, DC	May 2004	September 2004
Other Federal Employment	DHS/ TSA	Chief of Staff, Transportation Security Agency	Washington, DC	April 2002	May 2004
Other Federal Employment	U.S. Senate	Legislative Assistant	Washington, DC	January 2001	March 2002
Other Federal Employment	U.S. Senate	Deputy Legislative Assistant	Washington, DC	December 1999	December 2000
Other Federal Employment	U.S. Senate	Legislative Correspondent	Washington, DC	June 1999	December 1999
Other Federal Employment	U.S. Senate	Staff Assistant	Washington, DC	January 1999	May 1999
Non- Government Employment	Container Store	Associate	Dallas, TX	Est. X 1997	Est. X 1998
Non- Government Employment	Sixth Floor Museum	Intern (paid)	Dallas, TX	Est. X June 1997	Est. X August 1997
Non- Government Employment	Abercrombie & Fitch	Associate	Dallas, TX	Est. X December 1996	Est. X May 1997
Non- Government Employment	Stonebriar Country Club	Waiter	Dallas, TX	June 1996	August 1996
Non- Government Employment	Sears	Sales Associate	Plano, TX	Est. X December 1994	Est. X December 1995

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

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
N/A	N/A	Est ☐	Est ☐ Present ☐

4. Potential Conflict of Interest

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

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the U.S. Department of Homeland Security's Designated Agency Ethics Official (DAEO) to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I signed and transmitted to the Department's DAEO, which has been provided to this Committee. I am not aware of any other potential conflicts of interest.

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

During my time with Wexler | Walker, a bipartisan public policy consultancy, I advocated for a range of clients on various issues before the U.S. Congress. Most often, that engagement included educating Members of Congress and their staff as to the capabilities and/or issues confronting a specific client. From time to time, I did participate, as part of a team, to specifically advocate for and against legislation.

5. Honors and Awards

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

- U.S. Secretary of Homeland Security Distinguished Service Medal (April 2019)
- U.S. Secretary of Transportation September 11th Service Medal (February 2003)
- Transportation Security Administration's "Transportation Security" Silver Medal (November 2003)
- Partial Academic Scholarship, Southern Methodist University (1996-1998)
- Golden Key National Honor Society, Southern Methodist University (1996-1998) * *estimate dates*
- Two Year Academic and Athletic All-American, Collin College (1994-1996)

6. Memberships

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

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

Name of Organization	Dates of Your Membership (You may approximate.)	Position(s) Held
Army Navy Country Club	2006- Present	N/A

7. Political Activity

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

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
N/A	N/A	N/A	N/A

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

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
N/A	N/A	N/A	N/A

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

In 2014, 2015, and 2016, I was an employee of Wexler | Walker, a bipartisan public policy consultancy. I contributed to the Wexler | Walker PAC each of those years through a regular deduction of my paycheck during the course of the calendar year. The amounts listed below reflect the aggregate totals for each respective calendar year.

Name of Recipient	Amount	Year of Contribution
Wexler | Walker PAC	$3,450	2016
Wexler | Walker PAC	$2,200	2015
Wexler | Walker PAC	$1,600	2014

8. Publications and Speeches

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

Title	Publisher	Date(s) of Publication
Homeland Security Chief: To Attack Our Monuments Is To Attack America	The Federalist https://thefederalist.com/2020/07/03/homeland-security-chief-to-attack-our-monuments-is-to-attack-america/	July 3, 2020
ACLU's Unapologetic Attack on Law Enforcement Is Wrong	Newsweek https://www.newsweek.com/aclus-unapologetic-attack-law-enforcement-wrong-opinion-1525427	August 17, 2020

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been

nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

Title/Topic	Place/Audience	Date(s) of Speech
Confirmation hearing for the position of Under Secretary of Strategy, Policy, and Plans	U.S. Senate Committee on Homeland Security and Governmental Affairs	June 12, 2019
Press Conference with President Orlando Hernández	Casa Presdencial Tegucigalpa, Honduras Public	January 9, 2020
Hearing on "The FY 2021 Department of Homeland Security Budget"	U.S. Senate Committee on Appropriations: Subcommittee on Homeland Security	February 25, 2020
Hearing on "The FY 2021 Department of Homeland Security Budget"	U.S. House Committee on Appropriations: Subcommittee on Homeland Security	February 26, 2020
Hearing on "The FY 2021 Department of Homeland Security Budget"	U.S. House Committee on Homeland Security	March 3, 2020
Hearing on "The FY 2021 Department of Homeland Security Budget"	U.S. Senate Committee on Homeland Security and Governmental Affairs	March 4, 2020
Hearing on "Oversight of DHS Personnel Deployments to Recent Protests"	U.S. Senate Committee on Homeland Security and Governmental Affairs	August 6, 2020

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

Title	Place/Audience	Date(s) of Speech
Homeland Security Advisory Council (HSAC) Open Session	Transportation Security Administration (TSA) Headquarters Arlington, Virginia HSAC members and public	November 14, 2019
Roundtable	Embassy Suites Convention Center McAllen, Texas Business and community leaders	November 21, 2019
Roundtable	Sheriffs Association of Texas Austin, Texas Texas sheriffs	November 22, 2019
Sanctuary Cities Press Conference and Roundtable	North Carolina Legislative Office Building Raleigh, North Carolina Local & state officials, law enforcement, Angel Families, and public	November 25, 2019
Ambassador Espina Farewell	Official Residence of Guatemala Washington, DC Guests of the Embassy of Guatemala	December 4, 2019

DHS Then and Now Day Keynote	The Cosmos Club Washington, DC Washington Homeland Security Roundtable members and guests	December 4, 2019
Science & Technology Directorate (S&T) Under Secretary's Awards Ceremony Keynote	National Association of Home Builders Washington, DC S&T employees, guests, and company representatives	December 6, 2019
DHS Federally Funded Research and Development Centers (FFRDC) Senior Stakeholder Summit	MITRE Corporation McLean, Virginia Employees of DHS, MITRE, and RAND	December 9, 2019
US-EU Justice and Home Affairs Ministerial Reception	Department of Justice Washington, DC US-EU Justice and Home Affairs ministerial representatives	December 10, 2019
Senior Executives Association's Presidential Rank Awards Leadership Summit Keynote	The Mayflower Hotel Washington, DC USG Senior Executives and Senior Professionals	December 17, 2019
100 Miles of Border Wall System Press Conference	New Border Wall Construction Site Yuma, Arizona Public	January 10, 2020
Human Trafficking Strategy Roundtable	DHS (St. Elizabeth's Campus) Washington, DC Federal & state officials and private sector attendees	January 15, 2020
Strengthening the U.S. Response to Human Trafficking Event	The Heritage Foundation Washington, DC Public attendees	January 15, 2020
Homeland Security Experts Group (HSEG) Winter Meeting	Woodrow Wilson International Center for Scholars Washington, DC HSEG members	January 17, 2020
Combatting Counterfeits Report Press Conference	National Intellectual Property Rights Coordination Center Arlington, Virginia Public	January 24, 2020
United States Coast Guard Cutter (USCGC) Blackthorn Memorial Ceremony	USCGC Blackthorn Memorial Tampa, Florida USCGC related organizations	January 28, 2020
National Football League (NFL) Security Press Conference	Downtown Miami Hilton Miami, Florida Public	January 29, 2020
Council of Governors Winter Meeting	Marriott Marquis Washington, DC National Governors Association attendees	February. 7, 2020
School Safety Roundtable	Eisenhower Executive Office Building USG officials and families of Parkland victims	February 10, 2020

U.S. Border Patrol Academy Graduation	FLETC Artesia, New Mexico Border Patrol graduates	February 11, 2020
Arizona Corporate Security Symposium Keynote	GoDaddy Headquarters Scottsdale, Arizona Corporate stakeholders	February 12, 2020
National Border Patrol Council Engagement	The White House USG officials and National Border Patrol Council members	February 14, 2020
National Border Patrol Council Conference	Marriot Marquis Washington, DC National Border Patrol Council guests	February 15, 2020
Los Angeles 2028 Olympic Committee Meeting	Montage Beverly Hills Los Angeles, California USG officials and LA Olympic Committee	February 18, 2020
Regional Security Conference	Ministry of Security Tegucigalpa, Honduras Central American delegation	February 20, 2020
HSAC Public Conference Call	Telephonic HSAC members and public	February 24, 2020
President's Cup Cybersecurity Competition Awards Ceremony	Eisenhower Executive Office Building USG officials and cybersecurity competition award winners	February 26, 2020
North Carolina Election Security Press Conference and Roundtable	Mecklenburg County Election Security Facility Charlotte, North Carolina State & local election security attendees and public	February 27, 2020
Panel titled "National Security"	Gaylord National Resort & Conference Center National Harbor, Maryland Conservative Political Action Conference attendees	February 29, 2020
Panel titled "Human Trafficking"	JW Marriott Hotel Washington, DC Rule of Law Defense Fund attendees	March 2, 2020
Election Security Press Conference	CISA Headquarters Arlington, Virginia Public	March 3, 2020
Airlines for America (A4A) Board of Directors Meeting	A4A Headquarters Washington, DC A4A board members	March 5, 2020
Transatlantic Aviation Industry Roundtable Meeting	Ronald Reagan Building Washington, DC USG & UK officials and airline attendees	March 5, 2020
Voluntary Principles to Combat Online Child Sexual Exploitation Meeting	Department of Justice Headquarters Washington, DC	March 5, 2020

	USG and Five Countries/Five Eyes ministerial representatives	
Cruise Industry Roundtable	Port Everglades Administration Offices Fort Lauderdale, Florida UGS officials and cruise line attendees	March 7, 2020
White House Press Briefing with Coronavirus Task Force	The White House Public	March 14, 2020
White House Press Briefing with Coronavirus Task Force	The White House Public	March 20, 2020
White House Press Briefing with Coronavirus Task Force	The White House Public	April 1, 2020
Meridian International Center Meeting	Video Teleconference Meridian Corporate Council and ambassadors	April 1, 2020
Coronavirus Roundtable	Telephonic Business CEOs	April 1, 2020
Commercial Customs Operational Advisory Committee Meeting	Video Teleconference COAC members	April 15, 2020
Family Research Council (FRC) Meeting	Telephonic FRC staff and ministers	April 17, 2020
HSAC Open Session	Telephonic HSAC members and public	May 7, 2020
White House National Police Week Briefing	Telephonic Law enforcement participants	May 15, 2020
FRC Meeting	Video Teleconference FRC staff and ministers	May 21, 2020
SAFER Grants Press Conference	Fort Worth, Texas Local elected officials and public	May 21, 2020
SAFER Grants Press Conference	Jacksonville, Florida Local elected officials and public	May 26, 2020
Briefing on the 2020 Hurricane Season	The White House Public	May 28, 2020
Retail Industry Leaders Association (RILA) Meeting	Telephonic RILA members	June 3, 2020
"Keeping America's Communities Safe" Briefing	Telephonic State and local officials	June 3, 2020

National Hurricane Center Press Conference	National Oceanic and Atmospheric Administration National Hurricane Center Miami, Florida Public	June 8, 2020
Narcotics Offload Press Conference	Port Everglades Pier Ft. Lauderdale, Florida Public	June 9, 2020
Memorial Service for FPS PSO David "Pat" Underwood	Pinole Valley High School Pinole, California Guests of Underwood family	June 19, 2020
Border Security Roundtable	U.S. Border Patrol Yuma Sector Yuma, Arizona State and local officials	June 23, 2020
Naturalization Ceremony	Eisenhower Executive Office Building USG officials and naturalization candidates & their guests	July 2, 2020
Governors Homeland Security Advisors Council Engagement	Telephonic Governor-appointed Homeland Security Advisors	July 13, 2020
U.S. Chamber Foundation 9th Annual Building Resilience Through Private-Public Partnerships Conference	Telephonic U.S. Chamber Foundation members	July 14, 2020
National Organization of Black Law Enforcement (NOBLE) Executives Roundtable	Telephonic NOBLE members	July 20, 2020
Press Conference	Ronald Reagan Building Washington, DC Public	July 21, 2020
Operation LeGend Announcement	The White House USG & law enforcement officials and families of LeGend Taliferro, Vernado Jones, Jr., and Jacqueline Vigil	July 22, 2020
Law Enforcement Grassroots Town Hall	Telephonic Heritage Foundation Action Group staff and grassroots activists	August 10, 2020
Support Law Enforcement Grassroots Town Hall	Living History Farm Des Moines, Iowa Heritage Foundation Action Group staff and guests	August 13, 2020
Conservative Action Project (CAP) Engagement	Telephonic CAP members	August 19, 2020
Council for National Policy (CNP) Keynote	The Ritz-Carlton Arlington, Virginia CNP members	August 21, 2020
Naturalization Ceremony	The White House USG officials and naturalization candidates	August 25, 2020

Naturalization Ceremony	USCIS Field Office Centennial, Colorado USG officials and naturalization candidates	August 26, 2020
Hurricane Laura Emergency Operations Roundtable	Lake Charles Fire Department Lake Charles, Louisiana USG, state, and local officials	August 29, 2020

Since becoming Acting Secretary, I have made numerous speeches, remarks, publications, and other public representations of our Department's activities and achievements. To the best of my knowledge and after having conducted a thorough and comprehensive search, I can state that this list represents a complete and accurate collection of speeches, remarks, publications, and other public representations I have made.

9. Criminal History

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

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than $300 and did not include alcohol or drugs.) No
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? Yes
- Have you been charged, convicted, or sentenced of a crime in any court? No
- Have you been or are you currently on probation or parole? No
- Are you currently on trial or awaiting a trial on criminal charges? No
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? No

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

A) Date of offense: August 2000

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

   Description of the specific nature of the offense: Expired vehicle tags in Washington, DC

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

2) Firearms or explosives: No
3) Alcohol or drugs: No

C) Location where the offense occurred (city, county, state, zip code, country): Washington, DC, United States

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

1) Name of the law enforcement agency that arrested/cited/summoned you: DC Metropolitan Police

2) Location of the law enforcement agency (city, county, state, zip code, country): Washington, DC, United States

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

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

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

F) If no, provide explanation: I paid a fine ($200-300) and was released within hours. Washington, DC has since repealed its law that allows for the arrest of an individual for expired vehicle tags only.

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

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

I) Were you sentenced to imprisonment for a term exceeding one year: N/A

J) Were you incarcerated as a result of that sentence for not less than one year: N/A

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

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

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: N/A

N) Provide explanation: N/A

10. Civil Litigation and Administrative or Legislative Proceedings

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

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

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

Date Claim/Suit Was Filed	Court Name	Name(s) of Principal Parties Involved in Action/Proceeding	Nature of Action/Proceeding	Results of Action/Proceeding
N/A	N/A	N/A	N/A	N/A

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

N/A

11. Breach of Professional Ethics

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

Name of Agency/Association/ Committee/Group	Date Citation/Disciplinary Action/Complaint Issued/Initiated	Describe Citation/Disciplinary Action/Complaint	Results of Disciplinary Action/Complaint
N/A	N/A	N/A	N/A

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

I left my job as a waiter (Stonebriar Country Club) during college when my employer and I agreed my skill set was not that of a waiter.

12. Tax Compliance

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

(A) Have your tax returns been the subject of an audit in the past 10 years by Federal, State or local authorities, which resulted in a tax lien, levy or other collection enforcement action? If so, what resulted from the audit?

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13. Lobbying

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

Yes, I was a registered federal lobbyist from 2005-2017.

I would also note that, in conjunction with TSA and DHS legal counsel, I put in place two recusal arrangements on issues that I was involved in when I departed Wexler | Walker. The first recusal was specific to TSA and aviation security equipment and the second recusal concerned my work on H1-B visa issues. Both of those recusals ran from March 2017 – March 2019.

14. Outside Positions

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

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

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

15. Agreements or Arrangements

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

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

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

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

16. Additional Financial Data

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

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REDACTED

SIGNATURE AND DATE

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

This 13th **day of** September **, 20**20

REDACTED

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

September 18, 2020

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

Dear Mr. Chairman:

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

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

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

Sincerely,

DAVID APOL Digitally signed by DAVID APOL Date: 2020.09.18 14:04:59 -04'00'

David J. Apol
General Counsel

Enclosures REDACTED

September 10, 2020

Mr. Joseph Maher
Designated Agency Ethics Official
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

Dear Mr. Maher:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Secretary of the U.S. Department of Homeland Security. It is my responsibility to understand and comply with commitments outlined in this agreement.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the regulatory exemption for diversified mutual funds and unit investment trusts at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program

regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will continue to abide by the Ethics Pledge (Exec. Order No. 13770) that I previously signed and will be bound by its requirements and restrictions in addition to the commitments that I have made in this ethics agreement.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 2 – SPOUSE EMPLOYMENT

My spouse is employed by Berkeley Research Group and she holds stock in Berkeley Research Group. She receives a fixed annual salary and a bonus tied to her performance. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Berkeley Research Group, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

SECTION 3 – PUBLIC POSTING

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

Sincerely,

Chad F. Wolf

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Chad F. Wolf to be
Secretary, Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to be the next Secretary of the Department of Homeland Security (DHS or "the Department"), and if so, what were they?

   While I spoke to the President regarding my nomination, it is the longstanding practice and expectation of the Executive Branch for officials to refrain from commenting on conversations they may have had with the President of the United States.

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

   No.

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

   No. My only commitment, if confirmed, is that I will lead by example and with integrity while exercising my duties within the parameters of the law.

4. Are you aware of any business relationship, dealing, or financial transaction that can result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

   In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the U.S. Department of Homeland Security's (DHS) Designated Agency Ethics Official (DAEO) to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I signed and transmitted to the Department's DAEO.

   I am not aware of any possible conflict of interest or appearance of a conflict of interest for any business relationship, dealing, or financial transaction. However, if confirmed, I will ensure that any financial interests or those imputed to me will not come before me and, if they do, I will not participate and immediately consult with Departmental ethics officials. From March 2017-March 2019, I had recusals in place for issues dealing with aviation screening equipment and Hl-B visas. In an abundance of caution, I will continue to recuse myself from particular matters related to Analogic Corporation and NASSCOM.

II. Background of the Nominee

5. What specific background, experience, and attributes affirmatively qualify you to be Secretary?

I believe my homeland security subject matter expertise, increasing leadership positions at the Department, including as Acting Secretary for the past 10 months, experience leading and managing large staffs, and my time in the private sector uniquely qualify me to serve as Secretary. I have held a number of senior positions at the Department that have provided me with a unique view into how the Department operates, the challenges and complexities it faces, and the need for a strong senior leadership team to help provide direction and leadership to all Components and support offices. I have also had the opportunity to lead and participate in inter-departmental and interagency policy processes and deliberations to push DHS viewpoints and initiatives forward and have worked with congressional committees to ensure the Department has the resources and authorities to succeed in its mission.

Additionally, having worked at the Transportation Security Administration (TSA), I come equipped with experience working in a operational Component, which broadened my perspective on how headquarters can properly provide needed support. At TSA, I had the privilege of heading the agency's Policy Office and subsequently serving as the Chief of Staff of the agency. Both positions provided me with the opportunity to manage large teams, work closely with Departmental leadership, construct budget requests, participate in interagency deliberations and engage both private sector and state and local partners.

6. Please describe:

   a. Your leadership and management style.

   I lead by articulating a clear vision, setting both short- and medium-term goals and holding personnel accountable. I am a strong believer in setting clear expectations up front that include deliverables and timelines. I empower team members to be creative and determine alternative paths to identified issues. While I do not micromanage, I do hold personnel accountable for progress and action.

   My management style is based on setting expectations and ensuring roles and responsibilities are clear from the outset. I value open communication with personnel and am always looking for smarter, more creative ways to accomplish goals and objectives.

   b. Your experience managing personnel.

I have had the privilege to manage and lead large organizations in the Department, both at the component and headquarters level. I have worked with both career and political appointees at all levels on a wide range of issues and responsibilities. Throughout my time at DHS, my responsibilities have included hiring, performance evaluation, strategic oversight, daily operations, and integration of new capabilities, authorities and technology.

c. What is the largest number of people that have worked under you?

As Acting DHS Secretary, I have the ultimate responsibility of overseeing more than 240,000 DHS personnel with approximately 50 direct reports.

7. Please describe your previous experience, including roles and responsibilities, as Acting Secretary of DHS and Under Secretary for Strategy, Policy and Plans (PLCY).

As Acting Secretary, it is my responsibility to lead and provide strategic direction to Departmental leadership and ensure that the Department has the authorities and resources it requires to carry out its mission.

Previously, when I was leading the Office of Strategy, Policy and Plans, I was responsible for leading the policy-making process of DHS and participate with every DHS component and the interagency to ensure the Department made well-informed decisions. The challenges the Department faces are immense and the need for a strong and dynamic policy process that informs leadership decision making was, and remains, crucial to the success of DHS.

As Chief of Staff of the Department, I had close interaction with every Component agency and ensured that key decisions for the Secretary were properly staffed and that all Component views were expressed before decisions were made.

Additionally, having worked at the Transportation Security Administration (TSA), I come equipped with experience working in at an operational Component, which broadened my perspective on how headquarters can properly provide needed support.

a. If confirmed, what lessons learned from your time as Acting Secretary of DHS and Under Secretary for PLCY will you carry forward as the Senate-confirmed nominee?

Over the last 10 months, I have learned that you must surround yourself with competent and hard-working personnel who are committed to the DHS mission. The Department is only as strong as its workforce and I take my commitment to the teams I personally manage, as well as the 240,000 men and women of DHS, very seriously. Over the last two years as Acting Secretary and Under Secretary, I have also gained an even greater appreciation for a cohesive, forward-leaning and thorough policy process that provides opportunities for every subject matter expert in the room to weigh in on the important issues facing the Department.

III. Role of the Secretary of DHS

8. Please describe your view of the agency's core mission and the Secretary's role in achieving that mission.

At its core, the Department's primary mandate has remained consistent with the Homeland Security Act of 2002 – to prevent, reduce our vulnerability to, and recover from terrorist attacks against the United States. Although our core mandate of protecting the Homeland has remained the same, the threat streams and threat climate our Nation faces have changed quite considerably since our inception. Nation-states, in addition to non-state actors, arguably pose their greatest threat since DHS's creation.

Threats from Russia, China and Iran to our election systems, critical infrastructure, economic security and our way of life have increased since DHS's inception. The Department must also remain vigilant against Transnational Criminal Organizations, domestic terrorists of all ideological backgrounds, malign cyber actors and other threats facing our Homeland.

9. If confirmed, what would be the highest priority items you would focus on? What do you hope to accomplish during your tenure?

If confirmed, my highest priority would be to ensure the men and women of the Department have the support and resources they need to carry out their critical national security mission sets. The Department, and the country as a whole, face complex challenges on a daily basis. As Acting Secretary, ensuring the Department carries out their mission to keep the American people safe is my highest priority.

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

Cooperation and cohesion across the many components of the Department is critical to our mission. As Acting Secretary, I have prioritized my relationships with component heads and other senior DHS leaders in order to ensure they have the resources and support that they need, and the Department is fully coordinated in our complex mission sets.

11. There are a number of vacancies and officials in acting positions within the Department. If confirmed, what actions will you take to ensure that DHS' workforce is aligned with its core missions?

DHS's greatest strength is its people, and I am committed to ensuring that all of the men and women in our workforce—including senior leaders—are equipped to successfully execute the Department's mission of safeguarding the American people, the Homeland, and our values.

Actions in support of this objective include: leading by example, clearly communicating priorities to and through senior leaders, and working with Congress to ensure adequate resources.

IV. Policy Questions

DHS' Missions

12. By law, the Department of Homeland Security is responsible for the development and publication of the Quadrennial Homeland Security Review (QHSR) which outlines strategies and priorities for DHS. DHS was required to publish its 3rd QHSR in 2018; however, the 2018 report still has not been published. Will you commit to updating this Committee on the status of the QHSR (or its successor) and working to release the review as soon as possible?

I appreciate your patience and understanding in the delayed production of the QHSR, as the Department has navigated through leadership changes and devoted extraordinary resources to confronting an unprecedented global pandemic, national civil unrest, and malicious cyber activity that threaten the Homeland.

Despite these pressing challenges, producing an articulate, pertinent, and useful QHSR remains a key priority since I assumed the position of Senior Official Performing the Duties of Under Secretary (SOPDUS) in February 2019. While delayed, the Department continues to make meaningful progress in the production of this document and my staff are more than willing to come brief the Committee on its status.

During the last year, DHS has completed several other key foundational strategic documents, including *the National Preparedness Report*, the DHS Strategic Plan, Future Years Homeland Security Program Fiscal Years 2020-2024 (FYHSP) Executive Summary, the DHS Budget in Brief for 2019, and the DHS Agency Reform Plan. These documents will help inform the QHSR and ensure its currency and broader utility.

13. What, if any, are the most significant changes in America's security environment since the publication of the 2014 QHSR?

The threat landscape has changed quite considerably since the production of the last QHSR. As a case in point, the Boston Bombings (2013) and Deepwater Horizon Oil Spill (2010) were watershed moments that played a pronounced role in the production of the 2014 QHSR.

Since then, the threats of domestic terrorism and targeted violence as well as from Transnational Criminal Organizations have emerged, along with new and evolving threats including intellectual property theft, malicious cyber activity, election meddling, and the rise of increasingly assertive nation-state adversaries, like Russia and China, all

pointing to a security environment that is dynamic and arguably more complex than ever before.

14. In your view, how has DHS's core mission evolved since its inception, if at all? What do you think DHS's core mission should be for the next decade?

DHS's core mission is—and should remain—to safeguard the American people, our homeland, and our values from all threats, all the time.

However, the threats the Department faces are dynamic: as they shift and evolve, so must DHS. I believe the Department was created with adaptability in mind.

As I noted in my recent State of the Homeland address, terrorism, criminal actions threatening public safety, natural disasters, and pandemics will remain enduring threats to the Homeland. And in the decade to come, we will continue adapting to nation-states launching new aggressive tactics here in the Homeland, including through cyber and economic means.

15. What do you see as the greatest threats to the homeland, and how will you work to mitigate these threats if confirmed as DHS Secretary?

Threat streams including border security, public safety, cyber and infrastructure security, domestic terrorism, and transportation security remain concerning to me. These traditional threats and missions of the Department have continued to evolve over the last several years, but we are becoming increasingly concerned about malign actors that leverage non-traditional tools to undermine our global competitiveness and open democratic system. This includes election meddling, mis/disinformation campaigns, nefarious foreign investment, intellectual property theft, cyber intrusion tactics, and exploitation of our legal immigration systems.

If confirmed, I will work closely with Congress and the Department's interagency partners to ensure we continue to prepare, both from a resource, staffing, and personnel perspective, to proactively confront these threats.

COVID-19

16. During the response to the COVID-19 pandemic, the Federal Emergency Management Agency (FEMA) played a crucial role in positioning and deploying personal protective equipment (PPE) to frontline workers. If confirmed, what actions will you make to improve DHS' response to future national health emergencies?

Strong partnership between FEMA and HHS was critical to responding to COVID-19 as well as any future national health emergency. FEMA is working closely with HHS as they continue to modernize the Strategic National Stockpile in order to ensure the

federal government has the necessary commodities and supplies on hand for future emergencies. FEMA has also worked closely with the private sector and state officials in their COVID response and will carry those lessons learned forward to inform decisions and actions to future emergencies.

DHS is encouraged to see additional capabilities ramp up domestically and believes this trend should continue in order to reduce our reliance on other countries for critical supplies.

While not the only tool available to allow the U.S. to increase its production, the Defense Production Act (DPA) has been valuable during this pandemic as the Administration seeks to accelerate and expand the production of critical medical supplies facing severe shortages.

17. Many of the agency's employees work on the frontline to perform essential government functions and continue to work to keep communities safe. What actionable steps, if confirmed, will you take to ensure DHS employees are as safe as possible as they continue to perform essential duties and interact with the general public?

I remain fully committed to protecting the DHS workforce from exposure to COVID-19. The Department took concrete actions to protect our frontline personnel by ensuring they had access to adequate PPE, instituting maximum telework where applicable, issuing CDC health recommendations to DHS employees, and issuing dozens of health guidance memos to the workforce.

The Department also took decisive action to prevent our frontline personnel from encountering potentially infected individuals by implementing travel restrictions and public health orders along our borders.

We will continue to take these types of actions to protect our workforce going forward.

18. What steps can DHS take to increase the security of its supply chain in order to provide personal protective equipment (PPE) to individuals in a timely manner while also reducing the risks and disruptions associated with a global supply chain in a time of a national health emergency?

Today, I believe the country is better positioned with regards to PPE and the associated supply chains than it was at the outset of the COVID-19 pandemic. Thanks in part to the efforts of FEMA and its partner agencies, most states now have a 60 to 90-day supply of PPE on hand. The CARES Act also provided $1 billion to ramp up domestic production of PPE. While there may still be localized shortages of PPE in areas that have a flare up of COVID-19 cases, FEMA stands ready to direct PPE to those areas as needed.

FEMA has also used the DPA to increase the production of PPE such as N-95 masks. This production is being used to restock, expand, and modernize the SNS. For example, whereas the Stockpile had fewer than 18 million N95 masks prior to the pandemic, we are now growing the reserve through the DPA to include 300 million.

CISA also took decisive action to secure our supply chain to ensure PPE was made available across the country and issued guidance to essential critical infrastructure workers to prioritize essential industries and to help state and local jurisdictions and the private sector identify and manage their essential workforce while responding to COVID-19.

19. In light of COVID-19, the U.S. land borders with Mexico and Canada have been closed to non-essential travel since March 21, 2020. If confirmed, how would you collaborate with the Governments of Mexico and Canada to assist in combating the trans-national spread of COVID-19? Additionally, if confirmed, how would you evaluate re-opening the borders to lawful trade and travel?

In late March CBP implemented temporary travel restrictions at the northern and southern land borders to prohibit non-essential personal travel. We took these actions to protect our citizens from the spread of COVID-19 and to keep essential travel, and our economies, going. These restrictions do not affect cargo or commercial trade. These restrictions have resulted in a reduction over 470,000 individuals crossing our borders each day.

DHS works closely with the Governments of Canada and Mexico to continuously evaluate these restrictions and continue to rely on health criteria and the advice of the CDC and the public health experts from each government.

20. Beginning in March, DHS began enforcing the Centers for Disease Control and Prevention (CDC) Title 42 health authorities at the borders to refuse illegal migrants. As the pandemic progresses, if confirmed, how do you plan to assess the ability of DHS to begin processing migrants under DHS' title 8 authorities?

On March 21, 2020, CDC exercised its Title 42 Public Health authority to issue an order suspending the introduction of persons traveling from Canada or Mexico who would otherwise be introduced into a congregate setting in a land port of entry or Border Patrol station at or near the border. Under this authority, illegal border crossers are being expeditiously returned to their country of last transit – Canada or Mexico. When such a return is not possible, the U.S. Government makes every attempt to return these individuals to their country of origin.

Aliens not amenable to the CDC Order continue to be processed under Title 8 authorities, but the nature and duration of such processing carries with it significant risks to the public health of DHS personnel and the migrants themselves. As such, where appropriate and applicable, Title 42 remains the preferred pathway for processing amenable aliens encountered.

The Department will continue to rely on CDC medical health experts to assess the public health environment along with Southwest border.

21. If confirmed, what actions will you take to ensure that the Department is better positioned to identify, address and respond to future pandemics? What, if any, additional authorities are needed to strengthen the ability of the Office of Countering Weapons of Mass Destruction and Science and Technology Directorate to aid the Department's pandemic surveillance and response efforts?

Earlier this year, I established a Secretary's Advisory Group (SAG), led by a senior official at CISA, to take a comprehensive look at the Department's COVID-19 response and to provide recommended actions for future emergencies and pandemics. The SAGs After-Action Report is scheduled to be finalized by the end of September and will incorporate recommendations from across the Department.

Mission 1—Prevent Terrorism and Enhance Security

22. In reviewing the four objectives identified in the DHS Strategic Plan for Fiscal Years 2020-2024 related to this mission, please describe your understanding of DHS's current capability to achieve these goals.

Goal 1 (Counter Terrorism and Homeland Threats) outlines 4 objectives, which are to:
1.1) Collect, Analyze and Share Actionable Intelligence,
1.2) Detect and Disrupt Threats,
1.3) Protect Designated Leadership, Events and Soft Targets, and
1.4) Counter WMDs and Emerging Threats.

It is my assessment that the Department generally possesses the underlying capacity and personnel to identify and achieve the previously stated objectives outlined in Goal 1 of the DHS Strategic Plan. However, to more optimally meet these objectives, DHS manages a comprehensive performance analysis process, led by the Management Directorate, that works to evaluate strategic and programmatic performance each year against these and other Departmental objectives.

These analytical metric reports include the *1. DHS Agency Financial Report* (November 15, 2018), *2. DHS Annual Performance Report FY 2018-2020* (March 18, 2019), and *3. DHS Report to our Citizens* (Summary of Performance and Financial Information Information) (March 22, 2019) are formally transmitted to Congress and can be found online for public consumption (http://dhs.gov/performance-accountability).

Section 2 of the DHS Annual Performance Report, for instance, provides a detailed assessment of Component and supporting-Component progress in implementing the four objectives denoted, including areas of noteworthy progress, performance challenges, and programs necessitating additional focus or further recalibration.

For instance, per the DHS Annual Performance Plan, FY18 demonstrated that 63 percent of the Department's strategic measures met their overall performance targets. These goals, however are prospective in nature, and need to be continuously recalibrated to confront a threat environment that is increasingly fluid and ever evolving.

23. Should any goals be added to this mission, and if so, what goal(s) should be added?

DHS must always be agile in the face of emerging threats. With that in mind, and given the emergence of new threats in 2020, Goal 1.3 could be amended to include the protection of federal property and the safety of our federal officers as a key priority in the years to come. Additionally, DHS's long-term strategy could now include a focus on our ability to respond in real-time to pandemic threats with the lessons learned from our work to defeat COVID-19.

24. If confirmed, what steps will you take to improve information sharing among federal, state, local, and tribal officials?

As was the case since its inception, the Department's close and collaborative relationship with its federal, state, local, tribal, territorial (SLTT) partners is amongst its most important missions. We have made important progress in bolstering communication infrastructure in the past several years, including through the development and increased dissemination of bulletins and intelligence products via the Homeland Security Information Network-Intelligence (HSIN-Intel) portal. Through HSIN-Intel, I&A supports the widest dissemination of its intelligence products.

Additionally, CISA maintains a similar portal for private sector critical infrastructure operators and owners.

Despite the tremendous progress of DHS in bolstering SLTT information-sharing, areas of enhanced collaboration remain. As a Department, we must strive to continue to improve the delivery and timeliness of SLTT reporting with our interagency partners.

25. Please describe your understanding of the challenges facing, and your priorities to improve, the Transportation Security Administration (TSA).

Unfortunately, our transportation systems still remain a target for terrorists. While the Department has made significant progress in raising the bar on global aviation security, challenges remain. I continue to be concerned about a variety of threats, including the continued use of IEDs against aircraft, particularly concealment in small electronics, commercial, or household items. I also remained concerned about the ongoing insider threats we see mainly overseas and how to guard against them here in the Homeland.

Pre-COVID increasing passenger flows further dictate the need for TSA to ensure timely screening through the effective deployment of technology.

26. What is your assessment of, and commitment to, community engagement to prevent terrorism, including counterterrorism, domestic terrorism and the rise in activities involving other violent extremists?

Strong terrorism prevention, in part, is predicated on robust community outreach with state, local, territorial, and tribal partners. We are strongly committed to maintain close and continued engagement with communities across the country evidenced by the Department's Targeted Violence and Terrorist Prevention (TVTP) Grant Program, that provides $10 million in funding to bolster TVTP capacity within U.S. communities.

Our Office of Targeted Violence and Terrorism Prevention (OTVTP) has also expanded its field officer footprint, which is charged with the explicit mandate of bolstering terrorism prevention-related engagement with local communities Nationwide.

The Civil Rights and Civil Liberties (CRCL) Office also plays an invaluable role in the Department's efforts to prevent domestic terrorism. Incident Community Coordination Teams (ICCTs), for instance, are deployed to share information and support impacted communities following attacks-- most recently after the 2019 shootings in Texas and California. These teams provide important avenues to report allegations of hate crimes and backlash against vulnerable communities in the aftermath of the attacks.

As Acting Secretary, I have ensured the Department remains vigilant against all threats, both foreign and domestic, and have confronted domestic terrorism, irrespective of ideology, head on.

27. What is your assessment of the threat and our ability to mitigate against the threat of the acquisition and use of Chemical, Biological, Radiological, and Nuclear (CBRN) materials? Please describe your priorities regarding CBRN-related threats.

The use of CBRN weapons against the homeland would have potentially devastating consequences, including mass casualties, damage to critical infrastructure, and

economic paralysis, to name a few. DHS judges that the overall global WMD threat will only continue to metastasize in the coming years and in turn, will continue to be a threat to the Homeland.

In late 2017, DHS established the Countering Weapons of Mass Destruction Office (CWMD) to serve as the Department's focal point for counter-WMD efforts and they, in turn, work with frontline operators and first responders at all levels of government to prevent, detect, and respond to CBRN and health security threats and incidents. This includes support through operational programs such as BioWatch and Securing the Cities that operate in high-risk metropolitan regions across the nation.

The chemical threat is particularly notable as we continue in the most significant and sustained period of chemical weapons use in decades. Additionally, the publicity of emerging chemical weapons compounds and increases in information availability is evolving the chemical threat landscape. The Department released the first ever DHS Chemical Defense Strategy on December 20, 2019, which established a departmental approach to combatting chemical threats and incidents.

28. Please describe your assessment of the threat posed by electromagnetic pulse (EMP), Geomagnetic Disturbance (GMD), cyberattack, and physical attacks to our critical infrastructure.

Although the Intelligence Community has judged the likelihood of an electromagnetic pulse (EMP) attack to be low, an EMP strike would have devastating and debilitating impacts on significant portions of the Nation's infrastructure, and ultimately could affect the whole nation. CISA, working in coordination with the interagency, is taking key actions to address known EMP-related vulnerabilities to critical infrastructure.

The work to better understand EMP risk is not taking place in a vacuum and is complementary with a range of other critical infrastructure protection efforts across the Department, including those to protect against GMD, cyberattacks, and other emerging threat vectors. We increasingly live in a systems of systems world with highly connected critical infrastructure where a disruption to one asset or system – from a cyber-attack or otherwise – can have cascading impact.

By better understanding this criticality and interdependency across critical infrastructure systems, we can add resilience and harden systems in a more strategic, targeted and prioritized manner. This enhanced understanding of critical infrastructure risk is particularly important considering the realities of the current cybersecurity threat landscape. We remain concerned about nation state intent to comprise U.S. critical infrastructure to potentially cause disruption as well as intent to

engage in wide-ranging cyber espionage to steal intellectual property and personally identifiable information (PII) from U.S. businesses and governments.

Although the specific nature of some vulnerabilities remain classified, I want to emphasize the evolving and dynamic threat environment. DHS is aware of shifting and heightened threats, particularly in the face of 21st century technology such as the introduction of 5G, unmanned aircraft advancements, and the rise of artificial intelligence.

29. Dangers from unmanned aircraft systems, artificial intelligence, and other emerging threats represent a growing area of concern. If confirmed, how will you position DHS to address evolving threats so the agency is best capable to tackle malicious actors of the 21st century?

As noted above, the Department must shift and evolve in response to the dynamic nature of the threats we face. Fortunately, DHS was created with adaptability in mind.

We are constantly evaluating the current threat picture—including in the forthcoming Homeland Threat Assessment—while looking over at the horizon at the challenges of tomorrow. I'm proud to report that, under my leadership as Acting Secretary and Under Secretary for Strategy, Policy, and Plans (PLCY), has spearheaded the development of an Emerging Risk Matrix that positions DHS as a thought leader in the interagency on this issue. By leveraging the deep and wide-ranging expertise of subject matter experts from across the Department's offices and operational components, the risk matrix project is designed to identify and confront new or evolving risks that threaten the homeland. By identifying forthcoming risks that may present themselves in the next two to five years, the Department will be able to transform how the homeland security enterprise manages risks, anticipates and addresses policy gaps, and addresses resource allocation. Once fully operational, the results of the Matrix will be used to inform both strategic and resource planning, and budget requirements and performance measures will be developed to drive progress

30. Please describe challenges facing, and your priorities to improve, the Department's law enforcement protective security posture.

DHS has a statutory requirement for the Federal Protective Service to protect federal facilities. With the recent civil unrest, attacks on federal property remain the most immediate and primary challenge in the Department's protective security mission. Support and partnership from state and local law enforcement is critical to ensuring that we can effectively secure and protect federal properties. Portland is an example of what occurs when state and local law enforcement support is absent.

In response to the civil unrest and the destruction of federal property in cities across the country, DHS formed the Protecting American Communities Task Force (PACT), to coordinate departmental law enforcement agency assets to further this mission. PACT ensures that the necessary law enforcement resources are in place when the Department receives specific intelligence or threat reporting against a federal facility. This coordination allows the Department to quickly stand up and stand down resources across the country should the need arise.

31. As technologies advance that are able to enhance security, how will you approach balancing the need to protect the homeland with the need to protect individuals' privacy, civil rights, and civil liberties?

If confirmed, I will continue to consult with DHS experts within the Offices of Privacy and Civil Rights and Civil Liberties when utilizing technology and innovation to secure our homeland. The constitutional rights that these offices protect are a fundamental consideration in all homeland security policies. I do not consider these rights to be obstacles in protecting the homeland. Rather, they are foundational issues that are integral to the policy process and therefore should be accounted for from the onset.

32. As Secretary, how will you foster strategic partnerships with foreign entities to ensure the safety of U.S. citizens domestically and abroad?

DHS has a robust dialogue with numerous foreign partners on a variety of topics. In many instances, we have ongoing strategic dialogues, formal engagements, and other fora for collaboration. I have emphasized during my time at DHS that a significant part of our mission is to ensure threats to the Homeland are addressed before they get to the Homeland. And the best way to achieve this is to have ongoing and sustained dialogue with our foreign partners.

To this end, I continue to empower our Office of International Affairs to be the leading interlocuter for the Department. Our recent agreements with Honduras, El Salvador and Guatemala are prime examples of reaching successful agreements that protect U.S. citizens here in the Homeland while also promoting security in the region.

I will continue to foster strategic partnerships throughout the world as we raise the baseline of security to make our country safer. I will continue entering new and updating existing security agreements with our foreign partners that protect lawful trade and travel.

The Visa Waiver Program is another great example of DHS fostering international partnerships to advance the safety and security of the American people, and recent enhancement to program requirements are welcome additions that must be fully implemented.

33. Following the death of George Floyd in May, many cities across the country saw a rise in protests that, in a few instances, culminated into violent riots. Please describe the Department's role in protecting federal buildings and assets and providing assistance to state and local law enforcement in times of civil unrest. In addition, please explain DHS' role in the Administration's Operation Legend initiative.

DHS took quick and decisive action, through our congressionally mandated authorities, to protect federal buildings, assets and personnel from violent rioters. As Acting Secretary, I personally communicated with elected officials across the country, including in Oregon and Washington, in an attempt to coordinate federal, state and local law enforcement entities to prevent any such violence. In the vast majority of cities, federal law enforcement, primarily FPS, worked hand in hand with their state and local counterparts. In those instances, the violence was contained and the appropriate individuals who broke the law where held accountable. Unfortunately, in Portland, the Department operated in a different environment – one in which elected officials refused to allow local law enforcement to cooperate with DHS law enforcement, which led to over 60 days of nightly violence against DHS protected property and law enforcement officers.

The Department of Justice started Operation Legend in Kansas City on July 8th. DOJ has a long history of utilizing anti-violent crime task forces and federal law enforcement agents to assist American cities which are experiencing upticks in violent crime. DHS has provided support in the form of ICE Homeland Security Investigative (HIS) agents. These agents support the efforts of DOJ, FBI, U.S. Marshals, DEA, and ATF, in conducting investigations into gangs, narcotics traffickers, violent offenders, and firearms traffickers. This is activity that HSI agents are engaged in everyday during the normal course of their duties.

Mission 2—Secure and Manage Our Borders

34. Please describe your understanding of DHS's capability to achieve the two objectives identified in the DHS Strategic Plan for the missions to secure and manage our borders.

DHS has been making significant progress against TCOs, particularly in the fights against human and drug trafficking. DHS has been a leader in the effort to combat human trafficking and has worked with the Department of Justice, Mexican law enforcement counterparts, our interagency partners and, others to combat human trafficking and human smuggling networks operating networks that cross the U.S.-Mexico border. These efforts have resulted in a number of high impact prosecutions. DHS is committed to continuing to lead on this critically important issue and are opening a department-wide center to combat human trafficking this Fall in order to strengthen our efforts to prevent

human trafficking, hold the traffickers accountable and provide assistance to the survivors.

The movement of illegal drugs, most coming across our Southern border, results in the loss tens of thousands of American lives every year. While recognizing that there is still much more to do, DHS is committed to reversing this trend and has made considerable progress on the drug trafficking front, most notably in the area of interdictions. In addition to drug seizures, the border wall system is creating an additional deterrent to drug traffickers by making it more difficult to transport drugs across our Southern Border.

35. Please discuss the challenges DHS and its components face in preventing import and entry as well as export and exit of illicit goods. How would you plan to address these challenges?

The nefarious actors importing and exporting illicit goods are endlessly creative and attempt to mask their actions in the flow of legitimate trade and travel. Given these evolving tactics, as well as the volume of that flow, detecting bad actors is a continual challenge.

In addressing this challenge, prioritization is key. During my time as Acting Secretary, key priorities have included seizing outbound weapons, targeting the highest-risk counterfeit goods, and imposing civil and criminal accountability on those who seek to exploit the COVID-19 pandemic.

If confirmed, I also look forward to working with Congress to ensure our port of entry infrastructure and technology is a key enabler to address these challenges.

36. DHS is responsible for safeguarding and expediting lawful trade and travel. Please describe your understanding of the challenges facing DHS in executing these responsibilities. How would you plan to address them?

There are a number of entities inside the Department that play a critical role in this area – including CBP, TSA, and the Department's Office of Strategy, Policy & Plans (PLCY).

TSA is responsible for securing the transportation system to facilitate domestic and foreign travel and commerce. The agency continues to address a number of evolving threats while ensuring security effectiveness and efficiency of the system through technology advancements and close collaboration with international and industry partners. I have been passionate about this mission since my time working at TSA.

CBP is tasked with facilitating lawful international travel and trade and does so while balancing the changing nature of the threat, technology and the needs of the private sector, such as major airline carriers, etc. The COVID-19 pandemic provided another challenge for the Department, as we needed to limit non-essential travel across our land

ports of entry while allowing for the free-flow of essential trade needed to keep our supply chain strong. These non-essential travel restrictions resulted in decreased pedestrian, privately-owned vehicle traffic, as well as significantly reduced air travel. The reduction of non-essential travel allowed CBP to focus on facilitating legitimate trade and travel, both for key essential medical workers, as well as keeping trade free flowing.

PLCY works on a number of initiatives, such as the VISA Waiver Program and biometric programs, and during my tenure as Under Secretary and Acting Secretary established a new sub-office dedicated to Trade and Economic Security that will focus, among other things, on coordinating Department-wide efforts to facilitate lawful trade and travel.

37. What do you believe are the primary causes of illegal migration from Central America, and how do you believe the U.S. can partner with these countries to address the ongoing illegal migration?

Illegal migration from Central America, specifically from the Northern Triangle countries of El Salvador, Honduras and Guatemala, remains a security challenge for the US. In 2019, a surge of unaccompanied alien children (UACs) and family units from these countries was fueled by legal immigration pull factors and poor conditions in their home countries. We continue to see the primary reason for illegal migration from Central America to be for economic reasons.

The Department, working with our partners at the State Department, will continue our work to curb illegal migration and provided needed security and stability in the region. In the last 18 months, DHS has signed and implemented security and asylum cooperative agreements with our international partners to address these issues.

38. DHS entered into Asylum Cooperative Agreements with the Northern Triangle countries of Honduras, Guatemala, and El Salvador to address the "root causes of irregular migration." How do you plan to evaluate the effectiveness of these programs in combatting illegal migration? How will you work to implement and improve upon these agreements?

These Asylum Cooperative Agreements were established so that individuals seeking protection could do so closer to their respective homes. Therefore, we are looking at three metrics of success.

The first metric is a decrease in the number of migrants encountered on the Southwest Border seeking asylum. There could be many reasons for such a decrease, including the real declines in violence rates in these countries, but a decrease in encounters at our Southwest Border could correlate with increased opportunities to seek protection closer to home.

Second, we are also examining the actual rates of asylum claims in these countries and the length it takes to process them will be a meaningful metric to evaluate their growth in capacity. Before the countries agreed to pause ACA transfers during the pandemic, DHS and State personnel were in regular contact with Guatemalan counterparts and nongovernmental organizations to understand the number of people who choose to make asylum claims after their transfer to Guatemala.

Third, we will review the effects of U.S. government-wide efforts to support increases in long-term economic opportunity, thereby addressing a key root cause of migration.

These agreements are part of a larger framework of border security and biometrics information sharing arrangements with these three countries, and our desire is for our security partnerships to support the broader prosperity initiatives in the region.

39. If confirmed as Secretary, how would you work to decrease the amount of drugs coming across the United States borders and into local communities?

Combatting illicit narcotics coming into the country is a multi-pronged effort. It starts with information sharing with our partners to the south and providing them capacity building resources in their home countries.

The USCG plays a vital role in interdicting narcotics in the Eastern Pacific and Caribbean, alongside DOD assets. Stopping illicit narcotics from making it to our borders is a critical step in our strategy.

DHS also supports investigations into TCOs and cartels through ICE HIS, working alongside other interagency partners. Ensuring that TCOs are held accountable for their illegal actions is critical.

Closer to home, we must continue to make investments in critical infrastructure, to include the new border wall system, virtual assets and at ports of entry.

40. What experience do you have in fostering international partnerships? How would you collaborate with foreign governments to strengthen the security of the U.S. borders?

As stated previously, DHS responded to the crisis at the Southern Border in 2019 by signing critical agreements with the Governments of Mexico and other Central American countries to help address the flow of illegal migrations and restore functionality to our immigration system. These international relationships must remain strong to ensure the safety of the American people and the integrity of our border should issues arise in the future.

Additionally, due to the threat of COVID-19, DHS acted swiftly to limit unnecessary travel over our land borders through international agreements and will continue these conversations in real-time to ensure the safety of the American people.

41. What is your evaluation on the effectiveness of the more than 300 miles of new and replacement Border Wall barrier? What, if any, additional resources and capabilities are needed to enhance DHS's ability to secure our borders?

The new border wall system has significantly contributed in our efforts to stem illegal immigration and drug smuggling. Since the Trump Administration began, DHS has seized 4 million pounds of illegal drugs on the Southern Border, including methamphetamine, cocaine, and fentanyl and analogues originating from China. Many of these drugs are supplied by transnational crime organizations, that profit off the deaths of Americans. The border wall system plays a large role in directing smugglers to port of entries where we have the personnel and infrastructure to more appropriately interdict them.

Mission 3—Enforce and Administer Our Immigration Laws

42. Please describe your understanding of DHS's capability to achieve the two objectives identified in the DHS Strategic Plan for the mission to enforce and administer our immigration laws.

Goal 2 (Secure U.S. Borders And Approaches) outlines 4 objectives, which are to:
2.1) Secure and Manage Air, Land, and Maritime Borders
2.2) Extend the Reach of U.S. Border Security
2.3) Enforce U.S. Immigration Laws
2.4) Administer Immigration Benefits to Advance the Security and Prosperity of the Nation

It is my assessment that the Department generally possesses the underlying capacity and personnel to identify and achieve the previously stated objectives outlined in Goal 2 of the DHS Strategic Plan. However, to more optimally meet these objectives, DHS manages a comprehensive performance analysis process, led by the Management Directorate, that works to evaluate strategic and programmatic performance each year against these and other Departmental objectives.

These analytical metric reports include the *1. DHS Agency Financial Report* (November 15, 2018), *2. DHS Annual Performance Report FY 2018-2020* (March 18, 2019), and *3. DHS Report to our Citizens* (Summary of Performance and Financial Information Information) (March 22, 2019) are formally transmitted to Congress and can be found online for public consumption (http://dhs.gov/performance-accountability).

Section 2 of the DHS Annual Performance Report, for instance, provides a detailed assessment of Component progress (e.g., USCIS, CBP, ICE) in the immigration and border enforcement space, particularly as they pertain to successfully achieving the four immigration objectives outlined above. For example, a FY18 interdiction target rate of 81% between Ports of Entry (POEs) was almost reached, as USBP successfully achieved a 79.69% interdiction rate.

Additionally, per the DHS Annual Performance Plan, FY18 demonstrated that 63 percent of the Department's overall strategic goals met their overall performance targets. These goals, however are prospective in nature, and need to be continuously recalibrated to confront a threat environment that is increasingly fluid and ever-evolving.

43. What is your view on the use of expedited removal as a consequence to illegal migration?

Expedited removal, a process established by Congress more than two decades ago, is a critical and effective tool for upholding the rule of law and imposing expeditious immigration consequences on those who illegally enter the United States.

44. What is your understanding of the efficiency and effectiveness of expedited programs such as Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) in processing asylum seekers?

During this Administration, DHS has taken a number of steps to improve processing and increase component coordination at the Southwest Border. These steps include the establishment of the PACR and HARP pilot initiatives, which allow DHS immigration components—in partnership with the Department of Justice's Executive Office for Immigration Review—to efficiently adjudicate the credible fear claims of amenable aliens (non-Mexicans and Mexicans, respectively) while such aliens are in CBP custody.

In light of present circumstances (including the ongoing pandemic), DHS is continuing to evaluate of the efficiency and effectiveness—as well as the long-term sustainability—of these initiatives.

45. If confirmed, how would you work to improve cooperation and coordination between DHS components responsible for administering immigration benefits and enforcing immigration laws? Please describe any actions you would recommend to improve information sharing between DHS components and other government agencies.

Early on in my tenure as Acting Secretary, I signed a delegation order providing DHS PLCY with the tools necessary to improve cooperation and coordination between DHS components on all matters of policy, including immigration. The delegation order has

resulted in much better coordination and sharing of information throughout the Department.

Immigration coordination among Departmental Components continues to be a challenge given the amount of work and different missions. PLCY, through the recent delegation order, continues to improve cross-component efforts, and I am confident coordination and information sharing will only improve over time.

I also personally engage with all immigration components on a weekly basis to ensure appropriate information sharing is occurring on key priorities.

46. How would you work to improve and standardize data collection for detainee tracking across the agency?

Given the scope and complexity of the DHS Enterprise, it is important to improve and standardize data collection across the Department. ICE is the entity within the Department primarily responsible for the detention of certain individuals for extended periods of time. In contrast, CBP only detains individuals for short-term processing.

I am aware of and fully support additional efforts to share critical immigration-related data across DHS components. One crucial ongoing effort is the Immigration Data Integration Initiative (IDII), which will provide timely reporting of DHS-wide border security and immigration enforcement data. I look forward to continuing to work with Congress to appropriately resource IDII and related initiatives.

47. If confirmed as Secretary, how will you work with partner countries to ensure that the visa waiver program facilitates effective intelligence and information sharing?

If confirmed, I will continue ensuring that DHS leverages support to the Visa Waiver Program (VWP) and aspirant countries to help partners improve their systems, policies and procedures in a variety of different areas – such as, counterterrorism, law enforcement, border security, immigration and travel document security. The VWP requirements provide clear and visible benefits for both the VWP countries and the US that raise the international and information security standards and baselines.

The VWP is highly valued by participant countries who consistently work with DHS and interagency partners to meet program requirements and help to address the global threat environment. In recent years, through both the Visa Waiver Improvement Act of 2015 and executive policy changes in 2017 and 2019, DHS was able to enhance the program requirements to better serve the security needs of both the VWP countries and the US.

I will ensure that we continue our work to enhance the VWP, both through close engagement with the State Department and through VWP-designated countries to

guarantee mutually beneficial agreements that bolster both American and international security.

48. Immigration and Customs Enforcement's Homeland Security Investigations is responsible for enforcing a wide range of federal laws. What are your initial recommendations for prioritizing investigative resources?

As the principal investigative arm of DHS, ICE HSI must continue to be at the forefront of the U.S. government's efforts to protect the Homeland from the dangerous, transnational criminal organizations that threaten to illegally exploit America's legitimate travel, trade, financial and immigration systems. To do so HSI must continue to prioritize investigative resources towards public safety and national security.

If confirmed, I will ensure HSI utilizes its unique and expansive authorities to continue to lead the fight against the ongoing opioid epidemic, while not ceasing in its efforts to take deadly weapons and violent gang members out of our communities. HSI will continue to prioritize crimes of victimization, ensuring that those exploiting children and conducting human trafficking are arrested and prosecuted for their heinous crimes while still prioritizing a victim centered approach that ensures victims are identified and rescued. HSI will also continue to protect the integrity of our financial and trade systems, investigating the financial exploitation of the elderly and other vulnerable populations, while seizing illicit proceeds and assets from criminals seeking to profit from their crimes.

HSI will continue to be a key federal partner on the Joint Terrorism Task Force, working to identify and stop terrorists from traveling to the United States while also working with our partners to investigate, prosecute, and remove those already here. They will continue their cutting edge investigation to infiltrate and take down notorious dark net marketplaces that traffic in weapons and narcotics, launder money, and finance terrorism.

It is critical we give HSI the freedom to do its job and have this impact around the world with the support of Congress and the American people. If confirmed, I would prioritize investigative resources to ensure that HSI is given every opportunity to continue to accomplish these critical missions and to fulfil its essential role in keeping our homeland, our states, our cities, and our neighborhoods safe and secure from transnational crime and threats.

49. DHS entered into Asylum Cooperative Agreements with the Northern Triangle countries of Honduras, Guatemala, and El Salvador to address the "root causes of irregular migration." How do you plan to evaluate the effectiveness of these programs in combatting illegal migration? How will you work to implement and improve upon these agreements?

See answer to question 38 above.

50. During Fiscal Year 2019, the U.S. experienced unprecedented migration along the Southern Border. If confirmed, how do you plan to prepare DHS for potential future surges of migrants?

Since 2019, DHS has implemented a number of successful measures that have decreased the likelihood of—and enable a more effective response—to a future surge. Such measures include, but are not limited to: entering into groundbreaking agreements with our regional partners, implementing the Migrant Protections Protocols, building a state-of-the-art border wall system, effectively ending "catch-and-release," and reforming our broken immigration system through new regulations and policies which have addressed key vulnerabilities that served as a magnet to those who sought to exploit our laws.

Additionally, the Department is engaged in ongoing contingency planning efforts to apply lessons learned from the 2019 surge through the development of a Mass Migration Mitigation Campaign Plan.

Mission 4—Safeguard and Secure Cyberspace and Critical Infrastructure

51. Please describe your understanding of DHS's capability to achieve the four objectives identified in the latest DHS Strategic Plan for the mission to safeguard and secure cyberspace and critical infrastructure.

Goal 3 (Secure Cyberspace and Critical Infrastructure) outlines 4 objectives, which are to:

3.1) Secure Federal Civilian Networks

3.2) Strengthen the Security and Resilience of Critical Infrastructure

3.3) Assess and Counter Evolving Cybersecurity Risks and

3.4) Combat Cybercrime

It is my assessment that the Department generally possesses the underlying capacity and personnel to identify and achieve the previously stated objectives outlined in Goal 3 of the DHS Strategic Plan. However, to more optimally meet these objectives, DHS manages a comprehensive performance analysis process, led by the Management Directorate, that works to evaluate strategic and programmatic performance each year against these and other Departmental objectives.

These analytical metric reports include the *1. DHS Agency Financial Report* (November 15, 2018), *2. DHS Annual Performance Report FY 2018-2020* (March 18, 2019), and *3. DHS Report to our Citizens* (Summary of Performance and Financial Information Information) (March 22, 2019) are formally transmitted to Congress and can be found online for public consumption (http://dhs.gov/performance-accountability).

Section 2 of the DHS Annual Performance Report, for instance, provides a detailed assessment of Component progress, notably CISA, to successful secure our cyber systems, particularly as they pertain to successfully achieving the four objectives outlined above. A performance area of particular concern remains the continued strengthening of our Federal Cyber Security networks. For example, MGMT set an aggressive target of deploying EISTEIN intrusion detection and prevention systems to detect 20% of malign Nation-State activity in FY2018. CISA was able to beat these forecasts, FY18, securing a EINSTEIN detection rate of 28%.

Additionally, per the DHS Annual Performance Plan, FY18 demonstrated that 63 percent of the Department's overall strategic goals met their overall performance targets. These goals, however are prospective in nature, and need to be continuously recalibrated to confront a threat environment that is increasingly fluid and ever-evolving.

52. What do you view to be the most significant current and potential cyber security threats facing our nation, including threats to federal networks and critical infrastructure owners and operators?

Improving American cybersecurity at all levels remains a critical part of this administration's strategic priorities for defending the homeland. Multiple DHS components are responsible for protecting Americans against cyber-related attacks.

Our newest component – CISA is at the forefront guarding against nation-state actors' cyber-enabled espionage and malicious influence activity aimed at all levels of both government and industry.

China continues to engage in cyber espionage to steal intellectual property (IP) and personally identifiable information (PII) and poses a real threat to critical infrastructure. Stolen IP and PII is leveraged to support intelligence operations, bolster civil/military/industrial development, and gain an economic advantage. China targets the IT and communications sector and firms whose products and services support government and private-sector networks worldwide, while advocating globally for Chinese IT companies that could serve as espionage platforms. Cyber operations against US companies have focused on critical manufacturing, defense industrial base, energy, healthcare, and transportation sectors.

We know that Russia is working to sow division and create chaos in an effort to destabilize the United States. Russia's playbook includes efforts to conduct cyber-attacks against critical infrastructure, industrial control systems and supply chains that the American economy relies on. Russia leverages a range of capabilities to include exploiting publicly-known software and hardware vulnerabilities and poorly configured networks. Russia is likely further advancing debilitating and disruptive capabilities.

Iran and North Korea - while less technically mature than Russia and China - also pose a threat to US systems, networks, and information. Iran is developing capabilities inside the country that, during periods of increased tension, could be repurposed for destructive cyber-attacks. North Korea remains a cyber espionage perpetrator and a significant threat to financial institutions, with the ability to conduct disruptive cyber activities targeting our Nation's critical infrastructure.

53. What is your initial view about the role of DHS's programs to strengthen public and private sector cybersecurity?

Cybersecurity is a critical mission within DHS – and we must remain steadfast in our efforts to fight malicious actors, terrorists and foreign governments who seek to do us harm. CISA is the lead federal civilian cybersecurity agency and operates at the intersection of the Federal Government, state and local governments, the private sector, international partners, law enforcement, intelligence, and defense communities. CISA works across government and industry partnerships to lead the national effort to safeguard and secure cyberspace. By bringing together the intelligence community, law enforcement, the Department of Defense, Sector-Specific Agencies, all levels of government, the private sector, international partners, and the public, we are enabling collective defense against cybersecurity risks, improving incident response capabilities, enhancing information sharing of best practices and cyber threats, strengthening our resilience, and facilitating safety.

My view is that we must continue to focus on this critical mission and, especially as we draw closer to November, that CISA has the support needed to protect the most sacred American process: our elections. CISA has been partnering with other agencies in the federal government along with state and local election leaders to ensure the safety and resilience of our elections, and I remain wholly committed to strengthening these efforts.

Our Department must remain equally both steadfast and agile as new threats emerge in the cyber landscape. As the governments of China, Russia and Iran all target our election systems, we must hold them accountable, take aggressive measures to counter and adapt our policies whenever necessary to protect America's critical cyber infrastructure in private industry and government.

54. If confirmed, what steps do you intend to take to improve the nation's cyber security, both with respect to the government and private networks?

My focus has been and will continue to be capacity, capabilities, and people. The Department must continue to grow our capacity for digital defense as cybersecurity threats grow in scope and severity. The Department maintains an enhanced posture on the election security front to preserve our electoral process and secure our system against interference of any kind. The president's budget invests $1.7 billion in CISA to strengthen our cyber and infrastructure security mission. This is an increase of roughly $150 million above the president's Fiscal Year 2020 budget request and will be used to expand both our capacity to meet the growing need as well as capabilities.

Capability development is also a critical to improving the Nation's cybersecurity posture. Providing access to advanced scanning and the best defensive tools will enable our networks to be ready and resilient as threat actors are continuously evolving their tactics. CISA provides this support through its role as the Nation's risk advisor.

Our people will be the key to the strongest cyber defense. In the most recent budget, we requested an additional 500 new cybersecurity employees across the Department. We must attract a formidable cybersecurity workforce that eagerly serves their country and has the necessary skills and training to enable us to maintain our dominance in cyberspace.

55. What do you consider to be the greatest threats against our nation's election infrastructure, and how will you position DHS to help address them?

As we approach the 2020 election, we remain steadfast in protecting our election infrastructure. CISA has doubled down both on their efforts across the federal government and in partnering with state and local election leaders across the country to make sure our elections are safe, secure and resilient. We face a dynamic threat landscape as the governments of China, Iran, and Russia target our election systems, each with its own separate and nefarious motives and tactics.

Chinese foreign influence activity most likely aims to shape US foreign and domestic trade policy and counter official statements critical of China, deflect responsibility for COVID-19, and seek to improve relations with the US public, including by engaging directly with states and localities.

Russia's main goal is increasing its relative global influence—and contrasting with its view that Russia's system is superior to the Western democracies—by weakening America from within. This is done by amplifying narratives, both overtly and covertly, that promote internal US discord, shape the electorate, and undermine trust in Western democratic institutions.

Iranian foreign influence activity most likely will target US foreign and domestic policy, international events such as COVID-19, and democratic processes and institutions, including the 2020 US Presidential election. We expect Iran to continue to malign the United States for enforcing economic sanctions, casting Washington as hindering Iran's ability to put forward an appropriate public health response to the pandemic.

56. To what extent does DHS need additional funding or authorities to provide resources to states to protect election infrastructure?

With more, we can do more. We appreciate Congress' recognition of the importance of the cybersecurity mission and we will continue to strengthen and build our capabilities within the Department as our entire world becomes increasingly both connected and interconnected.

From a cybersecurity perspective, additional funding would allow us to accelerate many of our threat hunting efforts across Federal networks, expand support to State and local governments, grow our cybersecurity team and keep up with the increasing requests for incident response.

In terms of authorities, we are fortunate that Congress has recognized the evolving nature of the cybersecurity landscape and mission and has passed legislation that provides us with the authorities we need to do our job. As Congress continues work on the National Defense Authorization Act, there are a number of provisions included that strengthen CISA, allow us to notify critical infrastructure owners and operators about critical vulnerabilities that they may not be aware of, support our assistance to state and local governments and recognize the importance of training and education in the cybersecurity mission space – the Department is supportive of these efforts and looks forward to continuing this important work together.

Mission 5—Strengthen National Preparedness and Resilience

57. Please describe your understanding of DHS's capability to achieve the four objectives identified in the DHS Strategic Plan for the mission to strengthen national preparedness and resilience.

Goal 5 (Strengthen Preparedness and Resilience) outlines 4 objectives, which are to:

5.1) Build a National Culture of Preparedness,

5.2) Respond During Incidents,

5.3) Support Outcome-Driven Community Recovery

5.4) Train and Exercise First Responders.

I support these objectives continuing to be priorities should I be confirmed as the next Secretary.

It is my assessment that the Department generally possesses the underlying capacity and personnel to identify and achieve the previously stated objectives outlined in Goal 5 of the DHS Strategic Plan. However, to more optimally meet these objectives, DHS manages a comprehensive performance analysis process, led by the Management Directorate, that works to evaluate strategic and programmatic performance each year against these and other Departmental objectives.

These analytical metric reports include the *1. DHS Agency Financial Report* (November 15, 2018), *2. DHS Annual Performance Report FY 2018-2020* (March 18, 2019), and *3. DHS Report to our Citizens* (Summary of Performance and Financial Information Information) (March 22, 2019) are formally transmitted to Congress and can be found online for public consumption (http://dhs.gov/performance-accountability).

Section 2 of the DHS Annual Performance Report, for instance, provides a detailed assessment of Component progress, notably FEMA, to quickly and successfully respond to natural disasters in an increasingly complex recovery climate (i.e., due to COVID).

Additionally, per the DHS Annual Performance Plan, FY18 demonstrated that 63 percent of the Department's overall strategic goals met their overall performance targets. These goals, however are prospective in nature, and need to be continuously recalibrated to confront a threat environment that is increasingly fluid and ever-evolving.

When threats are dynamic as they are today, operational flexibility is a critical component of DHS's success. Just in recent years, DHS has had Coast Guard medical teams deploy to the border, FPS officers deploy to defend federal property, and we worked with the Pentagon to deploy troops to our Southwest Border. This demonstrated agility is key to our future success as an agency and must be maintained.

58. How do you evaluate the current state of national preparedness for emergencies and disasters, including the capabilities of individuals and communities?

If confirmed, I will continue to ensure that local communities are properly prepared for emergencies and disasters. This requires constant vigilance and engagement through **developing the capabilities needed to prevent, protect against, respond to, recover from, and mitigate against all threats and hazards. The Department largely accomplishes this through the work of FEMA and CISA.**

For more than 40 years, FEMA's has led the U.S. in preparing, preventing, responding to and recovering from all hazards with a vision of "A Prepared and

Resilient Nation." Today, that mission can best be captured as, "helping people before, during and after disasters." FEMA is continually evaluating and adjusting its preparedness posture as hazards change and new threats emerge. Through the decades, the Agency has grown, and the field of emergency management has become more sophisticated. Our commitment to continuous improvement, proactive engagement, innovative technology, and a nimble posture has only strengthened, especially in the last three years. When called upon to assist HHS to respond to a world-wide pandemic, FEMA still had the foresight to anticipate the challenges state and local emergency managers would face as hurricane season approached. They proactively developed and published guidance for these emergency managers to use during their response to hurricanes in a COVID-19 environment. Our robust, flexible response during Hurricane Laura showcased the success of this foresight and strategic thinking. No matter what this country needs, FEMA continues to step up to the plate and overcome any challenge through a locally executed, state managed, and federally supported structure.

FEMA also leads the way in building nationwide resilience through its commitment to mitigation, preparedness, grants and continuity planning. Our team supports local and state government with technical assistance and guidance for all hazards, across a full spectrum of emergency management functions. FEMA builds resilience through its leadership in building code adoption and enforcement, as well as its innovative approaches to investing in both structural and non-structural mitigation throughout the country. We know – again and again – our efforts before a disaster directly impact disaster outcomes. The FEMA team has been and will continue to be committed to helping our SLTT partners make wise decisions before a disaster strikes that will benefit the community, its economy, and its future.

59. The largest share of DHS's budget authority is provided to FEMA to carry out its mission. What are your initial recommendations for improving DHS and FEMA's management of its grant programs?

The homeland security threat environment has never been so diverse and the attack surface so wide as our nation faces traditional and non-traditional adversaries and threat. The federal government alone cannot defend and protect our country from these threats and must continue to work with our SLTT partners to build preparedness and resilience across our communities. DHS identified four critical, national priority areas for attention in the FY 2020 grant cycle: cybersecurity, soft targets and crowded places, intelligence and information sharing, and emerging threats.

To better prepare the nation to address these threats, in Fiscal Year 2020 we required our State Homeland Security Grant Program and Urban Area Security Initiative grant recipients to invest at least five (5) percent of their grant funding in each priority area, (20 percent of their total funding). In future years, DHS will incentivize recipients to develop effective projects in each of these national priority

areas with the opportunity to receive additional funding for proposing effective projects while eliminating funding for ineffective investments.

60. FEMA has budget authority to operate the Disaster Relief Fund (DRF), which provides the agency with an operational budget to address issues associated with natural disasters. If confirmed, how would you manage competing interests with DRF's limited resources, and how would you assess if additional resources or authorities from Congress are needed?

If confirmed, I would work closely with OMB and Congress during times of emergency to determine what resources the American people require. Managing the DRF in a responsible manner is absolutely essential when facing the types of disasters and assistance that has been required of late. I would rely on the professionals of FEMA to advise me on the status and priorities impacting the DRF and how best to manage. There will always be an ever-changing landscape – whether the disaster is a hurricane, wildfire, or national pandemic. We must remain agile and weigh the evolving circumstances when managing the DRF's limited resources.

Management, Accountability, and Oversight

61. Please describe your understanding of DHS's capability to achieve the three objectives identified in the DHS Strategic Plan for the mission to strengthen the DHS workforce.

As you denoted in your question, Goal 6 (Strengthen Preparedness and Resilience) outlines 3 objectives, which are to:

6.1) Strengthen Departmental Governance and Management,

6.2) Develop and Maintain a High-Performing Workforce

6.3) Optimize Support to Mission Operations

It is my assessment that the Department generally possesses the underlying capacity and personnel to identify and achieve the previously stated objectives outlined in Goal 6 of the DHS Strategic Plan. However, to more optimally meet these objectives, DHS manages a comprehensive performance analysis process, led by the Management Directorate, that works to evaluate strategic and programmatic performance each year against these and other Departmental objectives.

These analytical metric reports include the *1. DHS Agency Financial Report* (November 15, 2018), *2. DHS Annual Performance Report FY 2018-2020* (March 18, 2019), and *3. DHS Report to our Citizens* (Summary of Performance and Financial Information

Information) (March 22, 2019) are formally transmitted to Congress and can be found online for public consumption (http://dhs.gov/performance-accountability).

Section 6 of the DHS Annual Performance Report, for instance, provides a detailed assessment of Component progress, notably FPS, to safely and sensitively protect Federal properties in an increasingly difficult security environment, particularly with the rise of national civil unrest.

Additionally, per the DHS Annual Performance Plan, FY18 demonstrated that 63 percent of the Department's overall strategic goals met their overall performance targets. These goals, however are prospective in nature, and need to be continuously recalibrated to confront a threat environment that is increasingly fluid and ever-evolving.

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

DHS management functions have significantly matured since the stand-up of the Department. We have strengthened our management capabilities substantially over the past several years, as documented in our progress in implementing the majority of GAO's recommendations on the High Risk List for Management. We have built a culture of accountability, leadership, and innovation.

If confirmed, I will continue to ensure we demonstrate leadership commitment to maintaining the capacity, resources, and tangible action plans to further strengthen and mature our management function. With modern financial systems now at CBP, CWMD, FLETC, and USSS—we continue to make progress and will soon be joined at the end of October by TSA followed next year by USCG. These efforts promote standardized business processes and consolidated reporting, all of which make better financial analysis and inform decision making.

DHS is working to become the first federal civilian agency to implement the agency-specific supply chain authority found in the Federal Acquisition Supply Chain Security Act (FASCA). We are providing a roadmap for civilian agencies within the Federal Government, while supporting CISA's broader role government-wide including state, local and tribal, as well critical infrastructure. With this initiative and DHS' membership on the Federal Acquisition Security Council, the department will be able to provide the necessary support to issue additional orders for future covered entities.

Lastly, if confirmed, I will continue to support Management and the Office of the Chief Procurement Officer's efforts to innovate our procurement business processes by enabling competition, streamlining processes and focusing on exceptional outcomes in a more effective manner. Additionally, I will work diligently to continue to enable the security of our supply chain by ensuring all products and services acquired come from reliable and reputable sources.

63. What steps do you believe that DHS can take to ensure federal funds expended by the agency are free from duplication and waste?

If confirmed, I will continue to support actions which DHS already takes to prevent duplication and waste. Our multi-year Planning, Programming, Budgeting, and Execution system, regular cross-component program evaluations, and our Joint Requirements Council process are examples where the Department drives transparency into what DHS does, spotlighting opportunities for common requirements and common solutions. Further, DHS will continue to be an active participant, working with OMB and other Government agencies, to shift from Low-Value to High-Value Work, a President's Management Agency Cross-Agency Goal. In addition, we will also continue to consider recommendations from external audit authorities, and we use tools such as the GAO annual "Fragmentation, Overlap, and Duplication" to assist in identifying areas where we can eliminate or streamline redundancies.

64. DHS is consistently ranked as the lowest federal agency in terms of workforce morale. What actions will you take, if confirmed, to improve moral and the overall workplace environment at DHS and its components?

If confirmed, I intend to capitalize on recent successes realized throughout FY20 through continued partnership with the workforce and recognizing our teams for the vital role they play in mission success. One of the most important aspects of this is continuing to communicate with the workforce frequently. When COVID-19 began to impact DHS personnel nationwide I made it a priority to regularly send out video and email updates keeping the entire DHS workforce informed and empowered my Chief Human Capital Officer to initiate weekly outreach as well. DHS also took steps such as conducting a pulse survey to determine what the department could be doing to assist our employees while they navigated their personal and professional lives throughout the pandemic.

As DHS takes steps to implement a safe "Return to the Workplace" plan, I will also continue to communicate with those employees who are not on our front lines to make sure the transition back in to the office is both safe and smooth.

65. If confirmed, will you commit to reviewing any DHS programs that you believe could be eliminated because they are ineffective, duplicative, wasteful, unnecessary, or have outlived their purpose and report that information to Congress?

Yes. As I stated in my answer to question 63, I will consult with the appropriate DHS officials within the Management Directorate and at Components to ensure the Department is being a responsible steward of taxpayer dollars. I will ensure the Department serves the American people adequately and efficiently and commit to keeping Congress informed on these matters.

66. How would you assess DHS's internal controls over financial reporting and what would you do to make sure DHS addresses any weaknesses?

It is my understanding that DHS is the only federal agency required by law to obtain an opinion on internal controls over financial reporting. If confirmed, I will continue to support the Department's multi-year strategy and plan to strengthen its financial controls and resolve weaknesses. I will also continue to engage our senior leaders to ensure they are committed to maintaining a robust program of internal controls. This approach over the past 10 years has driven significant improvement in our financial controls which has been also noted by our independent auditors.

67. Throughout its history, DHS has struggled with efforts to modernize and integrate the numerous financial systems on which the components operate. What do you see as the most viable path forward for DHS to develop real-time, accurate, and comprehensive data on its finances and to use this data to inform budget decisions and resource allocation?

Improving DHS financial management systems has been a long-term effort, but during our recent modernization efforts, we have achieved successes, and continue to achieve planned milestones. The Department has successfully modernized several component financial systems, including U.S. Customs and Border Protection (CBP), the Federal Law Enforcement Training Centers (FLETC), Countering Weapons of Mass Destruction (CWMD), and U.S. Secret Service (USSS). The Transportation Security Administration (TSA) will be moving to a modern financial system next month and U.S. Coast Guard will be moving to a new system next year. The Federal Emergency Management Agency (FEMA), U.S. Immigration and Customs Enforcement (ICE) and several other components are in the early stages of modernization. In addition to the system modernization efforts, the Department, through the Financial Systems Modernization (FSM) program, is standardizing business processes, using standard financial data elements and leveraging consolidated reporting to provide a DHS-wide view for consolidated reporting and providing useful information for analysis and decision making.

68. Recently, USCIS averted furloughing over 13,000 employees, but anticipates increased backlogs and wait times. How do you plan to work with Congress and DHS' fee funded components to ensure that they are able to better anticipate and plan for significant budgetary shortfalls in the future?

COVID-19 presented the Department with an unanticipated, drastic decrease in our fee accounts that have had stable revenue over the past several years which allowed for uninterrupted operations. To ensure the Department, and our Components, have complete visibility at all levels, we have established a monthly Fee Scorecard to track anticipated revenue to actual revenue. This scorecard will quickly show any

perturbations in revenue which will allow the Component to use their modeling simulations to anticipate future impacts. In addition, the Department has a monthly Fee Governance Council which allows cross flow of information between Components on economic impacts each are experiencing and operational or financial changes necessary to ensure fee balances are sufficient. If necessary, the Department, working with the Administration, will request assistance from the Congress through legislative fee changes or one-time appropriation assistance.

69. GAO and DHS Office of Inspector General (OIG) have identified significant challenges in DHS's approach to information technology management at DHS components, such as U.S. Citizenship and Immigration Services. How would you approach addressing these challenges?

