

# NOMINATION OF HON. ELAINE C. DUKE

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## HEARING

BEFORE THE

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

FIRST SESSION

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NOMINATION OF THE HONORABLE ELAINE C. DUKE TO BE DEPUTY  
SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

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MARCH 8, 2017

Available via the World Wide Web: <http://www.fdsys.gov/>

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



U.S. GOVERNMENT PUBLISHING OFFICE

26-770 PDF

WASHINGTON : 2018

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## NOMINATION OF HONORABLE ELAINE C. DUKE

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WEDNESDAY, MARCH 8, 2017

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

The Committee met, pursuant to notice, at 9:33 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

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

### OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. The hearing will come to order. We are meeting today to consider the nomination of Ms. Elaine Duke to be Deputy Secretary of the U.S. Department of Homeland Security (DHS). Ms. Duke, welcome. Senator Portman, welcome. You have your position there, but you will hopefully come up on the dais here.

I do want to welcome Ms. Duke's family, and I will let you introduce your family during your opening remarks.

This is an incredibly important position. I believe this is an incredibly important Department, particularly at the current time.

The mission statement of this Committee is pretty straightforward—and I appreciate my new Ranking Member adding to it—but it is simple to state: to enhance the economic and national security of America and promote a more efficient, effective, and accountable government. And certainly from the homeland security side of it, we are really talking about the primary goals of securing our border, securing our homeland, our cyber assets, cybersecurity, protecting critical infrastructure, and combating violent extremism in any form.

Ms. Duke, I appreciated the time we spent in the office. I thought it was interesting, and I am completely supportive of, I think, the management style and the management directed between yourself and the Secretary. It sounds like Secretary Kelly is going to be the boots on the ground, looking at the front lines, finding out what is happening there, really at the point of the spear. And you will be back here in Washington, D.C., holding down the fort. And you realize, because you have been there before, that there are a number of challenges with the Department. And so I appreciate your experience. I appreciate your willingness to serve.

I do not have a whole lot more to say. I will let Senator Portman do the introduction, but we will first turn it over to Senator McCaskill for her opening statement.

#### **OPENING STATEMENT OF SENATOR MCCASKILL<sup>1</sup>**

Senator MCCASKILL. Thank you, Chairman Johnson, and welcome, Ms. Duke. I always like it when a valuable public servant returns, and it is one of the things, I think, that is most frustrating about the current political climate, that there are too many people out there giving the impression that everybody who works in government is somehow lazy or corrupt or not dedicated. And, clearly, you have made a choice which is not based on finances to come back to this work, and I am very appreciative of that. And I think the American people should be, too.

As you know from your many years at the Department of Homeland Security, your role is going to be an incredibly important one. While the Secretary has to look at the big picture, you, in fact, are going to be charged with making the trains run on time and managing the day-to-day operations of the Department.

When Secretary Kelly's nomination was in front of this Committee, I told him he was going to need a top-notch Deputy for Management. I am pleased to see that he has, in fact, chosen someone with significant managerial experience, but someone also who has shown a respect for taxpayer dollars.

Since the nomination, my staff and I have heard from many DHS former employees and officials about your strong qualifications for this position. It includes a formal endorsement signed by the previous five Deputy Secretaries of Homeland Security attesting to your integrity and skill. I have been glad to hear from each of these endorsements because you face a formidable task.

The Department of Homeland Security is the third largest Federal agency in this country with a \$46 billion budget. It is charged with some of the most important duties in our government such as overseeing cybersecurity, immigration, homeland defense, and emergency management. It is also an agency that has faced persistent challenges of unity of effort, acquisitions, and personnel.

As you have acknowledged, DHS continues to struggle with cohesion and mission among its many components. Many of its acquisition programs have been plagued by backlogs, delays, and budget shortfalls. In terms of employee morale, the Department is consistently ranked as one of the worst places to work in the Federal Government.

Gratefully, the Department has made strides in recent years on all of these fronts—procurement, acquisitions, jointness, and morale. I know you played a role in many of those efforts in your time at the Department. If you are confirmed, it will be of the utmost importance that you continue pushing these approaches because recent improvements cannot be allowed to roll back.

As the Chief Operating Officer (COO) of this agency, I expect that you will always approach new and existing programs with a critical eye on how they can effectively achieve their missions and more efficiently spend taxpayer dollars. As the Department con-

<sup>1</sup> The prepared statement of Senator McCaskill appears in the Appendix on page 34.

tinues to be thrust into the spotlight and entrusted with some of the highest priorities of this Administration, the job of Deputy Secretary in maintaining high operational standards, and particularly acquisition standards, in this evolving environment will be difficult.

I was pleased to see that you have made a strong written commitment to responding to requests for information from any Member of this Committee, and I underline “any” Member of this Committee. So far, the Department of Homeland Security has done a very poor job of responding to such requests. Since becoming Ranking Member of this Committee, I have sent a number of requests for information in order to uphold my duty to oversee the agency and its actions. But DHS is failing to uphold its duty to respond to these requests.

So far, I have outstanding requests about the implementation and details of President Trump’s numerous Executive Orders (EO), requests about how the Department is going to respond to the Government Accountability Office (GAO) reports and recommendations regarding whistleblower protections and the acquisition of the border wall, and even a request for two statutorily mandated cybersecurity reports to Congress that were due over a month ago. In addition, this complete lack of transparency escalated to the point where the U.S. Immigration and Customs Enforcement (ICE) refused my invitation to appear at a hearing last week. If you are truly committed to transparency, I hope you will agree with me that this is absolutely unacceptable.

When Secretary Kelly came in front of this Committee for his nomination, he made similar commitments to be responsive to Congress. But as evidenced by my outstanding requests for information, he has yet to keep his commitment.

So today I am going to need assurances from you that, if you are confirmed, you will use your managerial duty in that role to ensure that this crucial aspect of responding to oversight of this Committee is no longer overlooked and that requests for transparency from Congress are important to the operation of your public agency and, therefore, in turn the American people and taxpayers will be treated with respect.

I thank you for being here today, and I look forward to your testimony.

Chairman JOHNSON. Thank you, Senator McCaskill.

I would ask unanimous consent to enter the letter that you mentioned, written to us by James Loy, Michael Jackson, Paul Schneider, Jane Lute, and Alejandro Mayorkas in support of Ms. Duke’s confirmation, into the record,<sup>1</sup> as well as my opening statement.<sup>2</sup>

I will say just in terms of oversight that this Committee is dedicated to oversight over the Department. I think our first order of business, though, is to make sure that we staff and confirm positions like the Deputy Secretary, and certainly give you an opportunity to get into your position, enact your policies, give them time to actually work so we can start assessing them. But as Senator McCaskill did note, there are a number of reports that are due, and that is going to be kind of a catch-up process for you. But this Com-

<sup>1</sup>The letter of support referenced by Senator McCaskill appears in the Appendix on page 117.

<sup>2</sup>The prepared statement of Senator Johnson appears in the Appendix on page 33.

mittee will be dedicated to working very closely with you to make sure that you succeed in your mission, but we will provide the necessary oversight at the appropriate time.

With that, I would like to call on Senator Rob Portman, who would like to introduce Ms. Duke.

**OPENING STATEMENT OF THE HONORABLE ROB PORTMAN, A  
UNITED STATES SENATOR FROM THE STATE OF OHIO**

Senator PORTMAN. Great. Thank you, Mr. Chairman. I appreciate the opportunity to do so, and let me say first that I agree with both of you on the importance of this position at a critical time at the Department of Homeland Security, and, therefore, it is my privilege to be here to introduce Elaine Duke. We need her. She is the nominee for Deputy Secretary, a key management role, as has been discussed, and I believe General Kelly and the men and women at the Department of Homeland Security and our country, in fact, are really fortunate that she is willing to step forward and serve again. She has experience, she has a great perspective, she has integrity, and I think that will serve her and the Department well.

We are proud to claim her as an Ohio native. She grew up in North Olmsted in the Cleveland area. Her dad, Frank Costanzo, is a first-generation American, still a very proud Cleveland resident. I have known Elaine's uncle for over 25 years. She indicated to me this morning she hoped that he had not shared with me any of her teenage stories, and he has not. He has only shared good things, and he is a very proud uncle as well as a good friend and neighbor of mine.

The pride in Elaine's accomplishments, in fact, run deep throughout her entire family. They are rooting for her today. She has a very distinguished career in public service. As you know, she started her career as a GS-7 contract specialist for the U.S. Air Force (USAF). Over the next 28 years, she assumed roles of increasing responsibility in the Air Force, the Navy, the Federal Railroad Administration, the Smithsonian, and, finally the Department of Homeland Security, where in 2008 she was confirmed by the Senate to serve as Under Secretary for Management.

In this final role, she was a key member of the DHS leadership team for both Secretaries Chertoff and Napolitano, and through this professional journey, she has established herself as a true expert on some of the tough issues that the Department faces, including contracting, acquisition, property management, organization change, human resources (HR), as the Chairman and Ranking Member have said, all of extreme importance to DHS right now.

As Members of this Committee know well, now over 14 years after the establishment of the Department of Homeland Security, there are significant management challenges that remain. Integrating the various cultures and processes and systems of 22 components of the Department continues. Frankly, in my view, it has been more difficult than I had hoped it would be. We needed, in my view, to have consolidation of these responsibilities to better protect our country, but we still have a long way to go in ensuring all these cultures come together in an appropriate way.

So establishing adequate headquarters-level support, oversight of Department functions, and, in particular, major acquisition pro-



grams is still a work in progress. Recruiting, retaining, and leading the over 200,000 Department employees is an evolving challenge. I think Ms. Duke is well qualified to help Secretary Kelly tackle these challenges, and, again, I trust that he will rely on her significantly for a number of his most critical management initiatives in the Department.

I am sure we will have a very fruitful discussion with the nominee today, and I plan to ask her a few tough questions myself. But I hope we can then move forward after a constructive dialogue and get her to the floor for a vote and get her in place. We need her, and we need her now at the Department of Homeland Security.

Thank you again for allowing me to say a few words this morning.

Chairman JOHNSON. Thank you, Senator Portman. I am hoping you are not going to delve into her teenage years. [Laughter.]

It is the tradition of this Committee to swear in witnesses, so if you will rise and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. DUKE. I do.

Chairman JOHNSON. Please be seated.

Ms. Elaine Duke has had a career in government spanning nearly 30 years, beginning as a contracting officer at the U.S. Air Force and culminating with her Senate confirmation as the Under Secretary for Management of the Department of Homeland Security on June 27, 2008. She remained in that position under President Obama and ultimately retired in 2010, but has agreed to answer the call to return to the Department 7 years later.

Ms. Duke holds a B.S. degree in business management from Southern New Hampshire University and an M.B.A. from Chaminade University.

Ms. Duke, I am grateful for your commitment to the Department of Homeland Security and your willingness to serve. I yield the floor.

**TESTIMONY OF THE HONORABLE ELAINE C. DUKE<sup>1</sup> TO BE  
DEPUTY SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Ms. DUKE. Mr. Chairman, Ranking Member McCaskill, and distinguished Senators of this Committee, thank you for holding this hearing to consider my nomination to become Deputy Secretary of Homeland Security, and thank you, Senator Portman, for the kind introduction. My Midwestern upbringing really shaped my values and made me the person I am today, and I am proud to call myself a Buckeye.

First, I would like to extend my thanks to President Trump and Secretary Kelly for the great trust they have placed in my abilities to manage the Department's daily operations. I am very honored to be nominated for this position.

I would like to thank the former Deputy Secretaries of Homeland Security for their encouragement throughout this process. I draw strength and inspiration from their support and counsel.

<sup>1</sup>The prepared statement of Ms. Duke appears in the Appendix on page 37.

I would like to introduce my family who is here with me today: my husband, Harold; my youngest son, Jason; and my youngest sister, Cynthia. I would like to specifically recognize my husband for supporting my decision to return back to service. It is a sacrifice for our lifestyle, and I am grateful for his unwavering support and his service to our country by virtue of my service. Also, my son Brian, who is not with me here today, has provided me encouragement and support throughout this process.

And, finally, I would like to recognize my father, Frank Costanzo. He cannot be here physically with me today, but I know he is cheering me on, just as he did when I was interviewed for my first entry-level civil service position 35 years ago.

It would be an honor to serve as Secretary Kelly's Deputy. I would welcome the privilege of supporting him as he leads the Department in securing this homeland. When I retired from civil service just shy of 7 years ago, I thought I had retired permanently. However, when I received the call, like many of you, I immediately knew I must say yes.

More than 15 years after 9/11, this country continues to face many challenges in homeland security. But Americans must be able to go about their daily lives free from fear and secure in the knowledge that they and their loved ones may walk down the street or go to the mall in peace. DHS is addressing this threat and ensuring the homeland is protected, and if confirmed, I look forward to joining that continuing fight.

In the last 8 years of my 28 years of public service, I served at the DHS. I understand the complex challenges of DHS' missions; the complex oversight; the diverse concerns of its many missions; the urgency of its work; and the complexity of running such a large Department. But I also know the Department's employees are the most dedicated and passionate civil servants with whom I have ever had the pleasure of working. If confirmed, I pledge to lead them in producing results for our beloved Nation.

Additionally, if confirmed, I promise to lead DHS in enforcing the law with respect and integrity. I will be honest in my assessments and recommendations, and relentless in pursuing excellence. My such commitments are critical at this juncture in homeland security.

I will do everything in my power to preserve our liberty, enforce our laws, and protect our citizens. I recognize the many challenges facing DHS, and if confirmed, I look forward to partnering with all of you in protecting the homeland.

I fully understand the role of the Congress in its oversight and support to the Department. Throughout my career in government, I have always strived to work in a collaborative manner with Members of Congress and their staff and other oversight agencies. I will continue this approach with Secretary Kelly.

I thank you for this opportunity. I am happy to answer your questions at this time.

Chairman JOHNSON. Thank you, Ms. Duke. I have three baseline questions.

First of all, 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?

Ms. DUKE. No, Mr. Chairman.

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?

Ms. DUKE. 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?

Ms. DUKE. I do.

Chairman JOHNSON. Thank you. Again, Ms. Duke, I appreciate your willingness to serve. Having served, having gone back in the private sector, running a successful consulting business on the outside, you have certainly made some points in your opening statement, but I just want to ask kind of from the heart: Why are you willing to do this again? You know this is not going to be an easy job. Again, I appreciate the sacrifice that your husband and your family are going to incur as well. This is a 24/7 job. Can you just explain in your own words why?

Ms. DUKE. I think I watched from election day through December the unrest in the country, the protests, the concern over our future, and I feel like through the request to serve, I have a unique opportunity to make a difference in this really challenging time. I believe that Secretary Kelly and I can work together not only in enforcing the laws and the policies of this Administration, but doing it in a way that demonstrates integrity and compassion, and I feel like I can do good in moving this country forward, and that I need to accept that responsibility.

Chairman JOHNSON. Can you describe to me, just bullet point, and it does not have to be three, but your top priorities, maybe top three, if you have them? What is the first thing you are going to address?

Ms. DUKE. The first thing I am going to address is the men and women of Homeland Security and thank them for their support through the process. In terms of within the Department, the first thing I would address is bringing the components together and having our own cabinet, if you will, and starting to lead in the joint operations that we need to better secure our homeland.

Chairman JOHNSON. You were obviously there before, and the Department has historically had some of the lowest morale. Do you have an explanation for that? And, again, I appreciate the fact that your first task then is to go and thank them. That will certainly boost morale. But do you have an explanation yourself, having been there, why that is?

Ms. DUKE. I have two major explanations. One is they have not been communicated with completely and respected always within and outside. I think that what I would try to do is make them understand the value of the mission and the context of the mission so they understand how important it is, they understand the system they are working in and how much it is valued.

I think also it is difficult because most of our people work in a very public situation, and so I would be working toward some of the areas to make the workforce more professional and more respected by the American people.

Chairman JOHNSON. Having served in this Committee now for 6 years, recognizing when the Department was set up it was a number of agencies, 22 agencies cobbled together, each has their own reporting requirements to different committees and subcommittees of Congress, and, quite honestly, I think it is difficult to even determine the number, but it is a lot.

First of all, how did you deal with that in your previous service? And can you just kind of speak to how distracting that is to the men and women within the Department of Homeland Security in terms of keeping your eye and your concentration and your focus on your real mission of keeping the homeland safe and secure?

Ms. DUKE. Well, the way I dealt with it in my last service and will now is a mutual respect. We have three branches of government for a reason, and I respect your oversight role, and I will always treat it with that respect. It does become one of the nearly full-time jobs of leaders to manage that so that the workforce can actually do their job.

One of the ways I would like to do it—and I offered this to most of you in my initial meetings—is to work with you in a collaborative and open way, so the need to have formal hearings is diminished and we can work out issues in other ways and move the ball forward.

Chairman JOHNSON. One thing that has frustrated me, coming from a manufacturing background, I need information. To solve any problem, you need information. This has just been unbelievably frustrating, my inability to get decent information. One thing I have noticed in President Trump's Executive Orders, almost to an order there is always some requirement in there for more information, better information to move forward and make a decision.

First of all, do you agree with me in that assessment in terms of the lack of relevant information, consistent information? First answer that question.

Ms. DUKE. I do agree with you, yes.

Chairman JOHNSON. So can you also commit then to helping and working with us to develop the kind of metrics, the kind of information we really need so we can enact good policy?

Ms. DUKE. Absolutely. We need better data, more accurate data to make the best decisions for our country.

Chairman JOHNSON. OK. With that, I will turn it over to Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman.

From our visit, I understand that you have the most important asset in your life in my State, a granddaughter.

Ms. DUKE. Yes.

Senator MCCASKILL. So I am pleased to hear that she lives in Cass County, in Raymore, just south of Kansas City, and we will be happy to welcome you to the State as frequently as you need to come to get the granddaughter fix, which I have a feeling you will need in the coming days because of the stress that you are going to endure.

Ms. Duke, I assume, because of your background in acquisition, you believe that any large capital expenditure should have a cost-benefit analysis.

Ms. DUKE. Yes, I do.

Senator McCASKILL. And you are aware, of course, that there has been no cost-benefit analysis performed on this wall.

Ms. DUKE. Yes, and I understand that U.S. Customs and Border Protection (CBP) is preparing that.

Senator McCASKILL. OK. And there has been no money appropriated for this wall, correct?

Ms. DUKE. There is currently no money other than existing money in the CBP border security fencing, infrastructure and technology (BISFIT) account.

Senator McCASKILL. But, actually, they have to allow that to be reprogrammed, correct?

Ms. DUKE. Yes, that is correct.

Senator McCASKILL. And it is my understanding that in order to keep Congressional oversight and Congressional power in check, which I believe all the Members of Congress want as it relates to Executive Orders, there has to be a sign-off by the Ranking and Chair of the Appropriations Subcommittee for reprogramming those appropriations.

Ms. DUKE. Yes, that is my understanding.

Senator McCASKILL. And are you aware that has not occurred?

Ms. DUKE. I am aware.

Senator McCASKILL. OK. So we have no sign-off for reprogramming whatsoever on this wall, and we have no cost-benefit analysis for the wall.

Now, let me go further. Part of that analysis must be that when you spend money in one area and take it away from another area, you have to analyze the threat risk. And we spend a lot of time on threat risk at the Department of Homeland Security.

Ms. DUKE. Yes.

Senator McCASKILL. In fact, some of the cuts that are being proposed to biodefense I could not agree with more, because there was a whole lot of money wasted there in light of the threats that face our country, a lot of money on something that was not really a threat when we had real threats that were not being addressed.

So are you aware of any analysis that has been done that would say that it makes more sense to build a wall places along the border where the Border Patrol even says they do not want it or need it, and at the same time take a cut to the Coast Guard that would seriously impair the ability for us to intercept heroin that is the most deadly problem facing our country?

Ms. DUKE. That analysis is in progress, to my understanding, and I can commit to you, Senator, that, if confirmed, I would be using that analysis in moving forward.

Senator McCASKILL. The same thing would apply to the Transportation Security Administration (TSA) cuts that are being proposed to pay for this wall where no one has said that that wall is actually going to make us demonstrably safer or secure? The TSA cuts, the Visible Intermodal Prevention and Response (VIPR) teams are being proposed to be cut, and, of course, the VIPR teams are the ones that we rely on to keep our airports safe in light of the tragedies that have occurred around the world. Has there been any analysis that the VIPR teams are less important than part of the wall in places where there really is no utilitarian reason for a wall because of the geography of the border?

Ms. DUKE. I have not been involved in those discussions, but if confirmed, I would be looking at the budget, and that would be a major part of my role as the Chief Operating Officer.

Senator McCASKILL. So I know you are aware that good acquisition planning requires not only a focus on the present contract but lifecycle. I know you are very familiar with this because of your work in acquisition. Are you aware of any lifecycle cost analysis that has been conducted prior to the pre-solicitation notice that has been sent out on the border wall prototype acquisition?

Ms. DUKE. My understanding is that that is in process, but I do not know if it is completed.

Senator McCASKILL. Do you believe that it is appropriate—if, in fact, the total cost is above \$300 million, which qualifies as a Level 1 acquisition—I think we can all agree this is going to be more than \$300 million—why would you be conducting a request for information for long-term strategy for the border wall when you have not had this kind of lifecycle analysis?

Ms. DUKE. A request for information will give us industry's input into that lifecycle analysis, what is the state-of-the-art and what industry believes might be reasonable, and that would be an input to the lifecycle analysis.

Senator McCASKILL. Do you think it is appropriate to conduct acquisition and requests for information at the same time? Do you think that is appropriate? Or is that not good government?

Ms. DUKE. I think that—

Senator McCASKILL. That is certainly not what a business would do, I can assure you.

Ms. DUKE. I think that we are taking a segmented approach where we do an instant portion of border security and then look in the longer term is something that tends to deliver better results.

Senator McCASKILL. What about the costs of land acquisition and litigation? I was on the border a few weeks ago, and I noticed this incredible waste of resources because there are these big gaps in the existing wall where there is no gate. And there is a Border Patrol agent that sits there in a truck 24/7 at every opening. Very expensive in terms of lifecycle costs. But that is because of the litigation that has been going for a decade over land acquisition.

Now, has anybody factored in any costs, have you see any analysis ever done? Because I do not believe in looking at the numbers I have looked at they have ever included land acquisition, the cost of eminent domain, the government seizing some of the most valuable farmland in Texas, I have never seen a cost analysis of that. Are you aware if any exists?

Ms. DUKE. I do not know if any exists, but I do agree with you that that is an important concern, and we expect that to be a major issue if additional wall is constructed.

Senator McCASKILL. Another thing that bugs me is the government never does pen and pencil on legal costs because they are just government lawyers. I would ask you to commit to make an analysis of what the legal costs have been surrounding these half a dozen gates I have seen. Forget about the Border Patrol agent that sits there around the clock, but what about the legal cost and the delays and all the costs associated with that? I would like to see an analysis of what that time is costing our government in terms

of the legal analysis, because certainly a business would also do that analysis.

Ms. DUKE. I can commit, Senator, to using that going forward. I do not know if the data exists to go retroactively, but I believe that is a valid cost in the cost estimate going forward.

Senator MCCASKILL. I am going to be interested to see if in the original 600-and-some miles we built, if there was ever any pen and pencil about land acquisition costs and litigation. If there was not, then certainly that is a flaw that we would expect to be corrected.

I have many more questions. I think you have a very daunting job in front of you, and I look forward to a very cooperative relationship in terms of being able to get information and being able to perform the oversight by this Committee that I have been honored be a part of, regardless of which party holds the Presidency. Thank you.

Ms. DUKE. Thank you, Senator.

Chairman JOHNSON. Senator Portman.

Senator PORTMAN. Thank you, Mr. Chairman.

Again, welcome to the Committee. I said I was going to ask you some tough questions. Let me just start by saying I do think you are the right person at the right time for a very difficult assignment, and I notice that the Secretary has been talking about unity of effort, and my sense is that from your background that is exactly how you will tackle this responsibility.

Let me ask you about a couple specific things, if I could, that have come up recently. One is the role of the Department in these increasing incidents of threats and attacks on Jewish community centers, on Jewish day schools, on cemeteries. And, by the way, this is not just with regard to the Jewish community. Yesterday there was a bomb threat with regard to the Islamic community. Right outside of my home town of Cincinnati, the mosque actually received a bomb threat, which has happened over time, including after 9/11. And my sense is that there is more the Department of Homeland Security can do.

Over the last week or so, Senator Peters, who is here on our panel—he was here a moment ago and I am sure he will come back—we drafted a letter, and it was a letter to you, to your boss—it was also to the Federal Bureau of Investigation (FBI) and also to the Justice Department (DOJ)—making sure that you are aware of what is going on around the country and asking for your additional help. By the end of that process of asking colleagues if they wanted to join us, every single Member of this Committee signed that letter. In fact, every single Member of the Senate signed that letter. That never happens. A hundred Senators signed the letter. And what it said is, we need help, and we need you to understand the importance of this.

I met with the Jewish community in Cincinnati, Columbus, and Cleveland last week in Columbus, and they gave me a lot of specific ideas that they are looking for. I know Secretary Kelly vowed to support the communities last week. He talked about the Department's Protective Security Advisers (PSA) program. This is welcome, but I think there is more to do. One is these nonprofit security grants and that program, so I would like you to address that

at the end of my question to see whether that is being properly resourced and what you know about that program from your previous service.

I think there is a real need for better information sharing from what I hear from the communities back home, specifically with regard to the fusion centers and getting that information down to the local communities so local law enforcement knows what the threat information is, what the trends are. Opening up that flow back to the local community I think is really important, and it does not always happen.

Better training is another thing. There is this group called the "National Protection and Programs Directorate (NPPD)" that I know deals with a lot of this.

So what I am asking you today is to make a commitment to us that you will take a fresh look at this area, given this increasing evidence that there is more of a threat out there and actual attacks. If you look at the desecration of the cemeteries, including one in the home State of our Ranking Member I know she has spoken out on, and my sense is, again, that all of my colleagues are hearing from their constituents back home about this.

So if you could give me that commitment today that you will take a fresh look at this, along with General Kelly, and get back to us on what you think the Department can do more effectively.

Ms. DUKE. I give you my commitment. Crimes based on religion are against our Constitution and cannot be tolerated.

My knowledge of the specific grant program is limited. I will get back to you on that. I know the benefit of working with the Governors and the State and local and getting information from them for boots on the ground and, again, through the fusion centers, getting operational intelligence back out to them. And I think info sharing, going back to the data issue, and getting things timely and complete is very important, and I expect additional work on the fusion centers and enhancing their performance to be part of our leadership.

Senator PORTMAN. Thank you. The second question I have is about this heroin epidemic, and the Chair and Ranking Member have been very involved in this and mentioned it today. But we have a situation now where more and more families are facing this challenge of addiction. We have a new drug called "fentanyl," which is a synthetic heroin, as you know, coming in from overseas. Fentanyl, carfentanyl, U4, it comes by various names.

To give you an example of what is happening in my home State, between 2014 and 2015, we believe there was a doubling of overdoses and deaths related to fentanyl. If you look at February of this year, just last month, the shortest month of the year, we had the most deaths in your home town of Cleveland, Ohio, that we have had from overdoses. Most of those overdoses were because of fentanyl, often being mixed with heroin. I am told by law enforcement back home that the fentanyl is now being sprinkled on marijuana. This is incredibly deadly stuff, 30 to 50 times more powerful than heroin, and it is killing people. And unlike heroin, which does come over the Southern Border, as was talked about—and one reason we need a secure border to be able to stop more of that and increase the price for that that does get through,



because that would help. But this fentanyl comes by the U.S. mail system, and there was a recent study done by the U.S.-China Commission saying that it is being produced primarily in China, sometimes in India, sometimes other countries, sent to the United States by the U.S. mail. And the reason the traffickers use the U.S. mail system is because if they send it through another means, particularly, the United Parcel Service (UPS) or Federal Express (FedEx), they have to provide electronic data up front where it is from, what is in it, where it is going. But the mail system, they do not have to provide that, so it is the preferred way of sending this poison into our communities.

I would like your commitment today that you will work with us on legislation called the Synthetics Trafficking and Overdose Prevention (STOP) Act that most Members of this Committee have been involved with, some have been cosponsors of. It is bipartisan legislation. Amy Klobuchar from Minnesota and I introduced it again recently, and it basically just says with regard to the mail system, give law enforcement the tool to require that electronic data so that they can target these packages. They cannot look at millions, but they can look at hundreds. And the Customs and Border Protection people I have talked to privately say absolutely we need this tool. Local law enforcement is desperate to have it.

So could you give us a commitment today that you will work with this Committee to ensure that we can get this legislation moving and begin to stop some of this poison from coming into our communities?

Ms. DUKE. I give you my commitment that we understand that the drug problem is—it is bipartisan. I heard from every Member of this Committee as I met with them, and I commit to working forward to securing against that threat to our people, yes.

Senator PORTMAN. Thank you. And, again, this is one that is not going to be the silver bullet to stop drug abuse in our country, but it will stop some of this poison from coming in, which is the new major threat we are seeing, and it will increase the price, which is one of the issues that fentanyl unbelievably is now less expensive than some of these other drugs that are opioids that are causing so much devastation in our communities and the breakup of families and crime and other issues.

Finally, I have just got a few seconds left, but with regard to cybersecurity, I just want to echo what my colleagues have said already about the importance of that and your new role. We have tried very hard to give you the tools to be able to get better people in-house, more flexibility in hiring. And if you would make a commitment to us today to look into that issue and tell us what you need that you are not getting to be able to get the best people at DHS and other departments that are working with you all to push back on the cybersecurity threat.

Ms. DUKE. Yes, we have what we need legislatively. We need to move forward, if confirmed, with the accepted workforce, and that will go a long way to help with the cyber issue.

Senator PORTMAN. Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Hassan.

### OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chairman, and good morning, Ms. Duke. Thank you for meeting with me in my office. Thank you for your long career in public service, and I will give a special shout-out. Anybody who has studied in New Hampshire is good in my book. [Laughter.]

So thank you very much for being here.

I want to just start by echoing what Senator Portman was just alluding to. I am a cosponsor on the STOP Act. My State, as his, has been just devastated by this epidemic, and in particular now, the use and importation of fentanyl. And what we are learning among other things is how creative the drug cartels are. This is moneymaking business for them. They do not care about people's lives. And we are going to need to work together at all levels of government to stop it, both addressing the supply as well as the demand side.

So I am grateful for the discussion we had about it. I am grateful for all of the Members of this Committee who are committed to helping stop this epidemic. And I was very glad to hear you just now talk about the importance of information sharing. As a former Governor, I know the importance of sharing Federal, State, and local, especially around this issue. So thank you for your commitment and understanding of that.

We spoke briefly in my office about your commitment—and you mentioned in your testimony and your policy questionnaire—to a threat-based approach to decisionmaking, and I am wondering if you could just briefly talk a little bit more about what that means to you and what you think the Department needs to do.

Ms. DUKE. Yes, Senator. What that means to me is that we have a limited number of resources in the United States, and when we are making decisions with homeland security resources, we must spend every incremental dollar on the solution that is going to buy down the most risk. And these are important decisions both in the budget cycle, in moving personnel resources, and going forward, and that requires good data. It changes over time, and we just need to be on top of that.

Senator HASSAN. OK. Well, thank you.

So I want to then, following up on that, talk a little bit about one of the things that the Ranking Member also mentioned concerning TSA cuts. Last September, the Director of the National Counterterrorism Center (NCTC), Nick Rasmussen, testified before this Committee that—and these are his words—“terrorists remain focused on aviation targets because they recognize the economic damage that may result from even unsuccessful attempts to down aircraft or against airline terminals, as well as the high loss of life and the attention media devotes to these attacks.”

So the report that we saw yesterday in Politico indicated that the Office of Management and Budget (OMB) is considering making a number of cuts to the Department of Homeland Security in order to pay for the President's border wall and to hire more border and immigration officers. Among the cuts was an 11-percent reduction in TSA's budget, or a little under \$1 billion. That is truly a devastating cut, and it means less security against aviation threats from al-Qaeda and Islamic State of Iraq and Syria (ISIS).

So do you support cutting aviation security to pay for the President's border wall?

Ms. DUKE. I commit to you that I will look at the budget. At DHS, every mission is important and really underresourced at this critical time, Secret Service, the Coast Guard with its human trafficking and drug interdiction roles. So I commit that I will look at the budget very carefully, if confirmed.

Senator HASSAN. Well, I thank you for that commitment. I would just suggest that if we are truly committed to threat-based management at DHS and if the Director of the National Counterterrorism Center says that terrorists want to attack our aviation system, that the suggestion that we would cut \$1 billion from aviation security is very concerning. And so I hope you will take a close look at it and that you will be able to come back to this Committee and commit to fighting cuts to TSA.

Ms. DUKE. I will, and I will also use that intelligence from that organization and others.

Senator HASSAN. Thank you.

The other thing I wanted to do was follow up a little bit on my colleagues' questions and concerns around the opioid epidemic. We have talked about how devastating it is. We know that the flow of narcotics across the Southern Border absolutely contributes to the epidemic. But it is not the only route, to Senator Portman's point, through which drugs get into our country.

The security of our Northern Border lacks the resources and attention paid to our Southern Border, while fentanyl, a key precursor drug, is being shipped into the country from China in particular, and it is poisoning our young people and killing them. Additionally, our maritime borders stretch thousands of miles and have been a popular way for drug smugglers for years. And as mentioned by the Ranking Member, the Coast Guard plays a key role in interdicting maritime drug shipments.

So, again, going back to the Politico article yesterday which reported that OMB was considering cutting Coast Guard's budget by 14 percent, or about \$1.5 billion—and I would suggest that the U.S. Coast Guard (USCG) is already feeling pretty underresourced—again, this is a cut being suggested by OMB in order to pay for the President's wall.

I am having a hard time understanding the logic of a move like this. If we build a wall along the Southern Border and gut the Coast Guard in the process, what we have seen from these drug cartels is that they are creative, and I just think that incentivizes the cartels to smuggle more drugs across our maritime boundaries.

