

**Hearing of the House Judiciary Committee Subject: "Oversight of the United States Department of Homeland Security" Chaired by: Representative Robert Goodlatte (R-VA) Witness: Secretary of Homeland Security Jeh Johnson Location: 2141 Rayburn House Office Building, Washington, D.C. Time: 10:33 a.m. EDT Date: Thursday, May 29, 2014**

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## **Body**

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REPRESENTATIVE ROBERT GOODLATTE (R-VA): (Sounds gavel.) The Judiciary Committee will come to order. Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to this morning's oversight hearing on the U.S. Department of Homeland Security, and I will begin by recognizing myself for an opening statement.

I want to extend our welcome to Secretary Johnson for testifying before us today for the first time. The Obama administration has taken unprecedented and most likely unconstitutional steps in order to shut down the enforcement of our immigration laws for millions of unlawful and criminal aliens not considered high enough, quote, "priorities," end quote. DHS does this under the guise of prosecutorial discretion. The beneficiaries include many thousands of aliens who have been arrested by state and local law enforcement or convicted criminals who have been put in removal proceedings and who DHS simply has let back onto our streets.

In addition to simply not pursuing removable aliens, the DHS has granted -- has been granting hundreds of thousands of them administrative legalization and work authorization. The Department of Homeland Security does this under many guises, invoking doctrines with esoteric names such as "deferred action" and "parole in place." The net effect of these policies has been described by former ICE Acting Director John Sandweg: quote, "if you are a run-of-the-mill immigrant here illegally, your odds of getting deported are close to zero," end quote.

Over the past few years, ICE has been claiming to have removed record numbers of unlawful or criminal aliens from the United States. Of course, to the extent these numbers are valid, they would have simply reflected the vast increase in enforcement resources provided by Congress in recent years. ICE's budget has increased from approximately (\$3 billion in 2005 to (\$5.8 billion in 2013. However, ICE's removal numbers simply rely on smoke and mirrors. In fact, almost two-thirds of the removals claimed by ICE in 2013 involved aliens apprehended by the Border Patrol along the border or intercepted by inspectors at ports of entry.

When we look at the number of true ICE removals of aliens residing in the United States we see that they have fallen 43 percent from 2008 to 2013. Even President Obama has admitted that ICE's "record" removals are "deceptive." Removals are down so dramatically because the Obama administration is twisting the concept of

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prosecutorial discretion beyond all constitutional recognition, all in an unprecedented effort to create immigration enforcement-free zones.

Most disturbingly, despite the administration's pledge to prioritize the removal of serious criminal aliens, DHS is releasing thousands of such aliens onto our streets. The Judiciary Committee discovered through subpoena that between October 2008 and July 2011, the Department of Homeland Security declined to seek removal for almost 160,000 aliens who had been arrested by state and local law enforcement officers. After these aliens were then released into our communities, about 17 percent were rearrested on criminal charges with only three years -- in only three years' time. The crimes charged included nearly 8,500 DUI's, over 6,000 drug violations, and more than 4,000 major criminal offenses including murder, assault, battery, rape and kidnapping.

In one of the most horrific cases, an unlawful alien DHS decided not to pursue after being arrested for attempted grand theft was later arrested on suspicion of killing a man chasing those who had robbed his 68-year-old grandfather. These crimes never would have been committed had DHS pursued these aliens for removal. Unfortunately, none of this has shamed DHS into changing its irresponsible practices. The Center for Immigration Studies recently obtained -- (clears throat) -- excuse me -- ICE documents revealing that in 2013, ICE declined to pursue removal thousands of times against convicted criminals it had encountered. And ICE (sic) also discovered that in 2013, ICE released from detention over 36,000 convicted criminal aliens that it had actually put in removal proceedings.

I have asked DHS for identifying information on these released criminal aliens so that we may determine what new crimes they have gone on to commit. I hope and expect that Secretary Johnson will fully cooperate in providing this vital information to the committee and the American people.

The end result of DHS's practices is that the American people have lost all confidence in this administration's willingness to enforce our current immigration laws or use any enhanced enforcement tools that Congress may give it. This in turn has made it exceedingly difficult for Congress to fix our broken immigration system. Unfortunately, we can only expect DHS's efforts to evade its immigration law enforcement responsibilities to escalate. President Obama has asked Secretary Johnson to "perform" an inventory of the department's current enforcement practices to see how it can conduct them more "humanely."

These are simply code words for further ratcheting down enforcement of our immigration laws. We do not know yet how far Secretary Johnson will go. Persons within and without the administration have pressured him to no longer seek to remove previously deported aliens who have illegally reentered the U.S or aliens who have absconded from their removal proceedings and become fugitives. Some have demanded that DHS grant administrative legalization to parents who endanger their children's lives by bringing them here illegally in perilous journeys. Others have gone so far as to demand administrative legalization for the entire universe of millions of unlawful aliens who would receive a special pathway to citizenship under the Senate's massive comprehensive immigration bill.

Secretary Johnson is not responsible for the dangerous and irresponsible decisions made by DHS before he was sworn in last December. We can only hope that he will bring back a level of adult responsibility to the enforcement of our immigration laws. But his recent comments that he is considering scaling back one of DHS's most successful programs to identify and remove dangerous aliens -- Secure Communities -- cause me grave concern for the future of immigration enforcement. I look forward to the testimony of Secretary Johnson today.

It is now my pleasure to recognize the ranking member of the committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

REPRESENTATIVE JOHN CONYERS (D-MI): Thank you. Chairman Goodlatte and members of the committee, we all join in welcoming you, Secretary Johnson, to the House Judiciary Committee. As secretary and long before, you had a distinguished career -- both in public service and in the private sector. But the thing that I like most about it is that you're a Morehouse College graduate. And that has a special resonance for many in the Congress and in our communities.

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Before your appointment to the Department of Homeland Security, Secretary Johnson served as general counsel of the Department of Defense, where he oversaw many critical reforms, including ending the discriminatory policy "don't ask, don't tell." Given this background, I can think of no person better equipped to lead the Department of Homeland Security and carry out the president's directive to review our immigration policies to ensure that we're carrying them out in the most humane way possible.

Yesterday, the president of the United States announced a delay to this review to provide my House colleagues the room they need to pass legislative reforms, whether through the Senate bill or several House bills. And I am committed to work with them to achieve needed reforms of our system. Most of us agree that the system is broken and that only Congress can permanently fix it. So the secretary's testimony and opinions here today will be very important to us all.

We should get started on that process right away, before the window for reform closes. Every day that passes without a vote in the House is a day that thousands of families are torn apart, that businesses are deprived of critical skills and that brilliant entrepreneurs and investors are forced to take their resources and talents elsewhere. Every day that passes is also a day in which we fail to jumpstart our own economy. The Congressional Budget Office has concluded that the House and Senate immigration reform bills, S. 744 and H.R. 15, would decrease the budget deficit by \$900 billion over a 20-year period.

So I stand committed to work with my colleagues for legislative reform. But if my colleagues won't act to fix a system that most agree needs it badly, then I fully support the president doing what he can under the current law to improve that system. I agree with the president's call to make our immigration system reflect American values. People who commit serious crimes and pose a danger to the public should be our highest priorities for removal. Those with strong ties to this country, the spouses of citizens and permanent residents, the parents of citizens and Dreamers, and those who have worked productively in the United States for many years should not be.

We know the administration has the authority to set enforcement priorities. And it also has the authority to set detailed guidelines to ensure that those priorities are carried out by deportation officers, trial attorneys and other enforcement personnel. This authority has been specifically recognized by my colleagues on both sides of the aisle of this committee, including a letter sent by current members to the Clinton administration urging it to issue guidelines on prosecutorial discretion. So far, we've heard hardly more than excuses for not doing immigration reform.

The Senate bill has too many pages. The House wants to take its time and do reform step by step. We must secure the border before we can discuss anything else. Well, I think the newest excuse for not working to reform the system is that the Republicans cannot trust the president to enforce the law. Put aside the fact that this administration has set records with respect to enforcement spending, detentions, prosecutions and removals. The "can't trust the president" excuse strikes me as an extremely odd complaint from a legislative body.

What's the point of passing any bill if we have that kind of an impasse? How many other issues of national importance do my colleagues think Congress should ignore until they have someone else that they might prefer in the White House? It's time to cut out the excuses and get to work doing the people's business. Americans agree the system's broke, and they strongly support comprehensive immigration reform. And so it's our duty to stop passing the buck and get to work.

Mr. Chairman, I thank you for the time, and I yield back.

REP. GOODLATTE: Thank you, Mr. Conyers. And without objection, all other members' opening statements will be made a part of the record.

We thank our only witness, the secretary, for joining us today. Secretary Johnson, if you would please rise, I'll begin by swearing you in. (Witness sworn.) Thank you. Let the record reflect that the secretary responded in the affirmative, and it's now my pleasure to introduce him.

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Jeh Charles Johnson was sworn in on December 23rd, 2013, as the fourth secretary of homeland security. Prior to joining DHS, Secretary Johnson served as general counsel for the Department of Defense, where he was part of the senior management team and led the more than 10,000 military and civilian lawyers across the department. Secretary Johnson was general counsel of the Department of the Air Force from 1998 to 2001, and he served as an assistant U.S. attorney for the Southern District of New York from 1989 to 1991. In private law practice, Secretary Johnson was a partner with the New York City- based law firm of Paul, Weiss, Rifkind, Wharton & Garrison.

Secretary Johnson graduated from Morehouse College in 1979 and received his law degree from Columbia Law School in 1982. The secretary reminded me this morning that he has a connection to this committee as well that many members will find of interest. In the early 1990s he worked briefly for then House Republican Ranking Member of the Judiciary Committee Ham Fisch of New York.

SECRETARY JEH JOHNSON: It was actually the 1970s, Congressman.

REP. GOODLATTE: Oh, 1970s.

SEC. JOHNSON: I didn't want to date --

REP. GOODLATTE: Well, that was way before my time, so -- (laughter). But I thank you for that information, as well as the information that many members of the committee may find of interest that there are 10,000 military and civilian lawyers in the Department of Defense. Whether that's a good thing or a bad thing, we'll leave for a future discussion.

In any event, we look forward to your testimony. Your written statement will be entered into the record in its entirety, and we ask that you summarize your testimony in five minutes. To help you stay within that time, there's a timing light on your table, and when the light switches from green to yellow, you'll have one minute to conclude your testimony. And we welcome you to the committee.

SEC. JOHNSON: Thank you, Chairman. You do have my prepared written statement. Let me just summarize a couple of things within my five minutes.

First, thank you for inviting me. I look forward to our discussion this morning and this afternoon.

I begin by pointing out that as the leader of the Department of Homeland Security, I recognize that our most valuable asset is our men and women. And I have pledged numerous times to support them in good times and in bad times. My first full week on the job I went to South Texas to attend the funeral of CBP Officer Darrell Windhouse (ph), who died in the line of duty in South Texas. Yesterday we lost another one, Border Patrol Agent Alexander Gianinni (ph), age 24, who died in the line of duty in what appeared to be a one-car accident in Arizona.

And I'm sure that the members of this committee join me in mourning his loss and expressing condolences to his family. Thank you for the opportunity to be here. As I mentioned, I know a number of members of this committee from other contexts -- from the House Armed Services committee, from private life, and it's good to see you.

Let me begin by saying that, in my judgment, counterterrorism must remain and should continue to remain the cornerstone of the mission of the Department of Homeland Security. As the president mentioned yesterday at West Point, core al-Qaida has been largely decimated, but in the last several years, we've seen the rise of al- Qaida affiliates -- al-Qaida adherents and other al-Qaida-like organizations around the world. We have to be vigilant in regard to those organizations.

We're concerned -- I'm concerned about the so-called lone wolf who would attack us in this country -- domestic-based, independent actors who commit or attempt to commit terrorist acts, as evidenced last year by the Boston Marathon bombing. We in the Department of Homeland Security need to be vigilant against all these potential threats, and I believe we are.

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I believe it is also particularly important, given the decentralized and diffuse nature of the terrorist threat that the homeland faces, that we spend a lot of time and effort working closely with state and local law enforcement first responders through training, through working together and JTTFs and so forth -- preparedness grants. We have an initiative that I am personally involved in and particularly interested in -- countering violent extremism at home through engagements in local communities.

I believe it is important, where possible, that we push out our homeland security beyond our borders, where we can do so consistent with agreements with other governments. I believe it is important that we establish, in as many places as feasible, pre-clearance capabilities in overseas airports that are last points of departure. In terms of border security, we've devoted an unprecedented amount of resources thanks to the support of this Congress to that effort.

Over the last number of years, apprehensions have gone down, but we have seen a rise recently in apprehensions, particularly in the Rio Grande Valley sector in South Texas. We're seeing a rise that we have to address and we must address, and I'm developing a plan to address in particular with regard to illegal migration by those other than Mexicans coming from Central America and unaccompanied children.

The problem of unaccompanied children is one that I am very familiar with, having personally visited McAllen Station, Texas several weekends ago to see the problem myself. I've directed a number of actions in response to that situation, which I'd be happy to discuss further with members of the committee.

We've developed a campaign plan for the southwest border which represents a whole-of-DHS approach. You are correct, chairman, that I am engaged in a review of reforms to our enforcement priorities and the president has asked me to wait, for reasons that I agree, before announcing those reforms to give the House of Representatives the opportunity this summer to act on comprehensive immigration reform. It is something that I very much support and believe in for a number of reasons, including added border security, mandatory e-verify, enhanced criminal penalties for those who would hire undocumented as well as the earned path to citizenship, and both the president and I urge the House of Representatives to act.

We're doing a number of other things, which I'd be happy to discuss in more detail, in the department to enhance morale, to enhance our process for budget deliberations and our acquisition process, and we are making great progress in filling the numerous senior-level vacancies; including myself, since December, the Senate has confirmed seven presidential appointments for senior leadership positions in DHS.

I believe it's critical to the morale and good work of the agency that we have a new energy, new leadership in the department, and we're -- we're making good progress there.