The Department is focused on delivering world class Information Technology (IT) solutions to enhance and support the DHS mission. The Department OCIO provides the strategic direction and oversight for supporting component organizations to ensure the investments achieve the results and outcomes within planned costs and schedules. In particular, over the past few years, U.S. Citizenship and Immigration Services (USCIS) has diligently pursued modernization of legacy Information Technology systems supporting adjudicative decisions. USCIS works closely with the DHS Office of the Chief Information Officer (OCIO) and transparently with the GAO and DHS Office of Inspector General to identify risk areas and to implement improvement actions. USCIS is a leader in adopting modern IT service delivery and security practices through agile software development utilizing cloud-based infrastructure and services. As an example of a recent IT modernization success, the USCIS Transformation Program achieved Full Operational Capability (FOC) with the delivery of the Electronic Immigration System (ELIS), which currently supports a majority of the agency's workload. The delivery of this program demonstrates the USCIS IT management practices are working effectively to address many of the business challenges at USCIS.

70. What is your view of the role of the DHS OIG? Please describe what you think the relationship between the Secretary and the OIG should be. If confirmed, what steps would you take as Secretary to establish a working relationship with the Inspector General?

Any well-functioning and successful organization maintains strong lines of internal controls. The success of DHS rests on the diligence and duty the Office of the Inspector General (OIG) undertakes when fulfilling their role. DHS senior leaders, particularly me, should maintain professional working relationships with the OIG. Through these relationships, leadership can address mishaps expediently, while full investigations may expand months and years.

71. The Inspector General Act places great weight on the independence of an Inspector General within a department or agency, yet also places the Inspector General under the general supervision of the agency head. How do you engage with the OIG under that framework?

The Inspector General has a vital and important role to fulfill in the achievement of Departmental priorities. I fully respect that role and will continue to work with the Inspector General to ensure that the Department adheres to all its legal obligations and that it continues to act both appropriately and efficiently in the achievement of its objectives.

72. If confirmed, do you commit to ensuring that all recommendations made by the DHS Inspector General are reviewed, responded to, if necessary, and, unless the agency justifies its disagreements with the recommendations, implemented to the fullest extent possible within a reasonable time period?

If confirmed, I commit to reviewing all Inspector General recommendations. It would be inappropriate of me to make firm commitments due to the hypothetical nature of this question.

73. Protecting whistleblowers is of the utmost importance to this Committee:

    a. During your career, how have you addressed whistleblower complaints?

    Whistleblowers play an important part in our democracy and should come forward when legitimate actions deserve to be scrutinized. They deserve full protections under the law. At the same time, every American is innocent until proven guilty so every complaint must be fully vetted in accordance with the law and the Inspector General.

    b. How do you plan to implement policies within DHS to encourage employees to bring constructive suggestions forward without the fear of reprisal?

    I believe it is critical to create a positive workplace culture where there is frequent communication and transparency on matters of interest and importance to the staff. This type of culture encourages employees to bring constructive suggestions forward. As Acting Secretary, I have made it a priority to consistently communicate with all component leadership, through in-person town-hall meetings, recurring staff meetings, and frequent employee e-mails. I have made a consistent effort to visit thousands of our component operators and personally seek their advice. If confirmed, I will continue to lead this type of workplace and adhere to the existing Department policies dealing with employee relations.

    c. Do you commit without reservation to work to ensure that any whistleblower within DHS does not face retaliation?

Yes.

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

V. Relations with Congress

74. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes, if the request is reasonable and lawful.

75. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes, if the request is reasonable and lawful.

76. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes, if the request is reasonable and lawful.

VI. Assistance

77. Are these answers your own? Have you consulted with DHS or any other interested parties? If so, please indicate which entities.

Yes, I have written and reviewed all the answers in this document and they are my own. During preparation, I consulted with senior staff in DHS, legal counsel, and the Office of Legislative Affairs.

Minority Supplemental Pre-hearing Questionnaire
For the Nomination of Chad Wolf to be
Secretary, Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

   No.

2. Has the President or his staff asked you to make any pledge or promise if you are confirmed as Secretary of the Department of Homeland Security (DHS or "the Department")?

   No.

3. Have you been asked to pledge loyalty to the President, Administration, or any other government official?

   No.

II. Background of Nominee

4. Why do you want to be Secretary of the Department of Homeland Security?

   For me, the watershed moment and call to service began on 9/11 during my service on Capitol Hill. At that time, I had no idea the events of that morning would forever shape my future. I was extremely fortunate to join the Transportation Security Administration during its inception and its integration into the Department of Homeland Security. Together, I believe we made America's skies safer.

   For over the past three and half years, I have given all of my time, attention and effort to make the Department better and more prepared to prevent and respond to any threat or attack on our Homeland. As Acting DHS Secretary for the last ten months, I have had the honor of leading the Department and working with senior leadership to further enhance our capabilities and policies. If confirmed, I look forward to continuing this work.

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

   In the private sector, I disagreed with my firm's approach on taking on potential clients. The potential client - a foreign government---did not have a good reputation but

was willing to pay the firm well. I advocated against signing the potential client while other colleagues had a different view. I encouraged firm management to take the longer view and assess the public policy issues at play as well as the potential reputational impacts for the firm. In the end, we did not take on the client and I like to think my advocacy was a contributing factor.

At DHS, I have advocated for sharing more information with the media, Congress and other outside stakeholders in an effort to better explain the Department's positions. While not effective on every occasion, I believe more transparency builds more credibility for the Department.

6. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates? Please provide examples of times in your career when you have done so.

Yes. I rely heavily on a wide variety of subject matter experts and senior staff when making Departmental decisions. I make it clear that staff should express their professional opinions when discussing policy and operational decisions in their respective areas. Every decision I have made as Acting Secretary has been in consultation with senior leaders and interagency partners. I have always encouraged and will always encourage constructive critical opinions throughout the decision-making process.

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

I recognize that the Department must make a number of difficult and politically difficult choices on a weekly basis. During the last 10 months of my tenure as Acting Secretary, I have made a number of decisions that I believe have been in the best interest of public safety and homeland security. These include, but are not limited to, protecting federal facilities, assets, and personnel across the country, implementing common sense immigration and border security measures, continue constructing the new border wall system and implementing travel restrictions on Mexico and Canada.

8. What would you consider your greatest success as a leader?

Aside from leading the Department for the last 10 months, one of my greatest successes as a leader is surrounding myself with smart and dedicated individuals and listening to their advice and counsel.

9. What do you consider your greatest failure as a leader? What lessons did you take away from that experience?

One of my greatest failures as a leader is, from time to time, delegating too much responsibility to individuals serving under me. While some employees and senior leaders execute such responsibility successfully, others need more attention and oversight. Realizing and recognizing the difference is critical to being a good leader.

10. During your career, has your conduct as a federal employee ever been subject to an investigation or audit by an agency Inspector General, Office of Special Counsel, Department of Justice, agency Equal Employment Opportunity office or investigator, or any other federal investigative entity? If so, please describe the nature of the allegations/conduct and the outcome of the investigation(s) or audit(s).

The former acting head of Intelligence and Analysis Office (I&A), recently filed a complaint with the DHS Office of the Inspector General (OIG), which makes numerous baseless claims against me and other senior staff at the Department. The OIG complaint alleges that I retaliated against this individual for making protected disclosures. His claim against me is patently false. It is important to note that I was the one who promoted this individual once our Senate confirmed Under Secretary of I&A departed the Department. As I made clear in public statements at the time, I reassigned this individual out of I&A because I received credible allegations that I&A had violated numerous legal requirements when it compiled intelligence products on U.S. journalists. I took swift action in response to those allegations, directing the matter be referred to the OIG and ordering an internal review, and detailing this individual to ensure the integrity of the review and a lack of interference.

I am also currently responding to a request for information from the Office of Special Counsel related to my participation of an official event at the White House. To the best of my recollection, I am not aware of any other investigation or audit into my conduct as a federal employee.

III. Role of the Secretary of DHS

11. You currently hold the title of Acting DHS Secretary.

    a. Are you aware of any limitations to your current authority imposed by statute, regulation, or DHS policy, which will no longer apply if you are confirmed? If so, please describe those limitations.

    b. In your view, is Senate confirmation necessary for you to achieve your goals as the leader of DHS?

c. Other than any differences attributable to statutory, regulatory, or policy restrictions, do you expect your approach to leading DHS to change if confirmed as Secretary? If so, please explain.

Joint response: I am not aware of any legal limitations on my current ability to act in the interest of the Department that will be compromised or enhanced if I were to be confirmed as the Secretary of Homeland Security. That said, my Senate confirmation as Secretary of Homeland Security would enhance the stature of the Department and its mission and would vindicate the public confidence that is appropriately placed in DHS.

12. Please identify any duties or authorities that are exclusive to office of the DHS Secretary.

Federal law has conferred many powers, duties and authorities on the Secretary of Homeland Security. For instance, with respect to the Portland riots, 40 U.S.C. § 1315 authorizes and requires the Secretary of Homeland Security to "protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property." Furthermore, 8 U.S.C. § 1103(a)(1) generally provides: "The Secretary of Homeland Security shall be charged with the administration and enforcement of [Chapter 12 of Title 8] and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers." Another federal statutory provision directs the Secretary to "coordinate through the Office of State and Local Coordination . . . with State and local government personnel, agencies, and authorities, with the private sector, and with other entities."[1]

Federal law also authorizes the Secretary of Homeland Security "to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this chapter or otherwise provided by law;" and to "take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments."[2] Catch-all provisions authorizing various responsibilities across DHS in the Secretary also exist—namely: "All functions of all officers, employees, and organizational units of the Department are vested in the Secretary."[3] Other federal statutory provisions confer a variety of powers, duties and authorities on the Secretary of Homeland Security.

[1] 6 U.S.C. § 112(c).
[2] *Id.* (b)(2)—(3).
[3] *Id.* (a)(3).

IV. Policy Questions

Management

13. What role do you believe the Secretary should have in reviewing or having input on executive actions or other administration policies that impact DHS?

I believe it is critically important for the Department to have a key role in reviewing and commenting on any executive actions or administration policies that impact the Department, specifically our Operational Components.

14. Following your tenure as Acting Secretary, what structural changes or reorganization do you believe is necessary for the DHS to continue to effectively protect the homeland from overseas and domestic threats?

At this time, I do not see the value of any large-scale reorganization within the Department. I am focused on ensuring key offices and components are executing their mission successfully with the funding and resources necessary. However, should I determine structural changes are needed, I would engage the relevant Congressional Committees as soon as practicable.

15. If confirmed, do you commit to ensuring that the DHS Privacy Office and the Office of Civil Rights and Civil Liberties are appropriately consulted on the review of DHS products such as guidance, protocols, and implementation memoranda?

Yes.

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

Above all else it is my duty to ensure that the men and women who work at DHS, whether they are Border Patrol Officers at the southwest border or Transportation Security Officers at an airport in the Midwest, have the resources they need to stay safe – specifically in the wake of a global pandemic. The department's human capital office, as well as component human capital offices, have worked tirelessly to ensure operational changes are implemented as necessary, employees are educated on the latest CDC guidelines and recommendations, they have access to testing when appropriate, and the proper Personal Protective Equipment (PPE) is procured.

I will continue to ensure that our front line employees receive state of the art equipment and protective gear to keep them safe from the variety of threats they experience in the field. DHS's most valuable asset is our people and as the nation's largest law

enforcement agency it's paramount to me that those people are protected as they carry out our mission.

In addition to these health and safety challenges, I prioritize retaining talent and supporting DHS employee growth so that they may become the leaders of tomorrow. The department employs a diverse talent base – from medical professionals at CWMD to law enforcement experts at ICE to nationally-renowned scientists at S&T. It's imperative that we cultivate this talent and empower our people to become the future leadership of DHS.

a. What new initiatives would you take, if confirmed, to identify and address the root causes of low morale among DHS employees?

As stated in my answer to majority question 64, I intend to capitalize on recent successes realized throughout FY20 through continued partnership with the workforce and recognizing our team for the vital role they play in mission success. One of the most important aspects of this is continuing to communicate with the workforce frequently. This applies to COVID-19 but also communicating to the workforce on why the Department is taking certain actions.

When COVID-19 began to impact DHS personnel nationwide I made it a priority to regularly send out video and email updates keeping the entire DHS workforce informed and empowered my Chief Human Capital Officer to initiate weekly outreach as well. DHS also took steps such as conducting a pulse survey to determine what the department could be doing to assist our employees while they navigated their personal and professional lives throughout the pandemic.

As DHS takes steps to implement a safe "Return to the Workplace" plan, I will also continue to communicate with those employees who are not on our front lines to make sure the transition back in to the office is both safe and smooth.

17. As Acting Secretary of DHS, did you ever inform the President that a public statement that he made was inaccurate? Which one(s)? If not, why not?

It is the longstanding practice and expectation of the Executive Branch for officials to refrain from commenting on conversations they may have had with the President of the United States.

Federal Emergency Management

18. Do you believe that man-made climate change has contributed to the growth in the frequency, magnitude, and financial impact of natural disasters in recent years? If yes, please explain how FEMA can use this information to improve preparedness. If no, please explain why not.

The challenges posed by climate change, such as more intense storms, frequent heavy precipitation, heat waves, drought, extreme flooding, and higher sea levels could significantly alter the types and magnitudes of hazards faced by communities and the emergency management professionals serving them. Regardless of why the climate is changing, emergency managers have to be poised to respond to disasters and support preparedness efforts nationwide

19. Increasing our nation's resilience to our changing climate will require bold steps from the federal government to prevent severe economic and environmental damage to our country. If confirmed, what steps will you take as the Secretary of Homeland Security to address the challenge of climate change?

Emergency managers and other FEMA partners need information to help them make decisions on how to manage climate-related risks and capitalize on opportunities to further preparedness. Our goal is to provide easy access to our products and other Federal products to support decision makers.

20. What do you perceive has possible impacts and challenges of climate change on components within the Department of Homeland Security?

As previously stated in response to question #18, the challenges posed by climate change, such as more intense storms, frequent heavy precipitation, heat waves, drought, extreme flooding, and higher sea levels could significantly alter the types and magnitudes of hazards faced by communities and the emergency management professionals serving them. Regardless of why the climate is changing, emergency managers have to be poised to respond to disasters and support preparedness efforts nationwide.

a. If confirmed, how would you address these challenges?

The Department is constantly evaluating and re-evaluating our security posture against any threat facing the American people.

b. If confirmed, how would you direct the components to prepare for and address these challenges?

As Acting Secretary, I have always empowered the Department's component heads to lead their respective agencies and execute their mission within their authorities. If confirmed, this will not change.

21. During this season, the most extensive series of wildfires in history have ravaged the states of California, Washington, and Oregon, among others, causing more than $1 billion in insured losses.

    a. Please describe your role in the preparation, response, and recovery efforts for this season's wildfires.

    As always, FEMA and DHS work with multiple partners both in preparation and response to any incident. Any effective response must be federally supported, state managed and locally executed. Both FEMA Headquarters and FEMA Region 9 have a very strong relationship with the State of California as well as the California Office of Emergency Management and CalFire. Specifically, FEMA Region 9 works with California throughout the year on exercises and planning for each fire season.

    b. What is your evaluation of the initial interagency response to these wild fires?

    As always, FEMA and DHS work with multiple partners in response to any incident. Any effective response must be federally supported, state managed and locally executed. As always, when these incidents are over, DHS and FEMA will work on an after-action report, that will include all partners involved, to do an evaluation of areas for success as well as necessary improvements.

    c. What do you see as notable successes and failures by the Trump Administration and DHS regarding the initial response to these disasters?

    DHS/FEMA have responded to the requests of the States during this historic fire season. In total, FEMA has issued nearly 70 fire management assistance grants (FMAGS) to support state and local responses to the fires. Most recently, the President issued a major disaster declaration for the State of California and an Emergency Declaration for the State of Oregon at the request of the Governors in those States.

22. What do you believe the role of the federal government should be in long-term recovery efforts and what metrics should the government use to determine whether federal responsibilities have concluded for providing assistance after a natural or man-made disaster?

    After an incident, FEMA is fully committed to the recovery of impacted areas. We do this through multiple programs that are administered by FEMA. These include assistance for individuals through our Individual Assistance Program, as well as assistance for public infrastructure through our Public Assistance program. FEMA also has additional programs such as crisis counseling and community disaster loans that we can implement as circumstances warrant. FEMA are committed to utilizing the authorities we have under the Stafford Act, as well as any other authorities, in order to

successfully foster long-term recovery, mitigation, as well as codes and standards, through multiple post-disaster mitigation programs.

23. What steps should the federal government take, in your opinion, to ensure that infrastructure repairs made in disaster-affected communities are made to better withstand future disasters?

FEMA believes that individuals and communities should make themselves resilient before a disaster strikes. As an individual, this means making a plan, building a disaster kit and making sure you have appropriate and adequate insurance. For a community this means investing in mitigation and insuring communities. FEMA assistance to communities is available through multiple federal grant programs. After a disaster strikes, FEMA work to promote investments in mitigation, as well as codes and standards, through multiple post-disaster mitigation programs.

With the recently released the Building Resilient Infrastructure and Communities (BRIC) program, DHS/FEMA is placing a significant emphasis on pre-disaster mitigation for communities as well as infrastructure. This year's BRIC program will invest $500 million in mitigation projects throughout the nation. In addition to pre-disaster mitigation, DHS/FEMA provides funding through its Hazard Mitigation Grant Program to build communities and infrastructure back stronger following declared disasters.

24. What is your view of the "disaster deductible" concept, which would condition states' receipt of FEMA reimbursement on their ability to adopt specific mitigation and resiliency measures, such as updated building codes and stricter insurance requirements? If confirmed, will you support advancing the deductible concept through the federal rulemaking process?

FEMA strongly supports states investing in mitigation and resiliency measures as well as strong building codes. FEMA has posted a Notice of Funding Opportunity for a new program – the Building Resilient Infrastructure and Communities (BRIC) that was authorized under the Disaster Recovery Reform Act of 2018. This program will invest up to $500 Million in State, Territorial and Tribal mitigation projects. FEMA no longer supports the "disaster deductible" specifically, but remains supportive of the concepts of mitigation, resiliency and strong building codes.

25. Do you support repealing the Federal Flood Risk Management Standard? Why or why not?

FEMA supports a standard that would be consistent across the interagency as it: 1) provides more consistent flood standard to communities in the pre- and post-disaster environment; and 2) would help reduce disaster suffering and promote community resilience.

The Federal Flood Risk Management Standard (FFRMS) recognized that changing weather conditions are worsening the risk of flooding and mandated stronger flood risk reduction efforts for federal investments. However, under FEMA's existing authorities, the Agency is able to continue the intent of the standard by encouraging or requiring higher flood mitigation standards for our programs and actions, including: leveraging consensus-based codes and standards, the adoption of freeboard (elevation above the minimum standard to provide an extra measure of safety from storm surge and flooding) and, following state or local standards that may be more restrictive

26. **What do you view as FEMA's role in providing emergency management education, training, and exercise programs to state and local first responders?**

FEMA's role is to lead the nation in emergency management education, training and exercises. FEMA provides world-class training and education for the nation's first responders and emergency managers through a robust enterprise of institutions and partnerships managed by the National Preparedness Directorate's National Training and Education Division (NTED) and the U.S. Fire Administration (USFA) National Fire Academy. The National Fire Academy (NFA) is the nation's premier provider of leadership skills and advanced technical training for local fire and emergency services. The Center for Domestic Preparedness (CDP) offers more than 50 training courses at its resident campus in Anniston, Alabama, and through mobile deliveries, focusing on incident management, mass casualty response, and emergency response to a catastrophic natural disaster or terrorist act. The Emergency Management Institute (EMI) serves as the national focal point for the development and delivery of emergency management training to enhance the capabilities of federal, state, local, tribal and territorial government officials, volunteer organizations and the public and private sectors to minimize the impact of disasters.

FEMA leads national efforts to validate capabilities of the whole community in support of the National Preparedness System through its National Exercise Program. The National Exercise Program (NEP) consists of a two-year cycle of exercises across the nation that examine and validate capabilities in all preparedness mission areas, guided by strategic priorities set by the National Security Council's Principals Committee. The Homeland Security Exercise and Evaluation Program (HSEEP) provides a set of guidance that any organization can use to structure an effective exercise and evaluation program with a common approach to program management, design and development, conduct, evaluation, and improvement planning.

Border Security and Immigration

27. On January 25, 2017, President Trump issued Executive Order 13767, "Border Security and Immigration Enforcement Improvements." The executive order instructs the Secretary of

Homeland Security to take immediate steps to plan, design, and construct a physical wall along the southern border in order to "to obtain complete operational control, as determined by the Secretary, of the southern border." What does the term "complete operational control" mean to you, and, if confirmed, what additional steps would you recommend that Customs and Border Protection (CBP) take in order to obtain complete operational control of the southern border?

Immediately following the issuance of Executive Order 13767, the U.S. Border Patrol, a component of Customs and Border Protection (CBP), worked with the Department to define the elements needed to obtain operational control of the border: these are Situational Awareness (collecting and assessing intelligence and information and integrating them into our operations); Impedance and Denial (stopping illegal crossings or slowing them down to allow additional response time); and Response and Resolution (rapidly responding to threats).

I agree with these elements.

If confirmed, I would empower the Border Patrol to improve each element of operational control by enhancing the number of agents and support personnel; improving and increasing barriers and infrastructure according to the requirements in priority areas; enhancing situational awareness with the application of better surveillance technologies; and continuing the emphasis on systems along the border that combine barriers and access roads with detection and tracking technologies to give responding agents better awareness and increased mission advantage. I would combine these law enforcement resources with strong and coherent policies that link the U.S. Border Patrol's efforts with those of other domestic and international law enforcement partners.

28. Do you believe it is possible to end all unlawful entries into our country? Why or why not?

Unfortunately, I believe there will always be some level of illegal entries into the U.S. as our adversaries continue to find innovative ways to enter the country. However, we should continue to build on the successes of previous years and continue to harden our defenses and policies and push illegal behavior into areas where we have the advantage of engagement versus on their terms. Such success can only occur when Congress enacts legislation that ends the immigration loopholes that act as a pull factor for illegal immigration, and fully appropriates funds to maintain a secure border.

a. If you believe it is possible, what manpower, infrastructure, and technology capabilities would be required to achieve such an outcome?

CBP has Operation Control of the border between the POEs and has enhanced enforcement efforts at the ports: air, land and sea. Leveraging and strengthening CBP's full spectrum of capabilities, DHS can continue to enhance

our awareness of potential and kinetic threats. This can be accomplished in four key ways. First, by better integrating and analyzing data across the interagency to create a common operating picture that can be actioned at both the field and headquarters levels. Second, by dramatically improving impedance and denial (I&D) capabilities between POEs through infrastructure investment and enforcement of immigration and criminal laws through prosecution. Third, by collaborating with federal and local law enforcement agencies and international partners to disrupt illicit trafficking and facilitation proactively. Finally, by deploying a layered approach to response and resolution that supports our officers and agents with the latest tools, technology, and training they need to do the job.

b. Is there a point, in your view, where the costs of building additional infrastructure along the southern border outweigh in the benefits? If so, what is that point?

This administration is committed to securing our Southwest border. We have recently completed over 320 miles of border wall system and expect to complete 450 miles by the end of the year. These are high-priority areas, as defined by U.S. Border Patrol agents. We will always evaluate the cost-benefit analysis when building border wall infrastructure.

It is important to note that the Administration is not advocating for constructing a border wall system along all 2,000 miles of the Southwest border. CBP has identified high priority areas where a border wall system would be most effective.

29. Do you believe that our nation's ports of entry have adequate resources and manpower to prevent the illegal flow of drugs, contraband, and individuals posing security threats into this country?

CBP has numerous workload models to accurately identify requirements at ports of entry for its mission to prevent the entry of terrorist and terrorist weapons, interdict and seize illicit narcotics, protect the U.S. economy and consumers for fraudulent or unsafe goods, facilitate lawful trade and travel to the United States, prevent the illegal import or export of currency or firearms, and process legal migration. These models allow CBP to be cost effective in ensuring that it has the right mix of law enforcement, agriculture security, trade and revenue, and professional staff so that these missions can be accomplished responsibly for the U.S. taxpayer without compromising on security or a pleasant experience for lawful traders or travelers.

CBP has the Workload Staffing Model, which models the requirements for frontline CBP Officers; the Agriculture Resource Allocation Model, which identifies requirements to prevent the introduction of invasive pests, species, and diseases into the U.S.; and the Mission and Operational Support Resource Allocation Model,

which identifies the need for professional staff to ensure that law enforcement and frontline personnel are devoted to their law enforcement mission and not performing mission or operational support activities that could be carried out more cost effectively by professional staff.

The models do show that CBP is in need of additional officers, agricultural specialists, trade specialists, and professional staff. The current impact of COVID-19 worldwide have decreased international travel and alleviated some of the stresses on CBP staff at ports of entry. However, I expect that, as international travel recovers post-COVID-19, these models will again show the need for additional staff at ports of entry. Both the present and past administrations have requested every year since 2013 that Congress increase several CBP user fee rates, which would fully support all CBP staffing requirements at ports of entry. Congress has not acted on any of these requests.

Absent congressional action to increase staffing to requirements at ports of entry, CBP will continue prioritize its most critical counter-terrorism, counter-narcotics, and trade security missions at ports of entry to protect national and economic security.

30. Do you support the use of eminent domain to seize private citizens' property to build the physical wall along the Southern border?
    a. In your opinion, should private landowners be compensated for any devaluation of their land that would lie south of the wall as a result of border wall construction?

CBP and the U.S. Army Corps of Engineers are engaged in land acquisition activities for border wall system projects. It is always our preference to obtain real estate interests voluntarily and acquire permanent real estate interests through negotiated Offers to Sell.

31. Would you be in favor of a path to citizenship for the more than 700,000 current Deferred Action for Childhood Arrivals (DACA) recipients as a part of that legislative fix? Why or why not?

As I have stated publicly numerous times, I believe this population deserves closure and finality surrounding their status, and that Congress is the appropriate entity to debate this issue.

If confirmed, I look forward to reviewing any legislative package designed to address the current DACA population and the various systemic vulnerabilities that could encourage a future crisis, similar to what we experienced in 2019.

32. As recently as 2010 there were over 16,000 non-citizen immigrants serving in the United States military, making up 1.4% of the enlisted force. Do you support the enlistment of non-citizens into the United States military?

I defer to the Department of Defense to discuss the enlistment of non-citizens in the U.S. military.

a. In June 2002, President Bush issued an Executive Order expediting the naturalization of non-citizens serving in active-duty status in the war on terror. Do you support the expedited naturalization of non-citizens that serve in the United States military?

Yes. It is important to naturalize non-citizen immigrants who serve in our nation's military in a lawful and expedited fashion.

33. CBP has managed several communicable disease outbreaks in the past among people in their custody, but it seems that the Title 42 authorities were enacted as a result of CBP's and the CDC's belief that facilities and medical resources are inadequate.

a. What upgrades and increased capacities does CBP need to confront potential COVID-19 cases among its detainees?

CBP's medical support capabilities are tailored to its role as a law enforcement agency (versus a public health agency) and its role in short-term holding (versus longer-term detention). CBP does address focal outbreaks of disease in its facilities in coordination and partnership with state and local health authorities as appropriate.

However, COVID-19 does not represent a focal outbreak, but rather a uniquely challenging novel global pandemic which requires utilization of all appropriate public health measures and authorities—including Title 42—to protect persons in custody, CBP personnel, local communities, and local health systems. The threat of COVID-19, as recognized and addressed by Title 42 authority, is not specific to or limited to CBP facilities, but also extends to CBP personnel, ICE facilities and personnel, HHS/ORR facilities and personnel, local communities, and local health systems.

At this time, the most effective, efficient, and protective approach is to utilize Title 42 to minimize the risk of exposure to persons in custody, CBP personnel, local communities, local health systems, and the U.S. population.

b. Will CBP seek or request funding or additional authorities from Congress in the coming months to enact these upgrade or increased capacities and move beyond these emergency authorities?

CBP has significantly expanded its medical support capabilities for persons in custody and requires sustained funding for its ongoing medical support efforts. I believe this is an area that we need additional support from Congress on.

c. What specific metrics will CBP report to the CDC Director, or vice-versa, that will determine that these authorities are no longer needed?

CBP works closely with CDC and the CDC Director on a regular and ongoing basis to assess an array of considerations related to the requirement for continuation of Title 42 authority. While the Title 42 authority belongs to HHS/CDC, CBP provides requested information to assist CDC in making informed decisions regarding the continuation of the Title 42 authority.

The primary considerations that CBP will report to CDC will be the current status of the COVID-19 epidemic, with a focus on the current number of active cases and the current positivity rate in Mexico, Canada, and the United States, especially in those communities along the northern and southern borders of the United States. Additionally, we will consider the number and demographics of border crossers, number and demographics of persons in custody, and the length of time in custody.

CBP will continue to monitor the situations in Mexico and Canada, along with border communities of the United States, to ensure we are taking all appropriate and necessary steps to protect the American people.

34. The U.S. government made representations to the Ninth Circuit and Supreme Court that non-refoulement interviews for individuals in the Migrant Protection Protocols (MPP) are available at any time.

a. Is CBP currently referring individuals returned to Mexico under MPP who request protection at a port of entry for non-refoulement interviews? If not, why not?

Anyone who has been enrolled in MPP and expresses a fear of being returned to Mexico will be referred to USCIS for an assessment.

b. Are CBP and Border Patrol referring individuals newly being placed in MPP for fear screenings when they express a fear of return to Mexico? If not, why not?

Yes. If an alien who is potentially subject to MPP affirmatively states that he or she has a fear of persecution or torture in Mexico, or a fear of return to Mexico, at any time while he/she is in the United States, CBP will refer the alien to USCIS for an MPP assessment interview conducted by an asylum officer.

c. How many individuals in MPP have received non-refoulement interviews by nationality? What percentage have passed? Please disaggregate these number by initial MPP enrollees and those subsequently returning to a port of entry.

In Fiscal Year 2020 to date, as of September 10, USCIS had been referred and completed 12,116 cases of MPP enrollees. 1,195 (10%) of USCIS interviews resulted in a positive determination.

Disaggregated by citizenship, the positive determination rates were as follows:

- **Cuba, 16% of 3,411**
- **Honduras, 7% of 3,379**
- **Guatemala, 9% of 1,864**
- **El Salvador, 8% of 1,353**
- **Venezuela, 5% of 1,045**
- **Nicaragua, 10% of 417**
- **Ecuador, 4% of 293**
- **Brazil, 4% of 252**
- **Peru, 11% of 35**
- **Other, 6% of 70**

Disaggregated by previously returned to Mexico and initial arrival to the United States, the positive determination rates were as follows:

- **Previously returned to Mexico, 961 of 9856 (10%)**
- **Initial arrival to the United States, 234 of 2260 (10%)**

35. On June 16, the administration cited "severe pandemic conditions" in Mexico as justification to continue postponing MPP court hearings. But the only reason asylum-seekers are in dangerous conditions Mexico is because of US policy forcibly sending them there.
    a. Do you thus acknowledge that asylum-seekers are being sent to dangerous conditions in Mexico?

As noted above, anyone who has been enrolled in MPP and expresses a fear of being returned to Mexico will be referred to USCIS for an assessment. Each case is evaluated on an individual basis.

b. When will the MPP court hearings resume? What specific conditions will determine that?

What follows is directly from our recent press release on this issue.

Criteria to Restart MPP Hearings

- **When California, Arizona, and Texas progress to Stage 3 of their reopening plans.**
- **When DOS and CDC lower their global health advisories to Level 2, and/or a comparable change in health advisories, regarding Mexico in particular.**
- **When GOM's "stoplight" system categorizes all Mexican border states (i.e., Tamaulipas, Nuevo Leon, Coahuila, Chihuahua, Sonora, and Baja California) as "yellow."**

Once the threshold criteria above are satisfied, we will take steps such as ensuring compliance with CDC guidelines on social-distancing, face masks, etc., before resuming the hearings.

c. How many people in the MPP program have been forced to travel to the U.S.-Mexico border to get their "tear sheets" for their postponed court date?

Currently, it is my understanding that no individuals are required to get "tear sheets." Individuals should continue to check on their case status in English and Spanish by calling the Automated Case Information Hotline at 1-800-898-7180 or visiting the EOIR Automated Case Information portal.

MPP respondents are encouraged to report to the POE with any previously-issued court paperwork, including the referenced "tear sheets." However, MPP respondents reporting to the port of entry on their scheduled court date will be permitted to attend their hearing even if they report without a Notice of Hearing (NOH) or tear sheet.

d. Is CBP tracking how many individuals are missing their court hearings because they cannot travel to the border to obtain their tear sheets, or because of threats of violence, kidnappings, or extortion?

It is outside CBP authority and ability to monitor individuals while they are in Mexico, and therefore CBP is not able to track the reason an individual misses a court hearing.

e. How has CBP ensured that individuals in MPP are directly notified of changes to their hearing dates? Are you monitoring what is happening to them in Mexico while they're forced to wait for increasingly long periods of time?

Since hearings are currently paused, individuals should continue to check on case status in English and Spanish by calling the Automated Case Information Hotline at 1-800-898-7180 or visiting the EOIR Automated Case Information portal. Once the criteria are met, DHS—in coordination with the Department of Justice—will provide public notification at least 15 calendar days prior to resumption of the hearings with location-specific details.

It is outside CBP authority and ability to monitor individuals while they are in Mexico, but the Government of Mexico has pledged to provide appropriate humanitarian support for individuals waiting in Mexico for their hearings.

f. Have (or will) CBP officers be instructed to permit individuals in MPP to appear for their hearings even if they do not have a copy of their updated hearing notice?

MPP respondents are encouraged to report to the POE with any previously issued court paperwork, however, MPP respondents reporting to the port of entry on their scheduled court date will be permitted to attend their hearing even if they report without a Notice of Hearing (NOH) or tear sheet.

g. What steps, if any, has CBP taken to make access to counsel available in Immigration Hearing Facilities for individuals in MPP who are unrepresented when MPP restarts?

Consistent with the law, aliens in removal proceedings can use counsel of their choosing at no expense to the U.S. Government. Aliens subject to MPP are afforded the same right and are provided with a list of legal services providers in the area which offer services at little or no expense to the migrant.

To facilitate access to counsel, aliens in MPP are instructed to arrive at the designated port of entry (POE) at the time and date indicated on the tear sheet, which is a time early enough to be processed at the POE and arrive at court before their scheduled hearings to provide time to meet with their retained attorneys or accredited representatives. Aliens can also

communicate with their counsel of choice on their own accord at any other time.

DHAS has posted "Know Your Rights" information in English and Spanish on its website , the necessary forms from the DOJ Executive Office for Immigration Review (EOIR) are available in immigration court and on the EOIR website. Additionally, DHs understands that several migrant shelters in Northern Mexican cities make the EOIR forms and other Know your Rights information available.

For aliens who attend immigration court at one of the DHS-anaged immigration hearing facilities (IHFs) in Laredo or Brownsville, Know Your Rights videos are played in the waiting rooms, and DHS permits in-person Know Your Rights presentations to be provided by outside parties at the IHF's consistent with those parties' resources.

h. What instructions have been provided to CBP officers regarding information to be provided to individuals with cancelled MPP hearings who appear at the port of entry?

MPP respondents whose hearings have been affected by the suspension of MPP hearings are directed to the joint DHS/DOJ press releases and are encouraged to check on the status of their case in English and Spanish by calling the Automated Case Information Hotline at 1-800-898-7180 or visiting the EOIR Automated Case Information portal

i. How many individuals have been placed into MPP proceedings since the implementation of the Title 42 expulsions? What are their nationalities?

From March 21, 2020 through August 31, 2020, CBP placed 2,697 individuals into MPP proceedings. This data can be disaggregated by country of citizenship as follows:

Country of Citizenship March 21, 2020 – August 31, 2020	CBP
ARGENTINA	1
BELIZE	1
BOLIVIA	
BRAZIL	64

CHILE	1
COLOMBIA	6
COSTA RICA	1
CUBA	1,264
DOMINICAN REPUBLIC	8
ECUADOR	466
EL SALVADOR	157
GUATEMALA	208
HONDURAS	372
NICARAGUA	70
PANAMA	1
PARAGUAY	2
PERU	24
URUGUAY	1
VENEZUELA	50
MPP Total	**2,697**

j. Since the issuance of the Title 42 order, what percentage of migrants encountered have been processed into MPP program and through Title 42?

From March 21, 2020 through August 31, 2020, CBP total Enforcement Encounters at the Southwest Border were 172,279. Approximately 1.6 % (2,697) were placed into MPP proceedings and 89.3% (153,894) were processed under Title 42.

k. How do CBP agents determine which individuals enter the MPP program and which ones are expelled through the Title 42 order?

All aliens subject to the CDC Order shall be processed in accordance with the Order, unless they are excepted from the Order by a customs

officer. Any alien excepted from the Order shall be processed under Title 8, which may include processing under MPP for aliens amenable to MPP.

36. The administration maintains two programs – the Humanitarian Asylum Review Process (HARP) and Prompt Asylum Claim Review (PACR) – that allow Customs and Border Protection to remove asylum-seekers who do not succeed in their asylum claims through the expedited removal process. In a February 27 House Appropriations hearing, you noted that CBP removed 2,500 migrants through PACR and 1,200 through HARP.
    a. How many individuals, disaggregated by month and nationality, were subject to removal through these programs since their implementation?

    The PACR and HARP pilot initiatives allow DHS immigration components—in partnership with the Department of Justice's Executive Office for Immigration Review—to efficiently adjudicate the credible fear claims of amenable aliens (non-Mexicans and Mexicans, respectively) while such aliens are in CBP custody. Aliens enrolled in PACR and HARP are subject to expedited removal (ER), and to date ICE has not disaggregated data specific to PACR/HARP enrollees from its ER data.

    b. Has CBP issued guidance to process migrants through Title 42 instead of PACR and HARP since mid-March? If so, what percentage go through these programs versus Title 42 expulsions?

    Processing under HARP and PACR was temporarily halted on March 26, 2020 due to the risk of the spread of COVID-19 and while CBP is currently supporting the Public Health Order under Title 42 which imposes certain travel restrictions to prevent the spread of COVID-19 in the United States by suspending non-essential travel.

    It is my understanding that, since March 21, 2020, no aliens have been enrolled in the programs cited.

    c. How do CBP agents determine which individuals go through these programs and which ones are expelled through the Title 42 order?

    Processing under HARP and PACR was temporarily halted on March 26, 2020 due to the risk of the spread of COVID-19 and while CBP is currently supporting the Public Health Order under Title 42.

    It is my understanding that, since March 21, 2020, no aliens have been enrolled in the programs cited.

d. How many individuals, and from which countries and demographic groups, have been placed into the Prompt Asylum Claim Review (PACR)?

PACR has enrolled a total of 3,080 aliens, generally single adults and family unit aliens from Honduras, Guatemala, El Salvador, and Brazil.

e. How many Mexican nationals, and from which demographic groups, have been placed into the Humanitarian Asylum Review Process (HARP)?

OFO has processed a total of 1,735 aliens under HARP. This total includes 1,665 family unit aliens and 70 single adult aliens.

USBP processed a total of 2,105 Mexican aliens under HARP.

f. Has anyone been placed into PACR or HARP since the implementation of Title 42 expulsions? If so, how many individuals by program, nationality and demographic group?

No. Processing under HARP and PACR was halted in late March 2020 due to the risk of the spread of COVID-19.

g. How much time and how often are individuals in PACR/HARP permitted to speak with an attorney on the telephone?

Aliens oriented into the HARP or PACR are currently permitted a 48-hour consultation period prior to the interview by a USCIS Asylum Officer.

h. What accommodations do you provide for interpretation during attorney calls?

CBP does not provide translation services for attorney/client privileged calls. Aliens enrolled in PACR or HARP are provided a private phone booth for calls during the consultation period.

i. How many individuals have been represented by counsel through these programs and associated screenings?

As noted above, HARP/PACR enrollees are placed in expedited removal proceedings, and aliens in ER proceedings generally do not retain counsel.

For HARP, 13 of 2,005 cases had a legal representative. For PACR, 18 of 2,722 cases had a legal representative.

Cybersecurity

37. What specific strategies and policies would you pursue to bring together the public and private sector in strengthening our nation's cybersecurity and build infrastructure resilience?

Bringing together the public and private sector in strengthening our nation's cybersecurity is at the heart of CISA's mission. As the Nation's risk advisor, CISA leads the efforts to ensure the security and resilience of our cyber and physical infrastructure. CISA operates at the intersection of the Federal Government, state and local governments, the private sector, international partners, law enforcement, intelligence, and defense communities.

We share timely and actionable classified and unclassified information as well as provide training and technical assistance, and we do this in ways that prioritize the protection of privacy, civil liberties, and confidentiality. Our work enhances cyber threat information sharing between and among governments and businesses across the globe to stop cyber incidents before they occur and quickly recover when they do.

By bringing together the intelligence community, law enforcement, the Department of Defense, Sector-Specific Agencies, all levels of government, the private sector, international partners, and the public, we are enabling collective defense against cybersecurity risks, improving incident response capabilities, enhancing information sharing of best practices and cyber threats, strengthening our resilience, and facilitating safety.

If confirmed, I will continue to prioritize our cyber mission and will support all efforts to strengthen DHS's collaboration with the private sector.

38. How will you work across DHS components to strengthen the Department's efforts to implement effective policies to protect and secure Federal networks and our nation's critical infrastructure against the cyber threats?

CISA leads the Federal effort to secure the Federal Civilian Executive Branch (FCEB) enterprise. While CISA is the part of DHS charged with this mission, DHS—and all of our components—is a part is of the enterprise that CISA seeks to secure. The Department—as a whole—is committed to adhering to the guidance issued by CISA to strengthen our cybersecurity posture and build security and resilience into the very fabric of our network.

To help protect the FCEB enterprise, CISA provides a common set of security tools that helps federal agencies manage their cyber risk. CISA's assistance to federal agencies includes:

CISA helps safeguard the Federal Civilian Executive Branch from cyber threats through the National Cybersecurity Protection System (NCPS), which includes the EINSTEIN set of sensor capabilities and supports the deployment of new intrusion detection/prevention, information sharing, and advanced analytic capabilities. Another impactful tool is CISA's Continuous Diagnostics and Mitigation (CDM), which deploys tools inside agency networks, measuring and motivating agencies to implement policies, directives, standards, and guidelines.

The Department has embraced our statutory responsibility to administer the implementation of federal agency cybersecurity policies and practices. We continue to exercise the authority to develop and oversee the implementation of binding operational directives (BODs) and emergency directives. Most recently, CISA issued Emergency Directives 20-03 to mitigate significant risks posed by vulnerabilities to Windows operating systems and Windows Domain Name System (DNS) servers, respectively. These Emergency Directives demonstrated CISA's ability to respond quickly to emerging threats and enterprise risks and to oversee cross-agency actions while also demonstrating agencies' ability to patch millions of assets within tight timeframes based on the potential for significant, negative impacts.

I am proud of the work that we have done to secure the FCEB enterprise and will continue to provide and act on guidance for a strong digital defense.

39. What should the role of CISA be in federal cybersecurity? Should it remain as it is, or should there be changes in how it interacts with OMB and other agencies?

In passing the Cybersecurity and Infrastructure Security Agency Act of 2018, Congress recognized that CISA's role in fostering collaboration between and across both government and private sector organizations has never been more important. The threats against the Nation —especially from a cybersecurity perspective - are more complex, and the threat actors more diverse, than at any point in our history.

As noted above, CISA operates at the intersection of the Federal Government, state and local governments, the private sector, international partners, law enforcement, intelligence, and defense communities. CISA shares timely and actionable classified and unclassified information as well as provides training and technical assistance. Their work enhances cyber threat information sharing between and among governments and businesses across the globe to stop cyber incidents before they occur and quickly recover when they do.

But the responsibility for cybersecurity is truly a shared responsibility. Strong cybersecurity requires a whole-of-government approach. We all have specific roles and responsibilities which must come together for the strongest defense. Our work with our interagency partners continues to keep us ahead of our enemies and I am encouraged to see our cooperation and collaboration strengthen every day.

40. Today there are more than 20 agencies across the federal government with roles and responsibilities associated with U.S. cyber capabilities. What role do you believe the Department should play in this ecosystem? Please describe your understanding of the Department's responsibilities for cybersecurity, both federal and non-federal.

As noted above, CISA operates at the intersection of the Federal Government, state and local governments, the private sector, international partners, law enforcement, intelligence, and defense communities.

CISA enhances cyber threat information sharing between and among governments and businesses across the globe to stop cyber incidents before they occur and quickly recover when they do. As the lead federal civilian cybersecurity agency, CISA helps agencies guard the Federal Civilian Executive Branch (FCEB) enterprise; they support State, Local, Tribal and Territorial governments in their defense of critical infrastructure; and they provide risk management expertise in in response to national events.

I believe that this is the right goal for the Department at this time. Cybersecurity is a team sport. It cannot be done in a vacuum. A collective defense makes us stronger as a Nation. Cybersecurity is a multi-faceted discipline which requires intelligence, law enforcement, legal action and mitigation recommendations all working together to make a true and real difference.

DHS can synthesize the information provided by the intelligence community into actionable guidance able to be widely distributed; the public and private sectors can act on this guidance to safeguard systems today; and law enforcement is able to take action that discourages and penalizes cyber bad actors.

41. How will you address the challenge of recruiting and retaining the necessary personnel with critical cyber security expertise?

People are one of the most critical factors in a strong cybersecurity posture. Having the right people with the right training in the right positions is what will ensure that we maintain our strategic edge in cyberspace.

But, we, as the Federal government, have a lot of competition for cybersecurity experts from the private sector as well as State and Local governments and even each other. There is a big need and a small pool of qualified individuals – and this is a need that will continue to grow in our hyperconnected world.

We are in the final stages of preparing to launch the Cyber Talent Management System. This is an innovative personnel system that updates the civil service for the 21st

century field of cybersecurity and is possible because of the support from Congress. We anticipate the launch of CTMS in FY21.

But the need for cybersecurity experts cannot wait. To meet this need and get the people with the right training on the team, we have embraced innovative recruiting efforts to build awareness of our mission and the opportunities for professional growth and accomplishment with the Department.

As we all have moved into a virtual work environment, opportunities to connect with the cybersecurity workforce are changing radically and we need to adapt or we will have an even larger issue to deal with in the future and, we believe, technology is at the heart of the solution. CISA has acquired multiple virtual recruitment tools and by teaching into markets that may have otherwise been cost prohibitive, this use of technology allows CISA to remain competitive for cyber talent.

DHS continues to exercise all available mechanisms and has made marked improvement and progress in our recruitment and retention efforts. This remains a top priority for the Department, and I expect this positive trend to continue with the implementation of CTMS.

42. Please describe your views on the appropriate role of private sector entities in working with DHS to improve our nation's cybersecurity.

Collective defense makes us stronger as a Nation and includes not only the Federal government, but also State, Local, Tribal and Territorial (SLTT) governments, the private sector, higher education, and the research community.

While we have mechanisms to compel action from the Federal Civilian Executive Branch (FCEB) enterprise, our work with private sector stakeholders is voluntary. That is why the efforts of CISA to build relationships and establish information-sharing channels between these entities and the Federal government are so important.

CISA's work enhances cyber threat information sharing between and among governments and businesses across the globe to stop cyber incidents before they occur and quickly recover when they do. By bringing together a wide array of stakeholders, CISA enables collective defense against cybersecurity risks, improving incident response capabilities, enhancing information sharing of best practices and cyber threats, strengthening our resilience, and facilitating safety. We would not be able to accomplish this without collaboration with the private sector and will continue to strengthen these relationships as we combat evolving cyber threats together.

43. What have you learned about national emergency response as a result of the COVID-19 pandemic? What lessons learned can be derived in planning for a major cyber-attack? What clarification or changes to roles and responsibilities need to be considered?

From a cybersecurity perspective, the risk landscape has shifted dramatically over the last several months.

Our focus has been on understanding that shift in the threat landscape and recognizing –quickly–the organizations are the most critical to the response. We have been working with our partners at HHS and in the healthcare sector to identify organizations who are critical to the response and engage with them. Since December, we have realized a 55% increase in healthcare entities using CISA's cyber hygiene services and continue enrolling organizations into these vulnerability scanning programs, remote penetration testing and incident response, standby services, and also help them push the capability down into their supply chain.

Next, we moved quickly to protect the response. We are actively scanning more than 175 healthcare partner network systems to decrease critical vulnerabilities; we blocked over 6,500 domains to protect the Government from attacks emanating from high confidence malicious infrastructure and provided a shared threat-mitigation service to the Department of Health and Human Services, which accelerated the removal of approximately 7,000 fraudulent domains and decreased the amount of COVID-19 related spam campaigns.

We have also been working with our interagency and international partners. In May, we issued two specific alerts related to the targeting of vaccine developers including pharmaceutical companies, healthcare organizations and academic institutions by Nation-State actors and actions required to strengthen both their cybersecurity posture as well as their network resiliency.

Finally, we recognized and took action to secure the digital transformation across the cyber landscape. CISA's cyber resources hub provides a one-stop shop of cybersecurity resources to protect networks. During the shift to telework, we issued a suite of products to help organizations and employees work safely from home.

All of these efforts will become part of the toolkit for responding to cyber incidents – both large and small. But there is still work that can be done today to continue to strengthen Federal Network Cybersecurity.

Misinformation and Disinformation

44. Please describe your views on the appropriate role of DHS in addressing the threats of misinformation and disinformation.

Since 2016, the use of propaganda and information warfare techniques from foreign adversaries has increased exponentially and gotten increasingly sophisticated. These tactics are part of an overall "hybrid" approach by adversaries to undermine American democracy, faith in institutions, and functioning of critical infrastructure. Established in 2018, the DHS Countering Foreign Influence Task Force (CFI TF), housed within CISA, seeks to address these issues. The CFI TF is DHS's conduit to the FBI's Task Force on mis-, dis-, and malign information (MDM), as well as the State Department's Global Engagement Center and social media companies for focus on countering foreign interference in America's electoral process.

The CFI TF primarily focuses on "demand side" reduction of MDM – i.e. the targets of propaganda campaigns. This involves outreach and education to improve the resilience of Americans by educating them about the threat of MDM and how to avoid amplifying bad information they may encounter. DHS funds targeted efforts to educate on MDM and to encourage consumers of media to be more resilient to false information with a focus on MDM related to election security.

45. Recent technology advances have led to realistic deepfakes and other artificial or synthetic media that are difficult to discern as counterfeit. Please include how you would address these and other similar emerging technologies as they relate to misinformation and disinformation threats.

Deep fake technology presents a range of risks from fraud to the impersonation of government officials. Countering these risks requires continued investment in law enforcement investigative and forensic capabilities. Addressing risks associated with use of deep fake technology must be done consistent with First Amendment speech protections.

There are several known risks of deep fake technology, which could generate interference in the political process; disinformation that threatens the democratic system; and public misunderstandings of homeland security mission areas, from borders and transportation to counter-terrorism and critical infrastructure.

As noted above, the DHS Countering Foreign Influence Task Force (CFI TF) is staffed and resourced by CISA to address these issues. Our role in this work involves outreach and education to improve the resilience of Americans by educating them about the threat of MDM and how to avoid amplifying bad information they may encounter. DHS funds targeted efforts to educate on MDM and to encourage consumers of media to be more resilient to false information with a focus on MDM related to election security.

46. While misinformation and disinformation efforts have recently focused on election interference, it is clear that misinformation is ubiquitous and that adversaries utilize information operations on a regular basis on a variety of issues.

a. How would you organize DHS to ensure that the Department is postured to address misinformation and disinformation both around specific events (such as elections or the COVID-19 pandemic) and as a general threat?

As noted above, since 2016, the use of propaganda and information warfare techniques from foreign adversaries has increased exponentially and gotten increasingly sophisticated. These tactics are part of an overall "hybrid" approach by adversaries to undermine American democracy, faith in institutions, and functioning of critical infrastructure. The most prominent example is the Russian campaign in 2016 and ongoing efforts by China, Russia and Iran in 2020.

The risk of disinformation affects more than elections. For example, disinformation campaigns have resulted in destruction of 5G communications infrastructure, and undermined COVID response and use of medical countermeasures.

While the Department is taking steps to educate the public on spotting MDM and preventing amplification of incorrect information, we must also respect our rights to freedom of speech and to protect privacy as well as civil rights and liberties.

I am pleased with the work of the DHS Countering Foreign Influence Task Force (CFI TF). I believe that this is an effective structure that will likely continue to evolve to counter the dynamic threat presented by MDM.

The CFI TF has developed public messaging products highlighting the threat of MDM related to election activities and COVID-19. Additionally, CFI TF published educational products about foreign interference.

The CFI TF actively engages external partners, including civil society groups, for help with amplifying our messages by trusted voices. This work focuses on reaching groups that have standing with communities previously targeted by foreign influence to utilize non-government messaging. The CFI TF also maintains an analytic capability, in partnership with the intelligence community, to track trends in MDM and engage private sector and academic community subject matter experts about MDM and foreign interference.

47. Misinformation and disinformation threats are inherently tied to private sector platforms and media outlets. Please explain how you would work to partner with non-federal entities to combat these threats.
    a. Given social media companies have an inventive to keep people engaged, and misinformation and disinformation is often more engaging than the truth, how should DHS work with the private sector to address this challenge?

MDM is not exclusively a U.S. government challenge. Since 2016, social media companies have been much more aggressive in their efforts to counter MDM and to share information on a voluntary basis with the U.S. Government. There is also great interest in international collaboration on this issue and the USG has partnered with like-minded countries to share best practices and work in a unified manner.

As noted above, the CFI TF leads outreach and education efforts to improve the resilience of Americans by educating them about the threat of MDM and how to avoid amplifying bad information they may encounter. We know that we cannot accomplish this goal alone. Through the unique relationship that CISA has built with social media companies, we continue to get better at recognizing innovative ways to draw attention to a very serious threat.

Intelligence

48. DHS plays a central role in the multi-Department effort to share terrorism-related information both within the federal government as well as state, local, tribal, private sector, and even international partners. A recent report by the House Homeland Security Committee found that while DHS has made important progress, the Department's intelligence enterprise remains scattered and all too often uncoordinated across and sometimes within its various components.

    a. What plans do you have to improve coordination and coherence across DHS's various intelligence offices and programs?

If confirmed, I intend to continue to conduct a thorough review of current policies and procedures surrounding the Office of Intelligence & Analysis (I&A) actions and activities, specifically how they conduct information sharing and coordination. Following this review, I will work to improve areas that are deficient or disconnected from DHS components or other intelligence community partners.

It also a priority of mine to review the internal workings of I&A to ensure compliance with all laws and regulations. I trust that the Inspector General, Office of Privacy, and Office of Civil Rights Civil Liberties will diligently execute their respective oversight functions regarding I&A activities. I will empower them to do so.

    b. How do you envision DHS working with its partners in the federal intelligence community to ensure that intelligence information is both appropriately shared and protected from unwarranted disclosure?

I&A currently partners with agencies within the U.S. Intelligence Community (IC) on multiple IC priorities. I&A, and DHS more broadly, adheres to the

concept of "need to know" for access to protect sensitive intelligence and sources.

Additionally, the Chief Security Office at DHS has a robust Insider Threat Operations Center that monitors employees in sensitive positions through continuous monitoring and robust deployment of tools to identify mishandling of sensitive information.

49. Recent briefings have indicated that I&A has chosen to prioritize resources on protecting monuments, memorials, and statues (MMS) by relying on a legal analysis stating that spray-painting a statue would render this "critical infrastructure" inoperable.
    a. Do you agree that spray painting a statue would be an attack on critical infrastructure?

Spray painting in and of itself would not constitute a significant attack on critical infrastructure.

The I&A document and briefings referenced in the question were produced by prior I&A leadership. I have changed that leadership and, under the new leadership, the primary document that is the focus of this question, "Job Aid: DHS Office of Intelligence & Analysis (I&A) Activities in Furtherance of Protecting American Monuments, Memorials, Statues, and Combatting Recent Criminal Violence," was rescinded.

    b. Please describe how I&A sets its priorities and what role DHS and the Secretary's office plays in determining those priorities.

I&A sets its strategic priorities based on a number of inputs, including the National Intelligence Priorities Framework and the Homeland Security Intelligence Priorities Framework. Senior DHS policymaker interest and requests and I&A's own understanding of evolving threat issues—based on its reporting, analysis, and consultation with the rest of the DHS Intelligence Enterprise and IC—will inform adjustments to priorities on an ongoing basis.

    c. What input did your office have on I&A's prioritization of the threat to MMS over other homeland security threats?

Neither myself, nor anyone within my immediate office, directed I&A to prioritize MMS over other homeland security threats. Any instructions to I&A personnel on intelligence reporting regarding the threat to MMS would have been provided by the prior leadership of I&A. I have since changed that leadership.

d. Have any I&A field personnel been tasked to collect information on the threat to MMS?

After I recently appointed a new official to lead the Office of Intelligence and Analysis, that official rescinded the "Job Aid: DHS Office of Intelligence & Analysis (I&A) Activities in Furtherance of Protecting American Monuments, Memorials, Statues, and Combatting Recent Criminal Violence" document.

e. Have any I&A personnel traveled to support this mission?

No, I&A personnel have not traveled to support the MMS related mission.

f. Did you or the Department receive instructions from the White House or other officials in the Administration to prioritize resources to protect MMS?

Aside from receiving Executive Order 13933 (Protecting American Monuments, Memorials, and Statues and Combating Recent Criminal Violence), I did not receive any additional instructions.

50. Recent reporting indicates that a draft of the annual homeland threat assessments intelligence report described the threat of white supremacists as the deadliest domestic terror threat facing the U.S., greater than that of foreign terrorist groups. The threat from ANTIFA, on the other hand, was not great enough to even be included.

a. How do you define threats to the homeland? Do you differentiate between violent threats and non-violent threats?

The Department's September 2019 *Strategic Framework for Countering Terrorism and Targeted Violence* directed an annual product to "evaluate[] the strategic threat environment within the Homeland. . . ." The forthcoming Homeland Threat Assessment (HTA) will be the first such annual product, and will serve as a critical tool in characterizing the evolving threats to the homeland. Violent threats are a particular focus of our efforts—since our first responsibility is to protect life—but the HTA will extensively address both violent and non-violent threats.

b. Do you believe that the greatest threat to our homeland is white supremacist violence?

While it is difficult to rank threats to the Homeland as different threats are focused on different targets and sectors of our economy, let me state very clearly that I am concerned about all forms of violent extremism. Violent white supremacist extremists have proven to be the deadliest in recent years and pose a persistent, lethal threat.

However, I am also concerned with the more recent, violent anti-government and anarchist extremists that have damaged and destroyed government facilities, businesses and other infrastructure, and has inflicted violence on law enforcement officers and innocent civilians. Violence that does not result in fatalities is, depending on the severity, a threat to the Homeland. Violence and damage to infrastructure and property impacts our safety, security and way of life.

c. Do you have any reservations about the I&A assessment of the white supremacist threat?

Let me state clearly and unequivocally that I rely on the judgment of career intelligence professionals—including those at DHS I&A—to inform my decision-making as Acting Secretary. No – I have no reservations about I&A's assessment regarding white supremacist extremists. As I have stated in my answer to question 50(b), I remain concerned regarding the persistent and lethal threat from white supremacist extremists.

d. Do you agree with the assessment of your intelligence professionals at I&A that ANTIFA does not pose a significant threat to the homeland?

Without accepting the premise of the question or commenting on the purported leak of deliberative material, I have been consistent in my view that the threats to the Homeland should be addressed holistically.

To be clear, intelligence information is and should be a cornerstone of any such assessment. However—particularly given limitations on domestic intelligence collection—much of what we know about threats to the Homeland (appropriately) resides outside intelligence channels and is gleaned from open source reporting, engagement with a wide array of partners, and operational information.

With respect to violent anarchist extremists—including but not limited to those who claim affiliation with ANTIFA—the evidence about the threat they pose to the Homeland derived from <u>operational</u> reporting is unambiguous.

For example, while defending the federal courthouse during recent unrest in Portland, DHS law enforcement officers suffered over 240 separate injuries and were assaulted with sledgehammers, commercial grade fireworks, rocks, metal pipes, improvised explosive devices, and more. This violence, perpetrated by anarchist extremists and detailed in numerous public statements that remain available on the DHS website, significantly threatens the Homeland by undermining officer and public safety—as well as our values and way of life

51. Recently you stated that you had spoken with Attorney General Barr about prosecuting members of ANTIFA and Black Lives Matter (BLM) under the Racketeering Influenced and Corrupt Organizations (RICO) Act.
    a. What would the DHS role be in any prosecution?
    b. Have you had any conversations or are there any plans for prosecuting white supremacist groups under RICO?

Joint Response: The Attorney General and I have spoken about investigations into the criminal activities of the members of ANTIFA and Black Lives Matter (BLM) but nothing about any prosecutions. Because the merits of this question pertain to the prosecutorial activities of the Department of Justice (DOJ), I respectfully refer you to DOJ.

52. Please describe how DHS sets its priorities, and how I&A's annual homeland threat assessment influences those priorities.

DHS sets its priorities consistent with our mission and guidance documents including the Department's *Strategic Plan* for Fiscal Years 2020-2024. As noted above and in my recent State of the Homeland address, the Department must also continually adapt its efforts in response to rapidly-evolving threats.

Consistent with the September 2019 *Strategic Framework for Countering Terrorism and Targeted Violence*, the forthcoming first-ever Homeland Threat Assessment (HTA) will serve as a crucial resource for evaluating the current threat picture.

It is important to note that, in order to paint a holistic picture of the threats facing Homeland, the forthcoming HTA will incorporate inputs from across the Department—to include intelligence, operations and policy.

53. According to news reporting, in July, the DHS office of legislative and public affairs put a hold on the publication of an I&A report titled "Russia Likely to Denigrate Health of US Candidates to Influence 2020 Election," which described a Russian disinformation campaign against Vice President Biden. The hold was instituted by your Chief of Staff until he was able to talk to you about the product.
    a. Please describe, and provide documentation, the process or policy for what I&A intelligence products receive reviews from the office of legislative and public affairs?

Neither the Office of Legislative Affairs (OLA) nor the Office of Public Affairs (OPA) reviews the Office of Intelligence and Analysis' (I&A) products. OLA and OPA, like other DHS offices, are provided, as a matter of courtesy, with advanced notification of unclassified products prior to dissemination so that they have awareness and visibility.

b. Please describe, and provide documentation, the process or policy for which I&A intelligence products receive review from your Chief of Staff or your office?

Neither the DHS Chief of Staff nor any other non-intelligence official reviews the Office of Intelligence and Analysis' (I&A) products. Review and approval occur within I&A, and ultimately rest with the Under Secretary for I&A (or the incumbent serving in that role).

Due to ongoing mismanagement issues within I&A, I had asked to see reports as they were being issued so that I would have awareness of what was being sent and to assess the quality of the reports sent to our state and local partners. Immediately upon reviewing the report in question, it was evident that it was of poor quality and poorly written. A career I&A official agreed; and the report went back to be improved upon. And on September 4, 2020, the revised report was issued by DHS.

c. What policies, and provide documentation, are in place to avoid the politicization of intelligence produced and published by I&A?

In accordance with Intelligence Community (IC) Directive 203 (Analytic Standards), the Office of Intelligence and Analysis' (I&A) maintains an Analytic Ombudsman to respond to concerns of analysts with respect to adherence to standards, which includes freedom from politicization. The Analytic Ombudsman works with analysts, managers, and leadership—as well as with the Office of the Director of National Intelligence (ODNI)—to address concerns and complaints concerning any intrusion or manipulation of the analytic intelligence process in an effort to skew, delay, or withhold information or judgments for the purpose of supporting or opposing a specific policy, a general political ideology, a leader or politician, or an intelligence program.

d. What are the policies, and provide documentation, for addressing intelligence analysis disputes related to analytic confidence levels?

Inherently, confidence in an assessment rests on the analyst's judgment based on the logic and evidence underpinning it; the quality and quantity of sourcing; their understanding of the topic; and other factors. If analysts have differing confidence judgments, they resolve them at the lowest level by weighing the aforementioned factors. Analysts may also consult with the I&A tradecraft team for advice.

e. Why did your office put a hold on this intelligence report?

Upon further review, the Office of Intelligence and Analysis (I&A) leadership believed that the product required further scoping, context, and supporting evidence.

f. How many other intelligence reports have you or the DHS office of legislative and public affairs put a hold on? If more than this one, please identify the other reports including the date and subject.

On occasion, I&A leadership has held a product that moved to the advanced notification phase because of tradecraft concerns. However, I am not aware of any other instances in which a non-Office of Intelligence and Analysis' (I&A) official has issued a hold.

54. In recent hearings both you and Mr. Cuccinelli stated that recent changes to IA-901 only related to addressing disputes between the CRCL office and the Undersecretary of I&A. News reporting indicates that is not an accurate or complete description of the changes to the policy.

a. What in your view is the role of CRCL and PRIV in reviewing I&A intelligence analysis?

As oversight offices, the Office for Civil Rights and Civil Liberties (CRCL) and the Privacy Office (PRIV) play important roles as it relates to intelligence products. Those roles include: (1) establish guidelines for I&A collectors and analysts to follow, consistent with law, regulation, and policy; (2) provide training to I&A analysts and collectors so they have the tools to apply the oversight principles in their daily work; (3) advise analysts, collectors, and managers on the conduct of their work and answer questions referred to them; and (4) perform audits and compliance checks of post-production finished intelligence analysis and disseminated raw reporting to ensure compliance and offer feedback for improvement.

b. If CRCL and PRIV don't review a product, what should the internal I&A processes be to ensure these equities are independently accounted for.

It is my understanding that such processes already exist. The Office of Intelligence and Analysis' (I&A) personnel are required to undergo annual training on Intelligence Oversight to ensure their work comports with the I&A Intelligence Oversight (IO) Guidelines. Through mutual agreement with the Office for Civil Rights and Civil Liberties (CRCL) and the Privacy Office (PRIV), senior I&A analysts may undergo a certification program to become an "Oversight Review Authority" and conduct pre-publication reviews for CRCL and PRIV equities without a product separately being sent to those offices. Finally, I&A is expected to invite CRCL and PRIV to conduct post-production audits and compliance reviews to spot specific problems or trends in I&A reporting and analysis and collaborate with I&A management to improve remedy issues through training, counseling, or process changes. Ultimately, while CRCL and PRIV serve as both advisers to our workforce and as the entity overseeing them, it is incumbent on analysts and managers to understand and

properly apply oversight principles—just as they do analytic tradecraft standards.

c. How does the I&A civil rights and privacy review differ from reviews at other Intelligence Community member agencies?

While the Department has not conducted a review of each Intelligence Community (IC) agency's pre-publication review processes, we are not aware of any agency that requires all agency products to go through pre-publication vetting by oversight offices prior to dissemination.

d. Please describe the changes made to IA-901 that were approved by your office.

IA-901 was issued by the Under Secretary of I&A and incorporated a March 2020 decision by the Senior Official Performing the Duties of Deputy Secretary (SOPDDS), Mr. Kenneth T. Cuccinelli II. In that decision, the SOPDDS designated the Under Secretary for I&A as Head of the Intelligence Community (IC) Element, the final authority on the dissemination of intelligence—having properly considered any objection by the Office for Civil Rights and Civil Liberties (CRCL).

Some of the other changes made to IA-901 include: (1) A requirement for mission managers to consult with oversight offices prior to undertaking a new area of analysis to receive upfront guidance; (2) Updates to internal business processes aimed at improving quality control and efficiency, such as mandating products under go two levels of review for content analytic tradecraft by specially-designated personnel prior to a third level of review by the senior manager (mission manager); (3) Establishment of certain threshold criteria that implicate populations and activities with the potential to implicate individual privacy, civil rights, civil liberties, or other sensitive legal interests and therefore require pre-publication review by oversight offices or an Oversight Release Authority who is trained and certified to conduct such reviews; and (4) Post-publication compliance reviews conducted by oversight offices and the analytic ombudsman and reports issued to the Under Secretary to inform remedial action.

e. Please describe what instigated these changes and why they were made.

Changes were made to update the document based on organizational changes in recent years; improve the quality of analytic review; bolster internal accountability; streamline processes and increase agility while maintaining rigor; enhance post-production oversight compliance checks and reporting; and maintain focused pre-publication oversight review. A number of these changes had been advocated for and sought by previous Under Secretaries. The updates also take stock of the decade of advancements I&A has made since the first

requirement was issued in 2009 for pre-publication oversight reviews, including strengthened oversight and analytic tradecraft training, adoption of the Office for Civil Rights and Civil Liberties (CRCL) principles into review processes, establishment of a privacy and intelligence oversight branch to advise analysts and managers, and achieving high scores for analytic tradecraft, according to the Office of the Director of National Intelligence's (ODNI) evaluations.

f. Please provide a copy of the current previous versions of IA-901 for the committee's review.

Please find <u>enclosed</u> for your consideration the appropriate IA-901 documents.

55. DHS I&A is authorized to utilize open source, publically available information, in addition to overt human collection. News reports have indicated that some I&A intelligence may have been obtained from Telegram groups and other closed environments.
    a. Please provide DHS and/or I&A policies or guidance that defines open source and/or publically available information
    b. Please provide DHS and/or I&A policies or guidance that outlines how I&A may use collect or analyze social media and other electronic communication information.

<u>Joint Response</u>: Please find <u>enclosed</u> for your consideration IA-900 and the Intelligence Oversight (IO) Guidelines.

56. Recent news reporting indicates that the Secret Service has obtained commercially available location information that if obtained directly would require law enforcement to obtain a warrant, in accordance with a 2018 Supreme Court decision.
    a. Please provide DHS, I&A, and any DHS components' with law enforcement authorities policies or guidance for use of commercially available information, including location information and overhead imagery.
    b. Please provide any legal analysis or recommendation developed by DHS around the use of commercial data for law enforcement purposes.

<u>Joint Response</u>: DHS component uses of commercially-available location information for law enforcement purposes are consistent with all applicable legal authorities and requirements.

Port Security

57. As Acting Secretary, have you reviewed DHS and/or component standards for screening and scanning international incoming non-containerized cargo and the implementation of such policies at ports?

No – while I have not personally reviewed those standards, I have discussed such screening protocols with CBP officials.

Non-containerized cargo represents a broad range of cargo types. For example, it includes bulk cargo such as coal, grain, steel, or crude oil. It also includes break-bulk, or general cargo, that are transported in bags, boxes, crates, drums, or barrels.

This makes having a single standard for non-containerized cargo difficult. Instead CBP evaluates the nature of the cargo and uses the most appropriate scanning tools available.

58. Has the Department or CBP conducted an internal audit/review of the implementation of CBP policy at international ports, specifically ports in Michigan?

Yes.

a. If not, why not?

CBP has recently conducted a review of cargo processing policies and procedures for all maritime Ports of Entry, to include ports in Michigan.

b. If yes, what is the status of this audit/review? If the audit/review has been completed, what were the findings?

The review is in the final stages of approval, which should occur by mid-October.

59. What steps have you taken as Acting Secretary to ensure that CBP policies related to screening and scanning standards of cargo and related security capabilities at sea ports of entry are equitably enforced at all ports of entry?

While I have not personally reviewed those standards, I have discussed such screening protocols with CBP officials.

Non-containerized cargo represents a broad range of cargo types. For example, it includes bulk cargo such as coal, grain, steel, or crude oil. It also includes break-bulk, or general cargo, that are transported in bags, boxes, crates, drums, or barrels.

This makes having a single standard for non-containerized cargo difficult. Instead CBP evaluates the nature of the cargo and uses the most appropriate scanning tools available.

60. As Acting Secretary, have you been involved in any policy decisions to limit CBP services related to containerized cargo shipping at Great Lakes sea ports?

No. Policy decisions for CBP services are made by CBP officials at the local level who oversee those locations. Local managers would be the best ones to know what facilities, manpower, and technology are present to allow for the proper scanning and clearance of the cargo being presented for inspection.

CBP is committed to evaluating the totality of circumstances when evaluating requests for new or expanded services.

61. If confirmed, are you committed to ensuring the United States fulfills its obligations to outfit and staff the U.S. port of entry at the Gordie Howe International Bridge?

Yes, if confirmed, I commit to work with CBP and Congress to appropriately outfit and staff the U.S. port of entry at the Gordie Howe International Bridge.

CBP staffing models for requirements at ports of entry also factor in new and expanded ports. The requirements for the Gordie Howe International Bridge are included in CBP's staffing requirements models indicating the total number of staff required at all ports of entry.

I would encourage Congress to act upon what Presidents Trump and Obama have requested every year since 2013 to increase user fee rates so that CBP can fully staff its missions at ports of entry, to include the Gordie Howe International Bridge. Absent that, we will have to realign staffing resources to this bridge from other ports nationwide and there will be a small commensurate increase in wait times associated with having to staff another high-volume international crossing without sufficient Congressional support of the requirements identified.

62. Do you believe that our nation's ports of entry have adequate resources and staffing to both efficiently facilitate the flow of legitimate trade and travel and prevent the illegal flow of drugs, contraband, and individuals posing security threats into this country?
    a. How do you measure this? Is this based on threat and operational analysis of ports of entry?

CBP has numerous models to accurately identify requirements at ports of entry for its mission to prevent the entry of terrorist and terrorist weapons, interdict and seize illicit narcotics, protect the U.S. economy and consumers

for fraudulent or unsafe goods, facilitate lawful trade and travel to the United States, prevent the illegal import or export of currency or firearms, and process legal migration. These models allow CBP to be cost effective in ensuring that it has the right mix of law enforcement, agriculture security, trade and revenue, and professional staff so that these missions can be accomplished responsibly for the U.S. taxpayer without compromising on security or a pleasant experience for lawful traders or travelers.

The models do show that CBP is in need of additional officers, agricultural specialists, trade specialists, and professional staff. The current impact of COVID-19 worldwide have decreased international travel and alleviated some of the stresses on CBP staff at ports of entry, however, I expect that as international travel recovers post-COVID-19 these requirements will again show the need for additional staff at ports of entry. Both the present and past administrations have requested every year since 2013 that Congress increase several CBP user fee rates, which would fully support all CBP staffing requirements at ports of entry..

Absent this Congressional action to increase staffing to requirements at ports of entry, CBP will prioritize its most critical counter-terrorism, counter-narcotics, and trade security missions at ports of entry to protect national and economic security.

These requirements models calculate how long every process performed at or in support of ports of entry take, how many times there are done each day at every port, and then determine how many workhours are required to accomplish all of these tasks. These models have been validated by the Department and also by independent review.

The models are important to delineate the baseline need. The threat and operational analysis of the ports of entry further refine the models to allow CBP to judiciously apply resources to the areas with the greatest need.

63. What is the status of the threat and operational analysis of ports of entry required by Public Law 115-372, which was due to Congress last year?

The Office of Field Operations prepared a report to Congress in November of 2019. The report is being routed for approval and submission to Congress.

Northern Border

64. The Northern Border Strategy Implementation Plan notes that completion of milestones to secure the northern border is "predicated on the availability of budget and other resources, sufficient authority, as well as the relative priority in comparison to Departmental activities outside the scope of the Northern Border Strategy" and execution is "reliant on milestone

alignment with Presidential and DHS leadership priorities as identified in guiding strategic documents."

a. If confirmed, how do you plan to manage competing priorities to ensure that items such as the Northern Border Strategy Implementation Plan are adequately resourced and prioritized?

The security of our nation's borders remains one of our Department's highest priorities. This does not just include our Southern Border, but our Northern Border as well. That is why we completed our Northern Border Strategy in 2018 and Implementation Plan in 2019. This strategy focuses on enhancing border security operations, facilitating and safeguarding lawful trade and travel and promoting cross border resilience. In July 2019, we put the Northern Border Strategy Implementation Plan in place to ensure we are meeting these objectives. As a priority for the Department, we will ensure that sufficient resources are provided to this effort because secure borders are essential for our national security.

65. Under your leadership as Acting Secretary, what percentage of Northern Border Strategy Implementation Plan milestones scheduled for completion in FY 20 have been accomplished?

I am aware that DHS components are in the process of evaluating the successes of the Northern Border Strategy Implementation Plan and the completion of identified FY 20 milestones are scheduled to be reported by the end of the fiscal year. We will be able to provide more specifics after we complete our assessment.

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66. Please describe actions taken as Acting Secretary to coordinate the implementation, continuation, and potential off ramping of border restrictions with Canada and Mexico.

On March 21, 2020, CBP implemented temporary travel restrictions at the northern and southern land borders. These restrictions prohibit non-essential personal travel. They do not affect cargo. These restrictions have resulted in a reduction over 470,000 individuals crossing our borders each day.

DHS worked closely with the Governments of Canada and Mexico to end non-essential travel across our borders while ensuring essential goods, services and workers continued uninterrupted. We took these actions to protect our citizens from the spread of COVID-19 and to keep essential travel, and our economies, going.

Since the inception of these restrictions, my team and I have had regular conversations and information sharing with counterpart agencies, and coordination of public

messaging. Regarding off-ramping, DHS will rely on health criteria and the advice of the CDC and the public health experts from each government.

67. In your view, what does successful "reopening" or ending of border restrictions look like?

The first and most important consideration when assessing reopening is the public health risk associated with cross-border travel. The existing restrictions have served to decrease non-essential travel and reduce the potential spread of disease. To successfully end border restrictions, all available health criteria will need to demonstrate to the public health experts at the U.S. Centers for Disease Control (CDC) and in the Governments of Canada and Mexico that individuals may travel without posing an unacceptable level of risk to others.

Arctic Policy

68. Do you believe the Department of Homeland Security has adequate resources to address increased activity in the Arctic? If not, what additional resources would you like to see for the Department?

Given increasing interest in this space, at this present time, we are insufficiently resourced to both project sovereignty and compete with our adversaries in the maritime security space, particularly through our polar security cutter acquisition program. President Trump understands this challenge and the need for securing national interests in the region and released a Memorandum on *Safeguarding U.S. National Interests in the Arctic and Antarctic Regions*, directing a review of requirements for polar security cutter acquisition program requirements, as well as considering all options to address the region. The Department delivered a comprehensive study with the best information it had available making recommendations for consideration by the National Security Council, OMB and the interagency. The NSPM-4 process is now addressing the report and will make recommendations to the President in the near future.

COVID-19

69. What do you believe has gone well in the federal government's response, and the response of DHS specifically, to the COVID-19 pandemic?

This administration and DHS took decisive action to prevent the spread of COVID-19 in our country. Of all the threats DHS has confronted in the last

year, the COVID-19 pandemic has posed one of the most formidable, rapidly evolving and uniquely challenging responses in FEMA's history.

Partnering with the Department of Health and Human Services, FEMA quickly got to work prioritizing tasks, putting structure to a growing crisis and working with our interagency partners to make certain the full weight and breadth of the U.S. federal government was being brought to the fight against this pandemic.

FEMA processed the first ever nationwide emergency declaration under the Stafford Act. This was in addition to simultaneous major disaster declarations granted to all 50 states, 5 territories, and the District of Columbia.

Under President Trump's direction, we utilized the Defense Production Act to procure more than 220 million respirators from 3M, saving American lives. By taking historic action to better collaborate with the private sector, we have helped deliver and allocate billions of pieces of scarce PPE to our frontline healthcare workers and first responders.

Most recently, FEMA has played a leading role easing the economic burden COVID-19 placed on millions of Americans. In August, President Trump authorized FEMA to use $44 billion from the Disaster Relief Fund to alleviate the effects of lost wages, allowing states to make supplemental payments to those receiving unemployment insurance compensation. FEMA acted in short order. As of September 13, FEMA has already provided more than $32 billion to 49 states, three territories, and the District of Columbia for Lost Wages Assistance.

a. What do you believe could be improved in the continued response of the federal government, and DHS specifically, to COVID-19, as well as future pandemics?

The Department will work on a formal After-Action Report, that will include all partners involved, to do an evaluation of areas for success as well as necessary improvements. Some of the lessons learned so far have been:

1. That public safety equals national security. The Nation's investment in public safety must parallel the importance it places on national security investments;

2. That Continuity of Operations and Continuity of Government plans have never been more important. Having done the work ahead of time to determine Mission Essential Functions, Alternate Work sites, Orders of Succession, Delegations of Authority and Telework Policy and Capability are crucial to an organizations ability to demonstrate excellence in resilience;

3. That the emergency management profession and other public safety organizations must determine in detail the "public safety"

industrial supply chain and the impacts it will have on operations if interrupted. This understanding must be comparable to how the Department of Defense manages the defense industrial base, to include procurement, acquisition, long-term contracting, asset visibility, material distribution, and tracking of emerging threats that proactively supports supply chain assurance;

4. That it is critical to have access to and understanding of real-time data, from both the private and public sectors, to drive timely decisions;

5. That we must rethink how to measure true readiness at the state, local, tribal and territorial levels and;

6. That we must realign existing grant preparedness priorities and funding, with an eye on the future, which result in quantifiable capabilities.