So I am really looking for you to be able to outline steps to ensure that DHS employs a comprehensive approach to battling narcotics trafficking, stopping the opioid epidemic, and do not just focus—the Southern Border security is incredibly important, but, we have to be smart about this, and we have to use what you called this threat-based assessment process. And I am really concerned that, from what I am reading, the Administration is not following that path. So I am just hoping I can get a commitment from you to really help do this in a strategic way.

Ms. DUKE. I will. I know you recognize also that this is very much an interagency function, but DHS does play a part of this.

I committed to Senator Heitkamp to visit the Northern Border to learn more about its geography and the threat there. And you are right, the Coast Guard does play an important mission in drug interdiction also, in addition to the land. So you have my commitment.

Senator HASSAN. Well, and I thank you. And the last thing I would say as I am running out of time is just the other thing that we should all be thinking about, law enforcement has spoken very compellingly about the fact that we cannot arrest our way out of this opioid epidemic, that it is going to take a combination of prevention, treatment, as well as law enforcement. So I look forward to having further conversations with you about how DHS can partner in that effort, too.

Ms. DUKE. Thank you.

Senator HASSAN. Thank you.

Chairman JOHNSON. Senator Harris.

#### OPENING STATEMENT OF SENATOR HARRIS

Senator HARRIS. Thank you. Mr. Chairman, on the topic of immigration, I request unanimous consent that two items be entered into the record. One is a transcript from a hearing that I held in Los Angeles, a forum on the topic of immigration.<sup>1</sup> The second is a letter from the Coalition for Humane Immigrant Rights of Los Angeles, discussing how the President's Executive action has instilled fear in immigrant communities.<sup>2</sup>

Chairman JOHNSON. Without objection.

Senator HARRIS. Thank you.

Ms. Duke, thank you for your many years of service, and thank you to your family for allowing you to reenter. I have several questions of you.

You have in your questionnaire and in your interviews resonated several points that you have made in terms of principles that you hold to be important, including that government has good relations with the people that we serve and that there is trust between government and the people that we serve. And your comments suggest to me that you also prioritize transparency and consistency in the way that we do our work as government officials. So I thank you for that.

On that point, I will tell you based on the discussions that I have had, the forums I have held, many of my constituents need clarity on the decisions that have been made through the Executive Order and the memos that have been issued by the Department of Homeland Security, and so I have for you right now a poster that my staff has created of General Kelly's confirmation hearing. Can you see it from there? It is a bit small. But basically he talked about his highest priorities and mentioned that he would create priorities in terms of who would be deported and who would be the focus of U.S. Immigration and Customs Enforcement (ICE) and CBP.

Then the memorandum from February 20th<sup>3</sup> lists seven categories, and in those categories we see that we have: one, people who have been convicted of crimes; then it goes on to say people

<sup>1</sup> Transcript submitted by Senator Harris appears in the Appendix on page 120.

<sup>2</sup> Letter submitted by Senator Harris appears in the Appendix on page 200.

<sup>3</sup> The memorandum referenced by Senator Harris appears in the Appendix on page 119.

who have been charged but not been convicted or found to be guilty. It goes on to mention people who have committed acts which constitute a chargeable offense, and then other factors, including, 7, those that in the judgment of an immigration officer otherwise pose a risk to public safety or national security. You have said many times, including at least three times in this hearing, that you have limited resources—we all do—and so we have to make priorities and triage in many situations.

So will you tell me, please, of these seven categories, which you consider to be the most important with your limited resources?

Ms. DUKE. The most important is the people that have been criminal. It is subcategory 1.

Senator HARRIS. OK. And where do you put in this hierarchy the third one, those who have committed acts which constitute, but obviously there has been no legal action, where would you put that in your list of priorities?

Ms. DUKE. I believe these are, if you will, loosely in descending order. I think the main effect of that memorandum is to not exempt any categories that currently are under the current law passed by Congress.

Senator HARRIS. So it is your opinion that these are listed in descending order of priority?

Ms. DUKE. Yes.

Senator HARRIS. OK. And will you issue a memo then to your Department, if confirmed, that that is exactly the case, that this is in descending order of priority?

Ms. DUKE. I think that—

Senator HARRIS. Because there is no clarity right now in terms of—

Ms. DUKE. I can commit that—

Senator HARRIS [continuing]. What the folks on the ground are supposed to do as their priority for who they will pick up, who they will detain.

Ms. DUKE. I will commit that if there is continued lack of clarity that we will have more clarity. I know that ICE was issuing a memo that is not issued yet, and I can work with you on making sure that has the clarity so that you can explain it to your constituents in a way and show them that that is the way it understands. But there is still the prioritization.

Senator HARRIS. OK. And I will emphasize that it is most important to my constituents that the officials in the Department actually explain it to the troops on the ground.

How would you then direct an officer in the field to assess number 3, which is someone, again, who may have committed an act which constitutes a chargeable offense? How would you train and direct an officer on the ground about number 7, which is in the judgment of that officer, an individual poses a risk to public safety or national security? How would you train on that point?

Ms. DUKE. Both number 3—number 3 also requires judgment, and all our law enforcement officials in this country, whether they are Federal or State or local, have to have judgment. They have the Federal law enforcement training where they learn that. They both practice law enforcement. And in the Federal—

Senator HARRIS. But they need to be trained on specific factors that they—

Ms. DUKE. Yes.

Senator HARRIS [continuing]. Should consider, and that is the way that we actually evaluate whether they are exercising good judgment or not. Would you agree?

Ms. DUKE. Yes.

Senator HARRIS. Do you know if that training has been planned for those officers so that we can ensure that they are, in fact, exercising good judgment?

Ms. DUKE. Yes, that is part of their law enforcement training.

Senator HARRIS. Has that been issued since February 20th as it relates to these seven factors?

Ms. DUKE. I do not know at this time. I can get back to you on whether there has been incorporation into the training specifically.

Senator HARRIS. Please do.

Then on February 17th, there was a memo from Acting CBP Commissioner Kevin McAleenan which indicates that to meet the hiring goals of the Executive Order, there would be 15,000 new officers, that we would have to lower CBP hiring standards. And as you probably know, during a hiring surge at the Department between 2006 and 2012, there were a lot of unintended consequences which required then that Congress in 2010 mandate that the CBP use polygraph testing to blunt the infiltration of the agency by drug cartels. However, it is my understanding that now as part of the need to hire 15,000 new officers, there is a suggestion that the polygraph testing would no longer occur. Do you agree with that?

Ms. DUKE. We will not lower standards to do that.

Senator HARRIS. What about the polygraph testing?

Ms. DUKE. I am not familiar with it. I know there was discussion over whether it is necessary or not.

Senator HARRIS. Do you believe the polygraph testing should remain intact in order to ensure that we keep the hiring standards so that we can ensure that those officers exercise good judgment?

Ms. DUKE. I do not have enough data, to be honest, Senator, to comment on that, but I will look into it, if confirmed, immediately.

Senator HARRIS. So in your many years of service with the Department, you do not have information about whether—the efficacy of a polygraph test and the hiring of these officers?

Ms. DUKE. Yes, I know that the polygraph has efficacy, but is there a degradation in workforce if it is eliminated, I do not have that data.<sup>1</sup>

Senator HARRIS. OK. Thank you.

Chairman JOHNSON. Senator Heitkamp.

#### **OPENING STATEMENT OF SENATOR HEITKAMP**

Senator HEITKAMP. Thank you, Mr. Chairman. And it is great to see you again, and thank you for a lovely visit in my office.

Since we had an opportunity to talk, there has been a number of things that have occurred within the Department of Homeland Security, but one thing that really caught my attention is the dis-

<sup>1</sup> The information submitted by Ms. Duke appears in the Appendix on page 116.

cussion of a policy that would, in fact, separate mothers from their children at the border.

How much time have you spent in the triangle countries in Central America?

Ms. DUKE. Very little other than vacations. No official duty.

Senator HEITKAMP. Would you agree that the conditions on the ground in those countries are dire and dangerous for families?

Ms. DUKE. I have heard that, yes, from people I have met from those countries.

Senator HEITKAMP. In fact, we know that the murder rates per capita are the highest in these countries, especially El Salvador. Many of the people who are migrating, many of the people who are on the move are, in fact, escaping very desperate conditions, and it is not just economic migration. It is migration to get away from the terror.

Obviously, there has been a United Nations (U.N.) project to take a look at refugeeing in place, whether it is in Costa Rica, Belize, southern Mexico, Nicaragua. There has been a lot of discussion about how we deal with the crisis in Central America, which obviously is having an effect. But how do we deal with the visual of a Border Patrol agent taking a baby away from a mother at the border?

Ms. DUKE. That is a bad visual. I think what we do is we go to two underlying areas. One is we have to separate adults from children potentially because of threats we have heard against children. And, also, we have to address the fact of how dangerous it is to illegally immigrate into the country. And I think that the reference you are making to separating mothers and children or adults and children was one thing that Secretary Kelly said is a possibility to help address this threat against children who are illegally migrating.

Senator HEITKAMP. So the strategy is not to figure out how through the State Department we can effectuate support for refugees in place, which would be my preference, that people stay in the community as we work with these countries to stabilize their economies and stabilize their security. So it is not our problem, and the solution is to take babies away from mothers. That is the best solution we have in the United States of America when dealing with this crisis?

Ms. DUKE. No. No, it is not. Absolutely, Secretary Kelly and I have had short discussions, but are committed to looking at both what we call the push effect and the pull effect. And the push effect would be the areas you are talking about, Senator, of fleeing violence; they are leaving for a reason. And we are committed with the other appropriate agencies to looking at both sides.

Senator HEITKAMP. Well, I can tell you that for every mother who would be seeing someone seeking asylum in this country, fleeing from rape, murder, and potential destruction of her family, it is not a very humanitarian way to deal with this crisis. I think there are other ways, and I think that the threat of taking mothers away from children may, in fact, provide a deterrence. I get that. But it does not solve the problem in our hemisphere, and if we do not deal with the problem in our hemisphere, we will continue to have disruption, and that disruption will continue to find a place

for a criminal element in our country. I want to wage my strong opposition to taking babies away from their mothers.

If we look at budget—and I have spent a lot of time on this on the border, probably more time than what I should given that I represent a State like North Dakota, but I can tell you from being down there, working with some of the most conservative ranchers you are going to find, they do not want this wall. You have opposition from people from whom you need support to build this wall. They have a lot of really good ideas on how you can secure the border, but yet we are going ahead, in my opinion, because this is a political promise, not a vetted or actual idea that would result in any increased security.

How committed do you think the agency is or the agency during your tenure to actually pushing back against strategies that will not keep us any safer, that are, in fact, irrational deployments of Federal dollars, at the same time we are opening up the maritime borders, we are opening up the ports of entry (POE) called airports, we are not securing the Northern Border, but yet we are building a wall at huge cost and a wall that many people who live on the border, including the Congressional people, including at least one Senator thinks is absolutely the wrong strategy? When are we going to actually have a discussion not about whether we let the bids, as Senator McCaskill has been talking about, whether we actually ask for people to bid on these projects, when are we going to have a discussion on whether this actually is the right deployment of resources?

Ms. DUKE. Currently, Customs and Border Protection is working on a study, a comprehensive study to look at layers of security, not just the wall, to look at what other types of technology, infrastructure, and resources would be most appropriate and effective for the border. So that is currently working.

Senator HEITKAMP. Yes, but you said in addition to the wall. What I am saying is that we need to rethink all of border security. We need to really have a conversation, lots of great ideas from law enforcement, local law enforcement, on how we can do a better job, some discussions about actually clearing the brush so that you can detect people in a mile boundary. There are some really creative ideas that are being discussed on the Southern Border that, if you deploy all the resources on a wall, you are not going to get to that discussion because you are going to be fighting eminent domain, you are going to be fighting the local people on building this wall. And it just seems to me that someone needs to say, "Stop. Let us really evaluate this." And if we believe public opinion polling, it is not something the American public thinks will make them more secure.

And so, I just really hope—you are a common-sense person. You have been in the agency, I know. You obviously will work for the President, and I understand that. But we need to have someone and an agency that actually looks at what situational awareness means and how we best deploy the resources. I hope you take that message back to the Secretary. I am proud to support you, as you know, and we had a great talk about the Northern Border. But there are a lot of things that are happening right now that will be irreversible if we do not have a strategy.



Ms. DUKE. And I will engage with those Governors and local politicians also in gathering data about the Southern Border.

Chairman JOHNSON. Thank you, Senator Heitkamp.

Ms. Duke, very quickly, my guess is that once that study is complete and you have the results of your findings, you will be happy to come and testify before the Committee and lay out your findings, correct?

Ms. DUKE. Yes, I will come.

Chairman JOHNSON. And we will call you to do that.

Senator Tester.

#### OPENING STATEMENT OF SENATOR TESTER

Senator TESTER. Thank you, Mr. Chairman. And thank you for being here today, Ms. Duke. I appreciate, as others have said, your willingness to serve and your public service before today.

I want to touch a little bit on what Senator Heitkamp said because on the Northern Border, when I got elected 10 years ago and was on this Committee, I took an Assistant Secretary up to the Northern Border in the Bush Administration, and we went north of a little town called Turner, and there were a number of farmers and ranchers up there. And being new to this position, I just asked them silly questions like: What is your relationship with the CBP? And they said, the one person I talked to said, "I would not stop and help them if they had a flat tire." So the relationship was not good, and I think that relationship is critically important for border security, whether it is on the north or whether it is on the south. I think that relationship has improved greatly. I still think it can be improved some more.

But I think the point that Senator Heitkamp made about if these folks are working against us on the Northern Border, it really is going to cost us a lot more money to make it secure. So I just hope you take that to heart.

I serve on the Homeland Security Subcommittee on Appropriations under John Boozman as the Chairman. I am the Ranking Member on that, and there has been a request, as has been referenced earlier in this discussion, about \$20 million that will be reprogrammed in the Department of Homeland Security for the purpose of a wall. And my question to you is: Is that going to be the only purpose for the \$20 million?

Ms. DUKE. I am not—

Senator TESTER. To do a pilot on a wall.

Ms. DUKE. I am not familiar with that reprogramming request. As an adviser, I have not been involved in those discussions, but I will engage, if confirmed.

Senator TESTER. OK. That is cool. So do you think the \$20 million for a study for a wall is the right way to spend that money for national security interests on the Southern Border? And the reason I say that is because I do not think there is anybody in this room, and certainly nobody on this dais, that does not think that our security of this country is critically important. We know that money is finite, and so we have to get the biggest bang for the buck.

So if this \$20 million is reprogrammed, do you think a pilot project on a wall should be the only thing it is used for?

Ms. DUKE. I think that we should test things before we deploy them, and we have to test not only are they effective in securing the border, but are they sustainable. So for that purpose, a pilot program I think we be useful.

Senator TESTER. Well, let me ask it to you this way: Would you be opposed to carving out part of that money to be used for technology as a way to secure the border—not entirely but in places where the wall might not be the most effective way to do it because of a number of reasons, whether it is landscape or eminent domain or whatever it might be?

Ms. DUKE. I am not sure if there is any pilots necessary on technology now. I would have to look into that. But I do know the plan does not just include physical barrier. It includes continued technology and infrastructure.

Senator TESTER. OK. So what you are telling me is that there are certain places on that Southern Border where there will be technology and not a wall?

Ms. DUKE. I do not know if it is an either/or, but there is, to my knowledge, no intent to discontinue use of technology.

Senator TESTER. OK.

Ms. DUKE. A multilayered approach to the southwest border.

Senator TESTER. I think you are a smart lady. I think you are very well fit for this job, and I intend to support you. But you do not think it would be wise to at least determine what the best avenue is, whether it is a line in the ground like you talked to the Adelos folks to determine if there is a tunnel going underneath or something walking over the top, or whether it is drones or whether it is manpower or whether it is a wall, to get the most bang for the money and to really ensure this country's national security on our borders? Doesn't that make more sense than to just say, well, we are just going to focus on the wall, and after we get that done, maybe we will spend another \$30 billion on something else because it did not quite do the job we anticipated?

Ms. DUKE. My opinion is we should use the results of this pilot and the other information that Customs and Border Protection has in their program about technology cost and effectiveness, infrastructure cost and effectiveness, personnel, and take all that and determine what is the right combination for the complete security of the southwest border.

Senator TESTER. OK. And on this \$20 million that is due to be reprogrammed—I will go back to the original question I had—would you be opposed to carving out part of that to be utilized for technology resources on the ground on the Southern Border specifically?

Ms. DUKE. I do not have the information to either be for or opposed at this time.

Senator TESTER. All right. OK. What role do you think that Canada and Mexico play in our border security?

Ms. DUKE. A strong role, and relations with those countries are essential.

Senator TESTER. I agree with that. So what impacts do you think that the fluff up between the President of the United States and the President of Mexico had as far as potentially improving or decreasing our border security? Are you concerned about that?

Ms. DUKE. I know that Secretary Kelly and I would be working on strong relations. He has already been to Mexico and Guatemala, and the relationship between Homeland Security in the United States and our bordering countries would be strong.

Senator TESTER. OK. Good. So you are going to basically do what you think you need to do to establish those relationships, whether it be with Mexico or Canada, to make sure that folks are talking and hopefully—

Ms. DUKE. Yes, and because of—

Senator TESTER. Hopefully the fights up above do not impact that.

Ms. DUKE. Because of the Secretary's role at U.S. Southern Command (SOUTHCOM), he has some preexisting relationships that are very strong on the Southern Border.

Senator TESTER. With Mexico, OK. Operation Stonegarden we talked a little bit about in my office, and I just what to make sure that I know where you are at on funding for Operation Stonegarden. Where are you at?

Ms. DUKE. I am supportive of the program.

Senator TESTER. OK. And it goes back to the original question that Senator Heitkamp has. Those are the kinds of partnerships that I think we can utilize on the Northern and the Southern border to be able to get the most bang for the buck. I intend to vote for your confirmation. I appreciate you being here today, and I appreciate you putting yourself up for this position.

Ms. DUKE. Thank you, Senator Tester.

Chairman JOHNSON. Thank you, Senator Tester.

By the way, a real-world example of the effectiveness of fencing, read our report, the result of my trip to Israel right before Christmas, 143 miles of fence put up in 2 years, cost of about \$2.9 million per mile, cut the illegal immigration rate from 16,000 crossing their Southern Border to 18. And, by the way, Prime Minister Netanyahu said actually, three problems with fencing is tunnels, tunnels, tunnels. But still—it is not perfect, but it is pretty darn effective. Senator Lankford.

#### **OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Thank you, Mr. Chairman.

Thank you for being here. I appreciated our conversation in my office to be able to talk through a lot of these issues before. You have done a lot of work in acquisition and contracting. This has been an area that the Inspector General (IG) has noted for a while as a struggle for DHS, so I want to just be able to talk out loud on a couple of things with you to be able to ask you questions about.

DHS's major acquisition programs tend to cost more than expected, take longer to deploy than planned, or deliver less capability than promised. That came out of the IG's report of late. So one of the questions I would have for you is: How do we fix that? Because we are talking about multiple major acquisition programs here. How do we make sure that at the end of the day the taxpayers got what they paid for?

Ms. DUKE. I think the single most initiative that has begun and needs to be strengthened is really developing good requirements

based on operational needs before we get started. In the earlier days of Homeland Security, we tended to move quickly, maybe before we were ready, and that caused some changes—too many changes and stops and goes in the programs. So with the unity of effort, if confirmed, I would be focusing on having those operationally driven requirements before we go out and start acquiring something.

Then, second, consistent oversight within the Department through the Chief Acquisition Officer, and also, if confirmed, I would continue to look more toward modular approaches to acquisition rather than trying to buy these big, huge fixes that are too complex to deploy effectively.

Senator LANKFORD. So what does that mean for off-the-shelf technology, for instance? Because there has been an emphasis at times to say we are different, we have to have our own specialized piece of technology developed just for us, rather than an off-the-shelf piece that also has already been tested, has already been proven.

Ms. DUKE. I think that there needs to be a mix, and if confirmed, I would encourage—or I would mandate, I guess, that one of the roles of the Directorate of Science and Technology (S&T) be to look at those items that can either be used commercially or with minor modifications be used in a homeland security application, so looking toward industry to have already developed rather than major research and development (R&D) programs.

Senator LANKFORD. OK. Thank you. As we talked about before as well, DHS has spent 13 years trying to be able to pull together their HR system. That is a long time to try to pull together an HR system. Now, what typically happens is every 2 years there is an emphasis on it. There is a new plan of how we are going to attack it. Then leadership changes, and it never gets done. And then there is another 2-year plan to do it. There is a renaming of the previous plan. There is a new attack for it, a new plan. And for 13 years, the HR system continues to flounder.

How do we move from that is an ongoing issue to that is a settled issue?

Ms. DUKE. I think the focus has been on the system, and I think that is an inappropriate focus. The approach has to be at a jointness that we are one Department and we are going to have the appropriate jointness in hiring and staffing, and then the system flows through that. And I do not think we have had to this date that agreement, and that is what I will drive through the Deputies of the components, and then I believe the system will flow from that.

Senator LANKFORD. OK. Let me ask you an easy question. How do we solve the morale issue? This has been an issue for a while at DHS. These are some great folks that are patriots that want to be able to serve the Nation. And for whatever reason, there has been ongoing morale issues among DHS employees. How does that get solved?

Ms. DUKE. I think we solve that by giving them the authority and the tools and the judgment to do their job. We reinforce how much we value their ability to do the job. The Secretary and I lead by managing that what needs to be managed so it enables them to

be free to do their jobs, and actually communicating better, not just about their little piece but having them understand the system. And I think those are always important. It is very difficult to work at DHS, and we need to recognize that.

Senator LANKFORD. So I would say two things. One, people have a greater sense of joy in doing their job when they know their job is significant. Tom Carper, who serves on this Committee as well, has his ongoing statement that he comes back to over and over again. People love to do what is significant. They do a very significant national security task. And I think when they are allowed to do the job that they wanted to do, the reason they applied and came, I think that reaffirms them again to know, "I am doing something that is valuable, and I am getting to do what I came to do."

The second part of that is to be able to help hold the ideas that they have on the field of what needs to be fixed to actually get to this Committee, and so we can fix them. There has at times been a tension between their ideas in the field and they see the obvious things that need to be done. But there is a barrier between this Committee and individuals in the field, and the ideas are not coming all the way to us.

You can help us help them and the morale to be able to know that this Committee wants to hear the ideas from the field of how things can be fixed. They see the conflicts in the law and in regulatory issues, and they know, "I wish I could do this, but I cannot do this, and I am stuck." If we hear that, that will help us to be able to help them and be able to stand by them as well.

Let me talk briefly on some immigration issues as well. I know this is something that the Secretary has been very passionate about, in the case our Southern or Northern or Maritime Borders, but in the case of our Southern Border: the Southern Border of our Southern Border, that is, the relationship between Guatemala and Mexico. When we deal with a tremendous amount of illegal immigration coming into the country, it is from areas that come from that Mexico-Guatemala border. What can be done to be able to help us work with the Mexican authorities as they enforce their Southern Border?

Ms. DUKE. I think the relationships—I mean, what we have here is we have a joint purpose; we have a common ground. And I think that what we have to do is work with the enforcement on the demand side in the United States, and, again, that is not—the demand management is not as much a DHS role. We are part of the solution, but we have to work as a country on that side. And then I think on the international side, our role in helping them with some of those push factors related to the crime and the economy and keep a good partnership and helping them when they are trying to help themselves as world leaders.

Senator LANKFORD. Well, there are things that I know that have been proposed in the past, the Northern Alliance and the Alliance for Prosperity that the United States is partnering with Central America on, specifically those three countries—Guatemala, Honduras, and El Salvador. If there are ideas specifically in the implementation of that or things that need to be done differently, that is something—I serve on the State and Foreign Ops Appropriations

subcommittee—that we are very interested in getting input from DHS on as well. That does not need to just be a State Department focus. You also have a portion of that.

One last question that I want to bounce off of you, and that is this issue of operational control. The National Defense Authorization Act (NDAA) required DHS to come up with some sort of metrics and definition for what does operational control mean of our borders. Do you know what the status of that is or any recommendations for that?

Ms. DUKE. Yes, DHS is working to come up with the metrics behind operational control. That is very important, as the Chairman mentioned, not only for the wall where it has proven effective in other countries, but we have to know the effectiveness of the individual pieces of border security like the fencing and the wall, like the technology, but also across the border in general, we have to have those performance results. And that is working, and we are committed to that.

Senator LANKFORD. OK. So you expect that operational control definition to come to us fairly quickly? I know you are not there at this point in that seat, but is that something that you think is a pretty quick priority?

Ms. DUKE. Absolutely, and the definition is in the Executive Order. This is the metrics to measure the definition.

Senator LANKFORD. Right, and, yes, the metrics will be the key aspect.

Ms. DUKE. Yes.

Senator LANKFORD. OK. Thank you.

Thank you, Mr. Chairman.

Chairman JOHNSON. There has been a request for a second round of questioning, which I will honor, so we will go to another round of 7 minutes. Beyond that, it will be written questions for the record. Senator McCaskill.

Senator MCCASKILL. Yes, I want to start with the Secret Service budget. Let me preface this remark. I do not want anyone to misinterpret my question here. I think the President and his family deserve around-the-clock protection. That is not the argument. The argument is clearly there is going to be a lot more money needed because the Secret Service now has to protect Trump Tower. It has to protect Mar-a-Lago since the President goes there almost every weekend. It is going to have to protect his sons who travel constantly on international business. And I want a commitment from you that the budget will not only reflect an appropriate increase request for the Secret Service—because as you know, one of the issues we have had in the Secret Service which we finally turned the corner on is hiring and having enough people so that there is not this stress associated with a work pace that is totally unrealistic.

So I want a commitment that the budget will reflect the needs of the Secret Service in light of the additional protection that is going to be required with this President and, most importantly, where that money is coming from, what part of Homeland Security is going to take a hit for the additional protection that the President and family demands because of this greatly expanded playing field of protection that is necessary for President Trump.

Ms. DUKE. Yes, Secretary Kelly has already directed the operating components that when they come in for their budget requests, they are, for the initial discussions, to come in with their true costs.

Senator McCASKILL. And I think that is really important that that is transparent. I do not want to get into the details of what the Secret Service is spending money on, but top lines certainly have to be transparent to the public. Agreed?

Ms. DUKE. Yes.

Senator McCASKILL. All right. I want to also talk about the technology. I got to tell you that what is going on on the Border Patrol, I did not have one border agent say the first thing they needed was a wall. They said I think 76 miles of a wall would be helpful. But they said it was more technology and particularly, in the processing centers, they do not have enough bandwidth in terms of their Internet signal to even use the technology they have. They cannot activate the kiosks with the radio frequency, and since we know more people are overstaying visas than they are coming across the border illegally, it seems to me that technology to support this radio frequency embedded in the visa card is pretty damn important. They cannot even use it because they do not even have bandwidth at the processing center. I mean, we are getting ready to go on a multi-billion-dollar project that we have not even done a cost-benefit analysis, and the processing centers do not have enough bandwidth. It is bizarre to me.

The other thing that was bizarre to me was the technology they were using. They were using night cameras, and these border agents are so ingenious, they took a night camera, a military night camera, and attached it to a pole that goes up in the air, attached to a laptop, so they can surveil the geography where you need aerial—not wall but aerial—and they did this themselves. They did not do some big request for proposal (RFP) and spend billions of dollars acquiring this.

And then lateral roads. Lateral roads kept being named to me by border agent after border agent. They see somebody, and they cannot get to them. So if we cannot get lateral roads over these lands, I am trying to figure out how we are going to do a wall.

So I hope that all of those questions are something that you digest and get back to this Committee about those challenges and whether those items are going to be a priority in the budget.

Ms. DUKE. The operational requirements of the Border Patrol absolutely drive the requirements of future acquisitions. And the ports of entry, the legal ports of entry, cannot be forgotten as we secure the borders.

Senator McCASKILL. Will there be no requests for appropriation for billions of dollars until all these studies have been completed, until the pilot has been completed and until the cost-benefit analysis has been done?

Ms. DUKE. I honestly look forward to having those discussions with you, if confirmed, but I have not been involved in the budget requests to date.

Senator McCASKILL. Well, I know the Chairman, and he talks about business all the time and how business does it. And I know that there is no way a business would embark on a multi-billion-

dollar project without a cost-benefit in place. And so I will be very disappointed if there is a request for a giant appropriation for something that the Border Patrol never mentioned to me as a top priority, partially walls—I do not want to misrepresent what they said to me—but these other components which do not seem to be a high priority in terms of the President's political speeches.

The Mexican relationship I think we all agree is very important to our border security. I know the President has asked for everyone to identify every dime that goes from this country to Mexico. He made a very clear promise in his campaign that Mexico would pay for this wall. His supporters chanted, "Mexico will pay for the wall." Do you believe the President is intending to cutoff any kind of financial support for our mutual drug interdiction efforts to Mexico as a way to try to keep his promise that Mexico is paying for the wall?

Ms. DUKE. I have not had any discussions with the President, so I honestly do not know his intent.

Senator MCCASKILL. OK. Well, if that occurred, would you not agree that that would have a dire impact on Mexico's cooperation with our country in terms of their Southern Border?

Ms. DUKE. I look forward to being engaged in that and, supporting the President with information that we have from Homeland Security that would affect that decision.

Senator MCCASKILL. Do you believe that cutting off all financial assistance to Mexico in order to keep a political promise is a way to build morale at the Department of Homeland Security?

Ms. DUKE. I am not comfortable discussing—I have not been involved in that subject, and I understand your concerns, and I would work with the Committee. And as Secretary Kelly said, he and I will advise the Administration with facts, and we will continue to do that. And I feel confident the President will make the right decisions on that issue.

Senator MCCASKILL. Well, politicization, the political nature of issues being embedded within the Department of Homeland Security, you have acknowledged in front of this Committee is a problem. You said in a hearing in 2015, when we were looking at this morale issue, you believe part of the morale problem is that employees were feeling "disenfranchised." You attributed this in part to the increasing politicization of DHS' work, stating, "DHS employees do have pride in their work, but my experience is that it is more politicized." You went on to explain that employees find it hard to feel like they are part of the mission because a lot of the mission and the decisions are made politically.

Do you understand the point I am making, that the wall might fall firmly under that category, if we have no cost-benefit analysis, if we are cutting off aid to Mexico, if we are, in fact, not giving the Border Patrol what they are asking for but, rather, what the President promised in a political context?

Ms. DUKE. Yes, and my initial work in this Administration and how I became reinvolved was connecting the career employees of DHS with the new Administration, to make sure that that alienation did not happen. And I feel confident we will move forward and that we will use the career and their great knowledge and experience to make the right decisions.



Senator McCASKILL. Well, I wish you the very best of luck in that. I think you are well equipped to do it. I will look forward to your candid answers about that and the protection of whistleblowers in the Department of Homeland Security in the future.

Ms. DUKE. Thank you.

Chairman JOHNSON. If I do not say it publicly from the dais, I almost say it 100 percent of the time talking to witnesses before a hearing that the purpose of the hearings in this Committee is to lay out a reality, unvarnished truth, because that is the only way you solve a problem, which is why next week we are going to have a hearing—hearing from the people in the front lines at points of entry, points between the ports of entry, and in the interior from ICE. So we are going to have front-line enforcement officers, and we are going to lay out that reality. So I am looking forward to that, and I am sure you will as well.

Ms. DUKE. And you have my commitment, Mr. Chairman, that we will be hearing from those people also in developing requirements.

Chairman JOHNSON. Again, that is what I am certainly seeing from Secretary Kelly. He is getting down there talking to the boots on the ground, and that is how you have to manage. Senator Harris.

Senator HARRIS. Thank you.

Ms. Duke, I would like to return to the decision apparently that the Department has made about separating children from their parents. Do you know when this is supposed to take effect?

Ms. DUKE. It is not a decision. The Secretary, I talked to him personally about it. He considers it still a possibility. They are looking at a wide range of deterrence, and it was raised as a possible method of deterrence. But there was no decision made, and there is no implementation plan currently.

Senator HARRIS. So let us think of this as an opportunity for the public to weigh in before they make a decision. I would urge you to urge the Secretary to think about this from the context of, to the Chairman's point, the details of what this would look like on the ground. For example, if a family appears at the border and of those children with that family are nursing babies, what will the policy be as it relates to that nursing baby and that mom? If a family arrives at the border and among those children are toddlers who are potty training, what will the policy of the Department be as it relates to the separation of those children from those parents? What will the policy of the Department be if they arrive at the border and a child is sick and needs comfort to be able to sleep through the night from his mother? What will the Department's policy be? Because those are very real scenarios that all of us who have parented a child know, to be very real, and can be very traumatic if not taken into account in terms of the effect on those children and those families, when we are leaving it up to whoever is from CBP or ICE there to make the decision in their best judgment if they have not been given clear guidance and training on that issue.

So I would urge you to pass this on to the Secretary, and also in your capacity as number two of that Department, if confirmed, to require that everybody be very clear about what this will mean

and be very clear about the details in terms of the training and the protocols and the policy.

And as you know, the American Academy of Pediatrics has issued a statement in opposition to the practice of separating children from their parents, particularly in these kinds of cases, because of the longstanding, potentially lifelong trauma that results to those individuals, and it could be the parents as well as the children.

Back to the issue of the hiring standards, I believe this to be an issue that is connected with all that we need to do in terms of trust, as we discussed before, trust of government. I also believe it to be directly related to the morale of the good men and women of the Department, because, you see, bringing in 15,000 new officers without appropriate vetting will be a morale issue for the entire Department, and in particular for those who came in when the standards were high and were trained and brought into the field understanding their mission and respecting the power they have.

So I would urge you to be very clear in your role of leadership, if confirmed, that we cannot compromise for the sake of building up the forces as has been directed through the Executive Order, because there will be—I guarantee it as someone who has worked in law enforcement my entire career—many unintended consequences, which will also include a public perception that the Department is not run well and cannot be trusted. And that will indeed be something that is, I think, an unintended consequence but very dire in terms of the goal of the Department and the important goals of the Department in terms of securing our country and national security. And it will also be an officer safety issue.

So on this point, back to the issue of polygraph testing, what will be your position going into the Department if this is on the table as something that the Department is considering eliminating in order to process people quickly to reach that goal of 15,000 new officers?