Thank you, Chairman, and I look forward to your questions.

REP. GOODLATTE: Thank you, Secretary Johnson. We'll now proceed under the five-minute rule with questions, and I'll begin by recognizing myself.

Secretary Johnson, I appreciate the president's recognition of the importance of doing immigration reform. I, and I think most members of Congress, believe we need to do immigration reform as well, but it needs to be recognized by the president and by you and others in the administration that when the president says that he's going to set a time limit and then consider taking actions himself -- which many of us read to be the president again repeating, I have a pen and a cellphone, and if you don't act I will. But that makes doing immigration reform harder, not easier, because those who may like what the president decides to do administratively have less reason to negotiate the hard decisions to be made about how to enforce our immigration laws in the future, and those who do not agree with the president's position on immigration reform say, why should we negotiate if we can't trust the president to enforce the laws as they exist?

So I just expressed to you my ongoing concern that the president is being helpful to the process when he works with the Congress and suggests that he wants to accomplish immigration reform, but he hurts the efforts in the

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Congress when he says, if you don't do it -- and the suggestion is further, if you don't do it my way -- I'll act unilaterally, when many of us believe the United States Constitution does not give him the authority to do that.

But let me turn my questions to another subject, and that is there are now 858,779 non-detained aliens with final orders of removal who have not been removed. The vast majority of these aliens have simply absconded and become fugitives in the U.S. Is it -- is it -- it is, to me, crystal clear -- is it to you -- that if we do not detain aliens in removal proceedings, many will simply become fugitives and not be required to leave the country?

SEC. JOHNSON: Chairman, you are correct that there are a large number of undocumented in the country who are fugitives who have absconded after final orders of removal. I've looked at the same numbers. One of the things that --

REP. GOODLATTE: Let me get into the details here. It's recently been revealed that in 2013, DHS released from detention over 36,000 criminal aliens in removal proceedings or after they had been ordered removed -- aliens with convictions ranging from homicide to sexual assault to kidnapping to aggravated assault to drunk driving. DHS stated in response that many of these aliens were released "as a discretionary matter after career law enforcement officers made a judgment regarding the priority of holding the individual, given ICE's resources and prioritizing" for national security reasons. Isn't it true that ICE attorneys decide whether to offer bond and set the amount of the bond? So isn't it also true that the DHS could have detained most of these criminal aliens but simply chose not to?

SEC. JOHNSON: Chairman, I myself would like a deeper understanding of this issue. I have your letter on the subject. We responded yesterday. I don't know whether you received a response yet, sir. But my understanding so far is that a number of those released in FY '13 were as the result of an order from an immigration judge or by an immigration officer acting pursuant to -- consistent with Supreme Court precedent and other law.

Certainly there is an amount of judgment that goes into that, so if someone is released, they're released pursuant to conditions that are intended to guarantee their return. But I look at the same list you've seen and I've seen some pretty serious criminal convictions on those -- on that list, including homicide and other things, and so I want a deeper understanding of this issue myself to make sure that we're doing everything we should be doing to ensure public safety in this process.

REP. GOODLATTE: And you note the homicides. For example, it was stated by the department that mandatory releases because of court decisions account for 72 percent of those homicides. And obviously the Congress needs to address that. Some of those mandatory releases were because of being held for a length of time the courts felt were inappropriate, and we need to make sure that is addressed so that they are removed from the United States after they have served their sentences for homicide.

But that still leaves 28 percent of the murderers, a substantial number of people, who the DHS simply voluntarily release. So I hope that you will look into what is happening there and try to help us understand how this can be fixed.

Second issue I want to address is the issue of Secure Communities. It's been one of the most efficient mechanisms for removing dangerous aliens from the United States. Through Secure Communities, the fingerprints of everyone arrested and booked for a crime by a local law enforcement are checked against FBI criminal history records and also checked against DHS immigration records. If fingerprints match DHS records, ICE can seek immigration holds against the aliens and launch removal proceedings.

Former ICE Director John Morton has stated that, just to give you some sense of it, in very large jurisdictions of the United States, the rate of recidivism for criminal offenders can be as high as 50 percent or more. When ICE can come in and remove offenders from a given community so that they can't reoffend, well, guess what? We take that recidivism rate to zero. So for example, if you have a hundred criminal offenders, were able to root them out, that is 50 crimes that will not happen over the next three years as a result of our enforcement efforts.

Do you agree with former Director Morton as to the power of Secure Communities?

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SEC. JOHNSON: Well, I don't believe we should scrap Secure Communities. I believe, given the reality of where we are with this program in this country, that we need a fresh start. We have mayors and governors signing executive orders and passing laws that limit our ability to effectively carry out this program. And I think the goal of the program is a very worthy one that needs to continue.

So as part of the overall effort I'm embarked in right now, I want a fresh start to this program, and I want a fresh conversation with mayors and governors around the country to make this program work more effectively. We've got limitations being erected on our ability to conduct this program, and I think it's an important program, but it's gotten off to bad messaging, misunderstanding in state and local communities about exactly what it is. Some people think it's a surveillance program. But you're right, it's sharing fingerprints between one federal agency and another.

And I think with clearer guidance and clearer understandings by mayors and governors, commissioners and sheriffs of what our priorities are, we can go a long way to improving the administration of this program, sir.

REP. GOODLATTE: Well, not administrating the program is also a missed opportunity to address the problem with the release of criminal aliens back into our society because when state and local law enforcement go to the trouble of identifying people and sharing that information and giving DHS more information about who should be removed and then they don't see them removed, as is the case in 85 percent of the aliens identified through Secure Communities in 2013 not being deported, I think that builds a lot of mistrust in the system and will cause the system to fail of its own. So we encourage you to improve that system and to utilize it to a greater extent.

My time's expired. And I am now pleased to recognize the gentleman from Michigan, Mr. Conyers, for five minutes.

REP. CONYERS: Thank you, Chairman Goodlatte.

We appreciate your testimony here today, Secretary Johnson. My concern is about the large numbers of people who are being deported each year who've committed very little violation except those related to their undocumented status. There are people who've lived here for years, some for decades, for -- many of whom were brought as children. They have jobs and families, including U.S. citizen spouses and children or -- of -- or other close family who have legal status. Their only offense arises from not being here lawfully. They can't get licenses. They can't drive. They can't work. So they use, frequently, a fake Social Security card and so on.

Let me ask you, as you complete your review of enforcement practices, will you take a close, hard look at who's being targeted to make sure these people who have only immigration status violations are not made priorities?

SEC. JOHNSON: Yes. The concept of prosecutorial discretion is one that's been around for a long time in the criminal justice context and in this context. And I think with the resources we have from Congress, we have to continually re-evaluate how best to priority who we enforce the laws against. And so that would be part of my objective.

REP. CONYERS: Thank you. Now, what factors do you think that the customs and border patrol -- customs and border protection and ICE should consider before referring some of these cases for prosecution? I think that's an important consideration that comes from your experience and your analysis and the position that you hold now.

SEC. JOHNSON: I think that the priorities in general should be threats to national security, public safety and border security. And so I want our men and women to focus on those priorities at the various points in the system. I do believe that at the border -- at the border the priorities have to be a little different for the sake of border security, border integrity.

I don't expect our border patrol agents, for example, to try to prioritize as they see people literally cross the Rio Grande and stepping onto the shore. I think we have to maintain border security and we have to avoid practices and policies that operate as magnets for further illegal migration. But I do believe that our people should be encouraged to focus on, first, border security, public safety, national security.

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REP. CONYERS: Thank you. I understand that much of the spike in immigration prosecution is related to customs and border protections consequence deliver system -- which promises to assign some form of law enforcement consequence to nearly every person apprehended at the border. These prosecutions come at significant expense. And by contrast, the Department of -- your department could effectuate a voluntary return or formal removal for many of these people at little or no cost.

In deciding whether this is a good use of federal resources, do you think it's important for CBP data and methodology on recidivism to made public? Making the data and methodology public and ensuring that it receives close scrutiny might help to either increase confidence in our current approach or lead to other improvements. What's your view?

SEC. JOHNSON: Let me answer that two ways. First of all, I think that we should be careful to disincentivize illegal migration, as I suggested a moment ago. I also support greater transparency in our policies -- whether it's use of force at the border, and we've made some good progress there in making those policies more transparent, or other aspects of government policy. And I've been an advocate for that in this department and when it comes to our counterterrorism activities by the Department of Defense when I was general counsel.

REP. CONYERS: My time's expired. I thank you for your responses.

SEC. JOHNSON: Thank you.

REP. GOODLATTE: The chair thanks the gentleman and recognizes the gentleman from Alabama, Mr. Bachus, for five minutes.

REPRESENTATIVE SPENCER BACHUS (R-AL): Thank you, Secretary Johnson. First, I want to thank the Department of Homeland Securities for their support for the National Computer Forensic Institute. It has solved many crimes. It was initially designed for financial crimes, but they've actually solved hundreds of pedophile cases and child predator cases. And it, you know, trained law enforcement agents and judges all over the nation. So I thank you for that.

The Department of Homeland Security is in a partnership with drug enforcement agency and ICE to combat -- and local agencies to combat what I would call an epidemic of synthetic drug abuse.

In May you had Project Synergy, which actually seized millions of dollars, I think over 200 arrests. There's two things that really alarm me about this. One is that the targeted age -- most of the users of these synthetic drugs are between the ages of 14 and 25. At least one survey recently said one in nine high school students is using synthetic drugs. And then the results, which range -- and I have a photograph which I'm going to share privately with you, but it's a -- it's a picture of two young people who were -- actually died of an overdose from synthetic drugs, and the drugs were actually found there on the scene. And we've had those cases all over the United States.

The second is that -- not only that; it's causing long-term psychotic depression or psychological damage to our young people. But the most alarming thing -- and I want you to maybe comment on this first -- it is my understanding from that operation that the great majority of these funds being made -- and we're talking about millions and millions of dollars -- were being sent to terrorist organizations in Yemen and Lebanon.

So I would ask you, first of all -- we're talking about hundreds of millions of dollars from the sale of synthetic drugs here in the United States being used to fund terrorism, our enemies. And of course -- do you believe that synthetic drug proceeds are funding terrorists and extreme organizations? And is this a national security issue? And that would be my first question.

SEC. JOHNSON: Yeah, I -- sir, I agree with you. I recently attended a briefing on transnational criminal organizations that are engaged in billions in illegal narcotic activities. And we're beginning to see a connection between these organizations and terrorist organizations where one is supporting the other. So I agree very much



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with that observation, and I agree very much with the national security concerns that we should all have in this regard.

Within the Department of Homeland Security, HSI, Homeland Security Investigations, is very involved, as you pointed out, with DEA in dealing with the problem of synthetic drugs. HSI, in my observation, is a terrific, aggressive law enforcement organization and I have a good deal of confidence in their ability to address this issue. And I appreciate your interest in this.

REP. BACHUS: Right. And, you know, from what I have read and learned from talking to DEA and other agencies, the actual majority of these funds derived from the profits are going to the Middle East. Have you found that to be the case? Are you aware of that?

SEC. JOHNSON: I share that observation.

REP. BACHUS: Thank you. When I was on the Oversight Subcommittee we had hearings on -- and we focused on cocaine from Columbia, but I think synthetic drugs, which you don't hear a lot of talk about, should be getting the same attention today. And I'm not sure the American people realize just how serious this type of drug use is. Would you like to comment on that?

SEC. JOHNSON: It's a growing epidemic, sir. And when I was a prosecutor 25 years ago, it was crack cocaine. Now we're seeing other illegal narcotics that are causing a lot of destruction and heartache in our community. And I think -- I think the Department of Homeland Security has a role in addressing this through HSI, CBP, other organizations within the department. I think we've got a role and I think we need to make an investment in this. So I agree with your -- I agree with your assessment and I share your concern.

REP. BACHUS: Thank you. The last thing I've learned is almost all of these synthetic drugs, the material is being produced in China and then shipped to the United States, where actually a thousand dollars' worth can be turned into \$250,000 on the street. The state of Alabama -- and I'm very proud of our legislature -- they recently passed a law which is -- it's Senate Bill 333, which tries to stay one step ahead of drug producers.

What that law does, what happens is the drug producers and the people marketing these will change the contents just a little to sort of stay ahead of the law because, you know, most of the laws say it has to be a certain material and it has to be a combination, and so all they do is tweak that drug. And I've actually been told that what they'll do, when they outlaw a certain combination, they'll actually get on the phone and tell the folks in China, change that formula.

REP. GOODLATTE: The time of the gentleman has expired.

REP. BACHUS: Thank you.

REP. GOODLATTE: The secretary can respond if he has a response.

SEC. JOHNSON: I share the congressman's concern.

REP. GOODLATTE: OK, thank you.

The chair recognizes the gentleman from New York, Mr. Nadler, for five minutes.

REPRESENTATIVE JERRY NADLER (D-NY): Thank the chair. And I want to join in welcoming Secretary Johnson, especially as a former constituent and a graduate of Columbia Law School in my district.

Mr. Secretary, as you know, Congress passed, a number of years ago, the 9/11 commission implementation bill, which mandated that all maritime cargo must be scanned before it is loaded onto ships bound for the United States. When we wrote the law, we recognized that a hundred percent scanning would be difficult to achieve overnight, which is why we gave DHS flexibility, five years to comply, and allowed for extensions of the deadline in certain

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cases. We assumed that a hundred percent scanning would be phased in and that the department would make an honest effort to comply with the law.

Can you tell us what the department is doing to make progress on container scanning? And do you commit to work with us in good faith to develop a plan for implementing the law?

SEC. JOHNSON: Yes. As you and I have discussed, Congressman, I'm very much aware of the 2007 law. It was first brought to my attention in the Senate confirmation process. And my general view is, if there's a duly enacted law by Congress that mandates certain things, I've got to make a good-faith effort to try to comply.

Now, as you know, this particular law is a very large unfunded mandate. And so when I got into office, I took a careful look at it. I've been to ports. I've looked at the logistics to try to set up a 100-percent scanning regime at overseas ports. And it's, to be frank, a very, very large project. And I've asked my folks, first of all, what's in our best national security interest; second, as long as the law is on the books, we've got to make a good-faith effort to try to comply with it.