70. Do you believe DHS was well-equipped to respond to a pandemic of this scale?

While COVID-19 has been unprecedented in many ways, FEMA's operational framework and organizational structure was designed to respond, adapt, and scale to any incident. On March 19th, when Vice President Pence confirmed the President's decision to designate FEMA as the lead federal agency, he noted that this decision would bring the full weight of the federal government to bear to support our states and local communities. In part, this was due to the fact that every governor in the country was already familiar with FEMA's emergency management processes, procedures, and systems and has experience working through their respective FEMA regional office to identify unmet needs and seek assistance.

Furthermore, despite the historic scope and scale of COVID-19, FEMA, in conjunction with its interagency partners had pre-existing robust planning documents that illustrated the operational structures utilized during the Whole-of-America response to COVID-19: The Pandemic Crisis Action Plan (PanCAP), the U.S. Government COVID Response Plan (PanCap Adapted), and the Biological Incident Annex (BIA). These documents incorporated lessons learned from the H1N1 pandemic of 2009, the Ebola Virus Disease of 2013-2014, and the Zika Virus Disease of 2015-2017, and were tested through high-level exercises. These planning documents outline the establishment of a Unified Coordination Group (UCG) and facilitate the integration and synchronization of operations across departments and agencies with the authorities and capabilities needed to respond to COVID-19.

Regardless of the nature of the incident, DHS is always ready to serve, and FEMA is always standing by to coordinates ESFs, Recovery Support Functions (RSFs) and funding support to impacted areas during Stafford Act disasters. During the pandemic, DHS through FEMA, was fully prepared to:

- **Support HHS requests for interagency planning and coordination through ESF #5 and consistent with PPD-44 and HSPD-5. This function includes operational coordination among task forces, mission assigning federal departments and agencies to conduct tasks, contracting support, regional coordination and liaison with States/Territories/Tribes, the establishment and accounting of operational objectives, situational awareness and reporting, the representation and presentation of policy matters to the UCG or White House Task Force;**
- **Report the status of National Essential Functions to the White House in accordance with PPD-40; and**
- **Coordinate federal support for consequence management through the NRCC.**

a. How has COVID-19 changed your outlook on the role of DHS in emergency response?

DHS is always prepared to adapt to any challenge or threat facing our country. Our COVID-19 efforts showed our Department was prepared to effectively respond to this pandemic.

71. Do you believe that COVID-19 is in the process of going away?

DHS has done an extraordinary job of preventing the spread of COVID-19. I defer to our nation's health experts to determine if COVID-19 is in the process of going away.

a. Are you concerned about a potential second wave of COVID-19 in the fall or winter? Why or why not?

DHS and FEMA are prepared for a potential second wave of COVID-19 regardless of when it may or may not occur.

b. **How is DHS incorporating possible second wave considerations into PPE and testing supply acquisition?**

On April 20, 2020, the Acting Secretary of DHS established the COVID-19 Secretary's Advisory Group (SAG). The SAG provides the Secretary and the Deputy Secretary with a dedicated COVID-19-based analytical, planning, and advisory capability to inform strategic decision making. The SAG is also providing information and advice to the Secretary and Deputy Secretary about the feasibility of implementing measures to improve the Department's COVID-19 response posture.

SAG Line of Effort (LOE) #1 specifically is the coordination and development of a DHS COVID-19 after-action report (AAR) to provide best practices and lessons learned from the Department's COVID-19 response.

These insights will inform the Department's continued efforts to respond to future crises, including a possible resurgence or second wave of COVID-19.

DHS/FEMA also remain committed to supporting the whole of America response to COVID-19, including as members of the White House Coronavirus Task Force. We are starting to see great gains in supply starting to outpace demand across many commodities, as well as a reduced demand for PPE items which FEMA utilizes as its prime analysis for the stability of the supply chain. In fact, because of the effective use of the DPA, U.S. production of N95 masks has been accelerating from less than 40 million masks a month in March to almost 100 million masks in August, with projections to be 160 million masks a month by this fall

c. Do you commit to providing the committee with any relevant analysis of a potential second wave prepared or reviewed by DHS?

Yes

72. Do you believe that the United States is currently testing an adequate number of individuals for COVID-19? Why or why not?

Yes. This administration and DHS worked tirelessly to get COVID-19 tests across the country. FEMA served as the primary source of supply through July 12, 2020. Starting July 13, 2020, FEMA supports HHS in the testing supply mission. FEMA will only provide supplemental supplies to augment any shortfalls on the HHS contracts. HHS has established contracts with five vendors to supply nationwide testing supplies through the end of CY 20. This change streamlines the process by giving states, tribes and territories a single point of contact to those holding subject matter expertise in the field of testing.

73. The country experienced a variety of supply chain issues this spring and summer that limited the ability of states and health systems to respond to the pandemic, including availability of PPE, and conduct COVID-19 testing.

a. Have those supply chain issues been resolved?

DHS and FEMA took unprecedented measures to ensure PPE was available to medical professionals and the general public across the nation. We are starting to see the medical supply chain become more responsive to orders. Within the United States, we see backorders decreasing with about 70 percent of states now indicating that they have been able to build a 60-day stockpile of PPE. Under the SNS 2.0 initiative, the Strategic National Stockpile (SNS) is working to replenish supplies deployed at the beginning of the COVID-19 pandemic and build a 90-day supply of PPE in the SNS. Products prioritized for procurement under the SNS 2.0 include PPE

(including N95 respirators, surgical face masks, face shields and eye protection, gowns and coveralls), pharmaceuticals for intensive care use, and testing equipment and supplies. Contracts are in place or are on track to meet supply targets for the fall and end of the year. The goal is to support COVID-19 hotspots as they emerge and continue response efforts at the state, tribal, territorial and local level. We have utilized competitive solicitations to ensure the best available pricing and have also rated contracts using the DPA authority to ensure faster and timely deliveries. SNS is also working to establish a distributor working model for certain products that would allow SNS to more efficiently distribute supplies directly to points of care as opposed to the distribution from the SNS to a state, tribal, territorial or local jurisdiction and then to the point of care location.

b. What potential vulnerabilities in the testing supply chain, if any, still exist, and how does DHS plan to address them?

HHS, DHS and FEMA worked with our interagency partners to ensure tests became available as soon as possible to the American public. I do not believe there are any substantial vulnerabilities in the testing supply chain.

c. What lessons did DHS learn from the supply chain challenges the country experienced during the start of the pandemic and what changes, if any, have you required the department to make to avoid similar shortages in the future?

From the beginning, DHS and HHS understood that the SNS was not designed to provide for every locality in the United States concurrently and could not be relied upon as the single solution for pandemic preparedness. As a result, the Supply Chain Task Force (SCTF) was formed to orchestrate a comprehensive four-pronged strategy to preserve medical supplies, accelerate industrial manufacturing and distribution, expand industry, and allocate resources to the right place at the right time. This strategy enabled FEMA to continuously shift globally scarce resources, such as ventilators, to hotspots where they could immediately save lives within 72-hours. Ultimately, the efforts of the SCTF provided temporary relief until supply chains could begin to stabilize.

However, as the pandemic continues and DHS looks toward the future, the department is taking steps to ensure that the U.S. government is able to sustain its response to COVID-19, while also improving its posture for future incidents. To do this, it is critical that the U.S. government continues to align its needs with the best authorities, capabilities, and subject matter experts to accomplish them. For example, FEMA has worked to transition PPE procurement efforts to the Defense Logistics Agency (DLA) because they have a more robust procurement and distribution capability and capacity, and more experience doing so. Furthermore, while FEMA will retain overall

coordination of the federal response until instructed otherwise by the White House Task Force, the Agency has also worked to supplement HHS principal planning and coordination authority under the direction of the UCG. This will allow HHS to be the focal point for medical supply chain issues, which is an area they have much more expertise in.

74. In June, the Supply Chain Stabilization Task Force provided the committee with modeling that projected both anticipated PPE demand nationwide as well as expected available supply for the summer in response to COVID-19.
    a. Has DHS produced or reviewed updated projections since those that were outlined in the document that was shared with the committee?

       We are currently working with the HHS on the Strategic National Stockpile replenishment strategy and gaining better insight from state and local governments and points of care on their stockpile development. Those projections have not been updated to include the Fall/Winter months, as we are still evaluating factors. Demand is anticipated to continue at those levels, while estimated domestic production and imports increase.

    b. Do you to commit to providing the committee with the most current version of these projections prior to your confirmation hearing?

       As of September 1, 2020, resource prioritization and reporting has fully transitioned to HHS and the Office of the Assistant Secretary for Preparedness and Response (ASPR). I defer to HHS and ASPR on existing resource prioritization strategies and data.

75. On June 9, 2020, FEMA Administrator Gaynor told this committee that the Administration has used authorities under the Defense Production Act (DPA) fifteen times in response to COVID-19.
    a. How many times have DPA authorities been used since that date for COVID-19 response? How many times in total have they been used since the President declared a national emergency in response to COVID-19 on March 13, 2020?

       DHS, through FEMA, has used the DPA in the execution of the response to the Coronavirus. DHS/FEMA used Title I of the Defense Production Act authority to procure, to date, more than 220 million respirators from 3M; and to allocate scarce personal protective equipment (PPE) materials for domestic use pursuant to a temporary final rule administered by the Export Cargo Review Working Group. Additionally, under Title VII of the DPA, DHS/FEMA formed the "Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic" to facilitate collaborating with the private sector during a pandemic.

Since the June 9 testimony, DHS/FEMA has issued 2 priority rated task orders with 3M for respirators and the Voluntary Agreement had a determination issued by the Department of Justice, which allows for its use.

Departments of Health and Human Services and Defense have requested to use DPA 3 times since the June 9 testimony. DHS/FEMA defers to Departments of Health and Human Services and Defense to describe their use of Titles I and III of the DPA to procure or to increase the domestic production of PPE and other critical supplies.

b. Why has the Administration refused to use the DPA more comprehensively in the face of ongoing supply shortages as well as offers from a multitude companies willing to help?
The White House Coronavirus Task Force is the strategic coordinator for use of all authorities, including DPA, for the federal government response to the Coronavirus. The judicious use of the Defense Production Act Title I priority ratings for the Coronavirus response was to limit the impact on contracts with local stakeholders like hospitals and nursing home facilities.

c. How does the Administration determine when to utilize DPA authorities to address supply shortages? Is White House approval required to invoke DPA authorities for COVID-19 response?

All use of DPA is approved by the White House Coronavirus Task Force prior to its application. Requests for use of DPA authorities are considered at the Unified Coordination Group (UCG). Consistent with the National Response Framework (NRF), the UCG takes steps to ensure that all levels of government work together to achieve unity of effort in response to COVID-19. Given the nationwide scope of COVID-19, the COVID-19 UCG weighs and resolves – or elevates to the White House Coronavirus Task Force, as appropriate – strategic operational and policy decisions regarding the Nation's limited supply of critical lifesaving medical supplies and equipment to meet the demands of states, tribes, and territories. As suggested in the Biological Incident Annex (BIA), the COVID-19 UCG consists of UCG Principals based on the key operational areas. It is comprised of the FEMA Administrator, the HHS Assistant Secretary for Preparedness and Response (ASPR) Incident Manager, the HHS Assistant Secretary for Health, and the HHS Centers for Disease Control and Prevention (CDC) Lead. Upon UCG making a recommendation about DPA action, it is sent to the White House Coronavirus Task Force for a determination.

d. How does the Administration plan to use DPA authorities moving forward in response to the COVID-19 pandemic?

The White House Coronavirus Task Force remains the strategic coordinator for use of all authorities, including DPA, for the federal government response to the Coronavirus.

DHS/FEMA will be executing the "Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic", which is valid for five years. This agreement allows Federal departments and agencies to engage with private sector partners to develop sector-specific plans of action for improved information sharing and coordination within supply chain networks for COVID-19 and future pandemics. The federal government can now plan for preparedness response activities with private sector partners and acquire and use real-time data to make important decisions.

76. Several states have expressed concerns that federal acquisition and distribution efforts for PPE and testing supplies lacked coordination over the course of the pandemic, hindering their response efforts.
    a. How is DHS communicating with states so that they know what supplies the federal government will provide, and when they will provide them?

The federal government communicates with states, tribes and territories through multiple modes. The Centers for Disease Control and Prevention (CDC) sends states and territories monthly letters, explaining the points of contact for various concerns. States and territories are referred to the CDC for technical questions on product use and the testing process and to the U.S. Department of Health and Human Services (HHS), Office of the Assistant Secretary for Health (OASH) for questions on allocation numbers. Tribal requests are sent to the Indian Health Service and may be referred to other Federal Agencies, as needed.

FEMA Regions send states, territories and tribes notices on their inbound shipments of testing supplies weekly, including information on shipment arrival times, storage concerns, and shipment integrity. FEMA Headquarters distributes the inbound shipment notices nightly to the FEMA Regions and key stakeholders in the states, tribes and territories, including FEMA Integration Teams and representatives from HHS's Office of the Assistant Secretary for Preparedness and Response.

    b. What steps are you taking to improve communication with states?

FEMA served as the primary source of testing supply through July 12, 2020. Starting July 13, 2020, FEMA supports HHS in the testing supply mission. FEMA will only provide supplemental supplies to augment any shortfalls on the HHS contracts. HHS has established contracts with five vendors to supply

nationwide testing supplies through the end of CY 20. This change streamlines the process by giving states, tribes and territories a single point of contact to those holding subject matter expertise in the field of testing.

77. What role will DHS play in COVID-19 vaccine distribution once a vaccine is developed?
    a. Do you commit to sharing any vaccine distribution plan that DHS produces or reviews with this committee?

    We defer to Operation Warp Speed for any questions on vaccine distribution.

    The development, production, and distribution of a vaccine in response to COVID-19 is under the purview of HHS and DoD. I defer to them on any questions on vaccine distribution.

78. States have been put in increasingly difficult financial positions due to increased expenses and decreased revenues because of the COVID-19 pandemic. In light of these issues, states have requested an adjustment to the FEMA cost share for reimbursements under the ongoing emergency declaration, changing it to 100 percent federal for all states instead of the current policy of 75 percent federal and 25 percent state. Officials at OMB have previously told the committee that the Administration is reviewing the issue, but has not yet made a decision on the adjustment.
    a. Can you please describe your role and the role of DHS in considerations surrounding adjusting the FEMA cost share?

    Per regulation, cost share adjustment requests are made to the President through the FEMA Administrator. FEMA has received multiple requests for cost share adjustments, and these remain under review.

    b. Has DHS made a recommendation to the President on adjusting the FEMA cost share?

    To my knowledge, DHS has not made a recommendation to the White House.

    c. What analyses has the Administration done on a potential cost share adjustment?

    FEMA continues to track expenses related to COVID-19 and cost share adjustment requests remain under review.

    d. Do you commit to providing this committee with any analysis that DHS has done on decisions surrounding the adjustment of the FEMA cost share?

    Yes

Grants

79. Do you believe the preparedness grants administered by DHS and FEMA are meeting their intended statutory and policy goals?

Yes. Since the 9/11 attacks, the federal government has provided approximately $53 billion to assist state, local, tribal and territorial governments prevent, protect against, respond to and mitigate terrorist attacks and other incidents. Those investments have paid real, demonstrable dividends, as we have seen time and again in events such as the Boston Marathon bombing, the attempted Times Square bombing, and numerous terrorist plots that were effectively interdicted before they could be carried out.

In the years since the 9/11 attacks, however, the environment in which we operate has evolved. Threats to the United States no longer exist only in major population centers. The risk posed by terrorism, mass shootings, cyber attacks, and other threats exists everywhere in America. We are now faced with an increased threat from domestic terrorists who target houses of worship, nightclubs, office buildings, and concert venues. While the threat environment has evolved, our major homeland security grant programs continue to distribute grant dollars based on an assessment of a threat that we faced nearly 20 years ago. The majority of State Homeland Security Grant Program and Urban Area Security Initiative dollars continue go to high-population states and cities, even as less populated areas face similar threats and struggle to address their risks.

This administration has taken steps to address this disparity. For example, based on a review of recent events, intelligence community assessments, and trend analysis, DHS has identified and required our grant recipients to focus on four critical, national priority areas: cybersecurity, soft targets and crowded places, intelligence and information sharing, and emerging threats. We also are implementing effectiveness criteria as we review grant applications so that we can support effective projects while diverting funding from ineffective projects to those that show more promise, wherever they might be. But this focus on how grant dollars are spent does not fully address the problem of where grant dollars are allocated. So we also are reviewing the risk formula that underpins these programs. That review includes a reassessment of how we define and measure the threat of terrorism, the metrics we use to assess state and urban area vulnerabilities, and our understanding of the consequences of various types of attacks. Our intent is to recalibrate the formula to better reflect the threat environment as it exists today, not as it existed at the time the Department of Homeland Security was created.

As we work to ensure these terrorism-focused programs better reflect today's threats, we recognize also that the nation faces a myriad of threats that do not emanate from individuals or groups with violent intent. The most obvious of these threats, of course, is the current COVID-19 pandemic. Therefore, as we prepared to issue the FY 2020 round of funding for the Regional Catastrophic Preparedness

Grant Program, we adjusted the focus of the program from broadly defined large-scale events to pandemic preparedness specifically. Successful applicants targeted their projects to address capabilities related to current challenges, including public health, healthcare, and emergency medical services; fatality management health and social services; logistics and supply chain management; and economic recovery.

Finally, this administration has proposed a new program, the National Security and Resilience Grant Program (NSRGP), to address the dynamically changing environment across the full spectrum of threats, from terrorism to natural disasters to cyber-security and technological threats. Through this proposed program, DHS and FEMA will establish a set of national priorities that will complement existing terrorism and emergency management programs to build national capabilities that truly address the full range threats that pose the greatest risk to the nation.

a. Are current auditing practices sufficient to determine the effectiveness of DHS grant programs? Why or why not?

Ensuring targeted, effective investments is critical to the Nation's security and reflects responsible stewardship of scarce taxpayer dollars. All applications under the Homeland Security Grant Program now undergo an effectiveness review that includes a review of the investment strategy, the impact and anticipated outcomes, collaboration efforts, and the budget.

Additionally, States, urban areas and tribes are required to complete and submit a Threat, Hazard Identification and Risk Assessment (THIRA) and Stakeholder Preparedness Report (SPR) in order to identify gaps. They are also required to allocate their grant funding toward addressing those identified gaps.

b. What reforms could be implemented, by Congress or DHS, to maximize effectiveness of these grant programs?

The FY 2021 President's Budget request provides $406.9 Million in the Federal Assistance appropriation for the National Security and Resilience Grant Program (NSRGP). NSRGP will help address the dynamically changing threat environment by allowing applicants to apply for funding to reduce capability gaps and address emerging threats. The key differences between the proposed program and current programs are: 1) NSRGP does not require projects to have a nexus to terrorism and 2) DHS/FEMA will establish a set of national priorities to drive investments that address emerging threats. States will continue to use traditional grant funding mechanisms, such as the Homeland Security Grant Program or the Emergency Management Performance Grant Program, to maintain existing preparedness capabilities. To ensure the program reflects the current threat landscape, the program's priorities will be assessed frequently and will shift as needed.

80. Do you believe current funding levels appropriated by Congress are adequate to support the missions of the preparedness grant programs administered by DHS and FEMA?

The President's Budget provides $2.3 billion in federal funding to support the most effective preparedness grant programs. National preparedness is a shared responsibility among Federal, State, local, and tribal governments and other "whole community" stakeholders. The FY 2021 Budget proposes cost-share requirements for programs that currently have none, which is another way to ensure stakeholders take greater responsibility for their preparedness investments. The cost share will fill much of the proposed reductions, enable SLTTs to take on a greater role in sustaining existing capabilities while providing a suitable level of funding to focus on building new and innovative solutions in support of DHS and FEMA priorities.

81. Do you believe DHS and FEMA grant programs strike an effective balance between terrorism-focused assistance and all-hazards assistance, based on the current threat landscape and state and local needs?

First, DHS has awarded more than $53 billion to grant recipients to prevent, protect against, and respond to terrorist threats and other hazards since 2002. These funds have focused on deterring foreign terrorist organizations; improving the security of our ports, transit systems, and other critical infrastructure; and building the capabilities necessary to achieve the National Preparedness Goal of a more secure and resilient Nation. Almost 20 years later, the threat environment has evolved. As the threats and hazards evolve, so too must the grant programs intended to prepare communities for those threats and hazards.

Second, while some of the homeland security grants statutorily must have a nexus to terrorism, funding can also be used to support the capabilities (e.g., evacuation, mass care, etc.) that are germane to all hazards.

82. How has DHS adapted grant programs to respond to the COVID-19 pandemic?

DHS was tasked with opening and awarding over $400 million in supplemental grants as part of the funding provided in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This supplemental funding was made available through three separate opportunities. The first was $100 million in support to the Assistance to Firefighters Grants (AFG) program which was intended to provide Personal Protective Equipment (PPE) to first responders in fire departments and other emergency service organizations. Second was a $100 million in support for the Emergency Management Performance Grants (EMPG) program, intended to help states, territories, tribes, and local governments take specific prevention, preparedness and response measures toward COVID-19. Lastly, $200 million in support for the Emergency Food and Shelter Program (ESFP), intended to help local service organizations provide critical resources to the unhoused and food-insecure.

Further, FEMA requested that recipients under the Fiscal Year 2020 EMPG Program revise their workplans to align funding to support preparedness and response efforts in a COVID-19 environment. Lastly, FEMA included "Pandemic Preparedness" as a priority area under the Regional Catastrophic Preparedness Grant Program in Fiscal Year 2020 to build capability in the following core capabilities: public health, healthcare, and emergency medical services; fatality management services; health and social services; logistics and supply chain management; and economic recovery.

a. What adjustments could DHS or Congress make to support disproportionately affected communities during the pandemic, such as fire and emergency response?

In consideration of the whole community impact and significant disruption the COVID-19 public health emergency is causing at all levels of government, DHS issued blanket waivers under the Fiscal Year (FY) 2019 Staffing for Adequate Fire and Emergency Response (SAFER) Grant Program. For the FY 2019 and FY 2020 SAFER Grant Program, the Acting Secretary waived the Cost Share, Salary Cap, Supplanting, and Minimum Budget requirements. Based on this flexibility for FY 2019, DHS/FEMA will provide fire departments with 100 percent of the funding needed to hire firefighters for each of the next three years. This increase in total funding of 100 percent of a firefighter's salary eliminates a department's requirement to identify and fund 25% in the first two years and 65% in year three.

In anticipation of the significant fiscal hardship many municipalities will be facing as a result of the pandemic, the Acting Secretary also provided waivers for the FY 2020 SAFER Grant Program which will allow fire departments to retain firefighters facing imminent layoff and rehire firefighters recently laid off. FEMA anticipates opening the FY20 application later this calendar year. Using SAFER grants to retain firefighters was last permitted in FY 2015. DHS does not have the authority to provide blanket waivers for the Assistance to Firefighters Grant Program. DHS can, however, waive certain provisions on an individual basis, due to economic hardship.

Domestic Terrorism

83. It has been a year since DHS published its Strategic Framework for Countering Terrorism and Targeted Violence in September of 2019. The Department still has not published its implementation plan for how it will put the framework into action against the rise in white supremacist violence.
    a. When will the implementation plan be completed?

I am pleased to report that the Public Action Plan, the public version of the Department's internal implementation plan, was released on September 11, 2020.

84. The rise of white supremacist violence has particularly impacted minority communities in the United States, like Black, Hispanic, Jewish, Arab, Asian, and Muslim Americans, who have found themselves the targets of this racist violence. Their voices are not always included in the conversation and some have raised concerns that the Department's counterterrorism actions may have unintended consequences in their communities.
    a. How do you plan to engage these communities when developing programs and plans to counter this domestic terrorism?

The Department is committed to engage with all stakeholders as part of our efforts to counter terrorism. This engagement occurs across many of our Offices and Components.

One example of constructive engagement with diverse communities during my tenure as Acting Secretary is embodied by our ongoing efforts to prevent targeted violence against faith-based communities consistent with the recommendations of the December 2019 report of the Homeland Security Advisory Council.

Another example is the work from our Office for Targeted Violence and Terrorism Prevention (OTVTP), which engages directly with local communities. For example, OTVTP recently held a Digital Forum on Terrorism Prevention that worked with many community organizations in Atlanta to bolster their efforts to prevent online hate speech from becoming violence. The deployment of 11 Regional Prevention Coordinators by this month is another concrete step to enhance our effort to work with all Americans to prevent terrorism and targeted violence in localities. OTVTP is also the process of crafting strategic plans for outreach to the numerous stakeholders that are vital to implementing local prevention frameworks, and will be implementing these in support of the goals and objectives captured in the Strategic Framework for Countering Terrorism and Targeted Violence.

Our Office for Civil Rights and Civil Liberties also conducts extensive outreach to these and other stakeholders communities. The Community Engagement team works with communities across the United States to ensure their voices are heard and influence the decisions we make to make everyday. The community roundtables this group convenes continues to meet and provide important input to our plans for developing plans and programs to counter domestic terrorism.

CRCL

85. Minority communities, particularly Arab and Muslim Americans, have longstanding concerns related to excessive screening by TSA and CBP during air travel. What are your plans to address these concerns?

If confirmed, I will continue to support TSA and CBP's commitment to the fair, impartial, and respectful treatment of all members of the trade and traveling public. Both Components ensure that screening procedures and technology undergo extensive review for legal, privacy, and operational requirements. These assessments continue even once a procedure or technology is deployed to the field. This occurs through various lines of effort, including receiving input from numerous traveler communities and coalition stakeholders and incorporating passenger feedback through the TSA Contact Center and AskTSA. Moreover, we are committed to nondiscrimination in a number of existing policies, including the February 2014 CBP Policy on Nondiscrimination in Law Enforcement Activities, and regularly refine the training of frontline officers in order to inform procedural and technological enhancements.

Both TSA and CBP have robust redress procedures that travelers can undertake if they believe they are being unfairly targeted and I will continue to support both TSA and CBP's Civil Rights & Liberties offices and their work with DHS Office of Civil Rights & Civil Liberties. Additionally, I will continue to reinforce the importance of TSA's Ombudsman and Office of Traveler Engagement and CBP's Information Center. It is vital to ensure that the trade and traveling public is treated in a fair and lawful manner by protecting privacy and individual rights, prohibiting discrimination, and supporting diversity and inclusion in the transportation system. These offices will continue to maintain - and develop new - strong partnerships with coalition stakeholders and community groups to ensure that DHS provides consistent and equitable security operations for all.

86. Do you believe there is systemic racism in the criminal justice system?

We have individuals within the law enforcement community that have abused their authority. However, the idea that we have systemic racism in the criminal justice system is not accurate. Officers who abuse their power should be held accountable. It is the people not the institutions themselves that perpetuate these racist acts.

87. Facial recognition can be prone to misidentification based on a host of factors, and is more likely to misidentify people of color. If an individual is misidentified during a biometric check overseen by CBP at an airport (specifically a "false negative," in which the CBP facial recognition system may incorrectly state that the individual does not match any photos in the flight manifest), officials should simply proceed with a traditional ID check. But without training, such officials may assume a facial recognition system non-match indicates suspicion, and improperly subject a passenger to additional questioning or screening.
    b. Does CBP provide any training so that officials will know not to assume suspicion based on a facial recognition failing to match at airports?

CBP conducts rigorous training with both officers and stakeholders on the use of facial recognition technology. Part of the training includes emphasizing that a no-match does not indicate that there is something suspicious with the traveler. There are a vast number of valid reasons why a travel would not match. To provide an example of this, a reason could be that no photo was available of the traveler during gallery creation (i.e. U.S. Citizens traveling on military orders, Canadians not subject to US-VISIT, dual nationals, etc.).

c. If officials conducted additional questions or screening because they assume a non-match in itself indicates suspicion, isn't this more likely to impact people of color given disparate error rates in facial recognition systems?

CBP's facial recognition technology is simply confirming a traveler's identity by comparing a live photo against a very small gallery of high-quality images that those travelers already provided to the U.S. Government to obtain a passport or visa. CBP has a rigorous process in place to review data and metrics, which continue to show high accuracy and no measurable difference in matching based on demographics. CBP has partnered with the National Institute of Standards and Technology (NIST) to perform an independent analysis of CBP's facial recognition performance, including potential impacts due to traveler demographics and image quality. Based on an algorithm vendor test conducted by NIST in 2019, it was concluded that the false positive differentials based on demographics were undetectable using the NEC-3 algorithm which is used by CBP. Per NIST, the NEC-3 is the most accurate algorithm evaluated (out of the 189 tested).

GAO Legal Opinion

88. In an August 14, 2020 decision, the Government Accountability Office (GAO) concluded that you were "named [Acting Secretary of Homeland Security] by reference to an invalid order of success."
    a. What steps, if any, did DHS take to evaluate the legality of your acting service prior to your designation as Acting Secretary or prior to Ken Cuccinelli's service as the Senior Official Performing the Duties of Deputy Secretary? Please provide a copy of any legal or advisory opinions pertaining to this issue.
    b. What steps has DHS taken in response to the GAO decision? Please provide a copy of any related legal or advisory opinions.
    c. Please describe any additional steps DHS intends to take in response to the GAO decision.

    Joint Response: At the time of my appointment as the Acting Secretary, the DHS Office of the General Counsel (OGC) as well as the Department of Justice (DOJ) confirmed the legality of my appointment. To that end, please find enclosed the November 8, 2019 succession order signed by then-Acting Secretary McAleenan that resulted in me serving as Acting Secretary and the Nov. 13, 2019 change to the order of succession for the Deputy Secretary that resulted in Mr. Cuccinelli performing the duties of the Deputy Secretary. Both of these documents have been disclosed to the GAO as part of the GAO's review.

    DHS vigorously rejects the GAO Report dated August 14, 2020 (enclosed with these responses) because not only did the GAO have no authority to opine on the subject but the GAO's analysis is also wrong and misguided on the merits. Please find enclosed the DHS response to the GAO dated August 17, 2020.

89. On August 17, 2020, the DHS Senior Official Performing the Duties of the General Counsel responded to the August 14, 2020 GAO decision.
    a. When did you first become aware of the DHS response?
    b. Please describe your involvement, if any, in the DHS response and any associated public statements or releases.
    c. Did you, as Acting Secretary, review DHS's response to the GAO legal opinion?
    d. Did DHS consult with any individual or entity outside of DHS, including the White House, in the development of the DHS response and any associated public statements or releases? If so, please identify which individuals or entities.

    Joint Answer: The DHS response to the GAO dated August 17, 2020 was drafted as a legal opinion by DHS's Senior Official Performing the Duties of the General Counsel in his official capacity. While I was aware of the formulation of a response, I did not review the DHS response prior to submission. Please, in addition, see above the response to Question 88.

Cooperation with GAO

90. Under what circumstances, if any, do you believe DHS is not required to provide GAO with timely access to agency records?

DHS and I will always cooperate with the GAO carrying out its lawful mission.

91. If confirmed, do you commit without reservation to ensuring GAO receives timely, comprehensive responses to requests for information, including for records, meetings, and information?

Yes—to the extent that the request is reasonable and lawful.

92. If confirmed, what steps will you take to ensure all DHS offices and employees cooperate fully and promptly with GAO requests?

To the extent that the Government Accountability Office (GAO) request in question is reasonable and legally appropriate, I will encourage all DHS employees to comply fully with the GAO request and ensure that the GAO has all the salient information it needs to conduct its audits, evaluations, and investigations.

Hatch Act

93. Under the Hatch Act, federal employees and officials may not use their official authority to influence the results of an election. On August 25, 2020, you participated in a naturalization ceremony that was broadcast at the Republican National Convention.
    a. Did anyone at DHS seek or receive any guidance or advice pertaining to the naturalization ceremony, including your participation in the naturalization ceremony, and federal ethics laws, rules, or policies, such as the Hatch Act? If so, please specify who provided such guidance or advice, summarize the guidance or advice received, and provide any written opinion. If not, please explain why guidance or advice was not sought.
    b. At the time of your participation in the ceremony, were you aware that the ceremony would be broadcast at the Republican National Convention or otherwise used as part of a political campaign?
    c. When did you become aware that the ceremony would be broadcast at the Republican National Convention or otherwise used as part of a political campaign?
    d. What policies or guidance does DHS have in place pertaining to the Hatch Act and participation by DHS employees and officials, including political appointees, in partisan related political activities? Please provide a copy of these policies.
    e. What role do you believe partisan political considerations should have in your performance of your official duties?

Joint Response: Prior to the event, DHS Office of the General Counsel (OGC) as well as the Office of White House Counsel had approved my participation from a Hatch Act standpoint. The Office of the Special Counsel (OSC) had also been consulted on this matter. DHS takes compliance with the Hatch Act very seriously and applies even stricter guidelines to political appointees than it does to career officials. Please find enclosed then-Secretary Chertoff's 2007 memorandum imposing the additional requirements on political appointees; a reminder on June 29, 2020 from DHS of the obligations of political appointees on partisan political activity; and the 2019 Hatch Act handouts for career (less restricted) employees, for further restricted employees, and for political appointees, respectively. Furthermore, throughout the year DHS's Designated Agency Ethics Official sends reminders about partisan political activities to DHS employees.

As for the event in question, my staff did not raise the matter with me before the event because, as with a large number of my events, this event was cleared in advance with OGC to ensure there were no ethical concerns. I am permitted to perform my official duties as a government official and taking part in a naturalization ceremony is an aspect of my official role since the U.S. Citizenship and Immigration Services (USCIS) is a Component of DHS. USCIS, of course, is the agency that conducts the naturalization ceremony as one of the last steps in the naturalization process of new Americans.

Cooperation with the Inspector General

94. Under what circumstances, if any, do you believe DHS is not required to provide its Office of Inspector General (OIG) with timely access to agency records?

To the extent that the Office of the Inspector General's (OIG) request is reasonable and legally appropriate, DHS should provide the OIG with timely access to agency records.

95. If confirmed, do you commit without reservation to ensuring DHS OIG receives timely access to agency records?

Yes—to the extent that the request is reasonable and lawful.

96. If confirmed, what steps will you take to ensure all DHS offices and employees cooperate fully and promptly with OIG requests?

To the extent that the Office of Inspector General (OIG) request in question is reasonable and legally appropriate, I will encourage all DHS employees to comply

fully with the OIG request and ensure that the OIG has all the salient information it needs to conduct its audits, inspections, and evaluations.

97. OIG inquiries may be initiated after a congressional request, when the OIG determines such an inquiry to be appropriate. Do you believe that DHS should respond differently to OIG requests if those requests are part of an inquiry initiated in response to a congressional request? If so, please explain.

To the extent we receive an inquiry from the Office of the Inspector General (OIG), we aim to answer it accurately and completely regardless of the origin or the purpose underlying the inquiry.

Whistleblower Protections

98. Protecting whistleblower confidentiality is of the utmost importance to this Committee.
    a. Please describe any previous experience with handling whistleblower complaints. What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?
    b. If confirmed, what steps will you take to ensure that whistleblower complaints are handled appropriately at DHS?
    c. If confirmed, what steps will you take to ensure that whistleblowers at DHS do not face retaliation, and that complaints of retaliation are handled appropriately?

Joint Response: The Department and I fully respect the important role that whistleblowers play in ensuring that the federal government is compliant with all laws, regulations, and codes of conduct. I have always afforded complete legal protection to whistleblowers and been interested in impartially listening to and acting in response to their disclosures. I can assure this Committee that not only will no unlawful or inappropriate conduct ever be tolerated by DHS or by me but that whistleblowers who disclose such conduct will be protected. DHS leadership, including myself, will never countenance retaliation of any kind against such whistleblowers.

V. Relations with Congress and the Public

99. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Since my confirmation as Undersecretary for Strategy, Policy, and Plans, and throughout my tenure as Acting Secretary, I have consistently directed my senior leadership team to be timely in our responses to Member requests for information. I

fully support Congress' critically-important oversight functions. If confirmed, I will continue my commitment to respond to Congressional inquiries expeditiously.

100. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes. If confirmed, I will continue to respond to reasonable requests for information from the Ranking Member, Chairman, and all other Members of Congress.

101. If confirmed, will you direct your agency to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes. If confirmed, I will continue to ensure that Freedom of Information Act requests receive an appropriate and prompt response.

102. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public without requiring a Freedom of Information Act request?

As Acting Secretary, I have encouraged DHS senior leadership and their staffs to operate openly and transparently. If confirmed, I will continue to encourage DHS to make appropriate information publicly available, where possible.

103. If confirmed, will you keep this Committee apprised of new information if it materially impacts the accuracy of information your agency's officials have provided us?

Yes. If confirmed, I will continue to keep this Committee, as well as all other relevant Committees, apprised of new information if it materially impacts the accuracy of any previously shared information.

VI. Assistance

104. Are these answers completely your own? If not, who has provided you with assistance?

Yes. I have written and reviewed all the answers in this document and they are my own.

105. Have you consulted with DHS or any other interested parties? If so, please indicate which entities.

During preparation, I consulted with senior staff in DHS, legal counsel, and the Office of Legislative Affairs.

I, CHAD F. WOLF, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

(Signature)

This 14 day of September 2020

Department of Homeland Security
Office of Intelligence and Analysis
Policy Instruction: IA-901
Revision Number: 02
Issued: 05/07/2020

OFFICE OF INTELLIGENCE AND ANALYSIS PRODUCTION OF FINISHED INTELLIGENCE

I. Purpose

This Instruction establishes the responsibilities and procedures within the Office of Intelligence and Analysis (I&A) for the production, review, approval, and dissemination of I&A Finished Intelligence Products.

II. Scope

A. This Instruction applies to all I&A personnel, including contractors supporting I&A and employees detailed from other agencies to I&A.

B. This Instruction does not apply to the sharing of raw or unevaluated information or the analysis, production, or other assistance provided by intelligence personnel to support the authorized activities of DHS or non-DHS entities where no Finished Intelligence Product is produced.

C. This Instruction is not intended to replace or restrict other review, consultation, or oversight required by law or other authority, including that required by I&A implementing procedures for Executive Order 12333, as amended.

D. This Instruction supersedes I&A Policy Instruction IA-901 Rev. 01 "Office of Intelligence and Analysis Production of Finished," August 3, 2016.

III. References

A. Public Law No. 107-296, "Homeland Security Act of 2002," as amended, Title 6 United States Code (U.S.C.), Chapter 1.

B. Executive Order 12333, "United States Intelligence Activities," December 4, 1981, as amended.

C. Intelligence Community Directive 107, "Civil Liberties and Privacy," February 28, 2018.

D. Director of National Intelligence, "Memorandum for Intelligence Community Standards and Procedures for Revised or Recalled Intelligence Products," August 5, 2005.

E. I&A Instruction IA-1000, Rev. No. 00, "Office of Intelligence and Analysis Intelligence Oversight Program and Guidelines," January 19, 2017.

F. Department of Homeland Security Office of Intelligence and Analysis Intelligence Oversight Guidelines, January 11, 2017 (as approved and signed by the Secretary of Homeland Security and the Attorney General).

G. Memorandum from David J. Glawe, Under Secretary for Intelligence and Analysis, "Request to Designate the Under Secretary for Intelligence and Analysis as the Final Arbiter of Objections Raised by the Office of Civil Rights and Civil Liberties on I&A Finished Intelligence Products," January 13, 2020.

IV. Definitions

A. ***I&A Finished Intelligence Product***: The physical manifestation, regardless of form or format, of analytic efforts conducted in furtherance of the I&A mission, which represent the analytic assessment, judgment, or other analytic input of I&A or intelligence personnel, and which are to be disseminated outside the Department. Not included are: analyst-to-analyst exchanges, informal sharing that does not result in a finished intelligence product made available outside the federal government, products issued by the Current and Emerging Threats Center containing limited analytic content, or the sharing of third-party products not marked with the DHS seal.

B. ***I&A Oversight Review Authority (ORA)***: I&A personnel who are authorized to review I&A Finished Intelligence to ensure compliance with appropriate CRCL and PRIV oversight principles without sending a product to those offices for independent review. ORAs must successfully complete I&A ORA training and be certified by the Deputy Under Secretary for Intelligence Enterprise Readiness (DUSIER).

C. ***I&A Product Reviewer***: Persons nominated by Mission Managers and approved by the DUSIEO to perform quality review of I&A Finished Intelligence Products within their Mission Center for substantive content, accuracy, analytic tradecraft, and message of the product. Product Reviewers shall have the necessary experience and training, and meet any other requirements established by the DUSIEO.

D. ***U.S. Person (USPER)***: (1) A United States citizen; (2) a Lawful Permanent Resident (Green Card Holder); (3) a group substantially composed of U.S. Citizens and/or Lawful Permanent Residents; or (4) a corporation incorporated in the United States, except for a corporation directed or controlled by a foreign government or governments. A corporation or corporate subsidiary incorporated abroad, if even partially or wholly owned by a corporation incorporated in the United States, is not a U.S. Person.

V. Responsibilities

A. The ***Under Secretary for Intelligence and Analysis (USIA)***:

1. Is responsible for producing independent, objective, and high-quality intelligence analysis to meet customer requirements;

2. Ensures that I&A conducts its activities in a manner that protects privacy, civil rights, and civil liberties and I&A employees receive the appropriate intelligence oversight and compliance training; and

3. Is the final intelligence authority, and is responsible for the content, publication, and dissemination of all I&A products and is the final authority for approving the dissemination of Finished Intelligence Products notwithstanding unresolved objections raised by the DHS Officer for Civil Rights and Civil Liberties prior to dissemination.

B. The ***Deputy Under Secretary for Intelligence Enterprise Operations (DUSIEO)***:

1. Issues and maintains a Standard Operating Procedure (SOP) for Finished Intelligence Production and others necessary to further implement this Instruction;

2. Ensures all Product Reviewers and ORAs successfully complete and stay current on all applicable training;

3. Ensures all I&A personnel involved in the production and review of Finished Intelligence Products have such duties reflected in their individual performance plans;

4. Reviews and makes I&A recommendations on initial dispute resolutions as described in section VI.E.1, or, where necessary, elevates the dispute to the USIA for final resolution.

C. The ***Deputy Under Secretary for Intelligence Enterprise Readiness (DUSIER)***:

1. Issues and maintains a Standard Operating Procedure (SOP) for ORA certification and others necessary to further implement this Instruction;

2. Oversees the I&A ORA certification process, in consultation with the DUSIEO and Oversight Offices[1], to ensure the training and evaluation aspects are appropriate to support ORA duties;

3. Develops, maintains, and periodically updates all necessary training for Product Reviewers and ORAs, in consultation with DUSIEO and the Oversight Offices;

4. Oversees the provision of appropriate analytic guidance through the I&A Analytic Ombudsman; and

5. Ensures an efficient and effective I&A production management process, to include IT platforms, that enables the Mission Centers' analytic production activities.

D. ***I&A Mission Managers***:

1. Review and approve all products under their auspices prior to release;

2. Ensure compliance with all applicable analytic tradecraft standards, legal requirements, policies for the protection of privacy, civil rights, and civil liberties, and oversight and compliance guidelines for Finished Intelligence Products produced within or otherwise includes content within the purview of their Mission Center;

3. Nominate persons to serve as Product Reviewers and ORAs;

4. Ensure their personnel involved in the production or review of Finished Intelligence Products have received, and stay current on, analytic, oversight, and compliance-related training, and that such requirements are reflected in their individual Performance Plans;

5. Implement the SOP for Finished Intelligence Production within their Mission Center and ensure compliance;

6. Consult with Oversight Offices when undertaking new topics of analysis not previously examined by a Mission Center, to get advice and guidance prior to producing Finished Intelligence Products;

[1] [1] DHS Oversight Offices consist of the Office of General Counsel-Intelligence Law Division (OGC-ILD), the I&A Intelligence Oversight Officer (IOO), the DHS Office for Civil Rights and Civil Liberties (CRCL), and the DHS Privacy Office (PRIV).

7. Ensure any applicable coordinating office or Oversight Office's input is considered and, in the case of "critical edits," either successfully resolved or elevated for initial dispute resolution; and

8. Submit all relevant information concerning an elevated dispute resolution action, or other concerns related to the production of objective and independent analysis, to the I&A Analytic Ombudsman.

E. The ***Director of the Field Operations Division***:

1. Ensures any State, Local, Territorial, and Tribal-produced product that contains original I&A-authored content as described in section VI below is reviewed and cleared by relevant Mission Managers in accordance with the procedures described in section VI; and

2. Ensures any Finished Intelligence Product produced by I&A field-deployed personnel is reviewed and cleared by relevant Mission Managers in accordance with the procedures described in section VI.

F. The ***Director of the Planning, Production, and Standards Division (PPSD)***:

1. Maintains and communicates I&A standards for editing, style, formatting, and branding for all Finished Intelligence Products;

2. Oversees the final technical editing, formatting, and DHS brand compliance review for all Finished Intelligence Products and recommends to the Mission Manager and/or author any additional suggested changes to improve the product;

3. Disseminates the Finished Intelligence Product after appropriate approvals are received; and

4. Provides input to periodic I&A quality and compliance review reports on Finished Intelligence Products prepared by the I&A Analytic Ombudsman.

G. The ***I&A Analytic Ombudsman***:

1. Provides advice to the DUSIEO, DUSIER, and USIA on training enhancements and dispute resolution issues as appropriate;

2. Maintains a log of all dispute resolution actions for record keeping; and

3. Produces, in coordination with the Director of PPSD and Oversight Offices, periodic I&A quality and compliance review reports on Finished Intelligence Products.

H. ***I&A Personnel***:

1. Adhere to proper analytic tradecraft and oversight and compliance guidelines when drafting Finished Intelligence Products;

2. Successfully complete, and stay current on, any applicable oversight and compliance awareness training;

3. Apply the SOP for Finished Intelligence Production; and

4. Seek advice from DHS subject matter experts and offices when drafting Finished Intelligence Products, as appropriate.

VI. Content and Procedures

I&A has an obligation to apply the best practices of analytic tradecraft to all Finished Intelligence Products and to adhere to applicable law and policy and appropriately protect individuals' privacy, civil rights, and civil liberties. To accomplish this, I&A conducts a review that focuses on both content and analytic tradecraft, as well as compliance with oversight principles, guidelines, and procedures.

The review process ensures that Finished Intelligence Products: (1) are issued in a timely manner; (2) conform to I&A's authorized mission, analytic tradecraft and qualitative standards, and legal and regulatory requirements; (3) protect the constitutional and privacy rights of U.S. Persons and other individuals; (4) respond to the requirements of I&A customers, both Departmental and otherwise; and (5) maintain the integrity of the intelligence process.

The DUSIEO, in coordination with the DUSIER, shall publish an SOP for Finished Intelligence Production to further implement this Instruction throughout I&A, providing all necessary detail and guidance for the development, production, review, and approval of Finished Intelligence Products. The DUSIER, in coordination with the DUSIEO, shall publish SOPs for ORA Certification and for Post-Production Audits, Evaluations, and Quality Reviews. All SOPs shall be reviewed annually and updated as necessary to ensure its maximum efficiency and effectiveness. The DUSIEO and DUSIER shall coordinate with Oversight Offices on aspects of SOPs that relate to their review of products and as otherwise appropriate.

Upon issuance of this Instruction and until such time as SOPs are published, I&A shall follow its existing processes and procedures for those aspects of production, review, and approval not addressed within this Instruction in a manner consistent with the provisions of this Instruction.

A. ***Content and Tradecraft Review***

1. I&A Finished Intelligence Products shall be reviewed by at least two separate qualified Product Reviewers within their Mission Center at increasing levels of seniority.

    a. Product Reviewers focus on the message, tradecraft, and style of the product, to include: scope, accuracy, logical argumentation, accurate sourcing and evidence, proper coordination, and clarity of writing and organization.

    b. I&A personnel who authored the product shall discuss the Product Reviewers' feedback and incorporate or otherwise resolve edits that satisfy each Product Reviewer before advancing through the process.

B. ***Oversight Equities Review***

1. Some I&A Finished Intelligence Products include information and analysis relating to USPERs, constitutionally-protected activity, and other matters that have significant oversight equities. Only those products that meet one or more of the below criteria are required to undergo a formal oversight equities review as described in this section and further specified in the SOP for Finished Intelligence Products. All I&A personnel, however, may consult at any time with Oversight Offices on any product to seek advice and comment.

    a. Specifically addresses or describes populations discernible by race, ethnicity, gender, religion, sexual orientation, gender identity, country of origin, or nationality;

    b. References or describes the activities of minors (under 18) individually or as a discernible population;

    c. Includes Sensitive Personally Identifiable Information (SPII);

    d. Reflects analysis based upon or derived from a "Bulk Data Collection" containing US Person information;

    e. Names elected US Government officials, candidates for elected federal office, or US political parties;

    f. References or describes the political, religious, ideological, or other Constitutionally-protected speech or activity of a U.S Person (or person in the United States) when not directly

linked to violence or threat of violence; and

g. Any other criteria promulgated in writing by the DUSIEO.

2. Review for CRCL and PRIV equities may be accomplished by either (a) sending the product to those offices or (b) having a certified I&A ORA review the product. ORAs at any time may consult with an Oversight Office for guidance performing their duties.

   a. If an ORA reviews the product: The author must work with the ORA to satisfy any concerns before proceeding in the review process. If the author and the ORA cannot resolve a disagreement, the matter is elevated to the Mission Manager, DUSIEO, and/or the Oversight Offices, as necessary.

      i. If the product is sent to CRCL and PRIV: The product's author works with CRCL and/or PRIV on any feedback received. Recommended or suggested edits are optional. "Critical edits"—which require resolution or elevation to the Mission Manager—are those that meet the following criteria:

         a. For CRCL, where CRCL clearly communicates in writing that the edit is required for the product to adequately protect the civil rights or civil liberties of one or more individuals who are 1) a USPER or 2) any individual located or suspected of being located within the United States, and provides a written justification for that determination.

         b. For PRIV, where PRIV clearly communicates in writing that the edit is required for the product to adequately protect the privacy of one or more individuals who are 1) a USPER or 2) any individual located or suspected of being located within the United States, and provides a written justification for that determination.

   b. The DUSIEO is delegated the final authority for approving the dissemination of a product not covered under VI.B.1.

3. All products that meet one or more criteria in section VI.B.1 shall be sent to OGC-ILD and IOO for review. The product's author works with OGC-ILD and/or IOO on any feedback received. Recommended or suggested edits are optional. "Critical edits"—which require resolution

or elevation to the Mission Manager—are those that meet the following criteria:

a. For OGC, where OGC clearly communicates in writing that the substantive edit is legally required, or that the product is otherwise legally objectionable, and provides a written justification for that determination.

b. For IOO, where IOO clearly communicates in writing that the substantive edit is required by I&A's intelligence oversight procedures and provides a written justification for that determination.

4. I&A personnel are authorized to advance Finished Intelligence Products that meet one or more criteria in section VI.B.1 to the release approval phase if they have exhausted every reasonable effort to obtain required Oversight Office reviews and feedback or applicable clearance is not received within the timeframes prescribed in the I&A SOP for Finished Intelligence Products, or as otherwise agreed to in advance between the Oversight Office(s) and either a cognizant Product Reviewer or the Mission Manager for that particular product.

a. Timeframes established in the SOP shall be coordinated in advance with the Oversight Offices and reflect a reasonable amount of time for ensuring adequate Oversight review occurs within the timeframe necessary for the product to be released and still maintain its analytic value.

C. ***Approval and Dissemination***

1. The cognizant Mission Manager approves Finished Intelligence Products for dissemination after the appropriate review process is complete. The Mission Manager is the I&A senior accountable official who ensures that the product has completed the appropriate review processes and complies with all analytic tradecraft standards, legal requirements, policies for the protection of privacy, civil rights, and civil liberties, and oversight and compliance guidelines, as appropriate. He/she provides approval and/or final edits to the product author and PPSD.

a. Before approving a Finished Intelligence Product, the Mission Manager ensures that any "critical edits" from an ORA/Oversight Office; conflicting edits or inputs from Product Reviewers; or dissents or critical comments from analytic coordinators are resolved to the satisfaction of both/all parties or elevated to the DUSIEO for resolution

action.

b. The Mission Manager may delegate their approval authority to their deputy, or to another Mission Manager, if the cognizant Mission Manager is unavailable and the product timeliness dictates it cannot wait for the cognizant Mission Manager's review.

D. ***Expedited Process***

1. If an I&A Finished Intelligence Product relates to an immediate threat to homeland security or other exigent crisis or situation, the DUSIEO can modify the processes noted above in section VI.

   a. If the expedited process is applied to a product covered by VI.B.1, the DUSIEO shall ensure the modified process allows the Oversight Offices the maximum amount of review and coordination time possible for the product to be released and still maintain its analytic value given the exigent circumstances giving rise to its production.

   b. If the applicable review and approval processes cannot be obtained within the timeframe deemed necessary by the DUSIEO, every effort is made to notify the respective coordination and/or Oversight Office(s) prior to dissemination of that I&A product and I&A sends a copy of the disseminated product to the applicable Oversight Offices.

E. ***Dispute Resolution***

1. Initial Dispute Resolution for Oversight-Related Issues

   a. All oversight-related disputes should be resolved at the lowest possible level. If agreement cannot be reached between/among the author/Product Reviewer and ORA/Oversight Office(s) on "critical edits," recalls, or revisions, the matter shall be elevated to the cognizant Mission Manager.

   b. If the Mission Manager cannot resolve the issue to all parties' satisfaction, the matter is elevated to the DUSIEO for immediate review and final I&A recommendation. The I&A Analytic Ombudsman assists the DUSIEO in formulating the recommendation or decision as described below.

i. For Finished Intelligence Products that do not meet one or more of the criteria of section VI.B.1, the DUSIEO is delegated the authority to make final decision on disputes on behalf of I&A.

ii. For Finished Intelligence Products that meet one or more of the criteria of section VI.B.1, and for which agreement cannot be reached between the DUSIEO and the office providing the required edit in dispute, the issue is elevated to the USIA for resolution.

2. Elevated Dispute Resolution Process

a. The USIA reviews all the information to make a final determination for I&A.

b. The USIA's decision is final for the purposes of dissemination.

c. A record of the elevated dispute actions is submitted by the DUSIEO to PPSD and the I&A Analytic Ombudsman for record and to include in reporting requirements in section VI.F.

F. ***Post-Production Audits, Evaluations, and Quality Reviews***

1. The I&A Analytic Ombudsman, in coordination with the Oversight Offices and Director of PPSD, maintains a process for conducting post-publication evaluations, audits, and reviews of I&A products to evaluate: (a) analytic tradecraft and quality and (b) compliance with relevant oversight policies, guidelines, and principles directly related to their respective oversight authorities.

a. The procedures for and frequency of these evaluations and audits shall minimize the impact on production activities and ensure I&A provides appropriate support to the compliance review process.

2. The I&A Analytic Ombudsman—in coordination with the Oversight Offices—prepares periodic reports for the USIA, DUSIEO, and DUSIER based upon reviews of Finished Intelligence Products disseminated and any associated evaluations or audits during the respective reporting period. The report shall include:

a. An evaluation of product scores based on analytic tradecraft evaluations conducted by I&A;

b. An evaluation of compliance with relevant oversight policies, guidelines, and principles;

c. Any observations and examples of legal, oversight and compliance concerns;

d. Incidents of substantive recalls or revisions summaries;

e. Details of elevated dispute resolution actions and outcomes;

f. Any recommendations for revised or new I&A training or other measures of oversight and tradecraft principles to improve understanding and application;

g. Any information deemed pertinent by the I&A Analytic Ombudsman or Oversight Office.

VII. Questions

Questions or concerns regarding this instruction should be addressed to the I&A Office of the Deputy Under Secretary for Intelligence Enterprise Operations.

David J. Glawe
Under Secretary for Intelligence and Analysis

5/7/20
Date

Department of Homeland Security
Office of Intelligence and Analysis
Policy Instruction: IA-901
Revision Number: 00
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DHS INTELLIGENCE AND ANALYSIS REVIEW AND CLEARANCE OF ANALYTIC PRODUCTS DISSEMINATED OUTSIDE THE FEDERAL GOVERNMENT

I. Purpose

This Instruction refines the existing policies and procedures within the Office of Intelligence and Analysis (I&A) for the review, clearance, and dissemination of I&A Products outside the federal government. These policies and procedures are to ensure that I&A Products: (1) are issued in a timely manner; (2) conform to I&A's authorized mission, qualitative standards, and legal and regulatory requirements; (3) protect the constitutional and privacy rights of U.S. Persons[1] and other individuals; (4) respond to the requirements of I&A customers, both Departmental and others; and (5) maintain the integrity of the intelligence process.

II. Scope

A. Unless otherwise specified, this Instruction is applicable to the production of I&A Products by intelligence personnel, including those deployed. This Instruction does not apply to training, analysis, production, or other assistance provided by intelligence personnel to support the authorized activities of other Department of Homeland Security (DHS) or non-DHS entities where no I&A Product is produced.

B. Requests by I&A personnel for exceptions to policies or procedures established herein are to be made in writing to the Under Secretary for Intelligence and Analysis. All exceptions granted will be thoroughly coordinated with all affected offices prior to implementation.

C. This Instruction is not intended to replace or restrict other review, consultation, or oversight required by law or other authority, including that required by I&A implementing procedures for Executive Order 12333.

[1] U.S. Person is defined for I&A employees in the memorandum "Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis," dated April 3, 2008.

D. This policy applies to all I&A employees, contractors supporting I&A, and employees detailed from other agencies to support I&A.

E. This Instruction supersedes I&A Instruction 900.1, dated October 25, 2010, "Review and Clearance of Analytic Products Disseminated Outside the Federal Government," and all previous procedures within I&A for the clearance, review, and dissemination of finished intelligence.

III. References

A. Executive Order 12333, "United States Intelligence Activities," December 4, 1981, as amended

IV. Definitions

For the purposes of this Instruction, the following definitions apply:

A. ***Analysts***: Personnel within I&A's analytic divisions responsible for research, analysis, and authoring of finished intelligence products.

B. ***Analytic Division***: I&A's Homeland Counterterrorism Division, Border Security Division, Cyber Intelligence Analysis Division, and the Counterintelligence Programs Division.

C. ***Clearing Offices***: The Office for Civil Rights and Civil Liberties (CRCL), Privacy Office (PRIV), I&A Intelligence Oversight Officer (I&A-IO), and the Office of the General Counsel - Intelligence Law Division (OGC-ILD).

D. ***Dissemination***: Transmission, communication, sharing or passing of an I&A Product to any state, local, tribal, or territorial government, private sector entity, or any foreign government, foreign person, or international organization, including by e-mail, hard copy, posting to web sites, or any other method of distribution.

E. ***Division Director***: The most senior member of an I&A analytic division, either the named division director or acting division director.

F. ***Intelligence Personnel***: Employees, detailees, contractors, and subcontractors assigned to or working on behalf of I&A regardless of duty location.

G. ***I&A Products***: The physical manifestation, regardless of form or format, of analytic efforts conducted in furtherance of the I&A mission, which represent the analytic assessment, judgment, or other analytic input of I&A or intelligence personnel, and which are intended for dissemination. Not

included are the informal sharing[2] of raw or unevaluated information, analyst-to-analyst exchanges, products issued by the Intelligence Watch and Warning and which may contain limited analytic content, or the sharing of third party products.

V. Responsibilities

A. ***Analysts***:

1. Ensure timely and appropriate analytic coordination, including with other federal agencies and state, local, tribal and territorial partners. Coordination with state, local, tribal, and territorial partners shall be done through the I&A-SLPO. Processes mandated by this Instruction are not substitutes for proper analytic coordination;

2. Allow sufficient time for clearing offices to perform their duties as outlined in this Instruction;

3. Consult with clearing offices throughout the planning, research and writing of an I&A product to ensure clearing offices have the necessary visibility into the I&A product to understand its potential impact;

4. When submitting draft products to clearing offices, provide informational copies at the "Unclassified//For Official Use Only (FOUO)" level to the following additional DHS offices: Office of Public Affairs; National Protection and Programs Directorate - Office of Infrastructure Protection; Office of Operations Coordination and Planning; and Office of Legislative Affairs. Analysts may consider any comments from these additional offices but are not required to obtain their clearance or approval. Analysts, analytic supervisors or managers, or production managers may send substantive analytic objections from any entity to the Deputy Under Secretary for Analysis (or his/her designee) for resolution;

5. Submit fully coordinated I&A product drafts to the Production Branch of the Production Management Division at least five business days prior to expected dissemination for routine products and at least six hours prior to expected dissemination for emergent products; and

[2] Informal sharing is distinct from formal Dissemination in that it does not result in a finished analytical product being made available broadly outside of the federal government through posting to web sites or distribution via e-mail.

6. Respond to, and work directly with, the clearing office that provided questions or comments on a product until any substantive issues have been resolved or the issue has been referred to senior I&A leadership for resolution. Analysts will send an unclassified e-mail to the clearing office as notification of such resolution or appeal for record keeping purposes.

B. ***Analytic Division Directors***:

1. Ensure that the clearance of each required clearing office has been obtained and all clearing office required changes are made before submission of the I&A product to the Production Management Division to advance for final approval and dissemination;

2. Ensure that conflicting or inconsistent edits or other input contributed by clearing offices are resolved to the satisfaction of both/all or, as appropriate, elevated for action to the Deputy Under Secretary for Analysis; and

3. Enforce appropriate analytic tradecraft standards in I&A products.

C. ***Production Management Division***:

1. Conducts the final technical editing, formatting, and DHS brand compliance review of each I&A product;

2. Submits the final I&A product for release approval by the Deputy Under Secretary for Analysis, the Associate Deputy Under Secretary for Analysis or the Research Director;

3. Performs final edits as directed by the approving official;

4. Schedules dissemination in coordination with other federal partners, and advise clearing offices at least one hour prior to release; and

5. Releases the I&A product to the parties designated in the accompanying abstract.

D. Each ***clearing office***:

1. Provides timely substantive review of all products sent by I&A;

2. Provides one set of consolidated comments via e-mail to the individual who submitted the draft product for review; and,

3. Ensures to the greatest extent possible that all comments are coordinated with the original reviewer.

E. ***Other Offices***:

1. The Single Point of Service will continue its policy of screening incoming State and Local Support Requests (SLSR) and forwarding to the analytic divisions those that are appropriate for I&A response. SLSR responses that include or result in I&A products are subject to review and clearance in accordance with this Instruction.

VI. Content and Procedures

A. ***Production Board***

1. Under the guidance of the Deputy Under Secretary for Analysis, the I&A Production Board will develop and monitor I&A's annual production plan to facilitate the timely production of I&A products and ensure clearing offices, represented *ex officio* on the Board, have visibility into each I&A product from its inception.

2. The Board shall be chaired by the Deputy Under Secretary for Analysis. Members include the Associate Deputy Under Secretary for Analysis; Associate Deputy Under Secretary for Research; Director of PMD; Directors of each I&A analytic division, the Collection Requirements Division and Current Intelligence Division; and others the Chair may appoint or invite. The Board will also consist of the following *ex officio* members: the Associate General Counsel for Intelligence or designee; representatives of the Officer for Civil Rights and Civil Liberties; the Chief Privacy Officer; and the I&A Intelligence Oversight Officer. The Associate Deputy Under Secretary for Research will serve as Executive Director of the Board.

B. ***Clearance Process***

1. ***Review and Clearance by clearing offices***. Clearing offices will review and affirmatively clear or submit changes required for clearance of I&A products in accordance with the following criteria:

a. I&A products that refer to or describe the activities or beliefs of (i) a U.S. Person or (ii) any person or group of persons reasonably

believed to be physically present in the United States must be reviewed and cleared by **I&A-IO**, **CRCL**, **PRIV**, and **OGC-ILD**;

b. I&A products that address or describe populations discernible by race, ethnicity, gender, national origin, or religion must be reviewed and cleared by **CRCL**;

c. I&A products originally intended for dissemination to non-DHS federal government entities and repurposed for dissemination to state, local, tribal, and territorial government or private sector entities will be treated as new products and must also be reviewed and cleared by **I&A-IO**, **CRCL**, **PRIV**, **and OGC-ILD**.

d. I&A products falling into two or more of the above categories must be reviewed and cleared by all clearing offices required by those categories;

e. Required review and clearance by all clearing offices will be conducted concurrently. Clearing offices will exercise due diligence to ensure timely review within two business days unless a longer review period is agreed upon between the clearing office and author. One business day review and clearance is preferred, if possible. Clearing offices shall distinguish between recommended edits, which may be addressed at the product author's discretion, and required edits, which must be addressed to secure concurrence of the clearing office. Likewise, analysts will make every effort to respond to clearing office comments in a timely manner, generally within two business days if possible when the response does not require third party coordination.

2. ***Supplemental Considerations***

a. Clearing offices may request the support of other DHS offices subject to the following conditions:

i. Case-by-case requests shall not alter the standing requirements for I&A product review and clearance or implementing guidance issued pursuant to Section D, *Expedited Review*, below; and

ii. Clearing offices must receive approval of the analyst who wrote the product, prior to requesting the support of any DHS entity not already identified above as a Clearing office.

b. Prior to forwarding all related documents to PMD, the cognizant I&A analytic division director will review the I&A product, and all

reviews and clearances received to ensure that the affirmative clearance of each clearing office has been obtained and that all required clearing office changes are made.

3. ***I&A Review and Clearance***

a. The PMD Director or his/her designee will conduct a final review of each I&A product to ensure that it reflects the highest editorial standards of the Department, and is properly formatted, brand compliant, and ready for final review.

b. Once final quality control steps are complete, PMD will submit the I&A product for approval to the Deputy Under Secretary for Analysis, Associate Deputy Under Secretary for Analysis or Associate Deputy Under Secretary for Research.

c. The substantive or administrative recall of an I&A product requires the approval of the Deputy Under Secretary for Analysis, Associate Deputy Under Secretary for Analysis, or Associate Deputy Under Secretary for Research.

4. ***Dispute Resolution***

If agreement cannot be reached following dialogue between I&A and any clearing office on edits or other input contributed by those clearing offices, the issue(s) will be elevated to the Deputy Secretary of Homeland Security for final decision by the principal member of the Office of Intelligence and Analysis, clearing office Principal, or those acting in this capacity.

C. ***DHS Office of Public Affairs and the Office of Legislative Affairs Notification***

When feasible, drafts of all Unclassified//For Official Use Only" or "Unclassified//Law Enforcement Sensitive" products will be provided to the DHS Office of Public Affairs (OPA) and the Office of Legislative Affairs (OLA) via e-mail 48 hours prior to their scheduled release. When time does not permit for 48 hour advanced notification, drafts of those products will be provided to OPA and OLA early as possible.

D. ***Expedited Review***

If an I&A product relates to an immediate threat to homeland security or other exigent situation, a copy of that product will be immediately provided to all applicable clearing offices for accelerated review and clearance. If clearance by those offices cannot be obtained by I&A within the timeframe

deemed necessary by the Under Secretary for Intelligence and Analysis, every effort will be made to notify the Deputy Secretary of Homeland Security and all clearing offices prior to dissemination of that I&A product and I&A will send a copy of the disseminated product to the clearing offices.

VII. Questions

Questions or concerns regarding this Instruction should be addressed to the Director of I&A's Production Management Division.

4-9-2013

William E. Tarry, Jr.
Acting Under Secretary for Intelligence and Analysis

Date

Department of Homeland Security
Office of Intelligence and Analysis
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Issued: 08/03/2016

OFFICE OF INTELLIGENCE AND ANALYSIS PRODUCTION OF FINISHED INTELLIGENCE

I. Purpose

This Instruction establishes the responsibilities and procedures within the Office of Intelligence and Analysis (I&A) for the production, review, approval, and dissemination of I&A Finished Intelligence Products.

II. Scope

A. This Instruction applies to all I&A personnel, including contractors supporting I&A and employees detailed from other agencies to I&A.

B. This Instruction does not apply to the sharing of raw or unevaluated information or the analysis, production, or other assistance provided by intelligence personnel to support the authorized activities of DHS or non-DHS entities where no Finished Intelligence Product is produced.

C. This Instruction is not intended to replace or restrict other review, consultation, or oversight required by law or other authority, including that required by I&A implementing procedures for Executive Order 12333, as amended.

D. This Instruction cancels DHS Instruction IA-902, "Producing Finished Intelligence," July 15, 2011 and supersedes DHS Instruction IA-901, "Review and Clearance of Analytic Products Disseminated Outside the Federal Government," April 9, 2013, and all previous related policies, guidelines, and procedures within I&A for the production, clearance, review, and dissemination of finished analytic products.

III. References

A. Public Law No. 107-296, "Homeland Security Act of 2002," as amended, Title 6 United States Code (U.S.C.), Chapter 1.

B. Executive Order 12333, "United States Intelligence Activities," December

4, 1981, as amended.

C. Intelligence Community Directive 203, "Analytic Standards," January 2, 2015.

D. Intelligence Community Directive 206, "Sourcing Requirements for Disseminated Analytic Products," January 22, 2015.

E. Intelligence Community Directive 208, "Write for Maximum Utility," December 17, 2008.

F. Intelligence Community Directive 107, "Civil Liberties and Privacy," August 31, 2012.

G. Director of National Intelligence, "Memorandum for Intelligence Community Standards and Procedures for Revised or Recalled intelligence Products," August 5, 2005.

H. DHS Instruction 264-02-001, "DHS Intelligence Integration and Management Tearline Process Guidance," January 14, 2014.

I. Memorandum from Charles E. Allen, Under Secretary for Intelligence and Analysis, and Matthew L. Kronisch, Associate General Counsel (Intelligence), "Interim Intelligence Oversight Procedures for the Office of Intelligence and Analysis," April 3, 2008.

IV. Definitions

A. **I&A Certified Release Authority (CRA)**: I&A personnel who successfully completed the I&A Finished Intelligence CRA Training Course and applicable post-training evaluation period, are current on any applicable reoccurring oversight awareness training, and are authorized by the Under Secretary for Intelligence and Analysis to review and release I&A-produced Finished Intelligence. For the purposes of this Instruction, the I&A CRAs identified in this Instruction are at the Division-level, and their designee, only as described below in section V.C.

B. ***I&A Finished Intelligence Product***: The physical manifestation, regardless of form or format, of analytic efforts conducted in furtherance of the I&A mission, which represent the analytic assessment, judgment, or other analytic input of I&A or intelligence personnel, and which are intended for dissemination outside the Department. Not included are analyst-to-analyst exchanges, informal sharing that does not result in a finished intelligence product made available outside the federal government, products issued by the Intelligence Watch and Warning

containing limited analytic content, or the sharing of third party products not marked with the DHS seal.

C. ***U.S. Person (USPER)***: (1) A United States citizen; (2) a Lawful Permanent Resident (Green Card Holder); (3) a group substantially composed of U.S. Citizens and/or Lawful Permanent Residents; or (4) a corporation incorporated in the United States, except for a corporation directed or controlled by a foreign government or governments. A corporation or corporate subsidiary incorporated abroad, if even partially or wholly owned by a corporation incorporated in the U.S., is not a U.S. Person.

V. Responsibilities

A. The ***Under Secretary for the Office of Intelligence and Analysis (USIA)***:

1. Is the final intelligence authority, and is responsible for the content, publication, and dissemination of all I&A products;

2. Is responsible for producing independent and timely intelligence to meet Departmental and customer requirements;

3. Ensures that I&A conducts its activities in a manner that protects privacy, civil rights, and civil liberties and I&A employees receive the appropriate intelligence oversight and compliance training; and

4. Reviews and makes final intelligence-related decisions on elevated dispute resolutions as described in section VI.I.2 below.

B. The ***Deputy Under Secretary for Intelligence Operations (DUSIO)***:

1. Maintains a product review process for all Finished Intelligence Products;

2. Ensures all applicable personnel successfully complete, and stay current, on all applicable training as described in this Instruction; and

3. Reviews and makes final I&A recommendations on initial dispute resolutions as described in section VI.I.1 below, or, where necessary, elevates the dispute to the USIA for resolution.

C. ***I&A Division Directors (or their designees) as an I&A Finished Intelligence CRA***:

1. Ensure compliance with all analytic tradecraft standards, legal requirements, policies for the protection of privacy, civil rights, and civil liberties, and oversight and compliance guidelines in Finished Intelligence Products;

2. Successfully complete the I&A CRA training within 180 days of the course's certification, successfully complete the post-training evaluation period, and stay current on any applicable recurring oversight awareness training;

3. Submit any draft Finished Intelligence Product intended for dissemination to a SLTT partner to Field Operations Division (FOD) before granting release approval as described in sections VI.C and D below;

4. Ensure any applicable coordinating office or Oversight Office's[1] input is considered or successfully resolved if required input is not taken, or, as appropriate, elevated for initial dispute resolution;

5. Review and approve for dissemination all Finished Intelligence Products developed within their respective Division; and

6. Submit all relevant information concerning an elevated dispute resolution action to the I&A Ombudsman for Analytic Integrity for recording in the quality report described below in section VI.G.1.

D. The ***Director of the Field Operations Division***:

1. Coordinates with the respective Regional Director and Intelligence Officer as appropriate on state, local, tribal, or territorial (SLTT) partner-related Finished Intelligence Products containing the I&A and/or DHS seal; and

2. Ensures any SLTT produced product that contains I&A content as described in section VI below is reviewed and cleared in accordance with the procedures described in sections VI.C and D below.

E. The ***Chief of the Production, Media, and Dissemination Branch (PMDB)***:

1. Conducts the final technical editing, formatting, and DHS brand compliance review for all Finished Intelligence Products;

[1] DHS oversight offices consist of the Office of General Counsel-Intelligence Law Division (OGC-ILD), the I&A Intelligence Oversight Officer (IOO), the DHS Office for Civil Rights and Civil Liberties (CRCL), and the DHS Privacy Office (PRIV).

2. Submits the final product for release approval and performs final edits as directed by the approving official;

3. Schedules dissemination in coordination with other federal, or SLTT and private sector (SLTTP) partners as appropriate; and

4. Disseminates the Finished Intelligence Product after appropriate approvals are received.

F The ***I&A Ombudsman for Analytic Integrity***:

1. Provides advice to the DUSIO and/or USIA on training enhancements and dispute resolution issues as appropriate;

2. Maintains a log of all elevated dispute resolution actions for record keeping and input into the quality review report; and

3. Produces quarterly I&A quality review reports on Finished Intelligence Products disseminated and submits the report to the USIA and DUSIO.

G. ***I&A Branch Chiefs***:

1. Ensure all appropriate I&A personnel have received, and stay current on, analytic, oversight, and compliance-related training;

2. Enforce appropriate analytic tradecraft standards and oversight and compliance guidelines in Finished Intelligence Products; and

3. Review and clear all Finished Intelligence Products developed within their respective Branch before pre-coordination reviews and Division approvals as described in section VI.C below.

H. ***I&A personnel***:

1. Adhere to proper analytic tradecraft and oversight and compliance guidelines when drafting Finished Intelligence Products;

2. Successfully complete, and stay current on, any applicable oversight and compliance awareness training;

3. Seek advice from DHS subject matter experts and offices when drafting Finished Intelligence Products as appropriate; and

4. Respond to, and collaborate directly with, PMDB and the respective office that provided questions or comments on a product.

VI. Content and Procedures

I&A personnel can contribute informally and formally to federal and SLTTP products based on their training, expertise and local knowledge, but if the finished product contains I&A-written content, these products are subject to this Instruction, regardless of whether I&A is acknowledged in the product. Unless otherwise specified, this Instruction is applicable to Finished Intelligence Products to which I&A has contributed analytic content, to include briefings in which the briefing slides and/or handouts contain new analytical content and/or graphics. Products that are developed from information previously cleared, reviewed, approved, and disseminated as described in this Instruction, without additional analytical input, do not require re-reviews.

I&A has an obligation to apply the best practices of analytic tradecraft to all Finished Intelligence Products while adhering to applicable law and policy and appropriately protecting individuals' privacy, civil rights, and civil liberties. These procedures ensure that Finished Intelligence Products: (1) are issued in a timely manner; (2) conform to I&A's authorized mission, qualitative standards, and legal and regulatory requirements; (3) protect the constitutional and privacy rights of U.S. Persons and other individuals; (4) respond to the requirements of I&A customers, both Departmental and others; and (5) maintain the integrity of the intelligence process.

A. ***Training***

1. I&A employees who produce or contribute to finished intelligence products but are not approving authorities must successfully complete any applicable tradecraft and oversight and compliance training, but are not subject to the post-training period mentioned below.

2. I&A Finished Intelligence CRA training consists of: (1) an initial course of instruction approved by the Oversight Offices and appropriately certified by the I&A Strategic Learning and Development Branch to provide an adequate opportunity for the I&A CRA candidate to learn, comprehend, and apply analytic tradecraft standards, legal requirements, policies for the protection of privacy, civil rights, and civil liberties, and oversight and compliance guidelines in the assessment of Finished Intelligence Products, (2) subsequent annual oversight and compliance awareness training as available, and (3) any applicable tradecraft training as determined by the USIA.

3. A ninety (90) day post-training period, or longer as noted in section VI.A.3.a below, working with the applicable oversight offices immediately follows the CRA initial training and requires demonstration of competency and skill in the application of relevant oversight and compliance guidelines. This coincides with the pre-coordination process in section VI.C. below and confirms the CRA candidate's ability to reasonably avoid

or otherwise mitigate risks to privacy, civil rights, and civil liberties through the application of law, policy, and oversight guidelines.

a. The first thirty (30) days, or until a minimum of three finished intelligence products reviewed by the Oversight Offices is conducted, whichever is longer, consists of on the job training and feedback with the applicable oversight offices during the pre-coordination process. The remaining sixty (60) days, or until a minimum of five finished intelligence products reviewed by the Oversight Offices is conducted, whichever is longer, continues that effort, but tracks progress to determine successful completion described in section VI.A.3.b below. (For example, improvement in the necessary competencies and skills should result in a decrease over time of both the number and significance of issues identified by any oversight office that are deemed to require edits, as well as repetition of previously corrected errors. This should result in an improved demonstrated history of attempting to mitigate identified issues before oversight office reviews.)

b. In addition to qualitative assessments the CRA candidate must adequately review and successfully identify and correct issues that would result in mitigation as described in sections VI.C.5. and 6.b below for at least 90% of their respective products in the final 60 day pre-coordination process, such that an oversight office does not identify any additional required edits in their review stage. Recommendations and other feedback will not negatively impact scoring, but may be taken into account in the final oversight office recommendations to the USIA or PDUSIA for CRA certification.

B. ***Production***

1. I&A personnel ensure the analysis being written or contributed clearly articulates relevance to authorized DHS intelligence activities as described in EO 12333.

2. I&A personnel assigned to research and produce Finished Intelligence Products in accordance with the requirements outlined in the I&A Program of Analysis:

   a. Prepare the analytic approach to the proposed finished intelligence using any applicable analytic tradecraft guidances and/or Policies;

   b. Enter the required information into the appropriate I&A Production Plan data management tool;

   c. Digitally archive all sources used in drafting finished intelligence;

d. Properly identify and minimize U.S. Person (USPER) information;

e. Determine the releasability of the finished intelligence to the anticipated audience;

f. Coordinate with PMDB, as appropriate, to prepare pictures, charts, or other graphics;

g. Verify that classification markings comply with Controlled Access Program Coordination Office (CAPCO) and current I&A Classification Guide standards; and

h. Comply with requirements of any existing and future policy or memorandum of understanding governing the production and dissemination of joint seal finished intelligence with other Agencies.

3. I&A personnel can at any time seek the advice or voluntary review of a product by the Office of General Counsel-Intelligence Law Division (OGC-ILD), the I&A Intelligence Oversight Officer (IOO), the DHS Office for Civil Rights and Civil Liberties (CRCL), and the DHS Privacy Office (PRIV) regarding the application of legal, compliance, and/or oversight guidelines.

C. ***Pre-Coordination***

1. I&A personnel ensure timely and appropriate analytic coordination, including with other DHS Components and Offices, federal agencies, and SLTTP partners as appropriate.

2. I&A personnel submit the final draft of their Finished Intelligence Product to their respective Branch Chief for Branch review and clearance to submit the product for internal I&A review. The Branch Chief reviews products to ensure the appropriate substance, analytic tradecraft, and application of oversight principle guidelines are incorporated.