Ms. DUKE. Senator, I commit to you—I think we have a meeting in about a week. I will go back and I will look at that specific issue. I have not been involved nor looked at the rationale behind the possibility of eliminating the polygraph, and I will be prepared either in a question for the record or in our meeting to answer that specifically.

Senator HARRIS. OK. I appreciate that. Thank you.

Chairman JOHNSON. Senator Harris, if you would just stick around for a couple minutes, I would like to tell you a story that might give you a little comfort.

Shortly after the issuance of the first Executive Order on, we will call it, the travel ban, I got a text from my daughter who was born with a congenital heart defect. She is 33 years old now. She had corrective surgery. She is actually a nurse practitioner serving in neonatal intensive care units. And there was an article written about this little Iranian girl, a little baby that also had a heart defect that was scheduled for surgery at an Oregon university, one of the university hospitals in Oregon. And so I sent that immediately to my staff, who immediately contacted DHS and the Secretary, as well as I had it printed out. We were voting late at night.

I gave it to Senator Wyden, who passed it along to Senator Merkley. Secretary Kelly personally got involved.

Now, this was not a situation where a visa had already been issued and they were at the airport and, the EO had an immediate impact. But the Secretary personally got involved, and this little baby girl was admitted into the country without a visa, working with the State Department, very quickly, within hours. And so just the compassion from the Secretary, from Ms. Duke I think will be demonstrated time and time again. So just to provide a little comfort, we have exceptional people, certainly with Secretary Kelly, that we have voted to confirm, I think with Ms. Duke as well. There is no political party that has a monopoly on compassion.

Senator HARRIS. No, I think——

Chairman JOHNSON. We want to do this. We want to enforce our laws. We want to keep this Nation safe.

Senator HARRIS. I think we are all in agreement on that. My concern is not about what is in the heart of Secretary Kelly. It is about what is in the instructions and guidance and the policies.

Chairman JOHNSON. The good news is the little baby did get admitted, and her surgery has been successful. I want to see the news article.

Senator HARRIS. It is a great story.

Chairman JOHNSON. I want to hear more information, but there are privacy issues as well. But, again, I thought that was a pretty good news story, and, again, that certainly demonstrated to me how quickly the Secretary personally got involved, the waivers that were granted, compassion to a little Iranian baby girl I thought spoke volumes. But, again, I appreciate your good questions.

Ms. Duke, again, thank you. I want to thank your family. I will come down and shake your hands after the hearing. You know this is a commitment. You know the serious nature of the responsibility you are assuming, and I just want to thank you for it.

The nominee has made financial disclosures and provided responses to biographical and prehearing questions submitted by the Committee. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.<sup>1</sup>

Chairman JOHNSON. The hearing record will remain open until noon tomorrow, March 9th, for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:03 a.m., the Committee was adjourned.]

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<sup>1</sup> The information of Ms. Duke appears in the Appendix on page 39.



## A P P E N D I X

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**Opening Statement of Chairman Ron Johnson  
“Nomination of the Honorable Elaine C. Duke to be Deputy Secretary,  
U.S. Department of Homeland Security”**

**March 8, 2017**

*As prepared for delivery:*

Good morning. We are here to consider the nomination of Elaine Duke to be the next Deputy Secretary of the Department of Homeland Security.

Ms. Duke, welcome back. You are no stranger to this Committee. You have testified many times before our Committee. That includes your June 2008 nomination hearing for the position of Under Secretary for Management at DHS, for which you were confirmed by voice-vote. I appreciate your willingness to once again answer the call to serve.

Following the President's inauguration, the Senate immediately confirmed General Kelly to be the Homeland Security Secretary with overwhelming bipartisan support. As I told General Kelly during his nomination hearing: leading DHS is one of the most challenging positions in government. DHS is assigned some of the federal government's most important responsibilities—including transportation and border security, enforcing our immigration laws, securing our federal cyber assets, protecting critical infrastructure, and working to keep the American people safe. Successfully leading this 240,000-person agency requires DHS officials to work effectively with other federal agencies and coordinate between the Department's own components.

Much work remains to be done at DHS to achieve its priority missions: we must secure our borders; we must effectively enforce our immigration laws; and DHS must continue to fight the evolving terrorist threats that target the homeland.

In addition, DHS faces significant challenges as an organization. Low morale is still pervasive at the Department. Although this appears to be improving under a Secretary committed to following the law, we must continue to monitor the issue of attrition as we look to increase manpower within the Department. The Inspector General and other oversight bodies have found that DHS continues to mismanage expenditures. And the Department's many components still do not effectively work together.

Ms. Duke, I know that you appreciate these challenges. You have valuable first-hand knowledge and the experience to serve in this critical role at this time. You have served under two different administrations. I believe the fact that President Obama asked you to stay at the Department following your service during the Bush Administration is a testament to your character and dedication to DHS. Based on your qualifications, it is no surprise that five former DHS Deputy Secretaries spanning both Democratic and Republican administrations have endorsed your nomination.

Thank you again for your willingness to serve. I look forward to your testimony today.

**Opening Statement of Claire McCaskill  
Nomination Hearing for Elaine C. Duke to be  
Deputy Secretary, Department of Homeland Security  
March 8, 2017**

Thank you, Chairman Johnson.

Ms. Duke, welcome.

As you know well from your many years at the Department of Homeland Security, the role of Deputy Secretary is an incredibly important one. While the Secretary is the head of the Department and ultimately responsible for its actions, it is the Deputy Secretary who ensures that the trains are running on a day to day basis in order to accomplish the Department's missions. This requires strong leadership skills.

When Secretary Kelly's nomination was in front of this Committee, I told him that he was going to need a top notch manager as his deputy. I'm pleased to see that he has, in fact, chosen someone with not only significant managerial experience but also someone who knows how to be accountable for taxpayer dollars.

Since Ms. Duke's nomination, my staff and I have heard from many former DHS employees and officials about Ms. Duke's strong qualifications for this position. This includes a formal endorsement signed by the previous five Deputy Secretaries of DHS attesting to Ms. Duke's integrity and management skills.

I've been glad to hear of each of these endorsements because, Ms. Duke, you face a formidable task if confirmed. The Department of Homeland Security is the third largest federal agency in this country, with a \$46 billion budget. It is charged with some of the most important duties in our government, such as overseeing cybersecurity, immigration, and emergency

management. It is also an agency, however, that has faced persistent challenges in unity of effort, acquisitions, and personnel.

As you yourself have acknowledged, DHS continues to struggle with cohesion and mission among its many components. Many of its acquisitions programs have also been plagued by backlogs, delays, and budget shortfalls. In terms of employee morale, the Department is consistently ranked as one of the worst places to work in the federal government.

The Department has made strides in recent years in improving procurement, acquisitions, and jointness, and also in prioritizing a threat/risk-based approach to programs. I know you played a role in many of these efforts in your time at the Department. If you are confirmed, it will be of the utmost importance that you continue pushing these approaches because recent improvements must not be allowed to be rolled back.

As the Chief Operating Officer of this agency, I expect that you will always approach new and existing programs with a critical eye for how they can more effectively achieve their missions and more efficiently spend taxpayer dollars. I also expect that you will not hesitate to oppose programs that do not meet your standards of efficacy and efficiency.

As the Department continues to be thrust into the spotlight and entrusted with some of the highest priorities of this Administration, the job of the Deputy Secretary in maintaining high operational standards in a rapidly evolving environment will be difficult. From what I have heard of your integrity and management skills, I believe you are up to this challenge. But this Committee is going to hold you accountable for how you manage these priorities for the Department.

I was pleased to see that you have made a strong written commitment to responding to requests for information from any member of this Committee. So far, however, DHS has done a

very poor job of responding to such requests. Since becoming the Ranking Member of this Committee, I have sent a number of requests for information in order to uphold *my duty* to oversee the agency and its actions. But DHS is failing to uphold *its duty* to respond to those requests. So far, I have outstanding requests about the implementation and details of President Trump's Executive Orders, requests about how the Department is going to respond to GAO reports and recommendations relating to whistleblower protections and the border wall, and even a request for two statutorily mandated cybersecurity reports to Congress that were due over a month ago. In addition, this complete lack of transparency escalated to the point where ICE refused the Committee's invitation to appear at a hearing last week. If you are truly committed to transparency, I hope you will agree with me that this is absolutely unacceptable.

When Secretary Kelly came in front of this Committee for his nomination, he made similar commitments to be responsive to Congress. But as evidenced by my any outstanding requests for information, he has yet to keep his commitment. So today, I'm going to need assurances from you that if you are confirmed as the Deputy Secretary of DHS, you will use your managerial duty in that role to ensure that this crucial aspect of the Department's job is no longer overlooked and that requests for transparency from Congress, and therefore the American people, will be treated with respect.

I thank you for being here today and I look forward to your testimony.



**Statement of the Honorable Elaine Duke  
Before the  
U.S. Senate Homeland Security and Governmental Affairs Committee  
On Her Nomination to Serve as  
Deputy Secretary of the Department of Homeland Security**

**March 8, 2017**

Mr. Chairman, Ranking Member McCaskill, and distinguished Senators of the Committee, thank you for holding this hearing to consider my nomination to become the Deputy Secretary of the U.S. Department of Homeland Security (DHS or the Department). It would be an honor to join Secretary Kelly in leading the men and women of the Department as they execute the mission.

Thank you for the kind introduction Senator Portman. My Midwestern upbringing shaped my values and made me the person I am today. I am proud to call myself a Buckeye.

First, I would like to extend my thanks to President Trump and Secretary Kelly for the great trust they have placed in my abilities to manage the Department's daily operations. I am honored to have been nominated for this position.

I'd also like to thank the former Deputy Secretaries of Homeland Security for their encouragement throughout this process. I draw great strength and inspiration from their support.

I'd like to introduce my family who is here with me today: my husband, Harold; my son Jason; and my youngest sister, Cynthia. I want to thank my husband for supporting me in this decision to leave retirement and answer the call to serve. It is a sacrifice and I am grateful. Also, my son, Brian, who is not here today, has provided encouragement to me throughout this process. Finally, I'd like to recognize my father, Frank Costanzo. He cannot be here physically today, but I know he is cheering me on, just as he was when I interviewed for my first entry level civil service position 35 years ago.

It would be an honor to serve as Secretary Kelly's deputy. I would welcome the privilege of supporting him as he leads the Department, maturing and strengthening its ability to execute critical and complex homeland security missions. When I retired from civil service just shy of seven years ago, I thought I had retired from public service permanently. However, when I received the call, I immediately knew I must say yes.

More than 15 years after 9/11, this country continues to face many challenges in homeland security. There is a continued threat to our homeland, but Americans must be able to go about their daily lives free from fear and secure in the knowledge that they and their loved ones may walk down the street or go to the mall in peace. DHS is key to addressing that threat and ensuring that the homeland is protected.

I served the last eight of my 28 years of public service at DHS. My final position before retiring was the Senate-confirmed Under Secretary for Management. I understand firsthand the challenges of DHS' missions, structure, and complex oversight; the diverse concerns of its many stakeholders; the urgency of the work; and the complexity of running the Department. I also know the Department's employees are the most dedicated and passionate group of civil servants with whom I have ever had the pleasure of working. If confirmed, I pledge to lead them in producing results for our beloved nation.

I am grateful to have this opportunity to further mature the Department and continue improving its efficiency and effectiveness. If confirmed, I promise to lead DHS in enforcing the law with respect and integrity. I will be honest in my assessments and recommendations, and relentless in pursuing excellence. Such commitments are critical at this juncture in homeland security.

I will do everything within my power to preserve our liberty, enforce our laws, and protect our citizens. I recognize the many challenges facing DHS, and if confirmed, I look forward to partnering with you all to protect the homeland.

I fully understand and support the role of the Congress in its oversight and support of the Department. Throughout my career in government, I have always strived to work in a collaborative manner with Members of Congress and their staff. I know this approach is very important to Secretary Kelly and, if confirmed, I will ensure that our Department continues to work closely with you.

Thank you for this opportunity. I am happy to answer any questions you may have.

**REDACTED**

## HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

### 1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Deputy Secretary, U.S. Department of Homeland Security	February 8, 2017

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Elaine	Costanzo	Duke	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			3801 Nebraska Ave, NW		
City: Woodbridge	State: VA	Zip: 22191	City: Washington	State: DC	Zip: 20016

<i>Other Names Used</i>						
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)
Elaine		Costanzo			6/1958 <span style="float: right;">Est <input type="checkbox"/></span>	12/1978 <span style="float: right;">Est <input type="checkbox"/></span>
Elaine	Costanzo	Spangler			6/1978 <span style="float: right;">Est <input type="checkbox"/></span>	5/1984 <span style="float: right;">Est <input type="checkbox"/></span>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1958	Cleveland, OH

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married <input type="checkbox"/>	Married <input checked="" type="checkbox"/>	Separated <input type="checkbox"/>	Annulled <input type="checkbox"/>	Divorced <input type="checkbox"/>	Widowed <input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Harold	Vincent	Hanson	

<i>Spouse's Other Names Used (current spouse only)</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Maiden Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Suffix</b>
Brian	Martin	Duke	
Jason	Allan	Duke	

## 2. Education

List all post-secondary schools attended.

<b><u>Name of School</u></b>	<b><u>Type of School</u></b> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<b><u>Date Began School</u></b> (month/year) (check box if estimate)	<b><u>Date Ended School</u></b> (month/year) (check box if estimate) (check "present" box if still in school)	<b><u>Degree</u></b>	<b><u>Date Awarded</u></b>
Chaminade University of Honolulu	College/University	Est <input type="checkbox"/> Present <input type="checkbox"/> 6/1992	Est <input type="checkbox"/> Present <input type="checkbox"/> 5/1993	MBA	5/1993
New Hampshire College (now Southern New Hampshire University)	College/University	Est <input type="checkbox"/> Present <input type="checkbox"/> 9/1979	Est <input type="checkbox"/> Present <input type="checkbox"/> 12/1981	BS	12/1981
The University of New Hampshire	College/University	Est <input type="checkbox"/> Present <input type="checkbox"/> 6/1980	Est <input type="checkbox"/> Present <input type="checkbox"/> 12/1980		
Tidewater Community College	College/University	Est <input type="checkbox"/> Present <input type="checkbox"/> 12/1978	Est <input type="checkbox"/> Present <input type="checkbox"/> 6/1979		
Kent State University	College/University	Est <input type="checkbox"/> Present <input type="checkbox"/> 9/1976	Est <input type="checkbox"/> Present <input type="checkbox"/> 12/1978		

### 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.

<b>Type of Employment</b> (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	<b>Name of Your Employer/ Assigned Duty Station</b>	<b>Most Recent Position Title/Rank</b>	<b>Location (City and State only)</b>	<b>Date Employment Began</b> (month/year) (check box if estimate)	<b>Date Employment Ended</b> (month/year) (check box if estimate) (check "present" box if still employed)
Limited Term SES, Intermittent Employee	U.S. Department of Homeland Security (DHS)	Senior Advisor	Washington DC	Est Present <input type="checkbox"/> <input type="checkbox"/> 2/13/17	Est Present <input type="checkbox"/> <input checked="" type="checkbox"/>
Self employed	Elaine Duke & Associates LLC.	Principal / Owner	Woodbridge VA	Est Present <input type="checkbox"/> <input type="checkbox"/> 4/2010	Est Present <input type="checkbox"/> <input checked="" type="checkbox"/>
Prior Federal Civil Service; I was a career civil servant from 4/1982 until 2008. I began a GS-7 and ended my federal career appointment as a SES Deputy Under Secretary for Management. At that time I was nominated by President Bush and confirmed as the USM and served as a PAS until 4/2010, when I retired from federal service. I had no break in service during my federal career. I have outlined my positions in DHS below, and attached my full employment record.	US Government, Department of Homeland Security	Under Secretary for Management (USM)	Washington DC	Est <input type="checkbox"/> 4/1982	Est <input type="checkbox"/> 4/2010
PAS	DHS	USM	Washington DC	Est <input type="checkbox"/> 6/2008	Est <input type="checkbox"/> 4/2010
Career Federal Civil Service	DHS	Deputy Under Secretary for Management	Washington DC	Est <input type="checkbox"/> 10/2007	Est <input type="checkbox"/> 6/2008
Career Federal Civil Service	DHS	Chief Procurement Officer	Washington DC	Est <input type="checkbox"/> 1/2006	Est <input type="checkbox"/> 10/2007

Career Federal Civil Service	DHS	Deputy Chief Procurement Officer	Washington DC	10/2004 <sup>Est</sup> <sub>□</sub>	1/2006 <sup>Est</sup> <sub>□</sub>
Federal Civil Service	DHS	Assistant Administrator for Acquisition	Arlington VA	8/2002 <sup>Est</sup> <sub>□</sub>	10/2004 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	Smithsonian Institution	Deputy Director, Office of Contracting	Washington, DC	1/2000 <sup>Est</sup> <sub>□</sub>	8/2002 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	Naval Sea Systems Command (NAVSEA)	Deputy Director; Hull, Mechanical and Electrical Division	Arlington, VA	8/1999 <sup>Est</sup> <sub>□</sub>	1/2000 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	Naval Sea Systems Command (NAVSEA)	Director, Office of Contract Policy and Administrative Services	Arlington, VA	4/1998 <sup>Est</sup> <sub>□</sub>	8/1999 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	Federal Railroad Administration	Director, Office of Acquisition and Grants	Washington, DC	1/1997 <sup>Est</sup> <sub>□</sub>	4/1998 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	USN – Naval Facilities Engineering Command	Head, Business Management Branch	Alexandria, VA	5/1993 <sup>Est</sup> <sub>□</sub>	1/1997 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	USN – Navy Public Works Center Pearl Harbor	Deputy Director, Contracts Department	Aiea, HI	5/1990 <sup>Est</sup> <sub>□</sub>	5/1993 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	USN – Pearl Harbor Naval Shipyard	Head, Purchase Division	Pearl Harbor, HI	2/1990 <sup>Est</sup> <sub>□</sub>	5/1990 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	USN – Navy Public Works Center Pearl Harbor	Director, Maintenance Service Contract Division	Honolulu, HI	7/1987 <sup>Est</sup> <sub>□</sub>	2/1990 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	USAF – Hickam Air Force Base	Contracting Officer	Honolulu, HI	3/1987 <sup>Est</sup> <sub>□</sub>	7/1987 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	USAF – Pacific Air Forces Contracting Center	Chief, Installation Services Administration / Contract	Tachikawa, Japan	8/1984 <sup>Est</sup> <sub>□</sub>	3/1987 <sup>Est</sup> <sub>□</sub>
Career Federal Civil Service	USAF – Charleston Air Force Base	Contract Specialist/ Administrator	Charleston, SC	4/1982 <sup>Est</sup> <sub>□</sub>	8/1984 <sup>Est</sup> <sub>□</sub>

Unemployment	Not Applicable	Not Applicable	Charleston, SC	Est <input type="checkbox"/>	Est <input type="checkbox"/>
				1/1982	4/1982

(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)
DHS Homeland Security Advisory Council	Special Government Employee	1/8/2015 Est <input type="checkbox"/>	2/14/2017 Est <input type="checkbox"/> Present <input type="checkbox"/>

#### 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 Office of Government Ethics and the Department of Homeland Security's Alternate Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's Designated Agency Ethics Official and that 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.

None

#### 5. Honors and Awards

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

Presidential Meritorious Rank Award



DHS Secretary's Medal  
 Transportation Security Administration Silver Medal for Customer Service  
 Department of Army Commander's Award for Public Service  
 U.S. Coast Guard Distinguished Public Service Medal  
 National Contract Management Association – Hub O'Brien Scholarship  
 Naval Facilities Engineering Command Scholarship to the Naval Postgraduate School

## 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).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Western Fairfax Christian Ministries	2010-2015	Board of Directors
Government Technology and Services Coalition (GTSC)	2014-2017	Strategic Advisor
National Defense Industrial Association (NDIA), Washington Chapter Board	2007-2008	Ex-Officio Board Member, resigned when confirmed as the Under Secretary for Management

## 7. Political Activity

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

<u>Name of Office</u>	<u>Elected/Appointed/Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
Under Secretary for Management, U.S. Department of Homeland Security	Nominated by the President, and Confirmed by the Senate	6/2008	Not applicable

(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.

None

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

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

None

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>

## 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.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
Why Acquisition Programs Fail— and What To Do About It	Homeland Security Today	December 2010

(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.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
"Making DHS More Efficient: Industry Recommendations to Improve Homeland Security"	House Committee on Homeland Security	9/18/2015

"Stakeholder Perspectives on Priorities for the Quadrennial Homeland Security Review"	House Committee on Homeland Security	6/20/2014
"The Department of Homeland Security at 10 Years: Better Management and Better Results"	Senate Homeland Security and Governmental Affairs Committee	3/21/2013
"TSA Reform: Exploring Innovations in Technology Procurement to stimulate Job Growth"	House Committee on Homeland Security	9/22/2011
"Homeland Security Headquarters Facilities: St. Elizabeths and Beyond"	House Appropriations Committee	3/25/2010
"Rewarding Bad Actors: Why Do Poor Performing Contractors Continue to Get Government Business?"	House Oversight and Government Reform Committee	3/18/2010
"Homeland Security Department's Major Systems Acquisitions"	House Appropriations Homeland Security Subcommittee	3/2/2010
"Furthering the Mission or Having Fun: Lax Travel Policies Costs DHS Millions"	House Committee on Homeland Security	2/4/2010
"One DHS, One Mission: Efforts to Improve Management Integration at DHS"	Senate Homeland Security and Governmental Affairs Committee	12/15/2009
"Investment Management and Acquisition Challenges at the Department of Homeland Security"	House Oversight and Government Reform Committee	9/15/2009
"Strengthening the Federal Acquisition Workforce: Government-wide Leadership and Initiatives"	Senate Homeland Security and Governmental Affairs Committee	8/5/2009
"Protecting Our Employees: Pandemic Influenza Preparedness and the Federal Workforce"	Senate Homeland Security and Governmental Affairs Committee	6/16/2009
"The FY 2010 Budget for Departmental Management and Operations at DHS"	House Committee on Homeland Security	6/4/2009
"Protecting the Protectors: An Assessment of Front-line Federal Workers in Response to the H1N1 Flu Outbreak"	Senate Homeland Security and Governmental Affairs Committee	5/14/2009
"Keeping the Nation Safe through the Presidential Transition"	Senate Homeland Security and Governmental Affairs Committee	9/18/2008
To consider the nomination of Elaine Duke to be Under Secretary for Management, U.S. Department of Homeland Security	Senate Homeland Security and Governmental Affairs Committee	6/20/2008
"Diversity at DHS: Keeping Pace or Missing the Mark?"	House Committee on Homeland Security	5/21/2008

"Moving Beyond the First Five Years: Solving the Department of Homeland Security's Management Challenges"	House Committee on Homeland Security	4/9/2008
"Nuclear Smuggling Detection: Recent Tests of Advanced Spectroscopic Portal Monitors."	House Committee on Homeland Security	3/5/2008
Is the Department of Homeland Security Too Dependent on Contractors to Do the Government's Work?	Senate Homeland Security and Governmental Affairs Committee	10/17/2007
Playing by Its Own Rules: TSA's Exemption from the Federal Acquisition Regulation, and How It Impacts Partnerships with the Private Sector	House Committee on Homeland Security	8/1/2007
Is the Department of Homeland Security Too Dependent on Contractors to Do the Government's Work?	Senate Homeland Security and Governmental Affairs Committee	10/17/2007
Playing by Its Own Rules: TSA's Exemption from the Federal Acquisition Regulation, and How It Impacts Partnerships with the Private Sector	House Committee on Homeland Security	8/1/2007
Federal Contracting: Do Poor Performers Keep Winning?	House Oversight and Government Reform Committee	7/18/2007
Responsibility in Federal Homeland Security Contracting	House Committee on Homeland Security	4/20/2007
Management of Massive Homeland Security Contracts: Deepwater and SBInet	House Oversight and Government Reform Committee	2/8/2007
"The Secure Border Initiative: Ensuring Effective Implementation and Financial Accountability of SBInet"	House Committee on Homeland Security	11/15/2006
"Helping Business Protect the Homeland: Is DHS Effectively Implementing the SAFETY Act?"	House Committee on Homeland Security	9/13/2006
"Code Yellow: Is the DHS Acquisition Bureaucracy A Formula for Disaster"	House Oversight and Government Reform Committee	7/27/2006
"DHS's Procurement Process Regarding Its Contracts with Shirlington Limousine and Transportation, Inc."	House Committee on Homeland Security	6/15/2006
"Sifting Through Katrina's Legal Debris: Contracting in the Eye of the Storm"	House Oversight and Government Reform Committee	5/4/2006

(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.

Please note that I have no official records of my speeches and presentations, so the information provided is compiled from a search of my personal records, prior submissions to the committee, as well as a review of public information. The speeches and presentations provided in the table were in my official capacity as a federal employee. Principally, my speeches and presentations have been to inform industry and the public regarding issues of interest from DHS. The meetings have been predominately meetings and conferences in the DC metro area. Since leaving federal service, I have not given any formal speeches. I have done a few radio interviews. See <http://federalnewsradio.com/tag/elaine-duke/>.

Title	Place/Audience	Date(s) of Speech
Government Contract Management Conference	National Contract Management Association; Bethesda North Marriott Hotel and Conference Center, Bethesda MD.	November 8, 2007
DHS Industry Day	DHS potential vendors; Ronald Regan Bldg. Washington DC	November 7, 2007
National Contract Management Association	September 2007 chapter meeting; O'Donnell's of Kentlands, Gaithersburg MD	September 20, 2007
Acquisition Management	Government Advisory Panel for the Acquisition Management Shared Interest Group (SIG); City Club of Washington, Washington DC	September 7, 2007
National Contract Management Association (NCMA)	NCMA Local Meeting; Tyson Corner, McLean VA	April 25, 2007
Equity International Conference Presentation on DHS procurement procedures and priorities	General Public; National Press Club, Washington DC	March 13, 2007
First Annual VIP Awards Reception for Government and Industry	American Small Business Coalition, Washington DC	March 22, 2007
Executive Roundtable	Homeland Security and Defense Business Council; Army-Navy Club, Washington DC.	January 17, 2007

## 9. Criminal History

Since (and including) your 18<sup>th</sup> 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?  
NO
- Have you been charged, convicted, or sentenced of a crime in any court? NO
- Have you been or are you currently on probation or parole? NO
- Are you currently on trial or awaiting a trial on criminal charges? NO
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?  
NO

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

A) Date of offense:

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

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
- 2) Firearms or explosives: Yes / No
- 3) Alcohol or drugs: Yes / No

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

E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No

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

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

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

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

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

3) If no, provide explanation:

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

H) Provide a description of the sentence:

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

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

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

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

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

N) Provide explanation:

### 10. Civil Litigation and Administrative or Legislative Proceedings

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

None

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

(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.

None

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

(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.

### 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.



NO

<u>Name of Agency/Association/ Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

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

NO.

#### 12. Tax Compliance

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

**REDACTED**

**REDACTED**

### 13. Lobbying

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

NO

### 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)

### 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.

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

### 16. Additional Financial Data

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

**REDACTED**

**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.**

A handwritten signature in black ink, consisting of stylized, cursive letters, is written over a horizontal line.

This 22 day of Feb, 20 17

**REDACTED**UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

March 1, 2017

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 Elaine C. Duke, who has been nominated by President Trump for the position of Deputy 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,  
WALTER  
SHAUB

Walter M. Shaub, Jr.  
Director

Digitally signed by WALTER SHAUB  
DN: c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=WALTER SHAUB,  
0922311.10200100.1.1+545E9E56A25  
Date: 2017.03.01 14:34:45 -0500

Enclosures **REDACTED**

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March 1, 2017

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

Dear Mr. Maher:

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

As required by 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 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 officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I am the principal and owner of my consulting limited liability corporation, which does business as Elaine Duke and Associates, LLC (the "LLC"). Upon confirmation, the LLC will cease engaging in any business. During my appointment to the position of Deputy Secretary, the LLC will remain dormant and will not advertise. I will not perform any services for the LLC, except that I will comply with any requirements involving legal filings, taxes and fees that are necessary to maintain the LLC while it is in an inactive status. As Deputy Secretary, 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 my LLC. All amounts owed to me by any of my clients will be fixed before I assume the duties of the position of Deputy Secretary, and I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of any of these clients to pay these amounts. In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Upon confirmation, I will resign from my position with Anser. I have already resigned from my positions with the Government Technology and Services Coalition in January 2017 and the Homeland Security Studies & Analysis Institute in October 2016. For a period of one year

after my resignation from each of these entities, I will not participate personally and substantially in any particular matter involving specific parties in which I know that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

My spouse serves as a Director for Tridentis. He does not hold stock, stock options, or restricted stock in Tridentis. For as long as my spouse continues to provide services to Tridentis, I will not participate personally and substantially in any particular matter involving specific parties in which I know that Tridentis is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

My spouse also serves as a Director for Vista Technology Services, Inc. He owns stock options in Vista Technology Services, Inc. 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 Vista Technology Services, Inc., unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

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 exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I will meet in person with you during the first week of my service in the position of Deputy Secretary in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13,770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

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

Sincerely,



Elaine Costanzo Duke

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of the Honorable Elaine Duke to be  
Deputy Secretary, Department of Homeland Security**

**I. Nomination Process and Conflicts of Interest**

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

**I have not had a conversation with the President. I had a conversation with Secretary Kelly and he indicated he needed the experience, leadership and knowledge of Department of Homeland Security (DHS) operations that I possess as his Deputy. He wants the Deputy to perform as a Chief Operating Officer (COO) and based his decision that I can do that given my experience and recommendations from persons within and outside DHS.**

2. Were any conditions, expressed or implied, attached to your proposed 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 Deputy Secretary? If so, what are they, and to whom were the commitments made?

**I committed to Secretary Kelly that I will lead with integrity, treat all with respect, and perform as a public servant, considering the best interests of the people of the United States in all decisions.**

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.

**I have worked closely with the Department's Ethics advisor during the nomination process. There are potentially three recusals that would be placed in my Ethics Pledge, and I have been advised that only one may affect my work on one particular matter. If that is the case, I will have controls in place to ensure I do not receive any communication or material on the matter.**

**II. Background of the Nominee**



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

**The depth and breadth of my background and experience qualify me to be Deputy Secretary. I spent 26 years as a career federal employee. During my tenure, I came to fully realize the complexities of the federal system and most importantly, I have gained the needed insight and experience with DHS to help accomplish its mission. During that time, I have most importantly, learned how to comply and follow the regulations and statutes to deliver mission capability effectively. I have effectively managed risk and balanced mission needs with fiduciary responsibility to get results. In my years as a political appointee, I gained an even better understanding of the importance for career and political appointees to operate cohesively, each group valuing what the other brings to the table. In addition, the value of good relations and respect for DHS's congressional committees, oversight bodies, the press, and most importantly credibility with the American people.**

6. Please describe:

- a. Your leadership and management style.

**I am an empowering leader and manager. I develop an environment where individuals and teams own their work, and I hold them accountable for results. I provide an environment that rewards effective innovation, especially from the persons performing the work. I thrive on open communications both ways. I ensure that my direction is clear while allowing for individual creativity and improvements. Similarly, I am open to ideas and feedback from employees, including advice and counsel. I can and will make decisions; however, I encourage participation throughout the decision making process and as implementation occurs.**

**I am also passionate about growing employees, providing assignments that are preparing them for the next position. I value diversity, and diversity of experience and try to provide a career path for all employees that is continually rewarding and challenging.**

- b. Your experience managing personnel.

**I have managed from a few employees to thousands of personnel that impacted the entire Department. I have been a federal manager since my early years of federal service. I have led both civilian and military personnel at a local and national level. In managing personnel, I both lead and manage. To me, leading is the primary contributor to empowering, encouraging, and challenging employees, while managing is reinforcing and ensuring performance plans are accurate and in place, and metrics are met. It is also essential that employees receive the training necessary for their job.**

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

As Under Secretary for Management at DHS, I had approximately 2,000 people working under my leadership. This number includes employees in the offices of the Office of the Chief Information Officer, Chief Procurement Officer, Chief Security Officer, Chief Financial Officer, Program Accountability and Risk Management (PARM) Chief Administrative Officer, and Chief Human Capital Officer.

7. Please provide the dates of your service at the Department during the Bush to Obama administrations.

I started with Transportation Security Administration (TSA) in August of 2002, and became a member of the Department when TSA transferred from Department of Transportation in 2003. I then served in career positions at the Department as the Deputy Chief Procurement Officer, Chief Procurement Officer, and Deputy Under Secretary for Management until I confirmed as the Under Secretary for Management (USM) in June of 2008. I served as the USM until April of 2010.

- a. President Obama and Secretary Napolitano chose to have you remain in your position at DHS when they entered office in 2009. Why do you believe you were asked to stay?

I believe I was asked to stay for two reasons. First, I believe the President and Secretary Napolitano recognized the necessity for continuity in the position of USM, especially as there was no career deputy at that time. The USM serves as the Executive Lead for Transition and Chief Management Office for the Department, and a vacancy would have been detrimental to the Department's operations. Second, I have a track record for putting the good of the country first, aside from politics. As both a career employee and political appointee I have executed my responsibilities in a nonpartisan manner, focusing on implementing policies effectively and efficiently. I know the Department's mission and its business operations, and I performed my duties in a way that enhanced the Department's ability to fulfill its critical missions. Further, I have interagency experience and can reach across the executive branch to accomplish Department objectives. I respect both the House and Senate as well as other oversight bodies including the Government Accountability Office (GAO) and the Office of the Inspector General (OIG). In my opinion, it was for these reasons that I was asked to stay with the New Administration in 2009.

- b. What lessons did you learn from experiencing the Department transition to a new administration that you could bring to the role of Deputy Secretary?

I expanded my knowledge on the importance and diversity of positions, the importance of open and honest discussions, and the need to communicate decisions to stakeholders. I also learned that the components each have expertise in certain areas, and not just in their mission areas. I saw all components coming together to ensure the homeland was safe during the transition, and how well they worked together. If confirmed I would use this to improve jointness and collaboration during routine operations. Additionally, my experience with leading employees through challenges increased. I have a stronger

understanding of employees' desire to have meaningful work, be trusted and included as appropriate in the decision making process surrounding their work.