And so I've had the conversation with Senator Markey, with you and others about how I'm exercising my authority under the law to waive application of the law for the next two years, but in that same letter, which I think you've seen, I've also talked about some of the steps it will take for a plan to try to get us there, in other -- including raising the percentage of cargo that is -- that is scanned, to move in the right direction on this and demonstrate we're making our best -- our best efforts at trying to comply. And it's set forth in the letter, which I think you've seen, sir.

REP. NADLER: Yes, I have. I want to thank you for your willingness to work with us. And I know that Homeland Security Ranking Member Bennie Thompson has been a great champion of this issue, too. I'm sure that he and I and perhaps others will want to meet with you to discuss in greater detail how we can develop a mutually agreeable path forward.

I'd like to also say that it is obviously the policy of the administration that we should close the detention facility at Guantanamo. We have been told by U.S. generals and others that the presence of that facility and our actions there have fueled terrorist sentiment and have been used to recruit terrorists who seek to do us harm. Can you tell the committee if you believe that keeping Guantanamo open is a threat to our national security? Is it fomenting recruitment of terrorists abroad and so forth?

SEC. JOHNSON: Thank you for bringing me back to my last job in public service. Yes, I believe that the existence of Guantanamo as a detention facility represents an issue of national security. It has been a recruiting tool by al-Qaida.

I also believe that the guard force there is remarkably professional. It's a very well-run facility. But it's also hugely expensive. And there's going to come a point where -- we may already be at that point -- where it is no longer making sense from a taxpayer point of view to maintain such a hugely expensive multimillion-dollar facility for what are today, I believe, something like less than 160 detainees.

And so I know the president is committed to closing the facility. And I think that that, for a number of reasons, is a worthwhile objective.

REP. NADLER: Well, thank you. My last question is back to immigration. In recent months, we've heard reports about immigration and Customs Enforcement officers conducting routine immigration enforcement actions at courthouses around the country. People have been apprehended by ICE when they went to the courthouse to pay a traffic ticket, to answer criminal charges or to obtain a protective order. In one case, a person was detained when he appeared in court to get married.

These enforcement actions will make immigrants afraid to appear for criminal hearings, to exercise their First Amendment right to petition the government for redress of grievances, to seek protective orders in connection with instances of domestic violence, to advocate for the equal justice under law and conduct other important civic

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business. ICE already has a policy regarding enforcement in sensitive locations such as schools, hospitals and places of worship.

Do you agree or not that courthouses, which are essential for the protection of our constitutional rights only if you have access to those courthouses, should be added to the list of sensitive locations for ICE appropriate discretion?

SEC. JOHNSON: I received the letter on this. And I was a little surprised to find out that courthouses are not on the list of what we consider to be sensitive locations, though there is a separate policy dealing with courthouses that ICE has. My view is that, as you articulated it, courthouses are special. We ought to have a special policy with regard to courthouses. However, I can readily -- I can see certain circumstances where somebody really dangerous shows up at a courthouse, where ICE or law enforcement in general needs to apprehend that person. Just can't afford to let them go.

REP. NADLER: But that would be the same as if that person appeared at a hospital too.

SEC. JOHNSON: I mean, I can foresee exigent circumstances where somebody truly dangerous, who's a fugitive or otherwise, should be arrested on the spot. And I would support that. But this is an issue that intend to look at more closely.

REP. NADLER: Thank you. I yield back.

REP. GOODLATTE: Thank you. The chair recognizes the gentleman from Virginia, Mr. Forbes, for five minutes.

REPRESENTATIVE RANDY FORBES (R-VA): Mr. Chairman, thank you. Mr. Secretary, thank you for being here. We appreciate your appearance today. Also, I appreciate your friendship, your service in the Department of Defense and your service in your current position. I was not surprised when I read on your confirmation hearing that you pledged transparency and candor with Congress. And it's that transparency and candor that we appreciate and we ask today.

We've had testimony before this committee that violent criminal gangs are a major problem in the United States. And some of those gangs, such as MS-13, one of the most violent, we've had testimony --

SEC. JOHNSON: I'm sorry, sir, I didn't hear -- what --

REP. FORBES: I'm -- MS-13, one of the most violent criminal gangs, that as many as two-thirds of their members were here illegally.

Last year, when ICE began releasing convicted criminals, I asked then-Director Morton how many of those released were members of violent criminal gangs. And I think the committee was shocked that he didn't have a clue. Based on your letter that you submitted, I think, yesterday to the committee, we now know that 36,000 -- in excess of 36,000 criminals have been released. And the question I would have for you today is, of the 36,000 released, do you have any clue how many were members of violent criminal gangs?

SEC. JOHNSON: That -- if you're referring to the letter I think you're referring to, it's a letter signed by the deputy secretary yesterday. And I believe that there is an attachment to the letter that has the numerical breakdown by category of the criminal convictions. And it may include --

REP. FORBES: But none of them -- it says nothing about violent -- whether they're members of violent criminal gangs. So my question is, one, do you know of any records that you have of how many of those members released were members of violent criminal gangs?

SEC. JOHNSON: If we have it, I will be happy to --

REP. FORBES: But you don't know of any today.

SEC. JOHNSON: Sitting here right now, I don't know whether it's broken down --

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REP. FORBES: Do you know whether we even ask individuals who are detained if they are members of a gang -- violent criminal gang?

SEC. JOHNSON: I suspect we do in the immigration enforcement process, but I --

REP. FORBES: I would suggest you have no record of that. And if you do, if you would correct me on that. The second -- third question is, isn't it true that individuals can receive asylum or withholding of removal if they simply claim that they've renounced their membership in a gang?

SEC. JOHNSON: I'm not sure about that, sir. I know the asylum process --

REP. FORBES: And then, let me ask you this. Let me ask you this question.

SEC. JOHNSON: I'm not sure about the specific answer to that question.

REP. FORBES: Did you conduct a town hall meeting at DHS office in Fairfax, Virginia, on April 23rd, 2014 with ICE agents and officers present?

SEC. JOHNSON: Yes, sir, I did.

REP. FORBES: Did they voice strong concerns to you that gang members, other public safety threats and criminals are being released due to new administration DHS policies such as DACA and John Morton's arrest priorities memorandum?

SEC. JOHNSON: We talked about a lot of things.

REP. FORBES: Did they -- did they express concerns about what I just outlined to you?

SEC. JOHNSON: I recall discussions about pay, I recall discussions about --

REP. FORBES: That's not my question. And you know I've only got a certain amount of time, Mr. Johnson. Did they or did they not express strong concerns to you that gang members and public safety threats and criminals were being released based upon the administration's policies?

SEC. JOHNSON: I don't recall that statement in that way.

REP. FORBES: Let me suggest that I did.

SEC. JOHNSON: But I'm not doubting that they did, if somebody says -- (inaudible) --

REP. FORBES: The following question is this: Did these officers and agents tell you that the administration policies have tied their hands, preventing them from keeping many dangerous criminals off the streets and that in their opinion as boots on the ground officers of the field, the new policies are a failure?

SEC. JOHNSON: I don't recall it that way. I do recall a recognition that we should be going after the worst of the worst in our enforcement priority.

REP. FORBES: So you have no recollection that these agents expressed these concerns to you.

SEC. JOHNSON: That's not what I said.

REP. FORBES: Do you have a recollection of that?

SEC. JOHNSON: I recall a general discussion about our enforcement priorities, and I recall that we all agreed --

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REP. FORBES: And Mr. Secretary, that -- I understand what you recall there. That's not my -- my question is, did you or did you not -- or do you or do you not recall them expressing strong concerns about the issues I just raised to you?

SEC. JOHNSON: Not exactly in the terms you stated it.

REP. FORBES: OK, but pretty close to those terms.

SEC. JOHNSON: In general terms, we had a discussion about our enforcement priorities. That is absolutely correct.

REP. FORBES: OK.

And Mr. Johnson, thanks for not answering that question. It certainly is a violation of what you pledged that you were going to do in transparency and --

SEC. JOHNSON: I gave you my best recollection, sir.

REP. FORBES: I understand. I would think that would be a strong thing that you would remember if it was expressed that way. And it was expressed that way, as I understand it.

Next question and final question I have for you is, we now know, based on a GAO report, that DHS has purchased 84 million rounds of ammunition totaling \$19 million. Can you tell us and give us a report back as to what that ammunition is used for and what caliber bullets are being used for?

SEC. JOHNSON: Sitting here right now, I can't give you that information, but I'd be happy to provide that to you.

REP. FORBES: And just for the record, the information I gave came from the ICE Union, who was present at that particular hearing with you, and they stated that that's what they expressed.

And there -- and with that, Mr. Chairman, I yield back.

SEC. JOHNSON: Chair thanks the gentleman, recognizes the gentleman from Virginia, Mr. Scott, for five minutes.

REPRESENTATIVE BOBBY SCOTT (D-VA): Thank you, Mr. Chairman, and thank you, Mr. Secretary.

Mr. Secretary, in the aftermath of the typhoon in the Philippines, many members from Congress and from many people in the Filipino community pushed for temporary protective status. Can you give me an update on what the TPS -- the status of the TPS for those in the Philippines is today?

SEC. JOHNSON: It's under review, and I believe we're close to the finish line on that review, sir.

REP. SCOTT: Good. Keep pushing.

I understand that under the Prison Rape Elimination Act that regulations in Homeland Security are going into effect at this time. Are you proactively trying to renegotiate private contracts to make sure that the new regulations apply to contractors as well as the government facilities?

SEC. JOHNSON: I've checked on the status of that, and I believe that we are, sir.

REP. SCOTT: Can you say something about the use of solitary confinement in government facilities and private facilities?

SEC. JOHNSON: Well, an immigration facility is not like a prison. I can imagine circumstances in any detention facility where somebody needs to be separated and placed in some form of solitary confinement for reasons of safety, force protection or other circumstance. So I wouldn't rule it out necessarily, but I do recognize that an

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immigration detention facility is different in nature from a -- from a prison where convicted criminals are being housed.

REP. SCOTT: Changing subject to Fast and Furious, it's my understanding that this process started during the Bush administration -- during the Bush administration, that the attorney general during that administration was aware of it and that it continued into the Obama administration but when Attorney General Holder found out about it, he put an end to it.

Do you -- to the best of your knowledge, is anybody in your department now facilitating the trafficking of firearms with terrorists and drug dealers?

SEC. JOHNSON: Not to my -- not to my knowledge, sir.

REP. SCOTT: Thank you.

In terms of airport screening, there's a program spot-screening passengers by observation techniques. Are you familiar with this program?

SEC. JOHNSON: Yes, I believe I am.

REP. SCOTT: Can you explain how this can be done without ethnic profiling or how it can be done effectively?

SEC. JOHNSON: I think that behavioral screeners at airports are -- it's a pretty sophisticated methodology. I've had -- I've had one or two briefings on it and I've had the same question and the same concern. I'm satisfied that whether it is airport security or other activities of the Department of Homeland Security, that there are ways to do what we need to do to screen for aviation security threats, other threats, without engaging in sort of any racial profiling.

Now, immigration enforcement, border security, is different from law enforcement in general. It's different from stop-and-frisk in general. We do in various contexts take account of the nationality of people in the administration and enforcement of our immigration laws. And so there's a distinction there. But I do believe that we should not be engaging in racial profiling per se.

REP. SCOTT: Thank you. Could you say a word about the process for reviewing incidents of use of deadly force by Border Patrol officers and whether or not that review process is adequate?

SEC. JOHNSON: Yes. This issue has been one that I have focused on in my five months in office. As I suggested earlier, I think that transparency in our policies goes a long way to removing a lot of the controversy that may exist about a policy. And so a couple of months ago, I encouraged CBP to make their use-of-force policy public, and the same with other components of DHS. And they've done that. I've also -- I also encouraged the chief of the Border Patrol to think about incorporating expressly into the policies issues about rock-throwing, issues about when an agent feels threatened by a vehicle, and he did that. And I believe that we have -- we now have a use-of-force policy that takes account of those things which have been controversial in the past, but also preserves the agent's ability to defend himself if his life is truly threatened or he's in harm's way.

So I think we're in a better place than we were before, sir.

REP. SCOTT: And have -- is the review process adequate?

SEC. JOHNSON: I'm sorry?

REP. SCOTT: Like when there is a use of deadly force, you review each case, is that right?

SEC. JOHNSON: Yes.

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REP. SCOTT: And is that review process adequate? I understand that in no case has anyone been sanctioned for inappropriate use of deadly force.

SEC. JOHNSON: I believe our officers have to be -- should be held accountable for misconduct. I believe in that generally, yes, sir.

REP. SCOTT: Thank you. Mr. Chairman, my time has expired.

REP. GOODLATTE: The chair thanks the gentleman. Recognize the gentleman from Iowa, Mr. King, for five minutes.

REPRESENTATIVE STEVE KING (R-IA): Thank you, Mr. Chairman. I thank you for holding this hearing today and I thank the secretary for appearing and his testimony.

As I'm -- as I'm listening to the testimony here, I happened to hear in the exchange earlier that you have developed a plan to address the OTMs and the unaccompanied children, and that that's become a significant problem on the southern border, especially the southern tip of Texas. I heard that correctly, Mr. Secretary?

SEC. JOHNSON: Yes.

REP. KING: Yes. And could you describe this plan to this committee?

SEC. JOHNSON: Sure. A couple of things. And it's definitely a work in progress. We're building on this because it's a growing problem and we need to take steps to address it. And I'm open to additional steps. In fact, when I go back to my office, I'm going to have a meeting on this very subject to look at all the options on the table.

But what we've done so far, I have declared what's called a level four state of readiness, which means we need to draw upon resources and assets of other departments to help us out. And I appointed within CBP a federal coordinator for that effort.

Number two, I've personally contacted the secretary of HHS to highlight this as a problem that together we need to address. And she recognizes her obligations under the law to take these kids as soon as we identify them as unaccompanied children.