3. Once the Branch Chief clears the draft product, the product is submitted to the designated Division-level CRA for internal I&A review and feedback regarding the application of tradecraft standards and oversight and compliance guidelines. The product's author works with the Division-level CRA on any feedback received and incorporates the required edits before advancing the product for initial approvals.

4. Once the Division-level CRA preapproves the draft product, the product is submitted by the author to the OGC-ILD and IOO for internal

I&A review and feedback. The product's author works with the OGC-ILD and/or IOO on any feedback received and incorporates the required edits before advancing the product for initial approvals. Recommended or suggested edits by the OGC-ILD and/or IOO are to be considered by the product's author, but are not mandatory.

5. Edits from the OGC-ILD and/or IOO are deemed to be required where the following criteria are met:

   a. For the OGC, where the comment accompanying the substantive edit clearly states (or the OGC otherwise clearly communicates in writing) that the substantive edit is legally required and provides a written justification for that determination.

   b. For IOO, where the comment accompanying the substantive edit clearly states (or IOO otherwise clearly communicates in writing) that the substantive edit is required by I&A's intelligence oversight procedures and provides a written justification for that determination.

6. In the absence of an I&A Division-level CRA, I&A-produced Finished Intelligence Products intended for dissemination outside the federal government are reviewed by CRCL and PRIV in addition to the OGC-ILD and IOO prior to release to ensure that the product complies with applicable law and policy and appropriately protects individuals' privacy, civil rights, and civil liberties.

   a. The product's author works with CRCL and/or PRIV on any feedback received and incorporates the required edits before advancing the product for initial approvals. Recommended or suggested edits by CRCL and/or PRIV are to be considered by the product's author, but are not mandatory.

   b. Edits from CRCL and/or PRIV are deemed to be required where the following criteria are met:

      i. For CRCL, where the comment accompanying the edit clearly states (or CRCL otherwise clearly communicates in writing) that the edit is required for the product to adequately protect the civil rights or civil liberties of one or more individuals who are 1) a USPER or 2) any individual located or suspected of being located within the United States, and provides a written justification for that determination.

      ii. For PRIV, where the comment accompanying the edit clearly states (or PRIV otherwise clearly communicates in writing) that

the edit is required for the product to adequately protect the privacy of one or more individuals who are 1) a USPER or 2) any individual located or suspected of being located within the United States, and provides a written justification for that determination.

7. I&A personnel are authorized to advance Finished Intelligence Products to the release approval phase if they have exhausted every reasonable effort to obtain required reviews and feedback or applicable clearance is not received within the time frame required in advance by I&A or a deadline extension is not agreed upon, provided that this time frame is the maximum amount of time possible for the product to be released and still maintain its analytic value:

   a. For routine products, within two (2) business days unless a longer review period is provided by I&A;

   b. For priority products, within one (1) business day; and

   c. For immediate products, within two (2) hours, or as soon as possible that ensures the product is relevant and timely to the current situation.

8. I&A personnel must obtain all necessary release authority required by applicable Executive Orders, Foreign Intelligence Surveillance Act (FISA), Originator Controlled (ORCON), and other appropriate dissemination control and release approvals.

9. I&A personnel submit the Branch and internal I&A-approved product package to their Division leadership for review and dissemination approval.

D. ***Standard Publication Process***

1. Initial Approval: The respective Division Director (or his or her designee) in their role as an I&A Division-level CRA reviews products to ensure the appropriate substance, analytic tradecraft, and application of oversight principle guidelines are incorporated and approves Finished Intelligence Products before the products are submitted to PMDB.

   a. Before approving, if applicable, the respective Division Director (or his or her designee) ensures conflicting or inconsistent edits or other required input contributed by any offices are resolved to the satisfaction of both/all or, as appropriate, elevated for resolution action to the DUSIO.

b. If a Finished Intelligence Product is intended for dissemination to a SLTT partner, the respective Division Director (or his or her designee) submits the final draft to FOD for immediate review before approving a product for dissemination.

c. Division Directors ensure the requirements of any existing or future policy or memorandum of understanding governing the production and dissemination of joint seal finished intelligence with other agencies is met.

2. Release Approval and Dissemination:

a. The respective Division Director (or his or her designee) approves Finished Intelligence Products for dissemination after the appropriate review process is complete and provides his or her approval and/or final edits to the product author and PMDB.

b. PMDB:

i. Reviews final products to ensure all applicable edits were made during all stages of the review and clearance processes;

ii. Reviews customer lists in the product's accompanying product Abstract to ensure they correspond to the classification and dissemination controls applicable to finished intelligence;

iii. Ensures all finished intelligence is disseminated to the appropriate U.S. customers and posted on appropriate sites according to each product's dissemination instructions, controls, and product classification;

iv. Disseminates to international partners only after the Foreign Disclosure Officer completes his/her applicable responsibilities; and

v. Maintains an archive of finished intelligence that has been either distributed or disseminated.

E. ***Expedited Pre-Publication Process***:

1. If an I&A Finished Intelligence Product relates to an immediate threat to homeland security or other exigent crisis or situation as determined by the USIA or DUSIO, the USIA can modify the processes noted above in sections VI.C (except VI.C.4. and 5) and D.

2. In such cases, the USIA ensures the modified process allows the Oversight Offices the maximum amount of review and coordination time possible for the product to be released and still maintain its analytic value given the exigent circumstances giving rise to its production.

3. If the applicable pre-coordination and approval processes cannot be obtained by I&A within the timeframe deemed necessary by the USIA, every effort is made to notify the respective coordination and/or Oversight Office(s) prior to dissemination of that I&A product and I&A sends a copy of the disseminated product to the applicable coordination and Oversight Offices.

F. ***Finished Intelligence Products Evaluations***

1. Analytic recipients evaluate Finished Intelligence Products based on the perceived value of the information contained in the product to their analytic account and applicability of the information to their current mission requirements. A Finished Intelligence Product evaluation is not representative of the value of information to all consumers of the product.

2. DHS-produced evaluations are conducted, published, and recorded in accordance with appropriate guidelines approved by the USIA.

3. Evaluations are considered as a time series and can be received over the course of several months or years. Historical production is periodically revisited for evaluations received on past Finished Intelligence Products to produce evaluation reports covering the appropriate individual and/or Branch portfolio.

G. ***Quality, Compliance, and Oversight Office Reviews***

1. I&A Internal Quality Reviews:

   a. The I&A Ombudsman for Analytic Integrity, along with the OGC-ILD and IOO, prepares quarterly quality review reports based upon a review of Finished Intelligence Products disseminated and any associated evaluations during the respective reporting period.

   b. The report includes any observations and examples of legal, oversight and compliance concerns, substantive recalls or revisions summaries, the use of the expedited pre-publication process, and details of elevated dispute resolution actions and outcomes.

c. Based upon the report, the I&A Ombudsman for Analytic Integrity makes recommendations to the USIA, with the OGC-ILD and IOO input as appropriate, for revised or new I&A training or other measures of oversight and tradecraft principles to improve understanding and application.

2. Compliance and Oversight Office Reviews: To ensure that Finished Intelligence Products comply with applicable policy (e.g. ICD 107 and guidance issued by CRCL) and appropriately protect individuals' privacy, civil rights, and civil liberties, CRCL and PRIV may conduct compliance reviews directly related to their respective oversight authorities on Finished Intelligence Products and conduct supplemental awareness training or targeted training of I&A personnel, as appropriate.

   a. The I&A Ombudsman for Analytic Integrity, in coordination with CRCL and PRIV, develops a compliance review schedule that minimizes the impact on production activities and ensures I&A provides appropriate support to the compliance review process.

   b. The findings of each compliance review are shared with the USIA, DUSIO, and other officials as appropriate, along with recommendations designed to focus training or other oversight measures across I&A or specific analytic activities based on the results of the compliance review process.

H. ***Recalls or Revisions***

1. I&A uses the IC-common terms "administrative revision," "substantive revision," "administrative recall," and "substantive recall" when issuing notices that previously disseminated products have been modified or withdrawn. (See Reference G)

2. The substantive or administrative recall or revision of a Finished Intelligence Product requires the consent of the approving Division Director who approved the product for dissemination.

3. Administrative or substantive recalls are submitted by the respective product author to their Division Director for approval, and then submitted to PMDB for recall action.

4. A disseminated Finished Intelligence Product that required an administrative recall or administrative revision does not need to be submitted to the I&A Ombudsman for Analytic Integrity.

a. Administrative revisions are conducted by the respective product's author and submitted to their Division Director for release approval. The respective Division Director approves the revised product for release and submits the revised product to PMDB for re-dissemination. PMDB disseminates the revised product to the parties designated in the product's accompanying abstract.

5. A disseminated Finished Intelligence Product that required a substantive recall or substantive revision is submitted by the respective product's author along with a summary of explanation and required edits to their Division Director, PMDB, and the I&A Ombudsman for Analytic Integrity for awareness, record keeping, and possible remedial training on analytic standards.

   a. Substantive revisions are conducted by the respective product's author who makes the required changes and submits the revised product for the complete process as described above.

Dispute Resolution

1. Initial Dispute Resolution Process

   a. If an agreement cannot be reached between the respective Division Director and any office regarding required edits, recalls, or revisions, the issue is elevated to the DUSIO for immediate review and final I&A recommendation.

   b. The DUSIO examines the concerns within the context of analytic integrity and standards and within five (5) business days either requests edits to resolve the concerns or determines edits cannot be accepted without materially compromising the analytic value of the product or contradicting a best practice of analytic tradecraft. The I&A Ombudsman for Analytic Integrity assists the DUSIO in formulating a recommendation upon request by the DUSIO.

   c. If the DUSIO determines that no or only partial edits are needed, the DUSIO contacts the applicable office(s) to determine whether further elevation is required.

   d. If agreement cannot be reached between the DUSIO and the office providing the required edit in dispute, the issue is elevated to the USIA for resolution at the Component Head level.

2. Elevated Dispute Resolution Process

a. If an agreement cannot be reached between the DUSIO and respective office regarding required edits, recalls, or revisions, the USIA reviews all the information to make a final determination for I&A within ten (10) business days of receipt.

b. The USIA notifies the DUSIO and the respective Office Head(s) of I&A's final decision. The USIA's decision is final for any non-CRCL or PRIV dispute.

c. A record of the elevated dispute actions is submitted to PMDB and the I&A Ombudsman for Analytic Integrity by the DUSIO for recording and quality report reporting.

3. Departmental Dispute Resolution Process

a. If agreement cannot be reached between the USIA and a CRCL or PRIV Principal regarding required edits during their coordination or compliance reviews, the analytic product and dispute justifications from I&A and the respective office providing the required edit in dispute are sent to the Deputy Secretary via I&A Executive Secretariat channels. The Deputy Secretary reviews all the information to make a final determination for the Department.

b. The Deputy Secretary notifies the USIA and the respective Principal(s) of the final decision and appropriate action.

c. A record of the Departmental dispute actions and decision is submitted to PMDB and the I&A Ombudsman for Analytic Integrity by I&A ExecSec for recording and quality report reporting.

VII. Questions

Questions or concerns regarding this instruction should be addressed to the I&A Office of the Deputy Under Secretary for Intelligence Operations.

Francis X. Taylor
Under Secretary for Intelligence and Analysis

August 3, 2016
Date

Department of Homeland Security
Office of Intelligence and Analysis
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OFFICIAL USAGE OF PUBLICLY AVAILABLE INFORMATION

I. Purpose

This Instruction establishes the standards, guidelines, and processes for using Publicly Available Information, including publicly available social media platforms, for research, collection, analysis, retention, citing, reporting, and dissemination within the Office of Intelligence and Analysis (I&A).

II. Scope

This Instruction applies to all I&A personnel, including detailees and contractors.

III. References

A. The Antideficiency Act, 31 U.S.C §§ 1341-54.

B. The Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541, as amended.

C. Intelligence Community Directive 206, "Sourcing Requirements for Disseminated Analytic Products," October 17, 2007.

D. DHS Directive 110-01, "Privacy Policy For Operational Use of Social Media," June 8, 2012.

E. DHS Directive 4300A, "Sensitive Systems Handbook," July 24, 2012.

F. DHS Policy Directive 8310, "Request for Information (RFI)," February 21, 2007.

G. DHS Instruction 110-01-001, "Privacy Policy For Operational Use of Social Media," June 8, 2012.

H. Office of Management and Budget Memorandum, "Antideficiency Act Implications of Certain Online Terms of Service Agreements," April 4, 2013.

I. I&A Memorandum, "Interim Intelligence Oversight Procedures for the Office of Intelligence and Analysis," April 3, 2008 ("Intelligence Oversight Procedures").

IV. Definitions

A. ***Collection***: The gathering or receipt of information, regardless of source, by I&A, coupled with an affirmative act demonstrating intent to use or retain that information for intelligence purposes. Research is a form of collection.

B. ***Dissemination***: The transmission, communication, sharing or passing of an I&A Product to any federal, state, local, tribal, or territorial government, private sector entity, or any foreign government, foreign person, or international organization, including by e-mail, hard copy, posting to web sites, or any other method of distribution.

C. ***Homeland Security Standing Information Needs (HSEC SINs)***: Enduring all-threats and all-hazards information needs of DHS and its federal, state, local, tribal, territorial, and private sector stakeholders and other homeland security partners. HSEC SINs are gathered, integrated, and maintained by I&A and form the foundation for information collection activities within I&A.

D. ***I&A Products***: The physical manifestation, regardless of form or format, of analytic efforts conducted in furtherance of the I&A mission, which represent the analytic assessment, judgment, or other analytic input of I&A or intelligence personnel, and which are intended for Dissemination. Not included are the informal sharing* of raw or unevaluated information, analyst-to-analyst exchanges, products issued by Intelligence Watch and Warning that may contain limited analytic content, or the sharing of third party products.

E. ***Open Source***: Unclassified information that has been published or broadcast in some manner to the general public, could lawfully be seen or heard by a casual observer, is made available at a meeting open to the public, or is obtained by visiting any place or attending any event that is open to the public.

F. ***Open Source Information Report (OSIR)***: A raw report containing information that has been acquired as a result of Collection from a publicly available source, including but not limited to Open Source and Social Media, prior to any interpretation or analysis.

G. ***Publicly Available Information***: Unclassified information that has been published or broadcasted in some manner to the general public, is available to the public by subscription or purchase, could lawfully be seen or heard by a casual observer, is made available at a meeting open to the public, or is

* Informal sharing is distinct from formal Dissemination in that it does not result in a finished analytical product being made available broadly outside of the federal government through posting to web sites or distribution via e-mail.

obtained by visiting any place or attending any event that is open to the public. Open source information is a form of Publicly Available Information.

H. ***Request for Information (RFI)***: A validated expression of need for information. The informal, personal exchange of ideas or concepts by analysts, operators, or subject matter experts to further increase their personal understanding of an event, situation, or problem set are considered analytic exchanges and not RFIs.

I. ***Research***: The collection of information or intelligence by I&A personnel for the purpose of improving the understanding of a topic or subject of analytic interest.

J. ***Social Media***: The sphere of websites, applications, and web-based tools that connect users to engage in dialogue, share information and media, collaborate, and interact. Social Media takes many different forms, including but not limited to web-based communities and hosted services, social networking sites, video and photo sharing sites, wikis, blogs, virtual worlds, social bookmarking, and other emerging technologies.

V. Responsibilities

A. The ***Head of I&A Information Compliance/Intelligence Oversight Officer*** oversees and directs the execution of all functions performed by I&A Information Compliance, including with respect to the oversight of I&A's collection, retention, and dissemination of information or intelligence from publicly available sources, in order to ensure compliance with Intelligence Oversight Procedures and facilitate corrective action in the case of discrepancies or non-compliance.

B. The ***I&A Privacy Officer*** is the I&A official primary responsible for privacy compliance and policy, including with respect to the collection, retention, and dissemination of information or intelligence from publicly available sources, acting in coordination with the DHS Chief Privacy Officer and the Office of the General Counsel, Intelligence Law Division (OGC-ILD), and subject to the guidance and direction of I&A Information Compliance/Intelligence Oversight Officer.

C. The ***Intelligence Support and Integration Division Chief*** is responsible for all research-related activities conducted in accordance with this policy, including all such activities conducted by the I&A Supervisors of Open Source Reviewers.

D. The ***Head of I&A Collection Operations*** oversees and directs the execution of all functions performed by I&A Collection Operations, which includes

ensuring the content review of I&A Collection Operation's open source reporting and, in coordination and consultation with the I&A Intelligence Oversight Officer and OGC-ILD, establishing training requirements, including training in privacy, civil rights and civil liberties, intelligence oversight, applicable legal authorities, and operational security tradecraft and technology, for Open Source Officers and Open Source Specialists.

E. The ***Head of I&A Training***, in coordination and consultation with I&A Collection Operations, the I&A Intelligence Oversight Officer, OGC-ILD, and other relevant I&A officials, establishes training requirements, including training in privacy, civil rights and civil liberties, intelligence oversight, applicable legal authorities, and operational security tradecraft and technology, for Open Source Reviewers.

F. ***I&A Supervisors of Open Source Reviewers***:

1. Validate their respective I&A personnel's job-related duties prior to approving a request to become an Open Source Reviewer;

2. Confirm training requirements and compliance procedures are satisfied prior to approving a request to become an Open Source Reviewer;

3. Oversee and direct the execution of all functions and compliance procedures performed by their Open Source Reviewers; and

4. Maintain social media platform registration records and, as requested, provide such records to I&A Collection Operations for collection and operational de-confliction.

G. ***Open Source Officers (OSOs)***:

1. Collect and retain information or intelligence from publicly available sources, including publicly available social media platforms maintained and/or provided by non-Federal government entities, in response to established HSEC SINs, validated RFIs, and/or other validated intelligence requirements;

2. Disseminate information or intelligence collected from publicly available sources, including publicly available social media platforms maintained and/or provided by non-Federal government entities, via OSIRs or other appropriate reporting channels;

3. Coordinate the review of open source reporting, including OSIRs, by I&A Collection Operations with I&A Information Compliance, and, where appropriate, OGC-ILD; and

4. Directly oversee Open Source Specialists' collection, retention, and dissemination of information or intelligence from publicly available sources, including publicly available social media platforms maintained and/or provided by non-Federal government entities.

H. ***Open Source Specialists (OSSes)***:

1. Collect and retain information or intelligence from publicly available sources, including publicly available social media platforms maintained and/or provided by non-Federal government entities, in response to established HSEC SINs, validated RFIs, and/or other validated intelligence requirements; and

2. Disseminate information or intelligence collected from publicly available sources, including publicly available social media platforms maintained and/or provided by non-Federal government entities, via OSIRs or other appropriate reporting channels.

I. ***Open Source Reviewers (OSRs)*** review and conduct research from publicly available social media platforms maintained and/or provided by non-Federal government entities, and, when appropriate, refer those results to I&A Collection Operations for collection and reporting.

VI. Content and Procedures

A. ***Content***

1. *Consistency with Law and Policy*: All collection (including research), analysis, retention, reporting, and dissemination of information or intelligence derived from publicly available sources, including publicly available social media platforms, by I&A personnel is performed in accordance with the Constitution and all applicable statutes, executive orders, regulations, presidential and other directives, national and departmental policies, and international obligations.

2. *I&A Access to Publicly Available Information*: In furtherance of an authorized I&A activity, all I&A personnel are permitted to collect, retain, analyze, disseminate and cite information or intelligence in I&A Products from publicly available sources, except from publicly available social media platforms maintained and/or provided by non-Federal government entities.

   a. In furtherance of their professional I&A responsibilities, I&A personnel do not use personal accounts/registrations to access publicly available information, including information from publicly available social media platforms.

b. All sourcing and citing of publicly available information is performed in accordance with ICD 206, as applicable.

3. *I&A Access to Social Media Platforms Maintained by the Federal Government*: In furtherance of an authorized I&A activity, all I&A personnel use publicly available social media platforms and services maintained and/or provided by the Federal government to coordinate and collaborate with other Intelligence Community elements and Federal, State, local, tribal, territorial, private sector and other homeland security partners, as appropriate.

4. *I&A Access to Other Social Media Platforms*: In furtherance of an authorized I&A activity, OSOs, OSSes, and OSRs are permitted to access publicly available social media platforms maintained and/or provided by non-Federal government entities in accordance with the following requirements and restrictions:

   a. OSOs, OSSes, and OSRs, in coordination and consultation with the I&A Intelligence Oversight Officer and OGC-ILD, obtain user accounts with publicly available social media platforms maintained and/or provided by non-Federal government entities.

   b. OSOs, OSSes, and OSRs only register and/or create user accounts with publicly available social media platforms maintained and/or provided by non-Federal government entities that do not require human interaction during the registration or reviewing process.

   c. OSOs, OSSes, and OSRs do not engage any social media participants. Examples of engagement include, but are not limited to, "friending," interviewing, chatting, or posting. If engaged by any online user, OSOs, OSSes, and OSRs withdraw from the social media platform immediately.

   d. OSOs, OSSes, and OSRs record all their user accounts/registrations with publicly available social media platforms maintained and/or provided by non-Federal government entities, and, in accordance with Intelligence Community policies, standards, and guidelines, coordinate and de-conflict their social media accounts with other Intelligence Community elements or law enforcement community personnel.

5. *Terms of Service/User Agreements*: I&A personnel do not enter into agreements or arrangements (including terms of service or user agreements) with publicly available sources, including publicly available social media platforms, in a manner that is incompatible with Federal law, regulation, and/or policy, including the Anti-Deficiency Act. In the course of

registering or otherwise accepting access to publicly available sources, including publicly available social media platforms, I&A personnel do not agree or otherwise consent to terms of services or user agreements that contain unrestricted, open-ended indemnification provisions/clauses.

6. *Copyright Protected Materials*: I&A personnel reproduce copyrighted works and materials in accordance with Federal law, regulations, and policies, including the Copyright Act of 1974, as amended. I&A personnel direct all questions and concerns related to the Copyright Act of 1974, as amended, to OGC-ILD.

7. *Acquisitions and Procurement*: I&A personnel, after coordination with the I&A Chief Financial Officer, the I&A Intelligence Oversight Officer, and their respective Division Directors, procure or acquire fee-based services from publicly available sources. I&A personnel do not access "free trial offer" services from publicly available sources, unless approved by their Division Directors, after coordination and consultation with the I&A Chief Financial Officer, the I&A Intelligence Oversight Officer, and OGC-ILD.

B. ***Process***:

1. In furtherance of an authorized I&A activity, OSRs, OSOs, and OSSes access publicly available social media platforms maintained and/or provided by non-Federal government entities in accordance with the following framework:

   a. *OSRs*:

      i. I&A personnel submit formal written requests to become OSRs to their supervisors.

      ii. OSRs receive mandatory training in privacy, civil rights and civil liberties, intelligence oversight, applicable legal authorities, and operational security tradecraft and technology prior to being permitted to review and research information or intelligence from publicly available social media platforms maintained and/or provided by non-Federal government entities.

      iii. OSRs review and research information or intelligence determined to be mission-relevant from publicly available social media platforms maintained and/or provided by non-Federal government entities. OSRs may refer such information or intelligence to an OSO and/or OSSes for collection and reporting using established protocols and procedures, such as through RFIs. Once the referral/RFI is validated and the information or intelligence is reported and disseminated by an OSO or OSS, the OSR is

permitted to use the reported information or intelligence for formal analysis and/or intelligence production.

1. OSRs are permitted to conduct research from publicly available social media platforms maintained and/or provided by non-Federal government entities only within the scope of an established HSEC SIN.

2. Information or intelligence obtained through research from publicly available social media platforms maintained and/or provided by non-Federal government entities may not be used in intelligence products or for intelligence production absent formal collection and reporting, as appropriate.

b. *OSOs and OSSes*:

i. OSOs and OSSes are authorized to collect, retain, report and disseminate information or intelligence from publicly available social media platforms maintained and/or provided by non-Federal government entities.

ii. OSOs and OSSes receive mandatory training established by I&A Collection Operations in privacy, civil rights and civil liberties, intelligence oversight, applicable legal authorities, and operational security tradecraft and technology prior to being permitted to review information or intelligence from publicly available social media platforms maintained by non-Federal government entities.

2. For guidance on the use of publicly available information for non-intelligence purposes, I&A personnel refer to established policies, procedures, and guidelines, such as those in DHS 4300A, Sensitive Systems Handbook.

VII. Questions

Questions or concerns regarding this policy should be addressed to the Plans, Policy, and Management Division.

Francis X. Taylor
Under Secretary for Intelligence and Analysis

1/13/15
Date

Department of Homeland Security
Office of Intelligence and Analysis
Instruction: IA-1000
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OFFICE OF INTELLIGENCE AND ANALYSIS INTELLIGENCE OVERSIGHT PROGRAM AND GUIDELINES

I. Purpose

This Instruction establishes the Intelligence Oversight Program for the Office of Intelligence and Analysis (I&A) and implements the Intelligence Oversight Guidelines, as required by Executive Order 12333, "United States Intelligence Activities," as amended July 30, 2008, for the collection, retention, and dissemination of information concerning United States Persons.

II. Scope

This Instruction applies to all I&A employees, including detailees or other Government personnel acting for I&A, and contractors supporting I&A (hereafter "I&A personnel"). It supersedes the memorandum, "Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis," April 3, 2008.

III. References

A. Title 50, United States Code (U.S.C.), Section 3091, "General congressional oversight provisions."

B. Title 50, United States Code (U.S.C.), Section 3092, "Reporting of intelligence activities other than covert actions."

C. Executive Order 12333, "United States Intelligence Activities," as amended July 30, 2008.

D. Executive Order 13462, "President's Intelligence Advisory Board and Intelligence Oversight Board," as amended November 2, 2009.

E. DHS Delegation 08503, "Delegation to the Under Secretary for Intelligence and Analysis/Chief Intelligence Officer," August 10, 2012.

F. DHS Directive 252-01, "Organization of the Department of Homeland Security," March 31, 2009.

G. Department of Homeland Security Designation, "Designation of the Office of the General Counsel to Submit Reports to the President's Intelligence Oversight Board in Accordance with Executive Order 13462," August 25, 2015.

H. Memorandum from Charles E. Allen, Under Secretary for Intelligence and Analysis, and Matthew L. Kronisch, Associate General Counsel (Intelligence), "Interim Intelligence Oversight Procedures for the Office of Intelligence & Analysis," April 3, 2008.

I. Newly signed IO Guidelines, January 4, 2017 (Secretary Jeh Johnson), and January 11, 2017 (Attorney General Loretta E. Lynch).

J. Intelligence Community Directive 102, "Process for Developing Interpretive Principles and Proposing Amendments to Attorney General Guidelines Governing the Collection, Retention, and Dissemination of Information Regarding U.S. Persons," November 19, 2007.

K. Intelligence Community Directive 107, "Civil Liberties and Privacy," August 31, 2012.

L. Intelligence Community Directive 112, "Congressional Notification," November 16, 2011.

M. Memorandum from James R. Clapper, Director of National Intelligence, "Intelligence Community Reporting of Matters to the Intelligence Oversight Board," April 25, 2012.

N. Memorandum from James R. Clapper, Director of National Intelligence, "Guidelines on Reporting Violations of Law or Executive Order," September 5, 2015.

O. Memorandum from Neal S. Wolin, Chairman, Intelligence Oversight Board, "Intelligence Oversight Board's Concept of Operations," June 2, 2015.

P. Memorandum of Understanding: Reporting of Information Concerning Federal Crimes, August 22, 1995.

IV. Definitions

A. ***Questionable Activity***: Any conduct related to an intelligence activity reasonably believed to constitute a violation of any applicable law, executive order, presidential or other directive, regulation, international or domestic agreement or arrangement, or applicable national or

departmental policy, including, but not limited to, the requirements of this Instruction with respect to I&A personnel.

B. ***Intelligence Activities***: All activities that elements of the Intelligence Community are authorized to conduct pursuant to Executive Order 12333, "United States Intelligence Activities," as amended July 30, 2008.

V. Responsibilities

A. The ***Under Secretary for Intelligence and Analysis (USIA)***, as the Head of I&A, either directly or through designated personnel:

1. Ensures that I&A personnel conduct their activities in a manner that protects privacy, civil rights, and civil liberties; and complies with the requirements of Executive Order 12333 and this Instruction.

2. Designates a senior staff member to serve as the I&A Intelligence Oversight Officer in accordance with ICD 107, "Civil Liberties and Privacy."

3. Coordinates with the Inspector General, the Associate General Counsel for Intelligence, the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties, and the Intelligence Oversight Officer, as appropriate, on privacy, civil rights, and civil liberties matters relating to activities conducted by I&A personnel, and ensures that those officials and any staff reporting to those officials have access to any intelligence or information they deem necessary to perform their official duties; and

4. Complies with the requirements for training, investigation, and reporting set forth in the Office of Intelligence and Analysis Intelligence Oversight Program ("I&A Intelligence Oversight Program") (See Appendix A).

B. The ***Intelligence Oversight Officer***:

1. Is responsible for matters involving the protection of civil liberties and privacy as they relate to activities conducted by I&A personnel, including by ensuring that the activities of I&A personnel comply with this Instruction;

2. Complies with the requirements for training, investigation, and reporting set forth in the I&A Intelligence Oversight Program; and

3. Executes and implements this Instruction.

C. All ***I&A personnel*** comply with the requirements of this Instruction.

VI. Content and Procedures

A. ***Conduct of Intelligence Activities***: I&A personnel are expected to maintain a high standard of professional and personal conduct, and are authorized to conduct intelligence activities only in accordance with the U.S. Constitution, Executive Order 12333, other applicable law, and the Department of Homeland Security Office of Intelligence and Analysis Intelligence Oversight Guidelines ("I&A Intelligence Oversight Guidelines") (See Appendix B).

B. ***U.S. Persons Guidelines***: Executive Order 12333 requires that I&A may collect, retain, and disseminate information about U.S. Persons, and use certain information-gathering techniques, only in accordance with procedures established by the head of the Intelligence Community element concerned or by the head of a department containing such element, and approved by the Attorney General. The I&A Intelligence Oversight Guidelines, established by the DHS Secretary and approved by the Attorney General satisfy this requirement.

C. ***Training***: I&A personnel are required to attend training on the I&A Intelligence Oversight Guidelines in accordance with the I&A Intelligence Oversight Program.

D. ***Reporting***: I&A personnel shall report all intelligence activities that may violate the laws of the United States, applicable directives and policy, or this Instruction, in accordance with the I&A Intelligence Oversight Program.

VII. Questions

Questions or concerns regarding this Instruction should be addressed to the Intelligence Oversight Officer.

Appendix A: DHS/I&A Intelligence Oversight Program
Appendix B: DHS/I&A Intelligence Oversight Guidelines

Francis X. Taylor
Under Secretary for Intelligence and Analysis

Jan 19, 2017
Date

APPENDIX A
OFFICE OF INTELLIGENCE AND ANALYSIS INTELLIGENCE OVERSIGHT PROGRAM

I. Purpose

This Appendix sets forth the Intelligence Oversight Program for the Office of Intelligence and Analysis (I&A).

II. Responsibilities

A. The ***Under Secretary for Intelligence and Analysis (USIA)***, as the Head of I&A, either directly or through designated personnel:

1. Reports through the Associate General Counsel for Intelligence to the Attorney General possible violations of Federal criminal laws by I&A personnel and of specified Federal criminal laws by any other person in a manner consistent with the protection of intelligence sources and methods;

2. Reports through the Associate General Counsel for Intelligence to the Intelligence Oversight Board, consistent with Executive Order 13462, "President's Intelligence Advisory Board and Intelligence Oversight Board," as amended November 2, 2009, and providing copies of all such reports to the Director of National Intelligence, concerning any intelligence activities of I&A that the USIA has reason to believe may be unlawful or contrary to executive order or presidential directive;

3. Reports through the Office of Legislative Affairs to the intelligence committees of the Congress, among other things:

   a. Any intelligence activities of I&A that the USIA believes to be a violation of United States law, including any corrective action take or planned in connection with such activity;

   b. Any significant misconduct by an I&A employee or contractor supporting I&A that is likely to seriously affect intelligence activities or is otherwise of congressional concern, and

   c. Any other serious violations of United States criminal law by an I&A employee or contractor supporting I&A which, in the discretion of the USIA, warrants congressional notification;

4. Coordinates with the Inspector General, the Associate General Counsel for Intelligence, the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties, and the Intelligence Oversight Officer, as appropriate, on privacy, civil rights, and civil liberties matters relating to activities conducted by I&A personnel;

5. Ensures that the Inspector General, the Associate General Counsel for Intelligence, the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties, and the Intelligence Oversight Officer, and any staff reporting to those officials, have access to any intelligence or information they deem necessary to perform their official duties;

6. Affords any aggrieved individual the opportunity for complaint, investigation, and redress of alleged violations of privacy, civil rights, or civil liberties regarding I&A's activities; and

7. Ensures that I&A personnel are properly trained in and comply with the requirements of Executive Order 12333, "United States Intelligence Activities," as amended July 30, 2008, and this Instruction.

B. The ***Intelligence Oversight Officer***:

1. Develops and conducts training on the I&A Intelligence Oversight Guidelines;

2. Conducts, in coordination with the Associate General Counsel for Intelligence, as appropriate, preliminary inquiries concerning questionable activities;

3. Immediately reports the initiation of preliminary inquiries concerning known or suspected violations of Federal criminal law to the Associate General Counsel for Intelligence;

4. Reports the results of preliminary inquiries concerning all questionable activities to the USIA and the Associate General Counsel for Intelligence for referral, as appropriate, to the Inspector General, the Chief Security Officer, the President's Intelligence Oversight Board, and the Congress;

5. To the extent appropriate in light of their respective departmental responsibilities, reports the results of preliminary inquiries to the Assistant Secretary for Policy, the Chief Privacy Officer, and the Officer for Civil Rights and Civil Liberties;

6. Informs the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties of any departures by the USIA from the Department of Homeland

Security I&A Intelligence Oversight Guidelines ("I&A Intelligence Oversight Guidelines") (See Appendix), as appropriate; and

C. All ***I&A personnel*** comply with the requirements of this Instruction.

III. Content and Procedures

A. ***Training***: I&A personnel are required to attend training on the I&A Intelligence Oversight Guidelines within thirty days of commencing employment at I&A and at least once per calendar year thereafter.

B. ***Compliance Reviews***: The Intelligence Oversight Officer conducts periodic reviews to verify compliance with the I&A Intelligence Oversight Guidelines. These compliance reviews include, but are not limited to, unannounced reviews (i.e., "spot checks"), reviews of audit logs, records reviews, and employee and contractor interviews. I&A personnel are required to support any compliance reviews and evaluations to the maximum extent possible.

C. ***Reporting Requirement***: To ensure the integrity of the intelligence profession, I&A personnel who become aware of an actual or potential violation of Federal criminal law or questionable activity are required to report the matter to the Intelligence Oversight Officer or the Associate General Counsel for Intelligence immediately.

D. ***Prohibition on Retaliation***: I&A personnel are prohibited from subjecting other individuals who have reported a violation of Federal criminal law or other questionable activity to any adverse action or other form of personnel action as a reprisal based upon the reporting of the questionable activity.

E. ***Access to Information***: The Intelligence Oversight Officer and the Associate General Counsel for Intelligence are authorized to have access to any information or intelligence necessary to perform their duties described herein.

F. ***Preliminary Inquiry***: Upon notification of any potential violation of Federal criminal law or questionable activity, the Intelligence Oversight Officer, in consultation with the Associate General Counsel for Intelligence, commences a preliminary inquiry.

1. If, during the inquiry, the Intelligence Oversight Officer determines there is reason to suspect a violation of Federal criminal law, he or she immediately provides notice to the Associate General Counsel for Intelligence for referral, as appropriate, to the Inspector General, the Chief Security Officer, the Attorney General, and/or the Congress.

a. Upon provision of notice of a suspected violation of Federal criminal law, the Intelligence Oversight Officer suspends the preliminary inquiry except to the extent that the Associate General Counsel for Intelligence requests his or her assistance.

b. Any actions taken by the Intelligence Oversight Officer concerning a suspected violation of Federal criminal law are undertaken subject to the guidance and direction of the Associate General Counsel for Intelligence.

2. Notice of any preliminary inquiry into a questionable activity is provided to the USIA and the Associate General Counsel for Intelligence for referral, as appropriate, to the Inspector General and Chief Security Officer within five business days of initiation of the inquiry unless the inquiry gives rise to a reasonable belief that the questionable activity constitutes a violation of Federal criminal law, in which case such notice is provided immediately.

3. Notice of any preliminary inquiry giving rise to a reasonable belief that an individual has engaged in an intelligence activity that violates an international obligation, arrangement, or agreement applicable to the Department is also provided to the Assistant Secretary for Policy no later than two working days from the date on which the reasonable belief is formed.

4. Notice of any preliminary inquiry giving rise to a reasonable belief that an individual has engaged in an intelligence activity that violates national or departmental policy concerning privacy or civil rights or civil liberties is provided to the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties, and the Associate General Counsel for Intelligence no later than two working days from the date on which the belief is formed.

G. ***Facilitation of External Reporting***: The Intelligence Oversight Officer facilitates the reporting of questionable activities to appropriate external entities as set forth below.

1. **Violations of Federal Criminal Law**: The Intelligence Oversight Officer reports possible violations of Federal criminal law to the Associate General Counsel for Intelligence for reporting in accordance with the processes and procedures established in the Memorandum of Understanding: Reporting of Information Concerning Federal Crimes, August 22, 1995, or any successor agreement.

2. **Intelligence Oversight Violations**: The Intelligence Oversight Officer reports intelligence activities that are unlawful or contrary to executive order or presidential directive to the Associate General Counsel for

Intelligence for referral to the Intelligence Oversight Board and the Director of National Intelligence.

a. Significant or highly sensitive matters are reported immediately to the Associate General Counsel for Intelligence for expedited referral to the Intelligence Oversight Board and the Director of National Intelligence.

b. All other I&A intelligence activities that are unlawful or contrary to executive or presidential directive are reported to the Associate General Counsel for Intelligence in a timely manner to facilitate quarterly reporting to the Intelligence Oversight Board and the Director of National Intelligence.

Department of Homeland Security
Office of Intelligence and Analysis
Intelligence Oversight Guidelines

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INTRODUCTION

The Department of Homeland Security Office of Intelligence and Analysis (I&A) is committed to delivering timely, actionable, predictive intelligence to its Federal, State, local, tribal, territorial, international, and private sector partners in support of the Department's national and homeland security missions. At the same time, these activities must be conducted in a manner that is consistent with all applicable requirements of the law, including the Constitution, and that appropriately protects individuals' privacy, civil rights, and civil liberties. Executive Order No. 12,333, updated most recently on July 30, 2008, requires all *Intelligence Community* elements, including I&A, to develop guidelines governing the *collection*, *retention*, and *dissemination* of information concerning *United States Persons* that are approved by the Attorney General after consultation with the Director of National Intelligence.* Separate provisions of the executive order require guidelines for other *intelligence activities* that also must be approved by the Attorney General.

The guidelines set forth below fulfill these requirements. They have been approved by the Attorney General after consultation with the Director of National Intelligence. Although many of the provisions of Executive Order No. 12,333 only apply to *United States Persons Information (USPI)*, as a matter of policy, DHS extends some of the guidelines' protections to all persons. The guidelines supersede the Memorandum from Charles E. Allen, Under Secretary for Intelligence and Analysis, and Matthew L. Kronisch, Associate General Counsel (Intelligence), Interim Intelligence Oversight Guidelines for the Office of Intelligence & Analysis (Apr. 3, 2008).

The guidelines are divided into five parts. Part One sets forth general provisions applicable to all I&A employees (including detailees or other Government personnel acting for I&A) and contractors supporting I&A (hereinafter "*I&A personnel*") in the conduct of their intelligence activities. Part Two establishes standard guidelines for the collection, retention, and dissemination of intelligence and information for intelligence purposes, while Part Three delineates separate, special guidelines for *bulk data transfers* containing USPI. Part Four concerns certain other activities conducted by I&A personnel, and Part Five contains miscellaneous provisions regarding the guidelines. A glossary of defined terms is attached to the document.

These guidelines ensure that I&A executes its vital mission to protect the Homeland without compromising the values essential to our national identity as a free people. They apply to all

* Defined terms are *italicized* when first used.

I&A personnel when engaging in intelligence activities on behalf of I&A. It is the responsibility of all I&A personnel to follow them.

1. GENERAL PROVISIONS

The guidelines set forth below apply to all I&A personnel engaging in any activity for an intelligence purpose, including, but not limited to, the collection, retention, and dissemination of intelligence and information. An activity is for an intelligence purpose where it is intended to inform the tactical, operational, or strategic decision making by national or departmental officials for national security, homeland security, border security, or law enforcement purposes. The guidelines do not apply to I&A personnel acquiring, maintaining, reviewing, or transferring intelligence or information for non-intelligence purposes, such as administrative purposes (e.g., information about systems administration, the performance of contractors, public affairs, correspondence files, personnel and training records, or training materials); internal or external oversight of I&A activities; crimes reporting not constituting a dissemination as authorized under section 2.3; or the retention, processing, or disclosure of information to members of the public pursuant to requests made under Title 5, United States Code, Section 552, "Freedom of Information Act," or Title 5, United States Code, Section 552a, "Privacy Act of 1974," or pursuant to civil or criminal discovery requests.

I&A personnel must abide by all applicable provisions and observe all applicable requirements and restrictions imposed by the Constitution, the provisions of Executive Order No. 12,333, the laws of the United States, applicable directives, and these guidelines. I&A personnel are prohibited under all circumstances from requesting any other person to engage in any conduct forbidden by these authorities. I&A personnel are prohibited under all circumstances from engaging in any intelligence activities, including the dissemination of information to the White House, for the purpose of affecting the political process in the United States, for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States, or for the purpose of retaliating against a whistleblower or suppressing or burdening criticism or dissent. Further, as a matter of internal DHS policy, I&A personnel are not permitted to engage in intelligence activities based solely on an individual's or group's race, ethnicity, gender, religion, sexual orientation, gender identity, country of birth, or nationality. The use of these characteristics, in combination with other information, is permitted, where such use (1) is intended and reasonably believed to support one or more of the national or departmental missions described below in Section 1.1 and (2) is narrowly focused in support of that mission (or those missions). This does not otherwise limit the

authorized collection, retention, or dissemination of biographic information of specific individuals.

1.1. AUTHORIZED INTELLIGENCE MISSIONS

I&A personnel are authorized to engage in intelligence activities where they have a *reasonable belief* that the activity supports one or more of the national or departmental missions listed below. These missions reflect I&A's range of authorities and responsibilities as an element of the Intelligence Community and a component of the Department of Homeland Security, and are not exclusive of one another—I&A activities can be in furtherance of both national and departmental missions simultaneously.

1.1.1. National Missions

The intelligence activities of I&A personnel further a national mission where they assist the President or other executive branch officials performing executive functions in the development and conduct of foreign, defense, and economic policies or the protection of the United States national interests from foreign security threats, or, as appropriate, where they assist the Congress of the United States. Examples of foreign security threats include, but are not limited to, the following:

a. *International terrorism* threats;

b. The proliferation of weapons of mass destruction;

c. Intelligence activities directed against the United States;

d. International criminal drug activities; and

e. Other hostile activities directed against the United States by *foreign powers*, organizations, persons, and their agents.

1.1.2. Departmental Missions

The intelligence activities of I&A personnel further a departmental mission where they assist the Department, other departments and agencies of the Federal Government, State and local government agencies and authorities, the private sector, or other entities in identifying protective and support measures regarding threats to homeland security, including, but not limited to:

a. *Domestic terrorism* threats;

b. Threats to *critical infrastructure* and *key resources*;

c. Significant threats to the Nation's economic security, public health, or public safety, including, but not limited to, local manifestations of national threats (e.g., local outbreaks of diseases reasonably likely to pose the risk of becoming a national pandemic);

d. *Major disasters* and other catastrophic acts; and

e. Any other threat of such severity and magnitude that effective response would be beyond the capabilities of any affected State and local governments, such that Federal assistance would be necessary.

In addition, the intelligence activities of I&A personnel further a departmental mission where they support the Secretary, the Deputy Secretary, the DHS Chief of Staff, or their respective staff, Component Heads, or any other departmental officials, offices, or elements in the execution of their lawful missions.

1.2. GENERAL PROTECTIONS FOR UNITED STATES PERSONS INFORMATION

I&A personnel must take reasonable steps to determine whether intelligence or information contains USPI at the point at which the intelligence or information is first obtained by I&A. A person within the United States is presumed to be a United States Person unless specific information to the contrary is obtained. A person outside the United States or whose location is unknown is presumed not to be a United States Person unless specific information to the contrary is obtained.

With respect to USPI, I&A personnel will only *access* and/or use USPI when they have appropriate security clearances, accesses, and a mission requirement (consistent with the missions set forth above at Section 1.1). Further, when retrieving information electronically, I&A personnel will tailor their queries or other techniques to the extent practicable to minimize the amount of USPI returned that is irrelevant to fulfilling the purpose of the query. To facilitate compliance with these requirements, I&A will:

a. Take reasonable steps to audit access to information systems containing USPI and periodically audit queries or other search terms to assess compliance with these guidelines;

b. As practicable, establish written procedures to document the basis for conducting a query of unevaluated information that is intended to reveal USPI;

c. Take reasonable steps when developing and deploying information technology systems containing USPI to ensure effective auditing and reporting as required by these guidelines;

d. Establish documented procedures for retaining USPI and recording the reason for retaining such information and the authority approving the retention;

e. Regularly train I&A personnel who access or use USPI on the civil rights, civil liberties, and privacy protections that apply to such information; and

f. Periodically evaluate the adequacy of the temporary retention periods established for evaluating USPI in Sections 2.2.1 and 3.2.

1.3. REQUIRED CONSULTATION

I&A personnel must consult with the Office of the General Counsel/Intelligence Law Division prior to engaging in any intelligence activity under the following circumstances:

a. Where the activity contemplated represents a new or significantly revised I&A intelligence initiative;

b. Where there is any reason to believe that the activity contemplated does not fall within the scope of one or more of the national and departmental missions described above in Section 1.1;

c. Before tasking a person or organization outside the Intelligence Community or asking such a person or organization to collect intelligence or information on behalf of I&A; or

d. Before making a request for assistance from another entity pursuant to Section 4.3 below.

2. GUIDELINES FOR COLLECTION, RETENTION, AND DISSEMINATION

This Part establishes the standard guidelines governing the collection, retention, and dissemination of intelligence and information. It does not apply to bulk data transfers, which are subject to the special guidelines set forth in Part Three. At all times, I&A personnel must have a reasonable belief that any intelligence activity they engage in furthers one or more of the national or departmental missions described above in Section 1.1 for the activity to be authorized.

2.1. COLLECTION

I&A personnel may access intelligence or information where they have a reasonable belief that viewing the intelligence or information would further one or more of the national or departmental missions described above in Section 1.1. To proceed from access to collection of the intelligence or information, I&A personnel must also satisfy the requirements and abide by the restrictions described below. There are three categories of these requirements and restrictions: (a) those pertaining to the method of collection (i.e., the requirement that collection be overt or through publicly available sources); (b) those pertaining to collection techniques (e.g., the requirement that collection be made through the least intrusive collection techniques feasible); and (c) those pertaining to the collection of USPI. I&A personnel must satisfy all three categories of requirements and restrictions for collection to be authorized.

2.1.1. Collection Method (Overtly or through Publicly Available Sources)

In accordance with Section 1.7 of Executive Order 12,333, I&A personnel are only authorized to (1) use *overt collection* methods or (2) to collect information from publicly available sources.

2.1.2. Collection Techniques (Least Intrusive Means)

I&A personnel are required to use the least intrusive collection techniques feasible and sufficient when collecting USPI or when collecting intelligence or information within the United States. The collection of such intelligence or information from publicly available sources or with the *consent* of the subject of the intelligence or information is generally less intrusive than collection from a cooperating source. I&A personnel are required to consult with the Office of the General Counsel/Intelligence Law Division prior to taking or refraining from taking any action based upon implied consent to ensure that adequate notice has been provided to the individual consenting to collection.

I&A personnel are permitted to engage in *physical surveillance*, the use of *mail covers*, and the use of monitoring devices only to the extent permitted by and consistent with Sections 2.1.2.2–2.1.2.3 below. I&A personnel are not permitted to engage in *electronic surveillance* or unconsented physical searches. Use of these techniques within the United States will be coordinated with the Federal Bureau of Investigation, consistent with Executive Order No. 12,333 or applicable law or memorandum of understanding.

2.1.2.1. Physical Surveillance

I&A personnel are permitted to engage in physical surveillance of former or current I&A personnel or applicants to I&A for *counterintelligence* purposes subject to the following requirements:

a. Any physical surveillance must be approved in writing by the Under Secretary for Intelligence and Analysis (or his or her designee) in consultation with the Office of the General Counsel/Intelligence Law Division;

b. The surveillance must be performed consistent with standard operating procedures issued by the Under Secretary for Intelligence and Analysis after review by (a) the Office of the General Counsel/Intelligence Law Division to ensure that the procedures are consistent with any applicable legal requirements, (b) the Intelligence Oversight Officer to ensure that the procedures are consistent with these guidelines, and (c) the DHS Privacy Office and DHS Office for Civil Rights and Civil Liberties to ensure that the procedures appropriately protect individuals' privacy, civil rights, and civil liberties. These procedures will identify the standard that the Under Secretary for Intelligence and Analysis will use to approve requests for physical surveillance;

c. On a DHS facility, any such surveillance must comport with the requirements for overt collection, and such surveillance is prohibited in circumstances where the target of the surveillance has a reasonable expectation of privacy;

d. While approvals may be renewed, no single approval shall be for a period in excess of 72 hours; and

e. I&A personnel are not authorized to conduct physical surveillance outside of DHS facilities, but may seek the assistance of a DHS law enforcement component, or an element of the Intelligence Community explicitly authorized to conduct counterintelligence activities pursuant to Executive Order No. 12,333, as

appropriate, to conduct physical surveillance outside of DHS facilities consistent with the assisting organization's authorities.

2.1.2.2. Mail Covers

I&A personnel may request mail covers for mail that is within the possession of the Department of Homeland Security. For all other mail, I&A personnel may seek the assistance of a DHS law enforcement component or the Federal Bureau of Investigation, as appropriate, in requesting that the United States Postal Service perform a mail cover to the extent permitted by and consistent with 39 C.F.R. § 233.3 (2016) (or any succeeding regulation or equivalent authority). Any mail cover must be for counterintelligence purposes and requires the approval of the Office of the General Counsel/Intelligence Law Division. I&A personnel are not otherwise permitted to engage in mail searches.

2.1.2.3. Use of Monitoring Devices

I&A personnel are permitted to use monitoring devices only for counterintelligence purposes and subject to the following requirements and restrictions.

The use of monitoring devices, excluding *concealed monitoring* devices, within the United States or directed at United States Persons is permitted only where (1) the Under Secretary for Intelligence and Analysis (or his or her designee) has determined that the monitoring is necessary to the conduct of an authorized counterintelligence function and (2) the Office of the General Counsel/Intelligence Law Division has determined that the monitoring would occur under conditions where the targets of the monitoring would have no reasonable expectation of privacy, the monitoring does not require trespass, the monitoring does not constitute electronic surveillance, and the monitoring involves either overt collection or the collection of *publicly available information*.

The use of concealed monitoring devices by I&A personnel is not authorized. I&A personnel may seek the assistance of a DHS law enforcement component or the Federal Bureau of Investigation, as appropriate, in requesting the use of concealed monitoring devices consistent with the assisting organization's authorities. Any such request requires the approval of the Office of the General Counsel/Intelligence Law Division.

2.1.3. Collection of USPI

In addition to the requirements and restrictions on collection listed above, I&A personnel are subject to additional requirements and restrictions concerning the collection of USPI. These rules vary for intentional collection of USPI, *incidental collection of USPI*, and USPI that

is volunteered to I&A. Any collection within the United States will be coordinated with the Federal Bureau of Investigation consistent with Executive Order No. 12,333 or applicable law or memorandum of understanding. Any collection outside the United States will be coordinated with the Central Intelligence Agency, as appropriate.

2.1.3.1. Intentional Collection of USPI

I&A personnel may intentionally collect USPI where they have a reasonable belief that the collection activity furthers one or more of the national or departmental missions listed above in Section 1.1 and will result in the acquisition of USPI that falls within one or more of the standard or supplemental information categories described below in Section 2.2.3.

2.1.3.2. Incidental Collection of USPI

I&A personnel may incidentally collect USPI that could not be intentionally collected where the following requirements are satisfied:

a) Collecting information about the target of the collection is consistent with all applicable requirements of law and policy, including these guidelines;

b) The incidentally acquired information is not itself deliberately sought; and

c) It would create an unreasonable burden to collect the information about the target without collecting the additional, non-targeted information.

2.1.3.3. Volunteered USPI

I&A personnel may collect volunteered USPI that could not be intentionally or incidentally collected where (a) the USPI is not received through the action or at the behest of I&A personnel and (b) there is no mutual expectation between I&A and the provider of the USPI, whether explicit or inferred based upon past practice, that such information is to be provided on a regular or recurring basis.

2.2. RETENTION

The retention of intelligence or information, whether collected or otherwise obtained by I&A, is permitted only to the extent there is a reasonable belief that retention furthers one or more of the national or departmental missions listed above in Section 1.1 and the USPI falls within one of two categories: (a) retention for evaluation or (b) permanent retention. Retention in either of these categories is subject to requirements and restrictions, as set forth below.

2.2.1. Retention for Evaluation

As an initial matter, I&A personnel may temporarily retain USPI for the limited purpose of evaluating whether the USPI qualifies for permanent retention by I&A. The evaluation period cannot exceed 180 days from the date on which the USPI is collected unless the USPI is not initially believed to be USPI, in which case the evaluation period commences from the date on which the USPI is known or reasonably should have been known to constitute USPI. I&A personnel must delete all USPI that does not qualify for permanent retention pursuant to Section 2.2.2 below once the evaluation period expires or when it is conclusively determined that the USPI does not qualify for permanent retention by I&A, whichever occurs first. This section does not apply to bulk data transfers, which are subject to the special guidelines set forth in Part Three.

These requirements notwithstanding, I&A personnel may temporarily retain USPI for further evaluation for additional 180-day increments—but in any event no longer than five years total—where (a) the Under Secretary for Intelligence and Analysis determines that there is a significant likelihood based upon the content of the USPI and/or the circumstances under which it was encountered that further evaluation will result in the identification of intelligence or information that qualifies for permanent retention pursuant to Section 2.2.2 below, (b) the Office of the General Counsel/Intelligence Law Division is afforded an opportunity to consider in a timely manner whether further retention would violate any applicable legal requirements, (c) the Intelligence Oversight Officer is afforded an opportunity to consider in a timely manner whether further retention would be consistent with these guidelines, and (d) the DHS Privacy Office and the DHS Office for Civil Rights and Civil Liberties are afforded an opportunity to consider in a timely manner whether the technical and policy safeguards under which the USPI would be retained are sufficient to appropriately protect the privacy, civil rights, and civil liberties of the United States Persons whose information is subject to evaluation.

2.2.2. Permanent Retention

I&A personnel may permanently retain USPI where the USPI furthers one or more of the national or departmental missions listed above in Section 1.1 and falls within one or more of the standard or supplemental information categories set forth in Section 2.2.3. I&A personnel must record or denote the authorized national or departmental mission or missions (of those listed above in Section 1.1) that would be furthered by permanent retention and the standard or supplemental information category or categories of information (of those listed in Section 2.2.3) that permit the permanent retention of the USPI. Further, I&A personnel must identify and mark files reasonably believed to contain

USPI and, to the greatest extent possible, mark specific files and documents containing USPI in accordance with standards promulgated by the Director of National Intelligence regardless of the format or location of the USPI or the method for storing such USPI. Where I&A personnel conclude that permanently retained USPI no longer satisfies the requirements for permanent retention set forth above, they will delete all forms of that USPI regardless of format or location.

2.2.3. Information Categories

Standard information categories support I&A's national missions under Section 1.1.1, while supplemental information categories support I&A's departmental missions under Section 1.1.2; like I&A's missions, these standard and supplemental information categories are not exclusive of one another.

I&A personnel may collect and retain USPI that falls within one or more of the following standard or supplemental information categories so long as that collection or retention comports with all other applicable provisions of these Guidelines.

2.2.3.1. Standard Information Categories

a. Consent: The USPI of a United States Person who has consented to collection of the information.

b. Publicly Available: The USPI is publicly available.

c. Foreign Intelligence: The USPI is reasonably believed to constitute *foreign intelligence* where the USPI falls within one or more of the subcategories listed below.

   i. Foreign Intelligence (International Terrorism): The USPI is reasonably believed to relate to the existence, organization, capabilities, plans, intentions, means of finance or material support, or activities of groups or individuals involved in international terrorism; to threats posed by such groups or individuals to the United States, United States Persons, or United States interests, or to those of other nations; or to communications between such groups and other individuals reasonably believed to be assisting or associating with them to such a degree that collection of USPI concerning such associates would assist in understanding international terrorism.

ii. Foreign Intelligence (International Narcotics Activities): The USPI is reasonably believed to relate to activities outside the United States involving the production, transfer, or distribution of significant quantities of narcotics or other controlled substances in violation of Federal law, or activities within the United States that are directly connected to such activities.

iii. Foreign Intelligence (Other): The USPI is reasonably believed to constitute foreign intelligence even if that foreign intelligence does not pertain to international terrorism or international narcotics activities as described above under the following circumstances:

1. Where the USPI concerns an individual reasonably believed to be an officer or employee, or otherwise acting for or on behalf of, a foreign power;

2. Where the USPI concerns an organization or group reasonably believed to be owned or controlled, directly or indirectly, by a foreign power;

3. Where the USPI concerns a corporation or other commercial organization reasonably believed to be acting for or on behalf of a foreign power, organization, or person engaged in clandestine intelligence activities, sabotage, assassinations, or international terrorist activities;

4. Where the USPI concerns an individual, organization, or group reasonably believed to be engaged in or preparing for—on behalf of a foreign power—attacks on or intrusions into DHS information systems, any DHS contractors' information systems that impact DHS personnel, property, or missions, or Federal Government national security systems; or

5. Where the USPI concerns an individual reasonably believed to be a prisoner of war, missing in action, or (other than with respect to members of the Armed Forces) engaged or involved in an armed conflict or hostilities abroad, or who is the target, hostage, or victim of an international terrorist organization.

d. Counterintelligence: The USPI is reasonably believed to relate to an individual, organization, or group reasonably believed to be engaged in or preparing for

espionage, other intelligence activities, sabotage, or assassination on behalf of a foreign power, organization, or person, or the USPI is reasonably believed to relate to a United States Person in contact with such an individual, organization, or group, but only for the purpose of identifying that United States Person and assessing any relationship between the United States Person and such individual, organization, or group.

e. Investigative Information: The USPI is reasonably believed to have been acquired in the course of a lawful foreign intelligence, counterintelligence, international drug trafficking, or international terrorism investigation.

f. Threats to Safety: The USPI is reasonably believed to be necessary to protect against a clear, imminent threat to the safety of any person or organization, including those who are targets, victims, or hostages of international terrorist organizations.

g. Protection of Intelligence Sources and Methods: The USPI is reasonably believed to concern individuals who have access to, had access to, or are otherwise in possession of information that reveals foreign intelligence or counterintelligence sources or methods or activities, provided that such USPI is reasonably believed to be necessary to protect against the unauthorized disclosure of such information, and provided that, within the United States, I&A personnel are required to limit the collection of USPI to persons who are (i) present or former employees of I&A, (ii) present or former contractors of I&A or their present or former employees, or (iii) applicants for such employment or contracting.

h. Current, Former, or Potential Sources of Assistance: The USPI is reasonably believed to concern individuals who are or have been sources of information or assistance or who are reasonably likely to be of value as sources of information or assistance to the intelligence activities of I&A (or any other element of the Intelligence Community for whom the source would be useful) for the purpose of assessing their suitability or credibility, except that this category does not include USPI arising in investigations undertaken for personnel security purposes. Any such collection requires approval by the Under Secretary for Intelligence and Analysis accompanied by notice to the Intelligence Oversight Officer and the Associate General Counsel for Intelligence.

i. Personnel, Physical, and Communications Security: The USPI is reasonably believed to have been obtained pursuant to a lawful personnel, physical, or communications security investigation.

j. Overhead Reconnaissance: The USPI is reasonably believed to have been collected by overhead reconnaissance that was not directed at specific United States Persons.

2.2.3.2. Supplemental Information Categories

a. Critical Infrastructure and Key Resources: The USPI is reasonably believed to relate to threats to or the vulnerabilities of the critical infrastructure or key resources of the United States, including, but not limited to, cyber security threats or weapons of mass destruction.

b. Border Security: The USPI is reasonably believed to relate to threats to the safety or integrity of the United States borders, including, but not limited to, information about individuals engaging in activities that violate or are intended to violate immigration or customs laws or regulations.

c. Domestic Terrorism: The USPI is reasonably believed to relate to the existence, organization, capabilities, plans, intentions, means of finance or material support, or activities of domestic groups or individuals involved in domestic terrorism; to threats posed by such groups or individuals to the United States, United States Persons, or United States interests; or to communications between such groups or individuals reasonably believed to be assisting or associating with them to such a degree that retention of USPI concerning such associates would assist in understanding domestic terrorist groups or individuals involved in domestic terrorism.

d. Vulnerabilities The USPI is reasonably believed to relate to vulnerabilities to international or domestic terrorism or other threats to homeland security.

e. Departmental Investigative Information: The USPI is reasonably believed to have been acquired in or relevant to the course of a lawful departmental investigation or enforcement action.

f. Major Disasters: The USPI is reasonably believed to be necessary to understand, prevent, preempt, deter, or respond to major natural or manmade disasters or other catastrophic acts.

g. Protected Individuals, Groups, and Events: The USPI is reasonably believed to relate to threats to individuals, groups, property, or events protected by the Department of Homeland Security, including Components within the Department.

h. Other Threats to Homeland Security: The USPI is reasonably believed to relate to any other threat of such severity and magnitude that Federal assistance is needed to supplement State and local efforts or capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States, including, but not limited to, significant threats to the Nation's economic security, public health, or public safety.

2.2.4. Additional Requirements for Certain Communications

In addition to complying with the requirements for evaluation or permanent retention as described above in Sections 2.2.1–2.2.2, I&A personnel may retain telephonic or electronic communications subject to Section 309 of the Intelligence Authorization Act for Fiscal Year 2015 for more than five years only where they comply with the requirements of Section 309(b)(3)(B) of that Act.

2.3. DISSEMINATION

Like collection and retention, the dissemination of intelligence or information is permitted only to the extent there is a reasonable belief that dissemination furthers one or more of the national or departmental missions listed above in Section 1.1. The dissemination of USPI is subject to additional requirements and restrictions. These requirements and restrictions vary according to whether the dissemination is to another element of the Intelligence Community or outside the Intelligence Community.

2.3.1. General Dissemination Requirements

I&A personnel may disseminate USPI where all three of the following requirements are met:

a. The USPI is permanently retainable by I&A pursuant to Section 2.2.2 above;

b. The recipient is one of the following:

   i. A Federal, State, local, tribal, or territorial government entity (not including an element of the Intelligence Community) with law enforcement, counterterrorism, or national or homeland security-related functions;

   ii. An element of the Intelligence Community, and the USPI relates to a standard information category identified in Section 2.2.3.1 above, or, where the USPI relates only to a supplemental information category identified in Section 2.2.3.2 above, I&A personnel have confirmed the recipient's authority to receive the USPI;

   iii. A foreign government, international, or multinational entity;

   iv. Another element or office of the Department; or

   v. A private sector entity or individual with responsibilities relating to homeland security; and

c. There is a reasonable belief that dissemination would assist the recipient of the USPI in fulfilling one or more of the recipient's lawful intelligence, counterterrorism, law enforcement, or other homeland security-related functions.

2.3.2. Dissemination of Unevaluated Information within the Intelligence Community

Notwithstanding the general dissemination requirements of Section 2.3.1 above, and in accordance with E.O. 12,333 Section 2.3, I&A personnel may disseminate USPI to other appropriate elements of the Intelligence Community for purposes of allowing the recipient Intelligence Community element to determine whether the information is relevant to its responsibilities and can be retained by it. This dissemination is permitted both where the USPI is being temporarily retained by I&A for evaluation to determine whether it may be permanently retained by I&A in accordance with Sections 2.2.2 and 2.2.3.1 above (in which case neither the 180 day cap on evaluation nor the conclusive determination *deletion* requirement of Section 2.2.1 will apply to other elements of the Intelligence Community), or where the I&A personnel choose to disseminate the unevaluated USPI in accordance with the bulk data procedures set forth in Section 3.3 below.

2.3.3. Dissemination with Approval

The requirements set forth above in Sections 2.3.1–2.3.2 notwithstanding, I&A personnel may disseminate USPI outside I&A where such dissemination is approved by the Under Secretary for Intelligence and Analysis in consultation with the Associate General Counsel for Intelligence, the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties, the Intelligence Oversight Officer, and the Assistant Attorney General for National Security. Approval will only be granted where dissemination is permitted by and consistent with applicable law and policy and is done in a manner that appropriately protects the privacy, civil rights, and civil liberties of the United States Persons whose information would be disseminated.

2.3.4. Additional Requirements for Foreign Disseminations

In addition to the general requirements for dissemination described above, the dissemination of USPI to foreign governments or international or multinational entities is permissible only where the Under Secretary for Intelligence and Analysis or his or her designee determines that dissemination (disclosure or release) of the USPI is consistent with any applicable international agreements and foreign disclosure and release policies and directives, including any policies and directives requiring analysis of harm to any individual.

2.3.5. Anonymization Requirement

Prior to disseminating USPI pursuant to either Section 2.3.1 or Section 2.3.3, I&A personnel must evaluate whether the USPI would materially assist the intended recipient in using or understanding the disseminated intelligence or information. Where including the USPI would not materially assist the intended recipient in this manner, I&A personnel must replace it with a generic marking identifying the individual as a United States Person (e.g., "U.S. Person," "USPER," etc.). Where USPI is included, notice of that information must be provided through an advisory indicating that USPI is contained within the record or document being disseminated and by highlighting the USPI in a manner that clearly identifies it as such. These requirements do not apply to the dissemination of (1) publicly available information; (2) USPI disseminated with the consent of the person concerned; or (3) intelligence products or reports originating from other Intelligence Community elements provided those products or reports are not materially authored or altered by I&A personnel.

3. SPECIAL GUIDELINES FOR BULK DATA TRANSFERS

This Part establishes special guidelines applicable to bulk data transfers reasonably likely to contain USPI. It applies only to bulk data transfers to or from I&A and is an alternative to

the collection, retention, or dissemination standard procedures set forth above. Except as otherwise specified, bulk data transfers conducted under this Part are not subject to collection, retention, and dissemination requirements described in Part 2. This Part does not apply to bulk data transfers that are not reasonably likely to contain USPI, or to bulk data transfers (or segregable portions of bulk data transfers) that can be permanently retained by I&A upon receipt consistent with Section 2.2.2 above. Except as provided in the last paragraph of Section 3.2 below, these requirements also do not apply to *bulk data collection* of volunteered information. I&A may engage in the bulk data collection of volunteered information subject to the same standard requirements and restrictions governing the collection of volunteered information as set forth above at Section 2.1.3.3. Finally, the guidelines do not apply to bulk data transfers consisting exclusively of publicly available information, information whose use or dissemination is governed by court order or other procedures approved by the Attorney General, or information contained in intelligence products or reports obtained by I&A personnel in the ordinary course of their official duties. Where USPI in a bulk data transfer is identified and segregated from the remainder of the information, the requirements and restrictions provided below apply only to the USPI, not the remainder of the information.

As with all of its intelligence activities, I&A is authorized to engage in bulk data transfers only where it is reasonable to believe that a transfer to or from I&A would further one or more of the national or departmental missions listed above in Section 1.1, and all bulk data collection must be overt or through publicly available sources consistent with the requirements of Section 2.1.1 above. Further, any bulk data transfers to or from I&A must be permitted by and consistent with any applicable departmental policies or procedures. Generally, the Department encourages the use of alternatives to bulk data transfers, such as the provision of account access, the provision of specific records in response to requests for information, or the comparison of data within DHS-controlled environments, where those alternatives adequately support the information needs of the requestor. Accordingly, all bulk data transfers reasonably likely to contain USPI must be approved by the Under Secretary for Intelligence and Analysis after providing an opportunity for timely consideration by (a) the Office of the General Counsel to ensure that any such transfers are consistent with any applicable legal requirements, (b) the Intelligence Oversight Officer to ensure that any such transfers are consistent with these guidelines, and (c) the DHS Privacy Office and DHS Office for Civil Rights and Civil Liberties to ensure that any such transfers are conducted in a manner that appropriately protects individuals' privacy, civil rights, and civil liberties. The Under Secretary for Intelligence and Analysis, working with the Office of the General Counsel/Intelligence Law Division, the DHS Privacy Office, the DHS Office for Civil Rights and Civil Liberties, and the Intelligence Oversight Officer, will review I&A bulk data

collections not previously determined to contain USPI every three years to assess whether this determination remains accurate.

3.1. BULK DATA COLLECTION

With the exception of volunteered information, I&A may engage in a bulk data collection containing USPI only where two requirements are met. First, prior to engaging in the bulk data collection, the Under Secretary for Intelligence and Analysis must make the following determinations in writing:

a. A determination that bulk data collection is the only practicable means of identifying or using the information in the collection that will support an authorized I&A mission (of the list set forth above in Section 1.1);

b. A determination that, to the greatest extent practicable, only those data elements that are reasonably likely to support an authorized I&A mission (of the list set forth above in Section 1.1) are collected; and

c. A determination that the bulk data collection is reasonable in light of the totality of the circumstances, including, but not limited to, the following:

   i. The expected contribution of the bulk data collection to a national or departmental mission;

   ii. The methods and means by which the information was acquired and/or aggregated by the data provider;

   iii. The volume, proportion, nature, and sensitivity of the personally identifiable information collected; and

   iv. The safeguards to be applied to the collected information.

Second, any bulk data collection containing USPI will be subject to terms and conditions issued by the Under Secretary for Intelligence and Analysis. Prior to issuance, these terms and conditions will be submitted for timely consideration by (a) the Office of the General Counsel to ensure that the terms and conditions are consistent with any applicable legal requirements, (b) the Intelligence Oversight Officer to ensure that the terms and conditions are consistent with these guidelines, and (c) the DHS Privacy Office and DHS Office for Civil Rights and Civil Liberties to ensure that the terms and conditions appropriately

protects individuals' privacy, civil rights, and civil liberties. These terms and conditions must include the following protections for USPI:

a. A requirement that any I&A personnel provided access to the bulk data collection receive training in the use of that information to ensure they understand the safeguards applicable to the information and any other requirements involved in accessing and using the information;

b. A requirement that the bulk data collection be received, stored, and used in a secure manner that appropriately protects intelligence sources and methods and related sensitivities consistent with all applicable legal and policy requirements;

c. A defined period of time during which the bulk data collection will be retained for evaluation pursuant to Section 3.2 below; and

d. A description of the means and methods by which the bulk data collection will be evaluated.

These terms and conditions must also include any other safeguards for USPI that are appropriate under the circumstances. Examples include the following:

a. Procedures for the review, approval, or enhanced auditing of any access to or searches conducted in the bulk data collection;

b. Procedures to restrict access to or dissemination from the bulk data collection;

c. Procedures to mask any personally identifiable information within the bulk data collection;

d. Physical or logical access controls for the bulk data collection, including data segregation or policy-, attribute-, or role-based access;

e. A requirement that I&A use reasonable measures to identify and mark USPI within the data transferred in bulk to the extent appropriate;

f. Reporting metrics on the use and disposition of personally identifiable information within the bulk data collection to the extent appropriate;

g. Appropriate procedures to address the correction of any erroneous or outdated data and, where appropriate, individual redress;

h. Appropriate conditions on third-party dissemination;

i. Regular reporting, or reviews by the Office of the General Counsel/Intelligence Law Division, the DHS Privacy Office, the DHS Office for Civil Rights and Civil Liberties, and the Intelligence Oversight Officer regarding the use of the bulk data, including the application of any advanced analytic tools to the data, any sharing of the data with third parties, and whether there continues to be a need for retention of the data in bulk; and

j. Limitations on the amount of time personally identifiable information within the bulk data collection is subject to access and use by I&A personnel.

These terms and conditions may be memorialized in an agreement with the data provider or internally by I&A. If the terms and conditions are developed internally, I&A must make reasonable efforts to provide the data provider with notice of the internal terms and conditions. Generally, they should be developed and executed prior to collection, but they must be developed and executed before the data collected is made available for any analytic or other intelligence uses.

3.2. RETENTION OF BULK DATA COLLECTIONS

I&A retains bulk data collections, including any USPI within the collections, for the limited purpose of evaluating whether records within the collections constituting or containing USPI qualify for permanent I&A retention under the standard requirements and restrictions applicable to permanent retentions as set forth in Section 2.2.2 above. This evaluation must be performed within a defined evaluation period, which commences when the bulk data collection is first made available for evaluation following any necessary formatting, testing, and loading. Records that are determined to neither constitute nor contain USPI and records constituting or containing USPI that qualify for permanent retention pursuant to Section 2.2.2 above may be retained beyond the evaluation period. All other records, including, but not limited to, paper and electronic copies, must be deleted once the evaluation period expires.

The evaluation period for each bulk data collection is memorialized in the terms and conditions governing that bulk data collection as required by Section 3.1 above. As an initial matter, the evaluation period may not exceed five years. I&A may, however, extend the

evaluation period in one-year increments where (a) the Under Secretary for Intelligence and Analysis determines that there is a significant likelihood that further evaluation of the bulk data collection will identify intelligence or information that that qualifies for permanent retention pursuant to Section 2.2.2 above, (b) the Office of the General Counsel/Intelligence Law Division concludes in a timely manner that further retention would not violate any applicable legal requirements, (c) the Intelligence Oversight Officer concludes in a timely manner that further retention would be consistent with these guidelines, and (d) the DHS Privacy Office and the DHS Office for Civil Rights and Civil Liberties conclude in a timely manner that that the technical and policy safeguards under which the USPI would be retained are sufficient to appropriately protect the privacy, civil rights, and civil liberties of the United States Persons whose information is subject to evaluation. The maximum evaluation period for a bulk data collection, including any extensions granted by the Under Secretary for Intelligence and Analysis, is ten years.

Bulk data collections that are volunteered to I&A or collected without preexisting terms and conditions are subject to the standard requirements and restrictions governing retention for evaluation as set forth above at Section 2.2.1 unless I&A executes terms and conditions as described above in Section 3.1. Further, any retention of telephonic or electronic communications subject to Section 309 of the Intelligence Authorization Act of 2015 will be retained for no more than five years unless further retention satisfies the requirements of Section 309(b)(3)(B) of that Act.

3.3. BULK DATA DISSEMINATIONS

I&A may engage in a *bulk data dissemination* of unevaluated information reasonably likely to contain USPI to another element of the Intelligence Community in one of two ways, as directed by the Undersecretary for Intelligence and Analysis or his designee following consideration by (a) the Office of the General Counsel/Intelligence Law Division to ensure that the protections are consistent with any applicable legal requirements, (b) the Intelligence Oversight Officer to ensure that the protections are consistent with these guidelines, and (c) the DHS Privacy Office and DHS Office for Civil Rights and Civil Liberties to ensure that the protections appropriately safeguard individuals' privacy, civil rights, and civil liberties. Under the first, the recipient agrees to provide protections to the data that are comparable to those provided by I&A. For example, the recipient Intelligence Community element's application of its own Attorney General-approved procedures to the bulk data may constitute comparable protection. Under the second, I&A will negotiate alternative protections, memorialized in written terms and conditions between the recipient element head (or his or her designee) and the Under Secretary for Intelligence and Analysis.

I&A may only engage in a bulk data dissemination reasonably likely to contain USPI to an entity outside the Intelligence Community pursuant to written terms and conditions established between the Under Secretary for Intelligence and Analysis and an authorized representative of the recipient of the dissemination. All bulk data disseminations to foreign governments or international or multinational entities are subject to the requirements and restrictions set forth above in Section 2.3.4.

The Under Secretary for Intelligence and Analysis must consult with the Office of the General Counsel/Intelligence Law Division, the Privacy Office, the Office for Civil Rights and Civil Liberties, and the Intelligence Oversight Officer before agreeing to terms and conditions with either an Intelligence Community element or an external entity. Moreover, the terms and conditions must include the protections required in the second paragraph of Section 3.1. Generally, they must be developed and executed prior to dissemination. I&A may, however, engage in bulk data dissemination where the Under Secretary for Intelligence and Analysis determines that there are exigent circumstances (as described below in Section 5.3) requiring the dissemination. Where an emergency dissemination of that nature occurs, the terms and conditions governing the bulk data dissemination will be established as soon as possible, but in any event before any further bulk data dissemination unrelated to the exigent circumstances occurs.

4. GUIDELINES FOR OTHER ACTIVITIES

This Part establishes guidelines for the conduct of certain other activities by I&A personnel as described below.

4.1. PARTICIPATION IN ORGANIZATIONS WITHIN THE UNITED STATES

I&A personnel may only participate in organizations within the United States or organizations outside the United States that are United States Persons to the extent permitted by and consistent with the requirements set forth below.

4.1.1. Conduct Rising to the Level of Participation

I&A personnel participate in an organization when they take part in an organization's activities and interact with its members within the structure or framework of the organization. Such actions include, but are not limited to, the following:

a. Joining or acquiring membership;

b. Attending or taking part in organizational meetings, academic activities, seminars, trade fairs, workshops, conferences, exhibitions, symposia, social functions, or fora for communication through the use of technology;

c. Carrying out the work or functions of the organization;

d. Serving as a representative of the organization; or

e. Contributing funds to the organization other than in payment for goods or services.

Participation does not include occasional passive attendance at events that are open to the public, including non-members; however, it does include attending or taking part in any meetings or activities—even passively—of an organization that is closed to the public (i.e., meetings or activities exclusive to members and/or invited guests). Participation also does not include taking part in events outside the organizational structure or framework of an organization, such as infrequent attendance at meetings or occasional social gatherings that involve the organization's members, but that are not functions or activities conducted on behalf of the organization itself.

4.1.2. Participation on Behalf of I&A

Subject to the exceptions set forth below, I&A personnel are authorized to participate in an organization in the United States or organization outside the United States that is a United States Person on behalf of I&A only where two requirements are met. First, I&A personnel or personnel from another Intelligence Community element—not necessarily the actual participant—must disclose to an executive officer of the organization or an official in charge of membership, attendance, or the records of the organization that the participant is affiliated with I&A. If the disclosure is made to an official who is also acting on behalf of I&A, the disclosure requirement is not satisfied unless that official is the most senior official within the organization.

Second, the participation must be approved by the Under Secretary for Intelligence and Analysis in consultation with the Associate General Counsel for Intelligence. The approval by the Under Secretary for Intelligence and Analysis is valid for the duration of the participation or twelve months, whichever is shorter. Re-approval is required for any further participation.

These requirements do not apply under the following circumstances:

a. Where the employee or contractor is participating in, but not eliciting information from, a group on a social media or Internet platform, provided that the group's activities are publicly available;

b. Where the employee or contractor is attending a commercial class or training on behalf of I&A, provided that the employee or contractor is not tasked or directed to collect intelligence and the true name and I&A affiliation of the employee or contractor is used;

c. Where the employee or contractor is only obtaining the publication of an organization whose membership is open to the general public;

d. Where the employee or contractor is participating in an educational or professional organization to enhance the employee's or contractor's professional skills, knowledge, or capabilities;

e. Where the employee or contractor is participating in an organization that is an official establishment of a foreign government; or

f. Where the employee or contractor is participating in a seminar, forum, conference, exhibition, trade fair, workshop, symposium, or similar meeting, whether in person or through social media, provided that (i) the meeting is sponsored by an organization in which the employee or contractor is a member or for which the employee or contractor has been invited to participate; and (ii) the purpose of participation is to collect significant foreign intelligence that is generally made available to participants at such meetings and does not involve the domestic activities of the organization or its members.