### III. Role of the Deputy Secretary of DHS

8. Please describe your understanding of the role and responsibilities of the Deputy Secretary of DHS, including how you view the role in relation to the Secretary?

**The Deputy Secretary is the Chief Operating Officer for the Department which necessitates a close working relationship with the Secretary. I understand the role of the Deputy Secretary is to lead the men and women of DHS in daily executing the critical and complex mission set of the Department. This leadership must consider the short term, immediate needs, as well as the long-term health and welfare of DHS employees and the nation.**

9. If confirmed, what are the highest priority items you intend to focus on? What do you hope to accomplish during your tenure as Deputy Secretary?

**There are many high priority items in DHS and if confirmed as Deputy Secretary, I believe it is important for me to not only focus on the high priority items, but those more routine also. I have learned that only focusing on urgent, priorities stifles maturation and growth in the organization. Regarding high priority however, some I would expect to work on include cyber, critical infrastructure, TSA reinvention, border security, immigration, acquisition, staffing, retention, and morale, and unity of effort.**

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

**If confirmed, I would start driving better cohesion and cooperation among all DHS components from the top. I would maintain the regular and topical meetings with component heads to address matters but also to build an esprit de corps; and, a team that not only considers individual silos, but the good of the whole. I would also include the mission support organizations so they can develop better synergy and consistency. I would continue unity of effort actions to mature operator driven requirements, risk based capabilities, joint requirements, and resource allocation tied to priorities. I understand operations and business, as well as opportunities for joint operations and back office functions.**

### Mutual respect, clarification of responsibilities

11. As you advise the Secretary, what qualities will you look for in recommending people for DHS's other leadership positions?

**If I am confirmed, I will advise the Secretary to look for people who are committed, focused, and with the right skill and abilities to perform their roles in DHS. These**

individuals must understand that they are public servants and that they will be held accountable as individuals as well as team members to the Secretary, myself, and the American people. The commitment must also encompass respect and compassion as necessary in all their dealings. The focus is on the mission, and that DHS must continually find ways to adapt to the evolving threats, find efficiency in operations and management, and deliver results. The skills and abilities are their present technical and leadership skills, and predicted ability to grow even stronger in those skills and abilities.

#### IV. Policy Questions

##### *The Quadrennial Homeland Security Review and DHS's Missions*

12. The Homeland Security Act (HSA) requires the Department to produce, every four years, a Quadrennial Homeland Security Review (QHSR). Please share your overall assessment of the 2014 QHSR and to what extent, and the reasons why, you agree or disagree with its stated assumptions, missions, goals, and recommendations.

**The 2014 QHSR is a sound document. It presents the mission sets of DHS and in a comprehensive and logical way as the Department saw the world at that time. I believe that the 2018 QHSR must be based on a more mature, rigorous study and analysis that supports the national homeland security strategy, guides a more precise alignment of resources to the strategy, and an updated look at the threats and risks facing our nation. If confirmed, I commit to leading DHS in achieving this for the 2018 QHSR.**

##### *Mission 1—Prevent Terrorism and Enhance Security*

13. According to the QHSR, the Department's first mission is to prevent terrorism and enhance security. Please describe:

- a. The Deputy Secretary's role in ensuring that the Department executes this mission.

**The Deputy Secretary is the Chief Operating Officer for the Department and should I be confirmed my role would be to ensure that necessary resources (human, financial, systems) are obtained and applied in the most effective and efficient way to deliver that mission. My role also would also be to participate in developing policy and coordination, as a member of the interagency Deputies Committee, to enhance our ability to prevent terrorism and enhance security. I would work within the executive branch and across DHS's oversight bodies to build relations, develop and address commonalities and touchpoints, and align resources for successful mission execution.**

- b. Operational or management challenges that the Department faces in executing this mission.

**I believe the most significant operational challenge facing DHS in executing its mission is matching the speed and nimbleness of the terrorist and the rapid evolution of threats**

facing our nation's security; while being responsible stewards of the trust and resources given to the Department.

- c. What actions, if any, you recommend to improve DHS's operations to achieve this mission.

**I would recommend two initial actions to improve DHS's operations. First, DHS must find ways to align its business processes better to the mission. This includes analyzing risk continually and appropriately for the situation. Then finding ways to shorten schedule and reduce cost in major areas such as procurement, acquisition, deploying information technology systems, and staffing. Second, I would recommend DHS continue working toward appropriate jointness in mission and business, prioritizing using a threat/risk based approach. Joint operations will deliver homeland more securely, and can be done in a way that respect the individual mission and operations of each component, but deliver those in a way that provides a more cohesive mission system; rather than discrete, unconnected, and potentially duplicative or inefficient mission delivery.**

- d. How you will approach balancing the need to protect the homeland while at the same time protecting individuals' privacy, civil rights, and civil liberties?

**If confirmed, I will balance the need to protect the homeland while at the same time protecting individuals' privacy, civil rights, and civil liberties by following the law. I will make the Office of Civil Rights and Civil Liberties and Office of Privacy key members of decision teams so these areas are appropriately considered in context of the law and situation.**

*Mission 2—Secure and Manage Our Borders*

14. Please describe your understanding of DHS's capability to achieve the three goals identified in the 2014 QHSR for the mission to secure and manage our borders.

**I consider securing and managing our borders of paramount importance, and if confirmed, will assess the current capabilities and resources to perform this mission.**

15. Please describe the operational and management challenges facing the Department's mission to secure and manage our borders.

**The operational challenge facing the Department is to develop the best layered defense of personnel, policy, international relations, and the physical and technological infrastructure to secure and manage our borders. The management challenge is delivering the resource and efficient processes to meet the operational challenge. This includes hiring and retaining the right personnel for border security, and the appropriating funding.**

16. At this point, what actions do you recommend the Department take to improve border security?

**If confirmed, I will work with Department leadership to analyze the current state of our border security using the recently enacted and to be developed border metrics. I do not have current knowledge of the state of border security.**

*Mission 3—Enforce and Administer Our Immigration Laws*

17. Please describe your understanding of DHS's capability to achieve the goals identified in the 2014 QHSR for the mission to enforce and administer our immigration laws.

**If confirmed, I will assess the current capabilities and resources to perform this mission. I understand the necessity and complexity of enforcing and administering our immigration laws and will make reviewing DHS's capability to meet the mission a priority.**

18. How would you work to improve cooperation and coordination between DHS components responsible for administering immigration benefits and enforcing immigration laws?

**If confirmed, I would use the Deputies Management Action Group (DMAG) or a similar forum to develop mission cooperation and coordination. I would ensure that the DMAG members represented not only their individual component, but understood their role in making the mission set operate more effectively. I think that this culture could be supported in key ways, including (1) resource allocation and management (2) managing the SES corps more effectively and developing a rotation plan for Departmental personnel.**

19. What is your understanding of the challenges facing DHS and the State Department in visa security? How would you recommend addressing those challenges?

**Should I be confirmed, I will look into the challenges facing DHS and the State Department in visa security, including a full review of current processes. My understanding is that a key challenge facing DHS and State Department are the lack of control of exit, and therefore a significant number of persons that overstay their visa. I believe exit and case management are potential methods of addressing some of the challenges, part of a multilayered approach to visa security.**

*Mission 4—Safeguard and Secure Cyberspace*

20. Please describe your understanding of DHS's capability to achieve the four goals identified in the 2014 QHSR for the mission to safeguard and secure cyberspace.

**If confirmed, I will assess the current capabilities and resources to perform this mission, as well as the effectiveness of the goals in the current cyber environment.**

21. Please describe your understanding of the Department's responsibilities for cybersecurity.

**My understanding is that DHS has responsibilities for securing of its own systems and the .gov systems by working with other cabinet departments and agencies. DHS also shares cyber threat information with the private sector. If confirmed, I will develop a complete understanding of the Department's roles and responsibilities and cybersecurity.**

- a. Do you have recommendations for how to improve the operational performance of the Department's cybersecurity assets and programs?

**If confirmed, I will assess the Department's cyber assets and programs and their ability to meet the cyber mission set.**

22. The DHS Inspector General has identified challenges that the Department's own components and offices have faced in complying with federal information security policies. Do you have recommendations for how the Department's components, offices, and workforce comply with federal cybersecurity laws and practices?

**In general, my experience is that the IG's assessments and challenges are valid in identifying ways to improve the Department. I am not familiar with the recent specific recommendations of the DHS Inspector General (IG), however I will obtain them if confirmed and assess progress and action plans. As with all IG reports, I will track progress against recommendations.**

23. 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?

**I believe it is important for the role of DHS to be strong and clear, and that it must fulfill its roles and responsibilities fully in cooperation with other agencies, industry, and other key stakeholders. If confirmed, I will utilize existing authorities to continue working with other federal government agencies and key partners to obtain a complete understanding of the DHS cyber role.**

*Mission 5—Strengthen National Preparedness and Resilience*

24. Please describe your understanding of DHS's capability to achieve the four goals identified in the 2014 QHSR for the mission to strengthen national preparedness and resilience.

**If confirmed, I will assess the Department's capability to achieve strengthening national preparedness and resilience. We must reduce the vulnerability of our nation by promoting awareness, mitigating existing risk, and ensuring we have an effective response and ability to recover from those risks that cannot be mitigated.**

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

**I understand that much work has been done to improve preparedness at the individual, community, first responder, regional, state, and federal levels. I also understand that additional work must be done to further bolster preparedness at all levels. If confirmed I will review the programs and priorities and work with FEMA to reaffirm a persistent, effective, and comprehensive view of preparedness.**

26. Based on your past work at DHS, are you aware of operational challenges that FEMA faces in executing its responsibilities? If so, please describe them. What actions would you recommend to improve FEMA's operational performance?

**Based on my past work at DHS, one of the operational challenges FEMA faced was balancing planning with other mission needs. Its response and recovery was more mature at that time. If confirmed, I would assess the current planning, including supporting business functions (contingency workforce, contracts, systems) to help prepare for future response and recovery operations. Additionally, oversight of grants was a challenge. This is critically important to FEMA since every grant dollar should be appropriately expended to further the prevention, preparedness, readiness and resilience of our jurisdictions. Proper award and administration of FEMA's grant programs is critical to successful operational performance. I would work with FEMA leadership to ensure that the appropriate balance of roles and responsibilities between the regions and headquarters has been achieved.**

***Management, Accountability, and Oversight***

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

**I believe the Deputy Secretary should play a lead role addressing the GAO High Risk List. If confirmed, as the Secretary's Chief Operating Officer I would play a strong leadership role, with the Under Secretary for Management, in managing and reducing the risk areas.**

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

**I believe one of the most important actions the Department should take to strengthen overall management is to continue to mature the "unity of effort" initiative. The unity of effort is not just management, it sets the platform to launch the joint operations necessary for the Department's future. This includes strengthening strategy and policy, planning, requirements, budget and resources, acquisition, as well as operations and logistics. These factors should not only be reinforced individually but also fortified as a whole, with consistent priorities and objectives.**



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

**Should I be confirmed, I believe DHS should have a strong “grass roots” program that allows its employees to identify duplication and waste, and a culture that makes leaders accountable for eliminating duplication and waste – and that includes clearing the way for employees to do the right thing.**

30. 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?

**If confirmed, I will without reservation. I support this request and consider it important to DHS.**

31. DHS received clean audit opinions on its financial statements in 2013, 2014, and 2015. However, there are material weaknesses in DHS’s internal controls over financial reporting. What steps would you take as Deputy Secretary to address these material weaknesses?

**If confirmed, I would first ensure that the plans to eliminate the material weaknesses are sound and will lead to the necessary correction. Secondly, I would keep the leadership focused on following through with actions that meet the objective.**

32. 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?

**I believe that the move to the DHS common appropriations structure is a step toward to assist in the modernization and integration of the financial system. While it does not integrate the systems, it does take a first step toward standardization, setting a base for future integration. I understand the modernization must be efficiently done, and shared services is one potential avenue of efficiency.**

33. Please describe how you will work with the Government Accountability Office and the DHS Inspector General to address open recommendations and improve the Department’s performance.

**If confirmed, I would work with GAO and the IG proactively. I would have regular conversations with those groups, not just in reaction to a report. I believe that, in conjunction with the reports and recommendations, will serve to improve the Department’s performance more quickly and completely. Regarding open recommendations, I would make sure I have visibility into key information including (1) trends – where similar findings and recommendations are being found across**

**programs and multiple years in one program (2) priorities – areas critical to mission success (3) timeliness – of both the responses and corrections (4) validity of response – does the response correct the issue.**

34. Protecting whistleblower confidentiality is of the utmost importance to this Committee:

- a. In your career, how have you addressed whistleblower complaints? What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

**I have always addressed whistleblower complaints per the law, following through to ensure the individuals did not face retaliation and the claims were thoroughly investigated. Should I be confirmed I will continue to do so.**

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

**This is so important to DHS because it will improve employee morale, but more importantly will lead to improved operations. If confirmed, I will drive a culture that includes the action officers, such as program managers, to present at decision meetings, not just the most senior leadership. I will ensure there are avenues for suggestions, such as the Idea Factory, and that the suggestions get attention. I will strongly support the Whistleblower Act and act on any credible allegation of reprisal.**

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

**Should I be confirmed, I will without reservation.**

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

**Should I be confirmed, I will without reservation.**

#### **V. Relations with Congress**

35. 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?

**Should I be confirmed, I will work cooperatively with the Chairs and Members of the committees that have jurisdiction over the Department's activities, and appear before those committees in a manner consistent with applicable law.**

36. 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?

**Should I be confirmed, I make subordinate officials and employees available to appear and testify before committees that have jurisdiction over the Department's activities, in a manner that is consistent with applicable law.**

37. 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?

**Should I be confirmed, I work cooperative with the Chairs and Members of the committees that have jurisdiction over the Department's activities, and comply with the requests for documents, communications, or other agency materials from those committees, in a manner consistent with applicable law.**

**VI. Assistance**

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

**I have written and approved all edits to the responses in this document.**

**Minority  
Supplemental Pre-hearing Questionnaire  
For the Nomination of the Honorable Elaine Duke to be  
Deputy Secretary, Department of Homeland Security**

**I. Nomination Process and Conflicts of Interest**

1. Please provide a list of any federal contracts you consulted on or were awarded directly, since you left your previous position at the Department. Please include the contractor name, agency, contract number, contract value and short description of the requirement.

Contractor Name	Agency	Contract Number	Contract Value	Description of the Requirement
Isolations, LLC	NOAA	Subcontract; Prime Contract Number Unknown	Not to Exceed \$82,500	Provide an assessment of NOAA Acquisition & Grants Office (AGO) and executive coaching to specific AGO personnel
Elaine Duke & Associates, LLC	TSA	HST05-16-P-ACQ019	\$16,000	Analysis of framework and tactical details for realignment
Willcor, Inc	DTRA	Subcontract to Willcor, under contract with Defense Acquisition University	\$42,000	Provide an assessment of the DTRA acquisition and contracting processes and recommendations for improvement
Willcor, Inc	TSA	Subcontract to Willcor, under contract with Defense Acquisition University	\$38,000	Provide an assessment of the TSA acquisition function and recommendation for improvements
Willcor, Inc	CBP	Subcontract to Willcor/Paul Schneider under contract with Defense Acquisition University	\$42,000	Provide a review of the acquisition and requirements processes of CBP, and recommendations on realignment and improvements
Homeland Security Studies and Analysis (FFRDC)	DHS	Various tasks under the FFRDC contract	\$7,000-\$12,000/year from 2011-2016	Distinguished Visiting Fellow
Booz Allen Hamilton	DHS	Subcontract	\$21,700	Providing oral debriefing training and facilitation

Paul Schneider	USCG	Subcontract	\$21,000	Provide strategy and communications plan for key major asset plans
Booz Allen Hamilton	USCG	Subcontract	\$21,000	Provide request for proposal red team review

2. On what date did you submit your financial disclosure report to the Office of Government Ethics?

**I submitted my final financial disclosure report to Office of Government Ethics on February 23, 2017.**

## **II. Background of the Nominee**

3. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

**I believe that constructive critical dialogue, including dissenting views, are essential for good decision making and leadership. As I grew in my career, I learned that the complexity and diversity of stakeholder positions and views, as well as the impact and scope of decisions also grew. It is critically important to me and DHS, and our decisions to have dialogue in the decision-making process to consider all facets and positions before the final decision. Those coming from subordinates are often the most valuable. They often have the first hand, current, and practical knowledge to providing key input to the process. I seek these views by including persons from various levels of the organization in the decision meetings and process. Also, I invite feedback on the impact of policy so it can be made better in the future, easier to comply with and execute.**

4. If confirmed, what experiences and lessons learned since leaving DHS will you bring to the position of Deputy Secretary?

**I was in industry for the first time when I left DHS. That experience gave me better insight into industry, how it operates and what makes it most efficient and effective. That insight will help me within DHS. Additionally, I learned a lot more about people during my retirement period. I mentored many young persons, I did crafts with aged, and I taught civics to minorities going through the naturalization process. This more causal, relaxed interaction reminded me of the importance of being a good leader and person, and that each person has his or her own dignity. I believe this expanded my passion for the homeland security mission to a more complete passion for the others that serve, and for those whom they provide services to.**

5. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Give us a few examples of when you were successful and when you were not.

One example of when I aggressively disagreed with my superiors was the construction of the TSA Transportation Security Operations Center. This was build out of a rented space. The disagreement was about the mission essential requirements and stated needs of the end customer in terms of schedule, amount of space, and finishes. The end customer was stating needs not tied to mission services and in excess of what normally would be considered in a federal space. The way I handled this was to approve/disapprove requirements based on sound fiscal principles. If the end customer did not agree, the deputy administrator could approve additional requirements. I did this in a collegial way, not alienating the customer but explaining the importance of the checks and balances with these large expenditures. In this case, the predominance of decisions stood as I initially decided, and when additional requirements were approved, we acted on them immediately and to the satisfaction of the customer. This was a partial success because additional controls were put in place, and partially not a success because some enhancement I think weren't appropriate were made.

An example of success was at the change of Administration. Due to a miscommunication, there were two individuals that were promised the then political Chief Human Capital Officer position. Instead of deciding to select one, the incoming leadership decided to create a new Assistant Secretary for Acquisition and Human Capital under the Under Secretary for Management (USM); the position I was encumbering. I argued against this for two major reasons. First, the individual targeted for the position was not qualified. At a critical time in DHS' acquisition, this person had no acquisition experience either in government or private sector. Second, of the six functions under the USM, separating those two would inhibit the ability to make progress in management integration. My arguments convinced the new leadership that the position should not be created.

Another example of success was during the SBINet program. The leadership wanted the large prime contractor to be a true systems integrator, including all services, construction and material. However, the cost of overhead and profit on certain segments of the program were high, and it did not make sense to flow everything, including steel purchasing through the prime contractor. Though the separate contract model was against the original acquisition strategy, I convinced the leadership it was best due to the economics.

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

An example of a difficult choice I made was during the start of the H1N1 potential pandemic. DHS personnel, mostly CBP and TSA, desired to wear personal protective equipment (PPE) to protect them from possible infection. At the time HHS CDC did not prescribe PPE for H1N1. I tried to get clear guidance on the medical indication for

the use of PPE for this virus, but the medical evidence was inconclusive. Additionally, there was a concern that the wearing of PPE by DHS personnel would inhibit travel and drive the United States further into recession. The decision based on the CDC's permissive but not deemed medically advisable position made PPE "discretionary" and in violation of uniform policy. So, for about a week DHS personnel were prohibited from wearing PPE until CDC firmed up its position. Only then we could issue PPE to DHS personnel.

7. What would you consider your greatest successes as a leader?

I believe this nomination process alerted me to one of my greatest successes as a leader. That is the positive response I received from career employees across government. Most of the congratulatory email I received were from career employees. I believe this is evidence that I execute my duties in the best interest of the homeland, include employees aggressively, and am politically astute without being overly political. Operationally, my greatest success as a leader is getting DHS to move from procurement to acquisition. At the start up, DHS had only procurement, which are the contracting officers that make the business deals/contracts. There were no program managers for the requirements, cost estimates, etc. In fact, only 2% of major contracts had a program manager. When I left DHS, over 90% of major programs were run by certified program managers, there was a thriving intern program, and DHS was building the other acquisition related career fields.

### III. Policy Questions

#### *The Quadrennial Homeland Security Review and DHS's Missions*

8. In addition to providing federal leadership with respect to homeland security, DHS plays a large role in coordinating the activities of other federal, state, local, private sector, and international stakeholders, but has faced challenges in this regard. GAO and others have reported that the appropriate homeland security roles and responsibilities within and between the levels of government and the private sector are evolving and need to be clarified.
- a. What are your plans to strengthen DHS's coordination efforts and partnerships?
  - b. What would be your plan for reaching out to other agencies or organizations to partner with them on the development and implementation of homeland security programs?
  - c. What are some specific ways in which DHS could work collaboratively with other federal or nonfederal organizations to improve performance outcomes?
- a. If confirmed, I would review the GAO and other reports to gain a complete understanding of their recommendations. I would also consult with persons in operations that played a leadership role in coordinating federal activities to get input from their experiences. From that, I would work with the interagency to clarify the roles responsibilities, see if changes to the National Response Framework or other planning documents are warranted. I would recommend to the Secretary that he use

the Private Sector Office or Homeland Security Advisory Council to determine how private sector partnerships could be further developed.

**b. If confirmed I would actively develop relationship with other agencies. In addition to any guidance documents, I believe relationships are key to successful interagency partnerships. I would actively participate with Homeland Security Council, the OMB Management Council or similar established groups. Additionally, I would reach out to my peers at other agencies directly. Finally, I would encourage DHS personnel to build relations with their peers, so they are established at multiple levels with partner agencies.**

**c. I believe that DHS could work more collaboratively by establishing the multi-level relationships I discussed. Also, planning exercises involved multilevel personnel would be helpful in furthering cooperation and understanding each other's role and interconnectivity in homeland security.**

9. As you know, DHS has not had re-authorization legislation in some time. 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 the new administration's objectives? If so, please explain to us what those are.

**I believe that a reauthorization would help DHS. The reauthorization would be especially helpful if it would further streamline the legislative jurisdiction of the various congressional committees over DHS. If confirmed, I would review other proposed legislative changes and work with the Committee on any changes.**

*Mission 2—Secure and Manage Our Borders*

10. GAO and others have reported on the need for better data and metrics to assess the effectiveness of various border security investments, including infrastructure and technology. What goals and measures would you propose for assessing efforts and investments to secure U.S. borders?

**Securing the border is a critical priority. I believe metrics are necessary for both the efforts and results of border security measures. Metrics for the efforts could include performance of the acquisition programs against cost, schedule, and performance standards. Also, performance against operational and developmental testing plans. Metrics for the results are more difficult. I understand that the NDAA has a requirement for DHS to develop metrics in the next quarter. If confirmed I would review the proposal for efficacy before submission to Congress.**



11. Secretary Kelly has stated that his definition of a “secure border” means that “we have complete operational control of, and have knowledge of, the vast majority of who and what enters our country”.
  - a. What does operational control of the border mean to you?
  - b. What metrics would you use to assess whether DHS has operational control of the border?

**a I agree with Secretary Kelly. The border patrol needs situational awareness and the tools to apprehend illegal entry for operational effectiveness. It also needs technology and other measure to deter illegal entry, and to classify/identify detected movement to avoid wasting time pursuing nonthreats.**

**b. I understand that the NDAA has a requirement for DHS to develop metrics in the next quarter. Ideally metrics would include not only changes in apprehension, the result, but those that indicate if the technology is helping border patrol in the areas identified above. For example, are there less “false alarms,” are intrusions being identified more quickly and closer to the point of intrusion.**

12. What additional steps would Customs and Border Protection (CBP) and the Border Patrol need to take in order to achieve complete operational control of the border?

**The steps needed to be taken for the border patrol to gain operational control of the border would be a priority for me if confirmed. I would ask CBP, informed by border patrol, to conduct an analysis of alternatives for additional personnel, technology, and infrastructure. This analysis would include resources and effect on threat, and alternatives would comply with existing legislation and executive orders.**

13. Is it possible to end all unauthorized entries into our country? Why or why not?
  - a. If you believe it is possible, what manpower and technology capabilities would be required to achieve such an outcome?
  - b. The 2016 CBP budget is \$13.6 billion. How much additional money would CBP need in order to accomplish Secretary Kelly’s goal of complete operational control of the border?

**It may be possible to end all illegal entries to the United States, however I question whether that goal is the best for the country. I believe it is important to spend each incremental dollar on countering the most significant threat.**

**a. To determine if preventing 100% of illegal entry into the United States is advisable, I would recommend a study of the threats and counter threat measures, their effectiveness and cost, and make informed decisions about the balance of security measures to best address the threats of illegal entry, drug trafficking, other criminal activity, and terrorism.**

**b. If confirmed I would lead a review of the costs of operational control.**

14. GAO and others have identified significant challenges in DHS's planning for the deployment of technology along our borders. In January 2011, in response to performance, cost, and schedule concerns, DHS canceled the former SBInet program. DHS is now moving forward with a plan for deploying technology along the Arizona border and other locations across the southwest border. However, GAO has identified concerns regarding this plan, including that the Department has not documented the analysis justifying the plan or developed a reliable cost estimate for the plan.
- d. Moving forward, what steps do you feel are necessary to ensure that the effectiveness of technologies deployed under the new plan merit the substantial investment?
  - e. What do you believe to be the proper mix of personnel, technology, and physical infrastructure for securing our borders?

**d. I believe that not continuing forward with the SBInet program after the first increment of coverage is evidence that the acquisition system was working. That segment of technology is still operational today, but the decision was made to not continue that solution in additional segments. The current program is structured to allow incremental design and installation of future technology based on the specifics of each segment. I believe it is important to have accurate cost estimates and performance metrics, and if confirmed will have strong acquisition oversight through the Chief Acquisition Officer to make sure this is done before funds are obligated.**

**e. I cannot predict that at this time, however if confirmed the acquisition reviews would analyze the options and determine the optimum mix.**

***Mission 3—Enforce and Administer Our Immigration Laws***

15. Section 287(g) of the Immigration and Nationality Act gives ICE the authority to train and delegate immigration enforcement to state and local law enforcement officers in local jurisdictions. The 287(g) program is meant to supplement ICE's limited resources and improve the agency's ability to identify unauthorized criminal aliens. More than 1,600 officers have been trained and certified to participate in the program via 32 active Memoranda of Agreement in 16 states. The program is currently restricted to a jail model after previous task force models were discontinued.
- a. What was your view of the 287(g) program during your prior tenure at the Department?
  - b. Given concerns expressed in a 2009 GAO report, how might the Department ensure that 287(g) agreements serve the Department's enforcement priorities, and that the Department provides adequate oversight of the program?
- a. My involvement with the 287(g) program in my prior tenure at DHS was indirect. However, I believe that partnership between federal and state & local law**

**enforcement benefit the country in terms of effectiveness of law enforcement and efficiency in carrying out law enforcement.**

- b. If confirmed, I will assess the progress made against the recommendations in the 2009 GAO report to make sure they have been implemented to serve the Department's priorities and have the appropriate oversight.**

16. On January 27, 2017, President Trump issued an Executive Order restricting travelers from Libya, Sudan, Syria, Iraq, Iran, Yemen, and Somalia from entering the United States.
  - a. Do you believe that DHS's mission to protect the homeland is aided by barring legal visa-holders and U.S. permanent residents traveling from these countries from entering the United States?
  - b. Are there aspects of how DHS implemented the Executive Order that could be improved upon? If so, which ones?
  - c. Judges in several jurisdictions have issued stays on the Executive Order. Do you believe DHS should comply with such stays? If so, would you commit to doing whatever you can, if confirmed, to ensure that the agency complies with such stays in the future?

**a. I do not know the underlying threat analysis that drove the Executive Order (EO) so I am unable to comment on the potential effectiveness of the EO.**

**b. My understanding is that planning will be improved in the future. I believe that better planning and communication improves the implementation of any EO or other such initiative. Key stakeholders that should be involved in that planning would include, but not limited to, the Secretary and me, affected components, Civil Rights and Civil Liberties, Public Affairs and Congressional Affairs.**

**c. I believe DHS should comply with the law and legal court orders. If confirmed, I commit to doing whatever I can to ensure DHS honors stays.**

17. Secretary Kelly recently testified that DHS may soon require that visa applicants submit information about their social media accounts and their passwords to the federal government. Do you think such a policy would be an effective way to screen applicants? Do you have any concerns about this policy?

**I am not familiar with this policy. If I am confirmed, I would consult with the Privacy Officer and others regarding this potential policy.**

18. USCIS's provision of benefits and services has long been plagued by backlogs, delays, and lost paperwork. Furthermore, the process is vulnerable to fraud, waste, and abuse. To address these challenges and improve its performance, USCIS has developed a plan for transforming its operations from a form-oriented, paper-based process to a customer-oriented, electronic process. However, GAO and the Inspector General have identified

challenges with USCIS's management of its transformation program. Should you be confirmed, what actions would you take to address these issues?

**If confirmed, I would review the acquisition program with the Chief Acquisition Officer to make sure it will meet cost, schedule and performance plans going forward. I consider this a critical program to homeland security and would focus regular leadership attention on it.**

*Mission 4—Safeguard and Secure Cyberspace*

19. Former Secretary Johnson and former Under Secretary Spaulding attempted to reorganize the National Protection and Programs Directorate (NPPD) at the Department in an effort to better align the organization with its mission to work with industry and help protect critical infrastructure. There was also an attempt to rename the organization to reflect its growing cybersecurity mission. What do you think should be the Department's cybersecurity priorities? What do you think should be done organizationally to better equip our country to address cyber security threats?

**As Secretary Kelly noted in his confirmation hearing and should I be confirmed, we will take a look at this issue. DHS's cyber mission must succeed, for example I know that two of DHS's priorities are .gov and continuous diagnostic and monitoring. If confirmed, I would gain a full understanding of DHS's current cyber missions and what DHS might do to support them.**

20. DHS spends about \$1.6 billion each year on cybersecurity-related programs. NPPD and Einstein represent about \$1.2 billion of that total. Do you believe that these two programs are delivering results that warrant the amount being spent on them? If not, how can they be improved?

**If confirmed, I will receive a classified briefing of the effectiveness of EINSTEIN and any other cyber programs, and plans for further enhancements so I can develop a position on those programs.**

21. Several cybersecurity laws were enacted in the 113th and 114th Congresses. They included many provisions involving DHS, relating to information sharing, the protection of federal information systems, and the federal cybersecurity workforce. Do you think the current DHS legislative authorities and programs are adequate for ensuring the cybersecurity of U.S. critical infrastructure? If not, what changes do you think are needed?

**If confirmed, I will review the legislative authorities and programs for adequacy and then can more fully answer your question. I understand that the current cyber authorities will be very helpful in building the DHS cyber federal workforce, clarifying roles and responsibilities among civilian agencies, and facilitating cyber threat information sharing.**

22. What in your experience gives you the knowledge of how cyber threats differ from other threats that DHS is tasked with countering? What is your understanding of the range of cyber threat actors?

**My understanding is the range of cyber threat actors is that they are wide ranging, from those whose only intent is to breach a system for the challenge, to those with the intent to commit fraud, weaken our homeland, and collect intelligence. Cyber threats differ from other threats in several ways, including (1) there isn't a physical component, so the person(s) behind the threat is often unknown or masked. (2) The threat changes and evolves rapidly, and countermeasures must adapt as rapidly. (3) Now the threat is not only terrorism, but intelligence, fraud/financial, and other motives. (4) At this moment jointness in federal agencies and with the critical infrastructure sectors is even more important with a cyber threat.**

23. Please explain your understanding of how DHS interfaces with the Department of Justice in responding to significant cyber incidents. What types of support do the departments offer one another, and how are the roles delineated? What plans do you have to support interagency response to cyber incidents?

**My understanding is there are multiple layers of relationships regarding cyber incidents between the departments. I know there is joint monitoring and detection, and that DHS supports DoJ's criminal cases. If confirmed, I would learn more about these delineated roles. That knowledge, along with the partnerships I would build with DoJ would further the shared mission. I know that joint operations are most critical for cyber deterrence and detection, and fully support this and other interagency planning and operations.**

24. DHS faces no greater or more pressing challenge than cyber security. In recent years there has been legislation and other efforts to strengthen and clarify DHS's role and authorities in cyber security and to increase the sharing of cyber threat information with state and local governments and the private sector. The current administration's effort to reorganize and rename NPPD has, in part, been undertaken to strengthen and clarify the department's role in cybersecurity.

- a. If confirmed, what are your immediate and longer term plans for DHS's roles, authorities, and efforts in the cyber security area? What are the primary challenges DHS faces in this area?
- b. What is your vision for DHS's role in this area, compared to other federal partners, such as the FBI, NIST, OPM, and DOD?
- c. How will you address the challenge of recruiting and retaining the necessary personnel with critical cyber security expertise?

**a. My plan, if confirmed, is to get a complete understanding of the interagency roles and responsibilities and ensure that DHS has the appropriate authority for its role.**

**b. My understanding is that DHS's role is to protect .gov and work the critical infrastructure sectors. I did not have cyber in my portfolio during my last tenure at DHS, therefore I would need to learn more about current legislation, policy, and roles and responsibility of interagency partners. If confirmed, I will do this.**

**c. The new cyber hiring authority will help address recruiting the necessary personnel. In addition to this, if confirmed, I would look to expand the recruiting to new applicant pools in different regions, universities, and other potential new sources for talented applicants. For retention, I would look first to expanding career paths and improving morale in NPPD.**

***Mission 5—Strengthen National Preparedness and Resilience***

25. Over the last decade, the number of federal disaster declarations and overall federal disaster spending has increased significantly. While the reasons for this may vary, it is clear that there is an increased expectation by state and local governments, and citizens, that the federal government will fund much of the response and long term recovery to major disasters. This increases the federal government's future fiscal exposure to disasters and extreme weather.

- a. What is your position on the role of the federal government in this area and what steps would you take to decrease the federal government's future fiscal exposure.
- b. What is your position on FEMA's proposal to change the process for declaring federal disasters—more specifically—the proposed establishment of a state disaster deductible?
- c. What role do you think mitigation and resilience building will have in addressing federal disaster costs issues?