REP. KING: Just for the information of this committee, is this the plan that the president has asked you to withhold until such time as we get through the August break?

SEC. JOHNSON: No. This is something totally different.

REP. KING: OK. Could you explain the plan that the president's asked us to withhold, asked you to withhold until we get to the August break? I think this committee is really interested in what it is. The sword of Damocles that's hanging over our head, we'd be very interested in knowing what that is.

SEC. JOHNSON: What I'm doing, what I'm in the middle of reviewing right now is our enforcement priorities. That is what the president asked me to review in March. I actually had begun thinking about that before he made public his request, and I'm still in the midst of the review. But he has asked me to hold on the announcement of that until the end of the summer.

REP. KING: So if I ask you the question on what that might materialize to be as you know it today, your answer to me would be you don't want to answer that question?

SEC. JOHNSON: I'm not in a position to answer it right now, and my review is not complete, sir. So if I gave you an answer, it would be a premature answer.

REP. KING: This --

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SEC. JOHNSON: I'm sorry (if ?) I misunderstood your question earlier.

REP. KING: Well, thank you. I take it that this is some type of derivation of the DACA plan. That's what we anticipate here. This committee, on this side, at least, understands that there's specific federal law that the president has ordered ICE not to follow. And there's a lawsuit that's out there now that's working its way through the courts, the case of Crane versus Napolitano, and that addresses this separation of powers issue and prosecutorial discretion.

I'd ask you, does your policy that you're enacting now, the DACA policy, which I refer to as the deferred action for criminal aliens, does that create groups or classes of people as a result of the directive that we refer to as the Morton memos, or DACA?

SEC. JOHNSON: DACA is -- as I understand it, DACA was -- it was enacted two years ago, and something like 600,000 people have enrolled in the program. It is up for renewal later this year. I anticipate that it will be renewed, there will be some form --

REP. KING: Does it create groups or classes of people?

SEC. JOHNSON: I'm not sure I understand your question.

REP. KING: By the definitions and the directive that are DACA or the Morton memos, is a result of that that the definitions create groups or classes of people rather than, as I saw seven times referenced in that document delivered by Janet Napolitano -- she said seven times a reference to, on an individual basis only, prosecutorial discretion on an individual basis only. I'm asserting to you that it creates groups or classes of people and asking you whether you agree or disagree.

SEC. JOHNSON: I now understand your question. The way DACA works, there is an individual assessment of whether or not the person can be in the program, based on a background check, based on the particulars of that person's situation.

REP. KING: So as the clock has turned yellow, do you agree or disagree that it produces and results in groups or classes of people? Excuse me.

SEC. JOHNSON: There is a class of people who are eligible for the DACA program, but they've got to go through a background check for criminal history and so forth.

REP. KING: May I ask you another question. I have an amendment that is pending (a vote ?) right now on the floor of the House of Representatives with regard to the Justice appropriations, that directs the attorney general to investigate these tens of thousands of criminals that have been released onto the streets, partly as a result of this program, partly of others. If that becomes law, will you cooperate with the Department of Justice in that particular investigation?

SEC. JOHNSON: You can always count on me to comply with the law, sir.

REP. KING: Thank you, Mr. Secretary. Appreciate it.

REP. GOODLATTE: The chair thanks the gentleman.

Recognize the gentlewoman from California, Ms. Lofgren, for five minutes.

REPRESENTATIVE ZOE LOFGREN (D-CA): Thank you, Mr. Chairman. And thank you, Mr. Secretary, for being here with us today. I think that your openness is really a breath of fresh air here for the committee. And the transparency that you are seeking to provide to not just the committee but to the country is very welcome.

You know, it's often said that the Immigration and Nationality Act is as complicated and convoluted as the tax code. And I think that's about right. Therefore, it can be very confusing. I mean, it's easy to throw numbers around



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and impressions can be created that may not be accurate. For example, it was stated earlier -- I think by the chairman -- that the committee had learned that between 2008 and 2011 ICE declined to take enforcement action against 160,000 people who were arrested by state or local law enforcement agencies.

Now, the nonpartisan Congressional Research Service produced the subpoena and provided us with a report. And according to their analysis, more than 60 percent of those people were legal, permanent residents of the United States. They couldn't be removed until they were convicted of an offense. So I think it's important to note that we're not just talking about individuals who have -- are present without proper immigration documents. We're talking people who are legal permanent residents of the United States, in some cases have lived here for decades, and maybe ran afoul of the law.

I'm concerned that as we take a look at how we're applying our enforcement standards, that we take a look at the nature of the offenses that are at issue. We know that the great -- the most common federal prosecution in the United States today is felony re-entry after removal. And in most of those cases, from best we can tell, those are individuals who are trying to get back to their families here in the United States. They are doing what former Governor Bush described as an act of love. They're trying to come back to be a parent to their children.

And so I'm hopeful that we can take a look at what we are actually doing here when you take a look at the review. I was looking at former Director Morton detainer memoranda. And I think it's very instructive why so many communities are refusing to cooperate with the department today. And in fact, the state of California passed a law saying they will not respond to the Department of Homeland Security. It says a prior felony conviction, but it doesn't actually specify that that could -- if that conviction is really just about immigration, trying to get back to your kids, we look at it differently than if you commit, you know, a criminal offense.

An individual as illegally re-entered the country after a prior removal or return. An individual has -- (inaudible) -- on the order of removal. These are really immigration offenses and they deter individuals from cooperation with the police, which is why all the police chiefs have come out against the secure communities program. So I guess my question to you, Mr. Secretary, is as you take your review of our enforcement, I think we all agree that we want to focus on people who are violent, who harm others. But I'm noticing that the single biggest removal category in 2013 -- more than half -- was for immigration violations. Are you going to be able to take a look at those issues as you review this, sir?

SEC. JOHNSON: I'm in the midst of taking a look at those issues. One observation I'll make, I think that as I've looked at this guidance myself, which covers a multiyear period, I see a certain lack of clarity in the prioritization and the guidance. And I think we could do a better job there.

REP. LOFGREN: Well, I thank you very much for that. And I wanted to just briefly touch on the unaccompanied alien minors. I know that you're concerned about this surge and that is important -- and we have recognized as a Congress -- we have passed a law that these little children are not going to be treated as criminals. But what efforts can we make to deal with Central American nations so that they can take some responsibility for these little kids -- I mean, some three- and four-year old kids -- that are -- end up in our custody?

SEC. JOHNSON: I've had this conversation with the ambassadors from Mexico, Guatemala, El Salvador and Honduras; this exact question. And I think a lot of it is public messaging in English and in Spanish, don't send your child -- or send for your child through South Texas, a processing center in South Texas is no place for a child.

I think that we have to work with the governments of Central America on migration from their countries. I plan to go to Guatemala myself in the month of July on this issue, and there are a number of other things that I think we can do -- and I'm sensing a fair amount of receptivity from those governments to work with us on this.

I think we all recognize, including them, that we have a problem in this area that we need to more aggressively address, and that's one of my priorities and I'm personally invested in it.

REP. LOFGREN: Thank you very much, Mr. Secretary. I see my time is expired.

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REP. GOODLATTE: The chair thanks the gentlewoman and recognizes the gentleman from Arizona, Mr. Franks, for five minutes.

REPRESENTATIVE TRENT FRANKS (R-AZ): Well, thank you, Mr. Chairman, and thank you, Secretary Johnson for being here with us today.

Mr. Secretary, I know you are --

SEC. JOHNSON: Nice to see you again, sir.

REP. FRANKS: Thank you. I'm sure you heard about the case regarding Miriam Ibrahim, the Sudanese Christian who was sentenced to death for apostasy. Her husband is a U.S. citizen and she has two young children, one of which was just born two days ago in her mother's prison. Now, both of these children are eligible for U.S. citizenship, and this case has become so high profile that many of us are deeply concerned about Miriam's safety in Sudan, especially if she wins her appeal and is released **back** into the Sudanese society at large.

And so my question to you, Mr. Secretary, will you assure this committee that you will prioritize this case and quickly review the possibility of granting Miriam a safe haven in the United States?

SEC. JOHNSON: Congressman, I will personally, along with the appropriate component heads, take a look at this case. It sounds troubling.

(Cross talk.)

REP. FRANKS: -- case you are aware of at this point?

SEC. JOHNSON: I was generally familiar with the case, I think, but I will take a look at the case, yes sir.

REP. FRANKS: All right. Thank you, sir.

Mr. Secretary, the DHS Act of 2002, as you may know, lays out the roles and responsibilities of the -- of the assistant secretary of infrastructure protection. First, can you tell us which federal agency has the primary responsibility of protecting the electric grid? And secondly, has your assistant secretary made recommendations to protect the electric grid from all known significant hazards, to include EMP and GMD as is mandated, of course, in her role? And if not, why would DHS hesitate to do everything possible to protect the electric grid from potentially catastrophic events?

SEC. JOHNSON: Within DHS, sir, NPPD, our National Programs Protectorate Directorate -- I think I've got that right -- is responsible for critical infrastructure, including power grids and the like. In conjunction with other federal agencies, we have that responsibility, but it's not ours alone. It's a shared responsibility with other federal agencies.

But within DHS, that's the place where it belongs, and I agree with the sentiment of your question about the importance of protecting power grids and substations and the like.

REP. FRANKS: Well, we have a letter from DTRA that expresses that the primary responsibility of protecting the power grid is assigned to the Department of Homeland Security with assistance from the -- you know, from the Energy and Federal Regulatory Commission.

And I guess I'm just wondering why there doesn't -- you know, this doesn't -- isn't even insinuated right now in your emergency protocols, electromagnetic pulse or geomagnetic disturbance. And I'm hoping that if nothing else comes from this that that's on your radar because we have additional information that seems to indicate that the threat is more significant than we have been aware of. And you take that **back**.

SEC. JOHNSON: I'd be happy to take a look at that, sir.

REP. FRANKS: All right. And with that, Mr. Chairman, I'm going to yield **back**.

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REP. GOODLATTE: The chair thanks the gentleman and recognizes the gentlewoman from Texas, Ms. Jackson Lee, for five minutes.

REPRESENTATIVE SHEILA JACKSON LEE (D-TX): Let me thank the chairman and the ranking member. Mr. Secretary, thank you. Welcome to the Judiciary Committee. And let me, on the record, thank the many men and women of the Department of Homeland Security that I've had the privilege of working with for more than a decade, certainly since the heinous act of 9/11.

All of us are committed to the security of this nation, and we know that every day, members of your staff, of this department, are on the front lines unthanked, not unappreciated; I'm sure my members on this panel would say that they are appreciated. But they go by every day without thanks, and every day that we stay secure in this nation, we owe them a debt of gratitude, and I want to publicly make that point.

We work together to improve their work performance, how we can add resources that are effectively used, not just throwing money after an issue, and we are a team. And I think that is the approach that I hope that you perceive these questions -- certainly mine -- and recognize that we have to do this together.

I have a series of questions, and let me quickly proceed with them. I have worked with my colleague, Congresswoman Lofgren, for a number of years and members of this committee on the unaccompanied children. I know that you were at the border. The numbers should be stated for the record. Some 60,000, an increase of over 800 percent since 2011.

My Subcommittee on Border Security and Maritime Security in Homeland Security had a hearing and a markup which we added language to the Border Security Authorization bill on the determination of resources used in a slightly different perspective on the issue of human trafficking, unaccompanied children.

But I raise these condition, these issues, I'd partly like them to come in writing because I have another series of questions. I'm concerned about the detention conditions of these children. We know that this committee some years ago referred the HHS jurisdiction in particular on these children, particularly, the families and youth Commission. I understand that detained immigrants are the cleanup persons in some detention centers, I don't know if they're cooking food but they're cleaning up. I want to know what is your understanding of that situation and whether children are used to clean up and do work as well.

What kind of legal representation does the DHS provide or are they seeking to have a structure providing legal representation for these unaccompanied children? If you could answer that.

Let me just give my questions. I think it's important because some of them you'll have to give in writing, and I apologize to you. I have a sheriff that you've had the opportunity to meet with in Harris County who's mentioned the effectiveness of 287(g). Let me say that he's done an enormous job with respect of including or writing an MOU that would include having ICE at the table.

But the real point is that under 287(g) we're finding out that 85 (percent) to 90 percent of the people are not terrorists and drug cartel members, but simply trespassers, marijuana possessors, mostly people working in the community, not dangerous. And therefore, the funding that we're using is not capturing people so allow us to be safe. I'd like to know whether you're assessing the effectiveness of 287(g) and the monies that we spend for it.

Many of us have worked for the people who are now residing in Camp Ashraf -- Camp Liberty, excuse me. The MEK has been declared a non-terrorist group in the United States. My understanding of these individuals at Camp Liberty are trying to assimilate and receive status in the United States, that DHS and FBI officers are asking them to deny their affiliation with the MEK, which is no longer a terrorist group. That poses a great difficulty for any of these individuals trying to get here to the United States of America.

So I would like you to begin on the children and then work on the issue of the 287(g), but I would like you to get to MEK. So if you can't get to everything, then just answer the MEK and I'll take the others in writing.

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SEC. JOHNSON: First of all, thank you for those questions. We are concerned about the plight of the MEK, and we are taking a special look at interviewing them, screening them for the purposes that you have referred to. I'm not on the ground there, I'm not firsthand familiar with how that process is going, but it's something that I know our government is focused on, and we have made commitments that we seek to fulfill with regard to the MEK.

I'm very focused on the issue of children in south Texas, as you -- as you know, Congresswoman. I've visited there personally. I'm concerned about detention conditions, as I was in the Department of Defense, our detention facilities in DOD. I took a special interest in conditions of confinement and advocated for, and saw a number of, improvements to our conditions of detention. And so that's a special interest of mine that I'm continuing at DHS.

My understanding of the work program is it's voluntary in nature at our facilities. Nobody is required to work if they don't want to. It is a form of activity for people who want to work and get paid for their work. Now, is it a lot of money? I don't think it is. But it's a voluntary program.