In addition to the notice and approval requirements described above, I&A personnel may participate in social media platforms on behalf of I&A only to the extent permitted by and consistent with applicable departmental and I&A policies and guidelines. I&A personnel are prohibited from participating in an organization on behalf of I&A for the purpose of influencing the activities of an organization or its members except where (a) the participation is undertaken on behalf of the Federal Bureau of Investigation in the course of a lawful investigation or (b) the organization is composed primarily of individuals who are not United States Persons and is reasonably believed to be acting on behalf of a foreign power. Finally, I&A personnel participating in an organization on behalf of I&A are permitted to collect intelligence or information for intelligence purposes only to the extent permitted by and

consistent with Section 2.1 above, including, but not limited to, the requirement that any such collection be conducted overtly or through publicly available sources.

4.1.3. Participation in a Personal Capacity

The requirements and restrictions described above in Section 4.1.2 apply to I&A personnel participating in an organization on behalf of I&A. I&A personnel are permitted to participate in organizations in a personal capacity (i.e., on their own initiative and expense solely for personal benefit) without restriction provided that they do not, in their official capacities, collect, retain, or disseminate any intelligence or information provided or maintained by the organization or its members. This rule against the use of personal membership for an official purpose in no way restricts I&A personnel who are participating in an organization in an exclusively personal capacity from reporting actual or suspected violations of law, threats to national or homeland security, or foreign intelligence or counterintelligence to appropriate Federal, State, and local law enforcement, homeland security, or intelligence authorities in their personal capacities.

4.2. ASSISTANCE TO LAW ENFORCEMENT AND OTHER CIVIL AUTHORITIES

In addition to accessing intelligence and information held by, collecting intelligence and information from, and disseminating intelligence and information to law enforcement and other civil authorities as described in Part Two of these guidelines, I&A personnel are authorized to assist law enforcement and other civil authorities as follows:

a. By cooperating with appropriate law enforcement agencies for the purpose of protecting the employees, information, property, and facilities of any element of the Intelligence Community;

b. Unless otherwise precluded by law or Executive Order No. 12,333, "United States Intelligence Activities," as amended July 30, 2008, by participating in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or to investigate or prevent international terrorist or international narcotics activities, provided that such participation is approved in each case by the Office of the General Counsel/Intelligence Law Division;

c. By providing specialized equipment, technical knowledge, or assistance of expert personnel for use by any Federal department or agency or, when lives are endangered, to support State, local, tribal, or territorial law enforcement agencies

provided that such assistance is approved in each case by the Office of the General Counsel/Intelligence Law Division; or

d. As otherwise required or authorized by law.

4.3. REQUESTS FOR ASSISTANCE

I&A personnel are authorized to request assistance in the accessing, collection, retention, analysis, production, or dissemination of intelligence or information, including USPI, and including through the use of techniques or methods not authorized for I&A personnel, by any entity where they have a reasonable belief that the assistance requested would support one or more of the national or departmental missions listed above in Section 1.1 and the assistance requested is permitted by and consistent with applicable law and policy governing the activities of the recipient of the request, including, to the extent applicable, the recipient's own intelligence oversight guidelines approved by the Attorney General. I&A personnel must consult with the Office of the General Counsel/Intelligence Law Division prior to making a request for assistance pursuant to this section.

4.4. SHARED REPOSITORIES

Neither I&A's hosting another entity's intelligence or information in a *shared repository*, nor providing system administrative or technical support functions to a shared repository constitute the collection, retention, or dissemination by I&A of the intelligence or information held in that repository. As a result, these guidelines do not apply to I&A personnel who are engaging solely in such activities. Each participant in a shared repository hosted by I&A must inform I&A that its participation complies with all applicable law, policies, and procedures. To the extent practicable, I&A should enable audit of access to USPI in any shared repository that it hosts.

If I&A personnel participate in a shared repository, including a shared repository hosted by I&A, for operational or analytic intelligence purposes (i.e., for purposes beyond those described above), then their participation must be in accordance with these guidelines and in accordance with any more restrictive rules required by the host of the shared repository. With respect to information or intelligence provided by I&A, however, I&A may allow the host or another Intelligence Community element to provide system administrative or technical support functions without complying with the requirements of Parts Two and Three.

5. MISCELLANEOUS PROVISIONS

This Part sets forth the administrative and other miscellaneous provisions facilitating the execution and implementation of these guidelines.

5.1. EFFECTIVE DATE

These guidelines are effective as of the date of approval by the Secretary of Homeland Security and the Attorney General.

5.2. INTERPRETATION

Questions regarding the interpretation of these guidelines should be referred to the Office of the General Counsel/Intelligence Law Division. Questions regarding the execution or implementation of the guidelines should be referred to the Intelligence Oversight Officer. The Under Secretary for Intelligence and Analysis, acting through the Office of the General Counsel/Intelligence Law Division, will consult with the Department of Justice's National Security Division and the Office of the Director of National Intelligence's Office of the General Counsel regarding novel or significant interpretations of these guidelines, as appropriate.

5.3. DEPARTURES

Subject to the exception for exigent circumstances listed below, departures from these guidelines are permitted only where and to the extent authorized in advance by both the Under Secretary for Intelligence and Analysis and the Assistant Attorney General for National Security after consultation with the Director of National Intelligence. Notice of any departures must be provided to the Associate General Counsel for Intelligence and to the Intelligence Oversight Officer for referral to the DHS Chief Privacy Officer where the departure implicates individuals' privacy and/or DHS Officer for Civil Rights and Civil Liberties where the departure implicates individuals' civil rights or civil liberties. Any activities constituting a departure from these guidelines must be carried out in accordance with the Constitution and the laws of the United States under all circumstances.

The requirement for authorization from the Assistant Attorney General for National Security set forth above does not apply to departures from these guidelines in exigent circumstances where the Under Secretary for Intelligence and Analysis or a delegee determines that, due to the immediacy or gravity of a threat to the safety of persons or property or to the national security, such authorization cannot be obtained in advance (i.e., a clear, imminent threat of such severity exists that the failure to depart from the provisions of

these guidelines would be reasonably likely to endanger the safety of persons or property or the national or homeland security and the departure contemplated would be reasonably likely to prevent, preempt, deter, or respond to the threat). Any departures from these guidelines pursuant to this exception must be reported to the Associate General Counsel for Intelligence for further referral to the Assistant Attorney General for National Security and Director of National Intelligence and the Intelligence Oversight Officer for further referral to the DHS Chief Privacy Officer where the departure implicates individuals' privacy and/or the DHS Officer for Civil Rights and Civil Liberties where the departure implicates individuals' civil rights or civil liberties. This notice must be provided as soon as is practicable, but in any event no later than three working days from the authorization for departure.

5.4. AMENDMENTS

Subject to the exception for supplemental information categories listed below, amendments to these guidelines are permitted only where and to the extent authorized in advance by both the Secretary of Homeland Security and the Attorney General, after consulting with the Director of National Intelligence.

The Under Secretary for Intelligence and Analysis is authorized to add other supplemental information categories to the list provided above in Section 2.2.3.2 subject to the following requirements and restrictions. First, to add a supplemental information category, the Under Secretary for Intelligence and Analysis must determine that the proposed category is narrowly tailored to support an authorized departmental mission as described above in Section 1.1. This determination is subject to review for legal sufficiency by the General Counsel, who must certify that the proposed category is legally sufficient for the proposed category to be added.

Second, the Under Secretary for Intelligence and Analysis must provide notice to the Assistant Attorney General for National Security and the Director of National Intelligence of his or her intent to add a supplemental information category to the list provided above in Section 2.2.3.2. Notice must be provided as soon as is practicable, but in any event no later than thirty days prior to addition of the category. If the Assistant Attorney General for National Security or the Director of National Intelligence object to the addition of the proposed category within thirty days of receipt of notice from the Under Secretary for Intelligence and Analysis that he or she intends to add the proposed category, the proposed category will not be added unless and until the objecting party and the Under Secretary for Intelligence and Analysis resolve the objection. If the Assistant Attorney General for National Security and the Director of National Intelligence affirmatively indicate their

approval of the proposed category or fail to object to the category within thirty days of receipt of notice from the Under Secretary for Intelligence and Analysis, the category will be added to the list provided above. Any supplemental information category added pursuant to this section must be memorialized via amendment to these guidelines, with notice of the additional category provided to the Associate General Counsel for Intelligence, the Chief Privacy Officer, the Officer for Civil Rights and Civil Liberties, and the Intelligence Oversight Officer.

5.5. DELEGATION

Where these guidelines require a specific official to approve an activity or take some other action, only that official or a more senior official is permitted to take that action.

GLOSSARY OF DEFINED TERMS

A. ***Access***: The act of viewing or examining information or intelligence without collecting that information or intelligence.

B. ***Bulk Data Collection***: Collection via bulk data transfer.

C. ***Bulk Data Dissemination***: Dissemination via bulk data transfer.

D. ***Bulk Data Transfer***: The transfer of large quantities of data that, due to technical or operational considerations, is acquired without the use of discriminants (e.g., specific identifiers, selection terms, etc.). As a matter of DHS policy, bulk data transfer also includes the collection or dissemination of large quantities of data, a significant portion of which is not reasonably likely to have any ultimate intelligence or operational value to the recipient, but which is provided for the recipient to identify information of intelligence or operational value within it. Bulk data transfer does not include the transfer of records responsive to specific identifiers (e.g., name, date of birth, social security number, etc.) but it does include the transfer of records identified through the application of search terms where the transfer would include a significant number of records that, while responsive to the applied search terms, is not reasonably likely to have any ultimate intelligence or operational value to the recipient (e.g., records responsive to demographic profiles such as age, citizenship, or gender).

E. ***Collection***: Obtaining or acquiring information from outside the Intelligence Community (including from the Office of the Secretary and other Components) by any means, including, but not limited to, information that is volunteered, and regardless of whether the information is temporarily or permanently retained. Information that only momentarily passes through an I&A computer system is not collected. Collection is distinct from access to information in that collection requires that the information be copied, saved, or used in some manner, including, but not limited to, information that is copied or saved in the form of summaries, reports, or notes, whereas information that is accessed is merely viewed or examined, but is not collected even if it is transmitted on an I&A information technology system.

F. ***Concealed Monitoring***: The use of hidden electronic, optical, or mechanical devices to monitor a particular person or a group of persons without their consent in a surreptitious manner over a period of time, in circumstances in which such a person or group of persons has no reasonable expectation of privacy. Monitoring is surreptitious when it is conducted in a manner designed to keep the subject of the monitoring unaware of the monitoring.

G. ***Consent***: An agreement within a specific time frame and context by a person or organization to permit a particular action affecting the person or organization. Consent is obtained in written or electronic form if possible, but it can be oral if obtaining consent in written or electronic form is not possible unless a specific form of consent is required by law or these guidelines. Consent can be implied where there is adequate notice that a certain act (e.g., entering a Federal building or facility or using a Government telephone) constitutes consent to an accompanying action (e.g., inspecting a briefcase or monitoring communications). Consent may also be implied where adequate policy has been published or otherwise articulated. The Office of the General Counsel/Intelligence Law Division will determine whether a notice or policy is adequate and lawful, before I&A takes or refrains from taking action on the basis of implied consent.

H. ***Counterintelligence***: Information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.

I. ***Critical Infrastructure***: Systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on the Nation's economic security, public health, public safety, or any combination of those matters.

J. ***Deletion***: The removal from any files or records, whether electronic or paper copy, maintained or used for intelligence purposes.

K. ***Dissemination***: The transmission, communication, sharing, or passing of intelligence or information outside I&A by any means, including oral, electronic, or physical means. Dissemination therefore includes providing any access to information retained by I&A to persons outside I&A.

L. ***Domestic Terrorism***: *Terrorism* that is not international terrorism.

M. ***Electronic Surveillance***: The acquisition of a non-public communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a non-electronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio-finding equipment solely to determine the location of a transmitter.

N. ***Foreign Intelligence***: Information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

O. ***Foreign Power***: (1) A foreign government or any component thereof, whether or not recognized by the United States; (2) a faction of a foreign nation or nations not substantially composed of United States persons; (3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments; (4) a group engaged in international terrorism or activities in preparation therefor; (5) a foreign-based political organization not substantially composed of United States persons; (6) an entity that is directed and controlled by a foreign government or governments; or (7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.

P. ***I&A Personnel***: All I&A employees, including detailees or other Government personnel acting for I&A, and contractors supporting I&A.

Q. ***Incidental Collection of USPI:*** Collection of USPI that is not deliberately sought by I&A, but that is nonetheless collected. Collection of USPI that is not deliberately sought is considered incidental regardless of whether it is expected or reasonably anticipated to occur.

R. ***Intelligence Activities***: All activities that elements of the Intelligence Community are authorized to conduct pursuant to Executive Order No. 12,333, "United States Intelligence Activities," as amended July 30, 2008.

S. ***Intelligence Community***: The United States Intelligence Community as defined at Title 50, United States Code, Section 3003, "Definitions," and Section 3.5(h) of Executive Order No. 12,333, "United States Intelligence Activities," as amended July 30, 2008.

T. ***International Terrorism***: Activities that (1) involve violent acts or acts dangerous to human life that violate domestic criminal law or would violate such law if committed in the United States or a State, local, or tribal jurisdiction; (2) appear to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnapping; and (3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

U. ***Key Resources***: Publicly or privately controlled resources essential to the minimal operations of the economy and government.

V. ***Mail Cover***: The non-consensual recording of any data appearing on the outside cover of any sealed or unsealed mail matter. In this context, a "recording" means a transcription, photograph, photocopy, or other facsimile of the image of the outside cover, envelope, or wrappers of mail matter. It does not include the opening or examination of mail matter.

W. ***Major Disaster***: Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of any cause, any fire, flood, or explosion in any part of the United States, which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under Title 42, United States Code, Chapter 68, "Disaster Relief," to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

X. ***Overt Collection***: Collection that is openly acknowledged by or readily attributable to the United States Government or that would be acknowledged in response to an express inquiry. Acknowledgment may include advising of United States Government affiliation (confirming the collector's affiliation with an intelligence element is not required, so long as United States Government affiliation is acknowledged) or advising of a general collection activity applicable to that individual (rather than advising of specific acquisition methods, sites, or processes being used, or other details about the collection). For example, I&A might conduct physical surveillance at a DHS facility based on notice to I&A employees, but it would not need to notify a particular employee that he or she was the subject of the surveillance.

Collection conducted under circumstances where, although there has been no express inquiry, it would be misleading not to disclose affiliation with the United States Government (*e.g.*, collection through observation or elicitation at an event designed for or mostly attended by a private sector audience) is only overt where the collector affirmatively discloses his or her affiliation with the United States Government.

Y. ***Physical Surveillance***: The deliberate observation of an individual to track his or her movement or other physical activities while they are occurring under circumstances in which a person has no reasonable expectation of privacy.

Z. ***Publicly Available Information***: Information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, could be seen or heard by any casual observer, is made available at a meeting open to the

public, or is obtained by visiting any place or attending any event open to the public.

Social media sites, Internet sites, chat rooms, bulletin boards, and other electronic and other fora, or portions of the same, belonging to individuals or groups that limit access by use of criteria that cannot generally be satisfied by members of the public are not publicly available sources.

AA. ***Reasonable Belief***: A belief based on facts and circumstances such that a reasonable person would hold that belief. A reasonable belief must rest on facts and circumstances that can be articulated; "hunches" or intuitions are not sufficient. A reasonable belief can be based on experience, training, and knowledge as applied to particular facts and circumstances, and a trained and experienced intelligence professional can hold a reasonable belief that is sufficient to satisfy these criteria when someone lacking such training or experience would not hold such a belief.

BB. ***Retention***: The maintenance or storage of intelligence or information. Intelligence or information that is accessed (e.g., intelligence or information on the Internet or accessible through a shared repository), but is not saved or memorialized in some manner (including in the form of summaries, reports, or notes), is not retained.

CC. ***Shared Repository***: A database, environment, or other repository maintained for the use of more than one entity. A database, environment, or other repository that a contractor or other entity maintains solely for the use of I&A, or those acting on its behalf, is not a shared repository.

DD. ***Terrorism***: Any activity that (1) involves an act that (a) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and (b) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and (2) appears to be intended (a) to intimidate or coerce a civilian population; (b) to influence the policy of a government by intimidation or coercion; or (c) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

EE. ***United States Person***: (1) A United States citizen, (2) an alien known by I&A to be a permanent resident alien (i.e., lawful permanent resident), (3) an unincorporated association substantially composed of United States citizens or permanent resident aliens, or (4) a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. In determining whether an unincorporated association affiliated with a foreign-based international organization is substantially composed of United States citizens or permanent resident aliens, the membership of the entire international organization is considered if the association operates directly under the control of the international organization and has no independent program or activities in the United States, but only the

membership of the organization within the United States is considered if the organization within the United States conducts programs or engages in activities separate from or in addition to those directed by the international affiliate.

FF. ***United States Persons Information (USPI)***: Information that is reasonably likely to identify one or more specific United States Persons. USPI may be either a single item of information or information that, when combined with other available information, is reasonably likely to identify one or more specific United States Persons. Determining whether information is reasonably likely to identify one or more specific United States Persons requires a case-by-case assessment by a trained intelligence professional. It is not limited to any single category of information or technology.

APPROVAL

We approve the foregoing Guidelines in accordance with Executive Order No. 12,333, as amended.

Jeh Charles Johnson
Secretary
U.S. Department of Homeland Security

January 4, 2017
Date

Loretta E. Lynch
Attorney General
U.S. Department of Justice

January 19, 2017
Date

Amendment to the Order of Succession for the Secretary of Homeland Security

Section II.A of DHS Delegation No. 00106, *DHS Orders of Succession and Delegations of Authorities for Named Positions*, is amended hereby to state as follows: "In case of the Secretary's death, resignation, or inability to perform the functions of the Office, the order of succession of officials is governed by Annex A."

By the authority vested in me as Secretary of Homeland Security, including the Homeland Security Act of 2002, 6 U.S.C. § 113(g)(2), I hereby designate the order of succession for the Secretary of Homeland Security by amending Annex A of DHS *Orders of Succession and Delegations of Authorities for Named Positions*, Delegation No. 00106. Annex A is hereby amended by striking the text of such Annex in its entirety and inserting the following in lieu thereof:

Annex A, Order for Delegation of Authority by the Secretary of the Department of Homeland Security
Pursuant to Title 6, United States Code, Section 113(g)(2)

1. Deputy Secretary of Homeland Security;

2. Under Secretary for Management;

3. Commissioner of the U.S. Customs and Border Protection;

4. Under Secretary for Strategy, Policy, and Plans;

5. Administrator and Assistant Secretary of the Transportation Security Administration;

6. Administrator of the Federal Emergency Management Agency;

No individual who is serving in an office herein listed in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this designation.

Dated: 11/08/19

Kevin K. McAleenan
Acting Secretary of Homeland Security

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

November 13, 2019

MEMORANDUM FOR: Kenneth Cuccinelli
Principal Deputy Director
United States Citizenship and Immigration Services

Randolph D. Alles
Senior Official Performing the Duties of the Under Secretary for Management

Frank DiFalco
Acting Director, Office of Operations Coordination and Planning

FROM: Chad F. Wolf
Acting Secretary

SUBJECT: Amendment to the Order of Succession for the Deputy Secretary

Pursuant to Paragraph II.K of Department of Homeland Security (DHS) Delegation No. 0106, *DHS Orders of Succession and Delegations of Authority for Named Positions*, I am exercising my reserved right to re-designate the order of succession for the Deputy Secretary of Homeland Security. Effective at 6:00 am on Sunday, November 17, 2019, I hereby re-designate the order of succession for the Deputy Secretary as follows and direct that Annex B of DHS Delegation No. 00106 be modified accordingly:

1. Deputy Secretary
2. Under Secretary for Management
3. Principal Deputy Director, U.S. Citizenship and Immigration Services
4. Administrator of the Transportation Security Administration
5. Administrator of the Federal Emergency Management Agency
6. Director of the Cybersecurity and Infrastructure Security Agency
7. Under Secretary for Science and Technology
8. Under Secretary for Intelligence and Analysis
9. Commissioner of U.S. Customs and Border Protection
10. Director of U.S. Immigration and Customs Enforcement
11. Director of U.S. Citizenship and Immigration Services
12. Under Secretary for Strategy, Policy, and Plans
13. General Counsel

14. Deputy Under Secretary for Management
15. Deputy Commissioner of U.S. Customs and Border Protection
16. Deputy Administrator of the Transportation Security Administration
17. Deputy Director of U.S. Immigration and Customs Enforcement
18. Deputy Director of U.S. Citizenship and Immigration Services
19. Director of the Federal Law Enforcement Training Centers

Accordingly, because the Under Secretary for Management position is vacant, effective at 6:00 am on Sunday, November 17, 2019, I direct that Kenneth Cuccinelli, Principal Deputy Director, U.S. Citizenship and Immigration Services, will serve as the Senior Official Performing the Duties of the Deputy Secretary in accordance with Annex B of DHS Delegation No. 00106.

I further direct that DHS Delegation No. 0110, *Delegation to the Senior Official Performing the Duties of the Deputy Secretary*, (revised January 31, 2019), be cancelled.

cc: Kenneth Cuccinelli, Principal Deputy Director, USCIS
Joseph B. Maher, Acting General Counsel
Brandon Wales, Acting Chief of Staff

GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Decision

Matter of: **Department of Homeland Security**—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security

File: B-331650

Date: August 14, 2020

DIGEST

The Federal Vacancies Reform Act of 1998 (Vacancies Reform Act) provides for temporarily filling vacant executive agency positions that require presidential appointment with Senate confirmation. 5 U.S.C. § 3345. GAO's role under the Vacancies Reform Act is to collect information agencies are required to report to GAO, and GAO uses this information to report to Congress any violations of the time limitations on acting service imposed by the Vacancies Reform Act. 5 U.S.C. § 3349. As part of this role, we issue decisions on agency compliance with the Vacancies Reform Act when requested by Congress. The Vacancies Reform Act is generally the exclusive means for filling a vacancy in a presidentially appointed, Senate confirmed position unless another statute provides an exception. 5 U.S.C. § 3347. The Homeland Security Act of 2002 provides an order of succession outside of the Vacancies Reform Act when a vacancy arises in the position of Secretary of the Department of Homeland Security (DHS). 6 U.S.C. § 113(g).

Upon Secretary Kirstjen Nielsen's resignation on April 10, 2019, the official who assumed the title of Acting Secretary had not been designated in the order of succession to serve upon the Secretary's resignation. Because the incorrect official assumed the title of Acting Secretary at that time, subsequent amendments to the order of succession made by that official were invalid and officials who assumed their positions under such amendments, including Chad Wolf and Kenneth Cuccinelli, were named by reference to an invalid order of succession. We have not reviewed the legality of other actions taken by these officials; we are referring the matter to the Inspector General of DHS for review.

DECISION

This responds to a request from the Chairman of the Committee on Homeland Security and the Acting Chairwoman of the Committee of Oversight and Reform regarding the legality of the appointment of Chad Wolf as Acting Secretary of the Department of Homeland Security (DHS) and Ken Cuccinelli as Senior Official Performing the Duties of Deputy Secretary. Letter from Chairman, Committee on Homeland Security, U.S. House of Representatives and Acting Chairwoman, Committee on Oversight and Reform, U.S. House of Representatives to Comptroller General (Nov. 15, 2019). Specifically, we consider whether the appointments were authorized pursuant to the Secretary's designation of an order of succession under the Homeland Security Act of 2002 (HSA). Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002), *as amended by* National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 1903, 130 Stat. 2000, 2672 (Dec. 23, 2016), *codified at* 6 U.S.C. § 113(g)(2).

As explained below, we conclude that in the case of vacancies in the positions of Secretary, Deputy Secretary, and Undersecretary for Management, HSA provides a means for an official to assume the title of Acting Secretary pursuant to a designation of further order of succession by the Secretary. However, upon the resignation of Secretary Kirstjen Nielsen, the express terms of the then existing designation required the Director of the Cybersecurity and Infrastructure Security Agency (CISA) to assume that title instead of the Commissioner of Customs and Border Protection (CBP), Kevin McAleenan. As such, the subsequent appointments of Under Secretary for Strategy, Policy, and Plans, Chad Wolf and Principal Deputy Director of U.S. Citizenship and Immigration Services (USCIS) Ken Cuccinelli were also improper because they relied on an amended designation made by Mr. McAleenan.[1]

Under the Federal Vacancies Reform Act of 1998 (Vacancies Reform Act), GAO collects information agencies are required to report to GAO, and GAO uses this information to report to Congress any violations of the time limitations on acting service imposed by the Vacancies Reform Act. 5 U.S.C. § 3349. As part of this

[1] We have only been asked to address the designation of Messers. Wolf and Cuccinelli, so we do not otherwise address the consequences of any official's improper service. We are referring that question to the DHS Inspector General for his review. In that regard, we are aware that certain actions taken by Acting Secretary Wolf and his authority to take them are currently the subject of litigation. *See, e.g. A.B-B v. Morgan*, Docket No. 1:20-cv-0846 (D.D.C. 2020); *Casa De Maryland v. Wolf*, Docket No. 8:20-cv-02118 (D. Md. 2020); *Don't Shoot Portland v. Wolf*, Docket No. 1:20-cv-02040 (D.D.C. 2020). We are also aware that in March, 2020, the U.S. District Court for the District of Columbia ruled that Mr. Cuccinnelli's separate appointment as acting director of USCIS was illegal. *See L.M.-M v. Cuccinelli*, 442 F. Supp. 3d 1, 29 (D.D.C. 2020). That question was not before us.

role, we issue decisions on agency compliance with the Vacancies Reform Act when requested by Congress. Our practice when rendering decisions is to contact the relevant agencies and obtain their legal views on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 5, 2006), *available at* www.gao.gov/products/GAO-06-1064SP. We contacted DHS to obtain the agency's views. Letter from Managing Associate General Counsel, GAO, to General Counsel, DHS (Dec. 6, 2019). We received DHS's response on December 20, 2019. Letter from Associate General Counsel for General Law, DHS, to Managing Associate General Counsel, GAO (Dec. 20, 2019) (Response Letter).

BACKGROUND

The Vacancies Reform Act permits certain individuals to serve as acting officials in vacant presidentially appointed, Senate confirmed positions (PAS) for limited periods of time. 5 U.S.C. §§ 3345, 3346. The Vacancies Reform Act is generally the exclusive means for filling a vacancy in a PAS position unless another statute provides an exception.[2] Pursuant to the Vacancies Reform Act, the first assistant to a PAS position automatically becomes the acting official in case of a vacancy unless the President designates another individual who meets the Vacancies Reform Act's eligibility requirements. 5 U.S.C. § 3345.

HSA created DHS to prevent terrorist attacks within the United States and reduce the nation's vulnerabilities to such attacks, among other critical missions. Pub. L. No. 107-297, title I, § 101. At the head of the department, HSA created the position of Secretary of Homeland Security who is vested with all the functions of all officers, employees, and organizational units of DHS. HSA, Pub. L. No. 107-296, title I, § 102. HSA also created the position of Deputy Secretary and made the Deputy Secretary the first assistant for purposes of the Vacancies Reform Act. Pub. L. No. 107-297, title I, § 103.

On December 23, 2016, HSA was amended to establish an order of succession outside the Vacancies Reform Act for the position of Secretary. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, div. A, title XIX, § 1903, 130 Stat. 2000, 2672 (2016). Under the amendment, the Under Secretary for Management is next in line to be Acting Secretary in the case of absence, disability, or vacancy in the positions of Secretary and Deputy Secretary. 6 U.S.C. § 113(g)(1). Beyond this mandated order, "the Secretary may designate such other officers of the Department in further order of succession to serve as Acting

[2] A statute only qualifies as an exception if the statutory provision expressly authorizes the President or the head of an executive department to designate an official to perform the functions and duties of a specified office temporarily in an acting capacity or it designates an acting official. 5 U.S.C. § 3347(a)(1).

Secretary."[3] 6 U.S.C. § 113(g)(2). These succession provisions take effect "[n]otwithstanding" the provisions of the Vacancies Reform Act.[4] 6 U.S.C. § 113(g).

On December 5, 2017, Kirstjen Nielsen was confirmed as Secretary of DHS. On April 10, 2019, Secretary Nielsen resigned from her position. At this time, the Deputy Secretary position had been vacant since April 14, 2018, and the Under Secretary for Management resigned on April 10, 2019, as well, leaving that position vacant. GAO, *Federal Executive Vacancy System Database*, *available at* https://www.gao.gov/legal/other-legal-work/federal-vacancies-reform-act.[5] Upon the Secretary's resignation, the Commissioner of Customs and Border Protection, Kevin McAleenan, assumed the title of Acting Secretary.

On November 13, 2019, Acting Secretary McAleenan resigned, and the Under Secretary for Strategy, Policy, and Plans, Chad Wolf assumed the title of Acting Secretary. The same day, Mr. Wolf designated the Principal Deputy Director of USCIS, Kenneth Cuccinelli, as the Senior Official Performing the Duties of Deputy Secretary of Homeland Security (Deputy Secretary).[6]

DISCUSSION

Article II of the U.S. Constitution provides that "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law." U.S. Const. art. II, § 2. As noted previously, when there is a vacancy in these presidentially appointed, Senate confirmed (PAS) positions, the Vacancies Reform Act is generally the exclusive means for filling them temporarily with an acting official, unless another statute provides an exception.

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[3] The amendment did not impose time limitations on an individual serving as Acting Secretary under HSA.

[4] HSA does not establish an order of succession outside the Vacancies Reform Act for the position of Deputy Secretary. However, HSA establishes the Under Secretary for Management as the first assistant to the Deputy Secretary for purposes of the Vacancies Reform Act. 6 U.S.C. § 113(a)(1)(F).

[5] Under the Vacancies Reform Act, agencies are required to report to GAO certain information regarding vacancies in PAS positions. 5 U.S.C. § 3349(a). GAO compiles the information from these reports and makes them available to the public through its Executive Vacancy System.

[6] Regarding Mr. Cuccinelli, this decision only addresses his service as the Senior Official Performing the Duties of Deputy Secretary and does not address any other positions which he may also hold.

Here, HSA provides such an exception. HSA requires the Under Secretary for Management to serve as Acting Secretary if there is a vacancy in the offices of Secretary and Deputy Secretary. 6 U.S.C. § 113. By providing an initial order of succession for the Secretary and allowing the Secretary to make further designations, HSA qualifies as an exception to the Vacancies Reform Act's exclusivity provision.

At the time the Secretary resigned, the positions specified in HSA were vacant as well, permitting DHS to turn to the Secretary's designation of further officials to serve as Acting Secretary when Secretary Nielsen resigned and the position of Secretary became vacant. 6 U.S.C. § 113(g)(1), (2). Hence, to determine whether Chad Wolf and Ken Cuccinelli are properly serving, we must examine whether DHS adhered to the order of succession in the Secretary's delegation in force at the time Mr. McAleenan and Mr. Wolf each assumed the title of Acting Secretary. As explained further below, we conclude DHS did not.

HSA Delegation 00106

In its response to us, DHS stated that Secretary Nielsen had exercised the HSA power to designate an order of succession through Delegation 00106. *See* Response Letter. Secretary Nielsen issued this delegation on February 15, 2019 (February Delegation).[7] In this February Delegation, there were two grounds for assuming the position of Acting Secretary. The first ground was in the case of the Secretary's death, resignation, or inability to perform the functions of the office. February Delegation § II.A. The second ground was if the Secretary was unavailable to act during a disaster or catastrophic emergency. *Id.* § II.B.

Each ground had its own order of succession. In cases of the Secretary's death, resignation, or inability to perform the functions of the office, the February Delegation stated the order of succession was governed by Executive Order 13753 (E.O. 13753). *Id.* § II.A. E.O. 13753 included an order of succession for officers who would act and perform the duties of the Secretary during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the Office of Secretary. In cases where the Secretary is unavailable to act during a disaster or catastrophic emergency, Annex A to the February Delegation governed the order of succession. *Id.* § II.B. At that time, the orders of succession found in E.O. 13753 and Annex A were the same. The figure in appendix 1 attached to this decision illustrates the legal framework that could be used to designate an Acting Secretary at the time of the February Delegation.

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[7] DHS, *DHS Orders of Succession and Delegations of Authorities for Named Positions*, DHS Delegation No. 00106, Revision No. 08.4 (Feb. 15, 2019).

Under E.O. 13753 and Annex A, the first four positions in the order of succession were as follows: (1) Deputy Secretary, (2) Under Secretary for Management, (3) Administrator of the Federal Emergency Management Agency (FEMA), and (4) Director of CISA.[8]

The February Delegation also listed positions in an order of succession for Deputy Secretary in Annex B. The first four positions were as follows: (1) Under Secretary for Management, (2) Administrator of FEMA, (3) Director of CISA, and (4) Under Secretary of Science and Technology. [9]

The February Delegation further stated acting officials in the listed positions are ineligible to serve and, therefore, the order of succession would fall to the next designated official in the approved order of succession. *Id.* § II.G.

Nielsen's Resignation

According to DHS, on April 9, 2019, the day before her resignation, Secretary Nielsen established a new order of succession. Delegation 00106 was updated the following day, reflecting the changes (April Delegation).[10] The April Delegation on its face maintained the two separate grounds for designation. Vacancies due to the Secretary's death, resignation, or inability to perform the functions of the office were still governed by the order of succession under E.O. 13753, and vacancies due to the Secretary's unavailability to act during a disaster or catastrophic emergency were still governed by Annex A to the Delegation. April Delegation §§ II.A, II.B. Secretary Nielsen did however amend the orders of succession for the Secretary and Deputy Secretary in Annexes A and B, respectively. The figure in appendix 1 attached to this decision illustrates the legal framework that could be used to designate an Acting Secretary at the time of the April Delegation.

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[8] Both E.O 13753 and Annex A list more positions than those indicated here. However, they are not relevant for purposes of this decision. Public Law 115-278 renamed the position of Under Secretary for National Protection and Programs to be Director of the Cybersecurity and Infrastructure Security Agency. Cybersecurity and Infrastructure Security Agency Act of 2018, Pub. L. No. 115-278, § 2(a), 132 Stat. 4168, 4169 (Nov. 16, 2018), *codified at* 6 U.S.C. § 652(a), (b).

[9] The Secretary may provide for an order of succession for the Deputy position under general management authorities granted the Secretary in HSA. 6 U.S.C. § 112. However, any order of succession for the Deputy position must reflect that the Under Secretary for Management is the first assistant for purposes of the Vacancies Act, in accordance with HSA. 6 U.S.C. § 113(a)(1)(F).

[10] DHS, *Orders of Succession and Delegations of Authorities for Named Positions*, Delegation No. 00106, Revision No. 08.5 (Apr. 10, 2019).

The first four positions in the order of succession for Acting Secretary in revised Annex A (disaster or catastrophic emergency) were as follows: (1) Deputy Secretary, (2) Under Secretary for Management, (3) Commissioner of CBP, and (4) Administrator of FEMA. April Delegation Annex A. The April Delegation removed the CISA director from for the order of succession. The April Delegation added the Commissioner to be third in the order, making the Administrator fourth in the order.

In amending Annex A, the Secretary effectively established two different orders of succession. Annex A only applies to the Secretary's unavailability as a result of a disaster or catastrophic emergency. Because the Secretary did not amend the order of succession established in E.O. 13753 otherwise, the Delegation maintained the order set out therein whenever the position became vacant as a result of the Secretary's death, resignation, or inability to perform the functions of the office: (1) Deputy Secretary, (2) Under Secretary for Management, (3) Administrator of FEMA, and (4) Director of CISA.

Secretary Nielsen also changed the order of succession for Deputy Secretary in Annex B. The first four positions in the order of succession were changed to be: (1) Under Secretary for Management, (2) Administrator of the Transportation Security Administration (TSA), (3) Administrator of FEMA, and (4) the Director of CISA. *Id.* Annex B.

On April 10, Secretary Nielsen and the Under Secretary for Management resigned. The Deputy Secretary had resigned a year earlier. In its response to us, DHS stated that it referred to the April Delegation to fill the Acting Secretary position. *See* Response Letter. Apparently, DHS mistakenly referred to Annex A, rather than E.O. 13753. Mr. McAleenan served as the previously confirmed Commissioner of U.S. Customs and Border Protection at the time. Mr. McAleenan would have been the appropriate official had Secretary Nielsen been unavailable to act during a disaster or catastrophic emergency. That was not the case here. Secretary Nielsen resigned. A Secretary's resignation is addressed in E.O. 13753, not Annex A.

Applying the plain language of the April Delegation, the governing order of succession therefore, should have been that provided under E.O. 13753 and not Annex A. The April Delegation explicitly stated, "In case of the Secretary's death, *resignation*, or inability to perform the functions of the Office, the orderly succession of officials is governed by Executive Order 13753, amended on December 9, 2016." April Delegation § II.A (emphasis added). Annex A only applied to when the Secretary was unavailable to act during a disaster or catastrophic emergency. *Id.* § II.B.

The first previously confirmed official in the order of succession in E.O. 13753 was the Director of CISA.[11] However, instead of following the order of succession in E.O. 13753, DHS applied the one in Annex A. If DHS had invoked the April Delegation due to the Secretary's unavailability to act during a disaster or catastrophic emergency, then Mr. McAleenan would have been the designated official. However, here the vacancy was due to Secretary Nielsen's resignation. Accordingly, under the express terms of Delegation 00106, the incorrect individual assumed the position of Acting Secretary.

In its response to us, DHS stated that Secretary Nielsen used the authority provided by HSA to establish an order of succession with Mr. McAleenan's position—the Commissioner of Customs and Border Protection—as next in the order of succession, after the positions of Deputy Secretary and Under Secretary for Management. Response Letter. DHS further stated that the order of succession was not governed by E.O. 13753 because the executive order was superseded when the Secretary established an order of succession pursuant to HSA. *Id.*

DHS asserted that the direction from the Secretary to change the order of succession applied to any vacancy in the position of the Secretary. In support, DHS provided a memorandum from the DHS General Counsel to Secretary Nielsen. Memorandum from General Counsel, DHS, to Secretary of Homeland Security (Apr. 9, 2019) (Memorandum).

The Memorandum included the revised order of succession for Annex A which provides:

> "By the authority vested in me as Secretary of Homeland Security, including [HSA], 6 U.S.C. § 113(g)(2), I hereby designate the order of succession for the Secretary of Homeland Security as follows: Annex A of . . . Delegation No. 00106, is hereby amended by striking the text of such Annex in its entirety and inserting the following in lieu thereof."

Id. This Memorandum includes additional text from the then-General Counsel summarizing Secretary Nielsen's desire to "designate certain officers of [DHS] in order of succession to serve as Acting Secretary," and that "[b]y approving the attached document, you will designate your desired order of succession for the Secretary . . . in accordance with your authority pursuant to [HSA]." *Id.* A discussion section in this memorandum was redacted before DHS provided it to us.

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[11] The confirmed Director of CISA at the time of Secretary Nielsen's resignation was Christopher Krebs. GAO, *Federal Executive Vacancy System Database*, *available at* https://www.gao.gov/legal/other-legal-work/federal-vacancies-reform-act. The Administrator of FEMA was listed third in the order of succession, but the Administrator resigned on March 3, 2019, before Secretary Nielsen resigned. *Id.*

Notwithstanding the General Counsel's statement in the Memorandum asserting the Secretary's intentions in amending the April Delegation, the plain language of the delegation controls, and it speaks for itself. When Secretary Nielsen issued the April Delegation, she only amended Annex A, placing the Commissioner of U.S. Customs and Border Protection as the next position in the order of succession in cases of the Secretary's unavailability to act during a disaster or catastrophic emergency. April Delegation Annex A. She did not change the ground for which Annex A would apply. DHS did not provide evidence of Secretary Nielsen's designation under HSA in the case of her death, resignation, or inability to perform the functions of the office.

We are mindful that the timing of Secretary Nielsen's resignation the next day and the subsequent actions and statements of officials—such as Secretary Nielsen's farewell message to DHS[12]—may suggest that she intended for Mr. McAleenan to become the Acting Secretary upon her resignation. However, it would be inappropriate, in light of the clear express directive of the April Delegation, to interpret the order of succession based on post-hoc actions. *See N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929, 941–42 (2017) (providing that when the text is clear, the court need not consider post-enactment practice); *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011) ("Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation.") (internal citations omitted); *Weinberger v. Rossi*, 456 U.S. 25, 35 (1982) ("Such *post hoc* statements of a congressional Committee are not entitled to much weight.") (internal citations omitted). The April Delegation was the only existing exercise of the Secretary's authority to designate a successor pursuant to HSA. As such, Mr. McAleenan was not the designated Acting Secretary because, at the time, the Director of CISA was designated the Acting Secretary under the April Delegation.

McAleenan's Resignation

On November 8, 2019, shortly before he resigned, Mr. McAleenan revised the Delegation (November Delegation).[13] The November Delegation maintained the two grounds for serving, but substituted Annex A for E.O. 13753 as governing the order of succession in cases of the Secretary's death, resignation, or inability to perform the functions of the office. November Delegation §§ II.A, II.B. This change meant Annex A governed both grounds for assuming the title of Acting Secretary, including the Secretary's inability to act during a disaster or catastrophic emergency. The figure in the appendix illustrates the legal framework that could be used to designate an Acting Secretary at the time of the November Delegation.

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[12] Press Release, DHS, *Farewell Message from Secretary Kirstjen M. Nielsen* (Apr. 10, 2019), *available at* https://www.dhs.gov/news/2019/04/10/farewell-message-secretary-kirstjen-m-nielsen.

[13] DHS, *Orders of Succession and Delegations of Authorities for Named Positions*, Delegation No. 00106, Revision No. 08.6 (Nov. 8, 2019).

Mr. McAleenan also changed the officials listed in the order of succession found in Annex A as follows: (1) Deputy Secretary, (2) Under Secretary for Management, (3) Commissioner of CBP; and (4) Under Secretary for Strategy, Policy, and Plans. *Id.* Annex A. As a consequence, the revision removed the FEMA Administrator and CISA Director from the order of succession, replacing them with the CBP Commissioner and the Under Secretary for Strategy, Policy, and Plans respectively.

On November 13, Mr. McAleenan resigned as both Acting Secretary and Commissioner of U.S. Customs and Border Protection. In its response to us, DHS stated Mr. Wolf became the Acting Secretary pursuant to the November Delegation. Response Letter. At this time, the positions of Secretary, Deputy Secretary, Under Secretary for Management, and Commissioner of CBP were all vacant. Mr. Wolf was serving as the previously confirmed Under Secretary for Strategy, Policy, and Plans at the time he assumed the title of Acting Secretary. DHS told us this was the first position that was filled with a previously confirmed official in the order of succession. *Id.* Mr. Wolf currently serves as the Acting Secretary.

On November 13, 2019, Mr. Wolf amended the order of succession for Deputy Secretary in Annex B, as follows: (1) Under Secretary for Management, (2) Principal Deputy Director of USCIS, (3) Administrator of TSA, and (4) Administrator of FEMA. *Id.*; November Delegation Annex B. The revision removed the CISA Director from the order of succession, installed the Principal Deputy Director of USCIS next in the order, and shifted TSA and FEMA to third and fourth. Subsequently, Mr. Cuccinelli assumed the title of the Senior Official Performing the Duties of Deputy Secretary, as he was the Principal Deputy Director of USCIS. Mr. Cuccinelli currently serves as the Senior Official Performing the Duties of Deputy Secretary.

Under HSA, the Secretary, or properly serving Acting Secretary, has the authority to designate the order of succession for Acting Secretary. 6 U.S.C. § 113(g)(2). Based on the analysis above, Mr. McAleenan was not the proper Acting Secretary which means he did not have the authority to amend the April Delegation. When Mr. McAleenan issued the November Delegation, he did so without the proper authority. *See generally Utility Air Regulatory Group v. EPA,* 573 U.S. 302 (2014) (holding agency actions exceeding statutory authority are invalid). Because Mr. Wolf draws his authority to serve as Acting Secretary from the November Delegation, Mr. Wolf cannot, therefore, rely upon it to serve as the Acting Secretary.

Mr. Wolf altered the order of succession for Deputy Secretary in the November Delegation to permit Mr. Cuccinelli to serve as the Senior Official Performing the Duties of Deputy Secretary.[14] According to DHS, Mr. Wolf did this under his

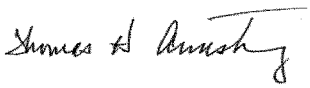
[14] Because the Vacancies Reform Act governs the Deputy Secretary, the 210-day limitation on acting service had already passed. This means the position had to remain vacant and no one could serve as Acting Deputy Secretary. However, under the Vacancies Reform Act, the department could designate an official to perform the

authority as Acting Secretary. Response Letter. As discussed previously, Mr. McAleenan did not have the authority to alter the order of succession; therefore, Mr. Wolf also does not have the authority to alter it as well. The last valid order of succession to serve in that capacity was Annex B to the April Delegation, which did not include Mr. Cuccinelli's position.

CONCLUSION

In the case of vacancy in the positions of Secretary, Deputy Secretary, and Under Secretary for Management, the HSA provides a means for an official to assume the title of Acting Secretary pursuant to a designation of further order of succession by the Secretary. Mr. McAleenan assumed the title of Acting Secretary upon the resignation of Secretary Nielsen, but the express terms of the existing designation required another official to assume that title. As such, Mr. McAleenan did not have the authority to amend the Secretary's existing designation. Accordingly, Messrs. Wolf and Cuccinelli were named to their respective positions of Acting Secretary and Senior Official Performing the Duties of Deputy Secretary by reference to an invalid order of succession.

In this decision we do not review the consequences of Mr. McAleenan's service as Acting Secretary, other than the consequences of the November delegation, nor do we review the consequences of Messers. Wolf and Cuccinelli service as Acting Secretary and Senior Official Performing the Duties of Deputy Secretary respectively. We are referring the question as to who should be serving as the Acting Secretary and the Senior Official Performing the Duties of Deputy Secretary to the DHS Office of Inspector General for its review. We also refer to the Inspector General the question of consequences of actions taken by these officials, including consideration of whether actions taken by these officials may be ratified by the Acting Secretary and Senior Official Performing the Duties of Deputy Secretary as designated in the April Delegation.



Thomas H. Armstrong
General Counsel

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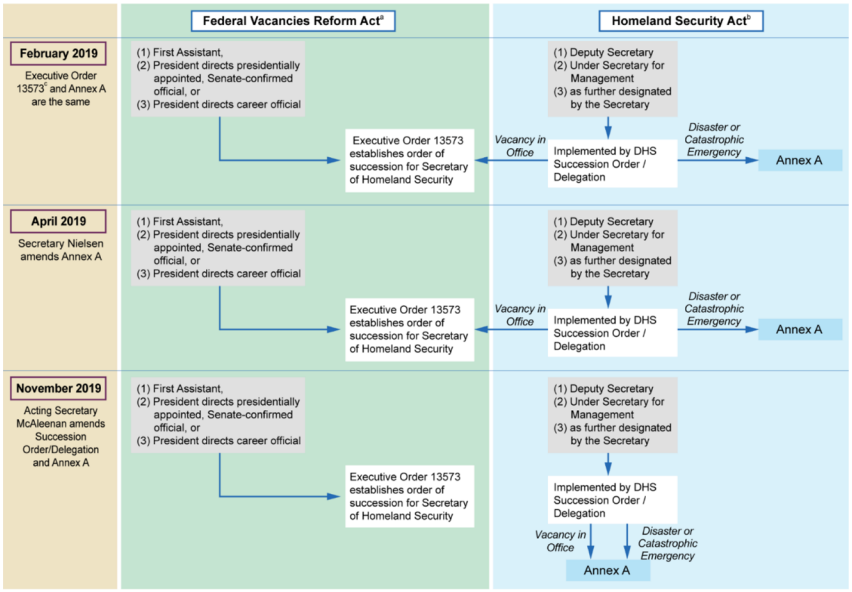
duties of the Deputy Secretary so long as the official does not perform any non-delegable duties of the position. DHS indicated to us that, to the department's knowledge, no one performed any of the position's non-delegable duties. Response Letter.

Appendix 1: Figure Illustrating the Legal Framework for Designating an Acting Secretary of Homeland Security, Calendar Year 2019



Source: GAO analysis of DHS documents. | B-331650.

[a] The Federal Vacancies Reform Act of 1998 (Vacancies Reform Act) is the default framework to designate acting officials for presidentially appointed, Senate confirmed positions. 5 U.S.C. §§ 3345–3349d.

[b] The Homeland Security Act of 2002, as amended, (HSA) provides an order of succession outside of the Vacancies Reform Act when a vacancy arises in the position of Secretary of Homeland Security (Secretary). 6 U.S.C. § 113(g). This includes authority for the Secretary to designate officers to serve as Acting Secretary, which the Secretary implemented through DHS Delegation 00106 and its various revisions.

[c] The President issued Executive Order 13753 providing an order of succession to serve as Acting Secretary under the Vacancies Reform Act. Exec. Order 13753, *Amending the Order of Succession in the Department of Homeland Security*, 81 Fed. Reg. 90,667 (Dec. 9, 2016).

Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 17, 2020

Dear Mr. Armstrong:

Under the Homeland Security Act of 2002 (HSA), Acting Secretary Chad F. Wolf and Senior Official Performing the Duties of Deputy Secretary (SOPDDS) Kenneth T. Cuccinelli II are lawfully performing their current roles at DHS. We request that the GAO immediately rescind its Report claiming otherwise, as the Report's conclusion is fundamentally erroneous.

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In response to congressional requests from Democrat leadership in the House of Representatives, on August 14, 2020, the GAO issued a Report concerning the appointments of Acting Secretary Wolf and SOPDDS Cuccinelli.[1] The Report does not allege that Acting Secretary Wolf and SOPDDS Cuccinelli are ineligible, unfit, unqualified, unable, or incapable of serving in their current roles. Rather, the GAO claims, based on its preferred (but not exclusive) reading of an internal DHS document, that former Secretary Kirstjen M. Nielsen's order of succession required the appointment of a different successor than the one that she designated in that order, personally swore into office, and announced to the public, and whom DHS, as directed by then-Secretary Nielsen, actually and ultimately installed. In doing so, the GAO neglects relevant evidence and subsequent designations.

The GAO's conclusions are baseless and baffling. Baseless because the GAO glosses over the import of DHS's unique order-of-succession authority found in the HSA; disregards key statements made by then-Secretary Nielsen; and ignores each piece of evidence that makes clear whom then-Secretary Nielsen was choosing as her successor, including express statements by Secretary Nielsen and President Trump that then-U.S. Customs and Border Protection (CBP) Commissioner Kevin K. McAleenan had been selected to serve as Acting Secretary and Secretary Nielsen's swearing-in of Commissioner McAleenan to serve in that role. Baffling because the GAO staff admitted that even if then-Secretary Nielsen's April 9, 2020, memorandum is considered in isolation, DHS's interpretation of its own internal memorandum was "a possible interpretation." Yet, despite the obvious fact that the agency is entitled to interpret its own internal memoranda, the GAO improperly rejected DHS's reading. Instead, the GAO decided that its preferred interpretation should displace that of everyone else's at DHS, including both the Agency head and the Agency's highest-ranking attorney.

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As an initial matter, GAO's authority to issue the Report is questionable. As its source of authority, the GAO states that the Report was issued pursuant to 5 U.S.C. § 3349, a section of the Federal

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[1] *Matter of: Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland* Security, GAO, File: B-331650 (Aug. 14, 2020).

Vacancies Reform Act of 1998 (FVRA) that gives the GAO the authority to report to Congress if "an officer [designated under the FVRA] is serving longer than the 210-day period" maximum allowed under the FVRA.[2] The GAO confirmed the claim to this source of authority by posting its Report on its website under the section for the FVRA.[3] The Report, however, did not concern an appointment under the FVRA and the GAO is not claiming that any official at DHS exceeded the 210-day maximum. Instead, the Report concerned an appointment under § 103 of the HSA.[4] The GAO has no authority under § 3349 to opine on the application of the HSA. For this reason alone, the Report should be rescinded.

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The Report is premised on multiple errors. Most prominently, it rests on the faulty contention that when then-Secretary Nielsen stated that then-Commissioner McAleenan would be her successor and swore him in as her successor, those actions had no legal significance in determining whom she actually chose as her successor. That error doomed the Report.

Then-Secretary Nielsen legally changed the succession order for the Secretary in April 2019 as evidenced by three official acts. First, on April 9, 2019, then-Secretary Nielsen issued a document designating the order of succession for any and all vacancies in the position of the Secretary, which provided that then-Commissioner McAleenan would be her successor (the Nielsen Memorandum). Second, then-Secretary Nielsen reaffirmed this change in a message to the entire agency when she stated that "Kevin McAleenan will now lead DHS as your Acting Secretary." Finally, then-Secretary Nielsen personally executed her order of succession when she swore in then-Commissioner McAleenan as the Acting Secretary.

The relevant statute in this area is the HSA. Section 103(g)(2) of the HSA allows the Secretary of Homeland Security "to designate such other officers of the Department in further order of succession to serve as Acting Secretary." This statute vests *exclusive* authority in the Secretary—not in the GAO—to determine the order of succession.

The order of succession established by then-Secretary Nielsen provided that then-Commissioner McAleenan was to serve as Acting Secretary when she resigned. In the Nielsen Memorandum, then-Secretary Nielsen designated as follows: "By the authority vested in me as Secretary of Homeland Security, including the Homeland Security Act of 2002, 6 U.S.C. § 113(g)(2), I hereby designate the order of succession for the Secretary of Homeland Security as follows," after which she listed the order of succession for any and all vacancies in the position of the Secretary.

For context, on December 15, 2016, then Secretary Jeh Johnson published an order of succession/delegation—before 6 USC §§ 113(g)(1) and (2) were added to the HSA—which

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[2] Chapter 33 of Title 5.

[3] https://www.gao.gov/legal/other-legal-work/federal-vacancies-reform-act#violation_letters.

[4] Homeland Security Act of 2002, Pub. L. No. 107-296, § 103, 116 Stat. 2135 (Nov. 25, 2002), *as amended by* National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 1903, 130 Stat. 2000, 2672 (Dec. 23, 2016), codified at 6 U.S.C. § 113.

distinguished between the two different scenarios that occurred under the FVRA —an order of succession and an order of delegation. First, in section II.A, he provided for an order of succession consistent with 5 U.S.C. § 3345(a), which stated that the *order of succession* in case of the Secretary's death, resignation, or inability to perform followed Executive Order 13753. This was necessary because under the existing law at the time (the FVRA), only the President could provide for an order of succession in these circumstances. Second, in section II.B and Annex A, Secretary Johnson provided a separate *order for delegation of authority*, which would apply during a disaster or catastrophic emergency—circumstances not covered by the FVRA.

Although the Nielsen Memorandum did not expressly revoke the language in section II.A that referred to an order of succession issued by the President under the FVRA in December 2016, it did supersede both aspects of Secretary Johnson's order by creating a single list, designated by the Secretary, of the officials who would be both in the "order of succession for the Secretary" (superseding section II.A) and recipients of the delegation of authority (revising Annex A). This was possible because 6 USC §§ 113(g)(1) and (2) now allowed Secretary Nielsen to change her order of succession in all circumstances, not just during a disaster or catastrophic emergency.

Four aspects of the text of Nielsen's one-page Memorandum establish that, contrary to the conclusion in the GAO Report, she changed both the *order of succession* and *order for delegation of authority*—not just the *order for delegation of authority*. First, the title of the document said it was "Amending the Order of Succession." That title makes no sense if she was only amending the *order for delegation of authority*. Second, the first line invoked the Secretary's authority under 6 U.S.C. § 113(g)(2), which is a power to designate officials in "order of succession to serve as Acting Secretary," notwithstanding the FVRA, thus demonstrating her intention to supersede the FVRA, not simply to revise a delegation of secretarial authority for use when there is not a vacancy for FVRA purposes. Third, she said "I hereby designate *the order of succession* for the Secretary of Homeland Security as follows." And fourth, the decision document attached to the Nielsen Memorandum, which Secretary Nielsen signed, makes this unambiguously clear: "By approving the attached document, you will designate *your desired order of succession for the Secretary* . . . in accordance with your authority pursuant to the [HSA]." Accordingly, consistent with the HSA, then-Secretary Nielsen established a single order of succession for all vacancies that may arise. Under this amended order of succession the Commissioner of CBP was to become the Acting Secretary in case of a vacancy.[5]

Then-Secretary Nielsen's designation of then-Commissioner McAleenan to serve as Acting Secretary was subsequently confirmed by her official statements and actions. As part of her amendment to the order of succession, then-Secretary Nielsen clearly and unambiguously articulated her intent when she stated in her farewell message to the entire agency: "Kevin McAleenan will now

[5] The source of the Report's confusion appears to be that the "follow[ing]" list of officials was then preceded by a separate introductory clause noting that Annex A — the list associated with the delegation -- was also being "amended by striking the text of such Annex in its entirety and inserting the following in lieu thereof." In context, however, the two different introductory clauses for the same list of officials simply showed that Secretary Nielsen was creating one list that would serve both the order-of-succession purposes of section II.A and the delegation-of-authority purposes of section II.B. This is supported by all of the other evidence about Secretary Nielsen's intention at the time.

lead DHS as your Acting Secretary." This was consistent with the public announcement from President Trump that "Kevin McAleenan, the current U.S. Customs and Border Protection Commissioner, will become Acting Secretary."[6] Further, on April 10, 2019, Secretary Nielsen made her designation unambiguous and clear when she personally swore in Commissioner McAleenan to serve as the new Acting Secretary.[7]

Posted on DHS's Twitter account (@DHSgov) on April 10, 2019

Few things constitute a more unambiguous designation of a successor than personally swearing your successor in. Even if the GAO were correct that the Nielsen Memorandum did not designate then-Commissioner McAleenan as then-Secretary Nielsen's successor—which it is not—the swearing in of then-Commissioner McAleenan (and the accompanying announcement) unequivocally supplanted that prior designation.

It follows, then, that Acting Secretary Wolf and SOPDDS Cuccinelli are lawfully performing their current roles at DHS. Invoking the HSA, then-Acting Secretary McAleenan later amended the order of succession, resulting in Acting Secretary Wolf's taking office. Acting Secretary Wolf subsequently amended the order of succession for Deputy Secretary, enabling Ken Cuccinelli to assume the role of the SOPDDS. The Report does not contend these subsequent actions were unlawful, and if the GAO had not ignored then-Secretary Nielsen's words and actions, then this letter would be unnecessary.

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[6] https://twitter.com/realDonaldTrump/status/1115011885303312386
[7] https://theborderobserver.wordpress.com/2019/04/11/cbp-commissioner-kevin-mcaleenan-sworn-in-as-the-acting-dhs-secretary/

The moment that Secretary Nielsen invoked her authority, she overrode all past designations, including Former Secretary Jeh C. Johnson's 2016 order of succession, which had been issued under the FVRA, *not* the HSA. This intentional and deliberate act by Secretary Nielsen was understood by all at DHS and across the Administration to have the scope that DHS has understood it to have. The GAO must accept this permissible interpretation. The GAO cannot ignore that interpretation to choose a different, preferred interpretation of its own in order to suit partisan ends. In reaching a contrary conclusion, the Report commits several egregious errors.

First, the GAO erred in failing to defer to DHS's interpretation of its own internal memorandum. The Nielsen memorandum is a wholly internal DHS document that does not have the binding effect of law, like a regulation governing the public, nor is its interpretation subject to challenge. Rather, the proper interpretation of the memorandum is solely within the authority of the Agency.[8] To that end, courts have found that not only do "the internal guidelines of a federal agency . . . not confer substantive rights on any party,"[9] but also it would be inappropriate for anyone "to second guess the Government['s]" interpretation of its own policies and internal memoranda "or demand that the Government" comply with its own "non-binding manual[s]" or internal memoranda.[10]

However, at a minimum, the GAO should have at least followed the Supreme Court's reasoning in *Kisor v. Wilkie* (2019)[11] and afforded the Department's interpretation deference. In fact, the Supreme Court explicitly held in *Kisor* and *Ford Motor Credit Co. v. Milhollin* (1980)[12] that such deference was owed *even to* official staff memoranda "never approved by the agency head."[13] This principle undergirding the Supreme Court's prevailing precedents entitles DHS in this matter to even more robust deference because the Nielsen Memorandum was, for the reasons DHS has given, "approved by the agency head" herself.[14]

At a minimum, DHS's interpretation of the Nielsen Memorandum should have received "'controlling weight'" unless it was plainly erroneous or inconsistent with internal DHS regulations or federal law.[15] Yet, as the GAO admitted, DHS's interpretation was neither plainly erroneous nor inconsistent with regulations or laws. Indeed, during a telephonic briefing with GAO staff on August 14, 2020, GAO officials responsible for the Report's drafting conceded that DHS's construction of the Nielsen Memorandum was a "possible interpretation." It was more than just a possible interpretation—it remains the *only* interpretation given by senior political and career officials at DHS. This key concession should have ended the inquiry.

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[8] *See California. v. F.C.C.*, 39 F.3d 919, 925 (9th Cir. 1994) (citations omitted).
[9] *United States v. Craveiro*, 907 F.2d 260, 264 (1st Cir. 1990), *cert. denied*, 498 U.S. 1015 (1990); *see also United States v. Ivic*, 700 F.2d 51, 64 (2d Cir. 1983) (stating that "non-compliance with internal departmental guidelines is not, of itself, a ground of which defendants can complain").
[10] *United States v. Cason*, 2015 WL 4988206, *8 (N.D. W. Va. Aug. 19, 2015); *see also Northwest Motorcycle Assoc. v. U.S. Dept. of Agriculture*, 18 F.3d 1468, 1479 (9th Cir. 1994) (concluding that an agency's decision should be upheld even if it is "of less than ideal clarity," as long as "the agency's path may be reasonably discerned").
[11] 139 S. Ct. 2400.
[12] 444 U.S. 555.
[13] *Kisor*, 139 S. Ct. at 2417 (citing *Ford Motor Credit Co.*, 444 U.S. at 566, n. 9).
[14] *Id.* (citing *Ford Motor Credit Co.*, 444 U.S. at 566, n. 9).
[15] *Id.* at 2416 (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012)).

Second, the Report refused to consider the official acts or statements of the key decision-maker: then-Secretary Nielsen. The HSA confers the Secretary with the exclusive authority to "designate such other officers of the Department . . . as Acting Secretary." Based on the statute, one would expect that the words and actions of then-Secretary Nielsen would be highly relevant to determining whom she was "designat[ing] . . . as Acting Secretary." Not, however, for the GAO. Relying on Supreme Court cases discussing post-enactment legislative history in the context of *statutory* interpretation, the Report claims that it would be inappropriate to consider then-Secretary Nielsen's words and actions.[16] This analysis misses a key distinction: The GAO was not interpreting a statute; it was interpreting an *internal agency memorandum* about whom then-Secretary Nielsen designated as her successor. Then-Secretary Nielsen was acting through that memorandum under a statute that gave her exclusive authority to set the order of succession. To ignore her words and her acts about the meaning of her memorandum was inexcusable and indefensible error.

Lastly, even if the GAO were correct that the Nielsen Memorandum did not designate Commissioner McAleenan as the successor—certainly, GAO is gravely mistaken in this view—then-Secretary Nielsen twice confirmed her designation when she sent her farewell message and when she swore in then-Commissioner McAleenan. Apart from confirming her intent, those acts, if somehow seen as inconsistent with the Nielsen Memorandum, would have *supplanted* the Nielsen Memorandum as Secretary Nielsen's designation. Thus, although the most logical interpretation of these three actions is that they were all done consistently and together, even if the GAO continues to unreasonably deny it, then the GAO still must concede that the last designation in time—Secretary Nielsen's direction to DHS that "Kevin McAleenan will now lead DHS as your Acting Secretary" and swearing in Commissioner McAleenan as the Acting Secretary—controlled.

*

Regrettably, the GAO's actions surrounding the issuance of the Report could cause an objective observer to question its motivations.

First, the timing of the Report is suspect. The Report was released a mere 80 days before the Presidential election—but 274 days after the GAO had been asked by congressional Democrats to investigate the matter.[17] Although the Report argues that the purported illegality of Acting Secretary Wolf's appointment is "clear,"[18] the GAO took more than nine months to determine it. Clear and obvious legal answers do not take 274 days to divine, particularly for an agency like the GAO, which has approximately 3,000 employees and a $706 million annual budget.[19]

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[16] Report at p. 9.
[17] Letter from Chairman, Committee on Homeland Security, U.S. House of Representatives and Acting Chairwoman, Committee on Oversight and Reform, U.S. House of Representatives to Comptroller General (Nov. 15, 2019).
[18] Report at p. 9.
[19] Fiscal Year 2021 Budget Request, U.S. Government Accountability Office (THE GAO), *available at* https://www.gao.gov/assets/710/704924.pdf.

Second, GAO's staffing of this Report is suspect. In an August 14, 2020, call between the GAO and DHS staff, GAO held out a junior staffer as the "author" of the Report. This staffer appears to have limited experience practicing law—having graduated from law school only three years ago. He also previously worked on a Democratic campaign and the partisan Senate Democratic Steering and Outreach Committee. Surely, few things could be more significant than the appointment of the head of a cabinet-level agency. It should have been easy to find a more seasoned attorney (whose past political work would not have created even the appearance of impropriety) among the GAO's 3,000 employees.

Third, the GAO's recent history is suspect. The GAO is frequently criticized[20] for its "substantive legal and methodological errors."[21] Indeed, a private-sector analysis found that the GAO had "inappropriately conducted, analyzed and reported" information.[22] However, and most problematically, the GAO has recently come under fire for allegedly partisan behavior. The GAO was accused of inappropriately participating in the attempted impeachment of the President and of changing a decades-long legal opinion in order to intentionally disfavor the President.[23] Unfortunately, the issuance of this most recent Report exacerbates legitimate concerns of political partisanship at the GAO.

*

[20] *See*, *e.g.*, Lisa Snell, *Why the GAO Study on Special Education in Charter Schools Gets It Wrong*, Reason Foundation, June 20, 2012, *available at* https://reason.org/commentary/why-the-GAO-study-on-special-educat/.
[21] CURTIS W. COPELAND, ERRORS AND INCONSISTENCIES IN THE GAO'S REPORTS ON THE CONGRESSIONAL REVIEW ACT, Harvard Law School: Environmental and Energy Law Program, July 10, 2018, *available at* http://eelp.law.harvard.edu/wp-content/uploads/GAO-and-the-CRA.pdf.
[22] Jean Norris, *GAO bias evident in report on for-profit college industry*, The Hill, Jan. 14, 2011, *available at* https://thehill.com/blogs/congress-blog/education/137995-gao-bias-evident-in-report-on-for-profit-college-industry.
[23] https://www.newsmax.com/scotfaulkner/government-accountability-office-trump-report-ukraine/2020/01/17/id/950282/.

August 17, 2020

The Report takes the reader on a march through a marsh. At each refusal to rely on key evidence, the morass thickens and the water deepens, as crucial questions lurking just underneath the surface begin to emerge: Is the ignored evidence and failure to afford DHS deference more than just a good faith disagreement? Does the timing of this Report suggest that something else is motivating this opinion? Does the GAO's unfortunate recent history of issuing partisan and inaccurate reports perhaps explain what is going on? As the reader reaches the Report's conclusion, he is left with the sinking and inescapable feeling that something is afoot in the swamp.

The GAO should rescind its erroneous report immediately.

Very Truly Yours,

Chad Mizelle
Senior Official Performing the Duties of the General Counsel

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

November 21, 2007

MEMORANDUM FOR ALL NON-CAREER DHS EMPLOYEES

FROM: Secretary Chertoff

SUBJECT: Restrictions on Political Activities of Non-Career Employees

As employees of the Department of Homeland Security (DHS), we have been entrusted by the people of the United States with a broad mission that goes to the heart of ensuring the safety and well-being of our country. For the public to retain its confidence that we are adhering to our responsibilities, we must ensure that politics – both in fact and in appearance – do not compromise the integrity of our work. This means that Department employees, particularly non-career employees, have an obligation to perform their duties in a politically neutral and impartial manner.

The first Secretary of the Department established a policy restricting the political activities of non-career employees with a policy memorandum on June 27, 2003. The first Chief of Staff supplemented this policy by memorandum on October 26, 2004, just before the 2004 Presidential election by prohibiting participation in the 2004 election activities. This memorandum builds upon that previous guidance and is intended to reiterate basic restrictions on political activity generally applicable to all employees, and clarify DHS policy further limiting the political activities of non-career employees.

As used in this memorandum, the term "non-career employees" includes those employees appointed by the President and confirmed by the Senate, non-career members of the Senior Executive Service, and employees who are appointed to positions classified in Schedule C of the Excepted Service. The restrictions on non-career employees apply even while off-duty, including while on leave.

General Restrictions Applicable to All Federal Employees

Statutes and regulations establish express limitations on the political activity of all Federal employees. Political activity is defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." See 5 C.F.R. §734.101. Under the Hatch Act (5 U.S.C. §§7321-7326) and associated regulations (5 CFR Part 734, Subparts B and C), Federal employees may not:

- use their official authority or influence to interfere with or affect the result of an election;

- solicit, accept, or receive a political contribution;[1]
- solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate;
- allow their official titles to be used in connection with fund-raising activities;
- run for nomination or election to public office in a partisan election;
- solicit or discourage the political activity of any person who is a participant in any matter before DHS; or
- participate in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties or while using a government vehicle.

5 C.F.R. §§734.302-734.306. For more information, please see www.osc.gov/hatchact.htm.

The prohibition on participating in political activities while on duty extends to the use of government e-mail and the internet when it is directed toward the success or failure of a party or candidate. This means that employees may not use any government equipment to engage in partisan political activities, and specifically may not send or forward political material or messages using government e-mail accounts or while in a government building.[2]

DHS Policy Restrictions Applicable to Non-career employees

As a matter of DHS policy, non-career employees are subject to additional restrictions on political activities as set forth below. The restrictions are intentionally more stringent than those imposed on career government employees and non-career employees at other agencies who are not directly involved in the homeland security mission. See 5 C.F.R. §734.104 (permitting agencies to establish additional restrictions on political activities for non-career employees).

Active Participation in Political Activities Prohibited

Non-career employees at DHS are restricted in their participation in political activities in a manner consistent with 5 CFR Part 734, Subpart D, which prohibits employees from actively participating in political management or partisan political campaigns as that phrase is defined in 5 U.S.C. 7323(b)(4). This means as a matter of DHS policy, non-career employees may not:

- appear on the program, on the dais, or in the receiving line of a political event;

[1] For exceptions in connection with Designated Localities and Federal labor organizations refer to 5 C.F.R. 734.208(b)(2) and (b)(4).

[2] In one particular case, a Federal employee disseminated a partisan political e-mail to 27 of her work colleagues while she was on duty and in her Federal workplace. The e-mail invited the recipients to a party the employee was co-hosting that would feature a candidate for partisan political office as a special guest. The e-mail and its attachment informed recipients of the partisan political office for which the individual was a candidate, described the candidate in favorable terms, and contained a link to the candidate's campaign website. After investigating the matter, OSC determined that the employee violated the Hatch Act. OSC, the employee, and the Federal agency agreed to informally settle this matter by suspending the employee without pay for 40 consecutive work days.

- allow one's name to be used in connection with the promotion of a political event;
- engage in political activity (to include wearing political buttons) while on duty, while in a government occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle;[3]
- manage a political campaign;
- distribute fliers printed by a candidate's campaign committee, a political party, or partisan political group;
- serve as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;
- organize or reorganize a political party organization or partisan political group;
- serve as a delegate, alternate, or proxy to a political party convention;
- address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is made in concert with such a candidate, political party, or partisan political group;
- organize, sell tickets to, promote, or actively participate in fund-raising activity of a candidate for partisan political office or of a political party or partisan political group;
- canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party, or partisan political group;
- endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
- initiate or circulate a partisan nominating petition;
- act as recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office; or
- drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

[3] An employee may put a bumper sticker on a personal vehicle and park it in a government-owned or subsidized parking lot, but may not use the vehicle in the course of official business. In addition, employees may display signs on their property and in their residences, and in similar personal circumstances that are not connected with their official positions.

Passive Participation in Political Activities Prohibited Without Approval of the Deputy Chief of Staff

Passive participation in political activities by non-career employees, which is characterized as mere attendance at political fundraisers or campaign events without any active participation in the promotion, production, or presentation of the activity, is also prohibited unless the Deputy Chief of Staff expressly approves the participation in advance.

In addition, the acceptance of a gift of free or discounted attendance at such an event may only be approved if it also meets one of the exceptions to the gift rules, including gifts based on a personal relationship or outside business relationship unrelated to official status. Non-career employees who seek approval to attend a political event or accept a gift in connection with a political event, must contact the Deputy Chief of Staff (for event approval) and the Designated Agency Ethics Official (for gift approval) sufficiently in advance of the event to allow for review of the request and prior approval.

Special Consideration Required for Official Events

Non-career employees must be especially vigilant in avoiding the appearance of partisanship in the course of attending official events. Official events are those proceedings that a non-career employee attends in furtherance of an official duty or in an official capacity. Non-career employees must carefully assess official events to ensure that participation could not be construed as advancing a political agenda or candidate. For example, a speech or grant announcement made in a State shortly before a general election, primary, or caucus, while categorized as an "official event," may not be appropriate for a non-career employee to attend – particularly where it involves an appearance with a candidate for partisan political office.

In determining whether appearance at an official event could be construed as inappropriately partisan, non-career employees should consider, among other factors, the identity of the sponsor of the event, the group being addressed, the other participants at the event, the timing of the event, and the subject of any speech to be given. If a non-career employee has any concern about whether an event may raise an appearance of impropriety, he or she should seek approval from the Deputy Chief of Staff before agreeing to appear. If asked by a current or former member of the Administration to participate in an official capacity in an event that a non-career employee believes could be construed as inappropriately partisan, non-career employees should contact the Deputy Chief of Staff for direction regarding how to proceed.

Activities Not Affected

This memorandum does not affect non-career employees' right to register and vote in any election, or serve as an election judge or clerk to perform nonpartisan duties as prescribed by state or local law. Further, this memorandum does not impact non-career employees' ability to:

- participate in nonpartisan activities of a civic, community, social, labor, or professional organization;

- take an active part (as a candidate or in support of a candidate) in a non-partisan election (such as a school board election);

- be a member of a political party or other partisan political group; or

- make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for a partisan political office (so long as the fact of the donation is not used in a promotional manner).

From: DHS Employee Communications
Subject: Message from the DHS Ethics Official on Partisan Political Activity
Date: Monday, June 29, 2020 8:54:56 AM

June 29, 2020

Message from the DHS Ethics Official on Partisan Political Activity

As we all know, 2020 is a presidential election year, and while I encourage you to exercise your right to vote, I want you to remain conscious of the partisan political activity restrictions in place—especially during these unprecedented times of mass teleworking.

As DHS employees, we must adhere to the rules and policies to ensure there is no political influence (actual or perceived) in the performance of our duties. Although there are differing standards governing varying personnel categories, caution is a valuable tool in navigating political activities. DHS employees may of course vote, express opinions about candidates and issues or otherwise express their First Amendment rights, including by personally contributing to partisan candidates or parties (within Federal Election Commission thresholds).

However, no DHS employee may engage in political activities while in the workplace, while on duty, wearing a DHS badge or insignia, or riding in a government vehicle. Employees are also prohibited from political fundraising activities, running for partisan political office or using their official authority to influence an election.

Less restricted employees may actively participate in most partisan political activities. Further restricted employees may not engage in partisan political activities even while on their own time or away from the workplace. DHS Political Appointees are prohibited from actively participating in partisan related political activities at any time.

In the age of social media, it is important to be cognizant of your presence online. You may choose to include your official title and position on your profile; however, you may not use your official capacity to engage in political activity. While on duty or in the workplace, no employee is permitted to engage in any political activity via social media.

While DHS is participating in widespread teleworking, it is relevant to address the issues that may arise. DHS property and devices may not be employed in political activity. Employees should be mindful of their activity when considered on duty as they may inadvertently exhibit partisan political activity.

I know during these challenging times it is understandably easy to lose sight of these rules; however, the standard at which we are all held does not change. We must maintain our integrity in service of the American people.

If you have any further questions or concerns, please contact your component Ethics Official. Questions about the Hatch Act should be directed to the U.S. Office of Special Counsel (HatchAct@osc.gov).

Joseph B. Maher
Designated Agency Ethics Official

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Reminder from the DHS Ethics Official on Partisan Political Activity

8/25/2020

We, as a Department, are under heightened scrutiny during this Presidential election cycle. It is important that we, DHS employees, are familiar with the rules and policies surrounding partisan political activity to ensure that we comply with them. This ensures the integrity of our operations in service of the American people.

Under the Hatch Act, all Department employees are prohibited from certain conduct, including: using official authority or influence for the purpose of affecting the result of an election; soliciting, accepting or receiving political contributions; soliciting or discouraging the political participation of any person who has a matter pending before the Department; and conducting any political activity while on duty or while in a government room, building, vehicle or other facility, while wearing a DHS badge or insignia, or while using government equipment.

DHS employees may vote, express opinions about candidates and issues or otherwise express their First Amendment rights, including by personally contributing to partisan candidates or parties.

Certain employees are subject to greater restrictions by law. These are career employees who are members of the Senior Executive Service, U.S. Secret Service employees, employees of Immigration and Customs Enforcement Homeland Security Investigations, Administrative Law Judges, or Contract Appeals Board. In addition, as a matter of long-standing DHS policy, political appointees in the Department are also considered further restricted.

More specific information is available on our website. If you have not recently, we recommend you review these guidelines.

- Less restricted employees may actively participate in most partisan political activities, but never while on duty or in federal facilities.
- Further restricted employees may not engage in partisan political activities even while on their own time or away from the workplace.
- DHS Political Appointees are prohibited from actively participating in partisan related political activities at any time and must seek the Office of the Secretary's approval to passively attend partisan political events.

These rules can also impact our online presence, so refamiliarizing ourselves with how the rules related to our social media activities, as well as how the rules arise while teleworking, is critical.

If you have any further questions or concerns, please contact your component Ethics Official. Questions about the Hatch Act should be directed to the U.S. Office of Special Counsel (HatchAct@osc.gov).

Joseph B. Maher
Designated Agency Ethics Official

From: DHS Employee Communications
Subject: Reminder from the DHS Ethics Official on Partisan Political Activity
Date: Thursday, August 27, 2020 9:22:08 AM

Homeland Security

August 27, 2020

Reminder from the DHS Ethics Official on Partisan Political Activity

We, as a Department, are under heightened scrutiny during this Presidential election cycle. It is important that we, DHS employees, are familiar with the rules and policies surrounding partisan political activity to ensure that we comply with them. This ensures the integrity of our operations in service of the American people.

Under the Hatch Act, all Department employees are prohibited from certain conduct, including: using official authority or influence for the purpose of affecting the result of an election; soliciting, accepting or receiving political contributions; soliciting or discouraging the political participation of any person who has a matter pending before the Department; and conducting any political activity while on duty or while in a government room, building, vehicle or other facility, while wearing a DHS badge or insignia, or while using government equipment.

DHS employees may vote, express opinions about candidates and issues or otherwise express their First Amendment rights, including by personally contributing to partisan candidates or parties.

Certain employees are subject to greater restrictions by law. These are career employees who are members of the Senior Executive Service, U.S. Secret Service employees, employees of Immigration and Customs Enforcement Homeland Security Investigations, Administrative Law Judges, or Contract Appeals Board. In addition, as a matter of long-standing DHS policy, political appointees in the Department are also considered further restricted.

More specific information is available on our website. If you have not recently, we recommend you review these guidelines.

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- Further restricted employees may not engage in partisan political activities even while on their own time or away from the workplace.
- DHS Political Appointees are prohibited from actively participating in partisan related political activities at any time and must seek the Office of the Secretary's approval to passively attend partisan political events.

These rules can also impact our online presence, so refamiliarizing ourselves with how the rules related to our social media activities, as well as how the rules arise while teleworking, is critical.

If you have any further questions or concerns, please contact your component Ethics Official. Questions about the Hatch Act should be directed to the U.S. Office of Special Counsel (HatchAct@osc.gov).

Joseph B. Maher
Designated Agency Ethics Official

The Hatch Act and Political Activities
"Less Restricted" Career Employees

The Hatch Act (5 United States Code §§ 7321-7326) and related regulations at 5 Code of Federal Regulations Part 734, govern the political activities of most Federal employees. This is a summary of the basic rules. If you have questions, contact your component Ethics Official (EthicsOfficeHQ@hq.dhs.gov) or the U.S. Office of Special Counsel (OSC) (www.osc.gov) for more information. OSC exclusively investigates and prosecutes Hatch Act cases. Employees who violate the Hatch Act may be subject to personnel actions.