**a. My position is that we should look to preparedness and resiliency as a way to decrease the government's fiscal exposure. Additionally, I would look to the Office of Partnership and Engagement to work with state and local governments to see how the exposure at every level could be reduced. I believe that response and recovery are an ecosystem and we cannot look at one segment without understanding the effects on the system.**

**b. I am not familiar with the proposal to have a state disaster deductible. I believe that mitigation, preparedness and resiliency can reduce the cost of response and recovery for both the federal government and state and local governments, and that all three must consider appropriate changes to the current process to address deficit, economic recovery and other national concerns.**

**c. As stated in b., I think they have a strong role. If we do not address mitigation preparedness, and resiliency we will not reduce the cost of response and recovery, we will just shift it between parties. That is not enough, in my opinion.**

26. 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. Some have raised questions about how these grants are allocated, the impact they have on preparedness, and the difficulty in measuring the effect of the grants on capabilities.
- a. 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?

**I believe effectiveness measures should be part of the grant program, both in grants guidance and in grant proposals. I think it is important to ensure our grants funds are going toward the public purpose with the largest positive effect on preparedness. I think there may be room for cooperative agreements in the current preparedness program. I do not know the administration's plans for the future, but would examine this if confirmed.**

27. As you know, FEMA has one of the oldest/most outdated financial management systems in DHS and is currently undergoing a grants management modernization effort to better integrate numerous systems. Given the complexity of these efforts and the amount of funding that FEMA manages and provides through grants, how do you plan to ensure these efforts are successful? What challenges do you anticipate, and are current timetables and estimates reasonable?

**Grants modernization is critically important for FEMA. It is needed not only to make the grants program more effective in allocation and controls. It is also necessary to make it more efficient by reducing the number of grants systems used. FEMA cannot afford to use its funds to operate and maintain multiple antiquated systems. Conducting grants modernization at the same time as financial systems modernization adds additional complexity. It is necessary to conduct not only change management for the individual systems, but understand the interfaces and manage across the programs. I am not familiar with the current timetables and estimates, however if confirmed I will review each program with the Chief Acquisition Officer, and keep these programs on the major programs list for continued review.**

28. What steps are you planning to address the long term solvency issues and other challenges with the National Flood Insurance Program (NFIP)?

**The solvency of the National Flood Insurance Program (NFIP) has been an issue for years. Pending legislation may correct some of the issues of the program. As it currently exists it cannot become solvent. As a major item on the GAO high risk list, if I am confirmed I would require a corrective action plan and quarterly updates, as with the other high risk list items**

*Management, Accountability, and Oversight*

29. In many areas, the responsibilities of DHS intersect with those of other cabinet departments. For example, the Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) coordinates five cabinet Departments, including DHS, to authorize and purchase medical countermeasures for chemical, biological, radiological and nuclear (CBRN) threats.

- a. How do you view the role of DHS vis-à-vis other cabinet departments, and what lessons from your previous work at DHS and other agencies help you establish or maintain effective working relationships with other Departments?
- b. Do you believe any current authorities or interagency organizational structures should be modified to ensure DHS is able to effectively coordinate interagency operations, such as catastrophic disaster response?

**a. Several of the DHS responsibilities are outlined in Presidential directives. DHS often has a coordination role for multi-agency programs and countermeasures. In specific disaster response scenarios under the Emergency Response Plan, other agencies may have the lead in response. However, DHS has overall lead in coordination of response, whether an act of nature or terrorism. Therefore, I believe that DHS should be at the forefront of building relations, conducting exercises, and ensuring planning is appropriate for all types of threats, including CBRN. If confirmed, I would exercise this leadership through collaboration and planning.**

**b. I know of no additional authorities or structure that need to be modified, however if confirmed I will further research this question.**

30. What experience do you have in working across departments and components at DHS? Provide examples of ways in which you were successful in coordinating a multi-agency or multi-component approach to an issue.

**When Katrina hit the Louisiana, the response needed was tremendous. FEMA did not have enough contracting officers to support the response and recover efforts. I worked through the Chief Procurement Officer Council and developed a contingency contracting officer corps to aid in procurements necessary for recovery. When Under Secretary for Management for DHS, I led the review board for resource decisions. This was the Department's first effort to look at budgets across domains and mission sets, instead of just through component stovepipes. With PA&E analysts, components participated in resource planning and scenarios for evaluation by senior departmental leadership.**

31. GAO and the DHS Inspector General play important roles in assisting Congress in overseeing DHS operations and management. As Deputy Secretary, how will you work to ensure that GAO and the Inspector General have the access they need to carry out their evaluation, audit, and investigation functions?



**If confirmed, I would work with GAO and the IG proactively to have strong relationships with these oversight bodies. I will have regular meetings to discuss trends, current reports, priorities and plans for the year(s).**

32. The Office of Personnel Management's 2016 Federal Employee Viewpoint Survey data showed that DHS has made modest progress in improving morale, but many challenges remain. What should the role of DHS management be in improving morale? What should the role of the components be?

**Every person of DHS has a role in improving the morale. DHS HQ and component leadership have a significant role. They must set of tone of understanding and valuing employee work, and establish a culture of inclusiveness and communication. DHS supervisors and managers must set performance standards and hold all employees to clear standards, provide training and career opportunities. Employees must take initiative to improve their skills, education, and knowledge. Effective and clear communication between supervisors and employees can improve performance and morale. There must be a respect for diversity and tolerance – expect for poor performance – by all employees from top to bottom.**

33. Under the Government Performance and Results Act, federal agencies are required to establish long-term, strategic goals and related annual performance goals and report on actual performance achieved. GAO and others have reported that a number of DHS programs lack outcome goals and measures, which may hinder the Department's ability to effectively assess the results of program efforts or fully assess whether the department is using resources effectively and efficiently, given various agency priorities for resources.
- a. Do you believe that DHS programs should have outcome goals and measures?
  - b. How would you demonstrate your commitment to establishing and achieving departmental performance goals?
  - c. How would you use performance information to improve performance results?
- a. I do believe that DHS programs should have outcome goals and measures. However, when the outcomes are complex, I also believe that interim measures provide visibility and allow leadership to monitor progress toward the outcome measure.**
- b. Under Unity of Effort, if confirmed I will make sure goals are developed during the requirements process and also during the resource allocation process.**
- c. If confirmed I would use performance information to determine if the current solution set is meeting the mission performance requirements. If not, I would order a new set of alternatives analysis to determine how to best alter resource allocation and programs to better deliver performance.**

***DHS Consolidation and Unification***

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

- a. In your view, how important is the consolidation of DHS headquarters to improving operations and efficiency?
- b. Secretary Kelly has indicated that he is open to a unified headquarters. If confirmed, how will you continue efforts to consolidate DHS headquarters operations and management in the interim?

**a. A functional DHS headquarters is important to improving operations and efficiency. The current rental footprint for DHS is ineffective in terms of commuting times for meetings and communications. It is also very inefficient.**

**b. If confirmed, I would work with the Chief Readiness Support Officer on the St Elizabeths' enhanced plan for a unified headquarters, as well as the field efficiencies program.**

#### *Acquisitions*

35. When it was established in 2003, DHS created a Joint Requirements Council (JRC) to review and prioritize requirements. The JRC became inactive by 2006. In 2014, the DHS Secretary directed the creation of a joint requirements process, with the JRC to be composed and chaired by the Department's components. GAO recently reported (GAO-17-171) that the JRC's structure and management are consistent with key organizational transformation practices and that the JRC has the potential to help DHS reduce duplication and make cost-effective investments.

- a. What is your assessment of the JRC?
- b. If confirmed, would you continue the work of the JRC? If yes, would you pursue efforts to codify it?

**a. The original JRC became inactive because of the immaturity of the Department. At that time, the leader Admiral Thad Allen was called to run Katrina response and recovery. The data necessary to run an effective JRC did not exist. Since then, other areas of the department have matured in their data and analysis, and made the JRC able to deliver results. I do not have a firsthand assessment of the current JRC. I do believe that to be effective it must balance rigor and timeliness, and be cognizant of current operations and urgencies in the processes.**

**b. If confirmed, I would continue the work of the JRC and pursue efforts to make it a permanent part of DHS.**

36. There is a lack of comprehensive data on the true cost of contractors and agencies do not conduct cost-benefit analyses to better understand whether services should be performed by federal employees or contractors. DHS previously adopted the Balanced Workforce Strategy but the effort is incomplete without data. How do you believe DHS can achieve a balanced

workforce? What efforts would you take to better understand the true cost of contracting for services?

**I believe DHS can achieve a balanced workforce by assessing the critical or core functions in each mission area and ensure it has the right number of federal employees to retain the intellectual capital necessary to execute those core/critical functions. This is of paramount importance when considering a balanced workforce. Regarding understanding the cost of contracting, there was a cost model in the Office of Management and Budget Circular A-76 for this purpose, but that circular has been suspended. If confirmed, I would recommend and work with OMB to institute a new federal model.**

37. On January 31, 2017, President Trump issued a hiring freeze for all federal workers. In the past, you have emphasized the importance of hiring flexibilities for DHS. In previous Congressional testimony you have also acknowledged issues surrounding the use of contractors for inherently governmental work and managing the risk of relying too much on contractors.

- a. Will you commit to work to discontinue contracting for inherently governmental work? How would you do so in light of the hiring freeze for federal workers?
- b. Will you also commit to ensuring that contractor oversight and the evaluation of contractors' job performance is conducted by federal employees, and not by other contractors?

**a. If confirmed, I will not hire contractors for inherently governmental work. Also, during the hiring freeze controls will be in place from the Chief Procurement Officer to comply fully with the terms of the hiring freeze regarding replacing federal employees with contractors.**

**b. If confirmed, I commit that I will ensure that contractor performance is evaluated by a federal employee serving as the contracting officer, or contracting officer's (technical) representative.**

38. Shortages in the acquisition workforce continue to be a challenge in the federal government. GAO found staffing shortfalls in 21 of the 22 DHS acquisition programs it reviewed; funding gaps of 10% or more in half of those programs, and requirements changes across all 22 programs. Do you plan to address the issue of acquisition workforce staffing and retention at DHS and if so, how?

**If I am confirmed, Yes. I will address the issue of acquisition workforce. Some actions I would take include reviewing the personnel on major acquisition programs to ensure there are enough qualified personnel in the right career field to run the acquisition programs. Another would be to institute an acquisition cadre for career growth, recurring training, and retention.**

39. During your time at DHS you established a test and evaluation program for the major acquisition programs in light of the issues with SBInet and others. GAO has reported recently that there are still issues with including test and evaluation at the beginning of a procurement to mitigate financial risks of purchasing systems that will not work in the field.
- Do you plan to include internal DHS testing, evaluation, and standards resources earlier in the acquisition process to mitigate risk in purchasing technologies that don't fit the needs of the Department? If so, how?
  - Do you support expanding the use of standards and funding the creation of standards in conjunction with the acquisition process to ensure DHS is making sound acquisition decisions?
  - From your previous experience at DHS, what lessons have you learned from major acquisition programs that were not successful like SBInet?
  - Will you commit to reviewing all major acquisition programs for feasibility, and commit to revising programs that have not followed proper acquisition guidelines and cancel programs that will not meet the needs of the Department?
- a. If I am confirmed, I plan on further strengthening the developmental and operational test and evaluation programs at DHS. Using both types of testing will help insure that not only do the systems meet the contract requirements, but that they will perform operationally in the field. This requires end user participation in both setting the test and evaluation master plan and conducting the testing.**
- b. If confirmed, I will support expanding the use of standards where warranted, for instance for IT systems, first responder equipment, and joint use equipment. I will work to have the optimal types and numbers of standards for efficiencies and effectiveness.**
- c. I have learned that (1) the government must always maintain control of its program and resources. Therefore, unless there are sufficient government personnel to manage the contract, it should not be awarded. (2) Modular development and deployment is often most successful; the big bang approach is very complex and high risk. (3) IT systems must be developed with AGILE or some type of method to make sure the system is deployed before it is obsolete**
- d. If I am confirmed, I commit to reviewing all major acquisition programs and work to cancel programs that will not meet the needs of the Department and/or are not feasible.**
40. GAO has done a number of reports, most recently in March of 2016 (GAO-16-338SP) on the budget shortfalls that are projected at DHS in regards to its major programs.
- If confirmed, what would you do to mitigate the budget shortfalls for major DHS programs?
  - What criteria would you use to prioritize which programs continue and which programs will need to be cancelled due to lack of sustainable funding?
  - Will you commit to requiring that DHS and its components will work to accurately forecast acquisition and sustainment costs so that this issue does not continue into the future?

a. If confirmed, I would work to get the resources in the DHS budget that are truly necessary to perform its missions. I would also work to develop innovative financing methods and acquisition strategies to minimize the shortfall. I would also look at programs that have continually breached cost, schedule and performance parameters; and duplicative programs.

b. The first priority would have to be those that fulfill a critical capability gap. If confirmed I would review the programs for mission impact, and obtain an assessment from the Chief Acquisition Officer of the funding risk for both acquisition and sustainment.

c. Yes, if confirmed I commit to requiring that DHS and its components work to accurately forecast acquisition and sustainment costs.

*Transportation Security and Coast Guard*

41. Within TSA operations, aviation security gets a lot of funding and attention, while surface security—including passenger rail and mass transit—receives about 3 percent of TSA’s budget. Yet the nation’s surface transportation system is inherently vulnerable to attack, given its very design. Do you plan to shift the level of attention and resources between aviation and surface transportation security?

**If confirmed, I would look at the threat/resource alignment and work toward aligning resources to the highest threat.**

42. What are the Coast Guard’s capability and resource gaps that concern you most, and what steps would you take to address them?

**If confirmed I would get a full assessment of the Coast Guard’s current capability gaps. Initially, I know there is a need for ice breaking cutter and the Offshore Patrol Cutter for the mission.**

43. TSA has faced long-standing challenges in balancing effective and efficient screening.
- a. What changes would you make at TSA, and what’s your position on the use of private screeners through the Screening Partnership Program?
  - b. If confirmed, would you support TSA’s efforts to expand the PreCheck program?

**a. If confirmed, I would assess the current USCG’s most pressing priorities for capability and resource gaps. This would include if it is making progress on modernizing its aging air and ship assets. Also, its personnel including acquisition personnel and its progress in the Blueprint for Acquisition Reform.**

**b. If confirmed, I would support TSA’s efforts to expand the PreCheck program.**

44. Regarding maritime security, do you plan to implement the 9/11 Act requirement for 100 percent scanning of all cargo container shipments or will you continue to support CBP's current approach of identifying and examining high-risk shipments?

**I understand there is currently a waiver in place that will expire soon. If confirmed, I would make it a priority to assess the 9/11 Act requirement and current risk profile for cargo before any further waiver decision.**

***Critical Infrastructure Protection***

45. One of DHS's most challenging missions is protecting physical and cyber critical infrastructure across 16 individual and unique sectors. In most of these sectors, DHS has little or no operational or regulatory authority and must rely on partnerships with other federal agencies, state and local governments, and private infrastructure owners and operators.
- How, if at all, would you recommend DHS change its approach under your to critical infrastructure protection?
  - What steps do you think are necessary to strengthen communication and two-way information sharing with private sector owners and operators, while also safeguarding sensitive information?
  - Which sectors (i.e. electricity, banking, chemical, etc.) do you think are most critical to protect and how should DHS prioritize among them?
  - How will DHS assess risks to various sectors and prioritize its efforts to those areas of greatest risk?

**a. If confirmed I would fully examine DHS's approach to critical infrastructure protection. It is important that roles and responsibilities be clarified, and that risks are prioritized.**

**b. If there is a trusted relationship, there can be communications that provide industry what it needs to know in an unclassified way. That is generally what needs to be done, overall risks, etc. without divulging the intelligence stream that generated the conclusion.**

**c. It is difficult to say that one sector is more important than another. I think it is important to understand how solutions/issues from one sector can be leveraged to other sectors. Issues common and high threat to multiple sectors may be a priority, rather than saying one sector is a priority.**

**d. Change of occurrence (threat level) and consequence (damage level) are two factors in assessing risk and could be part of the assessment of critical infrastructure.**

***Information Sharing***

46. 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?
- b. How do you envision DHS working with its partners in the federal intelligence community to ensure that terrorist-related information is both appropriately shared and protected from unwarranted disclosure?

**a. Unity of Effort should encompass not only operations on the ground, but those in support of operations. If confirmed, I would support functional integration across the intelligence offices, like the integration with the Department's chiefs.**

**b. I would envision DHS using its role in DIA? to further the partnerships. Secure network systems are available for information sharing, however stronger relationships are needed to understand the commonalities and differences in the various agencies' specific mission.**

#### *CBRNE Efforts*

47. The outgoing administration proposed several major organizational changes to the Department in recent years. For example, it proposed consolidating several components into one chemical, biological, radiological, nuclear, and explosives (CBRNE) Office and also renaming and reorganizing the National Protection and Programs Directorate (NPPD). Both proposals were not advanced in Congress. If confirmed, do you plan to pursue these reorganizations or any other major organizational changes to the structure of DHS? Please explain.

**I have no plans for reorganization entering the confirmation process. If confirmed, I will review both proposed organizational changes. I do understand them and with limited information they appear to have merit.**

48. GAO and others, such as the Blue Ribbon Study Panel on Biodefense—led by Tom Ridge and Joe Lieberman—have pointed to the largely fragmented and uncoordinated federal effort and approach to protecting the country from biological threats. While DHS has responsibilities for the country's biodefense, it has only a small piece of the federal staff, resources, and efforts compared to HHS and USDA, among others. Further, questions have been raised about the effectiveness of DHS's bio programs such as Biowatch and the National Biosurveillance Integration Center.
  - a. What is your position on the future role of DHS in biodefense, versus other federal agencies?
  - b. In your view, what steps are needed to ensure that the country is better prepared for naturally occurring or manmade biological threats?

- c. What is your view on the needs for a next generation bio detection system to replace Biowatch?

**a. Currently, DHS has been assigned the biodefense role, so if confirmed I would expect DHS to continue performing its assigned role until relieved. I believe it would be prudent to look at the roles of the other agencies to determine if there is full coverage of these threats without unnecessary duplication, and if the roles are understood and properly placed.**

**b. Preparedness for biological threats has not been addressed as well as preparedness for natural disasters. I think that preparedness should be expanded to "all threats" so that the people of our country can do their part, along with the local, state and federal government. Additionally, more exercises and pandemic planning in COOP and COG would be useful.**

**c. My understanding is that Biowatch is not meeting current needs. If confirmed I would review the program to determine if a next generation system is needed or some other solution.**

#### *Countering Violent Extremism*

49. DHS has recently stepped up efforts to counter violent extremism (CVE) within the United States through its Office of Community Partnerships. For example, DHS and DOJ co-chair a federal task force designed to bolster federal efforts to help local communities identify people at risk of radicalization and ensure those individuals do not undertake terrorist acts. DHS leadership has spoken of its CVE program as one of its main pillars in the Department's broader effort to protect the homeland against terrorism.

- a. To what extent do you foresee the Department changing its approach to CVE?  
b. What additional steps or resources, if any, are needed to bring greater cohesion and clarity to DHS's work in this realm?

**a I believe effective counterterrorism programs, including CVE, are critical to our nation, and joint task forces are a good tool for this effort. I see CVE as a deterrence/prevention measure, and DHS does deterrence/prevention across its mission set.**

**b. I do not know of planned changes to DHS's approach to CVE, nor if additional resources are needed. If confirmed, CVE would be a top priority.**

#### *Secret Service*

50. Recently, the U.S. Secret Service (USSS) has suffered a number of scandals and security breaches, most notably when an intruder was able to jump the fence and enter the White House unimpeded. While USSS has undertaken a series of reforms, there is still clearly a



great deal of work ahead before it can regain the same level of trust and esteem it used to enjoy.

- a. What, in your opinion, are the main problems and challenges at the Secret Service?
- b. What should be done to address those problems and challenges? How long will it take to repair the damage from recent years?
- c. Some have argued that the Secret Service is over-burdened by its dual mission: protecting the President and others while also investigating financial crimes. 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?

**a. and b. I am not familiar with the real, current problems in the Secret Service. If confirmed I would review the GAO and IG reports, along with the Service leadership to help determine how to best move the organization forward and repair any remaining damage to its reputation.**

**c. I have not heard the pros/cons of that argument. I do know that the Secret Service has performed exemplary for years, and have no reason currently to believe it cannot continue that in the future.**

*Science and Technology Directorate*

51. Since the creation of DHS, the S&T directorate has undergone various transformations and has often struggled in defining its role within the Department and its responsibilities in working with operational components. What is your view on the appropriate and most effective role of S&T and what steps are needed to ensure that they achieve it?

**S&T must provide products and services that enable the operating components to perform their missions most effectively. It must provide the scientific and technical expertise to deliver new, innovative products and services to DHS, using industry and research and development.**

52. How should investments in R&D be prioritized within S&T and among operational components?

**The largest, most critical capability gaps in DHS mission operations should drive investment priorities for both R&D and resources.**

53. S&T also plays a role in the development of threat assessments that can lead to authorization of the procurement of countermeasures under the BioShield program. If confirmed, will you commit to taking a strategic look at how the threat assessment process works and whether there is appropriate oversight of the assessments?

**I commit, if confirmed, to taking a strategic look at the Bio Shield program, especially its threat assessment process.**

54. In your view, is DHS effectively leveraging other federal R&D resources and facilities, such as the DOE national laboratories, DOD offices, and other federally funded research and development centers (FFRDC)?

**I believe leveraging other R&D resources, DoD R&D, DOE, and DHS' FFRDC is very important. If confirmed I will determine if they are being appropriated leveraged.**

#### V. Relations with Congress

55. 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, if confirmed?

**If confirmed, I do without reservation.**

56. 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, including requests from the Minority, if you are confirmed?


**If confirmed I will work cooperatively with the Chairs and Members of committees that have jurisdiction over the Department's activities, and comply with requests for documents, communications, or other agency materials from those committees, in a manner consistent with applicable law."**

#### VI. Assistance

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

**The answers are my own. I reviewed and accepted edits from DHS personnel, without changing the substance of my answers.**

I, Elaine C. Duke, hereby state that I have read the foregoing Pre-Hearing Questionnaire and the supplement and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
(Signature)

This 23<sup>rd</sup> day of February, 2017

**Post-Hearing Questions for the Record  
Submitted to Elaine Duke  
From Senator Rand Paul**

**Nomination Hearing  
For Elaine Duke  
To be Deputy Secretary  
U.S. Department of Homeland Security  
Wednesday, March 8, 2017**

1. In response to question 9 of the Pre-hearing questionnaire you completed for the Committee (“If confirmed, what are your highest priority items you intend to focus on?”), you mentioned “TSA reinvention.” Please elaborate on this vision for reinventing TSA, including what you perceive to be the agency’s most pressing and persistent challenges.

TSA has a challenging mission set, and the threats facing the aviation sector evolve quickly. One of the most pressing and persistent challenges is having a system of technology, process, and trained people to best counter that evolving threat. The pace of federal acquisition, testing, and the cost of technology are challenges to staying current. DHS must develop responsible but nimble ways to meet these threats. If confirmed, I will work with each and every component of the Department, including TSA, to confront such challenges.

2. In response to question 29 of the Pre-hearing questionnaire you completed for the Committee (“What steps do you believe DHS can take to ensure federal funds expended by the agency are free from duplication and waste?”), you mentioned “... a strong “grass roots” program that allows its employees to identify duplication and waste, and a culture that makes leaders accountable for eliminating duplication and waste – and that includes clearing the way for employees to do the right thing.”

In the last several sessions of Congress, I have introduced the Bonuses for Cost-Cutters Act (S. 1378 in the 114<sup>th</sup> Congress). The Bonuses for Cost-Cutters Act seeks to establish a cash award program to incentivize federal employees to identify wasteful spending in their agencies. Do you believe that a program such as would be created by the Bonuses for Cost-Cutters Act could help create “a culture that makes leaders accountable for eliminating duplication and waste” at DHS?

I believe that cash awards for employees who identify wasteful spending could be part of a program to eliminate duplication and waste. There are many federal employees with good ideas that simply need an avenue of communication. Leadership that welcomes ideas, and expects innovative ideas as employees grow, will not only help with

eliminating duplication and waste, but will also improve morale. In addition, non-cash awards such as leadership recognition and time off awards, would be beneficial to this culture. If confirmed, I would be happy to encourage and empower such creativity at DHS.

**Post-Hearing Questions for the Record  
Submitted to The Honorable Elaine C. Duke  
From Senator Steve Daines**

**Nomination Hearing  
For Elaine C. Duke  
To be Deputy Secretary  
U.S. Department of Homeland Security  
Wednesday, March 8, 2017**

Thank you for coming before the committee today to share your vision for the Department of Homeland Security and for taking the time to meet with me in February to discuss the issues that face Montana and our country as a whole. Your years of experience at DHS under President Obama and President Bush are a testament to your dedication to this country and will serve as an important tool as you move forward in your new role. As a new Member of the Homeland Security and Government Affairs Committee, I look forward to working with you to protect all American's security and safety, while preserving our privacy and civil liberties.

1. Having spent 28 years in the private sector, 10 of them with a global cloud computing company. I know the importance of cyber security and the threats we face daily to our sensitive information. As Deputy Secretary, **how will you work to harden the cyber security of our federal networks and protect our citizens' sensitive information?**

Cybersecurity is a top priority of the Department and, if confirmed, I commit to working with Department and component leadership to clarify roles and responsibilities among civilian agencies and facilitating cyber threat information sharing so that personal and sensitive information is protected from digital threats. I will continue to strengthen the National Cybersecurity and Communications Integration Center (NCCIC) in its cyber threat information sharing, situational awareness and incident response roles. I will ensure that the various missions of NPPD, including the Office of Cyber and Infrastructure Analysis, the Office of Cybersecurity and Communications, and the Office of Infrastructure Protection are operating as a system, each strengthening with the work of the others, and including privacy impact assessments.

2. It is important that we balance the need to protect our nation with the constitutional right to liberty and privacy. As Deputy Secretary, **how will you work to promote security while also safeguarding our civil liberties?**

If confirmed, I will ensure that lawful protections for individuals' privacy, civil rights, and civil liberties are fully integrated into our principal mission of protecting the homeland. I will make the Office of Civil Rights and Civil Liberties and the Privacy

Office key members of decision teams to ensure these areas are appropriately considered in context of the law and situation.

3. Montana shares a 545-mile border with Canada. It is of critical importance that we eliminate any vulnerabilities along this border while also maintaining the ability for farmers and ranchers in Montana get their goods to market.

One key to this is maintaining sufficient staffing. As Deputy Secretary, **how would you increase retention of Customs and Border Protection (CBP) officers and boost recruiting to mitigate staffing shortages?**

Employee retention and morale is a top priority of mine and, if confirmed, I will work to maintain a transparent and professional atmosphere that encourages employees from all parts of the Department to feel included and come to understand the importance of the Department's mission. If confirmed, I will be briefed on the current practices in place, and I will work with CBP leadership to make sure these men and women know their value, to include personal visits to field locations. I will work with human capital to ensure there are career paths and growth opportunities to encourage retention. And most importantly, I value their operational experience, and their understanding of what they need to better perform their operations (processes, technology, etc.). Regarding staffing, I may bolster local recruiting efforts, as well as recruiting of separating military personnel and college recruiting.

4. As we increase security on the southern border and increase immigration enforcement in the interior, it is important not to forget the vulnerabilities of our northern border and coasts. As Deputy Secretary, **how will you balance the use of DHS's limited resources to address the movement of illegal drugs, such as methamphetamines, across all of our borders?**

If confirmed, I will take a risk management approach to understanding how best to allocate the Department's resources. Keeping our country safe is the Department's utmost priority and number one mission, and thus we must balance our resources as you suggest. In my meetings with the members of this Committee, I learned much about the current illegal drug scenario, the movement of those drugs across the northern and southern borders, and through our mail system. If confirmed, I will get a comprehensive view of the smuggling patterns and ensure that the security protections match those threats.

5. Due to current state law, which was unanimously passed in the Montana state House and Senate, Montana will not comply with Real ID provisions and therefor Montanans

have been denied access to federal facilities, despite having IDs with the necessary physical security enhancements. In particular, you may be aware, Montanans who have worked for years at federal facilities such as Malmstrom AFB are now being denied access, and in some cases asked to apply for federal passports to verify their identities. As Deputy Secretary, **how will you work with States to address their concerns and ensure American citizens are not unduly impeded?**

If confirmed, I will review the status of Montana and other states that are not yet fully compliant with the REAL ID provisions. I will work with the Office of Partnership and Engagement and Montana officials to develop a plan toward compliance. Additionally, I will work with those officials to discuss options for the current needs of Montana residents.

**Post-Hearing Questions for the Record  
Submitted to Elaine Duke  
From Senator Claire McCaskill**

**Nomination Hearing  
For Elaine Duke  
To be Deputy Secretary  
U.S. Department of Homeland Security  
Wednesday, March 8, 2017**

**Transparency**

1. Please describe in detail how you will make sure that you live up to your commitment in ensuring the Department responds to requests and invitations to hearings, if confirmed.

As I stated in my confirmation hearing, if confirmed I commit to working with the members of this committee in ensuring that the Department provides the appropriate documents, briefings, and leadership witnesses in a bipartisan fashion to keep the Committee updated on Department matters.

2. Please state whether you believe the Department has an obligation to appear at a Congressional hearing when it is invited to provide testimony on the Department's policies and/or programs.

In general, I believe that the Department has an obligation to appear when appropriately invited by a committee of jurisdiction. I understand there have been some misalignment regarding what constitutes an appropriate invitation and adequate notice. If confirmed, I would work with DHS Office of Legislative Affairs to ensure that with adequate notice, we are providing appropriate witnesses for every hearing to which we are invited.

**Immigration and Border Security**

3. In response to your policy questionnaire, you stated that you would recommend that DHS take a risk-based approach to reducing illegal entries to the United States. Specifically, you would recommend that the Department study the threats and look at the effectiveness and cost of counter threat measures in order to make informed decisions about the balance of security measures. If such a study showed that spending funds towards the goal of ending all illegal entries to the United States is not advisable, please describe what you would do as Deputy Secretary to ensure that taxpayer funds for border security are being spent efficiently and effectively.



If confirmed, I will work with Secretary Kelly to ensure that the actions of the Department are always efficient and effective in carrying out its missions. I stand by my previous statement of taking risk-based approaches to reviewing best use of federal funds. Specifically, I would ensure that each program prepares the appropriate decision documents, including life cycle cost estimates and a performance baseline with cost, schedule, and performance metrics. I would use this data to make decisions within my authority, or to inform decisions of others.

4. Based on your extensive experience in DHS procurement, please describe the reviews that should take place prior to implementing a project like building a border wall along the entire U.S. Mexico border.
  - a. Please describe the circumstances under which you would support awarding contracts for a border wall project prior to the completion of all of these reviews.

If confirmed, I may consider allowing the award of contracts prior to completion of the generation and review of the full border security program if: (1) the work was to gather market/industry research to inform the requirement on a production contract, or (2) the contract was just an agreement or indefinite delivery indefinite quantity contract that did not order work or obligate funds until an order was placed, after the appropriate review was done. This second circumstance allows for a parallel process.

5. At your confirmation hearing, you stated that a cost-benefit analysis of the proposed border wall is currently underway at DHS.
  - a. Please state whether this analysis includes a comparison between the costs and benefits of a physical wall versus alternative border security measures.
  - b. Please provide the timeline for the completion of this cost benefit analysis.

If confirmed, I look forward to providing briefings on the border security program, including the wall. At this time, I do not know the current status of the CBP program work. The Secretary's February 20, 2017 Memorandum for implementing the January 25, 2017 Executive Order: *Border Security and Immigration Enforcement Improvements* requires both a comprehensive study of border security, as well as immediate measures in border wall and technology planning and design. There are no specific requirements or dates stated, however if confirmed I will obtain and monitor that information.

6. Please describe your plans for improving the acquisition workforce at DHS to avoid poor pre-acquisition planning.

If confirmed, I would first, with the Chief Acquisition Officer, examine the state of the current acquisition workforce, including the staffing and certification levels for major acquisition programs. I would address as a priority any program without a properly certified program manager. I would discuss the formation of an Acquisition Corps with the Chief Human Capital Officer, and look toward expanding the acquisition career development program to more acquisition career fields to recruit, train, and retain experienced acquisition personnel.

7. Please describe what you will do to ensure that DHS provides more of its border-related performance measures to Congress.

If confirmed, I would work toward DHS's compliance with Section 1092, Border Security Metrics, of the NDAA. I would also ensure that we use the metrics to manage and inform the applicable programs.

8. President Trump's recent Executive Order, and the DHS memo implementing the order, contained various provisions related to heightened enforcement of federal immigration law, including the hiring of 5,000 additional Border Patrol agents and 500 Air & Marine Agents/Officers, subject to the availability of resources. Please state whether you believe these positions to be inherently governmental and whether you believe they should be performed by contractors.

I do not believe that the federal law enforcement positions mentioned above can be performed by contractor personnel, and their duties must be performed by federal employees. If confirmed, I will conduct a thorough review of these position categories to see if any support positions, such as maintenance, are included in these numbers that could be further analyzed.

9. Please describe the circumstances in which you believe it is acceptable to have different hiring standards between federal employees and private contractors for the same job.

I believe that federal employees must undergo suitability review for the particular position they will perform, in addition to the requirements of any security clearance they may require. Additionally, the federal government has certain hiring programs, such as priority placement for veterans, which are not applicable to the private sector. Contractors must also be qualified and cleared for the work they will perform. In either case, an employee or contractor personnel must have the requisite experience, education, clearance, and skills to perform the job.

10. Please describe the circumstances in which you believe it is acceptable to have different training requirements between federal employees and private contractors for the same job.

I believe that private contractors should be responsible for keeping their employees properly trained to perform their contract duties. The federal government should only provide contractor personnel assignment specific training not otherwise available. I believe that the federal government should provide its employees the proper training to perform their duties. Additionally, I believe the federal government should provide additional training opportunities to enrich, grow, and help retain their employees. Career development programs are an example of this type of training.