REP. JACKSON LEE: Well, let me just conclude by saying if I can explore it further with you, if we can engage in meetings on this as well as a further understanding of the actual questioners or people on the ground in Iran regarding Camp Liberty. You're not there. But the question has to be: If they've been removed off the list, why would that be asked or seen as a bar, meaning that they have to denounce it. And I do think we need to be fair in the process.

So I look forward, Mr. Chairman. I thank the chairman. I look forward to, Mr. Secretary, pursuing these more definitively, both in terms of the detention center and children, 287(g), which I mentioned to you, and the MEK. Thank you.

REP. GOODLATTE: Time of the gentlewoman has expired.

The chair recognize the gentleman from Texas, Mr. Gohmert, for five minutes.

LOUIS GOHMERT (R-TX): Thank you, Mr. Chairman. And let me just say I agree with my colleague from Texas about Camp Ashraf and the injustices that have gone on. Appreciate you looking into that.

Secretary Johnson, back in 2011 and 2012, I had conversations here in a hearing with Secretary Napolitano about one the top advisers at Homeland Security named Mohamed Elibiary. I'd ask her if she knew about his downloading of two documents from -- utilizing the classified secret clearance that she had given him. And she said no.

However, the night before, the director of the Department of Public Safety in Texas had been assured she was briefed that evening about the situation. So either Secretary Napolitano lied to me or we have people at Homeland Security that are lying to state officials. Neither of those is a good situation.

So I've got a letter here dated May 28th asking you to look into this. She said later, in 2012 -- 2012, she had looked into the situation and said that he, Mr. Elibiary, did not shop these documents he downloaded. And the fact is that there is a reporter that did the story, and I know from talking to the reporter even yesterday that nobody contacted the reporter to get the information.

It's kind of like asking Tsarnaev, are you radicalized; asking his mother, are you radicalized; and then being satisfied that a Boston bombing won't occur. It's not adequate and we hope that you will look into that. I have a letter dated May 28th asking you to do that. Would you look into the matter further? It is a serious matter, if someone with the Homeland Security Advisory Council is -- has shopped information he downloaded. Wouldn't you agree?

SEC. JOHNSON: I read the exchange that you had with Secretary Napolitano a couple years ago. I'm not --

REP. GOHMERT: But my question is: Do you agree that if someone on the advisory council has shopped documents to a national media outlet that he downloaded, that would be a serious matter, wouldn't it?

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SEC. JOHNSON: I agree that unauthorized disclosures of government information --

REP. GOHMERT: Right. So will you agree to look further into the matter since nobody bothered to contact even the reporter that put it in print that that had happened?

So also, I've found the Texas resources very reliable and I've provided information that from October 2008 to April 2014, Texas identified a total of 177,588 unique criminal alien defendants booked into Texas county jails. These individuals have been identified through the Secure Communities Initiative in which Texas has participated since August of 2008. A review of these 177,588 defendants shows they are responsible for at least 611,234 individual criminal charges over their criminal careers, including 2,993 homicides, 7,695 sexual assaults.

And I know that these numbers are staggering. ICE's total docket for 2013 was 1,813,504, with total departures of 386,000. So to the end of fiscal year 2013, less than 2 percent of ICE's caseload was in detention, and they report 872,000 cases on the docket who had received final orders of removal but had not yet been deported. Since those cases are only counted after due process has been exhausted -- sir, I know you're new to the situation, but are you going to formulate a plan to reduce these massive numbers of aliens in this country illegally that are -- have been ordered removed from the United States?

SEC. JOHNSON: I may be new to the job but I'm responsible for the department --

REP. GOHMERT: Sure.

SEC. JOHNSON: -- the day I started. Look, in general I believe that we need to do a better job of working more effectively with state and local law --

REP. GOHMERT: Well, my time is running out and I just need to know whether or not you're going to formulate a plan to reduce those numbers in the backlog awaiting deportation. They've been ordered deported.

SEC. JOHNSON: I think we need to reduce the backlog but I need help from Congress to do that. You give me the resources to do the job. I have a finite amount of --

REP. GOHMERT: So that's the amazing thing. If you do the job and we see you doing the job, then you get the resources you need.

I have other questions and I would ask that a letter dated May 28th and May 29th be provided to the secretary in seeking written answers to the questions, if you would be amenable to having those answered for me.

SEC. JOHNSON: Thank you, sir. I look forward to your letter. I will read it personally.

REP. GOHMERT: OK, thank you. Let the record reflect those are being provided at this time. Thank you.

REP. GOODLATTE: The chair thanks the gentleman and recognizes the gentleman from Puerto Rico, Mr. Pierluisi, for five minutes.

RESIDENT COMMISSIONER PEDRO PIERLUISI (D-Puerto Rico): You did it very well, Mr. Chairman. It's a hard one to pronounce. Thank you.

Secretary Johnson, welcome to the committee. In your short time in office you have already proven yourself a worthy successor to Secretary Napolitano. She traveled to Puerto Rico in 2012, and I hope you will visit the island as well. I would like to outline a narrative for you and then ask you to comment.

I took office in 2009. That year there were about 900 homicides in Puerto Rico, home to less than 4 million American citizens. In 2010 there were nearly 1,000 homicides. And in 2011 there were over 1,100 homicides, an average over three a day, the most violent year in the territory's history. In each year our homicide rate was four to six times the national average and twice as high as any state.

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Of every 10 murders in Puerto Rico, seven to eight are linked to the drug trade. Puerto Rico is within the U.S. customs zone and is used by organizations transporting their product from South America to the U.S. mainland. Given this crisis, I examined the level of resources that DHS and DOJ were dedicating to combat drug-related violence in Puerto Rico and it was clear that the federal law enforcement footprint on the island was inadequate. Let me give two examples on the DHS side.

First, in 2011 patrol aircraft from the Coast Guard, the lead agency for maritime drug interdiction, conducted a meager 150 flight hours of drug interdiction operations in Puerto Rico. If Puerto Rico were a state that would have never been allowed to occur. Second, and also in 2011, CPB closed a boat unit in San Juan that had seized over 7,000 pounds of drugs the previous year. Clearly there was a disconnect between the problem in Puerto Rico and the federal response. Along with colleagues like Congressman Michael McCaul, who is now the chairman of the Homeland Security Committee, I did everything within my power to highlight the need for additional federal resources in Puerto Rico.

My colleagues here can attest to this, having heard me raise this issue every time a DHS or DOJ official appears before this committee. I have no alternative, because the stakes are too high. Starting in 2012, our message finally began to sink in, particularly at DHS. Much of the credit owes to Secretary Napolitano, who, as noted, traveled to Puerto Rico, and upon her return, created a DHS task force charged with taking steps to reduce Puerto Rico's murder rate.

As a result of this initiative, ICE surged 30 agents to Puerto Rico last year, where they made hundreds of arrests and seized vast quantities of illegal drugs and firearms. Between 2009 and 2013, the Coast Guard tripled the number of days its ships spend conducting counter-drug operations in the waters of Puerto Rico. The number of Coast Guard flight hours increased from 150 in 2011 to approximately 1,000 in 2013, and CBP, having assumed control of the counter-drug areas that (raider programmed ?) this year moved quickly to repair the raider in southern Puerto Rico that had been destroyed because of bad weather in 2011.

The results of this DHS effort combined with enhanced effort by DA and DOJ component agencies have been remarkable. Puerto Rico still has the highest murder rate in the country, but the number of homicides this year is (on place ?) to be 40 percent lower than 2011. The lesson, Mr. Secretary, is clear: When the federal government is committed to combating drug-related violence in Puerto Rico, hundreds of my constituents' lives are saved each year.

I'd like to give you the chance to comment on the narrative I just laid out, and I hope you can assure me that Puerto Rico will continue to be a top priority for the agency you now lead.

SEC. JOHNSON: Well, first of all, thank you for the comments. I'm pleased to know that we've been able to make progress since 2012 in what is obviously a very, very important issue and a very big problem. I will hopefully -- I'd like to be able to continue the progress that Secretary Napolitano began in 2012. This is an issue for me that I intend to focus on, and hopefully, together we'll be able to continue to make good progress.

COMM. PIERLUISI: Thank you.

REP. GOODLATTE: The chair thanks the gentleman and recognizes the gentleman from Texas, Mr. Smith, for five minutes.

REPRESENTATIVE LAMAR SMITH (R-TX): Thank you, Mr. Chairman. I have a brief statement, and then I have some questions after that. The Department of Homeland Security last year released 36,000 criminal immigrants into our neighborhoods. This would be considered the worst prison break in American history, except it was approved by the president and carried out by immigration officials.

By the administration's own admission, 90 percent of those who were voluntarily released had committed thousands of crimes, such as murder, sexual assault, kidnapping, drug trafficking and hit and run. Should someone be charged with crimes against humanity?

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Here are some of the other ways the president has ignored or undermined current immigration laws. The Secure Fence Act of 2006 requires the DHS to prevent all unlawful entries into the U.S., yet the Government Accountability Office reported in 2011 that only 6.5 percent of the southwest border is under full control. The DHS' widespread abuse of prosecutorial discretion ignores the statutory requirement to apprehend and remove illegal immigrants.

Immigration and Customs Enforcement weakened the rules that required illegal immigrants to be detained. The administration has undercut the ability of local law enforcement officials to apprehend illegal immigrants, and currently, the DHS is reviewing deportation policies, and no doubt will weaken them even more. If the president cannot be trusted to enforce current immigration laws, how can he be trusted to enforce future immigration laws?

Mr. Secretary, a couple of questions. First of all, in regard to the homicides that have been committed by those who are voluntarily released, will you be able to provide this committee with the details of those homicides -- who was involved, the nature of the crime, the date and so forth?

SEC. JOHNSON: It is something that I am interested in understanding further, and I will provide that information to you also.

REP. SMITH: OK. You have that information, do you not, in hand?

SEC. JOHNSON: I'm sorry, what was that?

REP. SMITH: You have that information available to you, do you not?

SEC. JOHNSON: I will share that information to you once I have it. I wrote you a letter --

REP. SMITH: Right.

SEC. JOHNSON: We wrote you a letter that was signed out yesterday that more generally talks about this issue. But I'm interested in understanding further some of these more serious cases, and I will share that information with the committee.

REP. SMITH: OK. You had that information or you wouldn't been able to give us the details you did in the letter that you wrote. When would -- when can we expect to get the details of those -- (inaudible) --

SEC. JOHNSON: Not long after I get it.

REP. SMITH: You expect that to be in the next week or two?

SEC. JOHNSON: I'm not sure, but not long after I get it, sir. I will make that commitment to you.

REP. SMITH: OK. Are you saying under oath right now you do not have that information?

SEC. JOHNSON: What's that?

REP. SMITH: Are you saying under oath right now you do not have that information?

SEC. JOHNSON: I personally do not have the information about the specific details of those --

REP. SMITH: OK. Not you personally, but the DHS does not have that information, are you saying that?

SEC. JOHNSON: Somewhere in the department, hopefully, that information exists.

REP. SMITH: OK.

SEC. JOHNSON: I have asked for a greater understanding of these particular cases, and I'm waiting for the answers to that information -- to that request.

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REP. SMITH: And you will get that to us, we hope, at a timely fashion, is that right?

SEC. JOHNSON: I don't have a problem with sharing further details about these particular cases with the committee.

REP. SMITH: OK. Thank you.

My second question is this: In your prepared testimony for today, you said comprehensive immigration reform is not amnesty. Let me read you the definitions of amnesty. The first is from Black's Law Dictionary, quote, "a pardon extended by the government to a group or class of persons." The 1986 Immigration Reform and Control Act provided amnesty for undocumented aliens already present in the country. And from Merriam-Webster Dictionary, quote, "the act of an authority as a government by which pardon is granted to a large group of individuals." Now, whether individuals pay a fine or back taxes, we see citizenship is irrelevant to the definition of amnesty.

Therefore, would you agree that the administration has given amnesty to thousands individuals and that the Senate immigration would have provided amnesty to millions of individuals, at least under the definitions that I just read you from Black's Law Dictionary and from the Merriam-Webster Dictionary?

SEC. JOHNSON: Through prosecutorial discretion, we prioritize our use of resources. And through the DACA program --

REP. SMITH: Mr. Secretary, that's not an answer.

SEC. JOHNSON: -- they've been deferred action to a certain category --

REP. SMITH: Do you -- do you agree that the administration's policies have resulted in amnesty to hundreds of thousands people, and do you agree that the Senate bill would have provided amnesty to millions of people under the definitions that I just read you?

SEC. JOHNSON: That's not what I consider amnesty.

REP. SMITH: So you disagree with Black's Law Dictionary's definition of amnesty?

SEC. JOHNSON: I don't believe that DACA or any act of prosecutorial discretion in the administration of our immigration laws constitutes amnesty as I understand the concept of amnesty, and I think I do.

REP. SMITH: Why wouldn't your concept of amnesty include the definition of amnesty in Black's Law Dictionary?

SEC. JOHNSON: I'm not sure the answer to your question.

REP. SMITH: Well, it seems to me it's kind of amazing that you would disagree with the long-standing definition of amnesty as given in various dictionaries. Now, it's not the first time the administration wants to change the definition or change the terms, but I'm absolutely amazed that you don't recognize the legal definition of amnesty.

Thank you, Mr. Chairman. And I'll yield back.

REP. LOFGREN: Mr. Chairman, could I ask unanimous consent to put into the record two statements?

REP. GOODLATTE: Sure. Would the gentleman describe those statements?

REP. LOFGREN: One from the National Immigration Forum and one from the Human Rights First organization.

REP. GOODLATTE: Without objection, those will be made part of the record.

REP. JACKSON LEE: Mr. Chairman.

REP. GOODLATTE: What purpose does the gentlewoman from Texas seek recognition?



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REP. JACKSON LEE: I'd like to ask unanimous consent to add into the record a report by First Focus, "The Cost Inaction: Why Children Can't Wait for Immigration Reform."

REP. GOODLATTE: Without objection, the document will be made part of the record.