GENERAL POLITICAL ACTIVITY RESTRICTIONS

The Hatch Act prohibits most employees from engaging in political activities[1] in a federal workplace, while on duty, while wearing a Government uniform, badge, or insignia, and while using a government vehicle.

The Hatch Act also prohibits employees from:

Engaging in political fundraising activities (including use of an official title), being a candidate for partisan political office (except in a local election as an independent candidate in certain localities); soliciting or accepting the volunteer services of a subordinate; encouraging or discouraging the political activity of any person who has a matter pending before the Department; using one's official authority to influence the outcome of an election; wearing political buttons on duty; and wearing or displaying partisan political paraphernalia in the workplace.

DHS IT policy prohibits the use of Government-issued office equipment, email, and the internet at any time for the purpose of engaging in partisan political activities. Employees may not send or forward partisan political material or messages using government e-mail accounts, while on duty, or while in a government building.

PERMITTED ACTIVITIES FOR "LESS RESTRICTED" CAREER EMPLOYEES[2]

The Hatch Act does not limit an employee's right, in a personal capacity and on their own time, to: vote; join a political party or group; express personal opinions about candidates and issues; participate in activities that are non-partisan; display a political sticker on a personal vehicle; place a political sign at one's home; engage in activities with civic, community, social, labor, or professional organizations; make a financial contribution to a political party, candidate, or group; or, engage in activities related to referendum, ordinance, or issue-based questions to the extent not expressly prohibited by the Hatch Act or other law.

Less restricted career employees may, on their own time and away from the office, take an active part in partisan political management; be a candidate for public office in a nonpartisan election; assist in voter registration drives; attend political fundraising events; attend and be active at political rallies and meetings; serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions; organize or reorganize a political party organization or political group; attend and fully participate in the business of nominating caucuses of political parties; participate in a political convention, rally, or other political gathering; initiate, circulate, and sign nominating petitions; serve as a delegate or proxy to a political nominating convention or caucus; engage in grass-roots "get-out-the vote" efforts (except fundraising); endorse or oppose a partisan political candidate, party, or group; act as a recorder, watcher, challenger, or similar officer at polling places; serve as an election judge or clerk, or in a similar position; drive voters to polling places; display a political bumper sticker on a personal vehicle; and place a political sign at their residence.

The Hatch Act applies when using social media outlets such as Facebook and Twitter. For more information on social media use, please visit the U.S. Office of Special Counsel website and see FAQs for Social Media as well as Hatch Act Advisory Opinions & Guidance regarding social media and email.

[1] *Political activity"* is an activity geared towards the success or failure of a partisan political party, candidate for partisan political office, or partisan political group.

[2] "Less restricted" employees are career employees who are not career members of the Senior Executive Service, employees of the U.S. Secret Service, Administrative Law Judges, Contract Appeals Board Members, or employees of Immigration and Customs Enforcement Office of Homeland Security Investigations. Uniformed members of the U.S. Coast Guard are bound by DoD Directive 1344.10 and should seek further guidance from the USCG Ethics Official at (202) 372-3737.

The Hatch Act and Political Activities
"Further Restricted" Employees

The Hatch Act (5 United States Code §§ 7321-7326) and related regulations at 5 Code of Federal Regulations Part 734, govern the political activities of most Federal employees. This is a summary of the basic rules. If you have questions, contact your component Ethics Official (email: EthicsOfficeHQ@hq.dhs.gov) or the U.S. Office of Special Counsel (OSC) (www.osc.gov) for more information. OSC exclusively investigates and prosecutes Hatch Act cases. Violations of the Hatch Act may subject employees to personnel actions up to and including removal from office.

GENERAL POLITICAL ACTIVITY RESTRICTIONS

The Hatch Act prohibits most employees from engaging in political activities[1] in a federal workplace, while on duty, while wearing a Government uniform, badge, or insignia, and while using a government vehicle.

The Hatch Act also prohibits employees from:

Engaging in political fundraising activities (including use of an official title), being a candidate for partisan political office (except in a local election as an independent candidate in certain localities); soliciting or accepting the volunteer services of a subordinate; encouraging or discouraging the political activity of any person who has a matter pending before the Department; using one's official authority to influence the outcome of an election; wearing political buttons on duty; or displaying partisan political paraphernalia in the workplace.

DHS IT policy prohibits the use of Government-issued office equipment, email, and the internet at any time for the purpose of engaging in partisan political activities. Employees may not send or forward political material or messages using government e-mail accounts, while on duty, or while in a government building.

ADDITIONAL RESTRICTIONS – "FURTHER RESTRICTED" EMPLOYEES

Career employees who are members of the Senior Executive Service, U.S. Secret Service employees, employees of Immigration and Customs Enforcement Homeland Security Investigations, Administrative Law Judges, or Contract Appeals Board Members MAY NOT, even on their own time and away from the office, engage in political activities in concert or coordination with a partisan political party, candidate, or group. These "Further restricted" employees MAY NOT:

Take an active part in partisan political management or partisan political campaigns; serve as a delegate or proxy to a political nominating convention; engage in grass-roots "get-out-the vote" efforts for a political candidate, party, or group; publicly endorse or oppose a partisan political candidate in concert with a partisan political party, candidate, or group; hold office in a political party or club; take an active role in a partisan political event; campaign for or against a candidate or slate of candidates in partisan elections; make campaign speeches; organize or manage political rallies or meetings; initiate or circulate nominating petitions; act as a recorder, watcher or challenger at a polling place, or drive voters to the polls in concert with a partisan candidate or group; endorse or oppose a partisan political candidate in political materials; invite subordinates to political events or otherwise suggest they engage in any partisan political activity; solicit, accept or receive donations or contributions for a partisan political party or candidate; or distribute campaign or candidate fliers. These activities are also prohibited while using social media outlets such as Facebook and Twitter. For more information on social media use, please visit the U.S. Office of Special Counsel web site and review the Hatch Act Advisory Opinions & Guidance regarding social media and email.

Nothing in the Hatch Act affects an employee's right, in a personal capacity and on their own time, to vote, join a political party or group, express personal opinions about candidates and issues not in concert with a partisan political candidate, party, or group; passively attend political events; display a political bumper sticker on a personal vehicle; place a political sign at one's home; participate in activities that are non-partisan; engage in activities with civic, community, social, labor, or professional organizations; make a financial contribution to a political party, candidate, or group; or engage in activities related to referendum, or issue-based questions.

[1] *"Political activity"* is an activity geared towards the success or failure of a partisan political party, candidate for partisan political office, or partisan political group.

The Hatch Act and Political Activities
DHS Political Appointees

The Hatch Act (5 United States Code §§ 7321-7326) and related regulations at 5 Code of Federal Regulations Part 734, govern the political activities of most Federal employees. This is a summary of the basic rules. If you have questions, contact your component Ethics Official (EthicsOfficeHQ@hq.dhs.gov) or the U.S. Office of Special Counsel (OSC) (www.osc.gov) for more information. OSC exclusively investigates and prosecutes Hatch Act cases. Violations of the Hatch Act and the DHS Political Activities Policy are subject to possible personnel actions.

GENERAL POLITICAL ACTIVITY RESTRICTIONS

The Hatch Act prohibits most employees from engaging in political activities[1] in a federal workplace, while on duty, while wearing a Government uniform, badge, or insignia, and while using a government vehicle.

The Hatch Act also prohibits employees from:
Engaging in political fundraising activities (including use of an official title), being a candidate for partisan political office (except in a local election as an independent candidate in certain localities); soliciting or accepting the volunteer services of a subordinate; encouraging or discouraging the political activity of any person who has a matter pending before the Department; using one's official authority to influence the outcome of an election; wearing political buttons on duty; and wearing or displaying partisan political paraphernalia in the workplace.

DHS IT policy prohibits the use of Government-issued office equipment, email, and the internet at any time for the purpose of engaging in partisan political activities. Employees may not send or forward political material or messages using government e-mail accounts, while on duty, or while in a government building.

ADDITIONAL RESTRICTIONS FOR POLITICAL APPOINTEES

All DHS Political Appointees are prohibited by DHS Policy from actively participating in political activities in concert or coordination with a partisan political candidate, party, or group, even on their own time and away from the office. (*See Secretary Chertoff Memorandum, dated November 21, 2007)*

DHS political appointees may NOT: Take an active part in partisan political management or partisan political campaigns; serve as a delegate or proxy to a political nominating convention; engage in grass-roots "get-out-the vote" efforts for a political candidate, party, or group; publicly endorse or oppose a partisan political candidate in concert with a partisan political party, candidate, or group; hold office in a political party or club; take an active role in a partisan political event; campaign for or against a candidate or slate of candidates in partisan elections; make campaign speeches; organize or manage political rallies or meetings; initiate or circulate nominating petitions; act as a recorder, watcher or challenger at a polling place, or drive voters to the polls in concert with a partisan candidate or group; endorse or oppose a partisan political candidate in political materials; invite subordinates to political events or otherwise suggest they engage in any partisan political activity; solicit, accept or receive donations or contributions for a partisan political party or candidate; or distribute campaign or candidate fliers. These activities are also prohibited while using social media outlets such as Facebook and Twitter. For more information on social media use, please visit the U.S. Office of Special Counsel website and review the Hatch Act Advisory Opinions & Guidance regarding social media and email.

Passive attendance at a political event requires prior approval from the Deputy Chief of Staff. Political appointees may not appear on the dais, or in a receiving line at any political event. Political appointees are also advised to contact the Deputy Chief of Staff before participating in official events with partisan political candidates and should review invitations to official events to ensure that they are not inherently partisan. Nothing in the Hatch Act affects an employee's right, in a personal capacity and on their own time, to vote, join a political party or group, express personal opinions about candidates and issues, display a political bumper sticker on a personal vehicle, place a political sign at one's home, participate in activities that are non-partisan, engage in\activities with civic, community, social, labor, or professional organizations, make a financial contribution to a political party, candidate, or group, or engage in activities related to referendum or issue-based questions.

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[1] *"Political activity"* is an activity geared towards the success or failure of a partisan political party, candidate for partisan political office, or partisan political group.

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

MIKE ROGERS, ALABAMA
RANKING MEMBER

One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

September 22, 2020

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

Ranking Member Gary C. Peters
Committee on Homeland Security
& Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

In advance of your hearing tomorrow to consider the nomination of Chad F. Wolf for Secretary of Homeland Security, I write to share my serious concerns regarding Mr. Wolf's repeated failure to comply with Constitutionally mandated oversight during his tenure as "Acting Secretary of Homeland Security" and to urge you in the strongest possible terms to oppose his nomination.

In a letter dated December 21, 2019, Mr. Wolf wrote to me that he was committed "to be fully cooperative, open and transparent" with the Committee on Homeland Security.[1] Unfortunately, under his tenure, the Department of Homeland Security (DHS) has been anything but cooperative, open, transparent, or responsive. Instead, the Department has repeatedly ignored the Committee's document requests, failed to comply fully with a Committee subpoena for documents, and failed to make Departmental officials available for transcribed interviews with the Committee. Further, just a week ago, Mr. Wolf himself failed to comply with a subpoena issued for his testimony to discuss worldwide threats facing the homeland.

In the absence of the information requested by the Committee, the Committee and indeed the Congress have little insight into the many troubling and apparently improper actions taken by the Department, both during Mr. Wolf's tenure and during that of prior Trump Administration officials. Mr. Wolf's obvious and blatant disregard for Congressional oversight and his repeated

[1] Letter from Mr. Chad F. Wolf, Department of Homeland Security, to Chairman Bennie G. Thompson and Ranking Member Mike Rogers, Committee on Homeland Security (Dec. 21, 2019).

failure to provide even the most basic information required by the Committee to understand the Department's actions render him unfit for confirmation as Secretary of a Cabinet-level department.

Presented below is a brief overview of just some of the Committee's unanswered requests, as well as detailed information on the Committee's unfulfilled subpoenas.

Requests for Documents Regarding Coronavirus Response Have Been Ignored

The United States faces an unprecedented global pandemic that has now killed more than 200,000 Americans and that will continue to spread until we have an effective vaccine. Recognizing that the pandemic is straining Federal resources, the Committee has sought only the most essential information regarding our nation's response—including state requests for and Federal distributions of personal protective equipment (PPE) and testing supplies—and yet we have received only cursory information and a handful of documents from DHS in reply to our correspondence.

For example, on March 23, 2020, I sent a letter requesting basic information on the supplies and distribution of PPE, including copies of solicitations and contracts for masks and other forms of PPE, medical supplies, and equipment.[2] On April 28, the Committee received a letter from the Administrator of the Federal Emergency Management Agency (FEMA) that conveyed only nine contracts. This letter admitted that these contracts "do not represent the entirety of contracts that FEMA has issued for PPE."[3] In fact, publicly available databases indicate that FEMA had issued nearly 200 contracts by April 27 that are coded as being related to COVID-19. Many of these contracts would presumably be responsive to the Committee's request.

Separately, the Committee has still not received the documents requested in a letter I sent jointly with Committee on Oversight and Reform Chairwoman Carolyn Maloney, on April 7, 2020, to Administrator Gaynor. This letter sought documents regarding requests from U.S. states, territories, and the District of Columbia for PPE, the distribution by the Federal government of PPE, and the role of Senior Advisor to the President Jared Kushner in FEMA's supply acquisition and distribution processes.[4] We wrote again on May 8 to renew the request that FEMA provide responsive documents by May 12.[5]

Numerous Requests for Documents Have Been Ignored

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[2] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Mr. Chad Wolf, Department of Homeland Security, and Secretary Alex M. Azar, II, Secretary, Department of Health and Human Services (March 23, 2020) (online at https://homeland.house.gov/imo/media/doc/DHS%20HHS%20PPE%20Letter.pdf).

[3] Letter from Administrator Peter T. Gaynor, Federal Emergency Management Agency, to Chairman Bennie G. Thompson, Committee on Homeland Security (April 28, 2020).

[4] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, and Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Administrator Peter T. Gaynor, Federal Emergency Management Agency (April 7, 2020) (online at https://homeland.house.gov/imo/media/doc/040720%20Joint%20FEMA%20letter%20re%20PPE.pdf).

[5] Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Administrator Peter T. Gaynor, Federal Emergency Management Agency (May 8, 2020) (online at https://homeland.house.gov/imo/media/doc/050820%20Joint%20FEMA%20Follow%20up.pdf).

Despite Mr. Wolf's pledge to be responsive and transparent, during his tenure the Department has ignored numerous Committee requests for documents, including:

Request for Documents Regarding DHS' Interactions with "We Build the Wall"

On August 24, 2020, the Committee wrote to Mr. Wolf requesting three categories of documents and communications between DHS and "We Build the Wall."[6] As you know, We Build the Wall is an organization founded by Brian Kolfage, Steve Bannon, and others with the stated intent of taking donations from private citizens "to build segments of border wall on private property" along the U.S-Mexico border.[7] The group partnered with Fisher Industries to build border barriers on private property in New Mexico and in Texas in 2019.[8] Mr. Kolfage, Mr. Bannon, and two other associates have been arrested and indicted for allegedly embezzling more than $1 million in donations made to We Build the Wall.[9] On November 20, 2019, Mr. Wolf praised We Build the Wall's New Mexico project at a press event.[10] The Committee asked that all requested documents be provided by September 6, 2020, but no documents have been provided.

Request for Documents Regarding the Exclusion of New York Residents from Trusted Traveler Programs

The Committee is conducting an ongoing investigation regarding the facts and circumstances surrounding the assertions made in testimony before the Committee by Mr. Wolf and another senior Departmental official that have proven to be inaccurate and misleading regarding the decision by the Department to exclude the residents of New York from Trusted Traveler programs (TTP) following the enactment by New York of its "Green Light Law."

On July 25, 2020, the Committee wrote to Mr. Wolf to request that the Department make four employees available to complete transcribed interviews no later than September 4, 2020. As none of those individuals have been made available, the Subcommittee on Border Security, Facilitation, and Operations has scheduled a hearing on September 30, 2020, and has requested testimony from each of these four individuals at the hearing. The Committee had also requested four categories of documents and communications to be provided by August 21, 2020.[11] The Department has not yet provided all requested documents and communications.

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[6] Letter to from Chairman Bennie G. Thompson, Committee on Homeland Security, to Mr. Chad Wolf, Department of Homeland Security (Aug. 24, 2020) (online at https://homeland.house.gov/imo/media/doc/0824%20DHS%20Letter%20re%20We%20Build%20the%20Wall.pdf).
[7] We Build the Wall, "About Us" webpage and "Our Team" webpages (accessed August 23, 2020) (online at https://webuildthewall.us/about-us/; https://webuildthewall.us/ourteam/).
[8] The Washington Post, *'He always brings them up': Trump tries to steer border wall deal to North Dakota firm* (May 23, 2019) (online at https://www.washingtonpost.com/immigration/he-always-brings-them-up-trump-tries-to-steer-border-wall-deal-to-north-dakota-firm/2019/05/23/92d3858c-7b30-11e9-8bb7-0fc796cf2ec0_story.html).
[9] Department of Justice, "Leaders Of 'We Build The Wall' Online Fundraising Campaign Charged With Defrauding Hundreds Of Thousands Of Donors" (August 20, 2020) (online at www.justice.gov/usao-sdny/pr/leaders-we-build-wall-online-fundraising-campaign-charged-defrauding-hundreds-thousands).
[10] Border Report, *DHS officials welcome privately-built border wall* (Nov. 21, 2019) (online at www.borderreport.com/news/dhs-officials-welcome-privately-built-border-wall/).
[11] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, and Chairwoman Kathleen Rice, Subcommittee on Border Security, Facilitation, and Operations, to Mr. Chad Wolf, Department of Homeland Security (July 25, 2020) (online at https://homeland.house.gov/imo/media/doc/DHS%20Wolf%20Letter.pdf).

Request for Documents Regarding Secret Service Expenditures at Trump-owned Properties

On January 15, 2020, the Committee wrote to Secret Service Director James Murray to request that the Secret Service produce, by February 3, 2020, data on expenses incurred to support the travel of President Trump and his family during his time in office.[12] After repeated unanswered inquiries on the status of the Department's review of the data, on August 19, 2020, I wrote to Mr. Wolf urging that he release the documents by September 2, 2020. However, the Committee has not received any documents in response to this request.[13]

Failure to Comply with Committee Subpoena for Documents Regarding Child Deaths

On January 4, 2019, I wrote to then-Secretary Kirstjen M. Nielsen to request that the Department produce by January 18, 2019, among other documents, the following:

> Any document, record, memo, correspondence, or other communication related to the care and treatment or children in CBP custody from November 1, 2018, to the present, including documents related to the deaths of Jakelin Caal Maquin and Felipe Alonzo-Gomez.[14]

On November 20, 2019, following the Department's failure to produce all documents requested in my letter of January 4, 2019, the Committee issued a narrowly tailored subpoena requiring the production by noon on December 11, 2019 of, among other documents, the following:

> Any document, record and/or communication related to the care and treatment of children in the U.S. Customs and Border Protection custody from November 1, 2018 to January 4, 2019, including those related to the deaths of Jakelin Caal Maquin and Felipe Alonzo Gomez.[15]

As already discussed, on December 21, 2019, Mr. Wolf responded to the Committee by assuring us that he was committed "to be fully cooperative, open and transparent" with us.[16] However, the Department has still failed to provide all documents responsive to the Committee's subpoena. Further, a production provided by the Department on March 2, 2020—just one day before Mr. Wolf's last appearance before the Committee on March 3, 2020—was so heavily redacted that it was essentially incomprehensible.

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[12] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Director James M. Murray, United States Secret Service (Jan. 15, 2020) (online at https://homeland.house.gov/imo/media/doc/SecretServiceCostRequest.pdf).

[13] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Mr. Chad Wolf, Department of Homeland Security (Aug. 19, 2020).

[14] Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Secretary Kirstjen M. Nielsen, Department of Homeland Security (Jan. 4, 2019).

[15] Letter and Accompanying Schedule and Subpoena Instructions, from Chairman Bennie G. Thompson, Committee on Homeland Security, to Mr. Chad F. Wolf, Department of Homeland Security (Nov. 20, 2019).

[16] Letter from Mr. Chad F. Wolf, Department of Homeland Security, to Chairman Bennie G. Thompson and Ranking Member Mike Rogers, Committee on Homeland Security (Dec. 21, 2019).

Mr. Wolf Failed to Comply with Subpoena for His Testimony

Earlier this month, I issued a subpoena for Mr. Wolf's testimony at the Committee on Homeland Security's annual worldwide threats hearing after he reneged on his commitment to testify.[17] It is the long-standing practice of the Committee to convene this hearing, meant to inform Members about global terrorism threats to the homeland. Past Secretaries of Homeland Security, regardless of political party affiliation, have regularly participated in this hearing. The Committee also hoped to question Mr. Wolf about many of the outstanding document requests enumerated in this letter. Regrettably, in an unprecedented rejection of the Committee's legitimate oversight, Mr. Wolf defied the Committee's subpoena and failed to appear at the hearing.

While DHS argued Mr. Wolf could not testify due to his pending nomination, there is no legal prohibition that would have barred his participation. Indeed, others have testified before Congress despite pending nominations.

Mr. Wolf's numerous failures to comply with Congressional oversight set a troubling precedent and should not be rewarded by confirmation to a Cabinet-level position. I therefore urge you and all Members of the Senate Committee on Homeland Security and Governmental Affairs to oppose Mr. Wolf's nomination for Secretary of Homeland Security. Thank you for your consideration.

Sincerely,

Bennie G. Thompson
Chairman

[17] Subpoena from Chairman Bennie G. Thompson, Committee on Homeland Security, to Mr. Chad F. Wolf, Department of Homeland Security (Sept. 11, 2019).

Ranking Member Gary C. Peters

Post-Hearing Questions for the Record Submitted to for Chad Wolf
Nomination of the Hon. Chad Wolf to be Secretary, U.S. Department of Homeland Security
September 23, 2020

Background & Management

1. How do you incorporate long-term or strategic goals into your management? Are there any long-term improvements that you feel need to be made to the department?
I lead by articulating a clear vision, setting both short- and medium-term goals and holding personnel accountable. I am a strong believer in setting clear expectations up front that include deliverables and timelines. I empower team members to consider all possible solutions and to determine alternative paths to identified issues. I hold personnel accountable for progress and action. My management style is based on setting expectations and ensuring roles and responsibilities are clear from the outset. I value open communication with personnel and am always looking for smarter, better ways to accomplish goals and objectives.

2. Do you believe that you have set a good example for your staff as to how to conduct themselves? Please provide examples of how you act to encourage good conduct.
Yes. As previously stated, I lead by articulating a clear vision, setting both short- and medium-term goals and holding personnel accountable. I am a strong believer in setting clear expectations up front that include deliverables and timelines. I empower team members to consider all possible solutions and determine alternative paths to identified issues.

3. Do you believe you have fostered an atmosphere where your colleagues believe you listen to their advice and counsel?
Yes.

4. You have previously stated that from time to time, you have delegated too much responsibility to individuals serving under you. Please describe what you view as your core roles and provide an example of when you have over-delegated.
Over the last 10 months, I have learned that you must surround yourself with the best and hard-working personnel who are committed to the DHS mission. The Department is only as strong as its workforce and I take my commitment to the teams I personally manage, as well as the 240,000 men and women of DHS, very seriously. Over the last two years as Acting Secretary and Under Secretary, I have gained an even greater appreciation for a cohesive, forward-leaning and thorough policy process that provides opportunities for subject matter experts to weigh in on the important issues facing the Department. I believe it would be inappropriate for me as Acting Secretary to give specific examples of when I have over delegated responsibility and to whom.

5. Do you believe you have been appropriately apolitical in how you have carried out your role as Acting Secretary? How do you evaluate decisions in a political atmosphere?

Yes. I make all my decisions with reference to applicable laws, past practices, and empirical data.

6. Can you provide an example of a statement made by the President that you knew to be false or misleading related to the security of the homeland?
I always communicate my advice to the President in a prompt and honest manner, including any disagreements I have with him. Consistent with longstanding Executive Branch precedent, it would be inappropriate for me to reveal the contents of those communications.

    a. Do you believe you have a responsibility, as a homeland security professional entrusted with matters of national security, to speak to truth to power when any government official, from a GS-7 to the President of the United States, manipulates, misstates, obfuscates, or withholds the truth?
    Yes.

7. Do you agree that DHS authorities, personnel, and resources should only be used to advance the homeland security of the United States, and not for any one President's or political party's political gain?
DHS, like other federal agencies, is a "creature of statute, having no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress," Atlantic City Elec. Co. v. FERC, 295 F.3d 1, 8 (D.C. Cir. 2002)—and may exercise, deploy, and use only the authorities, personnel, and resources that Congress has authorized. DHS has not and will not exercise, deploy, and use its authorities, personnel, and resources for any other ends.

    a. Will you resist, report to Congress, and refuse to carry out any proposal by the President to use the authorities, personnel, and resources of DHS to carry out activities designed to distract or otherwise influence for political gain the American public?
    I have never been asked to do so, and as I stated above, I make all my decisions with reference to applicable laws, past practices, and data.

8. GAO has identified strengthening and integrating DHS management as a high-risk issue since 2003. What steps will you take to ensure DHS leaders remain committed to addressing the remaining work needed on the high-risk issues at DHS?
As stated above, I take seriously my responsibilities to lead by example and will continue the Department's efforts to recruit and retain the best individuals, including management, for the mission.

9. DHS and GSA have not yet submitted information to Congress about DHS headquarters consolidation efforts as required by the DHS Headquarters Consolidation Accountability Act of 2015. The department was to have provided this in the fall of 2016. When will this be provided to Congress?

DHS continues to work closely with GSA and OMB on the report directed in the Headquarters Consolidation Accountability Act of 2015. We anticipate submitting the report by the end of this calendar year.

10. You have previously stated that at DHS, you have advocated for sharing more information with the media, Congress and other outside stakeholders to better explain the Department's positions. Can you provide an example of an instance or topic where you advocated for sharing more information with Congress and/or the media? Was this information shared?
DHS always works to share as much information with Congress, the media, and the American public without inappropriately divulging sensitive or classified information. In early January 2020, with the death of former Iranian General Soleimani, the Department extensively briefed and shared information as to how the Department was prepared to address any aggressive Iranian response.

11. As you know, DHS has not had comprehensive reauthorization legislation enacted. Are there particular legislative changes or initiatives that are needed to better ensure the department is operating effectively and that may enable you to better accomplish DHS's objectives? If so, please explain to us what those are.
I am committed to working with Congress to address comprehensive reauthorization legislation, while mindful that any solution will require bipartisan support and coordination among relevant stakeholders. I believe it would be more appropriate for me to work through official channels to communicate proposed legislation through our legislative affairs office, in consultation with expert advice provided by other components at DHS.

12. Would you support and encourage participation of current DHS leadership in any official blue-ribbon commission or congressionally mandated panel to review the Department's structure, mission, and alignment with the broader federal government, should one be created?
I would consider any such proposal upon seeing it, including its scope and structure.

GAO, OIG, Investigations, and Conflicts of Interest

13. GAO reports sent for comment to DHS and its components from August 2019 through July 2020 took over the 30 day-maximum for providing agency comments in 23 instances and in five cases DHS was three weeks or more late. How do you plan to ensure timely responses to GAO so that Congress can conduct necessary oversight?
The Department has a robust GAO audit liaison function that works closely with Component leadership to address and close out open recommendations. DHS will continue to work to provide responses to GAO as timely as possible.

14. Each year, GAO identifies multiple areas where Congress and the federal government can act now to address federal programs or activities that are fragmented, overlapping, or duplicative—which would save the government tens of billions of dollars. As Secretary of the Department of Homeland Security, what priority would you place on strengthening

and overseeing DHS's management of its programs, agencies, offices, and initiatives in order minimize duplicative goals or activities and achieve greater efficiency and effectiveness?
As Secretary (and as I have as Acting Secretary), I would put the highest emphasis on optimizing DHS's potential in every respect, including by strengthening and overseeing DHS's management of its programs, agencies, offices, and initiatives in order to minimize duplicative goals or activities and to achieve greater efficiency and effectiveness.

a. What specific steps is DHS taking to address and implement the actions previously identified by GAO for DHS to reduce, eliminate, or better manage fragmentation, overlap, or duplication; achieve cost savings; or enhance revenues?
We are continuously reevaluating our organization to ensure that we enforce applicable laws in a cost-efficient manner.

15. You have previously stated that you would provide GAO and the DHS OIG with timely access to agency records only if the request was "reasonable."

a. How would you determine what constitutes a "reasonable" request?
As stated above, DHS has a robust GAO and OIG audit liaison function that works to provide timely and responsive information to the GAO's and OIG's requests. The Department provides information taking into account the stated objectives and goals of the review, the type and volume of information requested, and the timeframe by which it is sought.

b. What steps would you take if GAO or the OIG disagreed with DHS on what constitutes a "reasonable" request?
I would evaluate the specific disagreement and work with the GAO and OIG toward resolution through the accommodation process.

16. What steps, if any, did DHS take to evaluate the legality of your acting service prior to your designation as Acting Secretary or prior to Ken Cuccinelli's service as the Senior Official Performing the Duties of Deputy Secretary?
While I was not involved with the discussions prior to my appointment, I understand that the DHS Office of the General Counsel as well as the Department of Justice confirmed the legality of my appointment. To that end, the November 8, 2019 succession order—which was signed by then-Acting Secretary McAleenan and resulted in me serving as Acting Secretary—and the November 13, 2019 change to the order of succession for the Deputy Secretary—which resulted in Mr. Cuccinelli performing the duties of the Deputy Secretary—have been disclosed to the GAO as part of the GAO's review. DHS strongly rejects the GAO Report dated August 14, 2020 and DHS's Acting General Counsel responded fully to the GAO in a letter dated August 17, 2020.

a. If a legal opinion was provided, please provide a copy of any legal or advisory opinions pertaining to this issue.

DHS's legal position is explained in the August 17, 2020 letter from the Acting General Counsel to the GAO.

17. You have previously stated that the Department of Justice (DOJ) has confirmed the legality of your appointment as Acting Secretary of DHS. How was that confirmation conducted?

a. Is DOJ's confirmation in writing? If so, please provide a copy.
DHS's legal position is explained in the August 17, 2020 letter from the Acting General Counsel to the GAO.

18. DHS's August 17, 2020 response to GAO accuses GAO, a nonpartisan agency charged with overseeing the executive branch, of partisanship and directly attacks an individual GAO staffer, even though all GAO reports are products of the agency. Do you believe this approach is appropriate?
The DHS Acting General Counsel's letter clearly states why the GAO's report is deeply flawed.

a. If the Department's legal opinion and position is valid, and you agree with the role that GAO plays in performing agency oversight (regardless of your agreement with this specific GAO conclusion), why did the letter go the extra step to make partisan allegations against GAO?
As I have previously stated, I respect the role and function of the GAO. However, we strongly disagree with the GAO opinion and how they arrived at that opinion, for the reasons explained in the letter from the Acting General Counsel to the GAO. The Acting General Counsel determined that identifying the suspicious partisanship, staffing, and lack of legal rigor at GAO was necessary in this instance and in the public interest.

b. Please explain how the content and tone of this letter is consistent with the need for DHS officials to cooperate with GAO reviews and provide information to them in a timely manner.
Please see the response to Question 18a.

19. On August 25, 2020, you participated in a naturalization ceremony that was broadcast at the Republican National Convention. At the time of your participation in the ceremony, were you aware that the ceremony would be broadcast at the Republican National Convention or otherwise used as part of a political campaign?

a. When did you become aware that the ceremony would be broadcast at the Republican National Convention or otherwise used as part of a political campaign?
As Acting Secretary of DHS, I am permitted to perform my official duties as a government official and taking part in a naturalization ceremony is an aspect of my official role since the U.S. Citizenship and Immigration Services (USCIS) is a component of DHS. USCIS, of course, is the agency that conducts the naturalization ceremony as one of the last steps in the naturalization process of new Americans. The naturalization ceremony

referenced in this question was one that I participated in as part of my official government duties.

20. You have previously stated that both the DHS OGC and Office of White House Counsel approved your participation in the naturalization ceremony later broadcast at the Republican National Convention. Please provide these approval documents.

Please see the response to question 19.

21. You have previously stated that the Office of Special Counsel (OSC) was consulted on the matter of your participation in a naturalization ceremony later broadcast at the Republican National Convention. What did OSC advise?

a. Did OSC agree that your participation would not violate the Hatch Act?
Please see the response to Question 19.

b. Did OSC provide written advice? If so, provide the Committee with that documentation.
Please see the response to Question 19.

22. DHS guidance states that, "All DHS Political Appointees are prohibited by DHS Policy from actively participating in political activities in concert or coordination with a partisan political candidate, party, or group." Please explain how your participation in a naturalization ceremony broadcast at the Republican National Convention is consistent with this policy.
Please see the response to question 19.

23. You have previously stated that you are "currently responding to a request for information from the Office of Special Counsel." Will you commit that you personally, as well as DHS, will fully cooperate with OSC's requests for information in a timely manner?
Yes, if it is lawful and appropriate.

24. You have been accused of misconduct and whistleblower retaliation in at least one public whistleblower complaint.

a. Will you commit that you personally, as well as DHS, will cooperate fully and promptly with any inquiry into this or any other whistleblower complaint by the DHS OIG, the Office of Special Counsel, and this committee?
Yes, if it is lawful and appropriate.

25. According to public reports, your spouse, Hope Wolf, is employed by the Berkeley Research Group, a consulting firm. Are Ms. Wolf's salary or bonus in any way tied to the profits of the Berkley Research Group?

- **No – there is no direct correlation. My wife's bonus and salary are discretionary. It is also important to note that at no time have I been involved in**

awarding *any* contracts at DHS. That responsibility is performed by procurement officials.

26. According to public reports, the Berkley Research Group has been awarded over $6 million in DHS contracts during your tenure at the Department. Were ethics officials in or outside of DHS consulted prior to the awarding of these contracts? If so, please identify which agency or agencies' ethics officials were consulted and summarize the advice provided.
The awarding of contracts does not require consultation with ethics officials unless an actual or potential conflict of interest arises, given the procurement integrity rules inherent in the procurement process. Further, as Acting Secretary, I am generally not engaged in procurement decisions, especially those at components, and have affirmatively recused myself from all matters affecting the financial interests of Berkeley Research Group. I was, therefore, not involved in any way with the award of any contracts to Berkeley Research Group.

27. You stated at the hearing that you were not involved in DHS procurements and that if you were, you have recusals in place for any contract involving your previous clients and your family.

a. To the best of your knowledge, does any acquisition official or official involved in the acquisition or contracting process at the Department know the name of your wife's business and that your wife owns that business?
No.

b. While you personally have recused yourself, please explain what processes and policies are in place at the Department to prevent any improper conflict of interest influencing Department acquisitions or contracts.
DHS, like all executive branch agencies, must comply with the requirements of the Federal Acquisition Regulation (FAR), which includes processes to guard against, identify, and remediate potential improper conflicts of a personal or organizational nature. DHS also has implementing regulations and policies.

Immigration and Border Security

28. You have previously stated that the new border wall system has significantly contributed to DHS's efforts to stem irregular migration and drug smuggling. Please provide specific metrics and analysis for the change in illegal drugs confiscated at ports of entry before and after the new border wall was installed? How do you know that the border wall is having the effect that you claim?
The goal of U.S. Border Patrol's National Strategy is to gain operational control (OPCON) of the border. OPCON is defined as USBP's ability to impede or deny illegal entries, maintain situational awareness, and apply the appropriate, time-bound, law-enforcement response and resolution between the ports of entry as its contribution to DHS's overall border-security mission. Each mile of border wall installed is one fewer mile that requires substantial manual patrolling, resulting in

substantial operational efficiencies. As hundreds of new miles of border wall system are constructed, that system pushes cartels to traffic their goods at locations precisely where DHS is best equipped—at Ports of Entry, where DHS has the infrastructure, staffing, and technology to better detect and interdict deadly contraband. For example, in March of this year USBP interdicted two aliens who possessed more than a kilogram of fentanyl—enough to kill more than half a million people. Since President Trump took office, DHS — including CBP—has seized more than 4 million pounds of hard drugs like fentanyl, cocaine, and methamphetamine.

29. GAO and others have reported on the need for better data and metrics to assess the effectiveness of various border security investments, including border barriers and technology. What goals and measures would you propose for assessing efforts and investments to secure U.S. borders?
Key goals for CBP including maintaining Operational Control of the border between the POEs and enhanced enforcement efforts at the ports: air, land and sea. Assessments of these efforts are contained in, among other documents, the Border Security Improvement Plan, which is regularly provided to Congress.

30. Congress directed that border wall not be built in particular locations, including a prohibition against building in the Santa Ana National Wildlife Refuge. At the time those provisions were passed, Congress was unaware that the land underneath a 0.3 mile stretch of the levee that runs through the Refuge was owned by a private party. Now the government is in the process of seizing the land underneath the levee from the property own so that construction can proceed there. Can you provide us an analysis of why construction on that 0.3 mile segment is critical to national security?

a. If you proceed with construction there, can you also provide assurances that the "law enforcement zone" that generally runs 150' to the south of the levees in that area will not be deployed within the Refuge?

Joint Answer:

DHS is committed to the protection of the nation's cultural and natural resources, as well as environmental stewardship. CBP consults with federal, state, local, and other relevant stakeholders to identify potential resources that may be present within a planned project area to avoid these resources or develop measures to offset or mitigate potential impacts, to the greatest extent possible, while still meeting treaty obligations and operational requirements. To evaluate the potential environmental impacts associated with the construction of barrier, CBP utilizes existing data and conducts new field surveys for biological and cultural resources that may be within a project area and affected by the project.

31. Recently, the U.S. Army Corps of Engineers, which serves as the contracting agent for DHS for border wall construction, solicited ideas for construction of a floating barrier system in both in freshwater and marine environments. Please explain what plans are in place for a floating barrier.

Any such plans might be deliberative, pre-decisional, or otherwise privileged. If a request is made by the Committee, we look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

a. What do you understand the environmental impact of wall construction to be? Have you required any measures to mitigate these harms?
DHS will continue to respect our responsibility to be good stewards of the environment, making sure that we are doing everything that we can to minimize and mitigate impacts to the environment while building the wall system along the Southwest border.

CBP continues to solicit and utilize information from the public on how to address environmental impacts. Additionally, CBP is compiling environmental stewardship plans which should be issued in the coming months.

32. On September 3, DHS OIG released a final management alert notifying CBP that they must take immediate action to address a lapsing medical services contract with its current provider, Loyal Source Government Services, to award a new contract, prior to the expiration of the current agreement on September 29, 2020. When will CBP be issuing a medical services contract?
CBP plans to award a new two-year medical services contract prior to the expiration of the current agreement. This will ensure uninterrupted continuation of CBP medical support efforts.

a. According to GAO, as of May 2020, CBP had obligated $87 million of $112 million for consumables and medical care. However, it violated appropriations law when it obligated funds from the 2019 Emergency Supplemental consumables and medical care line item to purchase dog food and dirt bikes. Has CBP obligated the remaining $112 million? How much is the current medical services agreement?
CBP ensures that all funds, including those appropriated for medical services agreements, are spent in accordance with applicable appropriations laws and regulations.

b. What has CBP done to recoup expenditures that violated the Appropriations Act and redirect those funds to medical care and consumables?
See answer to 32a.

33. Please discuss your plans to provide and improve medical care for those in DHS custody, particularly in light of the COVID-19 pandemic.
CBP plans to award a new two-year medical services contract prior to the expiration of the current agreement, which will ensure uninterrupted continuation of CBP medical support efforts.

a. In July 2020, GAO reported on numerous deficiencies related to CBP's medical care for those in its custody. The COVID-19 pandemic has only heightened the importance of providing timely and quality medical care to those in CBP's custody. Please describe your plans to improve medical care in CBP facilities.
See previous answer.

34. If and when a safe vaccine for the coronavirus becomes available, does DHS intend to provide this vaccine to individuals in its short-term and long-term immigration detention facilities? If so, and given that ICE does not currently provide the flu vaccine to all of its detainees and CBP does not vaccinate any of its detainees, how do you propose to provide a coronavirus vaccine?
U.S. Immigration and Customs Enforcement (ICE) is fully committed to the health and safety of those in ICE custody. ICE adheres to CDC guidance related to the COVID-19 pandemic but is unable to comment on the specifics of providing vaccinations at this time, as no vaccine is currently available.

35. In your testimony, you mentioned that you are not able to hire as many CBP Officers as you would like because of reductions in user-fees due to COVID-19 related reduced travel. Please explain how CBP has addressed the hiring of CBP Officers during COVID-19. Please provide data on CBP Officers hired for March 21-September 23, 2020 and March 21, 2019- September 23, 2019, disaggregated by month.
CBP has submitted proposals with the last several President's Budgets to Congress for marginal increases to Immigration User Fees and Customs User Fees, most notably, $2 dollar increases to air passenger fees. Those proposals would allow CBP to continue to hire up to the recommended number of CBP Officers to achieve its vital national security and trade and travel facilitation missions.

CBP has continued to hire CBP Officers throughout the COVID-19 pandemic. To maintain interest and hiring for future attrition, CBP has held virtual recruiting events and posted monthly vacancy announcements to USAJOBS for CBP Officer vacancies.

36. You have previously stated that CBP is in the process of producing a review of cargo processing policies and procedures for all maritime Ports of Entry.

a. Have you or will you be briefed on the results and do you commit to sharing the results with the Committee?
I have not yet been briefed by CBP on the results of its review. If a request is made by the Committee, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

b. Do you know if CBP communicated or consulted with external stakeholders, including Port operators in the State of Michigan, in the completion of that report?
As previously noted, I have not yet been briefed on this report and therefore cannot speak to CBP's process in drafting it.

c. Will the report include any action recommendations or an implementation plan?

As previously indicated, I have not yet been briefed by CBP on this topic and cannot speak to its contents at this time.

37. What do you think the role of DHS HQ/PLCY and/or CBP HQ is to ensure that there is consistency in the way that local CBP officials make policy decisions to limit CBP services related to containerized cargo shipping? What guidance do local officials receive in order to implement these policies?
The DHS Office of Strategy, Policy, and Plans (PLCY) serves the lead coordination role for Department-wide policy decisions, and consults with Components, including CBP HQ, on a wide range of policy and operational decisions that are implemented at the local level. The majority of policy decisions that impact the processing of containerized cargo shipments are developed by the Office of Field Operations (OFO) in CBP Headquarters, with consideration of the impact on both the local operations and the private sector. OFO Headquarters takes the primary lead in measuring compliance with existing policy, especially if there are no changes to regulation or statute required to implement the policy. DHS PLCY is typically made aware of OFO policy changes prior to their implementation for visibility and consistency of messaging across the Department. For those policy decisions that have a regulatory or statutory impact, CBP HQ coordinates closely with DHS PLCY to ensure that any changes to statute and regulation align with broader Department-level goals across Components and the interagency.

38. When do you anticipate the threat and operational analysis of ports of entry required by Public Law 115-372 will be approved and submitted?
CBP anticipates the release of this report to Congress by end of calendar year 2020.

a. You previously stated that the CBP Office of Field Operations prepared the report in November of 2019, and it is being routed for approval and submission. What has taken so long finalize? Do you know when the report was cut off in terms of new information?
CBP anticipates delivery to Congress by the end of Calendar Year 2020.

39. The Washington Post reported on Sept. 11 that, in order to use an ICE charter flight to transport DHS Special Response Teams to "dominate" Black Lives Matter protests in early June, DHS also transferred detained people from Florida and Arizona to the ICA Farmville facility. The transfer of detainees to Farmville turned out to be a "super-spreading event," causing the facility to experience one of the most devastating outbreaks of COVID-19 in a detention facility, with over 93% of detainees infected, leading to at least one detainee's death. While an ICE spokesperson claimed the transfers took place to prevent overcrowding, the Post reported that the Florida and Arizona facilities were both well below capacity at the time of the transfers.

a. Are you aware of these reports, and if so, is DHS investigating this issue?
I am aware of the transfer of detainees to Farmville. ICE conducts transfers to facilities across the United States where available beds can continue to meet the suggested population rate as well as security needs of the transferred population. The Department is engaged with the Congress on

this subject.

b. Have DHS tactical agents been deployed to any other locations on charter flights for the purpose of deployments to protests? Where? Were detainees also transferred on these flights?
Although ICE sometimes includes personnel on previously scheduled charter flights for operational efficiency, in most cases its SRTs travel on commercial flights, and at this time ERO SRTs are not deployed in response to protests.

c. Is it customary to use detainee transfers as a mechanism for transferring DHS personnel from one place to another? Are you aware that such unnecessary transfers violate the CDC's own guidelines for management of the virus?
Any ICE decision to transfer detainees between and among our nationwide detention facilities is based upon operational and mission needs. The transfer of detainees to the Farmville Detention Center via ICE Air on or about June 2 was planned and in place prior to the ICE personnel being added to the ICE Air flight. All decisions on movement, including detainee transfers, further isolation, and monitoring are done so in accordance with CDC guidelines.

d. How is DHS responding to reports that its misuse of a charter flight led to one of the most devastating outbreaks of COVID in the country and the death of a detained man in the Farmville facility?
ICE transfers detainees due to the operational demands of the detention network, and many transfers made during the COVID-19 pandemic have occurred in order to allow for increased social distancing within facilities. However, ICE is aware of concerns related to the Farmville transfers, and has been involved in ongoing discussions with Congress on the subject.

40. COVID-positive people have been deported to at least 11 different countries. DHS has repeatedly testified to Congress that all people deported are given a temperature check and not permitted to fly if they have a fever exceeding 99 degrees. In July, whistleblowers working for a DHS contractor reported that they were required to "freeze out" detainees by blasting them with cold air to artificially get their temperatures down to 99 so they could fly. Please comment on this allegation.
This allegation, if true, would be serious and concerning. If a request is made by the Committee, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

a. Why is DHS not, at an absolute minimum, systematically testing people for COVID prior to deportation?
ICE determines the appropriateness of testing on a case-by-case basis, taking into account a variety of factors including rapidly-evolving public health and operational requirements.

41. As of September 15, close to 5,800 people tested positive for COVID-19 in immigration detention, and since May, at least seven people died of the virus after contracting it in detention.

a. What is the total number of people ICE has released because of COVID-19 vulnerabilities? Of this group, how many have been released pursuant to judicial order and how many have been released under ICE's own file review?

ICE evaluates all new admissions within five days of entering ICE custody to determine whether the detainees fall within the populations identified by the CDC as potentially being at higher risk for serious illness from COVID-19. Upon being informed of a detainee who may potentially be at higher risk for serious illness from exposure to COVID-19, ICE ERO personnel will review the case to determine whether continued detention is appropriate.

On April 4, 2020, ICE issued guidance to its field components to review the approximately 34,000 detained cases nationwide for those that fell within CDC guidelines for higher risk of severe illness as a result of COVID-19. ICE's review of this specific group resulted in the release of more than 900 aliens after evaluating medical issues, immigration histories, criminal records, potential threat posed to the public, flight risk, and national security concerns. While the presence of one or more risk factors will continue to be a significant factor weighing in favor of release, in some instances, release may not be appropriate. In other cases, ICE is bound by statutory mandatory detention requirements, which in some circumstances preclude release, even during the current pandemic. ICE will continue to make such custody determinations on a case-by-case basis, pursuant to the applicable legal standards, with due consideration of the public health considerations implicated. Because releases from ICE custody are based on the totality of circumstances in a given case, ICE is not able to statistically report on how many overall releases have occurred in whole or in part because of COVID-19 vulnerabilities.

However, ICE can report on releases that occurred due to a judicial order related to COVID-19. As of September 21, 2020, there have been 535 releases of ICE detainees pursuant to a judicial order.

b. Why is ICE failing to systematically test all people in immigration detention, even where state officials have provided adequate tests to do so?
ICE acquired approximately 2,000 tests per month from HHS to screen aliens in its care and custody, and will continue to follow applicable CDC guidance.

42. At the Mesa Verde detention center, emails released through litigation reveal that ICE refused to carry out testing of all detainees, despite offers from GEO Group to conduct the testing, with one ICE official saying in an email that he had been ordered by ICE Headquarters not to test people due to the possibility it would cause "housing issues" if

people tested positive. Do you believe it is acceptable to refuse to test someone for COVID because it might cause administrative difficulties?

ICE conducts testing in line with guidance from the CDC. However, I am unable to comment further due to pending litigation.

43. Private prison company employees, who go in and out of detention facilities and interact frequently with detainees, are vectors for the virus. Why is ICE failing to report on the number of guards and other private prison employees who test positive for COVID? Will you commit to doing so going forward? Please provide statistics for private employees.

While contractors inform ICE of positive tests for operational reasons so that ICE can effectively cohort detainees, these reports aren't tracked for statistical purposes and often include reports for individuals who work at facilities even if they do not interact with ICE detainees.

44. Is ICE still utilizing "cohorting" despite CDC's warnings to the contrary? What plans is ICE putting in place to transition away from use of cohorting?

Cohorting is used to minimize the risks associated with COVID-19 as much as possible. Facilities are encouraged to implement cohorting for new arrivals before they are placed into the general population.

For those who are confirmed laboratory positive for COVID-19, ICE recommends isolation, with cohorting with other laboratory-confirmed cases to be used only when no other options are available. Because it is not possible to individually isolate all who are newly arrived at a facility, for those who have potentially come into contact with a COVID-19 case, or those who have displayed any of the range of symptoms associated with the virus, ICE utilizes cohorting to further reduce risk. Detainees with these characteristics should be cohorted with others who fall in the same group. Any grouping of detainees is maintained within the group throughout the isolation period. Detainees within the group are closely monitored and their activities scheduled to reduce the risk of exposure between groups.

45. Is ICE using solitary confinement, or any other type of segregation, as a means of medical isolation?
Per CDC guidance, ICE ensures that medical isolation for COVID-19 is distinct from disciplinary segregation of incarcerated/detained individuals, both in name and in practice.

46. When did ICE become aware of the whistleblower reports that the Irwin County Detention Center, operated by LaSalle Corrections - was performing unwarranted hysterectomies on women without their consent?
ICE ERO headquarters recently became aware of the allegations related to Irwin as a result of a complaint submitted to the OIG, as well as public statements made to

multiple media outlets by the former employee who submitted the complaint. ICE ERO has been looking into these issues as a result and provided a statement regarding these accusations on September 15, 2020.

47. Have ICE or the Irwin County Detention Center terminated the relationship with the medical provider(s) involved in the whistleblower complaint? If not, why?
My understanding is that any referrals to the provider in question are suspended pending further review of recent allegations.

48. Is ICE aware of other facilities besides Irwin that are performing or have performed medical procedures without detainees' consent?
ICE is not aware of any facility that is performing or have performed medical procedures without a detainee's consent.

49. How many women were subjected to unsafe, unwarranted, unethical medical procedures at the Irwin County Detention Center? What is ICE doing to assess whether detained women are being forced to undergo medical procedures at other ICE facilities?
ICE's detention standards require the provision of routine, age-appropriate gynecological care for all women in its custody, as well as other medically necessary procedures, which in rare cases may include a hysterectomy. Such decisions are made by medical providers, not law enforcement personnel, and conform to National Commission on Correctional Health Care (NCCHC) standards. However, in addition to the DHS OIG investigation into allegations related to Irwin, the facility has suspended its relationship with the medical provider in question, and ICE is conducting its own assessment and review of records.

50. In response to the whistleblower allegations, ICE has publicly claimed that only two people were "referred for" hysterectomies at the Irwin facility. However, this doesn't respond to the question of how many women received hysterectomies after being referred for other procedures. Can you confirm how many people received hysterectomies at the Irwin facility, and what n of these people received hysterectomies after being referred for other procedures?
Please see ICE's updated statement, covering a broader time period and all providers at the Irwin facility, and which states in relevant part: "According to ICE data, since 2017, a total of five individuals at Irwin County Detention Center were referred to certified, credentialed medical professionals at gynecological and obstetrical health care facilities for hysterectomies in compliance with National Commission on Correctional Health Care (NCCHC) standards, and only three hysterectomies were performed."

51. In June, a federal judge ordered the release of children being held in ICE's three "Family Residential Centers" (FRCs) in Dilley and Karnes, TX, and Berks, PA, by the end of July, and in her order, she stated that these detention facilities "are on fire" due to the rapid spread of COVID-19. In August, 263 people remained in FRCs. What steps has DHS/ICE taken to ensure compliance with the judge's order for the release of children detained at FRCs?

The FRCs are fully compliant with the CDC guidelines for PPE and social distancing to prevent the spread of COVID-19. Enhanced cleaning and sanitation are in place and handwashing stations and sanitizer are available throughout the facilities. The FRCs have completed saturation testing and intake testing is ongoing. Additionally, all residents are regularly screened by medical staff for high risk medical conditions that could contribute to their risk of COVID. ICE, through OPLA and DOJ/OIL, continues to follow the courts subsequent orders to meet and confer with the Plaintiffs to develop a process for the release of minors.

a. According to reports from attorneys representing detained families, on May 13 and 14, ICE gave the parents a "binary choice" of releasing their children without them or waiving the right's right to release under the Flores Settlement Agreement. Can you please explain who is responsible for the creation and implementation of this policy? Why were parents not allowed to speak to their attorneys before signing these documents?
Characterization of the referenced policy as "binary choice" is inaccurate. ICE processing of detained family units complies with all legal requirements, and remains the subject of ongoing litigation.

52. At a time when USCIS is experiencing both unprecedented processing backlogs and projected budget shortfalls, what data or other evidence does the agency possess relating to the efficacy of its "no deference" and "mandatory adjustment interview" policies in fairly administering U.S. immigration law?
USCIS conducts its mission consistent with existing law passed by Congress, including mandatory interview policies. Backlogs in processing are due to the incredibly complicated and increasingly outdated immigration laws that Congress has time and again vowed to fix - but has failed at every turn. In no case should backlogs be considered a relevant metric for the appropriateness of USCIS' interview policies, which as mentioned are consistent with law.

a. Have any USCIS user fees or appropriated funds been reallocated to ICE or CBP in connection with border enforcement activities, such as the "Credible Fear for USBP Pilot Program?"
USCIS provided funds to CBP for the purpose of allowing CBP personnel to achieve USCIS's mission of reducing the substantial backlog of credible fear claims made during the crisis at the southwest border. USCIS provided CBP $300,000 in FY 2019 and $3.2M in FY 2020. These funds were used only for salary and travel. USCIS provided no funds to ICE.

53. USCIS recently reported that the average processing time for citizenship applications has doubled since 2015 and, at the end of fiscal year 2019, USCIS reported that it had a pending caseload of 5.7 million cases. What steps will you take to reduce USCIS's case backlog and ensure USCIS carries out its mission to efficiently and fairly adjudicate requests for immigration benefits?

USCIS works tirelessly to efficiently and fairly adjudicate immigration benefit requests. USCIS was starting to make some progress in addressing the backlog in Fiscal Year (FY) 2019. Between FY 2018 and FY 2019, the backlog growth rate was less than one percent—the smallest since 2012. In FY 2019, USCIS naturalized 834,000 new citizens, an 11 year high in new oaths of citizenship. As a result, pending naturalization cases was reduced by 12 percent. Despite the gains in addressing the backlog in FY 2019, the COVID-19 pandemic created unforeseen obstacles that prevented USCIS from further reducing the backlog.

54. Recent data from TRAC indicates that the majority of individuals being placed into MPP in August 2020 were Cuban or Ecuadorian. Why were more than 700 people returned to Mexico under MPP in August 2020, given that all MPP hearings are indefinitely suspended?
CBP returns aliens to Mexico under MPP consistent with applicable immigration laws passed by Congress. Although MPP hearings are currently paused, DHS and DOJ have jointly announced a plan to resume them when they can be operationalized consistent with protecting the public health.

55. Please indicate the number of individuals who have deported or expelled through the use of Electronic Nationality Verification in FY2019 and FY2020 YTD, disaggregated by month, nationality and destination country.
DHS has regularly engaged with the Committee regarding Electronic Nationality Verification (ENV), and we commit to responding to a request from the Committee on this topic.

56. Please indicate the number of individuals placed through a screening interview for the Asylum Cooperative Agreements, and the number of such individuals who were represented by counsel at the time of the interview.
USCIS records show that approximately 1600 aliens were referred for further screening under the Asylum Cooperative Agreement process, which allows them to be removed to a third country in which they can safely seek protection (rather than the United States, where they are ineligible). Consistent with seeking protection in another country, our records indicate that none of these aliens requested an attorney to be present for their screening.

57. Please indicate the current status of the Asylum Cooperative Agreements with Honduras, Guatemala, and El Salvador, including whether any individuals have been removed pursuant to those agreements since March. What conditions will need to be met before these ACAs come into effect?
The U.S.-Honduras Asylum Cooperative Agreement (ACA) has been published in the Federal Register. The "Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act" rule requires that all ACAs be published there. It represents our strong, continued partnership with Honduras on migration issues. As previously announced, DHS paused ACA transfers to Guatemala while all countries focus on the ongoing pandemic. There

are no imminent plans to begin ACA transfers to Honduras; when international travel conditions improve, we will resume discussions about implementing these agreements.

58. Regarding Title 42, please describe the step-by-step process through which adults, family units, and single minors are expelled. Please describe how this process may differ for nationals from Mexico and Central America and for nationals from other countries.
When CBP encounters an alien who is subject to the CDC's Title 42 order, it obtains the alien's relevant biographic and biometric information and determines whether the alien is amenable to expulsion through a port of entry. In general, aliens who are amenable for expulsion to Mexico, such as Mexican nationals and nationals of Northern Triangle countries, are expelled within two hours. Aliens who are not amenable to expulsion through a port of entry are generally expelled to their home countries on the first available flight via ICE Air Operations. If an alien affirmatively claims fear of return to the country to which they will be expelled, the alien is referred to USCIS for an interview in line with the Convention Against Torture.

59. Are single minors, family units and adults still held in hotels or other private facilities before being expelled? If so, how are these facilities contracted and how much funding has been expended for these facilities? Under what agency's jurisdiction are they being held while in these private facilities and what are the applicable detention standards?
To the best of my understanding, as of Sept there were no single minors being temporarily housed at hotels. Any temporary housing of minors will comply with all legal requirements.

60. In mid-May, CBS News reported that only two people had been allowed to seek asylum since the Title 42 went into effect in March. Since the order went into effect, how many people have been screened for fear of return before being expelled? How many people were able to access an asylum procedure and how many people were granted asylum?
As of September 24, 2020, USCIS has received a total of 282 Title 42 referrals and has completed 278 screenings. Of those cases, USCIS found that 24 are more likely than not to be tortured in the country of return. 17 of those 24 cases were referred to USCIS for a credible fear interview, and 14 of the 17 cases were found positive for credible fear. USCIS does not have data on whether any of those individuals have been granted asylum by EOIR. These numbers do not include individuals who may have been referred to USCIS under the Migrant Protection Protocols or credible fear processes.

61. Since March, how many children have been transferred to ORR custody after testing negative for COVID-19? How many children have been transferred to ORR custody after being exposed to COVID-19 or testing positive for COVID-19?
The Department is engaged with the Congress and the courts on this topic and commits to responding to a request from the Committee on this topic.

a. How many children have been expelled even after testing negative for COVID-19? Please disaggregate by month expelled and expulsion destination.
See previous response.

b. What is the chain of custody for children being expelled to Mexico and to other countries of origin? If these children are not being given an A-number when they first arrive, how can CBP ensure proper tracking of all of these children?
For UACs processed under Title 42, if the UAC is able to be returned to Mexico, U.S. Customs and Border Protection (CBP) will immediately facilitate the return of the alien. If Mexico is unable to accept the direct return of the UAC from CBP, the UAC is then turned over to Immigration and Customs Enforcement (ICE). Minors apprehended are held in USBP custody until turned over to Mexican authorities or transferred to ICE/ERO for expulsion. Minors in custody are tracked through their unique Subject ID and all transfers are logged in the appropriate system of record. Both CBP and ICE are tasked with supporting the application of Title 42; however, individuals returned to their last transit point or country of origin under Title 42 authority represent CBP "expulsions" rather than ICE "removals." In some cases, single minors and families, who were apprehended under Title 42 authority, were turned over to ICE for temporary housing pending the next expulsion flight. The transportation process included transport from U.S. Border Patrol (USBP) to temporary housing until ICE Air charter flights were available.

CBP Officers retain the discretion to process inadmissible aliens, including unaccompanied alien children (UAC), under Title 8, when appropriate. The determination is made on a case-by-case basis with the primary goal to safeguard the health of other migrants, legitimate travelers, and United States Government personnel.

c. What screenings, if any, are being provided for unaccompanied or "single" minors encountered at the border prior to their expulsion under Title 42?

USCIS interviews individuals referred to it to determine if it is more likely than not that they would be tortured in the country to which they may be returned.

d. A federal judge ordered ICE to transfer children and families detained in hotels to properly licensed detention centers. What steps has DHS/ICE taken to ensure compliance with the judge's order and to ensure that these children and families are properly adequately transferred? Where are they being transferred to now?
This information has been regularly provided to the court and will continue to be.

62. A recent ProPublica article made reference to the fact that the U.S. has agreements currently with ten countries to return unaccompanied children under the Title 42 CDC

order. The same article stated that all those agreements require that children test negative for COVID-19 before being sent back. Please list those countries with which we have agreements and provide copies of the agreements.
DHS has no written agreements with any country regarding the execution of Title 42. Generally, DHS seeks to have a given country accept its expelled nationals as quickly as possible. Mexico, in the spirit of burden sharing, has agreed to accept not only expelled Mexican nationals but also expelled single males and family units from the Northern Triangle countries.

63. Please explain how you are coordinating with the CDC Director in determining when to suspend Title 42 expulsions and resume processing of foreign nationals arriving at the southwest border. What metrics have been established to deem the Title 42 order no longer necessary?
While CBP engages in regular discussions with the U.S. Department of Health and Human Services (HHS) to provide them with information they use in assessing the continued need for the CDC Order, it is up to HHS to determine when the CDC Order is no longer necessary to protect the public health.

64. Has your agency reclassified children as "single minors" to bypass protections under the Trafficking Victims Protection Reauthorization Act (TVPRA)?
No.

65. With the Title 42 CDC order in place, is CBP bound to abide by any provisions of the TVPRA while processing individuals under that order?
CBP is taking appropriate action to comply with all federal law, including the relevant Title 6, Title 8 and Title 42 authorities. Whereas authorities such as Titles 6 and 8 govern asylum practices regularly govern entry and removals, Title 42 applies in circumstances where there is a serious risk of the entry of communicable disease from a foreign country. If the Secretary of Health and Human Services, or as his authority has been delegated, the Director of the Centers for Disease Control and Prevention, issues an order under 42 U.S.C. section 265, CBP and other customs officials have a duty to aid in the enforcement of that order. See 42 U.S.C. § 268(b). Title 42 provides an alternative legal framework to Titles 6 and 8 that concerns the public-health threat presented by the current pandemic.

66. Please list the number of single minors expelled under the Title 42 CDC order by month, nationality, age, gender, and Border Patrol Sector or Office of Field Operations Field Office where encountered.
DHS commits to respond to a request from the Committee on this topic.

67. What screening questions are administered for unaccompanied children before they are expelled? In which document are these responses documented?
USCIS interviews cases referred to USCIS to determine if it is more likely than not that the individual will be tortured in the country to which they may be returned. USCIS completes a CAT assessment worksheet that is reviewed by a supervisor that includes the interview notes. UACs are not placed into expedited removal

proceedings and therefore USCIS does not screen them in credible fear, nor are they subjected to MPP.

68. Please list the number of family units expelled under the Title 42 CDC order by month, nationality, number of individuals within the unit, and Border Patrol Sector or Office of Field Operations Field Office where encountered.
If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

69. Please list the number of adults expelled under the Title 42 CDC order by month, nationality, age, gender, and Border Patrol Sector or Office of Field Operations Field Office where encountered.
If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

70. Are women with infants born in the United States while under CBP custody being expelled to Mexico? If so, how many have been expelled?
Under Title 42 guidelines, subjects admitted to the hospital are processed instead under Title 8 authorities.

71. Have pregnant women been expelled to Mexico? How many per month and nationality?
DHS commits to respond to a request from the Committee on this topic.

72. Are there any limitations on which migrants can be processed via Title 42?
Pursuant to the CDC Order, aliens subject to the Order are persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land or coastal Port of Entry (POE) or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions. The Order does not apply to U.S. citizens, lawful permanent residents, and their spouses and children; members of the armed forces of the United States, and associated personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE.

73. On what legal basis does CBP justify processing migrants via Title 42 instead of the legal requirements of Title 8 of the Immigration and Nationality Act?
If the Secretary of Health and Human Services, or as his authority has been delegated, the Director of the Centers for Disease Control and Prevention, issues an order under 42 U.S.C. section 265, CBP and other customs officials have a duty to aid in the enforcement of that order. See 42 U.S.C. Section 268(b). Title 42 provides an alternative legal framework to Title 8 that concerns the public-health threat presented by the current pandemic.

74. How many individuals have been referred for torture screenings who were being processed for expulsion and what are their nationalities? How many of those individuals have been minors? How many have passed these torture screenings? How many of those referrals were made by CBP officers, by Border Patrol agents, or by other DHS official?
If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

75. What training have CBP officers and Border Patrol agents received to assess whether an individual should be referred for a torture screening? What questions are being asked during this screening?
CBP officers receive training in both Academy and Post Academy training in the processing of cases of inadmissible applicants for admission. If the applicant for admission expresses a fear of return, the alien is referred to the United States Citizenship and Immigration Services (USCIS) for a more in-depth interview to ascertain the fear. The four questions on Form I-867B are used to screen the applicant. The CBP basic academies provide training in accordance with the National Standards on Transport, Escort, Detention, and Search (TEDS) policy, as the standard of recognizing persons in distress and how to seek appropriate medical attention or other necessary intervention. Training does include basic training in the processing of subjects (both adults and children) which includes screening questions and/or statements of rights related to individuals who may have a credible fear of returning to their home country or may be victims of a crime. Adults and children claiming fear or suspected of victimization are referred for further interview or investigation by the relevant agency/authority. Agents/Officers do not make a determination of threshold for referral or final assessment. Under Title 42, subjects would be referred to USCIS for a Convention Against Torture screening if they make an affirmative, spontaneous claim that they fear being tortured in the country to which they are being expelled. Under Title 8, based on questioning during processing, any claim of fear of torture would be referred to USCIS.

76. CBP has managed several communicable disease outbreaks in the past, but it seems that the Title 42 authorities were enacted as a result of CBP's and the CDC's belief that facilities and medical resources are inadequate. What upgrades and increased capacities does CBP need to confront potential COVID-19 cases among its detainees?
It is not feasible or practical to expect CBP to establish comprehensive capability to address an unpredictably and uncontrollable number of persons with COVID-19 exposures or cases. CBP has a basic ability to address outbreaks of disease in its facilities in coordination and partnership with state and local health authorities as appropriate. At this point regarding CBP medical support for persons in custody, including public health and infectious disease issues, CBP requires continued sustained funding for its ongoing medical support efforts.

77. What funding or additional authorities will DHS/CBP seek from Congress in the coming months to enact these upgrade or increased capacities and move beyond these emergency authorities?
At this point regarding CBP medical support for persons in custody, including public health and infectious disease issues, CBP requires continued sustained funding for its ongoing medical support efforts.

78. What specific metrics will CBP report to the CDC Director, or vice-versa, that will determine that these authorities are no longer needed?
The Title 42 authority is CDC's, but CBP works closely with CDC to provide requested information to assist CDC in making informed decisions regarding the continuation of the Title 42 implementation. The primary considerations will be the current status of the COVID-19 epidemic, with a focus on the current number of active cases and the current positivity rate in Mexico, Canada, and the United States, especially in those communities along the Northern and Southern borders of the United States. Additionally, we will consider the number and demographics of border crossers, number and demographics of persons in custody, and the length of time in custody. CBP will continue to monitor the situations in Mexico and Canada, along with the Northern and Southern border communities of the United States, to ensure we are taking all appropriate and necessary steps to protect the American people.

79. Is DHS unable to use the Title 42 process for certain countries? If so, please provide a list of countries which are currently not accepting some or all of their nationals who are expelled under Title 42. For each of those countries, please indicate whether the country is declining to accept some, or all, of their nationals. If a country is only accepting some nationals under the Title 42 process and not others, please indicate for each country which groups of individuals are being accepted under the Title 42 process and which groups of individuals are not being accepted.
Amenability to Title 42 is determined on an individual, case-by-case basis. Upon apprehension, aliens who are amenable to Title 42 are returned to either Canada or Mexico immediately at the nearest Port of Entry. They are not taken to the station in order to reduce the potential exposure and spread of the coronavirus to both our personnel and our facilities. Agents will run a records check through their sector dispatch to ensure they have no legal status, criminal history, or warrants. If that is the case, they are removed under Title 42 (either removed immediately or delayed expulsion). "Removed immediately" usually occurs within a few hours. A "Delayed Expulsion" could extend to a couple of days. An example of a delayed expulsion could be if the individual had an acute medical issue that needed to be addressed prior to the Title 42 removal.

If the individual is Title 42 ineligible (criminal history, warrants, long term medical issues, etc.), the individual is placed in Title 8 proceedings and turned over to the appropriate agency. USBP wide, the vast majority of the daily encounters have been Title 42 eligible.

80. Please indicate whether Mexico is still declining to accept under Title 42 the return of nationals from countries other than Mexico, Honduras, El Salvador, and Guatemala, as indicated in a March press release from the Mexican government.
As noted in response to question 62, Mexico, in the spirit of burden sharing, has agreed to accept not only expelled Mexican nationals but also expelled single males and family units from the Northern Triangle countries.

81. Are CBP and Border Patrol referring individuals newly being placed in MPP for fear screenings when they express a fear of return to Mexico? If not, why not?
Under the Migrant Protection Protocols program, which is a Title 8 program authorized under Section 235(b)(2)(C) of the Immigration and Nationality Act, aliens subject to processing under Title 8 and amenable to return to Mexico may raise a fear of return to that country at any time they are in the United States and have that fear evaluated by an asylum officer.

82. How many individuals in MPP have received non-refoulement interviews by nationality? What percentage have passed? Please disaggregate these number by initial MPP enrollees and those subsequently returning to a port of entry.
Fiscal Year 2020 to date, as of September 10, USCIS had been referred and completed 12,116 cases of MPP enrollees. 1,195 (10%) of USCIS interviews resulted in a positive determination.
Disaggregated by citizenship, the positive determination rates were as follows:
- **Cuba, 16% of 3,411**
- **Honduras, 7% of 3,379**
- **Guatemala, 9% of 1,864**
- **El Salvador, 8% of 1,353**
- **Venezuela, 5% of 1,045**
- **Nicaragua, 10% of 417**
- **Ecuador, 4% of 293**
- **Brazil, 4% of 252**
- **Peru, 11% of 35**
- **Other, 6% of 70**

Disaggregated by previously returned to Mexico and initial arrival to the United States, the positive determination rates were as follows:
- **Previously returned to Mexico, 961 of 9856 (10%)**
- **Initial arrival to the United States, 234 of 2260 (10%)**

83. How do CBP agents determine which individuals enter the MPP program and which ones are expelled through the Title 42 order?
All subjects amenable to Title 42 are expelled through Title 42. Any subject not expelled through Title 42 are processed under Title 8 authority, that can include the Migrant Protection Protocols (MPP) pathway. The decision to place an individual into MPP or to expel them under Title 42 is made by the ports of entry on a case-by-

case basis with the primary goal to safeguard the health of USG personnel, legitimate travelers, and undocumented aliens.

84. How many people have been transferred to Guatemala each month under the ACA by nationality, month, gender, age, and demographic group?
The specific data requested cannot be provided in the short time allowed to respond to this question; however, DHS commits to respond to a request from the Committee on this topic.

85. Have you assessed the capacity of Guatemala, El Salvador, or Honduras' asylum system to receive and duly process hundreds of asylum seekers? What is asylum capacity of each these countries?
Yes, I found Honduras's and El Salvador's laws and procedures satisfy the requirements of Immigration and Nationality Act ("INA" or "the Act"), Section 208(a)(2)(A). My predecessor found Guatemala's laws and procedures satisfied the requirements of Section 208(a)(2)(A). My decision regarding the Honduran and Salvadoran laws and procedures was made after a careful review of the available information found in their respective migration codes, their implementing regulations, an active dialogue between our States, information provided by the Department of State, and information from other sources.

86. What metrics is DHS tracking to ensure Guatemala's asylum system provides for full and fair procedures?
Due to ongoing litigation, DHS cannot comment at this time.

87. How many individuals, disaggregated by month and nationality, were subject to removal through the Humanitarian Asylum Review Process (HARP) and Prompt Asylum Claim Review (PACR) programs since their implementation?
If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

Human Trafficking

88. By definition, human trafficking does not require the transportation of an individual. Recent data from the Polaris Project strongly suggests that a small minority of trafficking cases involves the smuggling of victims and that the vast majority of victims are recruited either by people the victim knows or through job advertisements. A 2014 study of sex trafficking by the Urban Institute, a Washington think tank, found 71% of labor trafficking victims entered the US legally, again showing the limits of focusing on smuggling to combat this issue. How will the DHS *Strategy to Combat Human Trafficking, The Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation* address the majority of trafficking cases that do not involve smuggling?
Sex trafficking and forced labor in the federal criminal code (Title 18 Chapter 77) and as defined in the Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7102) relate to compelling an individual through force, fraud, or coercion to commit

commercial sex act(s) or labor. The statutes do not require, as part of the definition or as the element of a crime, crossing any border. Thus, human trafficking is often seen as a misnomer. Human trafficking is distinct from the separate crime of human smuggling. DHS is committed to addressing domestic cases of human trafficking. In fact, often most of the human trafficking victims that Homeland Security Investigations rescues in a given fiscal year are U.S. citizens, as reported publicly. DHS helps all victims of human trafficking, regardless of nationality.

89. Much of the dialogue around human trafficking focuses on the exploitation of children, and while every child victim is a tragedy, the data suggests that the vast majority of trafficking in general, and cross-border trafficking specifically, involves adults being trafficked, rather than children. How do you intend to allocate DHS resources to address both the trafficking of children and adults, taking into account available data around these different victim populations?
DHS is committed to addressing all forms of human trafficking. We also uphold the guiding principle of administering evidence-based programming and policymaking in countering human trafficking. We work closely with our counterparts at the National Institute of Justice and our colleagues in the DHS Science and Technology Directorate to integrate the latest research on human trafficking into our priorities framework. Homeland Security Investigations is growing its Forced Labor Program where we typically see a higher proportion of adult victims in the United States. DHS also dedicates many resources to addressing forms of child sexual exploitation that are not human trafficking, such as combating child sexual abuse material online and transnational child sexual abuse (formerly, child sex tourism.)

90. DHS established the Blue Campaign in 2010 under President Obama. Please describe how you assess this program's successes and how does your new strategy utilize this existing programmatic resource?
DHS is proud of the work that the Blue Campaign has done to raise awareness on human trafficking, direct the public to report indicators of human trafficking to law enforcement or the National Human Trafficking Hotline, and offer training on the indicators of human trafficking to airlines and airports, hotels, and other key groups. The Strategy seeks to grow the Blue Campaign program to support many other counter human trafficking priorities, such as prevention initiatives, youth engagement, training on the trauma-informed approach, and close alignment with law enforcement on where community engagement is most needed.

91. You testified while discussing human trafficking that under the Fraudulent Family Unit Program, DHS is "finding a high percentage of fraud," implying that a significant number of family units crossing the border are participating in trafficking activity. How many self-claimed families entering the border has DHS identified as fraudulent and how many of those were comprised of unrelated individuals?
If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

a. How many of self-claimed families entering the border has DHS referred for prosecution for being involved in trafficking, smuggling, or false statements?
HSI has initiated an ongoing operation called "Double Helix", which addresses the issue of human smugglers utilizing family units to facilitate their smuggling activities. Double Helix is in effect at 11 locations along the Southwest border and is based on referrals from CBP. While this operation maintains numbers on family fraud units, it does not represent all possible instances of family unit fraud, and the numbers relating to it have only been captured since July 2019. As of September 25, 2020, 1295 individuals have been referred for prosecution as part of the family unit fraud initiative.

b. How many of these children have been "recycled"?
HSI has no way of measuring the total numbers or full extent of family unit fraud or child recycling at U.S. ports of entry. Child recycling is difficult to detect and prove due to the lack of biometrics collection for most children under the age of 14. This becomes even more difficult when the children are encountered without documents. The inability to fully and properly identify the child can also lead to individuals being assigned more than one Alien File Number if their previous encounters are not confirmed in the system (name/DOB variations, etc.). Increased biometric testing and DNA testing would assist in identifying potential recycling victims as well as help establish familial connection in furtherance of identifying instances of family unit fraud.

Transportation Security

92. In June 2020, the U.S. Comptroller General reported to Congress on the lack of a national aviation-preparedness plan for communicable disease outbreaks, and urged Congress to take legislative action to require that DOT work with federal partners—including DHS—to develop such a plan. What progress, if any, has DHS made coordinating with key federal partners, such as DOT and HHS, to develop such a plan?
In May, the Federal Aviation Administration established and led an interagency working group to develop the "Runway to Recovery" public health guidance for the aviation industry. DHS served as a working group co-chair. The tri-seal (DHS, DOT, HHS) guidance was published on July 2, 2020.

93. TSA has faced long-standing challenges balancing effective and efficient screening of passengers and baggage. TSA must now also maintain efficiency and effectiveness while addressing new requirements, such as social distancing to prevent the spread of COVID-19. What changes would you make at TSA to ensure that checkpoint screening continues to be effective and efficient, while also adhering to requirements to prevent the spread of COVID-19? What new technologies or process innovations is TSA pursuing to this end?
TSA has brought immediate, impactful change to checkpoints across the nation with procedural and technological COVID-19 mitigation solutions. TSA's efforts, which have been coordinated closely with airline, airport, industry, interagency, and international stakeholders, allowed us to better protect frontline personnel and travelers from the virus and positioned us to create a safe and comfortable travel

experience in the post-COVID-19 world. TSA has focused on deploying solutions to help minimize touch, increase social distance, and enhance cleaning at the checkpoint and checked baggage areas in response to the COVID-19 pandemic, while also improving the security effectiveness of screening operations. These include Procedural Solutions, Enhanced Cleaning, Passenger Communications and Technology Solutions.

94. Within TSA, aviation security receives the most funding and attention, while surface security—including passenger rail and mass transit—accounts for about 3 percent of TSA's budget. Yet the nation's surface transportation system is inherently vulnerable to attack, given its very design. How do you plan to address the resource needs given the vulnerabilities that the surface transportation sector also faces?
The majority of TSA's budget is allocated to aviation security operations and personnel since the agency has primary responsibility for securing the aviation system under the Aviation and Transportation Security Act (ATSA). The primary responsibility for surface transportation security lies with system owners/operators because components of the surface transportation network are largely privately owned and operated compared to the federalized aviation system. While there are some regulatory requirements in surface transportation security, the majority of initiatives come from recommendations and standards developed and coordinated with system owners/operators, using a risk-based approach. TSA assesses the level of implementation with these recommendations and standards and uses the results to influence resource development and allocation. Additionally, total funding for surface transportation security is greater than what is solely reflected TSA's budget. System owners/operators and local/regional authorities contribute significant security resources and receive additional funding from Federal Emergency Management Agency (FEMA)-managed grant programs, which are administered cooperatively with TSA. More than $2.8B in surface transportation security grants has been awarded since FY 2006.

95. In the Aviation and Transportation Security Act, enacted following the terrorist attacks of September 11th, Congress authorized the collection of a security fee to fund aviation security measures. The 9/11 Security Fee is paid by passengers traveling on domestic or foreign air carriers originating at U.S. airports. Air carriers collect the fee from passengers at the time air transportation is purchased and remit those fees to the government. Please detail the Department of Homeland Security's current position on the propriety of the diversion of Passenger Security Fees, also known as the 9/11 Security Fees, that the traveling public pays when purchasing an airline ticket.
DHS works closely with Congress to fund the TSA aviation security mission in accordance with all statutory requirements. Since inception, both TSA and DHS have worked with Congress to formulate annual budgets through the use of optimal funding arrangements. DHS will continue to work with all stakeholders to ensure that resources are executed efficiently and in accordance with all applicable statutes.