### **Acquisitions**

11. GAO published a report in March 2016, on the budget shortfalls that are projected at DHS for its major acquisition programs. The review found that 10 of the major acquisition programs had funding gaps of 10% or more. Please describe your plans for addressing this problem as well as your plans for avoiding this problem in the future.

If confirmed, I will ask the Chief Acquisition Officer for a funding profile review of all major acquisition programs. I will ask that this be done before the next budget cycle, so that any funding shortfalls can be addressed in the five year Fiscal Year Homeland Security Plan (FYHSP). For programs that cannot be rationalized against the FYHSP, I would want a corrective action plan, meaning what changes, such as reduction in requirements, quantity, etc. will take place to address the shortfall. Additionally, if confirmed, I would ensure life cycle cost estimates would be completed for each major acquisition program, and that those are reconciled with the FYHSP.

### **Whistleblowers**

12. In recent years, there have been issues with whistleblower retaliation at DHS, particularly with TSA. Please describe your plans for eliminating whistleblower retaliation at DHS.

In the simplest terms, if confirmed, retaliation will not be tolerated. I would conduct regular reviews of whistleblower cases to look for trends and concentrated areas of concern. If such trends or concentrated areas are found, I may conduct remedial training to enforce the law. Additionally, if confirmed I will ensure that whistleblower statute and guidance is included in supervisory training.

13. Many whistleblower complaints end in a negotiated settlement with the whistleblower getting some sort of restitution, but the alleged retaliating manager admitting no wrongdoing. As a result, the manager is not disciplined at all and the message that sends is clear: you can retaliate against whistleblowers with impunity. Please describe the ways you plan to hold management accountable for handling

whistleblower complaints appropriately, including whether you would make handling disclosures from employees and responding to retaliation concerns a part of the performance appraisal process.

Similar to my response to the previous question, if confirmed I would look at the data, especially trends and concentrated areas. I would require a recommendation on appropriate management discipline, and would establish an independent review process for that recommendation. Leadership and management must be a part of every supervisor's performance appraisal. I believe that violations of statute such as the Whistleblower Act and EEO should be considered in the review of any supervisor's performance.

#### **Privacy and Civil Liberties**

14. Please describe your plans for incorporating the Privacy Office and the Office for Civil Rights and Civil Liberties into the policy decision-making process at DHS.

If confirmed, I would first be briefed on how Privacy and CRCL influence the policy making process. If/as needed, I would provide guidance on how to improve the processes in place. I believe if Privacy and CRCL considerations are part of the initial strategy planning, they are most successful and can be included most effectively.

#### **Unity of Effort**

15. Please list the areas of DHS that you would prioritize in driving better cohesion and cooperation.

If confirmed, I would drive better cohesion and cooperation through a strong deputies group if confirmed, which I would lead with each deputy operating component head as a member. I would also use that group (Deputies Management Advisory Group [DMAG] or similar), to build relationships, queue up cross component issues, and make departmental and cross component decisions.

If confirmed, I would also review the portfolio of the Joint Requirement Council (JRC) to determine the priorities based on dollars, impact on mission, and opportunity. I would ensure that decisions are made through the JRC, and that it is not just a paper exercise.

Additionally, if confirmed I would work to establish a robust operational planning process early in the Unity of Effort model.

**Cybersecurity**

16. Please describe the role you believe DHS should have in this country's cybersecurity.

DHS should lead the nation in securing our country's critical infrastructure from physical and cyber threats. This mission requires effective coordination and collaboration between the government and the private sector. Through offices such as the National Protection and Programs Directorate (NPPD), DHS continues to improve existing and create new relationships with private sector organizations so that ideas that help protect private information can be shared between industry and government. If confirmed, I will encourage this continued collaboration so that our citizens and their private information are safe.

17. Please describe the resources you believe DHS needs in order to fulfill its role in this country's cybersecurity.

I believe that DHS needs a strong Under Secretary for NPPD, who will lead the cybersecurity and critical infrastructure missions of that component. The position requires strong leadership skills and technical expertise. My understanding is that DHS is currently implementing its cyber workforce flexibilities, and needs to continue moving toward an excepted service workforce.

18. On January 6 2017, DHS announced that it would be designating election infrastructure as a critical infrastructure subsector, meaning DHS can offer cybersecurity assistance to state and local governments that request it. Do you agree with this designation? Please describe what you see as the role of DHS in helping to ensure the security and integrity of our voting systems.

I believe there has been confusion around the designation, but I do agree that making election infrastructure a critical infrastructure subsector does position the states to use federal assistance more effectively. Cyber security is a very real issue, and cooperation in addressing that threat seems to have credibility. The important fact in this designation though is that the state still controls the election process and equipment, and any federal assistance is provided as requested by the states.

**Federal Protective Service**

19. Please describe the improvements, if any, you would make to the Federal Protective Service's assessment of risk for federal facilities.

I am not aware of the totality of current FPS processes to assess risk at federal buildings. I do know that there have been consistency issues in the past, including standards, training, and enforcement. If confirmed I would look to see if these problems still exist and review current IG/GAO reports, as well as internal assessments, to determine if other issues exist.

**Domestic Nuclear Detection Office**

20. Please describe the improvements you would make to the Domestic Nuclear Detection Office and its equipment and personnel resources.

I do not have current information regarding Domestic Nuclear Detection Office (DNDO). To gain current information and decide if improvements are needed, if confirmed I would review its acquisition programs, the Global Nuclear Detection Architecture, and staffing allocation and vacancy rates. From that assessment, I would determine if improvements are made. I would, if confirmed, require better coordination and collaboration between DNDO, DHS Office of Health Affairs, and DHS Science and Technology to enhance the related work they perform.

**Post-Hearing Questions for the Record  
Submitted to Elaine Duke  
From Senator Heidi Heitkamp**

**Nomination Hearing  
For Elaine Duke  
To be Deputy Secretary  
U.S. Department of Homeland Security  
Wednesday, March 8, 2017**

1. Based on the interest of many here in Congress and throughout the federal government in reducing the federal cost of disaster response and recovery, the proposals to cut funding to critical state and local grant programs run by FEMA are concerning. The President's budget blueprint draft proposed cuts to the Emergency Management Grant Program – a program that requires a 50% match by State and local governments. If confirmed, would you commit to reviewing the various grant programs administered by FEMA to examine how to support programs like EMPG, which is important to North Dakota, that have significant matching requirements and increase capabilities at the State and local level while simultaneously helping to reduce the need for federal funding for disaster response and recovery?

If confirmed, I commit to reviewing all grant programs set forth by the Department and its components to ensure efficacy and success in such programs.

2. FEMA's workforce is increasingly critical to providing consistent support to state, tribal, and local governments during and after disasters. In order to help communities respond and recover in an efficient manner, the workforce must be well trained, equipped, and empowered to carry out the mission and provide accurate information to those in need. Plans to reduce the federal workforce often increase the interest in hiring contractors that may not provide the expertise or consistency needed in the weeks, months, and years following an event. Will you commit to reviewing FEMA's unique workforce and ensure that any hiring freeze or attrition plan will not negatively impact disaster survivors and local government stakeholders that rely on these employees for support?

If confirmed, I commit to reviewing FEMA's workforce structure and protocols for supporting disaster survivors during the federal hiring freeze.

3. The President's recent Executive Orders on Immigration and Border Security address interior enforcement and enforcement between the ports-of-entry including the hiring of 10,000 Immigration and Customs Enforcement Agents and 5,000 Border Patrol Agents. However, there is no mention of addressing the security concerns at the ports. According to CBP the vast majority of heroin, cocaine, and methamphetamine

are being trafficked through these ports. CBP's Office of Field Operations, who are responsible for the border security mission at the ports are experiencing significant staffing shortages and are roughly 2000 agents below what they need. These shortages not only affect border security but also have an adverse impact on the continued growth of international trade and travel. If confirmed will you commit to addressing the security concerns at these ports?

- a) If confirmed will you commit to seeking technological solutions including automated and biometric inspections systems that will provide for more efficient management of inspection hours at the ports-of-entry?
- b) If confirmed will you analyze facility and infrastructure requirements at these ports considering the projected growth in cross border trade and travel and seek solutions that will accommodate this growth?

If confirmed, I commit to reviewing technological solutions and analyzing facility and infrastructure requirements at the ports to ensure that the Department is meticulous in its cargo inspections while seeking improvements that do not obstruct cross-border trade and travel.

- 4. As I stated at to you at the hearing, there are several issues with the construction of a border wall along all – or a significant portion – of our southern border with Mexico. Secretary Kelly said on repeated occasions prior to his confirmation that a wall was not the best strategy – and that a layered approach that encompasses border assets and interior assets was a better way to approach border security at our southern border. White House OMB Director Mick Mulvaney recently stated that estimates of the wall run anywhere from \$8-\$25million – A MILE. Notwithstanding the strategic efficacy and cost of a border wall – there are vast challenges that are seemingly being pushed to the side in terms of the challenges securing private and Indian Lands along the border with Mexico in order to build a wall.

- a) How do you propose we address the legitimate property or treaty rights of landowners and tribes along the border who do not want a wall on their land?
- b) Are you aware of any engagement or consultation from the Secretary's office or the White House with tribes, landowners, or communities along the southern border?
- c) If so, are you aware of what the feedback has been?
- d) If not, please advise with specific steps that will be taken to engage tribes, landowners, and communities along the southern border prior to making a final decision on construction of a wall and what weight their input will be given in the Department's analysis?

- a). I can assure you that if confirmed, DHS will comply with all laws in addressing private property and treaty rights with landowners.



b) and c) I have not been involved in any discussions concerning the cost estimates of the wall, nor am I aware of any engagement from the Secretary's office or the White House with tribes, landowners, or communities along the southern border.

d) If confirmed, I look forward to interacting with state, local, and tribal officials providing a secure border that protects our country's citizens while not obstructing trade and travel. I will be briefed on the status of current activities and ensure that appropriate engagement and planning is done.

**Post-Hearing Questions for the Record  
Submitted to The Honorable Elaine Duke  
From Senator Gary Peters**

**Nomination Hearing  
For Elaine Duke  
To be Deputy Secretary  
U.S. Department of Homeland Security  
Wednesday, March 8, 2017**

Ms. Duke, you have had a successful career in the federal government, to include your previous role as undersecretary for management for DHS. I thank you for your service to your country. Please see the below questions for the record.

1. At DHS, you worked closely with the Chief Information Officer (CIO) and were instrumental in the procurement and development of the Department's enterprise architecture and information technology systems. **With your background in procurement and acquisition, do you feel the federal government has an adequate information communications technologies (ICT) supply chain risk management strategy?**

Since I left DHS in 2010, I would need to look into how the federal government has improved its supply chain risk management strategy. With the continually increasing cyber threat, I believe we must be ever vigilant on uncovering and countering new threats in the supply chain. If confirmed, I would ensure that the Chief Acquisition Officer includes supply chain risk appropriately, managed by the Chief Information Officer and Chief Procurement Officer.

2. Across the nation, our government faces enduring cybersecurity challenges. Recent high-profile incidents, including Russia's infiltration of state voter databases, underscore the magnitude of this threat. Like the federal government, our state and local governments rely on ICT to deliver key services to the American people. These responsibilities include maintaining critical infrastructure as public utilities, fostering collaboration between the public and private sectors, and ensuring first responders have the information they need in critical situations. **What do you see as DHS's role in supporting state and local governments that lack the resources to adequately respond to cyber-attacks?**

My current understanding is that DHS's role includes leading the federal critical infrastructure program and serving as the Sector-Specific Agency for 10 of the 16 sectors. As such, DHS should continue to provide support and expertise through the National Cybersecurity and Communications Integration Center (NCCIC) to the Multi-State Information Sharing and Analysis Center.

DHS should also, through the Office of Partnership and Engagement, work with state and local officials to better understand the state and local governments' challenges, preparedness, and response needs. If confirmed, I will work with the Department to maintain and increase its relationships with the private sector, as well as with state and local governments. As we all know, state and local players are almost always the first responders, and one of DHS's roles is to support them.

3. It is vitally important that each small business understand and manage their cybersecurity risks. To address this challenge, I joined Senator Vitter in introducing the Small Business Cyber Security Improvements Act of 2016. This bill would require SBA and DHS to develop a Small Business Development Center (SBDC) Cyber Strategy to help small businesses enhance cyber security infrastructure, threat awareness, and employee training programs. This bill became law as part of the FY2017 NDAA. **As Deputy Secretary of DHS, will you commit to ensuring the successful implementation of this law?**

If confirmed as Deputy Secretary, I will work to ensure that this and all laws on the books, are implemented successfully and enforced by the Department and its components.

4. Since the election we have seen a spike in anti – Muslim incidents in my home State of Michigan. Additionally, we have seen a rash of bomb threats against Jewish Community Centers in Michigan and across the country. My colleague Senator Portman and I, led a letter calling on DHS and DOJ to address these horrific incidents and to provide these communities with the resources they need. The letter was signed by all 100 members of the Senate. **Will you commit to continued support for important programs like the Nonprofit Security Grant Program (NSGP) which provides assistance to non-profits that are susceptible to terror threats?**

If confirmed, I commit to continued support to state and local governments in protecting their communities-individuals and religious groups-from harm. Threats against such people and entities are unacceptable, especially in a country that values individual freedom and liberty. I know that nonprofit entities are an important part of our country's foundation and resiliency, and would consider the NSGP an important element of DHS grant programs.

5. On March 6, 2017 the President issued an executive order banning individuals from 6 countries as well as suspending the refugee program. The executive order and rhetoric surrounding the order has had consequences for Muslim American communities. **What steps would you take to prevent DHS employees from profiling or discriminating against individuals, including American citizens, based on perceived religion?**

If confirmed, I would not tolerate discrimination based on a person's religion, and I will work within the Department and its components to ensure that these actions are not tolerated. Additionally, I would ensure that all appropriate trainings are up to date and that the training staff are readily available to assist employees with any issues that may arise.

6. Scientific advancements in genetic engineering such as the development of the CRISPR tool for gene editing have put the tools of genetic engineering in the hands of do-it-yourself biologists. This is leading to new opportunities for education and innovation, but the ease of modern genetic engineering has also started to ring some alarm bells. **How do you view the threat of bioterrorism or a biological accident stemming from modern genetic engineering tools in comparison to traditional biological threats such as conventional bioterrorism and naturally occurring disease? In your opinion, is the Department of Homeland Security adequately prepared for the threat of bioterrorism given the rapidly changing state of genetic engineering technology?**

Traditionally, bioterrorism is a real and constant threat to our nation; and preparedness for biological threats has not been addressed as well as preparedness for natural disasters. If confirmed, I will review the current status of the Department's abilities and needs, and look for ways to obtain improvement and adequate preparedness. If confirmed, I would also, through the Under Secretary for Management, look at the plans and effectiveness of the current BioWatch program.

7. In November of 2014, Secretary Johnson directed the creation of the "Southern Border and Approaches Campaign", a "Unity of Effort" approach to improve how the Department protects the homeland across our borders. Three "joint task forces" were created under the campaign: "West", "East", and "Investigations", to better coordinate DHS assets and personnel. **With unique cross border challenges, and significant trade and commerce between the United States and Canada, do you think a similar effort to improve coordination in the Northern Border Region through the creation of a "JTF – North" would be effective?**

I believe that the JTF's are an important operational element of the Department's Unity of Effort. If confirmed, I would consider a JTF-North within a review of the roles, responsibilities, and functions of the current JTFs.

8. The President has said combating transnational criminal organizations is a priority for his Administration. I understand that offshore drug interdictions by the Coast Guard and partner agencies resulted in more seized drugs in 2016 than any previous year. **Given their role in combatting transnational criminal organizations, do you support increasing investments in the Coast Guard to bolster their border security capabilities and better leverage available intelligence?**

I understand the U.S. Coast Guard's significant role in securing our maritime borders. If confirmed, I will assess the current status of funding within the Coast Guard and consider how best to allocate the Department's resources so that our maritime and land borders are as secure as possible.

.....  
**Post-Hearing Questions for the Record**  
**Submitted to The Honorable Elaine C. Duke**  
**From Senator Kamala Harris**

**Nomination Hearing**  
**For Elaine C. Duke**  
**To be Deputy Secretary**  
**U.S. Department of Homeland Security**  
**Wednesday, March 8, 2017**

1. As mandated by Section 13 of the executive order dated January 25, 2017 entitled, Enhancing Public Safety in the Interior of the United States, the president directed the Director of U.S. Immigration and Customs Enforcement to “take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims.” In implementing this directive, Secretary Kelly, through his February 20, 2017 implementation memorandum, created the Victims Of Immigration Crime Engagement (VOICE) office to assist victims of crimes committed by undocumented immigrants to be paid for reallocating any department resources currently going to advocating for undocumented immigrants.
  - a. Please provide a list of any department resources being using or that have used in the past 5 years to advocate for any undocumented immigrants.
  - b. Please provide any information about department resources for future, current, or past expended on advocacy for any undocumented immigrants.
  - c. Please provide me with an update three months from this submission as to the progress the Department has made in standing up this office and providing assistance.
  - d. Please provide me with any other federal, state, or local plan that has been used to model the creation of this office.

I am not familiar with any efforts of the Department to advocate for illegal aliens, and I have not been involved in the establishment of the VOICE office at ICE. However, if confirmed, I look forward to being briefed on the office including its mission,

funding, and timeline for fully standing up the office. After such time, I will provide the update you requested.

2. During the first round of questioning at your confirmation hearing, you agreed that law enforcement should be trained on specific factors that they should consider with respect to carrying out immigration enforcement actions that are in accordance with the seven categories of enforcement priorities that DHS outlined in a memorandum from February 20<sup>th</sup>. I then asked whether or not you were aware of any new training that had been planned after that February 20<sup>th</sup> memorandum to ensure that officers carrying out immigration enforcement actions were exercising good judgment and complying with the guidelines set forth in that memo. At the time, you were not sure if any training had been planned but pledged to get back in touch with me to provide answers.
  - a. Please provide me a list with all the new trainings, or changes to current trainings that have been planned or are underway, because of the February 20<sup>th</sup> memorandum.
  - b. Please also provide an explanation of how each of those new or changed trainings support the goal of ensuring that officers carrying out enforcement actions are trained to make sure actions to carry out enforcement is in compliance with the seven priority categories for enforcement outlined in the February 20<sup>th</sup> memo.
  - c. If there are no new trainings or changes to existing trainings, or you still do not have any knowledge about whether or not they exist, please explain to me how you plan to ensure that officers conducting enforcement actions receive training that is specific to the February 20<sup>th</sup> memo to ensure that they are in compliance with the seven priority categories for enforcement outlined in the February 20<sup>th</sup> memo.

I am not aware of the details regarding the training officers, agents, and attorneys have received as a result of the Executive Order. If confirmed, I will work with the relevant offices to become familiar with the relevant training and field guidance, and will provide an updated answer to you.

3. During my questioning, you mentioned that you did not know whether or not the elimination of polygraph testing would result in a degradation of the standards for which Customs and Border Protection (CBP) officers are hired.
  - a. Please explain to me what steps you think should be implemented to ensure that the quality of the CBP workforce is not compromised. And please indicate whether or not you believe that taking a polygraph test as part of the screening process for potential new officers should be included as one of those steps.

I believe that CBP must keep its current recruitment and federal law enforcement training standards during the buildup of its workforce. I do not believe that the standards should be lessened just to quickly build the workforce; that would be shortsighted. If confirmed, I would ensure that CBP does not unilaterally alter recruitment or training standards.

Regarding the polygraph test, prior to 2010, polygraph tests were not required for Border Patrol agents. They began as part of the implementation of the Anti-Border Corruption Act of 2010. Acting Commissioner McAleenan is currently reviewing the data on the use of polygraph within CBP and other agencies. This information is to be briefed to Secretary Kelly before any decision on the polygraph is made. If confirmed, I would participate in the decision process.

- b. If you do not believe that taking a polygraph test should be one of those steps, please explain to me how you intend to make sure that CBP does not inadvertently hire officers that may seek to undermine the mission of the department, and our country's national security interests.

The Department has zero tolerance for employees intending to undermine the mission. If confirmed, I will work with component leadership in deciding the best course of action for such behavior. This would include ensuring that CBP's suitability for employment standards are not relaxed.



**James M. Loy  
Michael P. Jackson  
Paul A. Schneider  
Jane Holl Lute  
Alejandro Mayorkas**

February 24, 2017

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

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

*RE: Recommending the confirmation of Elaine C. Duke as DHS Deputy Secretary;  
Delivered via fax and First Class U.S. Mail*

Dear Chairman Johnson and Ranking Member McCaskill:

We write to recommend unequivocally the confirmation of Elaine C. Duke, who has been nominated to serve as Deputy Secretary of the U.S. Department of Homeland Security (DHS). This letter is signed by five individuals who previously have been honored to be confirmed by the Senate to serve as the DHS Deputy Secretary.

Under the direction of the President and the DHS Secretary, the Deputy Secretary is effectively the chief operating officer of this large and vital Department. For this job, the nation needs someone with impeccable integrity, strong management and leadership skills and experience in protecting the safety, security and resilience of our Nation. This person must be able to collaborate routinely and respectfully with the Congress, state, local, tribal and territorial leaders, the private sector, foreign counterparts and the leadership team of virtually all U.S. Departments and agencies. Of course, the Deputy Secretary of the Federal government's third-largest Department must ensure that every Congressionally-appropriated dollar is well and wisely spent – and accounted for scrupulously.

Together, we respectfully attest that Elaine is extraordinarily well-qualified to serve in the position for which she has now been nominated.

Elaine has spent almost three decades honorably serving as a Federal employee. Most recently, she served as the Senate-confirmed DHS Under Secretary for Management. Reflecting her professionalism and dedication to DHS and its critical mission, Elaine began that service under President Bush and continued to serve well into the tenure of President Obama. As Under Secretary, she supported the entire DHS team, overseeing an annual budget of nearly \$50 billion. Prior to her tenure as Under Secretary, she served as the Department's Deputy Under Secretary for Management and its Chief Procurement Officer, leading DHS's extensive acquisition program.

Elaine gained important mission experience by helping after the 9/11 attacks to lead the stand-up of the Transportation Security Administration, where she served as Deputy Assistant Administrator for Acquisition beginning in August 2002. As you know, she began her Federal career as a contracting officer with the U.S. Air Force and spent much of her career working for the U.S. Navy.

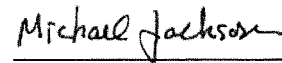
Elaine's distinguished service has not gone unnoticed. She was awarded the Presidential Meritorious Rank Award; the DHS Secretary's Medal; the Transportation Security Administration's Silver Medal for Customer Service; the Department of the Army Commander's Award for Public Service; and the U.S. Coast Guard's Distinguished Public Service Medal.

In sum, Elaine knows DHS. She has been a senior leader at DHS under two presidents. She sets an unwavering standard of excellence for all who consider themselves committed to public service. We write respectfully to urge your Committee to meet with Elaine, and to recommend her swift confirmation by the U.S. Senate.

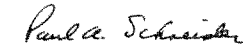
Sincerely,



James M. Loy



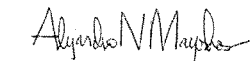
Michael P. Jackson



Paul A. Schneider



Jane Holl Lute



Alejandro Mayorkas

*Gen. Kelly Confirmation Hearing in HSGAC, January 10, 2017*

GEN. KELLY: And those categories [of persons subject to deportation] would be prioritized. I would guess, I am not part of the process right now, I would guess that this category might not be the highest priority for removal. I promise you, Senator that I will be involved in the discussion

\* \* \*

SEN. HARRIS: And do you intend then to use the limited law enforcement resources of DHS to remove them from the country?

GEN. KELLY: I will follow the law, but again, I go back to the -- we have a limited capacity to execute the law, so we would certainly look at the highest priority activities and -- but I will follow the law to the extent that I can execute the law if that makes sense.

SEN. HARRIS: Well, I know as a career prosecutor, I was formerly Attorney General of California and before that, the District Attorney elected two terms in office that we, in law enforcement have limited resources.

I am interested in knowing from your perspective where the students and the young people who applied and were eligible for DACA, where they would fall on your list of priorities in terms of the limited law enforcement resources that you have or would have if confirmed.

KELLY: I think law abiding individuals would in my mind with limited assets to execute the law would probably not be at the top of the list.

[SOURCE: *Gen. Kelly Confirmation Hearing in HSGAC, January 10, 2017*]

**February 20, 2017 Memorandum from Sec. Kelly,  
Memorandum on Enforcement of the Immigration Laws to Serve the National Interest**

Except as specifically noted above, the Department no longer will exempt classes or categories of removable aliens from potential enforcement. In faithfully executing the immigration laws, Department personnel should take enforcement actions in accordance with applicable law. In order to achieve this goal, as noted below, I have directed ICE to hire 10,000 officers and agents expeditiously, subject to available resources, and to take enforcement actions consistent with available resources. . . .

Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who:

- (1) have been convicted of any criminal offense;
- (2) have been charged with any criminal offense that has not been resolved;
- (3) have committed acts which constitute a chargeable criminal offense;
- (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency;
- (5) have abused any program related to receipt of public benefits;
- (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or
- (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories-for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

[SOURCE: *Secretary John Kelly, Feb. 20, 2017 Memorandum on Enforcement of the Immigration Laws to Serve the National Interest*]

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IMMIGRATION POLICY FORUM

TRANSCRIPT OF PROCEEDINGS

HOSTED BY

SENATOR KAMALA D. HARRIS (CALIFORNIA)

Entered into the record of the Senate Committee on  
Homeland Security and Government Affairs

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PANEL MEMBERS

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HONORABLE KAMALA D. HARRIS, UNITED STATES SENATOR  
(CALIFORNIA)

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SHERIFF JIM MC DONNELL,  
COUNTY OF LOS ANGELES

7

8

KENNY SALAS,  
CAMINO FINANCIAL

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ANTHONY NG,  
ASIAN AMERICANS ADVANCING JUSTICE IN LOS ANGELES

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12

ANGELICA SALAS,  
COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

13

14

MARIELENA HINCAPIE,  
NATIONAL IMMIGRATION LAW CENTER

15

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AUDIENCE MEMBERS

17

18

ANDREA VALLES,  
SECRETARY/TREASURER OF SEIU WORKERS WEST.

19

ANDREA GUERRERO,

Feb2217HarrisPanel  
EXECUTIVE DIRECTOR, ALLIANCE SAN DIEGO.

20

21 CHRIS NEWMAN,  
22 NATIONAL DAY LABORER ORGANIZING NETWORK

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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 22, 2017

2 10:38 A.M.

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6 SENATOR HARRIS: Welcome everyone.

7 I'm glad that we were able to convene so many

8 leaders under one roof to have a conversation today to

9 share information, to share ideas, to talk about a

10:38 10 strategy and highlight some of the best work that's

11 happening in the country around the support and the work

12 that we need to do to make sure that we are true to the

13 values that we have as a country.

14 I will say that in these times I find myself

10:38 15 often thinking about this point, which is, flawed though

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16 we may be, we are a great country. We are a great  
17 country. And part of what makes us great is we are a  
18 country that was founded on certain ideals; the ideals  
19 that are present in the First Amendment; the ideals that  
10:39 20 are present when we talk about the freedom of information  
21 and association; the ideals that are present when in 1776  
22 we said: we are all and should be treated as equals.  
23 These are the ideals upon which our country was  
24 founded. And this is a moment in time that is  
10:39 25 challenging us to fight for those ideals.

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10:39 1 And in fighting for those ideals we are being  
2 patriots. We are doing this because we love our country  
3 and we are going to fight for the best of who we are.  
4 So with that spirit in mind, I welcome everyone  
10:39 5 to our forum. As your newly elected senator I'm very  
6 proud to be here and to represent our great state, great  
7 State of California.  
8 And I am here, also, more specifically, in my  
9 role as a member of the United States Senate Committee on  
10:40 10 Homeland Security and Government Affairs.  
11 And this committee, as many of you know,

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12 provides oversight over the nation's principal  
13 immigration agency, which is the United States Department  
14 of Homeland Security.

10:40 15 So that is the reason and the purpose for this  
16 convening today. I am here as an official member of that  
17 committee. And what we will be doing is having a  
18 discussion that will actually be transcribed by a court  
19 reporter, and a full transcript of today's forum will be  
10:40 20 placed in the official United States record on this  
21 issue, and the committee's proceedings on immigration and  
22 the administration's executive actions as they relate to  
23 immigration.

24 So when I go back to Washington, D.C., we have  
10:41 25 a date that is -- can you tell me the date, please?

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10:41 1 THE FLOOR: March 1st.

2 SENATOR HARRIS: March 1st is the date when we're  
3 going to be submitting the hearing. We just got the date  
4 from D.C.

10:41 5 So that is the purpose and the spirit behind  
6 why we are here. And to set the table, I'll say that as  
7 we all know, over the last few weeks this new



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8 presidential administration has issued an unprecedented  
9 series of executive actions. And these actions have been  
10:41 10 directed at and targeting our immigrant communities, our  
11 Muslim communities.

12 And so we know that through these executive  
13 actions also that it is clear there's now more widespread  
14 detention of immigrants with far less prioritization than  
10:42 15 existed before. We know this based on also the executive  
16 action that just came down yesterday.

17 We also know that this administration has not  
18 made a firm commitment around its policy as it relates to  
19 the 250,000 Dreamers. Many of you may know that as a  
10:42 20 member of the committee on Homeland Security I actually,  
21 on the record twice, questioned General Kelly during  
22 those hearings on whether the administration, and his,  
23 the director of this department, would honor the promise  
24 we made to those Dreamers, to those DACA kids, when we  
10:42 25 said that if they give us the information that is

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10:42 1 necessary to vet them so that they qualify for DACA, we  
2 said we would not share that information with ICE.

3 And I asked him twice on the record to confirm

Feb2217HarrisPanel

4 that we would keep our commitment to those young people  
10:43 5 who I described correctly as being college students,  
6 enlisted people in our military, young people who are  
7 working for Fortune 100 companies.

8 I asked him if he would keep that promise, and  
9 he would not commit to keeping that promise.

10:43 10 And there is nothing about the executive  
11 actions at this point that has made clear that we are  
12 going to keep that commitment as it relates to those who  
13 may be swept up in the most recent executive action that  
14 came down yesterday, which is a broad definition of who  
10:43 15 can be detained, including those who might be charged  
16 with a crime, any level of crime.

17 Last week we even saw some in the  
18 administration float the idea of dispatching 100,000  
19 members of the National Guard to participate, which is of  
10:43 20 course shocking, the thought of it, especially for us as  
21 California where we have experienced huge harm in terms  
22 of natural disasters.

23 I'm going to later this week tour the dam. I  
24 am corresponding with the Mayor of San Jose around the  
10:44 25 harm that the flooding has caused to his residents.

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10:44 1 The National Guard was charged, and is charged,  
2 in our system of government for helping with national  
3 disasters, natural disasters, not doing something like  
4 the work of ICE. So these are obviously troubling words  
10:44 5 and perspective that we're hearing from the  
6 administration.

7 And let's be clear that these issues are not  
8 only troubling in terms of just what is morally right,  
9 what is right in terms of who we are and what our ideals  
10:44 10 are as a country. These administrative actions also harm  
11 us economically as a state and as a country.

12 In California 44 percent of Fortune 500 firms  
13 were founded by immigrants or their children. This  
14 includes household names like eBay, Yahoo and Qualcomm.  
10:45 15 This also includes brand-new companies.

16 In 2015 in L.A. County alone, six of the 13  
17 Fortune 500 companies were founded by immigrants or their  
18 children. It's obviously a huge share of our economy.

19 In California immigrant-owned businesses and  
10:45 20 firms generate - immigrant-owned businesses and firms  
21 generate - \$20 billion a year. And those businesses are  
22 giving back to California as we know. In 2014 immigrants  
23 paid \$56.5 billion in state and local taxes. 56 billion,

Feb2217HarrisPanel

24 with a "B" dollars in state and local taxes.

10:46 25 And, of course, these bans and these actions

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10:46 1 not only cost us in terms of our economy but do cost us  
2 in terms of public safety.

3 As a career prosecutor I have long known and  
4 seen that those who would commit crimes against  
10:46 5 immigrants will always have in their tool belt to look at  
6 the victim and say: if you report the crime against you -  
7 be it rape, domestic violence, fraud - if you report the  
8 crime against you, it is you who will be treated as the  
9 criminal.

10:46 10 And let's be clear: when any predator is  
11 empowered to think they can get away with their crime,  
12 all of us are at risk. This is not just about that  
13 victim, it is about all of us. And all of us in terms of  
14 those of us who pride ourselves in fighting for and  
10:46 15 living in a civil society.

16 And as a prosecutor I can tell you, I think it  
17 is a serious mistake for us to conflate criminal justice  
18 policy with immigration policy as though they are the  
19 same thing. They are two policy areas with their own

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10:47 20 factors and pathologies and problems and solutions.  
21 And it is a mistake for any, any one who holds  
22 a position of authority or leadership to conflate the  
23 two. And it is only feeding a climate of fear. It is  
24 not productive.

10:47 25 I'll also talk about the strain on local law

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10:47 1 enforcement. I know as the former top law enforcement  
2 officer of this state, local law enforcement is strapped  
3 in terms of the limited resources they have as compared  
4 to the job that they are charged with doing.

10:47 5 The job of responding to a call that relates to  
6 a homicide; the job of responding to a call that relates  
7 to human trafficking; the job of responding to a call  
8 that relates to domestic violence or child sexual  
9 assault - these police departments have limited resources

10:48 10 and so much work that they take a sincere oath to do.  
11 And the notion that we would put on top of them  
12 then, and pile on top of them then, beyond their own  
13 responsibilities, the job of performing the work of the  
14 Federal Government, and in particular our immigration

10:48 15 laws, is just unrealistic. And it is a bad use and

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16 distribution of limited resources.

17           So on the public policy in terms of just what  
18 is appropriate distribution of resources in a trifurcated  
19 form of government - local, state and federal - it's just  
10:48 20 a bad idea to require local government to do the work of  
21 the Federal Government on an issue like this.