The chair recognizes the gentlewoman from Washington, Ms. DelBene, for five minutes.

REPRESENTATIVE SUZAN DELBENE (D-WA): Thank you, Mr. Chair.

Secretary Johnson, thank you for being here today. I want to take a moment and thank you and FEMA Administrator Fugate for travelling to Oso, Washington, the site of a massive landslide in my district that tragically took the lives of 43 people. I think you'll agree it's impossible to describe the scale of what happened without being able to be there to see it, and I appreciate you coming out.

The support of the department through FEMA assistance has been very critical to everyone there. And as we continue with the recovery efforts, I look forward to continuing to work with you and FEMA to make sure that we have all the federal resources available to support the communities of Oso and Darrington and Arlington as they continue in this long rebuilding process. So thank you again.

I want to turn to the issue of immigration policy, which is particularly relevant in my district because we have the border with Canada, the northwestern border with Canada.

Under federal law, right now CBP officers have the right to stop and conduct warrantless searches on vessels, trains, aircraft or other vehicles anywhere within a reasonable distance from an external boundary of the United States. Currently, federal agents from CBP operate in a hundred-mile zone drawn from any land or sea border, and this distance was established by regulation over 60 years ago. And while this may be sensible in some areas, especially on the southern border, in Washington state we've seen the Border Patrol set up checkpoints that disrupt commerce and hassle residents. I'm particularly concerned about racial profiling complaints that we've received during vehicle stops, and want to point out that last September in Washington state the Border Patrol reached a settlement agreement in a lawsuit alleging that the agency was engaging in discriminatory conduct in its stops.

As the review of the department's immigration policies moves forward, I'd ask you to take a close look at this. We need to provide our federal officers with the tools they need to keep our borders safe and also keep our Customs and Border Patrol agents focused on their mission near the border. And so I wanted to ask for your commitment to review the hundred-mile zone, whether this is a reasonable distance from the border, in particular for the northern border.

SEC. JOHNSON: Yes, I will take a look at that and will also take a look at our enforcement activities generally at sea and elsewhere. It's a topic I'm interested in.

As the head of this agency, as a lawyer, as a former prosecutor, I also want to comment on what I saw when I was in Oso. I think all the members of the committee should appreciate the remarkable community effort that we saw the day we visited there: private citizens, local law enforcement, federal law enforcement, state law enforcement, and just neighbors who had been at the site of the mudslide for like two weeks with no sleep, trying to help their neighbors, trying to find evidence of their loss. It was a really remarkable effort. And so I just wanted to note that as well.

REP. DELBENE: Thank you.

SEC. JOHNSON: And I hope that your constituents are in a better place as a result, and please send them my regards.

REP. DELBENE: Thank you, I will.

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Also, on Sunday, The New York Times reported that even as the federal government cracks down on undocumented immigrants and forbids businesses to hire them, it's relying on tens of thousands of immigrants each year to provide essential labor, usually for a dollar per day or less, at detention facilities. And in Washington state, at the Northwest Detention Center in Tacoma, a privately run detention facility, detainees led a hunger strike recently to protest their conditions, which included concerns about their severe undercompensation for the labor they provide to keep these facilities running and without protections afforded to other workers. The vast majority of ICE detention facilities are operated under contracts with private prison companies and county governments. Given that, is there any statutory or regulatory impediment that would preclude DHS from requiring these contractors to pay wages to detainee workers that are higher than a dollar per day?

SEC. JOHNSON: As I mentioned a moment ago, this -- my understanding of the program is that it's on a voluntary basis. But I am concerned about conditions of confinement at our facilities. This is something that I've spoken to you and Adam Smith about, in particular the one in Washington state. I sent a group from my front office out a couple of weeks ago to visit this facility when the hunger strikes had started there, and I intend to visit it personally myself, along with other detention facilities.

In terms of the law and the legal requirements, that's something I'd want to look into.

REP. DELBENE: Thank you. I'd appreciate that, because I have met with individuals who were released from the detention center in Tacoma and they said that, you know, folks were put in solitary confinement for work stoppages, failing to show up to cover shifts, and so clearly that does not describe a voluntary scenario. But compensation has been important when they aren't -- they feel like they haven't had adequate food and they need to work to get enough money to buy things from the commissary, and a dollar per day does not help them out very much. So I'd appreciate your feedback on that going forward.

And I yield back. Thank you, Mr. Chair.

REP. GOODLATTE: Chair thanks the gentlewoman and recognizes the gentleman from Texas, Mr. Poe, for five minutes.

REPRESENTATIVE TED POE (R-TX): Thank you, Mr. Chairman.

Thank you for being here. A few questions about several things.

One, my friend from Texas Ms. Lee has made some comments and questions about the MEK and their status overseas. I have some further questions, but I'm going to put those in writing, and we'll tender those to you, and that's for a written response to myself and the chairman.

SEC. JOHNSON: That's fine.

REP. POE: The 36,000 that have been released -- walk me through this. As a former judge, I'd like to kind of figure out what their status is. What is their legal status in the United States now that they are released?

SEC. JOHNSON: Well, Your Honor --

REP. POE: Hey, I've been called worse, so -- (laughter) -- what is their legal status in the United States now that they've been released?

SEC. JOHNSON: Well, it depends. My understanding is that some of those 36,000 were lawfully in the United States. Others were not. Others were undocumented.

REP. POE: The undocumented, what's their status?

SEC. JOHNSON: They were undocumented immigrants that are subject to removal.

REP. POE: Excuse me for interrupting. Got five minutes. So there's -- technically illegally in the United States.

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SEC. JOHNSON: Those who were undocumented who were convicted of a crime. Now, there are all sorts of variations on this. We're talking about a class of 36,000.

REP. POE: I understand.

SEC. JOHNSON: But if you're undocumented and you're here and you're not -- there's no special status, there's no special program --

REP. POE: So you're illegally in the --

SEC. JOHNSON: -- you're not DACA, you know, you're here illegally.

REP. POE: OK. The ones that were released that are undocumented that are now illegally in the United States again, did they get work permits?

SEC. JOHNSON: Did they have what? Sorry?

REP. POE: Did they get work permits when they're released from custody -- or being released from custody, are now illegally in the United States again -- did they get a work permit?

SEC. JOHNSON: I couldn't say categorically one way or the other. I'd have to know each individual case.

REP. POE: Of the 36,000, did any of them get work permits?

SEC. JOHNSON: I don't know the answer to that, sir.

REP. POE: Will you find out the answer to that question?

SEC. JOHNSON: We will try to find the answer out, yes.

REP. POE: Just roughly. You don't need to go through all 36,000. Just roughly, percentagewise, I'd like to know that.

So let's take the ones that were illegally -- or undocumented, they're released. If they are rearrested for something, some other crime, then they are back in the same status, they're back in jail again, and they go through the process again, is that correct? In other words, they're not given some kind of "stay out of jail free" card that they -- now that they've been released? Talking about the undocumented ones. And they commit another crime.

SEC. JOHNSON: That -- I agree generally with that, yes, sir. That should not be the case, correct. If you're -- if you're released under some conditions and you commit a crime, then that obviously changes the circumstances, and you know, somebody needs to re-evaluate whether you're running -- you should be running around on the street, correct.

REP. POE: My understanding is your department has the authority, obligation to report to the State Department those countries that do not comply with repatriation, in other words, a person who commits a crime in the United States, they're a foreign national -- forget whether it's legally or illegally, but they're a foreign national, they go to prison, they're ordered deported back to where they came from when they get out of prison, and countries don't take them back. Why would they? They got enough criminals of their own. The law says that under some circumstances, after you make a recommendation to the State Department, that those countries can lose visas.

Do you know of any time that that has happened in recent years where that has actually been made, that somebody won't take them back -- China's a good example of those that don't take them back; there are other countries, Vietnam -- where they refused to take them back and those -- that country lost diplomatic visas or any kind of visas because of their failure to take it back?

SEC. JOHNSON: I'm -- I know that there was a case several years ago. I've forgotten the country -- (inaudible) --

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REP. POE: Grenada, I think it was. Grenada or Grenayda (ph), one of those two.

SEC. JOHNSON: It was a country -- I've forgotten -- I've forgotten which country. But I know that that occurred several years ago.

REP. POE: All right. Would you check with your -- would you get us an accurate report on that, when the last time that actually occurred, where the recommendation was made?

SEC. JOHNSON: Yes.

REP. POE: It seems to me that this problem's going to continue when countries don't have any sanction, punishment, if you will, for failure to take back their lawfully deported criminals. And myself and others on the other side have legislation to try to fix this problem.

I have other questions besides the MEK, but I'm going to yield back my time to the chairman. Thank you.

SEC. JOHNSON: Thank you.

REP. GOODLATTE: Chair thanks the gentleman and recognizes the gentleman from Illinois, Mr. Gutierrez, for five minutes.

REPRESENTATIVE LUIS GUTIERREZ (D-IL): Thank you so much, Mr. Chairman.

And welcome, Secretary Johnson. I guess I'd like to, first of all, start out by saying that I am disappointed, saddened that you are not going to announce in the coming weeks.

The president said that he had instructed you to do a review and to humanize our deportation processes in the next 90 days. So I was waiting for a couple of weeks to give you time to finish that review. I want to make that clear.

I was in Richmond, Virginia yesterday. I wish my colleagues on the other side of the aisle had been in Richmond, Virginia with me. They would have met a woman who has a GPS ankle bracelet, two American citizen children. And I assure you, while she may have -- because of the ankle bracelet, you might have thought of her as a criminal. I saw a mom. I saw a mother of two American citizen children. And she said please help me. And I'm going to help her. And I hope you do, too, Mr. Secretary, continue to help people like her from this broken immigration system.

I met three other women there, and they were reporters that come from Washington, D.C. And, one after another, they told me about their broken families. We met a young woman, beautiful young woman, 18 years old; been here since she was six; spoke in two language. Clearly the United States is their home.

And so I simply say to my colleagues on the other side of the aisle, I hear you. You want to talk about law and order and law and order and law and order. And I'm for law and order, but I'm also for compassion and justice. And we can find a way where you can find your law and order, and I think we can find a way where we can have justice and compassion too. People make mistakes. There's a broken immigration system. We should find a way.

The day before that, I was -- last Friday, last Saturday, I was in Riverside with Takano. The day before that, I was with Loretta Sanchez on Friday. That's how I spent my Memorial weekend, going and visiting. And everywhere there was the cry, Mr. Secretary, from people being deported, from families being devastated, from a community saying get the work done.

So I wanted to simply say to my colleagues, look, we don't have to do it the way the Senate says. But I think we have to do it.

And let me just say this to Mr. Secretary too. While I'm disillusioned, I'm conflicted too, because I think it's a pretty grand gesture on the part of the president of the United States. I think, in my opinion, it's a pretty grand gesture on

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his part to say no to me, to say no to those mothers in Richmond and that I met over the weekend in Riverside, to say no to millions of people who support him, voted for him, cherish him, love him and have protected him, for him to say no to us because he wants to say yes to you, because he wants to reach an agreement with you.

I think that's a pretty grand gesture, especially when I have seen the kind of disdain that some members of the other side of the aisle have showed for him. I think it's a pretty grand gesture.

And my point is I, like the president of the United States, want to work with you. I respect that you are the majority party in the House of Representatives and therefore get to dictate how it is things proceed. But I beseech you that there has got to be a way that we can find some commonality.

And I want you, Mr. Secretary, to understand that I want to be supportive. When you guys talk about criminals, criminals, criminals, you think we like criminals? I want to find a seamless process in which you commit a violation of the law, and if you're an immigrant in this country, you pay the price here and you're seamlessly deported from the United States of America. I don't want them here either.

But the only way we're going to reach that is if we fix the system completely, because unfortunately, when you talk about felony, that they're felons, it is a felony to reenter the United States of America once you've been deported.

But who on the other side would not reenter this country to regain your relationship and your love with your wife and your children? Which one of you would not reenter illegally this country? Every one of us would. We love -- I've had dinner. I've sat down with members of the other side. I know how much you love your wives and your children. I know how much you cherish your families. I know what you would do. And I think you know what I would do. So let's simply find a way where we can find law and order and some passion.

And lastly I just want to say this. Mr. Secretary, I'm so happy this is the first hearing. I hope to have many, many more in which I actually ask you questions. (Laughter.) But you know what, Mr. Secretary? Look, maybe you don't need my advice, but I know you're going to be just fine as secretary, because you come from a great family tradition. And I know one day you're going to see your grandpa again and he's going to be very proud of when you were secretary of Homeland Security.

Thank you so much for being with us this afternoon and this morning.

REP. GOODLATTE: Chair thanks the gentleman, recognizes the gentleman from Utah, Mr. Chaffetz, for five minutes.

REPRESENTATIVE JASON CHAFFETZ (R-UT): I thank the chairman. And Mr. Secretary, thank you for being here.

Have you had an opportunity to meet with the president of the ICE officers union?

SEC. JOHNSON: No, I have not.

REP. CHAFFETZ: And will you meet with -- will you meet with them?

SEC. JOHNSON: I would like to. I would like to meet with the president of that union. I'd like to meet with the president of APCHE (ph) --

REP. CHAFFETZ: OK. Well, I hope you have a chance --

SEC. JOHNSON: I've met with -- I've met with other labor leaders.

REP. CHAFFETZ: I hope you have a chance sooner rather than later to meet with the ICE officers and particularly their union.

SEC. JOHNSON: Well, I just committed to do that on TV.

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REP. CHAFFETZ: I know. I appreciate it. That's why I said I do appreciate it.

Operational control of the border -- I don't think that's unreasonable to ask. What's your understanding of the -- what percentage of the border do we actually have operational control of and --

SEC. JOHNSON: We don't -- we don't exactly compute it that way. We've got a fairly sophisticated analysis that demonstrates on the southwest border, for example, where we have enough assets that we feel that we've got pretty good situational awareness, where in the more remote areas we have other assets, surveillance assets, but we don't have as much boots on the ground. We feel like we've got a pretty good --

REP. CHAFFETZ: Now -- sorry, I've got -- I've kind of -- time is so short here. You were -- you evidently wrote a letter to Senator Durbin. You said, quote, "I do not believe that deportation quotas or numeric goals are a good idea," end quote. Can you explain to me why you don't think numeric goals are a good idea?