96. While 9/11 Security Fees collected from travelers are intended to fund aviation security measures, a significant percentage of those funds collected is now diverted for deficit reduction and is not funding aviation security measures. Please explain how the diversion of the 9/11 Security Fees is impacting TSA security operations and overall aviation security resources.
TSA works with DHS and Congress to identify the resources that are necessary to ensure transportation security. Throughout the annual budget process, the Administration and Congress enact a budget that provides TSA an annual appropriation that fully funds the TSA mission. The disposition of the 9/11 Security Fee revenue during a fiscal year does not alter that annual appropriation.

a. What aviation security measures are not currently being deployed because of current funding limits?
TSA ensures transportation security within existing funding limits. Under current and potentially expanded budgets, TSA will prioritize the accelerated procurement and deployment of NextGen explosives detection technologies at checkpoints throughout the Nation's aviation system. This includes Computed Tomography systems with Automated Screening Lanes to improve security and the passenger experience; NextGen Advanced Imaging Technologies while implementing upgrades to the existing AITs providing further advancements in on-person detection; improving small bulk detection capabilities to close security gaps through the replacement of bottle liquid scanners and Explosive Trace Detection systems; solutions to verify identity to prevent unauthorized access to sterile areas; and continued research and development for on-person screening including development and deployment of algorithm solutions to detect existing and new threats.

b. Does DHS or TSA disclose to airline passengers that a percentage of the security fee that they pay when purchasing an airline ticket is being diverted for deficit reduction and is not funding aviation security measures?
On an annual basis, TSA formulates and publishes a budget that details the resources utilized to ensure transportation security. The budget articulates the disposition of all 9/11 Security Fee revenue. Additionally, TSA publishes data on the 9/11 Security Fee total collections and the amount of revenue that is utilized to offset the TSA annual appropriation.

c. Does DHS support legislation that would end the diversion of 9/11 Security Fees and ensure that all 9/11 Security Fees collected are used for aviation security as originally intended?
DHS continues to work with Congress and all stakeholders to identify and implement optimal funding arrangements to secure the Nation's aviation system.

Civil Rights and Civil Liberties

97. You have previously stated that you will consult with experts in the DHS Offices of Privacy and Civil Rights and Civil Liberties when utilizing technology and innovation to secure the homeland. Will these offices have an effective veto over programs if there are significant concerns?

- **CRCL and PRIV play an integral role in advising senior DHS leadership on a variety of programs and issues. No one office or Component in DHS has "veto" authority. However, I have been, and will continue to be, open to any office—including CRCL and PRIV—that would like to discuss concerns with me regarding any DHS program or issue.**

a. What processes are in place to structurally empower these offices to influence day to day decisions within the operational components, beyond your direct consultation?

- **Please see answer above.**

Law Enforcement

98. Throughout the summer, thousands of Americans exercised their First Amendment right to protest peacefully, and DHS has deployed its law enforcement officers to help maintain the security and safety of the public, federal property, and fellow officers during these demonstrations.

a. Under what legal authorities (please provide US Code(s)) has DHS deployed its law enforcement officers to the protests and arrested protestors, including in areas outside of federal property?
Supporting DHS law enforcement personnel have been trained and cross designated under FPS legal authority (40 U.S.C. § 1315).

b. What impact did these redeployments have, if any, on other critical DHS missions such as securing the border, protecting our transportation and other infrastructures?
DHS has proven fully capable of fulfilling its statutory obligations to protect federal facilities and the people within them and maintain our other missions.

c. How have you ensured that DHS personnel are properly trained to deal with peaceful protesters during these demonstrations—particularly with respect to use of force?
All DHS components cross-designated to protect federal facilities in Portland had their training records reviewed to ensure their tasked missions aligned with their appropriate training. In addition, FPS ensured all these component law enforcement officers received additional training for their deployment in the city for FPS missions.

99. At some locations, DHS and other law enforcement reportedly used less-lethal weapons to control or disperse the crowds, such as rubber bullets, tear gas, and pepper balls. Although intended to only cause minimal harm, less-lethal weapons may cause

significant injuries, including deep bruises, broken bones, respiratory damage, and blindness.

a. What are your views on the use of DHS's resources to control crowds?
DHS will continue to ensure that our resources are used for appropriate purposes. Such uses may include, but are not limited to, protection of federal buildings, property, and officers--as well as safeguarding the public--consistent with applicable law, regulation, and policy.

b. What will you do to ensure that peaceful protestors are not harmed?
DHS law enforcement officers are highly trained professionals who place a high priority on the safe execution of their duties while preserving every Americans' right to peaceably assemble. Our officers are trained to distinguish between peaceful protesters and those engaged in criminal behavior.

100. DHS's response to the protests in Portland demonstrated some of the challenges in coordinating with state and local law enforcement.

a. Did state or local government request DHS's assistance with responding to the protests in Portland?
DHS activities in Portland were in furtherance of its statutory obligation to protect federal facilities.

b. How has the department coordinated with state and local law enforcement to respond to the protests?
State and local law enforcement have been in regular communication with FPS in Seattle, Portland, and other cities experiencing extreme violence.

101. GAO issued a report in September 2020 identifying 25 tactical teams across the federal government, such as SWAT teams and special operations teams. These teams have special training and military-style equipment to deal with critical incidents, such as hostage rescues and active shooter situations. According to GAO, 11 of the 25 tactical teams were housed within DHS components, including CBP, ICE, FPS, the Coast Guard, and Secret Service, and several of these teams were deployed in response to civil unrest and protests in May and June 2020.

a. Why does DHS need so many tactical teams? Could DHS create some efficiencies by combining some of these teams?
DHS has several Components with law enforcement equities, each with their own unique mission sets, requirements, and operating environments. As such, the Components' respective tactical teams are trained and equipped to operate in those unique environments and each of their respective skill sets may not always efficiently translate across all other DHS law enforcement mission sets.

b. Is it appropriate to deploy tactical teams with military style equipment and training to largely peaceful protests?

As we all have seen during the past several months, peaceful protests can often be quickly overcome by violent opportunists and those intent on engaging in criminal behavior. As such, and when appropriate, DHS's obligation to protect federal facilities may necessitate the deployment of tactical law enforcement units prepared and adequately equipped to protect those facilities should such violent behavior manifest.

102. Recent high-profile deaths of Americans during encounters with law enforcement have generated interest in federal efforts to reduce the use of excessive force and racial profiling by law enforcement personnel. What actions will you take to prevent the use of excessive force and racial profiling by DHS law enforcement personnel?
DHS personnel are required to undergo rigorous training prior to becoming law enforcement officers. We are always working to improve our training programs and practices.

103. A senior Trump Administration official was reported in a July 24 Washington Post piece as saying that DHS crackdowns on protests are "about getting viral online content" and are a centerpiece of President Trump's reelection strategy. President Trump has reportedly personally encouraged DHS agents to use force against protesters.

a. Have you been in regular contact with President Trump about responding to the protests? In those conversations, has President Trump's campaign for reelection come up as a topic?
It would be inconsistent with longstanding Executive Branch practice for me to disclose specific meetings or conversations I have had with the President of the United States.

b. Did President Trump order the deployment of DHS personnel in the context of Operation Diligent Valor?
It would be inconsistent with longstanding Executive Branch practice for me to disclose specific meetings or conversations I have had with the President of the United States.

At the request of FPS leadership, the Department's law enforcement components, to include FPS, CBP, and ICE, were directed to coordinate the deployments of DHS personnel in the context of Operation Diligent Valor.

104. There have been press reports of protestors in Portland being arrested and their cell phones being seized. Ordinarily, the government cannot collect the data off cell phones without a warrant. Has any DHS element extracted information off the mobile phones or electronic devices of protestors arrested or detained in Portland without a warrant?
To my understanding, DHS has not extracted information from an arrested/detained subject's cellphone or electronic device absent a warrant or written consent; however, I understand the DHS OIG is currently reviewing these operations.

a. If so, how did DHS conclude it had the lawful authority to collect that data, and which DHS components were involved?
Please see the response above.

105. There have been press reports of an interagency task force involving DHS and DOJ, intercepting protestors' phone communications. Has any DHS element been involved, in any way, in intercepting protestor's phone communications in connection with Portland?
It is my understanding that DHS has not intercepted any protester phone communications in connection with Operation Diligent Valor in Portland; however, the DHS OIG is currently reviewing these operations.

a. If so, did DHS obtain a warrant before collecting that data? How did DHS conclude it had the lawful authority to collect that data, and which DHS components were involved?
Please see the response above.

106. There has been a range of press reports indicating DHS officers detained protesters without making an arrest and conducted debriefings or interrogations without lawful authority or their consent. Has DHS, including its components or agencies, detained protesters in Portland or elsewhere without making arrests?
DHS has conducted lawful investigative detentions supported by reasonable suspicion of criminal activity within the jurisdiction DHS law enforcement officers. The conduct of these investigative detentions is currently under review by the DHS OIG.

a. Are you aware of any instances where DHS officers tried to debrief or conducted interrogations of protesters without lawful authority or their consent?
No.

107. Have charges been filed in the killing of FPS Officer Dave Patrick Underwood as a result of an attack on May 29? If so, please identify the name of the individual(s) charged and their association to any organizations or movements.
DHS is monitoring the criminal investigation into the killing of FPS-contracted Protective Security Officers (PSO) David Patrick Underwood, as the ongoing investigation is led by the FBI. DHS is aware that charges have been filed against Steven Carrillo (murder and attempted murder) and Robert Alvin Justus Jr. (aiding and abetting) in the killing of PSO Underwood as a result of a drive-by-shooting attack on May 29, 2020. According to the Criminal Complaint, evidence linked Carrillo to the "Boogaloo" movement.

DHS Office of Intelligence and Analysis (I&A)

108. According to the recent whistleblower complaint from former Acting Undersecretary for the Office of Intelligence and Analysis Brian Murphy, I&A assessed the primary reason for illegal migration from Central America to be due to high levels of violence and

corruption, in addition to poor economic conditions. Do you agree with I&A's assessment?
Illegal migration from Central America is a highly-individualized decision spurred by a number of factors, including regional violence/instability and a lack of long-term economic opportunity. Other factors may include perceptions of U.S. migration policy, Mexican law enforcement efforts, and a desire to reunify with family members.

109. You have previously stated that the DHS Office of Legislative Affairs (OLA) and the Office of Public Affairs (OPA) do not review I&A products. Does that mean that in providing them advanced notification, there has never been an instance where OLA and OPA have provided feedback that was incorporated into a product (raw intelligence and finished intelligence analysis) before it was formally disseminated?
I&A provides final products, approved by the appropriate intelligence official. On occasion, after moving to advance notification, senior intelligence officers have requested revisions to improve quality and clarity. In all cases, edits are made at the sole discretion of the intelligence officers so as to maintain objectivity and independence.

a. How do you define notification in this case? Is it a complete copy of the product? How much time is OLA or OPA given to evaluate this notification prior to dissemination?
I&A, for many years and during multiple administrations, has provided a 48-hour advanced notification to OPA, OLA, and the Office of the Secretary for UNCLASSIFIED products. This comes after final I&A approval and before broad dissemination. I&A provides a final, complete copy of the product with a watermark noting it is in the advanced notification phase. The purpose of the notice is to allow OPA or OLA to have situational awareness--not to comment on or review/approve the product.

b. Does OLA and OPA get a copy of every single unclassified I&A product? If not, how is it determined which products they get notified about?
In general, all unclassified products—after final I&A approval—are provided to OPA and OLA for a courtesy advanced notification.

c. In Mr. Murphy's whistleblower complaint, he alleges that you "ordered the [Homeland Threat Assessment] to be redesigned with the policy office" rather than be completed by I&A. Is that true? If so, why was I&A taken out of the loop on an intelligence assessment?
The Homeland Threat Assessment is not—and was never intended to be—a pure intelligence product, as made clear by direction from former Acting Secretary McAleenan. Contrary to the premise of the question, I&A was not "taken out of the loop" as you claim. The Department will publish a threat report that incorporates information from all relevant entities inside the Department, including I&A, Operational Components, and the Office of Strategy, Policy, and Plans.

110. You stated during the hearing that you have reviewed about "a half dozen to a dozen" I&A products prior to their dissemination. How many I&A products (raw and finished intelligence) have you identified issues with quality/writing style, and requested the report be remanded back to the analysts for revision?
I expect every product produced by DHS to meet the highest quality standards. On occasions when I review I&A products prior to dissemination, I require those products to meet the same high standards that I would any DHS product before they can be made public. I have reviewed products that do not meet this standard and returned them to the office for further revision.

a. How was it determined which products you would review? Who selected the products for you to review and what guidance did you provide them?
I have reviewed products that do not meet this standard and returned them to the office for further revision.

111. During your confirmation hearing you committed to providing the intelligence reports that you reviewed as Acting Secretary, both the versions before your review and the final versions. Please submit them to the Committee for review.
If a request is made by the Committee, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

a. Please provide every I&A product (raw and finished intelligence analysis) that you, your office, PLCY, OLA, or OPA has reviewed prior to its publication.
See prior response.

b. Please also denote every I&A intelligence product (raw and finished intelligence analysis) where you, your office, PLCY, OLA, or OPA put a hold, delayed publication, requested edits or otherwise proposed changing the content or publication timeline. Please provide the original version that was seen by you, your office, PLCY, OLA, or OPA and any subsequently updated version of the product. In instances where publication dates were changed, please provide the originally planned publication date and the subsequent actual publication date.
See prior response.

112. Of the I&A personnel deployed to, or otherwise who have been assigned to missions connected to the Portland protests, how many are analysts and how many are collectors?
Individuals from the DHS Office of Intelligence and Analysis, Current and Emerging Threats Center (CETC), Field Operations Division/Operations (FOD/Ops), Collections Management Division, Counterintelligence Mission Center and the Counterterrorism Mission Center were assigned to support missions in Portland.

a. What I&A mission centers do they work for?
Individuals from the DHS Office of Intelligence and Analysis, Current and Emerging Threats Center (CETC), Field Operations Division/Operations

(FOD/Ops), Collections Management Division, Cyberintelligence Mission Center, Counterintelligence Mission Center and the Counterterrorism Mission Center supported missions connected to the extended violence and civil unrest in Portland.

b. What backgrounds and training do they have that are relevant to the Portland mission?
I&A supervisors and managers ensure that I&A employees, including those supporting missions connected to the extended violence and civil unrest in Portland, have and/or receive training requisite with their position, including but not limited to: Civil Rights and Civil Liberties, Intelligence Oversight, I&A authorities, Open Source Collection Operations, Overt Human Collection Operations, and authoring raw or finished intelligence reports.

113. Has I&A employed any contractors for the Portland mission? If yes, please describe their roles and the companies they work for.
Yes. I&A has used contractors that support federal staff, including the dissemination of intelligence reports, on Portland-related content since May 28, 2020.

114. Please provide a breakdown of the DHS components I&A personnel have supported in Portland and a description of the support provided to each such component. To what extent does the chain of command of I&A personnel include those components, as opposed to I&A Headquarters?
If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

115. Please describe interactions and coordination between I&A personnel in Portland and federal law enforcement, including elements of the Departments of Justice and Homeland Security.
I&A personnel supported FPS, CBP, and ICE/HSI through the provision of liaison services, police officer de-briefing, and the sharing and briefing of finished intelligence products and raw open source and human derived intelligence reports.

A July 9, 2020, I&A document describing "Portland Surge Operation" states that I&A personnel may "collect from incarcerated, detained, or arrested persons" so long as the collection is conducted overtly. Mr. Murphy stated during a briefing for the Senate Select Committee on Intelligence (SSCI) on July 23, 2020, that I&A personnel have not engaged in custodial debriefings. Please confirm.

If the Committee is able to clarify the precise scope of the request—for example, the period of time to which it pertains—I would be happy to work with the Committee to provide an appropriate and timely response.

116.

a. Have I&A personnel been indirectly engaged with detainee operations, for example, by providing collection requirements or requests, or suggested lines of questioning, to detaining authorities or otherwise requesting or receiving information related to detainees?
As noted in response to the previous question, to the extent the Committee is able to clarify the scope of the question—for example, the period of time to which it pertains—I would be happy to work with the Committee to provide an appropriate and timely response.

b. How do you define "overt" collection with respect to I&A collection? What specific information must be conveyed to the individual who is providing information to I&A to ensure the collection is overt?
"Overt collection" refers to activities that are openly acknowledged by or readily attributable to the U.S. government, and include activities designed to acquire information through legal and open means without concealment. Information may be collected by observation or engagements from knowledgeable human sources. Overt collectors must explicitly state to the interviewee that the interviewer is an employee of DHS; the source's participation is voluntary; the interview may be terminated by either party at any time; the interview will not exercise any preferential or prejudicial treatment in exchange for the source's cooperation; and the source has no right to review, edit or control I&A's use of the information collected and products derived from the interview, except for access rights provided by the Privacy Act and FOIA.

117. Mr. Murphy also stated during the July 23, 2020 SSCI briefing that I&A personnel have not interacted with protesters in any way. Please confirm.
It is my understanding that I&A did not interact with protesters in any way.

118. During the July 23, 2020 SSCI briefing, Mr. Murphy stated that I&A had neither collected nor exploited or analyzed information obtained from the devices or accounts of protesters or detainees. Please confirm. Please also consider any information that was not directly collected by I&A but provided to I&A, either from another law enforcement partner or through the commercial purchase of information.
It is my understanding that I&A did not access, seize, or exploit any devices of protesters or detainees in Portland.

119. Please describe I&A's open source collection. What rules of engagement apply to open source collection in the context of protests in which the vast majority of participants are exercising their First Amendment rights?
I&A may collect publicly available information from open sources, including but not limited to online social media, where they have a reasonable belief that it supports one or more of its national or departmental missions. I&A is prohibited, however, from engaging in any intelligence activity for the sole purpose of monitoring activities, including protests, protected by the First Amendment or the

lawful exercise of other rights secured by the Constitution or federal law. I&A collectors are focused on threats of violence or tactics, techniques, and procedures (TTP) associated with past violence to ensure both the safety of those who are exercising their rights as well as the safety of DHS employees protecting federal facilities in the area of the activities.

a. What rules or guidance does I&A follow to distinguish actual threats of violence or vandalism from political hyperbole, and what training do I&A personnel receive on the implementation of that guidance?
The I&A IO Guidelines forbid I&A personnel from performing intelligence activities for the sole purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution. I&A personnel may only collect and report on social media and other open source information when they have a reasonable belief that these activities assist DHS in identifying protective and support measures regarding threats to homeland security.

I&A personnel are required to successfully complete Intelligence Oversight training yearly. Intelligence Oversight, ILD, PRIV, and CRCL provide supplementary training.

b. What rules or guidance does I&A follow regarding I&A officers joining and observing social media groups, group chats, or other similar forums?
I&A open source collection is done passively by reviewing publicly available content online. This passive collection requires that I&A collectors do not have any human interaction on line and are only viewing information that is available publicly.

c. Is there any specific guidance for I&A officers joining closed (requires an action allowing admittance) social media groups, group chats, or other similar forums?
Yes.

120. What tools and processes does I&A have to vet the authenticity of open source threat reporting?
While the information is raw and unevaluated, analysts in specific mission areas utilize this information along with validated information to help inform analysis of open source threat reporting, while recognizing information can be intended to influence and/or inform.

a. What tools and processes does I&A have to vet the authenticity of social media accounts in which individuals take credit for acts of violence or vandalism, on their own behalf or on behalf of an ideology?
I&A uses Intelligence Community (IC) Analytic Standards that govern the production and evaluation of analytic products; articulates the responsibility of intelligence analysts to strive for excellence, integrity, and rigor in their analytic thinking and work practices.

b. How has this vetting been conducted prior to disseminating this information, or using it as basis for analysis?
As with much of the data found on the internet, and all instances of raw intelligence, there is no direct way to vet the authenticity of the information. The information is raw and unevaluated, which is noted in every Open Source Intelligence Report. Analysts utilize Intelligence Community (IC) Analytic Standards that govern the production and evaluation of analytic products; articulates the responsibility of intelligence analysts to strive for excellence, integrity, and rigor in their analytic thinking and work practices.

121. Have I&A operations in connection with the Portland protests been reviewed by an I&A Intelligence Oversight Officer, DHS's Privacy Office and Office for Civil Rights and Civil Liberties, or any other DHS personnel responsible for reviewing the impact of I&A operations on the privacy and civil liberties of U.S. persons? If yes, please describe those reviews.
The I&A Intelligence Oversight Officer (IOO) conducts preliminary inquiries into suspected questionable intelligence activities in accordance with I&A's IO Guidelines, and transmits the results to the Undersecretary for Intelligence and Analysis and the Associate General Counsel for Intelligence, for referral, as appropriate, to other oversight bodies. The IOO completed one report and conveyed it to appropriate parties on August 5, 2020. The IOO continues to conduct preliminary inquiries on published intelligence products related to Portland but is not interviewing witnesses pending completion of OIG investigation(s) into related matters. The DHS Privacy and Civil Rights and Civil Liberties offices have access to all I&A intelligence products produced during these operations.

122. Has I&A conducted network analysis linking individuals suspected of violence? If yes, can you describe how that analysis has been conducted while not collecting on U.S. persons not suspected of violence? Please provide any such analysis.
I&A research and analysis involving any identified U.S persons has been limited to individuals with an alleged nexus to violence through criminal charges. With respect to Portland, I&A conducted link analysis of various individuals that were arrested on federal charges. I&A did not conduct analysis to attempt to identify potential associates of the arrested individuals who had not been charged with a crime.

123. During the July 23, 2020, briefing, Mr. Murphy stated that I&A is able to track those who engage in violent acts because "it is the same people who come out after midnight." Please describe how I&A is able to differentiate between peaceful protesters exercising their First Amendment rights and those individuals who have planned or conducted acts of violence, and what information or intelligence is used in making this determination.

Although I am not able to comment on the excerpted quote from Mr. Murphy, I recognize that it can be difficult to differentiate between peaceful protestors and individuals that will separately act in violence. In part, this is so because violent actors often use peaceful protests as cover for their violent activities. Before the

Department reports through any intelligence activity in this area, we are working to ensure that intelligence analysts identify overt acts of violence or planning for violence.

124. Has I&A produced or contributed to targeting packages, "baseball cards," or dossiers on particular suspects? If yes, please provide these to the Committee.
I&A did not produce "targeting packages" identifying lawful protestors for additional collection or analysis. I&A did produce working materials such as "Operational Background Reports" for arrested subjects in order to conduct analysis on whether links of a derogatory nature existed between the known individuals.

125. On July 16, 2020, the FAA put in place flight restrictions over Portland to prevent drones from flying below 1000 feet. The FAA cited a DHS conclusion that private drone use presented a threat. Please provide any intelligence to support that conclusion.
I cannot speak for FAA with respect to the information on which it relied. To the extent such information is identified and a request is made by the Committee, I look forward to cooperating with Committee through the constitutionally-mandated accommodation process.

126. Have I&A personnel obtained or analyzed data from overhead imagery of protests? If yes, please describe, including the provenance of the imagery.
Not to my understanding.

127. On July 25, 2020, Mr. Murphy sent a memo to I&A personnel which stated that individuals in Portland committing acts of violence are "VIOLENT ANTIFA ANARCHIST INSPIRED (VAAI)." Please describe the origin of this designation and the analytical process whereby it was developed and applied.
I cannot speak to Mr. Murphy's decision or the process he used to develop or issue this definition.

128. The July 25, 2020, memo stated that the VAAI designation was informed by FIRs, OSIRs, "baseball cards" and FINTEL. Please provide these documents to the Committee.
If a request is made by the Committee, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

129. Please describe how I&A has applied its retention guidelines to information related to the Portland protests. What information has been marked for indefinite retention? How has I&A sought to apply its 180-day retention limitation to information it has disseminated?
I&A may retain information only to the extent there is a reasonable belief that retention furthers one or more of the national or departmental missions identified in the DHS I&A Intelligence Oversight Guidelines. Where that information contains U.S. Persons Information (USPI), I&A may temporarily retain it up to 180 days for the limited purpose of evaluating whether it can be permanently retained. I&A may permanently retain USPI where it also falls within one or more of the standard or

supplemental information categories also set forth in I&A's Intelligence Oversight Guidelines. I&A conducts retention evaluations of information containing USPI within 180 days from the date of acquisition, at which time information that does not meet the reasonable belief standard for continued temporary or permanent retention is deleted immediately. With limited exceptions, information containing USPI may be disseminated outside of I&A only if it can be permanently retained. Accordingly, that information is also no longer subject to I&A's 180-day retention limitation. Information containing USPI that has been disseminated outside of I&A may be retained indefinitely until determined to no longer be of intelligence value, at which point it is permanently deleted from I&A repositories, with an associated memorandum. As you are aware, the Inspector General is conducting a review of the Department's activities in Portland.

130. Please describe what I&A raw and finished intelligence reporting related to the recent protests has been disseminated to what entities, whether DHS, federal law enforcement, state or local or municipal law enforcement, or the Intelligence Community.
I&A's raw intelligence collection on civil unrest has spanned a variety of product lines–to include Field Intelligence Reports, as well as Open Source Intelligence Reports and Intelligence Information Reports. Since May 2020, I&A has produced 18 unclassified FINTEL products related to threats to Law Enforcement, Federal facilities, and violent protest across the United States. I&A has disseminated those products to DHS, federal law enforcement, state or local or municipal law enforcement, the Intelligence Community, and to Congress.

131. Are there limits to I&A's role in protecting public monuments, memorials or statues absent threat of violence to persons? Does it matter whether such monuments, memorials or statues are on federal, state, local, or private property?
By law, DHS is tasked with protecting federal buildings, grounds, properties, and persons on those properties.

132. What cities has I&A deployed to, or plans to deploy to in response to protests or associated threats of violence? Please provide any documentation or guidance related to any such deployments.
I&A deployed personnel to Portland, Oregon, and Minneapolis, Minnesota.

133. As you are aware, the House Intelligence Committee is conducting an investigation into the activities of I&A in response to the domestic protests as well as allegations that DHS has politicized intelligence regarding Russia's interference in the 2020 U.S. election. DHS has refused to provide many documents or make available most witnesses for transcribed interviews, despite requests issued more than six weeks ago. Will you commit to cooperating fully with the investigation, including immediately providing documents and making available witnesses for interviews?
DHS has not refused to provide documents to the Committee; in fact DHS has provided many documents. Document pulls are ongoing and future productions of documents are planned in the near future, even under the circumstances in which DHS remains mission-focused and operating under COVID constraints. DHS has

also made its officials available for questioning and interviews. DHS remains committed to the accommodations process with the Committee.

134. Mr. Murphy has publicly blown the whistle on DHS's activities and wants to cooperate with Congress. However, DHS has refused to provide security clearances to his lawyers, thereby not only depriving Mr. Murphy his right to counsel but also obstructing congressional oversight. Will you commit to immediately processing the attorney's clearances and allowing Mr. Murphy to review classified records to which he previously had access, so that Mr. Murphy can testify?
As DHS has already advised Chairman Schiff of the House Permanent Select Committee on Intelligence (HPSCI or the Committee) as well as Mr. Murphy's counsel, because Mr. Murphy's current position does not require access to classified material, he does not have the required "need to know" to access the classified information he wishes to now review. That fact in no way precludes him from testifying before or answering the questions of HPSCI as to the facts of which he has knowledge, be they classified or unclassified.

Regarding Mr. Murphy's counsel's request for access, DHS has informed them that we are willing to work with them to facilitate their representation. At the same time, Mr. Murphy's interest in receiving immediate assistance from his counsel cannot override DHS's responsibility to ensure that the appropriate procedures are followed to protect the classified information. Mr. Murphy has advised that he wishes his counsel to receive access to information classified at the TS/SCI level. Mr. Murphy's counsel does not currently have such a clearance, and the Department will need to conduct an appropriate investigation to consider their request. At this time, counsel's background investigation is not yet complete. Consequently, until that process is complete, his counsel's request for TS/SCI access will not be granted.

Critical Infrastructure and Election Security

135. The Cybersecurity and Infrastructure Security Agency (CISA) was recently reorganized to unify various infrastructure protection efforts and improve outreach to critical infrastructure stakeholders. Was the reorganization worth the effort? What tangible results have accrued, if any, as a result of CISA's reorganization?
The Cybersecurity and Infrastructure Security Act of 2018 mandated certain organizational changes within the newly created CISA, including the establishment of an Emergency Communications Division and the creation of distinct structural mechanisms to address improved coordination with stakeholders as well as internally within the Agency. The full range of structural realignments are scheduled to be finalized by the end of this calendar year. Initial indicators of improvement have been observed, most notably during the ongoing COVID-19 pandemic, through unified operational reporting from CISA's nationwide field personnel, more active and consistent engagement with external stakeholders, and better stakeholder-relevant analyses being delivered by the CISA's National Risk Management Center (NRMC). While there is still more work to be done, these

indicators, along with a growing and much-needed "One CISA" culture throughout the Agency, validate to us that it has certainly been worth the effort.

136. What do you believe is the role of DHS in relation to the election this fall?
As we approach the 2020 election, we remain steadfast in protecting our election infrastructure from cyber threats and educating the American public about misinformation. CISA has redoubled its efforts to make sure our elections are safe, secure and resilient.

a. Will you pledge to support the efforts of CISA to provide nonpartisan resources and services to protect America's election from foreign influence and its infrastructure from foreign cyber attacks, including by informing Congress of any attempts to interfere with those efforts?
Yes

b. Are there any circumstances where you would deem it necessary to send DHS personnel, including law enforcement personnel, to be present at polling places or other facilities that are handling ballots such as centralized counting locations for mail in ballots?
DHS works with state and local officials in a supporting role. We evaluate every request from our partners and will make decisions on a case-by-case basis.

137. Looking past the November Presidential election, will you commit to supporting a peaceful process for carrying out the Electoral College, certifying its result in Congress, and carrying out any transfer of power whoever wins in November?
Yes.

a. Specifically, will you commit to upholding the Constitution's 20th Amendment and the Presidential Succession Act in the event that a winner has not been certified by the Congress by noon on January 20?
Yes.

138. You have previously noted the partnership that CISA has with state and local election leaders across the country to ensure safe, secure, and resilient elections. Please describe what specifically CISA has been doing and what they need to be doing in the future to continue to improve election security.
For the last three and a half years, CISA has been helping to build a community of practice around election security. This includes funding the establishment of the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC) and helping to grow it to include all 50 states and thousands of local election jurisdictions. Within this community, CISA has conducted hundreds of cybersecurity assessments and taken those results and distributed guidance to address the most common challenges and vulnerabilities. Through CISA's last mile initiative local election officials in more than five thousand offices have received tailored cybersecurity products to help identify risks and take tangible steps to

mitigate those risks. Finally, CISA has served as a focal point in coordinating across federal agencies in support of election officials around the country.

a. You have stated that Russia, China, and Iran – states with significant cybersecurity capabilities – can threaten our election infrastructure. How do you propose small municipalities address these nation-state threats?
For small and mid-sized election jurisdictions, CISA has consistently promoted four low-or-no-cost steps to advance their security posture. First, join the EI-ISAC to ensure that they are receiving the most timely and tailored alerts and warnings pertinent to elections. Second, patch systems and update unsupported software. CISA's no-cost vulnerability scanning service can help to identify these critical vulnerabilities. Third, implement multi-factor authentication on the most important election systems. Lastly, educate users on the risks and tactics of spearphishing, a common vector of compromise. Through CISA's last mile initiative local election officials in more than five thousand offices have received tailored cybersecurity products that identify risk mitigation steps like those outlined above to build a more resilient election.

b. State and local governments across the political spectrum say they need more resources, money - not just partnerships - to address cybersecurity threats. They need to buy new equipment, hire cyber professionals, and upgrade their systems. Do you support additional, consistent long-term funding to state and local governments to improve their election security?
Yes.

139. The President and Attorney General Barr have on multiple occasions claimed that mail-in voting is a threat to our elections. Do you agree?
Mail-in voting exposes an election to a unique set of cyber and infrastructure risks. The outbound and inbound processing of mail-in ballots introduces additional infrastructure and technology, providing new potential opportunities for cyber-attacks. Implementation of mail-in voting infrastructure and processes within a compressed timeline may also introduce new risk. To address this risk, election officials should focus on cyber risk management activities, including proper configuration, access controls, and authentication best practices when implementing vote by mail.

a. If yes, on what basis do you draw that conclusion? Do you have evidence that states with historic widespread mail-in voting have had election security concerns? Please provide any intelligence or other analysis that has influenced your conclusion.
   - **Please see previous answer.**

b. It is probable that we will not know the final results of the election on election night due to the time it will take to count the millions of additional mail-in ballots this year. What plan do you have for addressing any mis- or disinformation that stems from this legitimate delay in announcing the results?

- **DHS actively engages with social media companies to share information about ongoing and emerging disinformation risks that relates to critical infrastructure. CISA will continue to ramp up efforts leading up to and through election day, building off lessons learned from 2018 midterms and recent primaries. CISA will continue to operate under a heighted state of readiness. CISA field personnel have established relationships with state and local officials. They will operate on a heightened state to report information to CISA's Watch and Warning teams. Leading up to November 3 and beyond, CISA will operate both an in-person and remote, classified and unclassified, Election Day Operations Center, with representatives from Federal, state and local partners, political parties, election tech companies, and social media companies.**

140. You have previously referred to the DHS Countering Foreign Influence Task Force (CFI TF) as the primary means for DHS to address misinformation and disinformation.

a. How many people work on this Task Force?
The CFITF is part of CISA's Election Security Initiative. The CFITF has around 8 federal billets plus contract personnel to support them as a program management office. The team also pulls from the analytic capabilities of the National Risk Management Center.

b. What is their annual budget?
The program spent approximately $4M in the past fiscal year.

c. How many products do they produce in a year?
While the impact of the CFITF cannot simply be measured by product, we have produced several —like our WarOnPineapple campaign and our Disinfo Stops with You materials—to educate the public on the tactics of foreign influence. The WarOnPineapple campaign used social media to demonstrate and raise awareness about foreign political influence. Disinfo Stops with You materials encourage Americans to participate in stopping foreign influence operations. We've also produced several products that shine a light on specific disinformation narratives.

d. If they are active on social media, how many interactions do they get in a year?
While CFITF engages with social media platforms, they are not an external affairs function posting on social media directly.

e. Can you provide us their strategy for how they interface with the general public? How do they ensure that the general public is aware of mis- and disinformation?
The CFITF is part of CISA's Election Security Initiative and is guided by the Protect 2020 strategy. They focus on understanding and evaluating the threats of dis-and-misinformation, partnering with federal agencies and subject matter experts to define the threats, and promoting best practices for countering foreign influence. The Election Security Initiative partners with

trusted voices, such as state and local election officials, civil rights groups and academics.

f. What metrics do you use to define the effectiveness of the CFI TF? How do you measure the impact of this team?
As described above, CFITF has conducted several public campaigns and products. We have promoted a longitudinal study to look at whether our efforts are successful in reducing Americans' engagement with disinformation.

141. Experts have recently warned that QAnon's encouragement of sensational depictions of random kidnappings, coupled with inflated and unreliable data, can make legitimate efforts to combat trafficking more challenging. The group's claims distorts public perceptions of the reality of trafficking, making it more challenging to educate the public on the real warning signs within their communities. What are the impacts of this misinformation on the Department's efforts to fight human trafficking? What is the Department doing to combat this misinformation perpetrated by QAnon?
Misinformation about human trafficking comes from many sources, and all forms of human trafficking misinformation are unhelpful to DHS's efforts. To combat human trafficking misinformation, we encourage all Americans to arm themselves with facts to help combat conspiracy theories and the spread of misinformation and disinformation—including false narratives associated with QAnon. Also, we condemn and stand in absolute opposition to those who espouse or commit violence—regardless of ideological association.

142. Do you believe the disinformation perpetuated by the QAnon conspiracy group presents a threat to homeland security?
At this time, I am not aware of specific threats to homeland security associated with QAnon, but we remain cognizant of the ability for conspiracy theories to influence or misinform violent actors.

143. State and local election officials have voiced concerns regarding their ability to obtain classified threat information in timely manner and that is actionable at an unclassified level so that state and local IT administrators/contractors who do not have clearances can harden their systems appropriately. How is DHS responding to and addressing those concerns?
We heard similar feedback during the past few years and have made sweeping efforts to address those concerns. First, we have sponsored more than 150 clearances for election officials and critical vendors. We have worked with the Intelligence Community to provide regular classified briefings. Second, we have focused on the need to provide information at as low a classification as possible. We have held bi-weekly unclassified threat calls with election officials, in advance of the election. We have pushed declassified cyber threat indicators out to as wide an audience as possible. Lastly, we have facilitated private sector resources to directly brief election officials.

144. How, if at all, is DHS working with the presidential campaigns, as well as national and state parties, to counter potential cyber-attacks and/or disinformation efforts designed to influence the upcoming elections by foreign or domestic actors?

DHS and its interagency partners has briefed presidential campaigns and the primary partisan organizations to provide threat intelligence and risk management guidance.

145. Elections were designated as a critical infrastructure subsector in January 2017. With limited federal funding for state and local election administration, including for replacement and upgrading of voting technology, what challenges does the Department face in helping state and local election officials ensure secure elections?

I appreciate the support and funding that Congress has provided to DHS during the last two years to aid in the election security effort. Election officials have made tremendous strides in their security posture but there is always more work to be done. In coming years, we plan to continue working on election security and on advancing supply chain risk management across the sector.

146. To what extent has DHS partnered with federal and state government stakeholders (e.g., FBI, the Election Assistance Commission, state and local election officials) to establish a whole-of-government approach for responding to and recovering from a significant cyber incident leading up to or during the 2020 elections? Do you believe our nation has a well-defined and tested incident response plan for these elections?

At the state and local levels, we are working with all 50 states and thousands of local election offices. The collaboration and coordination across the Federal Government in support of election security has been some of the best that I have seen. We are close partners with the FBI, the Intelligence Community, and the U.S. Election Assistance Commission.

Emergency Management and Preparedness

147. If confirmed, how would you address and/or direct components to address impacts of climate change on DHS infrastructure, such as port of entry facilities or USCG boat stations and ensure that they are able to withstand issues such as more intense storms and flooding/high sea levels while fulfilling their operational missions?

DHS takes into account the challenges posed by more intense storms, frequent heavy precipitation, heat waves, drought, extreme flooding, and higher sea levels when making decisions regarding asset placement. When severe weather is forecasted there are criteria for setting port conditions which provide information to the captains of the port and maritime industry. Based on these conditions, leaders are able to make decisions to protect their assets and infrastructure by either strengthening, protecting, or moving those assets out of harm's way.

148. Are you aware of reports that Jared Kushner elevated his former college roommates to temporarily work at FEMA, without government email addresses or with formal titles, and bypassed chain of command to try to fix challenges with personal protective equipment (PPE) in response to COVID-19?

In responding to this unprecedented pandemic, DHS and FEMA have surged resources from across the government—and engaged in groundbreaking partnerships with the private sector—to acquire and disseminate PPE in accordance with applicable law, regulation, and policy. FEMA continues to step up to the plate and overcome any challenge through a locally executed, state managed, and federally supported structure distributing PPE to localities as needed.

149. According to a number of states, the existence of the White House Coronavirus Task Force led to confusion, with PPE being sent without actual requests from governors, and states often having to put in requests with FEMA's system retroactively, to justify deliveries made at the direction of the President. Are you aware of these concerns?
As noted in response to the previous question, FEMA continues to step up to the plate and overcome any challenge through a locally executed, state managed, and federally supported structure distributing PPE to localities as needed.

150. You have previously stated that COVID-19 cost-share adjustment requests remain under review. When will decisions or recommendations to the President be made?
The Department does not make public the future timing of decisions or recommendations to the President.

a. Do you think states and localities could benefit in regards to planning if a decision were made?
Our goal is to be as transparent with our state and local partners as possible.

151. Since the beginning of the pandemic, 1,850 federal TSA employees have tested positive for COVID-19 and 6 have unfortunately died as a result. How is DHS ensuring that TSA and other DHS components have the necessary Personal Protective Equipment to protect frontline employees—Transportation Security Officers, U.S. Customs and Border Protection Officers, Border Patrol Officers, and Federal Air Marshals—and the traveling public from contracting COVID-19?
I remain fully committed to protecting the DHS workforce from exposure to COVID-19. The Department took concrete actions to protect our frontline personnel by ensuring they had access to adequate PPE, instituting maximum telework where allowable, issuing CDC health recommendations to DHS employees and other health guidance memos to the workforce. The Department also took decisive action to prevent our frontline personnel from encountering potentially infected individuals by implementing travel restrictions and public health orders along our borders. We will continue to take these types of actions to protect our workforce going forward.

a. What steps is DHS taking to ensure that in the event of future pandemics, it can expeditiously provide frontline personnel with Personal Protective Equipment?
DHS is working to further strengthen and maintain efficient and effective ways to obtain and distribute equipment to our front-line employees.

152. What steps would you take to decrease the federal government's future fiscal exposure, while at the same time enhancing resilience by reducing or eliminating long-term risks to people and property from natural disasters?
To decrease future fiscal exposure, I assess that the federal government should continue to promote and invest in hazard mitigation. Hazard mitigation is any sustainable action that reduces or eliminates long-term risk to people and property from future disasters. An independent study conducted by the National Institute of Building Sciences and the Multihazard Mitigation Council in 2019 found that for every dollar invested in Mitigation there is a 6-fold return on investment.

153. What role do you think mitigation and resilience building will have in addressing extreme weather events?
Hazard mitigation includes long-term solutions that reduce the impact of disasters in the future, including those resulting from extreme weather events. Mitigation and resilience therefore have a large role to play in addressing the impacts from extreme weather events. Furthermore, FEMA continues to assess emerging trends in resilience building, encourage the adoption and enforcement of disaster resistant building codes, monitor floodplain ordinances, and promote higher standards using our Community Rating System (CRS) program.

154. Since September 11, 2001, DHS has provided over $40 billion in preparedness grants to state, local, and tribal governments to strengthen their preparedness to terrorism and other hazards. What is your position on the effectiveness of these grant programs and what are the administration's plans for their future, both in terms of funding levels and use?
Almost 20 years after the 9/11 attacks, the environment in which we operate has evolved to include an increased threat of domestic terrorism; attacks on soft targets such as houses of worship, nightclubs, office buildings, and concert venues; and emerging threats such as cyber-attacks and the use of unmanned aerial vehicles. Based on recent events, intelligence community assessments, and trend analysis, DHS has identified four critical, national priority areas: cybersecurity, soft targets and crowded places, intelligence and information sharing, and emerging threats. DHS will continue to incentivize recipients to develop effective projects in each of these national priority areas with the opportunity to receive additional funding for proposing effective projects while moving to reduce funding for less effective investments.

155. How would you propose that DHS grant programs be changed to more closely align with the threats facing our nation?
Based on a review of recent events, intelligence community assessments, and trend analysis, DHS has identified and required our grant recipients to focus on four critical, national priority areas: cybersecurity, soft targets and crowded places, intelligence and information sharing, and emerging threats. We also are implementing effectiveness criteria as we review grant applications so that we can support more effective projects while diverting funding from less effective projects to those that show more promise, wherever they might be. In addition, we also are

reviewing the risk formula that underpins these programs. That review includes a reassessment of how we define and measure the threat of terrorism, the metrics we use to assess state and urban area vulnerabilities, and our understanding of the consequences of various types of attacks. Our intent is to recalibrate the formula to reflect the threat environment as it exists today in order to achieve DHS's mission to protect the homeland.

156. Given FEMA has one of the oldest financial management systems in DHS and is currently undergoing a grants management modernization effort to better integrate numerous systems, how do you plan to ensure these efforts are successful? What challenges, if any, do you anticipate and are current timetables and estimates reasonable?
To ensure success, the Department will continue to support FEMA through the leadership, guidance and oversight of our Management Directorate. This will be achieved through the functions of the Offices of PARM (Program Accountability and Risk Management), Finance, Information Systems, and Procurement. Both Financial Systems Modernization (FSM) and Grants Management Modernization (GMM) undergo regular reviews by the DHS Undersecretary for Management to ensure the programs are appropriately managed in terms of cost, schedule, performance, and risk.

The timetable and estimates for the FSM and GMM are reasonable. The FEMA FSM project is preparing to start and has currently encountered a software vendor procurement protest, to which DHS is currently responding. This could potentially delay the project to start later than expected.

157. This year and in recent years, California has experienced major catastrophic wildfires, requiring billions of dollars in federal assistance. According to the U.S. Global Change Research Program, warmer and drier conditions have led to a greater incidence of large forest fires, a trend which is expected to continue, while human settlement and expansion into wildland and forest areas continues. What role do you see for DHS going forward in promoting hazard mitigation against wildfire damage in the coming years?
The Disaster Recovery Reform Act (DRRA) of 2018 authorized the Hazard Mitigation Grant Program Post Fire (HMGP Post Fire). This program provides mitigation assistance using HMGP funds for areas affected by fires that have received assistance under Fire Management Assistance Grant (FMAG) declarations. HMGP Post Fire focuses on substantially reducing the risk of future damage, hardship, loss, or suffering from wildfire and other natural hazards such as floods or landslides after wildfires. FEMA has introduced program efficiencies such as pre-calculated benefits for common wildfire mitigation activities to enable States to implement this program quickly.

158. As you know, recent major disasters have resulted in the loss of a great many homes. This is obviously a very challenging situation for survivors, communities, and federal agencies. What steps can DHS take to help ensure that disaster survivor housing needs continue to be met?

FEMA works with each impacted State to develop an effective Sheltering and Housing Strategy that outlines how FEMA, other federal agencies, and nongovernmental organizations deploy a streamlined suite of sheltering and housing solutions and case management services to promote timely and effective housing-related outcomes. Through the Individuals and Households Program (IHP), FEMA may provide either Financial or Direct Housing Assistance to applicants with a disaster-caused housing need. Using the new remote inspection process, FEMA is providing Housing Assistance much faster than ever before.

Counterterrorism

159. Do you commit to sharing the internal implementation plan for the Strategic Framework for Countering Terrorism and Targeted Violence with appropriately cleared staff on the Committee to ensure Congress is able to assess the Department's efforts to operationalize the Framework?
If a request is made by the Committee, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

160. What processes and procedures does DHS have in place to identify, investigate, and monitor homegrown violent extremism? Please describe the types and amounts of resources that DHS allocates to counter homegrown violent extremism. What trends has DHS observed over the last 10 years regarding homegrown violent extremist activity or incidents, and what are the underlying causes of any trends, if known?
The Federal Bureau of Investigation (FBI) serves as the lead Federal agency that identifies, investigates and monitors homegrown and other forms of violent extremism, and DHS provides support to the FBI's mission through information sharing and staffing at Joint Terrorism Task Forces across the country. The past decade has witnessed an increase and diversification of homegrown violent extremism associated with efforts to catalyze radicalized individuals to act locally (often through online and social media), with a revival of domestic terror movements, and with emerging threats that defy traditional categorization. To counter this new threat landscape, DHS expanded its prevention mission to establish and support whole-of-society local prevention frameworks addressing all forms of homegrown violent extremism. The FY20 budget for expanding educational, technical and financial assistance to local prevention frameworks was $20.3M and the FY21 budget request quadruples this prevention effort across DHS to $80M.

161. GAO has previously reported that the federal government uses a formal six-step process for designating foreign terrorist organizations that includes consultation with multiple stakeholders, the development of supporting documentation, congressional notification, and Federal Register notice. What steps, if any, has DHS taken to develop a formal process to designate domestic terrorist organizations?
DHS is committed to combating all forms of violent extremism, including domestic terrorism. Unlike FTOs, there is no similar framework to designate domestic terrorist organizations (DTOs). As noted above, DHS continues to work with DOJ to prevent, disrupt, and prosecute criminals involved in terrorism in the homeland.

Additionally, we are committed to working with all stakeholders—including Congress—to develop the appropriate tools and legal framework for addressing DTOs.

a. Please describe what this process should entail and why, including what entities should participate in the process.
Please see the prior response.

b. If there is no such process, what are your views on the need for one?
Please see the prior response.

162. DHS has shifted strategic focus from Countering Violent Extremism (CVE) to Targeted Violence and Terrorism Prevention (TVTP). Please describe the impetus and implications of this shift. How do the terms "targeted violence" and "terrorism prevention" relate with the lexicons/definitions of international and domestic terrorism, and violent extremism?
After a comprehensive review of countering violent extremism (CVE) activities and an examination of how the threats of terrorism and targeted violence can be mitigated with the same tools, DHS moved from the more focused approach of CVE to the holistic prevention approach found in targeted violence and terrorism prevention (TVTP). TVTP addresses all forms of international and domestic terrorism as well as targeted violence and improves upon CVE's simple trust-building and awareness efforts by building and supporting local prevention frameworks that will increase community resiliency and intervene with individuals before they commit a violent act. Targeted violence is associated with non-ideological grievances, distinguishing it from terrorism, and it is generally accepted to refer to unlawful acts of violence wherein a known or knowable attacker selects a target prior to a violent attack that implicates homeland security and/or DHS activities. DHS is in the process of completing a formal definition of targeted violence to be entered it into its lexicon.

a. What are the consequences and/or challenges, if any, of agencies using different terminologies as they carry-out their counterterrorism missions?
DHS recognizes that differences in terminology can cause challenges in such a complex mission set. That is why the Department continues to support the interagency in refining and agreeing upon definitions. Furthermore, DHS is also continuing critical conversations and clarifying terminology with our international partners.

163. DHS plays a central role in the multi-Department effort to share terrorism-related information both within the federal government as well as with state, local, tribal, private sector, and even international partners. What plans does DHS have to improve coordination and coherence across DHS's various intelligence offices and programs?
I recognize the need to improve coordination and coherence across the DHS intelligence enterprise. As noted in pre-hearing questionnaire, if confirmed, I intend to continue to conduct a thorough review of current policies and procedures surrounding the Office of Intelligence & Analysis (I&A) actions and activities, specifically how they conduct information sharing and coordination. Following this

review, I will work to improve areas that are deficient or disconnected from DHS components or other intelligence community partners.

a. How do you envision DHS working with its partners in the U.S. intelligence community to ensure that terrorist-related information is both appropriately shared and protected from unwarranted disclosure?
DHS's core stakeholders include SLTT and private sector partners, many of which lack the appropriate clearances for most of the national security-related threat information. The Department works with its IC partners to provide this information at the appropriate clearance level for its key stakeholders.

U.S. Coast Guard and Maritime Security

164. What Coast Guard capability and resource gaps most concern you, and what steps is DHS taking to address them?
Coast Guard's aging air and surface fleets constitute the most significant readiness concern. DHS continues to support Coast Guard recapitalization, including acquisition of the Offshore Patrol Cutter, the Polar Security Cutter, and initial steps to acquire replacement capability for its fleet of buoy tenders. In addition to the acquisition programs, Coast Guard also has several life extension programs for both surface and air assets to extend the life of these critical assets until resources are available to recapitalize them as well.

165. The Coast Guard has reported challenges in meeting mission demands. Among other things, it has reported lacking sufficient personnel to meet its mission demands and challenges in addressing its $1.77 shore infrastructure backlog. However, in recent years, DHS has transferred funds from the Coast Guard for other component purposes. How does DHS intend to manage these Coast Guard shortfalls, and how does the DHS budget reflect it?
DHS will continue to review and prioritize investments across all Components, especially with regard to infrastructure. The DHS budget reflects balanced prioritization across the Department's multiple mission sets and is in line with Administration priorities.

a. What specific mission demands is the Coast Guard not currently meeting?
I am not aware of any mission demands that the Coast Guard is unable to meet. As with any operational entity, resource constraints require prioritization of missions, but the Coast Guard continues to be a leading contributor to our national security.

b. What actions, if any, has DHS taken to address the inability of the Coast Guard to meet all of its mission requirements?
DHS continues to work closely with Coast Guard to ensure mission priorities reflect the most pressing requirements and are in line with Administration priorities.

166. The Coast Guard plans to spend over $12 billion over a period of 20 years to acquire a fleet of 25 Offshore Patrol Cutters (OPC) as their highest investment priority. The OPCs will replace the aging fleet of Medium Endurance Cutters (MEC)—which are either approaching or have exceeded their design service lives—and enable the Coast Guard to conduct patrols for homeland security, law enforcement, and search and rescue operations. What is the status of the effort?
The OPC program is one of the highest USCG and DHS acquisition priorities. Eastern Shipbuilding Group, in Panama City, FL, was awarded the Detail Design and Construction contract for the first four OPCs, with the first two currently under construction. Construction of the first hull is approximately 30% complete with an anticipated delivery date before the end of 2022.

167. You approved the Coast Guard to use extraordinary contractual relief for Eastern Shipbuilding Group of up to $659 million for the acquisition of the critical Offshore Patrol Cutter. But it appears that the shipbuilder continues to experience delays and is at risk of not being able to meet the revised cost and schedule baselines. You also approved the Coast Guard to re-compete the acquisition for the Offshore Patrol Cutter beginning with the fifth of 25 cutters. What are you doing to ensure that the Coast Guard is managing their highest priority acquisition to deliver these critical assets in a timely and cost effective manner?
The Under Secretary for Management (USM) and the Vice Commandant of the Coast Guard closely oversee the current execution of the program and the future re-compete progress. Additionally, the USM support staff are continually engaged with USCG to ensure the program delivers the assets the USCG requires.

168. The Coast Guard and Navy are planning to invest up to $9.8 billion to build and maintain three heavy polar icebreakers to conduct missions in the Antarctic and Arctic. The first ship is scheduled for delivery in 2023. What is the status of this effort?
In April 2019, the Coast Guard-Navy Integrated Program Office for the Polar Security Cutter (PSC) awarded a contract for the detail design and construction of the first PSC to VT Halter Marine of Pascagoula, MS. VT Halter Marine is currently in the design phase of this contract with the first heavy polar icebreaker scheduled to begin construction in 2021. The contract includes options for building the second and third PSCs and if these options are exercised, the total value of the contract would be about $1.9 billion.

U.S. Secret Service

169. What are your views on whether the Secret Service is over-burdened by its dual mission: protecting the President and others while also investigating financial crimes?
I do not believe the Secret Service is over-burdened by its dual mission.

a. Do you believe the Secret Service would benefit from having a single focus on its protective mission? If so, when and how would you propose making that change?
No. Please see previous response.

Countering Weapons of Mass Destruction Office

170. DHS's Countering Weapons of Mass Destruction (CWMD) office was established to streamline efforts across DHS. Since the reorganization, morale at CWMD plummeted. This is of grave concern given the tremendous importance of protecting the homeland against a devastating WMD attack. What steps do you plan to implement to ensure CWMD can effectively execute its mission?
I will capitalize on recent successes realized throughout FY20 through continued partnership with the workforce, recognizing our team is vital to mission accomplishment. I have laid the groundwork for CWMD workforce investments and plan to continue leadership and engagement which can enhance these efforts currently underway.

Use of Cellular Phone Information

171. Recent news reporting indicates that during the Portland protests, DHS may have assisted in obtaining, or received from Justice Department agencies (possibly the DEA), interceptions of protesters' phone calls or other phone data.

a. Has any DHS employee extracted information from protesters' phones, either in Portland or during any of the other nationwide protests? If so, what components performed this action and under what authorities was this action taken?
To my understanding, DHS has not extracted information from an arrested/detained subject's cellphone or electronic device absent a warrant or written consent; however, I understand the DHS OIG is currently reviewing these operations.

b. Has any DHS employee reviewed, analyzed, or otherwise utilized any information extracted from protesters' phones, and if so where did they gain access to this information? What DHS or component policies govern the use of this information?
See prior response.

172. Separate news reporting indicates that the Secret Service, CBP and ICE have all purchased cellphone location data that otherwise would require a warrant or subpoena to obtain.

a. Is there any documented DHS or component policy regarding the purchase of commercially available information that otherwise would require a warrant or subpoena? If so, please provide a copy.
DHS complies with the United States Constitution and applicable laws and regulations in the course of discharging its law-enforcement duties.

b. Do you believe that DHS law enforcement should circumvent the 4th amendment by purchasing information that otherwise requires a subpoena or warrant?
See prior response.

Senator Thomas R. Carper
Post-Hearing Questions for the Record
Submitted to The Honorable Chad F. Wolf

Nomination of The Honorable Chad F. Wolf to be
Secretary, U.S. Department of Homeland Security
Wednesday, September 23, 2020

1. Relations with the DHS OIG

In the pre-hearing questionnaire when asked about your view of the role of the DHS Office of the Inspector General (OIG) and what you think the relationship between the Secretary and the OIG should be, you noted that "Any well-functioning and successful organization maintains strong lines of internal controls. The success of DHS rests on the diligence and duty the Office of the Inspector General (OIG) undertakes when fulfilling their role. DHS senior leaders, particularly me, should maintain professional working relationships with the OIG. Through these relationships, leadership can address mishaps expediently, while full investigations may expand months and years."

a. During your time at DHS, have you met with DHS Inspector General Cuffari?
Yes, I have met with IG Cuffari.

b. If so, what was the nature of those meetings? What topics were discussed?
It would be inconsistent with longstanding Executive Branch practice for me to disclose specific meetings or conversations I have had with Executive Branch officials.

c. If confirmed, do you intend on holding regular meetings with the DHS OIG to review open recommendations pending before the agency?
Yes. DHS leadership and the Office of the Inspector General (OIG) will continue to maintain their collegial, communicative, and productive relationship in all matters pertaining to the success of DHS's mission.

On September 14, 2020 DHS Inspector General Cuffari wrote to Chairman Bennie Thompson and Chairwoman Carolyn Maloney regarding GAO Decision No. B-331650 (August 14, 2020) concerning matters referred to the DHS OIG by the Government Accountability Office in the August 14, 2020 decision issued by the GAO General Counsel.

d. Have you discussed this letter with DHS OIG Cuffari?
As I have previously stated, it would be inconsistent with longstanding Executive Branch practice for me to disclose specific meetings or conversations I have had with Executive Branch officials.

e. If so, what was the nature of that discussion?
Please see the response above.

f. If not, have you or anyone at the Department of Homeland Security held discussions with the DHS OIG's office regarding the GAO's conclusion that you and Kenneth Cuccinelli were named to your respective positions of Acting Secretary and Senior Official Performing the Duties of Deputy Secretary by reference to an invalid order of succession?
Please see the response above.

2. DHS Headquarters Consolidation at St Elizabeths

For the last several years, I have been a strong advocate for the Department of Homeland Security's headquarters consolidation project at St Elizabeths. I haven't always been convinced this project was a smart investment. However, in the last several years I've grown to appreciate the benefits the project has for the mission of the Department and cost savings to taxpayers in the long term.

Last year I was proud to join Acting Secretary McAleenan and others to celebrate the grand opening of the Center Building, which houses the Acting Secretary and support staff.

a. Do you agree that ultimately completing DHS Headquarters at St. Elizabeths will enhance the ability of the agency to complete its mission and save taxpayer dollars?
Yes.

b. While I was disappointed to learn that the Federal Emergency Management Agency (FEMA) will not be moving to St. Elizabeths, I am encouraged to see that DHS and GSA have sufficient funding to begin new construction on a headquarters building for the Cybersecurity and Infrastructure Security Agency (CISA).
[No question here.]

c. What is needed from Congress to complete this project?
CISA is fully funded and is on schedule to move on to St. Elizabeths campus early 2024. Additionally, included within the pending FY21 budget request for both GSA and DHS is support to move I&A fully to St. Elizabeths campus in early 2025. Additionally, we expect to request support to move ICE headquarters to St. Elizabeths in the near future; if appropriated ICE HQ will be fully on campus in early 2026.

3. Speaking Truth to Power

On the subject of politically-difficult decisions, nearly two years before submitting his resignation, General Jim "Mad Dog" Mattis said during his confirmation hearing that he would resign as a matter of principle if the President ignored his best advice as Secretary of Defense and still directed him to do something that he believed was wrong.

In his resignation letter, General Mattis pointed to his policy differences with the President and noted that the president deserves "the right to have a Secretary of Defense whose views are better aligned with yours."

a. Have you ever been asked to do something that you believe is wrong or against the best interest of the country by the President or anyone else?
No.

b. If at some point in the future, you are asked to do something that you believe is wrong or against the best interest of the country, what would you do?
If I found myself unable to discharge my duties consistent with my oath of office, I would resign my position as Secretary.

4. DHS Employee Morale

Low employee morale at DHS has been a longstanding issue since the creation of the Department. While DHS has made progress in this area, it still remains below the government average and retains an employee engagement score similar to the score it held ten years ago.

Former Secretaries such as Secretary Jeh Johnson took this issue head on, and through initiatives such as Unity of Effort began to see this issue trend in the right direction from a low point in 2015, to where it stands today.

a. In your view, what do you believe is driving low morale across the department?
The Department of Homeland Security is filled with patriotic Americans who work under some of the most challenging circumstances. I believe that today's politicization of national security, law enforcement, and the DHS mission by the press and other selected policymakers is impacting employee morale.

b. What efforts do you, and do the component heads need to take to improve employee morale across DHS?
We need to continue to set priorities, lead by example, and provide the recourses and support employees need to do their jobs. It is also important to remind our employees to ignore false and demeaning attacks on the Department. I am proud that DHS' Employee Engagement Steering Committee is working to address these issues and share best practices to strengthen morale department-wide.

5. DHS Countering Foreign Influence Task Force

Can you elaborate on the size and scope of the Countering Foreign Influence Task Force at CISA, how this Task Force measures success in countering misinformation and disinformation?

a. Are only DHS personnel on this task force, or are there people from other agencies or the private sector that are a part of it? If so, can you list which agencies and/or private sector partners are a part of the task force?
The Countering Foreign Influence Task Force is part of the Election Security Initiative at CISA. It is composed of CISA personnel but works closely with partners at the FBI, which leads the federal effort on countering foreign influence as well as the Office of the Director of National Intelligence (ODNI). While other agencies focus directly on foreign actors targeting us with disinformation, CFITF

focuses on educating the public on the risks of engaging and disseminating disinformation.

b. As November is a short time away, what is the most immediate and prevalent threat the task force has identified ahead of the election?
The Countering Foreign Influence Task Force is paying attention to disinformation that pertains to the administration of elections and is promoting the voices of election officials as trusted sources of information.

c. Does this task force within CISA work with the Federal Bureau of Investigation's Foreign Influence Task Force? If so, are there interagency memo's or reports on foreign influence operations ahead of November that can be provided to my staff and I?
CFITF works closely with the FBI's FITF; their missions are complementary. While the FBI and the Intelligence Community focus on reducing the supply of foreign influence and disinformation actors, the DHS CFITF works to reduce the public's susceptibility to disinformation through education, risk management, and media literacy efforts.

6. Election Security

In a time of incredible discord in our country, we need to ensure that Americans are getting accurate, consistent, and factual information so they can feel confident when voting in November. Misinformation and disinformation campaigns surrounding our elections are used by our adversaries to sow social discord and disrupt our democratic process. I am happy to hear election security is your top concern.

a. Do you feel that it is your duty and responsibility as Secretary to publically correct any inaccurate and misleading statements regarding election security, especially if there is a discordance between what the President may say is a dominant threat, and what the Intelligence Community identifies as a dominant threat?
DHS is focused on any cyber threats to election infrastructure and we will continue to provide the public with accurate information regarding these threats. We're working with all 50 Secretaries of State and major election technology companies. We have not seen any specific intelligence or threats targeting infrastructure, but we know the capability is there and we're prepared.

b. Do you think mail-in voting is a threat to our elections, and if so, is there evidence by the Intelligence Community that foreign adversaries are targeting ballots? What foreseeable threats are you identifying, if any, that would undermine the legitimacy of mail-in voting?
Concern regarding mail-in voting should be distinguished from cyber risks. Our mission at DHS is to focus on the cyber risks of certain forms of voting. DHS will continue to focus on supporting the decisions of state and local election officials and to give them the best advice to manage those risks. I am not aware of intelligence specifically addressing foreign adversaries targeting mail-in ballots.

c. In light of the coronavirus pandemic, do you agree with the President's push and overall sentiments against mail-in voting? Is there a difference in protection measures put in place for absentee ballots versus other forms of mail-in ballots?
Please see answer to the previous question.

7. Farmville

Back in June when protests in Washington, DC, were erupting, ICE had stated it flew detainees from Arizona and Florida to the Farmville, VA, detention center in order to spread detainees out to facilitate social distancing and mitigate the spread COVID-19.

a. Was there a coronavirus outbreak in any of the detention centers in Arizona or Florida that prompted the Department to institute social distancing guidelines in June?
Since March 2020, during the height of the pandemic and while following guidance from the CDC, ICE has proactively applied social distancing measures as expeditiously as possible to ensure detained populations in all facilities fell at or below the suggested 75% rate (70% or less at ICE-dedicated facilities). Due to implementation of this important mitigating measure, transfers are made to facilities across the United States where available beds can continue to meet the suggested population rate as well as security needs of the transferred population.

b. Reports have stated that over 300 individuals tested positive for covid-19 at Farmville after the transfer of detainees from AZ and FL. Before the transfer of detainees to Farmville, were they tested for COVID-19?
Prior to transport, ICE conducts temperature checks and medically screens detainees for COVID-19 symptoms. The June 2, 2020 intakes at Farmville were quarantined at intake, apart from the rest of the population, for 14 days and monitored for symptoms.

c. When was the decision made for them to be transferred to Farmville?

    a. Who made the decision to transfer detainees to Farmville? Did the local ICE field office in Arizona that oversees the facility that these detainees were transferred out of consulted? Was the local ICE field office that oversees Farmville consulted?
    All detainee transfers and transfer determinations are based on a thorough review of the most current information available and in accordance with ICE policy. Decisions to transfer are made by the Field Office Director or his/her designee on the basis of case information and principles set forth in the ICE ERO Detainee Transfers Directive and other applicable ICE Enforcement and Removal Operations (ERO) policies. All detainee transfers and transfer determinations are based on a thorough review of the most current information available to ICE ERO.

        i. Reports indicate that ICE transferred these detainees so that DHS special response teams could take charter flights and be deployed to Washington,

DC to quell the protests. Were any ICE agents or personnel that came on these charter flights with the detainees kept in DC to respond to the protests? If so, how many?
ICE transfers detainees due to the operational demands of the detention network. The June 2 transfer of detainees to Farmville was made as part of a national effort to move detainees across the detention network to facilitate social distancing and mitigate the spread of COVID-19 based on guidance from the CDC.

As a matter of operational efficiency, ICE used available space on an ICE Air flight to move personnel for a temporary duty assignment.

ii. If not, can you please provide the number of DHS personnel that were deployed in the Washington DC/National Capital Region in June in response to the protests, with the location of where each of those agents came from?
Some of the ICE personnel who travelled on ICE Air flights were deployed to the NCR. Six ERO SRT Teams and two local ERO Field Offices responding elements participated in the NRC.

d. What is the maximum capacity that DHS deems appropriate at each of the detention facilities in light of COVID-19 distancing guidelines?
In response to the unprecedented COVID-19 pandemic, ICE ERO reduced the population of all detention facilities to approximately 70 percent capacity or less exceeding the CDC recommendation, taking even greater precautions than the 75% capacity limit recommended by the CDC. This measure was taken to avoid any potential overcrowding and ensure that social distancing can be maintained.

a. Is it correct that Farmville was 57% full as of June 1? After detainees were transferred there from Arizona and Florida, what was the updated percent of capacity at Farmville, compared to the facilities they came from?
On June 2, 2020, there were 387 detainees in custody at Farmville, or 53.6 percent of capacity. On September 21, 2020, there were 183 detainees in custody at Farmville, or 25.3 percent capacity.

8. EO 13780 (the "Muslim Ban")

On September 24, 2017, the President issued a Presidential Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats. The Proclamation was in addition to Executive Order 13780, and it banned the entry of foreign nationals from predominantly Muslim-majority countries.

b. In section 4(a) of the Proclamation, "The Secretary of Homeland Security shall, in consultation with the Secretary of State, devise a process to assess whether any suspensions and limitations imposed by section 2 of this proclamation should be continued, terminated, modified, or supplemented."[1] Section 4 requires the

Secretary of Homeland Security to submit a report to the President every 180 days on updates for the travel restrictions.
[No question here.]

c. When is the next report due to the President? Has the required report been done every 180 days since the Proclamation? If not, how many reports have been done since the Proclamation was issued?
The next report is due on October 1, 2020. Between September 2017 and January 2020, DHS submitted reports to the President roughly every six months as required by Proclamation 9645. Proclamation 9983 of January 31, 2020, however, changed this reporting cycle to annually for any country that has travel restricted under the process created by Proclamation 9645 and every other year for all other countries.

d. Do you anticipate any countries currently on the list, to be removed in the foreseeable future?
Any country facing travel restrictions that meets the requirements established under Executive Order 13780 may have those restrictions lifted. For example, Proclamation 9723 lifted restrictions on the Republic of Chad. The President has tasked the Secretary of the Department of Homeland Security with identifying deficiencies in foreign identity management and information sharing practices and protecting the United States from the resulting risks—ideally by the foreign government improving its practices, but through travel restrictions when warranted.

e. Would you commit to disclosing the latest report to this Committee?
DHS's reports constitute classified and privileged advice from the Secretary to the President.

f. Since the Proclamation was ordered, has it increased public safety? If so, please explain how.
Yes. Foreign governments, both those that have received travel restrictions and those that have not, have improved their identity management and information sharing practices as a result of the Proclamation. For example, multiple countries have begun reporting lost and stolen passports to Interpol or have increased the frequency of their reports, reducing the opportunity for criminals and terrorists to use these documents to travel to the United States. In addition, multiple countries have begun to replace passports with outdated security features with modern electronic passports. We have also seen improved liaison relationships for the regular exchange of terrorist and criminal information.

g. Have waivers been granted to foreign nationals that qualify for them in a timely manner?

Waivers are issued by the Department of State. I respectfully refer this question to them.

i. Have there been any delays in issuing waivers to foreign nationals that qualify for them?
Waivers are issued by the Department of State. I respectfully refer this question to them.

ii. If delays are found, will you commit to working with the Secretary of State to address the problem in waiver processes?
Waivers are issued by the Department of State. I respectfully refer this question to them.

1. Will you provide an update to my staff once you have consulted with the Secretary of State on addressing the visa waiver issues?
I refer you to the Department of State for any updates regarding visa waiver issues.

9. Climate Change

Mr. Wolf, earlier this month, you sat next to the President in California during a trip to survey the damage from a historic wildfire season which as of this week has claimed over three million acres of land. In response to accurate remarks from a California official concerning the relationship between climate change and extreme weather events that can worsen forest fires, the President had this to say: quote, "It'll start to get cooler, you just watch." When corrected that his remarks were not supported by science, Mr. Trump replied, "I don't think science knows."
[No question here.]

10. COVID Response

1. Do you agree that masks significantly reduce the risk of COVID transmission and should be worn, particularly indoors?
CDC recommends that people wear masks in public settings and when around people who do not live in the same household, especially when other social distancing measures are difficult to maintain. DHS will continue to follow CDC guidelines on masking.

2. Do you agree that Department leaders have a responsibility to adopt policies and procedures to reduce essential employees risk of contracting COVID?
   - How about detainees in DHS custody?
   Yes and yes. DHS has adopted and implemented policies and procedures to minimize the risk of spreading COVID-19 to DHS employees and detainees.

3. Do you believe that DHS policy reflects not just CDC recommendations, but the best available *science* when it comes to COVID protection? (i.e., CBP policy)

Yes.

4. Do you agree with the President that, all other things being equal, we would have fewer cases of COVID if we simply stopped testing?
The country's capacity for COVID-19 testing is overseen by the CDC, but let me be clear: President Trump and his Administration built the world's leading testing system to detect the novel COVID-19. President Trump took action immediately to ensure that testing was readily available to individuals who need it most. And under the President's leadership, the U.S. Government partnered with the private sector to develop testing and produce supplies distributed across the country to great success; today, the United States conducts 800,000 tests a day.

5. In response to minority question 71, on page 79, you state that you would defer to the nation's medical experts as to whether COVID "is in the process of going away."

   Dr. Tony Fauci is the nation's leading infectious disease official. He said last Thursday we are not in fact "rounding a corner" in terms of COVID going away.
   [No question here.]

   a. Should we take your answer to mean that you accept his assessment?
   As the American homeland continues to open, DHS's components continue to see a return to pre-COVID operations. DHS defers to the nation's medical experts regarding epidemiological trends and remains undeterred in serving the American people throughout the coronavirus pandemic.

11. PPE Provision

Please provide an overview of DHS' roles and responsibilities when it comes to procuring and providing PPE to states and local governments during the pandemic.

DHS's/FEMA's role within the federal response to the COVID-19 pandemic is evolving to meet the changing needs of the American people over the span of the pandemic. FEMA and the Defense Logistics Agency (DLA) coordinated the transition of PPE procurement from FEMA to DLA, with FEMA transitioning its contracts and DLA procuring PPE requested by states, territories, and tribes. New procurements for COVID-19 PPE reside with the DLA, which has a robust procurement and distribution capacity and capability. However, both FEMA and HHS have previous acquisitions with deliveries into 2021.

When possible, DHS/FEMA will fill a request for PPE if it has that particular item in its inventory. Consistent with the principle of emergency response being locally executed, state-managed, and federally supported, requests for assistance at the local and county level are first routed to the state. Any needs that cannot be met by the state are then directed to the appropriate FEMA Region, and then onto the FEMA National Response Coordination Center (NRCC) in Washington, D.C., for action. If FEMA does not have that

PPE in the warehouse, the request is transferred to HHS to fulfill using the Strategic National Stockpile inventory.

a. Does DHS have a responsibility to provide PPE to frontline workers, such as agricultural workers?
The Federal Government's delivery of facial coverings is in a phased-approach for infrastructure workers, first responders, and food producers who do not need medical-grade PPE for their daily work. Many of our infrastructure sectors must have access to facial coverings in order to reduce possible spread of the virus and to ensure critical services continue throughout our communities. Distribution is based on DHS's Cybersecurity and Infrastructure Security Agency analysis of priority infrastructure sectors. Priority infrastructure sectors included in the analysis are food production and distribution, energy, water and wastewater treatment, essential transportation and logistics, first responders, communications, hazardous materials management, manufacturing of medical supplies, and sanitation and disinfection supplies.

b. What specific steps has DHS taken to ensure that the amount of PPE available is adequate to meet the nation's response to the pandemic?
FEMA has been proud to work closely with its interagency partners, including HHS, to address both the critical acute needs of communities in danger of running out of supplies within days, and the nation's supply chain needs for vital PPE. For locations in danger of running out of supplies within 96 hours, as reported by local, state, tribal and territorial government officials, FEMA and HHS worked to deploy life-saving equipment from the federal government's reserve within the Strategic National Stockpile (SNS) and procurements by the federal government. Due to our efforts, states received life-saving equipment. To address the Nation's additional needs amid a global shortfall for PPE, FEMA and its interagency partners also assembled the Supply Chain Stabilization Task Force to supplement – not supplant – the supply chain through a variety of strategies, including Project Airbridge.

12. Portland Deployments

1. Do you believe it is the responsibility of the Secretary of Homeland Security to calm domestic tensions and civil unrest, rather than inflaming them?
Yes.

2. In the case of deployments of DHS officers and agents to protests, state and local officials objected to DHS's presence, and the operational components responsible for carrying out the mission warned you that their agents were not adequately trained.

   Afterward, Secretary Esper expressed concern regarding Border Patrol agents' uniforms, saying that he would prefer they didn't wear fatigues on the streets of U.S. cities, in order to avoid being mistaken for a domestic Army occupation.

You have spoken previously about your respect for a collaborative policy development process, in which stakeholders and operational components are closely consulted.

a. Do you believe that these deployments were conducted following a thorough and appropriate policy process? Please describe how the process was conducted.
DHS officers who supported the protection of federal facilities in Portland during the unceasing violence were properly trained and were clearly identifiable as law enforcement officers.

b. Do you believe that these decisions prioritized officer safety?
DHS law enforcement personnel are trained in tactics to conduct missions while protecting civil liberties and promoting public safety and the safety of our officers.

13. Black Lives Matter / systemic racism

1. On page 72, in response to minority question number 51, you stated that AG Barr and you considered prosecutions of members of Black Lives Matter. What process does DHS use to determine individuals' membership in Black Lives Matter?
DHS seeks to ensure that Americans can exercise their First Amendment rights to peacefully assemble and protest. These individuals would not be subject to arrest by virtue of their association by BLM, but on the basis of any engagement in unlawful conduct.

3. In response to minority question number 86, on page 94, you stated that you don't believe systemic racism exists in the criminal justice system.

a. How do you define "systemic racism"?
As the President articulated in his Executive Order, "Combatting Race and Sex Stereotyping" on September 22, 2020, the theory of "systemic racism" posits that America is "irredeemably racist," with some Americans as "oppressors"; and that race is one's defining characteristic—rather than one's natural gifts and talents, humanity, or status as an American. I do not subscribe to this belief. I instead believe in our Founding principle: that all individuals are created equal and should be allowed equal opportunity to pursue happiness and prosperity.

b. Do you acknowledge that Black people experience differential outcomes in this country in terms of educational opportunity, income, wealth, health care, and interactions with law enforcement?
As Acting Secretary of Homeland Security, my mission is to ensure the safety of the American homeland for all Americans, regardless of race or membership in any other protected class. Our nation was founded on the promise that every American would have the opportunity to achieve happiness and prosperity. Any stereotyping, scapegoating, or discrimination on the basis of race is anathema to this promise. Racial stereotyping, scapegoating, and discrimination are all wrong and intolerable and must be corrected where encountered.

c. If so, what is your hypothesis on why those disparities exist?
America is premised on, in the President's words, "the inherent and equal dignity of every person as an individual." Where disparities among racial groups are the result of stereotyping, scapegoating, or discrimination, those disparities are intolerable and must be corrected where encountered.

14. Vacancies
In responses provided to the Committee ahead of this hearing, you stated that you trust in your subordinates and "empower" them to carry out the missions of their components.

Eleven of 18 Senate-confirmed positions within DHS leadership are acting or unfilled. Some of the roles filled by acting individuals include the Deputy Secretary, the Director of ICE, the Commissioner of CBP, and the General Counsel.

a. Are you at all concerned that the Senate has not had the opportunity to vet so many members of your leadership team on behalf of the American people?
I support and believe in the current leadership at the Department. I also believe that the Department needs Senate-confirmed leaders.

b. If confirmed, how will you work to address these vacancies?
I will continue to work to address the vacancies at the Department. DHS's greatest strength is its people and I am committed to ensuring that all the men and women in our workforce—including senior leaders—are equipped to successfully execute the Department's mission of safeguarding the American people, the homeland, and our values.

Post-Hearing Questions for the Record

Submitted to Chad Wolf, Acting Secretary,

U.S. Department of Homeland Security (DHS)

From Senator Kamala Harris

"Nomination Hearing"

Senate Homeland Security and Governmental Affairs Committee

September 23, 2020

Allegations of ICE Permitting Hysterectomies Without Informed Consent

1. On September 14, 2020, a nurse that worked at Irwin County Detention Center in Georgia, a facility that is privately operated by LaSalle Corrections, filed a whistleblower complaint with the DHS Inspector General alleging high rates of hysterectomies without informed consent. According to the complaint, the nurse stated that "[e]veryone [the facility doctor] sees has a hysterectomy." According to one detained immigrant, between October 2019 and December 2019, five different detained women had a hysterectomy or other invasive procedure done, and all of them expressed confusion "when explaining why they had a [hysterectomy or other invasive procedure] done." On September 18, 2020, I joined my colleagues in sending a letter to the DHS Inspector General Cuffari asking for a thorough investigation into these allegations.

   Please provide the date on which you became aware of the whistleblower reports that detained migrant women at the Irwin County Detention Center received hysterectomies without having provided their informed consent and that the facility was not following COVID-19 infection control practices.
   I became aware when the complaint was reported in the press. To my knowledge, the complaint was filed September 14, 2020.

2. Has ICE terminated its relationships with the medical provider(s) or any other entity implicated in allegations set forth in the whistleblower complaint?
   a. If so, please provide the effective date for the termination of the relationship or contract, if applicable.
      The facility's relationship with the provider has been suspended while the investigation is pending. All future appointments with the provider have been canceled until the investigation has been concluded.

3. Has ICE taken any steps under its contract governing the Irwin County Detention Center in connection with the allegations in the complaint, including to investigate what happened?
While DHS OIG reviews the allegations, ICE has taken a proactive approach to investigating the allegations. As noted above, the facility has suspended the relationship with the provider while the review is ongoing, and it is working to identify another offsite provider to care for the OB/GYN needs of female detainees.