22           Not to mention the fact that I want to know  
23 that that victim of a crime will feel that she can run  
24 out in the middle of the street and wave down a patrol  
10:49 25 car as it is driving by, knowing that will be how she

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10:49 1 receives help and safety, instead of standing back and  
2 not doing that for fear that to do that might mean that  
3 she is ripped apart from her children.

4           We have to talk about what is the sign of a  
10:49 5 civil society. So we are here today to talk about the  
6 impact of these actions and the impact that they are  
7 having on the streets of Los Angeles, on the streets of  
8 California; and I'm going to take these stories back.  
9 They will be part of the official record and we will all  
10:49 10 be talking about them, but I think it's very, very  
11 important, as we all know, that we put dimension on these

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12 executive actions; that we put faces and names to what is  
 13 actually happening because I am sure that there are many  
 14 well-intended people who don't know or understand what  
 10:50 15 these actions are actually doing to hardworking families.

16 And so the stories need to be told. And I  
 17 believe we have the power and the ability to be  
 18 persuasive in asking people to reconsider how we are  
 19 approaching these issues and are these the consequences  
 10:50 20 that we intend, and are these consequences reflective of  
 21 the ideals of who we are as a country.

22 So with that, I'm going to now turn it over to  
 23 Sheriff McDonnell. And thank you, Sheriff McDonnell, you  
 24 are -- you've been extraordinary in terms of your  
 10:50 25 leadership in Los Angeles and as a great law enforcement

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10:51 1 leader and a colleague to me.

2 And thank you for being here.

3 SHERIFF MC DONNELL: Thank you, Senator.

4 Good morning everyone, and thank you for the  
 10:51 5 opportunity to be able to talk on this issue.

6 We've heard a lot of rhetoric over the campaign  
 7 season and since that time and trying to translate that

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8 into what does that mean for people here in Los Angeles.  
9 We're committed to public safety. We're  
10:51 10 committed to working with all of the residents of L.A.  
11 County to be able to ensure that everybody is as safe as  
12 they can possibly be.

13 So in doing that we continue to do business in  
14 a way where we don't stop people on the street to find  
10:51 15 out what their immigration status is. We have no  
16 interest in that. We do the job. We try and work with  
17 every community that we are privileged to have the  
18 opportunity to protect and to serve.

19 And in doing so our currency is trust, is  
10:51 20 credibility. And if people are afraid to come forward,  
21 then we can't do the job the way it needs to be done. We  
22 can't fulfill our obligation to protect our society.

23 So as we move forward, we plan on continuing to  
24 do things the way we have been doing them, the way  
10:52 25 that -- the foundation of trust that we've been able to

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10:52 1 build. We want to be able to further build on that. We  
2 want none of that to erode in any of our communities.

3 Community policing, policing and public safety



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4 is a team sport and we can only do it well if we do it  
10:52 5 all together. So we've learned a lot of lessons over the  
6 years. We're in a position now where I think we have a  
7 strategy to be able to deal with the issues of the day in  
8 a way that protects our communities, that enables us to  
9 be able to maintain the level of trust that we've worked  
10:52 10 hard to achieve; but at the same time we're able to use  
11 the tools necessary to remove true predators from our  
12 communities as well. And that's a balance that we have  
13 to try and achieve.

14 There's people on one side that will say, you  
10:52 15 know: don't talk to ICE at all. There's people on the  
16 other side that, you know, completely cooperate with ICE  
17 and work with them and go to the other extreme.

18 I think probably the right answer is somewhere  
19 in the middle in that HSI, a part of ICE, is probably our  
10:53 20 best partner on sex trafficking and on dealing with some  
21 very difficult issues. They're very, very helpful to us.

22 So the task forces that we're on - and there is  
23 some that would like us to remove ourselves from any task  
24 force that ICE is involved in or that there's any  
10:53 25 immigration issues addressed in those task force - the

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10:53      1    Joint Terrorism Task Force, the Joint Regional  
             2    Intelligence Center; a lot of the ways with limited  
             3    resources, as the Senator mentioned, that we're able to  
             4    get the job done is in task force configuration by using  
10:53      5    the benefits of what others have to offer on federal,  
             6    state and local partners.  
             7                So we do that, but we do it in a way where I  
             8    think we strike that balance between being trusted, being  
             9    approachable and being what every segment of our  
10:53      10   community is looking for. And at the same time being  
            11   able, with limited resources, to effectively protect  
            12   everyone across the board.  
            13                As the Senator mentioned, our responsibilities  
            14   are very diverse. We go from the day-to-day, day-to-day  
10:54      15   crime prevention and solving crimes, to the  
            16   counterterrorism overlay, and on and on and on.  
            17                And in the L.A. County Sheriff's Department we  
            18   not only provide policing services for four million  
            19   people over 4,083 square miles; but we also do the jails,  
10:54      20   the courts, the community colleges, the hospitals, the  
            21   parks, search and rescue, the MTA.  
            22                And so we have a tremendous, you know,  
            23   diversity of responsibility. We are stretched very thin.

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24 So as the Senator mentioned, even if someone was inclined  
10:54 25 to try and do what some would like, the personnel

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10:54 1 resources are not there to be able to achieve that,  
2 certainly at the local level here. And I would argue  
3 that any police chief or sheriff across America would  
4 argue that as well.

10:54 5 So my commitment is to continue to be in a  
6 position where we're serving all aspects of our  
7 community, all members of our community across the  
8 county, and to be able to work with all of our partners  
9 to ensure the safety of everybody who resides in

10:55 10 Los Angeles County. Thank you for this opportunity.

11 SENATOR HARRIS: Thank you, Sheriff.

12 Next I'm going to turn it over to Kenny Salas,  
13 who co-founded an online lending site that helps connect  
14 small business owners who are first-time borrowers to  
10:55 15 those who have had a hard time getting a loan with banks  
16 and other lenders.

17 Kenny, thank you for being here and for telling  
18 your story and representing our community and our state  
19 so well. And perhaps you can share a bit, also, about

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10:55 20 the economic impact and significance of these executive  
21 actions.  
22 KENNY SALAS: I would love to do that. And really I  
23 want to share the perspective of not only an entrepreneur  
24 but an entrepreneur that is the son of an immigrant that  
10:55 25 came from Mexico.

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10:56 1 The power that immigration, the immigration  
2 story has, as an entrepreneur, transcends multiple  
3 generations. She moved out -- my mother moved out here  
4 in the '50s from Mexico and she, in her teens, opened a  
10:56 5 taco stand; and this transformed into about 25 fast food  
6 restaurants that she opened in Los Angeles called The  
7 Mexicana.  
8 The only degree she had was a beauty  
9 certificate that she got at a community college out here,  
10:56 10 but she had the entrepreneurial spirit.  
11 Unfortunately, as her business grew, it just  
12 became a little too much to manage. Right? As you think  
13 about the cost of -- different costs of managing a  
14 business, it was above her means.  
10:56 15 And unfortunately, she closed her restaurants.

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16 And my brother and I moved to Mexico with her and -- but  
17 always had wanted to move back to the United States to  
18 repursue that American dream that my mother had at her  
19 grasp. And that really inspired us to eventually get our  
10:57 20 education after we worked on Wall Street for five years  
21 and eventually get our degree at Harvard and to incubate  
22 this concept of Camino Financial, a technology company  
23 with the mission of serving underserved businesses.  
24 And I'm proud to say that currently we are an  
10:57 25 employer of 17 people out here in Los Angeles, the

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10:57 1 representative of seven different countries. So  
2 immigration in that spirit is inherent in the DNA of  
3 Camino Financial.  
4 And, also, 70 percent of the businesses we help  
10:57 5 are owned by immigrants. And despite what is going on in  
6 Capitol Hill, Camino Financial is redoubling its effort  
7 to invest in this community. We're raising an additional  
8 \$10 million. Currently we have 1,200 applications come  
9 in every month from the -- from small business owners  
10:58 10 seeking capital and also advisory.  
11 In order to illustrate the economic impact that

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12 a loan can have is, in many ways, when business owners  
 13 come, there are many family-owned businesses informally  
 14 run. I'll be the first to say that the majority of them  
 10:58 15 probably don't reflect everything on their taxes.

16 What does that mean? And that's not only  
 17 immigrant companies, that's across the spectrum. So let  
 18 me be very clear on the record: across the spectrum.  
 19 Okay?

10:58 20 Being able to give that business owner capital  
 21 incentivizes them to report their taxes, to pay more  
 22 taxes to the government, to enter into the formal  
 23 economy. And I'll give you one illustrative example:  
 24 Gabriel Latuga. He owns a specialty manufacturing  
 10:59 25 company in Palm Springs. And we were able to give him a

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10:59 1 \$250,000 loan when he was not able to secure this capital  
 2 from a bank.

3 I'm proud to say that with that capital he,  
 4 within a year he hired four more people to his business,  
 10:59 5 and he grew the top line and the bottom line by over  
 6 double digits.

7 So capital can really serve as a driver, not

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8 only to incentivize people to formalize their business  
 9 and enter into that - to the formal economy - which we  
 10:59 10 can really help them; and they can take advantage of the  
 11 resources, such as those offered by the Small Business  
 12 Administration. But in addition to that, it gives them  
 13 the capital to grow their business and employ more people  
 14 in this beautiful state. Thank you.

11:00 15 SENATOR HARRIS: Thank you, Kenny.

16 Next, I want to welcome Anthony Ng of Asian  
 17 Americans Advancing Justice organization. He applied for  
 18 and qualified for protection under DACA and, as a result,  
 19 he has been contributing to our state and our nation in a  
 11:00 20 pretty significant way.

21 Welcome, and thank you for being here.

22 ANTHONY NG: Thank you so much, Senator Harris.

23 My name is Anthony Ng. I came to the  
 24 United States from the Philippines when I was 12 because  
 11:00 25 there was an economic crises in Southeast Asia that

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11:00 1 bankrupt our small business in the Philippines.

2 When I first moved to the United States, I  
 3 didn't know what my life was going to be like. All I

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4 knew was I was with my family.

11:00 5 When DACA happened in 2012, I remember waking  
6 up one morning, looking on my social media feed and  
7 seeing some buzz around the president making an  
8 announcement around deferred action. So I didn't know  
9 what that meant. I was, like, this must be some sort of  
11:01 10 joke. Until I really understood what was happening.  
11 That day was actually my first day interning at  
12 Asian Americans Advancing Justice, and there was an  
13 opening retreat for the program that I was part of.  
14 And I remember seeing the announcement with  
11:01 15 about 150 undocumented youth and really understanding  
16 that DACA was an organizing victory led by undocumented  
17 youth that was won by the immigrant community; and,  
18 really, that allowed me to understand the power that we  
19 have as community members, as immigrant communities.

11:01 20 And although I did have hesitation about  
21 applying for DACA in the beginning: like, what does this  
22 mean? Why am I going to give my information to the  
23 government? For someone that's lived, "quote unquote,"  
24 in the shadows for the longest time, to be able to give  
11:01 25 your information to the government. Right? And not



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11:01 1 knowing what's going to happen with that.  
2 When I applied for DACA - and many of us  
3 applied for DACA - we had the faith in this government  
4 that our information would be kept confidential; it would  
11:01 5 not be using our information for immigration enforcement  
6 purpose.  
7 And I think just hearing what's happening all  
8 over the country and with executive orders and the folks  
9 in D.C., really not feeling confident that that is going  
11:02 10 to be -- that trust that I had was going to be upheld.  
11 Right? And a lot of us that are DACA recipients are  
12 scared of what's going to happen, not just to us. Right?  
13 I think it's beyond me. It's beyond folks who  
14 have DACA. It's about our families and about the  
11:02 15 communities that we live in. Right? What happens to  
16 those information knowing that we all live in mix-status  
17 families, and how is that going to be used against us,  
18 immigrants who do live in mixed-status families?  
19 And I think -- although DACA did have a lot of  
11:02 20 positive impact. Like I remember graduating from college  
21 in 2011 thinking I had no future and being able to get  
22 out of the depression and being able to -- like, I did  
23 have a future. Right? Like, even though it was a

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24 two-year incremental kind of period - process - it has  
 11:03 25 allowed me to be able to think beyond like the next day

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11:03 1 or the following week, how am I going to be able to  
 2 survive?

3 And I think it allowed me to really harness my  
 4 passion for social justice and immigrant rights work, and  
 11:03 5 be able to do that in a nonprofit setting. Right?

6 So I've been doing immigrant rights work for  
 7 the past five years, working on various issues from  
 8 immigration reform in 2013 to some of our most proactive  
 9 immigrant agenda here in California, which is a driver's  
 11:03 10 license, some of the really great policies we've had.  
 11 I've had the pleasure of working with folks here on the  
 12 panel, around some of our local work, disentangling ICE  
 13 with local law enforcement.

14 And it's really great to have Sheriff McDonnell  
 11:03 15 here next to me, really having to talk about how to make  
 16 L.A. County as safe as possible. And really, the trust  
 17 that needs to be further built between the law  
 18 enforcement and our communities.

19 I think DACA has different impacts on different

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11:04 20 folks. Right? I think it does create a sense of ease  
21 that you're not necessarily the target for priority of  
22 enforcement. Right? But you know as yesterday, seeing  
23 that, it really is chaotic. Right? We don't know, like,  
24 DACA folks will be second priority, third priority,  
11:04 25 fourth priority. Right?

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11:04 1 Like I think there is a sense of anxiety of  
2 what's going to happen with information that's out there  
3 or what's going to happen to the program and what  
4 precedent does this create for our government - right -  
11:04 5 to say that we are creating this program and then take  
6 back the word and actually use it against the folks who  
7 apply for it. Right?

8 So I think, as a DACA recipient, I'm going to  
9 continue fighting with the immigrant community to ensure  
11:04 10 that folks are not marginalized, that folks -- the  
11 numbers that we're hearing. Right? Like the amount of  
12 folks from DACA, the amount of undocumented folks in this  
13 country - that it's not just about the numbers: it's  
14 really about the human face of it. Right?

11:05 15 Whether it's the people that got caught in the

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16 raids that happened a couple of weeks ago, or even the  
 17 folks that are here on the streets, fearful of what's  
 18 going to happen to them, to their families, or the kids  
 19 that don't know what's going to happen to their parents  
 11:05 20 who might be stranded in school, not knowing are their  
 21 parents going to be able to come because their parent got  
 22 caught up in the raids.

23 I think we're in a very unique time in our  
 24 country's history where we are really figuring out our  
 11:05 25 values as a country. Are we welcoming folks from all

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11:05 1 sorts of walks of life. Right? Are we really harnessing  
 2 the talents and the contributions, not just economic  
 3 contributions of immigrants but the social, economic and  
 4 cultural contributions of immigrants?

11:05 5 SENATOR HARRIS: Next I want to introduce Angelica  
 6 Salas who is a tremendous leader and has been doing a lot  
 7 of work through CHIRLA for people in Los Angeles, but  
 8 really statewide and nationally.

9 Thank you, for your partnership.

11:06 10 ANGELICA SALAS: I really want to begin by saying  
 11 thank you for bringing us together in this very important

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12 moment. So thank you for your leadership,  
 13 Senator Harris. We're very proud to have you as our  
 14 senator from California.

11:06 15 CHIRLA's mission is to advance the human and  
 16 civil rights of immigrants and refugees and to build a  
 17 just society in which immigrants are included.

18 I, myself, am an immigrant from Mexico. My  
 19 parents came here in the '70s as undocumented workers,  
 11:06 20 and I and my sister joined them when we were four and  
 21 five. The '70s were a period in our country where there  
 22 were mass roundups: mass roundups in factories, mass  
 23 roundups in communities.

24 I know that because that is the experience that  
 11:07 25 my family had where my mother was picked up from a

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11:07 1 garment factory, and -- as that factory was raided. And  
 2 uncles and aunts have similar stories of being picked up  
 3 in that way. And just not feeling safe. Not feeling  
 4 safe at work; not feeling safe in the community. And I  
 11:07 5 am so concerned that we're going back to that moment of  
 6 mass roundups in this country.

7 So I want to be very, very clear today that our

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8 immigrant families are feeling terrorized. They're  
9 feeling attacked. They're feeling vilified; they are  
11:07 10 being vilified; and all their contributions - everything  
11 that they give to this country - is being absolutely  
12 ignored. They are being painted as individuals who they  
13 are not. They're contributors. They're builders of this  
14 nation. They're strivers for their families. They are  
11:07 15 good people. They are Americans in every way.

16 The administration's executive orders that we  
17 have seen are moving forward an agenda which is to  
18 destroy families, plain and simple, and to attack whole  
19 communities simply because of their religion, simply  
11:08 20 because of what country they were born in.

21 And simply because our elected officials have  
22 failed them in passing immigration reform in a system  
23 that is just, in a system that is modern, in a system  
24 that's going to actually allow for legal entry into this  
11:08 25 country and not ballooning the undocumented migration

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11:08 1 into this nation.

2 It is a system that has not been -- that  
3 refuses to recognize that individuals are fleeing for

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4 their lives. People are in peril of losing their lives,  
11:08 5 that is why they're coming to our nation as refugees,  
6 whether they be from Syria, whether they be from many  
7 countries in Africa, Asia or right down near us in --  
8 both in Mexico and in Central America.

9 We're denying the fact that they need refuge.  
11:09 10 They don't need more attacks, and they don't need denials  
11 of their rights.

12 On February 8th and 9th in Los Angeles we saw  
13 ICE sweeps. So for the community all that was promised  
14 during the campaign and all that was written in paper on  
11:09 15 an executive order now has become a reality in their  
16 lives. In Los Angeles we had six Southland counties  
17 targeted, 161 people picked up. Fifty-five neighborhoods  
18 in which individuals saw people being picked up at their  
19 jobs, at their homes and in their communities.

11:09 20 Individuals were picked up - were picked up -  
21 in these different places, and all of these actions were  
22 witnessed by their families, by their coworkers, by their  
23 neighbors.

24 That is why at CHIRLA we received thousands of  
11:09 25 calls from individuals who were reporting ICE in their

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11:10 1 neighborhoods. They wanted to tell us what was  
2 happening. ICE denied it. ICE denied that this was  
3 happening in our communities.  
4 But because of the pressure of individuals like  
11:10 5 Senator Harris, our members of Congress, our local  
6 elected officials and people of goodwill - they had to  
7 force, come forward, with the information that, yes,  
8 these kinds of raids were happening. And they weren't  
9 just happening in Southern California. They were  
11:10 10 happening all over the country.  
11 The human cost is severe, and I'm most worried  
12 about the children who are witnessing these actions.  
13 Many of these children are being left behind without a  
14 father, without a mother. Many of these children are  
11:10 15 U.S. Citizens themselves.  
16 For many of these individual families who are  
17 mixed status, what is happening is many of the  
18 individuals who are being picked up are the main  
19 breadwinner; that is why they're being picked up at work.  
11:11 20 I want to just really emphasize this. They  
21 weren't being picked up doing illicit behavior. They  
22 were being picked up at work and with their families. So  
23 what we're doing in terms of the -- it's the human cost,



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24 but it's also the economics to those -- economic cost to  
11:11 25 those families where they don't -- no longer have a bread

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11:11 1 winner.  
2 And it's basically also leaving the family in  
3 total trauma. Trauma about what has happened in the  
4 destruction of their family, but also economic ruin.

11:11 5 What I know is that people do not feel safe,  
6 and that is why we're also getting calls from legal  
7 permanent residents. Legal permanent residents who feel  
8 that even though they are legally in this country, who  
9 have a permanent ability to stay in this country, they  
11:11 10 want to become citizens because they don't believe their  
11 legal permanent residency status is going to be honored  
12 or respected.

13 So every day at our organization we have  
14 individuals coming forward. And I know that many of my  
11:11 15 sister organizations, whether its CARCEN, and others, are  
16 seeing the same -- the same thing: individuals saying I  
17 need to become a citizen because I don't think I, a legal  
18 permanent resident, will be protected.

19 Finally, the cost of these enforcement actions

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11:12 20 are exorbitant. The Center for American Progress did a  
21 report in 2010 that basically stated that if we were to  
22 deport 8 to 9 million people, it would cost us  
23 \$285 billion to deport this amount of people as promised  
24 right now by Donald Trump.

11:12 25 Imagine this: \$285 billion over a five-year

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11:12 1 period to deport 8 to 9 million people - and they want to  
2 do it faster. And so, imagine what we could do with  
3 \$285 billion invested in education, in housing, in health  
4 care, and, yes, in the U.S. Citizenship and Immigration  
11:12 5 Services, so that we actually could fund the departments,  
6 to process legal paperwork so people can come in legally,  
7 and their asylum claims and their citizenship  
8 applications can be processed even faster.

9 This is a wrong way for our country to move  
11:13 10 forward. We as citizens of this nation, as individuals  
11 who believe in the values of liberty and justice, should  
12 not accept what's happening right now.

13 Yesterday we saw the work plan, the way that  
14 the executive orders are going to be implemented. And be  
11:13 15 clear, we're going back to -- and I want to be clear - we

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16 are going back to the time of mass roundups. And they  
17 want to use our local law enforcement, as they call them,  
18 as force multipliers.

19 We cannot allow this to happen. We need to  
11:13 20 speak up, and I know good people all over this country  
21 are speaking up. We need to stop this, and stress, and  
22 show that Americans believe in justice, in due process;  
23 and we believe in family; and we believe in fairness.

24 Thank you very much.

11:13 25 And I want to actually enter into the record a

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11:14 1 letter with many of our concerns to Senator Harris so  
2 that it can be entered into the record.

3 Thank you very much.

4 SENATOR HARRIS: It will be entered into the record.

11:14 5 Thank you.

6 And we have Marielena Hincapie, who is another  
7 of our distinguished panelists. She is the executive  
8 director of the National Immigration Law Center, and a  
9 leader -- another leader, as everyone at this table,

11:14 10 around these issues, but particularly the pro bono legal  
11 services component of this issue.

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12           MARIELENA HINCAPIE: Thank you, Senator Harris.

13                   And thank you for your leadership and for not  
14 only representing us in Washington but here.

11:14   15           Many of us, this is our second time meeting  
16 with you and you've only been in office for, I believe,  
17 exactly a month. So that, again, it just speaks to, you  
18 know, just speaks volumes on your leadership; and also  
19 want to thank you on behalf of the National Immigration  
11:14   20 Law Center for working with us to reunite literally a  
21 Syrian family that was detained at LAX, and Lin, and  
22 their 18-month-old son. Thank you very much for that  
23 work.

24                   So these are very dangerous times. I'm just  
11:15   25 going to be really blunt. We are living in a period

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11:15   1 where racism, xenophobia, hatred is the policy of the day  
2 coming from Washington, D.C., from the White House.

3                   I'm also an immigrant. I'm an immigrant from  
4 Columbia. My father was a guest worker. He was  
11:15   5 recruited to work at a time when textile, skilled textile  
6 worker was considered a skilled worker. And he came.  
7 And we were able to come actually with green cards

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8 eventually in the 1970s.

9 My parents made a sacrifice to come to the  
 11:15 10 United States because they were fleeing poverty and  
 11 violence in Columbia. They came to the United States the  
 12 same way that millions, millions of immigrants and  
 13 refugees have come throughout our history.

14 That notion that our country can be a place  
 11:16 15 that welcomes people of all nationalities, of all faiths,  
 16 of all races, that we can come to this country and become  
 17 thriving individuals who can fulfill our full human  
 18 potential. Look, my father had a second-grade education.  
 19 My mom had a fifth-grade education.

11:16 20 Never in their dreams did they think that I  
 21 would be a lawyer today, sitting next to a senator of the  
 22 United States. Honestly, my parents, my father, thought  
 23 that I should become a nail salon owner.

24 He was an entrepreneur, speaking of  
 11:16 25 entrepreneurs. Right? He really didn't know, but he

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11:16 1 knew this: so that hair salon and nail salon, that  
 2 will -- that will allow you to make a living.

3 But they also believed in the power of

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11:16 4 education: the power of education as an equalizer and a  
5 pathway out of poverty. That dream that they were  
6 actually able to fulfill, my ten brothers and sisters,  
7 all of us, are now contributing to this country as small  
8 business owners, as educators, as health providers, a  
9 biochemist, a corporate manager. I mean, we fulfill all  
11:17 10 these different roles in society, and we are just a  
11 sample of the immigrants that make this country great.  
12 What is at stake today is that the White House,  
13 and the person who is occupying that White House, has now  
14 said that every immigrant is now a priority.  
11:17 15 Yesterday the implementing memos that were  
16 issued clarify, and the FAQ's, the fact sheets that were  
17 issued with them. And yesterday on the call that the  
18 White House and the Department of Homeland Security had  
19 with media's - they clarified that everyone is now a  
11:17 20 priority.  
21 There are no longer any priorities: whether  
22 you've been convicted of any crime, whether it's murder  
23 or whether it's street vending, whether you have been  
24 charged with a crime, even if you were charged for  
11:17 25 mistaken identity.

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11:17 1 We live in a country where our Constitution  
2 protects everyone and demands that everyone is innocent  
3 until proven guilty. But this administration is saying,  
4 no, that does not matter for immigrants. If you've been  
11:18 5 charged with a crime, you are now a priority for  
6 deportation.

7 This administration also says, if you have  
8 committed an act that could be interpreted to be a crime.  
9 Just think at how Kafkaesque and dangerous that is: you  
11:18 10 have committed a crime, or you committed some kind of act  
11 that could be interpreted as a crime.

12 And then yesterday in a footnote they said the  
13 guidance from November of 2014 that protects you as  
14 citizen parents of children, that's going to be dealt  
11:18 15 with in a future guidance. Our understanding is that  
16 this administration is also prioritizing parents of U.S.  
17 citizen children. They are now equal game.

18 DACA, as Anthony mentioned, we have no  
19 guarantee that DACA will -- actually, in fact, the draft  
11:18 20 executive order terminates DACA.

21 We also have no guarantee that all of the  
22 priorities and guidances that have been put in place  
23 because of the hard work of people in this room and

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24 across the country under the Bush administration and to  
11:19 25 the Obama administrations so that ICE cannot conduct

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11:19 1 raids in sensitive locations.

2 What are sensitive locations? They are our  
3 churches and temples; they are our health clinics, our  
4 schools, our courts. There is no indication that that

11:19 5 continues to be on the books any more.

6 All of the guidances have been rescinded by  
7 this administration. Travel and Muslim ban - fortunately  
8 the courts are serving as a firewall.

9 We at National Immigration Law Center have sued  
11:19 10 both, along with our partners at the International  
11 Refugee Assistance Project, ACLU and Yale. That was the  
12 initial lawsuit at -- with Mr. Darweesh and Mr. Alshawi  
13 over at JFK, including everybody who was detained at  
14 airports. We separately have filed a lawsuit against the  
11:19 15 entire executive order in Maryland, but that is being  
16 rewritten.

17 We, in any moment now, can, at least for the  
18 next few hours or tomorrow, expect to see the revised  
19 travel ban and Muslim ban. They are not stopping there.



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11:20 20 And so I will close by saying that we at the  
21 National Immigration Law Center are committed to working  
22 with every single one of you.

23 And I say every single one of you because we  
24 need everyone in the room. We need the media. This is  
11:20 25 an administration that believes in alternative facts.

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11:20 1 Yesterday on that call they said, this is  
2 nothing different. The community is the one that's --  
3 its notion of mass deportation is a figment of the  
4 imagination of communities. This is what this  
11:20 5 administration said yesterday to the media on call  
6 explaining what -- the new deportation memo.

7 So it is the media's job to hold them  
8 accountable and to speak truth to power. It is the job  
9 of philanthropy that is hosting this, the California  
11:20 10 Endowment, and private sector and the public sector.

11 It is our job as advocates and organizers, the  
12 community leaders, to hold this administration  
13 accountable and to work with our local elected officials  
14 to ensure that our Constitution and the rights enshrined  
11:21 15 in the Constitution continue to protect all of our

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16 residents, all of our communities members, all of our  
17 family members.

18           So I thank you again, Senator Harris, for your  
19 commitment to working with us because we are going to  
11:21 20 lose loved ones. We already are losing loved ones and we  
21 need to ensure that we try to prevent as much harm as  
22 possible. We'll do that through the courts but we must  
23 also do that through the halls of Congress and the state  
24 legislatures and local elected officials and in our  
11:21 25 communities. Gracias.

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11:21 1           SENATOR HARRIS: Gracias.  
2           I'd like that the panel will have a discussion  
3 and I'd like to kick it off with a couple of questions.  
4           And I'll start with you, Sheriff, but I would  
11:21 5 like that also, through this process, this conversation,  
6 that we have in the record information that we're giving  
7 people who are concerned that they may be caught up in  
8 this, and what information we can give them that is  
9 helpful to them, in addition to articulating, obviously,  
11:22 10 all of our concerns.

11           So, Sheriff McDonnell, I read a study that

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12 indicated that there was a questionnaire for Latinos in  
13 California. And the response was that 40 percent of the  
14 respondents said they would not report a crime against  
11:22 15 themselves for fear that they would be deported or they'd  
16 be asked about a family member who was not documented;  
17 because as we know, and it has been mentioned, we have a  
18 lot of mixed-status families: meaning, within one  
19 household, or within one family, there are members of the  
11:22 20 family who are documented and others who are not  
21 documented.

22 So my question to you, Sheriff, is what, as a  
23 career law enforcement official - you ran a police  
24 department, you run the largest sheriff's department  
11:22 25 within the country - what are your concerns about

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11:23 1 unintended public safety consequences of these executive  
2 orders?

3 SHERIFF MC DONNELL: Thank you. Great question,  
4 Senator.

11:23 5 When I look at it, when I mentioned in my  
6 opening that trust is our currency, if people aren't  
7 willing to come forward as victims, as witnesses, then

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8 the system that we have in place for criminal justice  
9 breaks down. So that is a critical component for us, to  
11:23 10 be successful is to have -- serve a populace that's  
11 willing to step up and to be able to say: hey, I was a  
12 victim of a crime and -- or: I was aware of a crime and I  
13 want to stand up and be able to raise my right hand and  
14 testify, how to hold people accountable for their  
11:23 15 actions.

16 The criminal element in our communities use the  
17 fear and the anxiety that's in the immigrant communities  
18 against us, against the victims in an effort to be able  
19 to do what they want.

11:23 20 Many of our gang members frequently will tell  
21 people: hey, don't call the police. You'll be deported.  
22 And they use that leverage to be able to do what it is  
23 they want to do and prey on the most vulnerable in our  
24 communities.

11:24 25 So our goal is to be able to get out there and

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11:24 1 be very clear on what we do and what we don't do. And  
2 we're there for the people that we serve. Our focus is  
3 on crime prevention, crime control and dealing with the

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4 challenges that people face. We are not an arm of  
11:24 5 immigration, and so we want to be very clear about that.

6 I had the opportunity to meet last week with  
7 the Consul General of Mexico here in Los Angeles; and  
8 we're moving forward to be able to try and do something  
9 together that -- where we can, on Spanish-speaking  
11:24 10 television, particularly, to be able to talk to people  
11 and to ease that level of anxiety that we've seen and  
12 hopefully be able to take a leadership role in that.

13 And I think what we do here in Los Angeles  
14 could well be replicated in cities around the country.

11:24 15 SENATOR HARRIS: So you are seeing a level of  
16 anxiety on the streets as a result of these orders?

17 SHERIFF MC DONNELL: A level of anxiety,  
18 anecdotally, when we looked, and we did, at the number of  
19 crime reports in -- particularly in our immigrant  
11:25 20 communities, we have not seen a decrease, we have seen an  
21 increase, in fact. So that leads us to believe that what  
22 we're doing here locally is having a positive impact, and  
23 that people are still willing to come forward and be part  
24 of the system.

11:25 25 SENATOR HARRIS: And what would your recommendation

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11:25     1    be for your colleagues around the country in terms of how  
             2    they should be responding to the anxiety in their  
             3    communities to the extent that it will have an impact on  
             4    the public safety of their jurisdiction?

11:25     5            SHERIFF MC DONNELL: I think a lot of them are doing  
             6    it. I was last week in D.C. for a meeting with major  
             7    county sheriffs and major city chiefs. And we met with  
             8    some of the -- some of the representatives of the new  
             9    administration. And we're very clear about what our  
11:25     10    concerns were, what our challenges are, and what we see  
             11    as the best path for moving forward.

             12            And I think people -- I think people would be  
             13    surprised at the belief and the feeling of major city  
             14    chiefs, major county sheriffs, that as we move forward  
11:25     15    our primary focus is, as I just said, is on protecting  
             16    the people that are in our jurisdictions.

             17            And as we move forward we have to do what, in a  
             18    way of -- by means of partnership with the communities  
             19    that we serve. And that we can only be successful if we  
11:26     20    eliminate the anxiety and the fear that many have about  
             21    coming forward and being part of the solution.

             22            SENATOR HARRIS: My final question for you for now:  
             23    Are there best practices around how you can train your

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24 deputies, your officers, so that they work on this  
11:26 25 relationship of trust that you so rightly prioritized;

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11:26 1 and what are those best practices that can be shared with  
2 other departments around the country?

3 SHERIFF MC DONNELL: I think with transparency, a  
4 term that we hear all too frequently now but one that I  
11:26 5 think is very applicable, is to basically come out and  
6 talk to the public, to be able to say: Here is what your  
7 expectations can be; here are our expectations.

8 We need to work together. We need to be able  
9 to do so in a way where we're sharing information, we're  
11:27 10 able to work together on solutions rather than just the  
11 symptoms that we see in urban America, in particular.

12 So I think it's setting the bar high, holding  
13 our people to a very high standard, but also holding the  
14 expectations we have of the community to work with us, to  
11:27 15 be able to get some long-lasting solutions to deal with  
16 the underlying problems.