SEC. JOHNSON: Because I think that the analysis into what constitutes a secure border requires a more sophisticated approach that looks at not just --

REP. CHAFFETZ: Is it a secure -- is --

SEC. JOHNSON: -- the number of attempted crossings but who's crossing, where are they from, are they drug dealers, are they recidivists, are they criminals. I think there's a more sophisticated analysis --

REP. CHAFFETZ: So --

SEC. JOHNSON: -- that goes into what constitutes border security.

REP. CHAFFETZ: So where they're from and if they're a criminal or not --

SEC. JOHNSON: And I think the chief of the border patrol agrees with me.

REP. CHAFFETZ: The -- you say the border patrol agrees with you?

SEC. JOHNSON: Yes.

REP. CHAFFETZ: I just don't understand -- how -- you know, we all try to look at the same set of metrics. You're saying the metrics aren't necessarily a good idea and it depends -- their intent on crossing the border as to whether or not to actually have operational control, I -- explain that to me a little bit more. I don't understand that. If you're saying it -- you know, we have to look at their intent, where they're from, if they're criminals, is that --

SEC. JOHNSON: No, I --

REP. CHAFFETZ: So it's OK if they don't have bad intent? It's -- but it's not good if they have evil intent?

SEC. JOHNSON: I believe metrics are very important but not just one metric. I don't believe that it is as simple as one statistic like effectiveness rates. I think that there is more that should go into what constitutes a secure border. And we have that analysis and we're developing it, and I think it needs refinement.

REP. CHAFFETZ: Is that something you can share with us? Is that something you can share with us? I'd love to see what your version of that is, but I don't -- I haven't seen that.

SEC. JOHNSON: I've had that conversation with other members of Congress. I'm happy to have it with you, sir.

REP. CHAFFETZ: Thank you. And if there were some sort of document there, I would -- I would sincerely appreciate it.

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Biometrics that -- you said, quote -- and this is during your Senate confirmation -- "Biometric exit is, in my judgment, the gold standard; it's a place that we eventually ought to get to," end quote.

How do we get there? And I -- and I want to add another part of this, because I think they do go hand-in-glove. You said that it is your goal that -- you know, I believe in response to Mr. King -- that if you had enough resources, then you'd be able to detain and deport more people, correct? But you haven't asked for more resources, have you? In fact, your request for the number of beds is going down, isn't it?

SEC. JOHNSON: Well, in response to the question about biometric exit, biometric exit -- I do believe that it is definitely a worthwhile goal and it requires resources from Congress. We are operating and living in fiscally constrained times with huge national debt and a huge deficit. So we ask the Congress for resources. It's your prerogative to give us more --

REP. CHAFFETZ: Do you have a plan to fully implement --

SEC. JOHNSON: -- it's your prerogative --

REP. CHAFFETZ: -- the entry-exit program? Do you have a plan to do that?

SEC. JOHNSON: I believe we do. I believe we have a plan to get to biometric exit, but it requires resources from Congress. It requires resources from you.

REP. CHAFFETZ: And the resources that you talk about, if you're going to get tougher in this situation on people who are here illegally, you said if you -- if we gave you the resources you'd make that happen, but you're not asking for more resources, are you?

SEC. JOHNSON: I have to prioritize where I think it's important. I believe it's important that we add resources to the southwest border, which is why we've asked for additional boots on the ground --

REP. CHAFFETZ: But then why did you ask for less -- why did you ask for less beds?

SEC. JOHNSON: -- surveillance resources.

REP. CHAFFETZ: But you've asked for less beds. Why less beds?

SEC. JOHNSON: Because my -- the budget reality is we must prioritize.

REP. CHAFFETZ: Mr. Chairman, that is, with all due respect, a nonsensical answer. It's just circular. You're asking for less resources, but you're saying if you had more resources, you'd do your job better, and yet you're asking for less. That doesn't add up, Mr. Chairman. It's something we need to further --

SEC. JOHNSON: May I answer? May I be allowed to answer?

REP. GOODLATTE: The secretary definitely can answer the question.

SEC. JOHNSON: Thank you. We make a budget submission every year, as you know, Congressman. We're given a top line to work with. We're given budget reality to work with. And we have to make hard choices. And in my view, in my judgment, the priorities must be border security, without a doubt, particularly southwest border and some of the challenges we face there. We've asked for additional surveillance technology there. We've got to deal with cybersecurity. We've got to be mindful of the counterterrorism threat. We've got to provide grants for urban areas that face terrorist threats. We've got priorities.

Now I would like to be able to fund every single thing that I believe is a priority, but Congress is only going to give me so much money and so I've got to make hard choices. I'd like to have biometric exit. I think it would add to our homeland security. But over the years we've had to make some hard choices about prioritization and so it's a goal. Unfortunately we haven't been able to fund it as quickly as we would like.

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REP. CHAFFETZ: And Mr. Chairman, I'd just say, when we have to release criminal aliens because there aren't enough beds, they've made a conscious decision to have less beds, and that's what I have a problem with. Yield back.

REP. GOODLATTE: The chair thanks the gentleman. And Mr. Secretary, biometric entry/exit is not a goal, it's the law and we would like to see expeditious efforts made. And we actually think the cost of that is coming down with the development of new technology.

The chair recognizes the gentleman from Georgia, Mr. Johnson, for five minutes for his questions.

REP. JOHNSON: Thank you, Mr. Chairman. Director Johnson, so what you're -- what you're saying basically is you have to prioritize and from the standpoint of your priorities you believe that border security trumps the number of beds that the Congress would want versus what you've asked for in your budget. Is that correct?

SEC. JOHNSON: Not necessarily, sir. Detention of those who are dangerous is part of border security. It's part of homeland security, part of national security, part of border security. Every year we make an estimate of what we think we will need in terms of detention space. It's the Congress' prerogative to agree or disagree with that. But homeland security, border security is -- that's my mission, so my priority. Detention of those who are dangerous is very much part of that.

REP. JOHNSON: OK, let me ask the question this way. I understand that we spend \$10 billion per year -- \$2 billion, I'm sorry -- per year on immigration detention alone. The House Appropriations Committee is currently considering an appropriations bill for DHS that requires the department to maintain 34,000 beds while the president's budget only requested roughly 30,000 beds.

Do you really need these extra beds that the House Appropriations Committee says that they want to give to your department?

SEC. JOHNSON: Well, our request, as I recall it, was for bed space for about 31,000 or so. Obviously that number could change based on current circumstances. So we're seeing a rise in illegal migration in south Texas, for example, which may require additional bed space. But at this point it's a number that can fluctuate up and down. It's not necessarily a flatline number.

REP. JOHNSON: But you asked for -- you asked for roughly 31,000 dollars (sic\beds) and they want to give you now more than that, 3,000-plus more beds. How much does that cost?

SEC. JOHNSON: I don't have the exact number.

REP. JOHNSON: Well, let me ask you this.

The 2011 ICE performance-based detention standards update existing ICE standards to address gaps in previous standards with regards to health and safety conditions. ICE facilities include private prisons as well as ICE-owned facilities, and they operate under widely varying detention standards. According to reports from ICE, almost half of the average detainee population is not covered by the most recent PBNDS standards.

What is DHS's timeline for ensuring that all facilities that hold detainees operate under the most recent standards? And why do we continue to hold detainees in facilities that cannot commit to complying with the most recent standards?

SEC. JOHNSON: I'd like to take that for the record and get back to you in writing, if I could. Sitting here, I don't know the answer to your question.

REP. JOHNSON: All right. Detaining an immigrant costs over \$150 a day. Of course, immigration detention is purely civil; that is, we're not detaining individuals to -- we're only detaining individuals in a civil proceeding to make



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sure that they show up for their court date. That's the reason why we're detaining them, not as criminal punishment.

I understand that there are alternatives to detention, such as ankle monitors or checking in by phone, which cost anywhere from 70 cents to \$17 a day. What plan does your department have for expanding the use of these alternatives to detention?

SEC. JOHNSON: The alternatives-to-detention program that we have -- and I know that it's part of our budget submission for this year -- is, in my judgment, an important program and a reasonably effective program. I'm sure we could always do better, but I think we've become pretty sophisticated in terms of alternatives to detention and the conditions under which we release people to ensure their return.

So I think alternatives to detention in general is an important program. Could we do better? I suspect we can. And so we have to continue to try to make improvements in that area.

REP. JOHNSON: Thank you. With that, I'll yield the balance of my time back.

REP. GOODLATTE: The chair thanks the gentleman and recognizes the gentleman from South Carolina, Mr. Gowdy, for five minutes.

REPRESENTATIVE TREY GOWDY (R-SC): Thank you, Mr. Chairman.

Mr. Secretary, you had a very distinguished career as an attorney, so I want to ask you some legal questions. What is the difference between prosecutorial discretion and the wholesale failure to enforce a category of law?

SEC. JOHNSON: Prosecutorial discretion is a prioritization. Now, somebody who's a low priority is not necessarily, therefore, beyond the reach of the law. They are a low priority. But they don't have any sort of status that says you hereby have amnesty.

REP. GOWDY: Are there limits on the doctrine of prosecutorial discretion?

SEC. JOHNSON: I'm sorry?

REP. GOWDY: Are there limits on the doctrine of prosecutorial discretion?

SEC. JOHNSON: DACA, as I understand it, is an active --

REP. GOWDY: No, no, no. Are there limits --

SEC. JOHNSON: -- (inaudible) -- prosecution discretion on an individual basis.

REP. GOWDY: Are there limits on the theory of prosecutorial discretion? Are there any categories of law that the chief executive really actually has to enforce, and this time we really mean it?

SEC. JOHNSON: As a lawyer, I will tell you I believe there are. I think that there comes a point where something looks like a wholesale abandonment of the enforcement of the law versus prosecutorial discretion. So I would agree with that assertion, that proposition.

REP. GOWDY: Well, there are at least three different categories of law. Law can forbid conduct like the possession of child pornography. Law can require conduct like registration with Selective Service. And law can even tell one branch you have to do something, like sentence within these parameters. Does the doctrine of prosecutorial discretion apply to all three of those categories of law?

SEC. JOHNSON: DACA is an individual assessment of people who are eligible for DACA treatment. And then they have to go through a process, a background check and so forth.

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REP. GOWDY: I'm not just asking about DACA.

SEC. JOHNSON: And if they're eligible --

REP. GOWDY: I'm --

SEC. JOHNSON: -- they're eligible for --

REP. GOWDY: You were a prosecutor. Our attorney general has concluded he doesn't like mandatory minimums, so they're no longer going to inform the grand jury or the sentencing court what the drug amounts are. I'm just trying to -- I'm not talking about DACA specifically. I'm trying to determine whether there are any limits to this theory called prosecutorial discretion.

SEC. JOHNSON: I believe there are.

REP. GOWDY: Give me a for instance. Give me a category of law where you can't rationalize, due to a lack of resources, your failure to enforce a law.

SEC. JOHNSON: Like I said, sitting here I'm not sure I can answer specifically your question in hypothetical terms, but I do believe that there comes a point when something amounts to a wholesale abandonment to enforce a duly enacted constitutional law that is beyond simple prosecutorial discretion. I'm agreeing with you in principle.

REP. GOWDY: Well, you mentioned in response to one of my colleague's questions a lack of resources and a need to prioritize.

SEC. JOHNSON: Right.

REP. GOWDY: Can the legislative branch prioritize for you what we think your enforcement mechanisms ought to be or the priorities of your department? Does it only come from the executive branch or can the legislative branch say we really want you to detain this category of alien and we really mean it?

SEC. JOHNSON: I think that's a good question. I think that there is a role for the legislative branch in making national priorities and how we enforce and prioritize the law. So for example, if I may, Congress can ratchet up criminal penalties for certain things. That's an act of prioritization. I think that's an act of prioritizing, telling the executive branch where we want your priorities to be and so there are enhanced penalties here.

REP. GOWDY: But Mr. Secretary, that enhanced penalty is meaningless if there's no prosecution. You would agree with me there. We can raise the statutory maximum on all crimes. If you mean to tell me the executive branch has the unfettered discretion not to enforce a category of law, what difference does it make what the statutory maximum is? Nobody's ever going to be prosecuted.

SEC. JOHNSON: That's not what I said.

REP. GOWDY: No, but -- no, no. You cited something the legislative branch can do, which is raise the statutory maximum.

SEC. JOHNSON: Right.

REP. GOWDY: What I'm trying to get at is what can the legislative branch do when we want -- and I'm not talking about immigration right now. I'm talking about any category of law. If we really want the law enforced -- I mean, this time we really mean it, Mr. President, we want you to enforce the law -- what are our remedies?

SEC. JOHNSON: I think that the legislative branch in general, whether it's the enforcement of immigration laws, the enforcement of criminal laws or how we conduct counterterrorism operations, needs to be careful not to intrude into the discretion that the executive branch should normally have. You cannot, with all respect, micromanage certain functions that the executive is charged with carrying that out.

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And I've seen -- I know from experience, whether it's as an AUSA or as the general counsel at Department of Defense responsible for signing off on the legality of specific military operations, that the legislative branch can and should and has the prerogative to set the broad parameters for national policy and the executive should be given a certain amount of discretion based on existing circumstances to implement and enforce those laws.

And there's a line between those two that I think is probably a little difficult to articulate, but I believe both branches have a role in this process.

REP. LOFGREN: Would the gentleman yield?

REP. GOWDY: Well, I'm out of time, but Mr. Secretary, I will say this in conclusion. Our politics may differ. I don't have any idea, I don't know you well enough to know. But you're a former prosecutor and there are other former prosecutors on this -- on this committee, and the beauty of this country is, even if our politics differ we still respect the rule of law. And we are playing with the foundation of this republic when we decide selectively which laws we're going to enforce due to political expediency. That transcends politics and it begins to impact the foundation of this republic.