4. Is DHS investigating whether the activities alleged in the whistleblower complaint have occurred at any other detention facilities?
DHS and ICE have a number of oversight mechanisms in place to ensure that the care received by the detained population conforms to applicable detention standards, and there are multiple ways that detainees, employees, contractors, and others can report concerns. At this time, both DHS OIG and ICE are reviewing allegations related specifically to the Irwin facility that stem from a specific complaint.

5. In response to the whistleblower allegations, ICE stated that "since 2018 only two individuals at Irwin County Detention Center were referred to [...] health care facilities for hysterectomies..."
Please confirm the number of individuals that received hysterectomies while detained at the Irwin County Detention Center.
    a. What percentage of these people received hysterectomies after being referred for other procedures?
    - **Inquiries into this situation are ongoing. It is my current understanding based on ICE data that, since 2017, a total of five individuals at Irwin County Detention Center were referred to certified, credentialed medical professionals at gynecological and obstetrical health care facilities for hysterectomies in compliance with National Commission on Correctional Health Care (NCCHC) standards, and three hysterectomies were in fact performed. These recommendations were reviewed by the facility clinical authority and approved. Decisions related to health care are made by medical providers and not law enforcement personnel.**

6. What are DHS' policies and procedures governing the selection of medical service providers through contractual relationships or otherwise?
    a. Please provide copies of all relevant policies, procedures, and guidance.
    - **The Department of Homeland Security Acquisition Manual (HSAM) is issued by the Chief Procurement Officer (CPO). The HSAM establishes for the Department of Homeland Security uniform department-wide acquisition procedures, which implement or supplement the Federal Acquisition Regulation (FAR), the Homeland Security Acquisition Regulation (HSAR), and other agency regulations and statutory requirements. All acquisitions within the Department follow the HSAM unless otherwise excluded by the FAR, HSAR or the HSAM. IHSC works with Office of Acquisition Management (OAG) who is the ICE acquisition authority.**

Senator Kyrsten Sinema

Post-Hearing Questions for the Record

Submitted to The Honorable Chad F. Wolf

Nomination of The Honorable Chad F. Wolf to be

Secretary, U.S. Department of Homeland Security

Wednesday, September 23, 2020

Question for the Honorable Chad Wolf

1. U.S. Immigration and Customs Enforcement (ICE)'s practice of detaining migrant children in temporary hotel accommodations while they await deportation continues in Arizona despite a court finding that this practice violates the Flores settlement when children are detained for longer than 72 hours. Communication with the city of Phoenix continues to be insufficient despite repeated requests that DHS provide more proactive information about the use of these hotels in Phoenix. Unfortunately, my staff and I have received feedback from Phoenix officials that indicates proactive steps are not being taken to keep city officials informed of these activities and that limited information has been shared on only a few occasions.
   - Why does DHS not proactively share information with appropriate local officials in Arizona regarding the transport and detention of children in DHS custody, especially when the children are being held in facilities outside the formal ICE detention system, such as hotels, where adherence to DHS protocols and oversight is more limited?
     ICE recognizes the importance of communication and cooperation between its state and local partners. In this instance, ICE has been providing information in response to numerous inquiries, including with state and local officials. For instance, on July 31, 2020, ICE held a briefing with Mayor Gallego and her staff, and ICE leadership followed up with a phone call on September 10th.

   - Is DHS communicating with local law enforcement regarding the use of these hotels to ensure the safety of the migrant children and ICE employees and contractors?
     To the best of my understanding, as of September 11, 2020, there were no single minors being temporarily housed at hotels. Any temporary housing of minors will comply with all legal requirements.

   - What are DHS's plans for responding to local officials in communities who indicate they do not support this initiative and how will ICE change its procedures if cities continue to express objections to the continuation of these actions?
     See previous answer.

   - Do children who are held in a hotel after being released from ORR custody awaiting a deportation flight have the ability to communicate with legal counsel via telephone or other methods? What protocols are in places to ensure this communication is

available? Are legal representatives made aware of where the children are physically located throughout this process? If not, why not? Will ICE allow legal representation to have physical access to these children while they are at these hotels?
See previous answer.

- What training do contract employees who are supervising and transferring minors receive that specifically relates to caring for this unique population? What background checks and security screening are done for these contract employees?
All employees are subject to background checks and security screenings. The contract staff are required to undergo training that includes a significant amount of subject matter related to care for unaccompanied minors and adhere to the ICE guidelines regarding COVID-19, to include hourly medical screenings of individuals in our care and providing necessary medical supplies and multiple forms of personal protective equipment (PPE), soap and other sanitary products. Other topics include behavior management, safety, first aid, unexpected circumstances, and emergencies. The training manager and ICE's record review confirmed that all staff sampled have completed the required training. Contract staff adhere to the ICE guidelines regarding COVID-19, to include temperature checks -every 4 hours and screenings related to COVID-19 symptoms and providing necessary medical supplies and multiple forms of PPE, soap and other sanitary products. ICE contract staff must meet the hiring requirements outlined in their contract's Statement of Work, which include receiving a favorable adjudication of the required background investigation commensurate with the position requirements.

- What precautions is DHS taking to mitigate the risks of infection spread among agents, contract employees, hotel personnel, and other guests? Are CDC guidelines and public health best practices being complied with while holding these children in hotel accommodations? Is adequate PPE available for all DHS and contract staff, migrants being held and others as needed? Are individual children kept in separate rooms to allow for isolation and social distancing?
As noted above, to the best of my understanding, as of September 11, 2020, there were no single minors being temporarily housed at hotels. Any temporary housing of minors will comply with all legal requirements, as well as applicable CDC guidelines.

- What testing protocols are in place for these migrant children? What happens if a child tests positive for COVID-19? Are they isolated while still being kept in the hotel or are they sent to ORR or traditional ICE detention facilities? If a child tests negative, why are they then not transferred to ORR custody since they are no longer a public health concern?
ICE follows current CDC guidance with respect for all individuals in its custody, including minors. Medical staff at ICE detention facilities consult with the local health department, as appropriate, and notify the health department if any detainee tests positive for COVID-19. As noted above, to the best of my

understanding, as of September 11, 2020, there were no single minors being temporarily housed at hotels. Any temporary housing of minors will comply with all legal requirements, as well as applicable CDC guidelines.

- If ICE knows that deportation flights cannot be arranged within a short time period and these hotels would be used for extended periods of time, what discretion do they have to transfer these children to traditional ICE facilities or ORR care?
  Single minors subject to Title 42 expulsion are transported to their respective expulsion flights. Should a Title 42 expulsion need to be converted into Title 8 proceedings, the minor is processed as such and placed in the care and custody of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR).

- Given that minors being expelled under Title 42 or removed under Title 8 have been exposed to different populations in the period immediately preceding the time they are held in these hotels, are the groups of minors held separately to decrease infection spread originating from different locations and sources? If not, why not?
  As noted above, to the best of my understanding, as of September 11, 2020, there were no single minors being temporarily housed at hotels. Any temporary housing of minors will comply with all legal requirements, as well as applicable CDC guidelines.

2. Using Title 42 authority, CBP is quickly expelling almost every person who crosses the border. I understand the need to adapt policies and procedures to protect the public health and also support strong border security. However, the sheer volume of overlapping restrictions and policies seems to have effectively closed our southern border to those who have a legal right to seek asylum. The lack of information DHS officials are providing to migrants regarding what legal rights they may have is concerning. DHS has stated previously that individuals are still screened for potential claims under the Convention Against Torture (CAT) and Customs and Border Protection (CBP). Commissioner Morgan previously testified in front of this committee that CBP is screening all unaccompanied children who arrive to the United States for relief under the Trafficking Victims Protection Reauthorization Act (TVPRA). However, there is a lot of evidence, including the situation regarding children being held in Phoenix hotels, which indicates these protections are not being applied consistently or fairly.
   - Does policy guidance provided by DHS to CBP and Border Patrol agents in the field address Title 42's interaction with the Trafficking Victims Protection Reauthorization Act (TVPRA), Convention Against Torture (CAT), and other potential asylum claims made by migrants?
     The CDC order instructs DHS to prevent the introduction of aliens traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry or Border Patrol station at or near the United States borders with Canada and Mexico, except those who fall within specified categories identified in the CDC order or whom customs officers have determined, with approval from a supervisor, should be excepted from the CDC order based on the totality of the circumstances. Implementation of

the CDC order requires the temporary suspension of the introduction of covered aliens into the United States for public health reasons. This implementation is not an immigration authority—it is completely separate of and distinct from any immigration processing under Title 8.

- What specific policy guidance is provided for the handling of unaccompanied children under Title 42? How many unaccompanied children have been screened by CBP for TVPRA protections since March 2020?
  The CDC order instructs DHS to prevent the introduction of aliens traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry or Border Patrol station at or near the United States borders with Canada and Mexico, except those who fall within specified categories identified in the CDC order or whom customs officers have determined, with approval from a supervisor, should be excepted from the CDC order based on the totality of the circumstances. Implementation of the CDC order requires the temporary suspension of the introduction of covered aliens into the United States for public health reasons. It is separate and distinct from any immigration processing under Title 8. CBP has processed approximately 1,759 unaccompanied alien children under Title 8 authority in accordance with law, policies and guidelines.

- Please provide my office with any and all policy and implementation documents issued by DHS that outline the use of Title 42 authority to expel migrants and how Title 42 procedures interact with traditional asylum claims.
  If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

- Please provide copies of any agreements between the U.S. and Latin America and Caribbean countries regarding the return of unaccompanied children under the CDC order. In what ways, if any is DHS tracking information on the children you are expelling? Do these agreements provide any provisions for information sharing?
  There are no written agreements between DHS and any international counterpart regarding the application of Title 42. Currently, DHS endeavors to capture basic biographic and biometrics information on all individuals it expels, consistent with existing DHS policies and standard practices.

- Of the unaccompanied children who have been expelled under Title 42 since March 2020, how many children are in each age category, less than 1 year, 1 to less than 2 years, 2 to less than 3 years… etc to 17 but less than 18 years? Who keeps track of this data?
  If a request is made by the Committee for this information, I look forward to cooperating with the Committee through the constitutionally-mandated accommodation process.

At what point in the Title 42 process is consular notification provided to the

appropriate consulate? If DHS is unable to verify an individual's citizenship during the compressed timeline of Title 42 processing, what steps are taken to transfer this individual to ICE or ORR custody?
DHS fully complies with consular notification requirements under the Vienna Convention on Consular Relations and other bilateral agreements. For most of the nationalities encountered along the Southwest Border, consular notification need occur only if an alien affirmatively asks for it. DHS seeks to establish the nationality of any individuals encountered through standard processes (record checks, interviews, etc.). Transfer between USG agencies, when required, follows standard processes.

- I have seen reporting of individuals being returned to a country that turned out to not be their country of nationality and they were then returned to the U.S. What steps is DHS taking to ensure this does not happen given the high risk of increasing infection spread of COVID-19 that arises from multiple transfers?
DHS seeks to establish the nationality of individuals encountered through standard processes (record checks, interviews, etc.). In the exceptionally rare circumstance where this occurs, DHS works quickly to address the issue and ensure the safety of all involved.

- How does DHS handle migrants that they are seeking to expel under Title 42 who Mexico will not accept, specifically Cuban nationals?
Individuals, including Cubans, who are not amenable to Title 42 are processed under the existing Title 8 authority.

- DHS has stated that it only conducts cursory health screening for migrants apprehended in the field before they are expelled. What health issues does DHS consider serious enough when observed during this cursory review to halt a Title 42 expulsion? Is pregnancy considered a health condition that would exclude someone from a Title 42 expulsion?
A Title 42 expulsion could be halted by any medical condition that is considered life threatening by the attending medical personnel, which could include pregnant females who are deemed to be high-risk. Pregnancy alone would not halt the Title 42 process.

3. DHS cancelled all Migrant Protection Protocol court hearings in March due to the pandemic and continued to delay these hearings on a monthly basis until late July when it finally put out a more detailed joint plan between DHS and DOJ to restart MPP courts. For the first few months of rescheduled MPP hearings, migrants who were staying in Nogales Mexico were required to travel to the El Paso POE on their original hearing date just to receive a new NTA with a new hearing date. Additionally, all members of a family unit were made to appear, as opposed to one family member being able to appear as a representative. This practice greatly increased the risk of infection spread for migrants, DHS personnel, and border communities across Arizona, Texas and Mexico. I'm glad that this practice has stopped but remain concerned at how long it took DHS to provide clear guidance to migrants, the public, and Congress.

- What was the reason for the delay in DHS and DOJ laying out a clear plan for rescheduled MPP hearings that protected the public health and did not require unnecessary travel for migrants during a pandemic?
  At the time of the initial hearing pause—and given the lack of knowledge and uncertainty surrounding COVID-19—it was unclear when DHS and DOJ would be able to resume removal hearings for migrants in MPP, thus a month-by-month approach was taken. When it became clear that the public health situation in the United States and Mexico would not imminently allow for hearing resumption, DHS and DOJ introduced more certainty into the decision-making process for when to resume removal hearings for MPP by issuing the restart criteria on July 17, 2020.

- What steps have you taken in your role as Acting Secretary to improve DHS' communication to all parties impacted by the shutdown of MPP hearings to include our Mexican partners and the legal and nonprofit community that is heavily involved in this area providing support to migrants?
  DHS and DOJ have worked to proactively provide as much information as possible about the MPP Hearing Pause. For instance, DHS and DOJ have issued a number of press releases which sought to provide the most current information available at the time. Additionally, the DHS Attaché in Mexico is regularly interviewed by local and national press news outlets from around Mexico and, in the course of those interviews, provides information related to the MPP hearing pause. DHS funnels as much information as possible through the Department of State offices that are working directly with (and in many cases funding) the groups involved in providing shelter to migrants in Mexico. Finally, DHS recently published an MPP-focused landing page on DHS.gov--in both Spanish and English--that provides a one-stop source of information for individuals seeking to learn more about MPP and has specific sections that are directly intended for migrants in MPP that include "reminders" and resources—all in one place.

- Is any other outreach being done to Mexican partners or nonprofit groups beyond just posting information on the EOIR case tracking system?
  Please see prior response.

- MPP was put in place based on the understanding that the Mexican government will provide migrants with all appropriate humanitarian protections for the duration of their stay in Mexico. Many of these protections have not been available to migrants as Mexico struggles to respond to the pandemic and has closed many government offices. How has this factored into DHS' review of how to restart MPP hearings, knowing that migrants may be in even greater danger in Mexico now due to this lack of assistance?
  DHS has regularly inquired with the Government of Mexico regarding its commitment that aliens in MPP would have the opportunity to access health, schooling, work permits, etc. The Government of Mexico has confirmed, including recently, that these resources continue to remain available for aliens in MPP who are in Mexico.

4. ICE detention facilities in Arizona have reported high numbers of confirmed cases of COVID-19 among detainees throughout the pandemic. Congress and Arizona communities must understand what precautions and additional measures DHS is taking to protect detainees, prevent the spread of the virus within the detainee population and staff, and ensure local medical communities are not overwhelmed by the movement of infected detainees into local hospitals.
   - Do ICE facilities in Arizona have the ability to completely isolate infected detainees from other prisoners? If not, what steps are being taken to isolate infected detainees to the greatest extent possible?
     For those who are confirmed laboratory positive for COVID-19, ICE recommends isolation, with cohorting with other laboratory-confirmed cases to be used only when no other options are available. Given the significant variance in facility attributes and characteristics, cohorting options and capabilities will differ across the various detention facilities housing ICE detainees. However, ICE encourages all facilities to adopt the most effective cohorting methods based on the individual facility characteristics and taking into account the number of new intakes anticipated each day.

   - Are detainees placed in cohorts by admission date, or by other criteria? If so, how does this strategy reduce the risk of infection?
     Medically speaking, a cohort of people is a group who have a designated characteristic in common; among the detained population, this commonality may be a confirmed illness, a suspected illness, a potential exposure, or a new arrival in custody. The practice of cohorting involves housing people in separate groups based commonalities. Cohorting lasts for the duration of the incubation period; in the case of COVID-19, the duration of cohorting is 14 days from the most recent exposure.

   - What ability do ICE facilities in Arizona have to test detainees and staff who may have been exposed to individuals with confirmed cases of COVID-19? What is DHS headquarters doing to expand ICE's testing capability?
     ICE adheres to the most current CDC guidance for COVID-19 testing. ICE has also taken steps to expand its testing capacity. Currently, 17 IHSC-staffed facilities are conducting COVID-19 testing during the intake process. Additionally, as of September 22, 2020, 17 IHSC and 24 IGSA facilities have conducted saturation testing. ICE is also requesting additional testing machines and test kits to continue expanding its testing capacity.

     IHSC has conducted COVID-19 testing on all detainees that come into its custody at designated facilities, including two facilities in the state of Arizona. Per CDC guidelines, testing is conducted on symptomatic detainees and on medical staff if needed.

   - Is there adequate PPE for staff who closely interact with potentially exposed detainees at all ICE facilities in Arizona? What is the department's strategy to maintain adequate PPE throughout the duration of the COVID-19 crisis?
     The ICE Occupational Safety and Health (OSH) Unit continues to work diligently to

ensure employees are operating under the safest and most practical conditions to reduce the risk of exposure and prevent further spreading of COVID-19 during daily operations. The ICE OSH Unit regularly provides guidance regarding integrating administrative controls such as social distancing in law enforcement settings and the appropriate choice and use of PPE when administrative controls cannot be implemented. Additionally, IHSC has a supply of PPE at all designated facilities, to include two in Arizona, and have been receiving PPE from HHS the last two months to add to its inventory.

- I understand some detainees in Arizona have been released on humanitarian parole due to age or medical conditions that make them highly vulnerable to infection. What steps are being taken to ensure that any eligible detainees who are at critical risk for exposure are paroled for humanitarian reasons? Is ICE considering additional releases since COVID-19 has been detected within populations at the detention centers in both Eloy and Florence? If such releases are considered, what additional criteria related to COVID-19 has ICE developed to determine suitability for release?
  Early in the pandemic, ICE conducted a review of all detained cases, evaluating medical issues, immigration histories, criminal records, potential threat posed to the public, flight risk, and national security concerns in order to determine whether continued detention or release was appropriate. ICE continues to evaluate aliens on a case-by-case basis in light of these factors.

- CDC guidelines outlined that transfers of detainees would be extremely risky and should only be done in extreme circumstances. It is widely reported that ICE has continued to transport detainees around the country to new facilities, sometimes for staging for deportation flights, and for other reasons throughout the pandemic. Some these transfers lead to new outbreaks in facilities.
  - Please provide my office with policy and implementation documents outlining how ICE decides when these transfers of detainees are still necessary given the public health risks.
    All detainee transfers and transfer determinations are based on a thorough review of the most current information available, in accordance the applicable ICE Directive. Decisions to transfer are made by the Field Office Director or his/her designee on the basis of complete and accurate case information and principles set forth in the ICE ERO Detainee Transfers Directive and other applicable ICE ERO policies. All detainee transfers and transfer determinations are based on a thorough review of the most current information available to ICE ERO. Any ICE decision to transfer detainees between and among our nationwide detention facilities is based upon operational and mission needs.

  - Please provide my office with all statistics regarding the number of ICE detainees that have been transferred into, out of, and among Arizona facilities since March.
    Although ICE tracks overall transfers, it is unable to report on the breakdown requested here. ICE is currently updating its transfer methodology and anticipates that it will be able to report on these types of questions in greater

detail once this has occurred.

- At Acting Secretary Wolf's staff interview he committed to providing my office with details regarding the ICE detainees who were transferred from Arizona facilities to a Farmville, VA facility in June where it is alleged they were only moved to help facilitate the movement of DHS agents to protests in DC. Please provide background on this decision and how these transfers met ICE requirements and followed CDC public health guidelines.
  ICE transfers detainees due to the operational demands of the detention network. The June 2 transfer of detainees to Farmville was made as part of a national effort to spread detainees across the detention network to facilitate social distancing and mitigate the spread of COVID-19. Due to implementation of this important mitigating measure, transfers were made to facilities across the United States where there were available beds that would continue to meet the suggested population rate as well as security needs of the transferred population. All decisions on movement, including detainee transfers, further isolation, and monitoring are done so in accordance with CDC guidelines.

5. In response to the Supreme Court decision on DACA in June, you wrote a memo laying out next steps for DHS's handling of the DACA program asserting that the interim changes you put in place are necessary while DHS completes a full review.
   - What initial review was done, if any, in light of the SCOTUS decision and how did this review guide the determination for these interim changes?
     Due to ongoing litigation, DHS is unable to comment at this time.

   - What is the timeline for the full review? What factors is DHS considering during its full review of the program to determine whether to rescind it again?
     There is no current timeline associated with the full review. Due to ongoing litigation, DHS is unable to comment further at this time.

   - What outreach is DHS doing to ensure populations impacted by these interim changes understand DHS' decision-making process?
     USCIS routinely posts information on its website regarding DACA. The new policy, as well as the memoranda explaining the policy and implementation guidance, are available on USCIS's website. Additionally, information regarding USCIS's outreach at the local and national level is available on USCIS's website.

6. The pandemic has paused and slowed some of your Department's initiatives related to asylum – including the Migrant Protection Protocols (MPP), Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP). However, it is critical that we examine these programs to ensure migrants are treated fairly and humanely. You stated during your confirmation hearing that migrants have a right to due process and that access to legal counsel is part of that due process. However, according to your HSGAC policy questionnaire, only 13 of 2,005 HARP cases and 18 of 2,722 for PACR cases had a legal representative during their proceedings.

- Has DHS done any review to compare the outcomes of PACR or HARP cases where legal assistance was obtained by the migrant versus cases where no legal assistance was available?
  The PACR and HARP pilot initiatives allow DHS immigration components—in partnership with the Department of Justice's Executive Office for Immigration Review—to efficiently adjudicate the credible fear claims of amenable aliens (non-Mexicans and Mexicans, respectively) while such aliens are in CBP custody. Aliens enrolled in PACR and HARP are subject to expedited removal, and to date the Department does not have disaggregated data specific to PACR/HARP enrollees who have obtained legal representation. These programs implement the expedited removal statute passed by Congress.

- If a review has been done, what statistical differences were found, if any, between the results of asylum claims for migrants who were able to obtain legal counsel as opposed to those who were not? If no review has been done, is DHS planning any such review?
  Aliens enrolled in PACR and HARP are subject to expedited removal, and to date the Department does not have disaggregated data specific to PACR/HARP enrollees who have obtained legal counsel.

- How does DHS plan to improve access to legal counsel for migrants held in CBP custody under these expedited asylum programs given your claim that this is a due process right and it is currently only available to a minuscule percentage of migrants?
  The law provides aliens in Title 8 immigration proceedings the right to be represented by counsel at no expense to the Government. DHS and DOJ have put forth multiple initiatives to enhance access to legal counsel for aliens in removal proceedings.

7. Travel restrictions on the southwest border were put in place in March and have been extended on a monthly basis through October 21st. These incremental extensions coupled with DHS' efforts to limit non-essential travel by U.S. citizens has caused uncertainty and confusion for border communities. During this pandemic, we must be smart and stay safe, but it is also important that local communities understand DHS plans and benchmarks for resumption of regular operations.
   - Is DHS developing a plan to return to normal operations at the border, and how is DHS communicating these plans and benchmarks to border communities and getting their feedback on how this prolonged shutdown has impacted them?
     Throughout the COVID-19 pandemic, DHS has recognized the need to balance protecting the public health with the need to ensure that critical businesses and infrastructure have the tools they need to maintain operations. DHS has worked closely with Canada and Mexico to achieve that delicate balance through cross-border travel restrictions and any decision to reduce or remove these travel restrictions will be made in collaboration with our foreign partners. Currently DHS is operating on a month-by-month basis due to the uncertainty surrounding COVID-19. DHS recognizes the importance of communication and cooperation between its state and local partners and looks forward to returning to normal operations when conditions permit.

8. In May 2020, USCIS requested an additional $1.2 billion in emergency funding from Congress stating that it would need to furlough 70 percent of the agency's personnel without this emergency bailout. USCIS initially framed this major budget shortfall as a direct result of decreased receipt fees due to COVID-19 but it is clear the agency's financial problems started long before the pandemic and USCIS expressed an almost identical budget shortfall as early as November 2019. These budget issues and the impact on USCIS operations is a serious concern both for the federal employees whose jobs are at risk and the individuals who are awaiting USCIS to process their critical immigration benefits. Provisions in the continuing resolution will allow for USCIS to increase revenue through increases in premium fees and expanding the availability of premium processing for certain immigration benefits. However, these increased fees will not solve long-term funding issues and stability without increased oversight.

   What have you done in your role as Acting Secretary to review the financial health of USCIS?

   To ensure the Department, and our Components, have complete visibility at all levels, we have established a monthly Fee Scorecard to track anticipated revenue to actual revenue. This scorecard will quickly show any perturbations in revenue which will allow the Component to use their modeling simulations to anticipate future impacts. In addition, the Department has a monthly Fee Governance Council which allows cross flow of information between Components on economic impacts each are experiencing and operational or financial changes necessary to ensure fee balances are sufficient. Specifically, USCIS and DHS CFOs have weekly engagements where they monitor revenue projections and actual collections, identify options for contract savings, and developed a process to project monthly cash flow. This engagement is already paying off and has provided the financial savings which along with Congressional assistance from the USCIS Stabilization Act will assist USCIS in gaining positive cash balances.

   - How is DHS planning to address the financial health of USCIS in the long-term?
     DHS will work with USCIS to formally establish a multi-year planning process to better inform future needs and incorporate those needs into future fee adjustments. The multi-year planning process and the alignment of metrics to the budget will inform USCIS leadership fiscal decisions through the provision of the short-and long-term financial impacts and by measuring the impact of funding changes on operational outcomes.

   - How will you address any Administration immigration policies that played a part in denigrating the financial health of USCIS?
     This Administration's immigration policy decisions have no relation to USCIS' financial concerns; they are caused by COVID-19. Indeed, there is no data or evidence to support the notion that policies implemented during this Administration have caused a significant reduction in revenue. Revenue was relatively flat from FY 2017 – FY 2020, based on USCIS' analysis of historical data and revenue collections, there is nothing to suggest that there has been any drop in USCIS' overall application and petition receipts outside historical norms. In fact, since the

implementation of the last fee rule in December 2016, USCIS' annual revenue has remained relatively flat at approximately $3.8 billion per year. Prior to COVID-19 FY 2020 revenue was on pace to reach $3.8 billion. However, starting March 2020 and entirely caused by COVID-19, USCIS experienced a 50 percent drop in revenue, placing the agency in a dire financial situation.

- What oversight does DHS plan to do related to the increased premium processing fees to ensure this additional funding is being used to appropriately decrease case backlogs for all cases and will not negatively impact those who cannot afford these premium fees?
  DHS CFO is currently working with the USCIS OCFO to develop a new Premium Processing Fee governance policy to ensure the proper use of these fees. The new premium processing language expands the use of premium processing funds. Based on USCIS's current financial situation, the first priority is to ensure that the agency can maintain operations in FY 2021 and future years. Once UCIS has established a solid financial foundation, additional premium processing fees can be invested into significant technology projects, including paperless electronic work flow and case management, which we believe in the long run will improve the timing and quality of non-premium case handling. In conjunction with USCIS' multi-year budgeting process, base budget reviews will ensure that premium processing funds are fully assessed and aligned with the agency's long-term strategic priorities, such as decreasing case backlogs.

9. DHS has been rapidly constructing new and replacement border wall on public lands in Arizona, and the construction is now approaching both the western and eastern boundaries of the Tohono O'odham reservation. Indian lands are fundamentally different from public lands, tribes have property rights in those lands that are protected from alienation. Further, Congress, not the Executive Branch, has Constitutional authority and plenary power over Indian affairs. See Felix S. Cohen, Handbook of Federal Indian Law, § 5.01, 5.02, U.S. Const. art. I, § 8, cl. 3; art. II, § 2, cl. 2; art. IV, § 3, cl. 2; United States v. Lara, 541 U.S. 193, 200 (2004) (Congress' authority over Indian tribes is broad, plenary and exclusive); Indian Trade and Intercourse Act, 25 U.S.C. § 177. Any action that impinges on tribal property rights -- like constructing a border wall on an Indian reservation -- should therefore require the approval of Congress before such action can proceed, as well as consultation with the affected Tribe.

   - Has DHS conducted any planning to build border wall segments on any land inside an Indian Reservation? If so, please identify the specific Indian Reservation?
     CBP is not constructing today in or on the Tohono O'odham reservation. Construction is currently occurring on the Quechan reservation with permission near Yuma, Arizona. In addition, this project was coordinated with the Bureau of Indian Affairs. CBP regularly consults with Federal, Native American Tribes, state and local agencies, and non-governmental organizations to minimize and/or mitigate impacts to natural and cultural resources. Should culturally sensitive artifacts or sites be identified during construction, CBP will coordinate with the appropriate tribes to determine an appropriate treatment plan and repatriation of artifacts.

- Does DHS currently have any plans to begin construction of a border wall on any land inside an Indian reservation? If so, please identify the specific Indian Reservation?
Aside from the construction on the Quechan reservation, DHS does not have any identified funding to construct barriers inside or on a Native American reservation.

- If such plans exist, does DHS intend to comply with the law, i.e., Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) 102(b)(1)(C); Executive Order 13175, and its own tribal consultation policy by consulting with the Tribe whose reservation will be affected and seeking the approval of Congress before taking action that would affect reservation lands?

  No plans currently exist, however CBP will continue to regularly consult with Federal, Native American Tribes, state and local agencies, and non-governmental organizations to identify resources that have the potential to be affected by the construction of border barrier in order to minimize and/or mitigate impacts to natural and cultural resources. CBP also executes a robust outreach effort to solicit public input as part of the environmental planning process.

- While DHS has provided my office with a list of meeting dates where consultation with the Tribe occurred, no notice was given for Quitobaquito, and notifying the Tribe on the same day that blasting occurred at Monument Hill is not meaningful. The Tribe continues to maintain that their concerns about the cultural and religious significance of these sites was ignored despite these limited meetings. Meaningful consultation assumes an exchange of information and actually considering the information provided by a tribe before making decisions or taking actions. How does DHS plan to improve consultation with the Tribe moving forward?
CBP will continue to meet regularly with all potentially affected Native American Tribes that may have an interest in a project area. CBP continues to modify and improve its outreach and consultation efforts to potentially affected and interested stakeholders to ensure that information is provided in a timely matter and that concerns of stakeholders are adequately addressed and considered, prior to construction. For all construction projects, CBP has an environmental monitor present daily to ensure construction best management practices are adhered to by the construction contractor as well as to halt any work should any historical or culturally sensitive artifacts be identified. Should culturally sensitive artifacts or sites be identified during construction, CBP will coordinate with the appropriate tribes to determine an appropriate treatment plan and repatriation of artifacts.

10. CBP is using huge amounts of water to construct the border wall in the Tucson sector (CBP August 2020 figures for Tucson Sector report water consumption for border barrier projects between 12 million and 15.6 million gallons per week), which includes Organ Pipe Cactus National Monument and Quitobaquito Springs, which in addition to being sacred to the O'odham, is home to two endangered species found only in that location. There has been a significant reduction in the water levels at Quitobaquito -- they have dropped about 30 percent since March, and in July the water flow dropped to its lowest rate on record -- as well as a dramatic decline in wetlands wildlife at the Springs since the border wall construction began almost a year ago. Professional wildlife biologists working for the Park Service and other

agencies have reported that only 48 percent of the bird species typically recorded -- 34 bird species -- have not been seen since wall construction began, undoubtedly as the result of heavy construction equipment, drilling, blasting and water pumping in the area. CBP is not pumping groundwater within a 5-mile buffer around Quitobaquito, but that does not guarantee that the springs will be protected, and in fact there appears to be significant damage occurring to the springs and the wildlife that rely on them.

- What additional measures will DHS take to ensure that this unique cultural and biological resource is not further depleted and damaged by the border wall construction?

  CBP is committed to environmental stewardship and protection of natural resources. CBP continues to monitor the situation associated with Quitobaquito Springs very closely with the assistance of the National Park Service. Based on this coordination with the National Park Service, there is much evidence that the drop in water levels at the springs is more related to the lack of important monsoonal rainfall and leaks with the existing liner of the pond. CBP, in consultation with the U.S. Fish and Wildlife Service and the National Park Service, determined and recommended that no groundwater would be used within five miles of either side of Quitobaquito Springs for new border wall system construction. Based on this recommendation, there have been no use of existing groundwater wells or drilling of any new wells within five miles of either side of Quitobaquito Springs.

11. Operation Asian Touch was an ICE investigation in Arizona which may have been derailed by improper actions on the part of the investigators. I reached out to DHS' Office of the Inspector General on this matter in June and was informed this matter was referred to the ICE Office of Professional Responsibility. A full examination of ICE actions in this matter is critical so that my constituents can have confidence in future DHS activities.

- Does HSI have a written policy prohibiting agents from engaging in sexual activity with the subjects, witnesses, or victims who are encountered during the course of an official investigation?
- What updates were made to HSI investigatory procedures or policies in the wake of Operation Asian Touch? Has ICE made any other changes in light of the outcome of this operation?

Joint Answer:

Yes, the applicable HSI Directive outlines prohibited undercover activities. Specifically, the direction provides that an undercover operative shall not engage in any type of sexual activity, sexual contact, and/or participate in an act of prostitution with anyone connected to an investigation, to include, but not limited to, confidential informants, sources of information, cooperating defendants, targets of investigations, or potential victims.

Airlines for America®
We Connect the World

Nicholas E. Calio
President and CEO

September 21, 2020

The Honorable Ron Johnson
Chairman
U.S. Senate Homeland Security and
Governmental Affairs Committee
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Gary Peters
Ranking Member
U.S. Senate Homeland Security and
Governmental Affairs Committee
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Johnson and Ranking Member Peters:

Airlines for America (A4A), representing the leading U.S. airlines that shape crucial policies and measures that promote safety, security and a healthy U.S. airline industry, would like to express its support for the nomination of Chad F. Wolf to be the Secretary of the Department of Homeland Security (Department).

Mr. Wolf has had a distinguished career working with the industry on issues of importance both to A4A members and the entire aviation sector. Through multiple roles at the Department, Mr. Wolf has been instrumental in the development of policies and strategies to strengthen the robust risk-based security system that underpins our industry. We believe the Department would benefit from his continued leadership.

A4A supports Mr. Wolf's nomination and encourages timely action on his nomination.

Sincerely,

Nicholas E. Calio

1275 Pennsylvania Ave, NW Suite 1300 Washington, DC 20004 T 202.626.4000 W airlines.org

ENOUGH·IS·ENOUGH℠
Making the Internet Safer for Children and Families

September 21, 2020

Enough Is Enough, a national non-partisan, non-profit organization fighting to make the internet safer for children and families since 1994, supports President Trump's nomination of Chad Wolf for Secretary of the Department of Homeland Security.

Prioritizing the sexual exploitation of children must be at the forefront of America's priorities, and Acting Secretary Wolf has made his commitment to that end clear. In January's "Department Of Homeland Security Strategy To Combat Human Trafficking, The Importation Of Goods Produced With Forced Labor, And Child Sexual Exploitation" report, the acting DHS secretary named child exploitation among the "heinous crimes [that] have no have in our society," noting DHS is leveraging its authority to" eliminate such inhumane activity."

By placing a person committed to the rule of law of Mr. Wolf's caliber, the White House is showing its commitment to following through on promises made in Enough Is Enough's bipartisan **Children's Internet Safety Presidential Pledge** signed by candidate Donald J. Trump in 2016. The Pledge calls for the advancement of policies combined with aggressive enforcement of existing laws including the obscenity, child pornography, sexual predation and sex trafficking laws. This Administration has exceled in prioritizing criminal justice policy to prevent the Internet-enabled sexual exploitation of children and we remain expectant that DOJ will soon begin obscenity prosecutions.

The global COVID pandemic has brought about exponential increases in reports of online child sexual exploitation, youth sexting, sexual predation and sex trafficking– crimes both fueled by the extreme content depicted in today's obscene pornography. The public, technology industry and government must each do its part to prevent the exploitation of children in digital world. Parents can't enforce the laws and government can't parent.

Enough Is Enough is confident Mr. Wolf will follow through on the department's commitment to use its authority to end all forms of child sexual exploitation and trafficking , and will do his part on behalf of DHS to initiate necessary measures to tackle these issues at the source.

Sincerely,

Donna Rice Hughes

Donna Rice Hughes
President and CEO
Enough Is Enough

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION
1100 Connecticut Ave NW ▪ Suite 900 ▪ Washington, D.C. 20036
Phone: 202-293-1550 ▪ www.fleoa.org

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Retirement Director
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Public Affairs Officer
NATALIA CASTRO

July 27, 2020

Honorable Ron Johnson
Chairman, Committee on Homeland Security & Governmental Affairs
United States Senate
Washington, DC 20510

Honorable Gary C. Peters
Ranking Member, Committee on Homeland Security & Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson and Senator Peters,

We are writing to you to express our strong support for the nomination of Acting Secretary Chad Wolf to the position of Secretary of the Department of Homeland Security (DHS). As Acting Secretary, Chad Wolf has shown himself to be a strong and capable leader that has led the Department through some of its most challenging times. From the response to the COVID pandemic to the rise of assaults against federal property and law enforcement officers to ensuring our homeland remains secure, Chad Wolf has proven that he is up to and can meet the challenges of this important position.

FLEOA has worked with Acting Secretary Wolf during his entire tenure, including during his time standing up the Transportation Security Administration in the aftermath of the September 11th, 2001 terrorist attacks. The Acting Secretary's experience has been critical in allowing him to successfully manage a Department as large and complex as DHS while continuing to keep it focused on keeping America and Americans safe.

To accomplish this, Chad Wolf sought out and enlisted the advice and support of stakeholder groups from across DHS's myriad constituencies. That stakeholder input and those partnerships have been critical to enhancing DHS missions and providing a sounding board for effective and realistic strategies. As Acting Secretary, Chad Wolf has also prioritized the personnel of DHS to ensure that they were supported with the gear and strategies required to accomplish their missions.

At a time when our nation is grappling with many critical issues that pertain to our national security, sovereignty, and pillars of our nation, it is vital that the leadership of the Department be effective, permanent, and stable. Confirming Acting Secretary Chad Wolf as the next Secretary of Homeland Security would provide that strong and stable leadership.

Sincerely,

Larry Cosme

Larry Cosme
National President

cc: Members, Committee on Homeland Security & Governmental Affairs

NATIONAL
FRATERNAL ORDER OF POLICE
328 MASSACHUSETTS AVENUE NE, WASHINGTON, DC 20002

PATRICK YOES
National President

JIM PASCO
Executive Director

26 August 2020

The Honorable Ronald H. Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

The Honorable Gary C. Peters, Sr.
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Peters,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for the nomination of Chad F. Wolf to be the next Secretary for the U.S. Department of Homeland Security (DHS).

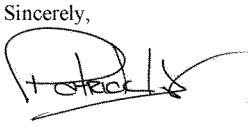
In nominating Acting Secretary Wolf, President Trump has selected an individual who has amply demonstrated his ability to lead one of our nation's largest and most vigorous departments at an unprecedented time on our nation's history. Prior to becoming Acting Secretary in November of last year, Mr. Wolf served as Chief of Staff to former DHS Secretary Nielson and, just a few hours before being named as Acting Secretary, was confirmed by the Senate to be the next Undersecretary for the Office of Strategy, Policy, and Plans.

Since his appointment to lead the DHS, Mr. Wolf has positioned himself and the department as a partner to State and local law enforcement. He leads with a "can do" attitude and values tangible results. For example, as the scope of the pandemic and the dangers it posed to the men and women in law enforcement—who were unable to "work from home"—became clear, the FOP sought realistic, science-based guidance from DHS about the use of personal protective equipment (PPE) in the field. The DHS, working through its Office of State and Local Law Enforcement (OSLLE), quickly developed a best practices guide for law enforcement officers to minimize their risk of exposure to COVID-19. The *COVID-19 Exposure and Risk Mitigation: Best Practices and Resource Guide for Law Enforcement* was issued in early April and was disseminated widely by the FOP, which encouraged its adoption by State and local agencies.

We believe the President has made an outstanding choice in Mr. Chad F. Wolf to be the next Secretary of Homeland Security. He has proven he can lead in times of great adversity and he has been a genuine partner to law enforcement at a time when others have turned their backs on the men and women who keep our communities safe. This is a mark of good character—being there when no one else has your back. Like any good partner, we know we can count on him.

The FOP proudly offers our full and vigorous support for this nominee. We urge you and the members of this distinguished Committee to favorably report his nomination. On behalf of the more than 354,000 members of the Fraternal Order of Police, thank you both for your continued leadership and for your consideration of our views on this critical nomination. If I can be of any additional help on this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,



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Judith Wilson

September 17, 2020

Senator Mitchell McConnell
317 Russell Senator Office Building
Washington, DC. 20510

Dear Senator McConnell,

President Donald Trump recently announced that he will appoint Acting Secretary of Homeland Security, Chad Wolf, to become the Director of Homeland Security (DHS) on a permanent basis. Hopefully, you will bring this up for a vote in the Senate as soon as possible.

Innocents at Risk has been working with the Department of Homeland since 2005 and working in partnership with the Department of Homeland Security (DHS/ICE and (DHS/CBP) since 2007 when Innocents at Risk established the very successful Flight Attendant Initiative. We have worked directly with the brave men and women of DHS/ICE to meet the airports and the planes to take women and children out of danger. We always had the support and response from these brave agents in the field who called Innocents at Risk "Our Boots in the Air".

Innocents at Risk has seen the leadership of the Department of Homeland since 2005 and we have never seen the leadership that Acting Director Chad Wolf has shown. Chad Wolf is the real deal and not just interested in pleasing the press, he cares about our country and keeping our citizens safe. Acting Secretary Wolf has said the we can end Human Trafficking and we are working every day to do that! Acting Secretary Wolf is dedicated to keeping America safe and free from all our enemies.

Innocents at Risk full heartedly endorses Acting Secretary Chad Wolf to be the Secretary of Homeland Security as soon as possible!

May God Bless you and God Bless Our Great Country.

My Warmest Regards,

Deborah Sigmund
Founder, Innocents at Risk

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Major County Sheriffs of America
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Milwaukee, WI

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Sheriff Dennis Lemma
Seminole County Sheriff's Office
Sanford, FL

Executive Director
Kimberly J. Wagner

General Counsel
Steven H. Cook

September 21, 2020

The Honorable Ron Johnson
Chairman
The Honorable Gary Peters
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters,

The Major County Sheriffs of America (MCSA) supports advancement of the nomination of Chad Wolf to be Secretary of the Department of Homeland Security. The MCSA represents sheriffs in over 100 of America's largest counties, protecting and serving over 120 million Americans.

MCSA members recognize the importance of stability in senior leadership positions in Federal departments that oversee major law enforcement components. This stability is necessary for the development of strategic direction and productive strategic partnerships, including with our members and all of state and local law enforcement.

The confirmation of Mr. Wolf as Secretary of Homeland Security will enable MCSA members to benefit from stability at DHS. With that stability, our member sheriffs can develop more effective strategic partnerships with DHS and its components to ensure that its public safety mission is more supportive and harmonious with that of our respective counties.

Thank you for your consideration.

Sincerely,

Kimberly J. Wagner

Kimberly Wagner
Executive Director

Association of State Criminal Investigative Agencies

September 16, 2020

The Honorable Ron Johnson
Chairman
The Honorable Gary Peters
Ranking Member
Homeland Security and Governmental Affairs Committee
United States Senate
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters,

On behalf of the Association of State Criminal Investigative Agencies (ASCIA), I am writing in support of the nomination of Mr. Chad Wolf to serve as the Secretary of the Department of Homeland Security (DHS). ASCIA is a professional association representing the lead statewide criminal investigative agencies in 47 states.

ASCIA members interact on a regular basis with DHS and its many component agencies. We consider our relationship with those entities to be vitally important to our ability to protect our states' citizens. We also understand that DHS components cannot accomplish many of their missions without strong relationships and partnerships with our member agencies.

Our executive board has had discussions and interactions with Mr. Wolf and we believe he understands the importance of our partnership. If he is confirmed by the Senate, we are committed to working with him and his team at DHS to further strengthen our collaboration. Please reach out to me directly or to ASCIA's Executive Director, Louis Grever, at executive.director@ascia.org if you have questions.

Sincerely,

Mark Keel
President
Association of State Criminal Investigative Agencies
Chief
South Carolina Law Enforcement Division

September 18, 2020

The Honorable Mitch McConnell
Majority Leader
S-230, The Capitol
Washington, DC 20510

Dear Leader McConnell:

We, the undersigned, urge you to support the nomination of Chad Wolf for the position of Secretary of the U.S. Department of Homeland Security (DHS). House Democrats are seeking to stymie the confirmation process by asking Mr. Wolf, who has yet to be confirmed, to testify regarding a whistleblower's complaint. It is inappropriate for nominees to testify before they have been confirmed, so we respectfully ask you in your capacity as Majority Leader to move the Senate's confirmation process along.

The DHS Secretary oversees the department's efforts to counter terrorism, enhance our nation's security, secure our borders, enforce and administer our immigration laws, safeguard and secure cyberspace, and handle a host of related matters such as election security (which is obviously crucial at this juncture). Mr. Wolf professional experience dates back to the inception of DHS as a part of the leadership in the Transportation Security Administration. His experience expands across multiple areas relevant to the role for which he has been nominated. He has done a stellar job while serving as Acting Secretary since November 2019, and will continue to serve with distinction if confirmed.

Recently, Mr. Wolf was integral to Operation Legend – a sustained initiative across federal law enforcement agencies, working with local authorities, to fight the sudden surge of violent crime in our cities. Yet rather than be praised as he should have been, Mr. Wolf has been wrongly villainized for his participation in this effort to keep American cities safe.

In two of the areas key to our country's stability at this moment – border security and election integrity – Mr. Wolf has crucially needed experience.

For all these reasons, we respectfully ask that you speedily confirm Chad Wolf as Secretary of the Department of Homeland Security.

Sincerely,

The Honorable Ken Blackwell
Former Secretary of State of Ohio

Lt. Gen. (Ret.) William G. Boykin
Executive Vice President, FRC Action

Jenny Beth Martin
Honorary Chairman, Tea Party Patriots Action

The Honorable Ed Meese
Former U.S. Attorney General

Penny Nance
President & CEO, Concerned Women for America

Tony Perkins
President, Family Research Council

Bill Walton
President, Council for National Policy

CC: Mark Meadows, White House Chief of Staff

L. Brent Bozell III
Founder and President

September 17, 2020

Majority Leader Mitch McConnell
Office of the Majority Leader
United States Capitol, S-230
Washington D.C., 20510

Dear Majority Leader McConnell,

Earlier this year, I went to the San Ysidro Border Facility and was able to witness firsthand the progress that has been made during President Trump's administration to bring security to our borders. Three hundred miles have been completed of the imposing 30-foot wall and an additional 150 miles is slated to be finished by the end of the year. I was impressed by what has been accomplished but so much more needs to be done.

Strong leadership is needed if we are to secure the border. Acting Secretary Chad Wolf has demonstrated that he is serious about securing and protecting America. In the past 10 months, he has not only overseen two-thirds of the wall's construction, he has also tightened security at the border by coming up with an effective screening process for those who want to enter the country while prosecuting those who break the law. While accomplishing that, he has also overseen one of the worst global pandemic's in the past 100 years. Every state in country including Washington D.C. has declared an emergency. This is the first time ever FEMA has processed a nationwide emergency declaration while also handling simultaneous national disasters.

Acting Secretary Wolf has only been in his position for 10 months and in the that short span has accomplished so much. America need him leading our security efforts the next four years.

I am proud to support Acting Secretary Wolf's nomination for Secretary of the Department of Homeland Security.

Sincerely,

L. Brent Bozell III
Founder and President

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

317 South Patrick Street. ~ Alexandria, Virginia ~ 22314-3501
(703) 549-0775 ~ (800) 322-NAPO ~ Fax: (703) 684-0515
www.napo.org ~ Email: info@napo.org

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JAMES PALMER
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Wisconsin Professional Police Association

WILLIAM J. JOHNSON, CAE
Executive Director and
General Counsel

September 21, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

Re: Nomination of Chad F. Wolf to be Secretary of Homeland Security

Dear Majority Leader McConnell:

On behalf of the National Association of Police Organizations (NAPO), I am writing to advise of you of our support of the nomination of Chad F. Wolf to be the Secretary of Homeland Security.

For the past year, Mr. Wolf has been Acting Secretary of Homeland Security, advancing many of the Administration's homeland security priorities including strengthening our nation's borders, supporting state and local law enforcements' counterterrorism efforts and protecting our communities from transnational criminal organizations. Prior to his designation to be Acting Secretary, he was confirmed as the first Under Secretary of the Department of Homeland Security's Office of Strategy, Policy, and Plans.

During the Trump Administration, Mr. Wolf has also served as Chief of Staff for the Transportation Security Administration and Deputy Chief of Staff and Chief of Staff of the Department. For his work and leadership on behalf of the Department, Mr. Wolf received the U.S. Secretary of Homeland Security Distinguished Service Medal. Further, under the George W. Bush Administration, he played a leading role in establishing the Transportation Security Administration after the September 11, 2001 terrorist attacks as the Assistant Administrator of Transportation Security Policy.

NAPO believes Mr. Wolf has more than proven that he has the experience and expertise necessary to serve our nation well as the Secretary of Homeland Security. Homeland Security is too important to leave it to an Acting Secretary. Therefore, we urge the Senate to support the nomination of Chad Wolf and confirm him as soon as practicable. Please feel free to contact me at (703) 549-0775 if there is anything I or our organization can do in further support of Mr. Wolf for this position.

Sincerely,

Michael McHale
President

Cc: Chairman Ron Johnson, Senate Homeland Security & Governmental Affairs Committee
Ranking Member Gary Peters, Senate Homeland Security & Governmental Affairs Committee

Honorable Ron Johnson
Chairman, Committee on Homeland Security & Governmental Affairs
United States Senate
Washington, DC 20510

Honorable Gary C. Peters
Ranking Member, Committee on Homeland Security & Governmental Affairs
United States Senate
Washington, DC 20510

We write to express our strong support for the nomination of Acting Secretary Chad Wolf to be the confirmed Secretary of the Department of Homeland Security. For the past two decades, Wolf has demonstrated an exemplary record in public service protecting homeland security interests here and abroad in various leadership roles. In 2019, he became the first confirmed Under Secretary for Strategy, Policy and Plans and has since led the Department for almost a year in the very role for which he is being nominated. He is mission driven and consistently leads with strength, deep knowledge and commitment to the Department and this country. Most of all, he is devoted to the DHS workforce many of whom put their lives on the line every day. This is the solid, inspired leadership the Department desperately needs.

Over the course of his career, Mr. Wolf has dedicated himself to overcoming challenges with diligence, transparency, and hard work. We have worked with or for Mr. Wolf in various capacities over the years and can say with the utmost confidence that he is qualified for the position. From Wolf's front-row seat at the Department's 9/11 inception through his leadership across the Department for almost two decades, he has developed a deep understanding of how the Department operates from the ground up, the challenges it faces, and the need for strong, dynamic, and effective policies to match the ever-evolving threat landscape.

Wolf has the experience and continues to demonstrate his commitment to fulfilling the DHS mission and leading the third largest Department of the federal government with over 240,000 employees. The Department and this country need permanent, Senate confirmed leadership which it has not had in over a year and a half - the longest in Department history – it is imperative that you confirm Mr. Wolf.

Respectfully,

Jayson Ahern, *Former Acting Commissioner, U.S. Customs and Border Protection*

Stewart Baker, *Former Assistant Secretary for Policy, DHS*

Douglas Baker, *Former Special Assistant to the President and Senior Director for Border and Transportation Security*

Sametta Barnett, *Former Director, Border Transportation & Trade Security Policy, DHS*

Tom Blank, *Former Chief of Staff, U.S. Immigration and Customs Enforcement, Former Acting Deputy Administrator, Transportation Security Agency*

Thad Bingel, *Former Chief of Staff, U.S. Customs and Border Protection*

Christina Bobb, *Former Executive Secretary, DHS*

Pam Bondi, *Former Attorney General of Florida*

Matt Brooks, *Executive Director, Republican Jewish Coalition and Jewish Policy Center*

Maggie Nelson Collins, *Former Director of Aviation Security Policy, Homeland Security Council*

Frank Cilluffo, *Former Special Assistant to the President for Homeland Security*

Nicholas Eftimiades, *Assistant Teaching Professor, Penn State University*

Marcia Ferranto, *CEO of National Law Enforcement Memorial and Museum*

Paul Goldenberg, *President, Cardinal Point Strategies*

Betty Guhman, *Former Chief of Staff, Border and Transportation Security*

Thomas Homan, *Former Acting Director, Immigration and Customs Enforcement*

Robert "Buzz" Jacobs, *Former Director of Immigration Security Policy, Homeland Security Council*

Daniel Kaniewski, *Former Deputy Administrator for Resilience, Federal Emergency Management Agency*

Mary Marr, *Founder President, Christian Emergency Network*

Kathryn Maxwell, *Former Senior Counselor to the TSA Administrator*

Hans Miller, *Former Deputy Assistant Administrator, TSA*

Hunter Morgen, *Former Special Assistant to the President and Senior Advisor for Policy and Strategy*

Sean O'Hollaren, *Former Deputy Assistant to the President*

David Olive, *Founding Principal, Catalyst Partners*

Tom Smith, *President, Wrap Technologies, Inc*

Chad Sweet, *Former Chief of Staff, DHS*

Karen Tandy, *Former Administrator, Drug Enforcement Administration*

Scott Taylor, *Former Member of Congress*

Pam Turner, *Former Assistant Secretary for Legislative Affairs, DHS*

Bob Walker, *Former Member of Congress*

Alison R. Williams, *Chief of Staff to the Governor of Arkansas*

National Immigration and Customs Enforcement Council

September 22, 2020

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

The Honorable Gary C. Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Peters:

On behalf of the law enforcement professionals of Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) and the ICE support staff we represent, I write to express our strong support for the nomination of Chad F. Wolf to be the Secretary of the Department of Homeland Security (DHS). This is the first time in the history of the National ICE Council that our organization has officially endorsed the nomination of a DHS Secretary, and we are proud to give Mr. Wolf our full and complete support.

Since Mr. Wolf was designated the Acting Secretary last November, we have witnessed his strong leadership and effective stewardship of our Department and have total confidence in his ability to lead us going forward. Mr. Wolf is deeply committed to the rule of law and supporting employees on the frontlines. It is clear he is a dedicated public servant who is focused on ensuring our communities are safe and defending the homeland from the very real threats we face each and every day.

Like Mr. Wolf, the men and women of ICE whom we represent are passionate about ICE's critical national security mission and believe in the enforcement of our immigration laws. We know Mr. Wolf will remain steadfast in his commitment to carrying out our mission and protecting the Americans we are proud to serve. The men and women whom we represent are also confident that Mr. Wolf will continue to do everything he can to improve the morale and welfare of the rank and file employees under his command.

Thank you for your time and consideration of our views. We urge the Committee to favorably report Mr. Wolf's nomination and ask that the Senate swiftly confirm him as our next Secretary.

Sincerely,

Chris Crane
President

cc: Members, Committee on Homeland Security and Governmental Affairs

September 22, 2020

The Honorable Senator Ron Johnson
Chairman of Senate Homeland Security Committee
328 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Johnson:

We, the undersigned, have all lost a loved one that was killed by an illegal alien.

Our families have all been permanently and irrevocably separated, through no fault of our own, from a family member killed by an illegal alien.

We represent a tiny fraction of the tens of thousands killed and the millions that have been victims of crimes ranging from rape, assault, domestic violence, burglary, and hundreds of other crimes committed by illegal aliens. (Source: 2018 GAO Criminal Alien Statistics, Information on Incarcerations, Arrests, Convictions, Costs, and Removals)

Our loved ones lives mattered, and decades of lax enforcement of our immigration laws and now willful protection of these criminal illegal aliens has to stop.

We wholeheartedly endorse the nomination of acting United States Secretary of Homeland Security to become the Secretary of Homeland Security.

While serving as Acting Secretary, Mr. Wolf has demonstrated his firm desire to enforce our immigration laws to the fullest extent possible. Acting Secretary Wolf has the knowledge, background, and skills that make him an excellent choice for this critical position.

Please approve this nomination immediately.

Sincerely,

Don Rosenberg
Father of Drew

Maureen Maloney
Mom of Matthew

Sabine Durden-Coulter
Mom of Dominic

Maureen Laquerre
Sister of Richard

Brian McCann
Brother of Denny

Dennis Bixby
Father of Amanda

Judy Zieto
Mom of Blake

Chris Odette
Father of Chrishia

Cindy Scalf
Mom of Shirra

Jimmy Walden
Dad of James

Chris Storie
Sister of Joe

Kathy Woods
Mom of Steven

Shellie Woods
Sister of Steven

Boni Driskill
Mom of Lacey

Rosi Gonzales
Mom of Santi

Eric Brady
Husband of Jeannie

Mark/ Evangeline Batin
Parents of Mark Jr.

Karen Anderson
Mom of Mark

Wendy Corcoran
Mom of Pierce

Mom of Amy

Melanie Kortlang

Avery Corcoran
Sister of Pierce

Vickie Lyons
Mom of Nikki

Michele Root
Mom of Sarah

Emily Canady Moose
Mom of Kendrick

Dan Ferguson
Dad of Mandy

Marie Herrera Vega
Mom of Harvey

Bonnie Eggle
Mom of Kristopher

Jeane Reid
Sister of Joe

Contact:
Don Rosenberg
drosenberg@westlakecg.com
818-991-1956

September 24, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
U.S. Senate
Washington, DC 20515

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security
& Governmental Affairs
U.S. Senate
Washington, DC 20515

The Honorable Gary C. Peters
Ranking Member
Senate Committee on Homeland Security
& Governmental Affairs
U.S. Senate
Washington, DC 20515

Dear Leader McConnell, Leader Schumer, Chairman Johnson, and Ranking Member Peters,

As governors, we write in support of President Donald J. Trump's nomination of Acting Secretary Chad F. Wolf for the position of Secretary of the Department of Homeland Security (DHS). We have partnered with Mr. Wolf during his time as Acting Secretary, and we encourage the United States Senate to move expeditiously to confirm his nomination.

Prior to his time as Acting Secretary, Mr. Wolf served as Under Secretary for DHS's Office of Strategy, Policy, and Plans, where he developed the Department's strategies and coordinated policies to fulfill its core mission to protect our nation from all manner of threats. In addition to his time as Under Secretary, Mr. Wolf also served as Chief of Staff for the Transportation Security Administration, and as both Deputy Chief of Staff and Chief of Staff for the entire Department. This vast internal experience has given Mr. Wolf a keen understanding of DHS's inner workings and equipped him with the knowledge and experience necessary to permanently lead the agency.

DHS spearheads the federal government's operations in a number of priority areas for our states, including border security, disaster response, cybersecurity, and, most recently, the collaborative government response to COVID-19. Under Mr. Wolf's leadership, DHS has been a dependable partner in these critical areas, and we look forward to a continued successful partnership going

forward. President Trump has made an astute choice for Secretary of DHS, and we look forward to Mr. Wolf's swift confirmation.

Sincerely,

Governor Greg Abbott
State of Texas

Governor Kay Ivey
State of Alabama

Governor Doug Ducey
State of Arizona

Governor Asa Hutchinson
State of Arkansas

Governor Brian Kemp
State of Georgia

Governor Kim Reynolds
State of Iowa

Governor Tate Reeves
State of Mississippi

Governor Pete Ricketts
State of Nebraska

Governor Kevin Stitt
State of Oklahoma

Governor Henry McMaster
State of South Carolina

CONGRESSIONAL HISPANIC CAUCUS
116th Congress

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Rep. Ruben Gallego (AZ-07)
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Rep. Veronica Escobar (TX-16)
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Rep. Nydia M. Velázquez (NY-07)

September 22, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

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

Dear Leader McConnell and Chairman Johnson,

We, as Congressional Hispanic Caucus (CHC) Leadership, stand in firm opposition to the nomination of Chad F. Wolf to be Secretary of the Department of Homeland Security (DHS). Mr. Wolf's tenure – in both his capacity as staff at DHS and Acting Secretary– proves he is unfit to serve as Secretary and lead an agency of a quarter of a million people. His record shows a consistent failure to effectively manage the agency, a pattern of issuing inaccurate or misleading statements, and enacting some of the most disturbing immigration policies in our country's history. The CHC urges the Senate to oppose Chad F. Wolf's nomination for DHS Secretary.

As Chief of Staff to Secretary Kirstjen Nielsen, Mr. Wolf was an early architect of the family separation policy that separated children from parents or guardians upon entering the U.S.[1] Over 5,000 children were separated from their loved ones.[2] Apart from the egregious nature of family separation, it emerged that the policy did not include measures to reunite families, triggering a child migration crisis.[3] The process to reunite all families could take years and the children separated at the border have been left with a lifetime of trauma.[4] Mr. Wolf, who proposed family separation, does not deserve a promotion.

[1] https://www.cbsnews.com/video/a-cbs-news-documentary-the-faces-of-family-separation/#x
[2] https://www.nbcnews.com/news/us-news/more-5-400-children-split-border-according-new-count-n1071791
[3] https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf
[4] https://www.cbc.ca/radio/thecurrent/the-current-for-sept-18-2020-1.5729242/trump-s-family-separations-at-border-played-out-exactly-how-it-was-designed-to-journalist-jacob-soboroff-1.5692142

Since Mr. Wolf's illegal appointment as Acting Secretary in November of 2019, U.S. Citizenship Immigration Services (USCIS) has nearly shutdown, U.S. Immigration and Customs Enforcement (ICE) has operated black sites to detain migrant children, and DHS agents have picked up civilian protestors in unmarked vans and uniforms. Under Mr. Wolf's supervision, USCIS nearly furloughed 13,000 public servants.[5] DHS has clandestinely detained at least 660 young children, some as young as one, in hotels, for weeks at a time, while immigration officials made plans to expel them.[6] In Portland, DHS dressed in unmarked uniforms and picked up protestors and placed them in custody in unmarked cars without explanation.[7] Mr. Wolf's distortion of DHS' mission nearly jeopardized the livelihoods of over 10,000 personnel, disrupted public trust, and placed children in danger.

Furthermore, Mr. Wolf has consistently undermined the rule of law, eroded U.S. legal protections for asylum seekers, and used his authority for political gain. Most recently, Mr. Wolf openly disobeyed the Supreme Court's ruling to reinstate the Deferred Action for Childhood Arrivals program to its 2012 policy, instead issuing a new memo that rejected opening the program to initial applicants.[8] Since the beginning of the pandemic, DHS has expelled nearly 170,000 asylum seekers without due process, including 8,800 unaccompanied children.[9] Mr. Wolf has also been accused of manipulating intelligence assessments on the Russian threat to the U.S. election because it "made President Trump look bad" and downplayed the threat to White Supremacy.[10] Mr. Wolf's leadership of DHS has prioritized party politics, destabilized regional migration perspectives, and risked the security of the American people.

Based on Mr. Wolf's track record it is clear he is unfit to serve as the Department of Homeland Security Secretary. On behalf of the CHC, we strongly urge the Senate to oppose the nomination of Chad. F. Wolf.

Sincerely,

Joaquin Castro
Chair
Congressional Hispanic Caucus

Ruben Gallego
First Vice-Chair
Congressional Hispanic Caucus

Nanette Diaz Barragán
Second Vice-Chair
Congressional Hispanic Caucus

Adriano Espaillat
Whip
Congressional Hispanic Caucus

Veronica Escobar
Freshman Representative
Congressional Hispanic Caucus

CC: The Honorable Charles Schumer, Minority Leader of the United States Senate
The Honorable Gary C. Peters, Ranking Member of the Committee on Homeland Security & Governmental Affairs

[5] https://www.uscis.gov/news/news-releases/uscis-averts-furlough-of-nearly-70-of-workforce
[6] https://apnews.com/c9b671b206060f2e9654f0a4eaeb6388#:~:text=HOUSTON%20(AP)%20—%20The%20Trump,documents%20obtained%20by%20The%20Associated
[7] https://www.npr.org/2020/07/17/892277592/federal-officers-use-unmarked-vehicles-to-grab-protesters-in-portland
[8] https://www.dhs.gov/news/2020/07/28/department-homeland-security-will-reject-initial-requests-daca-it-weighs-future
[9] https://abcnews.go.com/US/wireStory/8800-unaccompanied-children-expelled-us-border-72962135
[10] https://www.cnn.com/2020/09/09/politics/dhs-whistleblower-white-supremacist-threat/index.html

CHIRLA
Coalition for Humane Immigrant Rights

September 23, 2020

Chair Ron Johnson
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC, 20510

Ranking Member Gary C. Peters
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC, 20510

Re Nomination of Chad F. Wolf to be Secretary, U.S. Department of Homeland Security

Dear Chair Johnson, Ranking Member Peters, Committee Members::

On behalf of the Coalition for Humane Immigrant Rights (CHIRLA), the largest statewide immigrant rights organization in California, I am submitting this statement in opposition to the nomination of Chad Wolf, currently Acting Director of Department of Homeland Security (DHS), to become the seventh DHS Secretary and the fifth person to lead DHS, in some capacity, under the Trump Administration. We urge that you reject this candidate who is so manifestly ill-suited to help DHS restore even an iota of legitimacy, accountability and humanity.

The nomination of Mr. Wolf comes on the heels of a report by the U.S. Government Accountability Office (GAO) indicating that his appointment as Acting Director was unlawful. The timing of the nomination, after leaving DHS without a Senate-confirmed leader for nearly a year and a half, is a naked attempt to play electoral politics *and* avoid legal consequences.

CHIRLA
Coalition for Humane Immigrant Rights

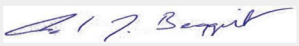
CHIRLA opposes the nomination of Mr. Wolf because his actions as Acting Director and his prior trajectory in DHS reveal a troubling history of draconian policies such as "zero tolerance" family separation, defiance of the Supreme Court's order to restore DACA, attacks on the right to seek asylum and attempts to undermine states who protect immigrants from the excesses of DHS. Following the murder of George Floyd, he has led Trump Administration's attacks on the First Amendment right to peaceably assemble, using militarized border shock troops to police a citizenry protesting racial injustice in the criminal justice system."

Furthermore, Mr. Wolf is ignoring the danger that extreme white supremacy groups, as documented by his own DHS, is posing to our county. Instead, he has joined others in the Trump Administration, who seem to specialize in chasing phantom threats, whether non-existent voter fraud or magical anarchist cities.

As a final insult to injury, from a man seeking the blessing of the United States Senate, Mr. Wolf added to his litany of lawlessness by ignoring a recent subpoena from the U.S. House of Representatives to account for his misuse of tax dollars. Instead of complying with the law, he was preparing for today's hearing. No amount of preparation can hide the fact that his nomination is a slap in the face to our values of fairness, due process, and diversity. We respectfully request that you reject Mr. Wolf.

Please contact me at cbergquist@chirla.org should you have any questions.

Sincerely,



Carl Bergquist
Policy Counsel, Coalition for Humane Immigrant Rights (CHIRLA)

DELIRIS MONTANEZ
6108 Los Siglos Drive
El Paso, Texas 79912

September 27, 2020

House Homeland Security Committee
Attention: Senator Roy Johnson (WI)
328 Hart Senate Office Building
Washington, DC 20510

SUBJECT: **Nomination Hearing for Acting Department of Homeland Security (DHS) Secretary Chad F. Wolf**

Dear Honorable Senator Johnson:

First of all, as a current Federal Border Patrol Agent under DHS, let me personally thank you from the bottom of my heart for orchestrating this important and crucial hearing within the Homeland Security Committee and make it public for us "the little people" to watch. It assist with accountability and transparency; which unfortunately, now days it seems non-existent in our federal government.

I applaud (A) Secretary for (DHS) Chad Wolf's family support and sacrifices but it does not and will never surpass my elderly parents, at risk of COVID-19, who have sacrifice so much to include moving with me until retirement across ocean waters for emotional support as I was headed to self-destruction as so many of my peers under DHS who cannot find a way out due to the lack of genuine emotional and mental support from the department. Suicide awareness and prevention should never be a check the block matter and that is how it seems to be now days.

As Senator Gary Peters stated on his opening remarks, rhetoric and political ideologist cannot drive the nomination of a critical position within our federal government as in this case the Secretary of the Department of Homeland Security (DHS). We deserve the best candidate with the upmost leadership, experience, and temperament to serve and protect the American people. We crave and are in need of strong leadership, not dictatorship. Those days are way gone and should stay gone for our future generations.

DHS is the county third largest federal agency within our government with over 240,000 employees, and the largest in Law Enforcement. I myself have served over 20 years as a Federal Agent with CBP, but the experienced force is shrinking really fast after the lack of leadership with the proper backbone.

Little by little, China, Russia, North Korea, and Iran are learning more on our weaknesses and I am seriously afraid for my country and the people. Our own forces are becoming demoralized for the lack of true leaders with personal agendas. Setting the example is crucial to be able to lead and have followers under any Empire and DHS leadership speaking over Members of

Congress at congressional hearings, disrespecting them in a "subtle" manner, should not be acceptable and that is what the employees observed over and over. I do not appreciate the demeanor, the attitude, and the inattentiveness to critical issues. No one is above the law.

Historically, DHS has abuse the filling of vacancies within the department which is a detrimental threat to our National Security. I am a retired Latina, Puerto Rican to be precise, female Lieutenant Colonel in the United States Army Reserves (USAR) who was selected for promotion to Colonel and due to a constant witch hunt from both the toxic leadership in the United States Army and DHS to include Customs and Border Protection (CBP) that career was cut short after numerous false accusations made against my person since 2017 when I first blew the whistle on white supremacist. To this date, I am still fighting at both the Department of Defense and the Department of The Army Inspector General level for them to conduct a fair and proper investigation to hold accountable and bring to justice the corrupt and toxic leadership. #iamvanessaguillen. I have served my country selflessly for 29 years with USAR on US soil and abroad without any hesitation as that was the oath I took back in 1990.

I can attest to House Homeland Security Committee Congressman Bennie Thompson submitted letter that was added to the records in regards to DHS Acting Secretary Chad Wolf lack of compliance in request of information as I have experienced it myself over and over again. America deserves the right person in this critical role position, and nothing less than the best qualified candidate. At this time, I am afraid to say that until (A) Secretary Wolf is willing to held his leadership accountable and truly improve those lines of open communications from top to bottom and bottom to top and acting capacity is the most appropriate and deserving.

Since March 2020, verbally and via email, I have expressed interest in speaking with the higher leadership of DHS and CBP via the El Paso Station leadership for them to get a grasp of the issues that they might face if not made aware of by their own staff. On July 6, 2020, almost 3 months ago, I requested in writing, via El Paso Sector chain of command, a face to face meeting with both Acting Secretary Chad Wolf and Acting CBP Commissioner Mark Morgan and to this date this agency have sat on the request. Again, lack of compliance on requests. CBP clearly stated that even though they were not discouraging me from pursuing my meeting request, that both of these individual's priority was to get our President re-elected. In my humble opinion, if they do not have or can't make the time to meet with one of their own, then I do not consider neither of them to be able to execute the full duties and responsibilities of neither Secretary nor Commissioner in a full time vacancy capacity.

Back on July 3-5, 2019, I blew the whistle on the horrendous treatment to illegal immigrants, un-sanitized holding facilities, harassment and mistreatment towards illegal immigrants, and false statements made by CBP management officials. (I can submit articles upon request as they were anonymous.) (A) Commissioner Mark Morgan testified in Congress back on approximate August 2019 regarding these same subjects and for him to state that CBP upheld those who commit misconduct to the highest standards is a joke. They go after the righteous ones non-stop. None of the 4 individuals involved in the misconducts, 2 agents, 2 first line management officials, served what it was proposed by the leadership and the primary "bad actor" did not even serve his punishment. CBP has a very clear and detailed Table of Penalties for every violation to the Standards of Conduct and until there are checks and balances on that process the agency will

continue to have "bad actors" because they themselves foster the behavior and bad conduct. I have file several DHS Office of Inspector General complaints and the agency have still not provided responses to even TX Congresswoman Veronica Escobar's office.

On or about February, 2020, I blew the whistle on an El Paso, Texas, January 29, 2020, tragic deadly crash that went badly after it being unsupervised; consequently, it affected our international relations with the Country of Ecuador. https://theintercept.com/2020/02/28/border-patrol-el-paso-texas-car-chase/?fbclid=IwAR3G-H3fusgfbJz0-MTFYB7IRitQ1damlVdToxcg4kGH1YLSjdbA98EeeJ0

On or about June 25, 2020, another El Paso, Texas, deadly crash went terribly wrong and killed innocent human beings from my own community. CBP have totally isolated me to prevent me from serving my country for the truth to be exposed and come to light. I reported our El Paso Sector Chief Gloria Chavez with the El Paso, Texas Federal Bureau of Investigations via the online complaint system for the white crime of Obstruction of Justice but these agencies cover for each other and have not investigated anything while the victim's families are still searching for answers to have some sort of closure. She herself violated the Standards of Conduct but DHS nor CBP held their leadership accountable. If this is the character of employee this agency looks for: https://kvia.com/news/crime/2019/10/08/husband-of-el-pasos-border-patrol-chief-facing-charges-of-sex-assault-and-kidnapping/?fbclid=IwAR2lMC7MYfSIH_MDdcMg39108M2ufwhzh3Hc27QoT8gXTB1nKL8qx0ZgE6Q then it is time for me to retire as many already have and continue to do so at a fast rate of speed.

On or about August 2020, I filed a complaint with the El Paso, Texas Occupational Safety and Health Administration as CBP was not complying with the Center for Disease Control and Prevention guidelines. They again were not truthful nor holding violators accountable. A guidance that is not enforced by a leadership is considered a violation to that guidance. Posters and signs are not enough, enforcement and accountability are.

A few months ago, I provided guidance to a friend who reached out to me with a concern on how to report possible cartel activity in our Area of Operations in the Southwest Border. He immediately contacted the Joint Intake Center and the Office of Personal Responsibility at CBP but they have not follow up with him. Back on July 2019, CBP leadership instructed both of those departments to keep all my complaints or referred ones in-house and I will not allow for the American people to be blind of the issues we face in our county as they are a matter of National Security. I do not need a rank nor position to be righteous and have integrity.

The worst course of action anyone can take with a victim of Post-Traumatic Stress Injury is to isolate them, but because I have received warnings and threats from my own co-workers after being a whistleblower that is the decision made by the agency for their own CYA. Thank God for my parents, and my strong resiliency.

All these incidents have caused for me to incur this work related critical medical condition and the agency refuses to take any responsibility for it. A sworn federal agent, who is also an honorable veteran of the Armed Forces, should not have to fight the Department of Labor for a

federal agency, CBP, wrongdoing and negligence. I have had to beg the agency for attendance to rehabilitation retreats and symposiums, searched by me, to get me to retirement as I cannot nor support misconduct, nor violation to established policies, standard operations procedures, regulations, and/or laws. Even after President Trump signed the assistance to law enforcement mental health bill into legislation on December 20, 2019, CBP refuses to fund my recovery. Maybe Congress needs to retrieve those funds from them as they are not being used for what they were intended to be. Shocking not, as it is customary of the agency at this point. https://kesq.com/news/2019/12/20/president-trump-signs-rep-ruizs-burn-pits-law-enforcement-mental-health-bill-into-law/

DHS/CBP has been extremely slow in the decision making process in many issues and constantly side lining with expert's judgement independent of agency leaders at best and I can attest for a period of over 20 years. The attached image will give you a more clear illustration of what I am talking about.

I have faith this committee and its members will conduct the most scrutinized critical review into the confirmation of (A) DHS Secretary Chad Wolf for this most needed filled vacancy. Former DHS Secretary Kirstjen Michele Nielsen did a great job and was and still is the most qualified candidate but political issues got in the way of her doing her job.

Please reach out if I can serve my country in any capacity, to include testifying in Congress, as we need bold and courageous leaders who are not afraid of taking a bullet for the country they took an oath to serve, protect and defend against all enemies foreign and domestic. That is selfless service and loyalty at best. God have me on a path with a very unique purpose and I will fulfill it the best I can. #icantbreathe2020.

I can be contacted at deemontanez@hotmail.com or (704) 293-4307 365 days, 7 days a week, 24 hours a day. True leaders rest when all we serve, protect, and defend are safe. Until then, I am 100% plus committed #2021dmbadvocacy.

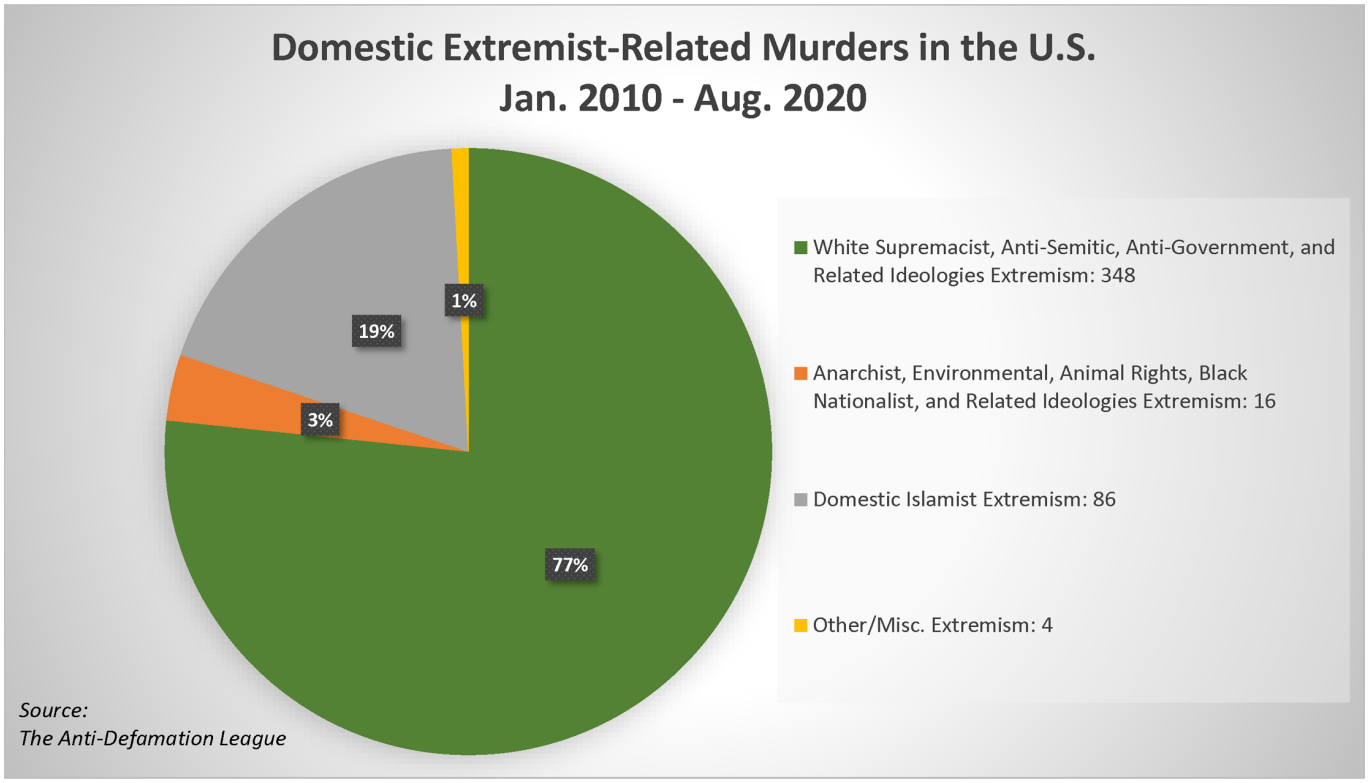
Very Respectfully,

Deliris Montanez

DELIRIS MONTANEZ
Border Patrol Agent
El Paso Sector/El Paso Station

Attachment:
1 (Image)

CC:
Senator Gary Peters (MI)
Congresswoman Veronica Escobar (TX)


Domestic Extremist-Related Murders in the U.S.
Jan. 2010 - Aug. 2020
1%
19%
3%
77%
White Supremacist, Anti-Semitic, Anti-Government, and Related Ideologies Extremism: 348
Anarchist, Environmental, Animal Rights, Black Nationalist, and Related Ideologies Extremism: 16
Domestic Islamist Extremism: 86
Other/Misc. Extremism: 4
Source:
The Anti-Defamation League