17 And we talk about the philosophy of community  
18 policing, which is partnership primarily and problem  
19 solving, and to be able to do that together, we have to

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11:27 20 do it from a position of trust.  
21 SENATOR HARRIS: And then I'd like to ask Kenny,  
22 what impact has the executive order had on your workforce  
23 as well as, perhaps, your clients? Have you seen any  
24 impact?  
11:27 25 KENNY SALAS: Absolutely. And I'll be fully

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11:27 1 transparent. So our -- as I think about immigrants, we  
2 primarily target Latino-owned businesses, just for  
3 contextualization. And immediately after the election of  
4 Trump and after the executive order related to  
11:28 5 immigration, you know, the amount of applications we got  
6 in January was about 1,200; that plummeted 30 percent as  
7 we look at the amount of applications we received in  
8 February.  
9 And why is that? It's, at the end of the day,  
11:28 10 what pushes people to innovate. Right? You don't have  
11 to really dig too deep. It's the confidence that you can  
12 invest in your business and have a certainty that your  
13 rights are protected.  
14 And if I would also piggyback on the concept of  
11:28 15 trust that we've been discussing; to share a statistic



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16 again, focused on Latino-owned businesses, there are --  
 17 currently there are 4.3 million Latino-owned businesses  
 18 in the United States. They represent currently about  
 19 \$668 billion in revenue they contribute to the U.S.  
 11:29 20 economy.  
 21 Now, if we look at the average size of these  
 22 businesses, they're about \$156,000 in revenue. That's  
 23 one quarter of the size of non-Latino-owned businesses.  
 24 Why do I mention that? One of the reasons -- there's  
 11:29 25 several reasons why they are smaller, but one reason that

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11:29 1 you can argue is they under-index in their ability to  
 2 access capital, and capital is in many ways a driver for  
 3 growth.  
 4 Why do they under-index in accessing capital?  
 11:29 5 Again, one assumption is lack of trust. Right? It boils  
 6 down to the lack of trust in our institutions to help  
 7 this group. Right?  
 8 And that is -- and to circle back at the  
 9 question, this is just making it worse, and just the  
 11:30 10 numbers speak for themselves, which is why, you know,  
 11 we've taken a very strong position in helping this

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12 community.

13 SENATOR HARRIS: Thank you.

14 Anthony, in this conversation we sometimes lose  
 11:30 15 sight of the impact on the Asian and the API community in  
 16 terms of the number of immigrants.

17 Can you talk a little bit about that piece of  
 18 it and which of the various Asian and API countries we're  
 19 seeing the executive order perhaps have the most impact?

11:30 20 ANTHONY NG: Yes. I think in terms of the impact of  
 21 the executive orders, like the Asian-American and Pacific  
 22 Islander community, is very diverse. Right? We  
 23 definitely see a lot of the executive orders attacking  
 24 Southeast Asian communities who are the most criminalized  
 11:30 25 within Asian-American communities.

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11:30 1 And I think, just a lot of the DACA recipients  
 2 coming from the Philippines, Korea -- the attack on  
 3 family immigration. Right? And how that's been a  
 4 pivotal, pivotal piece of the growth of Asian-American  
 11:31 5 community is because we're able to migrate through family  
 6 immigration, or even the attacks on our Muslim  
 7 communities. Right? Many Asian-Americans are Muslims.

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8 Right? So when Muslims are under attack, Asian-Americans  
9 are under attack.

11:31 10 I think we see the flurry of different  
11 executive orders, it's going to have varying degrees of  
12 impact. Whether it's the public -- the leaked memos and  
13 public benefits. Right? How that's going to impact the  
14 ability of low-income immigrants to be able to support  
11:31 15 themselves and be able to -- to feel that they are able  
16 to survive day-to-day. Right?

17 Or even using that against folks who are  
18 wanting to bring their family members over. Right?  
19 Whether it's high school workers who have family members  
11:31 20 that they want to bring over here to the United States  
21 and we're targeting, like immigrants from different  
22 aspects: that's going to impact the way immigrants are  
23 coming to the United States, wanting to come to the  
24 United States or wanting to be in the United States.  
11:32 25 Right?

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11:32 1 The executive orders definitely will continue  
2 to create fear in various communities, whether it's fear  
3 of calling local law enforcement when we see this

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4 administration wanting to utilize the law enforcement as  
 11:32 5 immigration agent. I think that it's really great to  
 6 hear the Sheriff say he wants to ensure that trust is  
 7 building.

8 And one way you can do that, Sheriff, is  
 9 supporting the California Values Act SB 54 and SB 31  
 11:32 10 which is a conflict to those that we see are in the  
 11 state.

12 SENATOR HARRIS: Tell us about those.

13 ANTHONY NG: SB 54 will be simply a clear line  
 14 between state resources and not allow any of those  
 11:32 15 resources to go for immigration enforcement, which I  
 16 think is very -- very, very clear-cut. I think it makes  
 17 sense to my mom, to other folks that we've talked about.  
 18 Right?

19 And SB 31 relates to the creation -- or  
 11:33 20 prevents state and local funding from being utilized in  
 21 the creation of a Muslim registry or any kind of  
 22 registry -- I'm sorry. Right?

23 I think a lot of the fear that we see in the  
 24 community are being manifested in policies that our  
 11:33 25 elected officials shows both at the state, at local

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11:33 1 levels, and the Sheriff, can really push forward.  
2 SENATOR HARRIS: Angelica, Anthony mentions a really  
3 important subsegment of the population we've been  
4 speaking of, Asian Muslims.

11:33 5 What are we doing in terms of what resources  
6 are available to them, and are there any unique issues?  
7 Is there any way that this is impacting that subset of  
8 these communities that we should talk about and highlight  
9 as this point of education, public education?

11:33 10 And then, also, can you talk a little bit about  
11 what you are experiencing in terms of the executive order  
12 that will double the size of the employees of DHS? I  
13 think it's going to be 10,000 new ICE officers and then  
14 five thousand new CBP, customs and border patrol  
11:34 15 enforcement officers.

16 And I know that the current number of staff  
17 there is 7,000. So to increase it by 15,000, not to a  
18 total of 15,000 but seven plus 15, is obviously going to  
19 present, I think, certain challenges in terms of the  
11:34 20 standards by which people will be employed and the  
21 vetting that will take place to bring those folks on.

22 ANGELICA SALAS: I think that the first answer to  
23 your question around Asian Muslims - I think the first

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24 thing that CHIRLA is doing is partnering with  
11:34 25 organizations like Asians Advancing Justice, like CAIR

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11:34 1 Los Angeles, Counsel of American Islamic Relations, the  
2 Southern California Islamic Center, different groups, so  
3 that we're working in partnership and doing the work  
4 together.

11:35 5 I think it's really important that as part of  
6 this conversation we also talk about the need to continue  
7 to work with law enforcement around the reporting of hate  
8 crimes and hate incidents.

9 Many times the attacks don't just begin --  
11:35 10 don't end up as hate crimes, but they are hate incidents  
11 and hate -- and what I would just say, this sense of  
12 feeling not welcome and not caring; that's an important  
13 element to bring to this conversation.

14 I think that the other piece is really to fight  
11:35 15 to have refugee status and also to have -- to be honored,  
16 to honor our values in this country, which basically says  
17 there is freedom of religion.

18 And I think that we have to stand firmly in not  
19 allowing our immigration laws to suddenly be

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11:35 20 determined -- or who gets -- who is allowed to come in on  
21 a visa based solely on your religion.

22 And so I'm so thankful for NILC, for the ACLU,  
23 folks who are here in this room who actually put this  
24 through the courts, because I think we all have to stand  
11:36 25 firmly united in that front around the enforcement and

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11:36 1 the doubling of ICE agents and also border patrol.  
2 To give you context, a lot of this doubling  
3 ignores the fact that ICE and CBP personnel have already  
4 doubled. Since 2001, after 9/11, the border patrol went  
11:36 5 from 10,700 agents to 21,364, one of the largest  
6 enforcement arms in this nation. 21,000 border patrol  
7 agents. And they're asking to add an additional 5,000.

8 It took -- it was -- since 2001 to the present,  
9 border patrol has been doubled. They're trying to, in  
11:36 10 one year, literally, maybe even months, trying to bring  
11 forward individuals who are -- to bring them into border  
12 patrol.

13 And I actually want to really -- Andrea  
14 Guerrero, who works with the Alliance for San Diego who  
11:37 15 has done phenomenal work, is here with us. And she knows

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16 the kind of abuse that happens at border -- in our border  
17 regions, in our border communities because of ill-trained  
18 officers, because of officers who are not held  
19 accountable and officers who literally believe that  
11:37 20 they're above the Constitution of the United States.

21 That is happening now. And so when I see  
22 additional forces at the border patrol, I am just very  
23 concerned for what we will see with our southern border  
24 regions.

11:37 25 The other is ICE. So ICE right now has almost

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11:37 1 close to \$6 billion annual budget. And here we want to  
2 double to 10,000 agents to go up -- to, again, to  
3 participate in the rounding up, the detention, the  
4 arresting of individuals.

11:38 5 Again I'm very concerned both because of our  
6 tax dollars being spent in this way but also that I  
7 want -- and this is what we tell our community, you are  
8 protected by the Constitution. You are protected. If  
9 you live in the United States, irrespective of your

11:38 10 immigration status, you are protected by the  
11 Constitution.



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12                   So what we want to make sure is that  
13 individuals understand that they have a responsibility to  
14 abide by the law of the -- our current immigration laws  
11:38 15 that have certain safeguards, but also our Constitution.  
16 And my concern with the doubling so quickly of ICE  
17 personnel is that they won't be trained properly.  
18                   And anybody in law enforcement knows that you  
19 must train well because if you don't train officers that  
11:38 20 then they will do what they will do anyway, you know, on  
21 the ground. And even if there are policies, et cetera,  
22 they won't follow them.  
23                   And the final piece is, this is my biggest  
24 concern. So between CBP and ICE right now we have close  
11:39 25 to a \$20 billion annual budget. More personnel than many

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11:39 1 of our Federal -- other Federal law enforcement agencies  
2 combined. And I want to know is, when they're talking  
3 about a force multiplier, just for Sheriff McDonnell, to  
4 let us know, what is your budget?

11:39 5                   And it seems to me that they have quite a bit  
6 of resources, so to demand that our local law enforcement  
7 with limited resources also do their job I think is

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8     atrocious. And we should actually feel -- you know, we  
9     should condemn that.

11:39   10             But I'm most concerned for the kind of  
11     treatment that our immigrant community will be -- what  
12     they are going to feel when they're encountering ICE  
13     officers: just the lack of respect, the lack of  
14     professionalism that we're seeing, because we're seeing  
11:40   15     more aggressive -- a more aggressive tone in their  
16     actions.

17             A more -- I would say even the lack of  
18     communication is something that we're very disheartened  
19     with, because we might disagree - over many, many years  
11:40   20     we've disagreed as to their purpose and our purpose; but  
21     one thing that we've always felt is at least  
22     communication was forthcoming, and that is something  
23     we're not seeing.

24             SENATOR HARRIS: I'm going to ask that a couple of  
11:40   25     the folks on this panel, including you, and perhaps

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11:40   1     Sheriff, you, as well, that you would submit for the  
2     record, and for me, any recommendations you have about  
3     what we will recommend to ICE that they do regarding

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4 training these new officers they're going to bring on,  
11:40 5 because they will bring them on.  
6 And we know that we have cultivated in  
7 Los Angeles and in California, I say with bravado, some  
8 of the best training techniques for law enforcement in  
9 the country. So I welcome and invite you to share that  
11:41 10 with me in my office, so that as this starts to happen we  
11 can at least -- we can ensure that there will be some  
12 base level of standard on training.  
13 And let's talk a little bit about the legal  
14 assistance piece.  
11:41 15 Marielena, what are you seeing as the  
16 challenges in terms of the calls that you're getting,  
17 questions you're getting about the executive orders and  
18 what do we need to clear up about any confusion or  
19 misinformation about legal rights?  
11:41 20 MARIELENA HINCAPIE: So, very important questions.  
21 So like everyone else in the room, and of  
22 course all the panelists, we at National Immigration Law  
23 Center have been overwhelmed. Like, we're not getting  
24 calls just from immigrants and immigrant advocates and  
11:41 25 allies, but also local and state elected officials around

11:41 1 the country, from Congressman, Senators, from health care  
2 providers, pediatricians.

3 I have a meeting on Monday with the leadership  
4 of the American Academy of Pediatricians because of what  
11:41 5 they're seeing among their membership. Educators, right?  
6 Just really be -- the number of -- this new world order  
7 in which we're in is completely taxing every part of our  
8 society; every part of our society is being impacted by  
9 what is being proposed and soon to be implemented by this  
11:42 10 administration.

11 Fortunately, we've also seen some of the silver  
12 lining. Right? We saw the beauty of the power of  
13 We-The-People at airports a couple of weeks ago. Right?  
14 Where just average, everyday people said, "I'm going to  
11:42 15 volunteer. This cannot be happening in our country."

16 So the number of law students; the number of  
17 law firms, private; both large law firms as well as just  
18 individual attorneys, some with immigration experience,  
19 some with not. That's requiring many of our  
11:42 20 organizations to work together to train attorneys so that  
21 we can expand.

22 We're also, again, a number of the groups here  
23 are working on creating rapid response networks for raids

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24 so that we're prepared and we can match individuals. So  
11:42 25 if there is deportation that somebody gets caught up in,

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11:43 1 that there is representation.  
2 Most importantly, though, we want to try to  
3 prevent that, the front end. So the organizing, the  
4 know-your-rights education is all really critical.  
11:43 5 Many of our organizations at the national level  
6 worked on a centralized website, which is  
7 [www.informedimmigrant.com](http://www.informedimmigrant.com), which is like a clearing house  
8 of all the know-your-rights information.  
9 And also it links, based on people's zip code  
11:43 10 anywhere in the country, people can find access to a  
11 referral: the local organization that has Board of -- BIA  
12 accredited reps for lawyers of either low bono or  
13 pro bono lawyers.  
14 So there's a lot to be done, but the reality is  
11:43 15 the resources for all of our organizations are really  
16 limited. And we're all stretched beyond capacity.  
17 So needing to really think very creatively, and  
18 even the tech industry is helping us to think through,  
19 like what are the apps and what are the different

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11:43 20 platforms that can help expand capacity to reach people  
21 so that they have the information; because, as many of us  
22 have said already, the Constitution does protect all of  
23 us, regardless of where we were born, regardless of how  
24 much money we have, our race, our religion, et cetera.

11:44 25 So we want to make sure that people are

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11:44 1 empowered with information, that they're empowered to  
2 take action to protect themselves. And then if people  
3 are detained or when people are detained, that they get  
4 access to counsel.

11:44 5 You have introduced - at the Senate level,  
6 right? Federal level - a bill on access to counsel here  
7 in California. We have a bill giving universal  
8 representation at the local county level.

9 We need to make sure that those bills all get  
11:44 10 through the finish line, that they get signed, that the  
11 resources are there to make sure that our community  
12 members have a right to an attorney, which is the only  
13 way they're going to be able to fight their deportation  
14 with them, even in this new context that we're in.

11:44 15 SENATOR HARRIS: Can you share with us some of the

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16 frequently asked questions and what are the responses?  
 17 MARIELENA HINCAPIE: Do I have a right to an  
 18 attorney? There is misinformation out there about  
 19 whether or not immigrants, one, are they protected by the  
 11:45 20 Constitution? Do they have any rights if they're  
 21 undocumented or not? What rights do they have vis-a-vis  
 22 law enforcement? Vis-a-vis immigration agents or border  
 23 patrol? Is that any different?  
 24 So, you know, what are their rights at home  
 11:45 25 versus on the street or in the workplace? So a lot of

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11:45 1 questions like that. And then now we're also getting,  
 2 because of some of the, as Anthony mentioned, the leaked  
 3 drafts of executive orders out there with respect to  
 4 public charge and that being a deport -- or reason for  
 11:45 5 someone to be deported if they have access or benefits,  
 6 even as to their U.S. citizen children.  
 7 So there's a lot of chaos and fear right now,  
 8 which I actually think a lot of that is intentional.  
 9 Part of the strategy at the Federal level is coming from  
 11:45 10 this administration to create such fear and chaos as the  
 11 attrition through enforcement strategy that was tried at

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12 the state level in Arizona, Georgia, Alabama, Indiana,  
13 Utah, South Carolina, et cetera - all of which we were  
14 successfully able to get them struck down through the  
11:45 15 courts. They're trying this at the Federal level now.

16 SENATOR HARRIS: So, thank you for mentioning the  
17 first bill that I proposed as a Senator is a bill that we  
18 are getting sponsors for now. And it is a bill that  
19 would create a right for immigrants to have access to  
11:46 20 counsel.

21 After the executive orders came out, and  
22 regarding refugees, I got calls that Saturday through the  
23 night from lawyers who were at Dulles or SFO or LAX,  
24 literally pretty much on the other side of the door where  
11:46 25 refugees were detained and without being provided counsel

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11:46 1 and when requesting counsel were denied.

2 So this bill will create a right so that if  
3 that person requests counsel they will be granted  
4 counsel. Government doesn't have to pay for it but  
11:46 5 government cannot deny them access to counsel.

6 So I look forward to everyone helping us get  
7 that through and convincing everyone that it's just the



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8 right thing to do and is reflective of the values of who  
 9 we are as a country and it's, just on general purpose  
 11:47 10 principles, something that is reflective of the values in  
 11 our Constitution.

12 But tell us, if you will, what are the three  
 13 top questions that you're receiving about what this means  
 14 for families and what are the answers to those three  
 11:47 15 questions?

16 MARIELENA HINCAPIE: So I'll start from of the  
 17 National Immigration Law Center, this may be different  
 18 for different organizations. I mean, we definitely --  
 19 DACA is a big question. DACA and DAPA. Right? If I  
 11:47 20 have DACA will I be able to continue with DACA? Have  
 21 this temporary protection from deportation, or will I be  
 22 deported?

23 The answer is that right now DACA continues to  
 24 exist. They have not rescinded the guidance. They have  
 11:47 25 indicated yesterday, I think, President Trump got caught

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11:47 1 loving Dreamers. I won't editorialize on that.

2 But the answer is, yes, people with DACA  
 3 continue to be protected.

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4           We are not -- you know, we are asking  
11:48 5   individuals who would be eligible for DACA to first  
6   consult with an organization or an attorney before  
7   considering applying, definitely for the first time; that  
8   I think is a huge, huge risk. And even renewals at this  
9   time, but we want to make sure that people have  
11:48 10 individualized assessments about that.  
11           With DAPA, which is the parents of U.S.  
12   citizens or lawful permanent residents, this was the  
13   change of policy that President Obama announced back in  
14   November 2014, which never went into effect, as folks  
11:48 15 know, unfortunately because of a lawsuit filed by Texas  
16   and 25 other states. They have not officially rescinded  
17   that program.  
18           In the past under President Obama parents of  
19   U.S. citizens were not a priority. Unfortunately, our  
11:48 20 read at the National Immigration Law Center is parents of  
21   U.S. citizens are, just as much as everyone else, now a  
22   priority.  
23           And, again, the importance of making sure that  
24   individuals know that they have a right under the  
11:49 25 Constitution to remain silent; that they have a right not

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11:49 1 to answer questions that will incriminate them, including  
2 what country you are from.

3 By admitting that I am from Columbia, then I am  
4 now admitting that I'm not a U.S. citizen. Making sure  
11:49 5 people know not to sign any documents without the advice  
6 of counsel.

7 We saw at the airports lawful, permanent  
8 residents being coerced into signing Form 4407, which is  
9 abandoning their permanent residency. And it's just  
11:49 10 unheard of and un-American and unlawful that that's  
11 happening to people with green cards.

12 So especially for anybody in detention,  
13 absolutely do not sign any document without legal  
14 counsel. If you are confronted with an immigration  
11:49 15 agent, ask for a warrant. They're a Federal agent, they  
16 have to identify themselves as Federal agents. They must  
17 provide a warrant for arrest or a search warrant.

18 If they don't have that, you don't have to let  
19 them in. So there are many ways that people can protect  
11:50 20 themselves to try to prevent the detention to begin with;  
21 and then definitely there are additional rights once  
22 they're detained, like access to counsel, although not at  
23 government expense.

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24 SENATOR HARRIS: Angelica.  
 11:50 25 ANGELICA SALAS: So everything that Marielena said

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11:50 1 is absolutely the similar questions that we're receiving.  
 2 I think the other major question, and I know  
 3 Felipe Carrera from the Mexican Consulate is here, as  
 4 well. But the question about how do I -- what do I do  
 11:50 5 with my children? So the issue of families, really  
 6 thinking about the well-being of their children if  
 7 they're detained and deported.  
 8 So how do I fill out a guardianship form? What  
 9 will happen to my children in terms of are they going to  
 11:50 10 be taken by social services? What will happen to them?  
 11 A lot of questions about the well-being of their  
 12 children. And then I would also say that the other piece  
 13 is individuals who are coming forward who actually have  
 14 applications pending.  
 11:50 15 So, for example, I mean, part of what in my  
 16 opening remarks I talked about UCIS, which is the  
 17 United States Citizenship and Immigration Services. So  
 18 many individuals who are undocumented actually are in  
 19 process of legalizing their status; but because there's

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11:51 20 such a backlog, individuals obviously are waiting and  
21 waiting inside the country, so -- and outside the  
22 country. So they're asking, you know, what will happen,  
23 especially for those here? What happens if I actually  
24 have a petition pending? Will I have to be forced to  
11:51 25 abandon that? What will happen?

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11:51 1 So a lot of very specific immigration questions  
2 because they have that. But I think definitely I would  
3 say of all the questions, the children - the question  
4 about children and what to do in case they are detained  
11:51 5 or picked up - I think would be the highest on people's  
6 radar.

7 SENATOR HARRIS: And what have the answers been to  
8 those questions?

9 ANGELICA SALAS: So what we have done is we help the  
11:51 10 families. So the first thing is, maybe to step back, is  
11 we tell people prepare to stay. Fight to stay in this  
12 country. This is -- when you have deep roots, your kids  
13 are here, you've given your life to this country so fight  
14 to stay in this country.

11:52 15 What do you do? First, if you're detained,

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16 exercise your right to ask for legal counsel. Do not --  
17 everything that Marielena said - do not sign anything.

18 And before you are ever detained, connect with  
19 an organization or a legal representative that you can --  
11:52 20 that your family can call immediately.

21 In that preparation we're also asking  
22 individuals to fill guardianship documents so that they  
23 know who their children are going to be released to,  
24 whether at school; and to really have a conversation  
11:52 25 within the family to talk about if immigration comes to

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11:52 1 our home or to our work, what would be the steps that  
2 we'd follow?

3 And one of the main things -- so at CHIRLA  
4 we're helping them fill out guardianship forms. I know  
11:52 5 the Mexican Consultate is helping that with -- helping  
6 individuals with that process, as well. And to, just to  
7 really have outlined the to-do's, what they would do.

8 And also to save some money, because the other  
9 problem that we have with mass deportation is that  
11:53 10 individuals are being picked up in the morning and  
11 dropped off maybe -- especially from Mexico; by evening

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12 they're in Tijuana, but they are penniless; they have  
13 nothing. Sometimes they don't even have a coat with  
14 them. And so it's very important for families to have  
11:53 15 some way to transfer information to their family, to  
16 their loved ones.

17 And then also to know if, once they are  
18 deported, there are organizations like Casa Immigrante  
19 and others where they can connect; because literally,  
11:53 20 just being dropped off on the other side of the border  
21 with nothing is one of the most horrendous things.

22 Just so that they understand what -- that  
23 families really take seriously the plan. The plan to  
24 stay, but then all the things that they need to know in  
11:53 25 order to safeguard their well-being.

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11:53 1 SENATOR HARRIS: We have about five more minutes  
2 left in the forum. I'd love to take questions from  
3 anybody in the audience.

4 Yes.

11:53 5 ALEJANDRA VALLES: Hi.

6 SENATOR HARRIS: Hi.

7 ALEJANDRA VALLES: Good morning. My name is

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8 Alejandra Valles and I represent 45,000 janitors,  
 9 security officers and airport workers across California.  
 11:54 10 And with your leadership, and all of the  
 11 leadership here in California, we've been able to fight  
 12 for like -- you know, against -- well, wage staff laws  
 13 and laws that emanate from the night shift and really  
 14 bring the huge underground economy that we have in  
 11:54 15 California above float.  
 16 Right now one of the bills, and really a  
 17 shining light at the end of the tunnel in California, is  
 18 the leadership that carwash workers, day laborers,  
 19 janitors, many of the workers in our organization have  
 11:54 20 been leading with SB 54.  
 21 So my question is, for the panel is: Are you  
 22 or your organizations signing on to endorse SB 54?  
 23 And, Senator Harris, anything you can do to  
 24 help elevate that and lift that up and endorse that and  
 11:54 25 be a champion for workers on that end would be really

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11:54 1 helpful.  
 2 SENATOR HARRIS: Marielena. Yes.  
 3 MARIELENA HINCAPIE: Absolutely. We're following



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11:55 4 SEIU's leadership and all of the workers and other united  
5 workers organizations.

6 SENATOR HARRIS: Any other questions?

7 ANDREA GUERRERO: Yes.

8 SENATOR HARRIS: Yes.

11:55 9 ANDREA GUERRERO: I really appreciate all of your  
10 comments. I was especially touched by Angelica and  
11 Marielena.

12 But I wanted to ask you, Senator, if there's  
13 anything that we can do to be proactive? I know we're  
14 concentrating so much on being reactive.

11:55 15 But I was also reflecting on where we were in  
16 the 1970s and 1980s and remembering that we've been here  
17 before and we'll be here again unless we take proactive  
18 steps to change our immigration laws. Right?

11:55 19 So in the absence of immigration reform we are  
20 in the position of asking for mercy because of an  
21 enforcement-only approach making use of laws that are on  
22 the books that Congress passed many years ago. Right?

23 So, in my mind the way forward is -- is  
24 twofold. One, to create pathways for legal status for  
11:55 25 the many individuals who are here unlawfully because

11:56 1 there were no pathways. But, two, is to rein in the  
2 powers of immigration agents who currently have  
3 extraordinary and egregious powers to do things that  
4 police aren't allowed to do.

11:56 5 And I hear you when you say the Constitution  
6 protects us all, but I can tell you that immigration  
7 agents have powers without warrant. Those might not  
8 be -- though we have never successfully challenged those  
9 in the courts. And -- because there's such deference to  
11:56 10 Congress around immigration laws.

11 So are there things -- is there a willingness  
12 in Congress to move forward, some proactive measures to  
13 create pathways and also rein in these extraordinary and  
14 egregious powers; because even if we get immigration  
11:56 15 reform, we're still going to have these extraordinary and  
16 egregious powers that are rounding up our communities.

17 SENATOR HARRIS: Well put.

18 So I'll say a few things. There's no question  
19 in my mind that we have to be proactive as well as  
11:57 20 reactive where necessary and when necessary and as  
21 swiftly as possible.

22 Proactive. We have got to keep fighting for  
23 comprehensive immigration reform. We can't let that fall

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24 off the table because we're so busy trying to figure out  
11:57 25 who's been picked up and where are they right now. We

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11:57 1 have to do all of those things. We have to do all of  
2 them.

3 So in our messaging, which is a part of this,  
4 let's stay with our messaging about "You wouldn't have to  
11:57 5 deal with this if we actually passed comprehensive  
6 immigration reform, and this is what that looks like."

7 The point that has been made by many people at  
8 this table about the economic impact of not only these  
9 executive actions; Angelica mentioned \$285 billion is  
11:57 10 what it will cost us to deport over a five-year period.  
11 Extraordinary amount of money.

12 The budget for the officers that will need to  
13 be hired to do that. Extraordinary amount of money.

14 The economic benefit that immigrants bring in  
11:58 15 terms of the businesses that they create and the taxes  
16 they pay. Extraordinary benefit.

17 So I would urge us to, as much as anything,  
18 always push in this environment for comprehensive  
19 immigration reform. Let's not stop talking about that.

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11:58 20 Let's be forceful about it. Let's talk about the  
 21 economic impact.  
 22 And then let's also recognize that we have  
 23 these three branches of government. And this is a moment  
 24 in time, the history of our country, that is probably  
 11:58 25 reinforcing the importance of remembering we have three

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11:58 1 coequal branches of government.  
 2 It's a moment in our history to remember that  
 3 and to remember that the judiciary, we are a nation of  
 4 laws. We respect the rule of law and a big part of this  
 11:59 5 battle is going to be fought in courts, as we have seen,  
 6 which is why there was a stay.  
 7 And now the administration has to go back to  
 8 the drawing board and figure out what they're going to do  
 9 with refugees, because the courts spoke up, because we  
 11:59 10 are a nation of laws.  
 11 So that highlights the importance of supporting  
 12 the legal organizations and the nonprofit organizations  
 13 that are fighting these battles in courtrooms.  
 14 There is the piece about, the legislative  
 11:59 15 piece, and that is about the comprehensive immigration

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16 reform package.

17 And then there is highlighting, the -- I, you

18 know, being most deferential -- well, I don't do that

19 well; as deferential as I can - the unintended

11:59 20 consequences, I'm going to say unintended consequences of

21 these executive orders and highlighting what they mean in

22 terms of basic principles. Like we all want public

23 safety. We all want to know that victims will have their

24 day in court. Right?

12:00 25 We all want to know that people who commit

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12:00 1 crimes which involve violence and pain, that they will

2 suffer serious and severe and swift consequence. All of

3 these things.

4 But we're going to have to -- we're going to

12:00 5 have to put equal priority and weight and energy and

6 resolve into each of these components. And, again, let's

7 just all remember, no matter how much somebody or anybody

8 would like to have us forget: three coequal branches of

9 government.

12:00 10 I can take one more question. You are press?

11 Not press? We'll take press afterwards.

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12 CHRIS NEWMAN: I think everyone agrees that the  
13 election of Donald Trump constitutes a crisis for the  
14 country. But it's also opened up an opportunity. We're  
12:01 15 seeing all around the country a reinvigoration of  
16 sanctuary policies that delink police from immigration  
17 and enforcement.

18 Many people have gone so far as to say this  
19 whole notion of deporting so-called felons, not families,  
12:01 20 is sort of our generation's super-predators. This idea  
21 that casts immigrants under a cloud of suspicion and  
22 putting them -- subject to double punishment.

23 I would like to ask the Sheriff whether he  
24 believes that non-citizens have a right to rehabilitate  
12:01 25 themselves after they're incarcerated and after having

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12:01 1 served their time.

2 SHERIFF MC DONNELL: Sure. You know, I -- we  
3 don't -- as I mentioned in my opening, we don't focus on  
4 where somebody's from, what their immigration status is.

12:01 5 In our custody, to the degree that we can  
6 provide that for people who are there longer term, we do  
7 have a lot of programs where we get people into

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8 rehabilitation, drug treatment, deal with people with  
9 mental illness and try and help them as best we can.

12:01 10 We also have -- trying to get people back on  
11 track; trying to be able to get people job skills so that  
12 when they get out they have a vehicle to be more  
13 successful than they were when they came in.

14 So we don't have any focus on somebody's  
12:02 15 immigration status. Once they're in our custody, we try  
16 and do the best we can with the resources we have to work  
17 with.

18 SENATOR HARRIS: I can actually speak to that  
19 because as Attorney General I reached out to the Sheriff  
12:02 20 and partnered with him on an initiative that's called  
21 Back on Track that we have been running out of the L.A.  
22 Sheriff's jails with residents who are there, getting  
23 them jobs and counseling and educational support, so that  
24 when they come out they can actually live a productive  
12:02 25 life, having paid for the crime that they committed and

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12:02 1 wanting to give them a leg up instead of a handout.  
2 So, I do applaud your work in that regard,  
3 Sheriff.

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4                   We're going to close it out. And I'm just  
12:02 5   going to -- again, I want to thank everyone, and in  
6   particular our panelists because there's a lot of work  
7   that needs to be done and I know you all well enough,  
8   because I've been working with you for years, that you  
9   work around the clock tirelessly on behalf of people who,  
12:03 10  for the most part, never gonna know your name. You're  
11  working on behalf of people we may never meet. But it is  
12  important and good work, and I think it represents the  
13  best of who we are as a state.

14                   And I want to thank Bob Ross and California  
12:03 15  Endowment for, yet again, hosting community and leaders -  
16  all of us - to be able to have a discussion that  
17  hopefully elevates public discourse around these trying  
18  times and increases public education and information.

19                   And we've got a lot more work to do, but I want  
12:03 20  to thank everybody for being here and for all that you do  
21  each day.

22                   Thank you.

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24                   (Ending 12:03 p.m.)

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1 STATE OF CALIFORNIA )  
2 COUNTY OF LOS ANGELES ) SS.

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5 I, WENDY SOBEL, CSR NO. 2341, A DEPOSITION  
6 NOTARY IN AND FOR THE STATE OF CALIFORNIA, DO HEREBY  
7 CERTIFY:

8

9 THAT THE FOREGOING TRANSCRIPT IS A TRUE  
10 RECORD OF THE PROCEEDINGS ON IMMIGRATION POLICY  
11 FORUM.

12

13 IN WITNESS WHEREOF, I HAVE HEREUNTO  
14 SUBSCRIBED MY NAME THIS 28TH DAY OF FEBRUARY, 2017.

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WENDY SOBEL

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Wendy Sobel  
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## COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

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February 21, 2017

United States Senator Kamala Harris  
312 N. Spring St., Suite 1748  
Los Angeles, CA 90012

Honorable Senator Harris,

On behalf of the immigrant communities across the state of California, the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) would like to express our concerns and disappointments over the newly announced immigration measures signed by the Department of Homeland Security's Secretary John Kelly.

The Trump Administration has been relentless and cruel during its first month in office when it comes to immigration measures. By signing the executive orders on immigration, Trump has chosen to ignore any semblance of unity and compassion for our immigrant families. Furthermore, the memos most recently issued by Secretary Kelly outdo themselves in clearing the way for wide spread terror on millions of families, children, workers, and anyone and everyone who is undocumented, even those whose contributions are well documented.

Moreover, the immigration enforcement memos are a one size fits all mass deportation approach and void the fairness and justice. These guidelines represent an unlawful, expedited process and inhumane approach to remove undocumented immigrants living and working in the United States.

As such, we strongly oppose these measures which threaten our families, hurt our nation's economy, and stand in directly opposite our nation's history and values. We urge you to prevent millions of families from becoming victims of these inhumane plans. Our nation needs leaders who can stand up to fairness and justice and fight back against these immoral policies.

Should you have any questions, please feel free to contact Isabel J. Sanchez at [isanchez@chirla.org](mailto:isanchez@chirla.org) or at 213-353-1334.

Sincerely,

Angelica Salas  
Executive Director, CHIRLA