And I would urge you to help me find where that line is between prosecutorial discretion and just decide you don't like to enforce a law.

REP. GOODLATTE: The chair thanks the gentleman and recognizes the gentlewomen from California, Ms. Chu, for five minutes.

REPRESENTATIVE JUDY CHU (D-CA): Yes. Congresswoman Lofgren?

REP. LOFGREN: Thank you for yielding. I just wanted to point out that in fact Congress has identified the priority in the appropriations language for 2013. We prioritized the removal of criminal aliens, and I thank the gentlelady for yielding and yield back.

REP. CHU: Thank you. And thank you, Secretary Johnson, for meeting with the congressional Asian Pacific American caucus. We had a very fruitful dialogue on the deportation policies and I appreciate that. I would like to ask questions about removals without due process and I know that those on the other side of the aisle are saying that there's too much prosecutorial discretion, but actually I believe that the opposite is true. And that is, immigration agents now deport most people without ever bringing them before an immigration judge.

In 2013, more than 70 percent of all people that ICE deported were subject to summary removal procedures which bypassed immigration courts entirely and lacked fundamental due process. For these hundreds of thousands of individuals, immigration agents are the jury and the judge, and in fact deportation decisions are made so quickly that there's no time to see if a person merits discretion or needs protection.

Take the case of Gerardo Hernandez-Contreras from San Diego, who entered the U.S. when he was 15 years old and later married a U.S. citizen and had two U.S. citizen children. In 2012, he was driving to pick up ice cream for his kids when he was pulled over by the San Diego police department for talking to his wife on his cell phone while driving. So the immigration officials were called to the scene and just one day later he was deported to Mexico, a country that he had not lived in for a decade.

He appears to be a prime candidate for prosecutorial discretion. He had no criminal history, had lived in the country for over a decade, had U.S. citizen family, but instead he never had the opportunity to present this case to a judge. He was pressured by immigration to sign a voluntary return form and was not informed of the consequences of doing so. By signing the form he waived a right to a hearing and consented to removal from the U.S. and now faces a 10-year ban before re-entering.

Because a working memo does not apply to Border Patrol, they are not required to screen individuals prior to deportation to determine if they are eligible for discretion and so he slipped through the cracks.

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So Mr. Secretary, it's of great concern to me that those like Mr. Hernandez-Contreras, who lives within 100 miles of the border, and are apprehended by border patrol are subject to less due process than those apprehended by ICE in the interior, where ICE is required to screen for prosecutorial discretion.

And do you believe that the department's enforcement priorities should require the Border Patrol to at least screen individuals for prosecutorial discretion?

SEC. JOHNSON: Well, I can't comment on the specific case, but in general, I believe that in the process of prioritization Border -- CBP officials should evaluate whether a case is a priority one, two or three all along the way. As I commented earlier, however, I think that there are special considerations at the border that you can't ask a Border Patrol agent when he's watching somebody crossing the Rio Grande to engage in that sort of balancing and discretion. So it's normally something that's done in the interior, or once somebody has crossed this country -- crossed into this country illegally.

I do think that we should -- and this is one of the things I'm seeking to do. I think we should do a better job of providing our people with clearer guidance about what our priorities should be and spending the time to educate and train the workforce on those guidelines so that they understand them, they understand what's expected of them and they are truly making the effort to prioritize.

I don't think we have spent -- when I say we, I mean the leadership of my department -- have spent enough time talking to the workforce, as I've tried to do over the last several weeks as I've conducted my review. And I've spoken to ERO leadership as well as a number of people in the workforce. And Congressman Forbes cited an example earlier in Fairfax, Virginia, where I had a session with a number of people on the frontlines in the workforce enforcing our immigration laws.

So I think an important element of the answer to your question is better communication between leadership and the front lines and more effective and clearer guidance.

REP. CHU: Thank you. I yield back.

REP. GOODLATTE: The chair thanks the gentlewoman, recognizes the gentleman from Texas, Mr. Farenthold, for five minutes.

REPRESENTATIVE BLAKE FARENTHOLD (R-TX): Thank you, Mr. Chairman, Secretary Johnson. I serve on the Transportation Committee so I also want to talk to you for a second about the TSA before I get into more pressing issue. Currently, the passenger fee associated for TSA screening is \$2.50 per enplanement, with a maximum of \$5 each way.

The Bipartisan Budget Act of 2013 increased that from 2.50 (dollars) to 5.60 (dollars) per one way, regardless of the number of enplanements.

Now, do I understand correctly that since 2001 your agency has been implementing the underlying law so with the 2.50 (dollars) you maxed out at \$10 each way? I guess -- so it's 2.50 (dollars) per enplanement with a maximum of \$5 each way or \$10 for a round trip.

SEC. JOHNSON: I think that's right, yes.

REP. FARENTHOLD: Right. So my office is hearing some rumors that there may be a different way you interpret what we're doing. But given this precedent, it seems the correct thing to do is to look at the 5.50 (dollars) will max out at 11.20 (dollars) per round trip. Is that what y'all are planning so we can put some of these rumors to rest?

SEC. JOHNSON: Well, I don't want to get this wrong. I know I've looked at this issue. I would need to refresh my recollection on how we propose that the fee be calculated, because I want to be sure I get this right, Congressman.

REP. FARENTHOLD: OK.

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SEC. JOHNSON: But -- and I -- and I'm happy to get back to you on that. Now, I do know that one way or another we need to fund our activities.

REP. FARENTHOLD: So -- absolutely, and this is a -- you know, it's a billion-dollar expense to the flying public, but it falls, I think, under the category of a user fee rather than a tax. If you -- if you don't fly, you don't pay it. So --

SEC. JOHNSON: One way or another we need -- we need to pay for the --

REP. FARENTHOLD: Right.

SEC. JOHNSON: -- executive branch's activities.

REP. FARENTHOLD: Well, if you could just let me know just to make sure that there's no intent to go beyond what I think Congress intended, was 11.20 (dollars) per round trip max on that. Follow the same implementation.

But I want to get to something more important. You testified early on in your testimony -- and there were a couple of questions about the issue we have with the increasing number of minor children that are crossing the border. In fact, there are two facilities in the district that I represent that house those children: one in Bishop, Texas -- or, I'm sorry, Driscoll, Texas; and one literally four blocks from my residence. And I've toured one of those facilities and spoken to the people, and they say they can't deal with the children fast enough, there are so many coming in.

You mentioned that you went to a facility in McAllen that was overcrowded with children. And your suggestion in the answer to one of the questions of how we fix this is an ad campaign saying it's dangerous to cross the border illegally. And I'm concerned that that isn't enough. I think in a well-intentioned manner we have created an incentive for parents who are in this country to lawfully or unlawfully -- to hire a coyote to bring their children across, let them get captured, and we deliver them to the parents at over a billion dollars, I think, last year expense -- I think the numbers are, you know -- they're thousands. And I don't want to get -- I don't want to get the number wrong either.

Do you -- do you think an advertising campaign really going to be enough, or are there some policy changes that we need to make to solve this?

SEC. JOHNSON: No, clearly not by itself, sir. And I don't think I really got a chance to finish my answer to the question. Public messaging directly to the parents of these kids is an important aspect of it, but it's not the only answer clearly. I think that we have to -- we have to do a better job of attacking the network. And I'm reviewing statistics recently --

REP. FARENTHOLD: Well, my question -- just real quickly, my fear is that as drug cartels, who run a lot of these human smuggling operations, are losing revenue, whether it's increased enforcement or legalization of marijuana in parts of this country, they're losing revenue -- my fear is that these coyotes turn more into traffickers and either hold out for more money once the child is across the border or worse yet take those children into sex slavery and some form of human trafficking.

I want to give you an opportunity to fully outline what you propose, because I really am concerned we are unintentionally incentivizing very, very dangerous (conduct ?) that has already cost the life of at least one child I've seen and will cost the lives of more.

SEC. JOHNSON: Going after the network is important. And we are increasing prosecutions of smugglers. I think smuggling organizations, as you've pointed out, are the key to this. Nobody freelances across the southwest border that I've seen.

They're all the -- they're all paying smuggling organizations to get them up the east coast of Mexico into south Texas and then into the interior of our country, 3 (thousand dollars) or \$4,000 a head, or whatever the amount is.

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So I think an important part of this is increased prosecutions of smuggling organizations, those engaged in this activity, many of whom can be found in the United States. And so I think that's part of it. And I think that there are other things that we need to consider that I'm considering this afternoon when I go back to meet with my team on UASIs, because this is a problem that we have to address for a number of reasons, including the humanitarian reasons.

REP. FARENTHOLD: Any way I can help, please let me know.

I see my time has expired. I would like to spend some more time with you talking about it.

REP. GOODLATTE: The time of the gentleman has expired.

The chair recognizes the gentleman from Florida, Mr. Deutch, for five minutes.

REPRESENTATIVE TED DEUTCH (D-FL): Thank you, Mr. Chairman. Secretary Johnson, thank you for being with us today.

As you're aware, the House Appropriations Committee just released the text of the Homeland Security appropriations bill, which again contains the detention-bed mandate, something that there's been a lot of talk of here today. And it says, quote, "that funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30th, 2015," closed quote.

What's the purpose of detention, Secretary Johnson?

SEC. JOHNSON: Public safety.

REP. DEUTCH: And the purpose is, as I understand it, to ensure that compliance with immigration court proceedings is upheld. Isn't that correct?

SEC. JOHNSON: Those with immigration court proceedings, some are released pursuant to conditions, if we don't think they're a risk of flight and they're not public safety. But those who are considered to be a risk to public safety should be detained.

REP. DEUTCH: That's not what I'm asking. The purpose for detention, first and foremost, is to ensure that these undocumented immigrants wind up appearing in court. Isn't that why we have it? Isn't that the basis for the system?

SEC. JOHNSON: That is one of the purposes, yes. But I think --

REP. DEUTCH: Right.

SEC. JOHNSON: -- we also need to pay attention to public safety too.

REP. DEUTCH: I understand that. And paying attention to public safety is exactly what law enforcement does. Are you aware of any law enforcement agency in this country, any other law enforcement agency that's required to hold a certain number of people every day?

SEC. JOHNSON: No.

REP. DEUTCH: Why --

SEC. JOHNSON: (Inaudible.)

REP. DEUTCH: So why do we do it -- why do we --

SEC. JOHNSON: The statutory requirement is beds, not people. A lot of people think it's people, but it says beds.

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REP. DEUTCH: Right. Well, in fact, one of my colleagues in the Appropriations Committee made the point that the detention-bed mandate, not only is it people, but it's meant to be people, because it's meant to be a deterrent, because apparently he believes, some of my colleagues believe, that it is Congress rather than law enforcement that should enforce the law. How do you -- how do you feel about that?

SEC. JOHNSON: Well, as the exchange I had with Congressman Gowdy reflects a few minutes ago, I think that a core function of the executive branch is to enforce the law, which includes prosecutorial discretion. That's something that I engaged in 25 years ago --

REP. DEUTCH: Right.

SEC. JOHNSON: -- as a federal prosecutor. And anybody else in this room who's been a prosecutor has done the same thing.

REP. DEUTCH: And every -- and every law enforcement agency in America has the ability to make their own decisions to exercise their discretion, except in this case, where Congress has stepped in and has insisted -- the interpretation of my colleagues, some of my colleagues here, is not yours, though it should be, but the interpretation here is that it means people. And the cost, the cost, then, is \$2 billion a year -- \$2 billion a year that we spend when there are -- at a cost of \$160 per detained person per day -- when there are alternatives that cost anywhere from 17 cents to \$18 per day.

The average cost for alternatives to detention is \$5.94. Why shouldn't we let the -- why shouldn't we let law enforcement do -- in this case, why shouldn't we let immigration officials do their job, the same way we let law enforcement exercise discretion in every other place in our country?

SEC. JOHNSON: Well, look, I don't -- I don't want to -- don't misunderstand me, please. There are lots of people in the immigration -- in the removal system who should be detained, who should not be at liberty. We make estimates every year of what we think our detention bed space should be. Congress comes to their own number and they give us their own number. And that's the back and forth we have every year.

REP. DEUTCH: Right. But Secretary Johnson, ICE detained nearly 500,000 people in 2012 -- it was a record number of detentions -- when there are alternatives. And so with these detentions and the interpretation that Congress has put forth, there is no -- there is no discretion that can be utilized.

And so with these detentions and the interpretation that Congress has put forth, there is -- there is no -- there is no discretion that can be utilized.

So my question to you is, why wouldn't -- instead of having this back and forth over how this should be interpreted, why do we have this requirement, this detention bed mandate, in law to begin with? Why does it come through the appropriations process instead of through a debate about policy that should take place in this committee? And shouldn't we, through these alternatives to detention, be working to save taxpayers money while at the same time making sure that immigration officials can do their job? Why are we mandating this?

SEC. JOHNSON: Well, I think that's -- first of all, I think that's a discussion you should have with your colleagues.

REP. DEUTSCH: No. Secretary Johnson, I'm asking you.

SEC. JOHNSON: Look, I --

REP. DEUTSCH: I don't believe we should. And I have had this discussion, and a lot of my colleagues can't understand why it is that when we spend so much of our time here talking about taxpayers' dollars and making decisions wisely and spending decisions wisely that in this case we have a policy that benefits a certain group that costs \$2 billion a year and that is a policy that we impose that we don't impose on any other area of law enforcement. It tears families apart. There are less expensive ways to do it. I don't believe we should have it at all, and I -- I'm asking you whether you agree with me.

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SEC. JOHNSON: Look, I think that there are a certain number of people in the system who should be detained. And Congress --

REP. DEUTSCH: We agree. We absolutely agree with that. Mr. Secretary, I'm talking about all of the others that should be -- that could be released on a whole host of alternatives to detention, which would save taxpayers money, that would not put communities at risk, that would permit these -- that would permit these people to move -- to go back to their families, still ensuring that they're going to show up in court, which is what the detention --

SEC. JOHNSON: If I could --

REP. DEUTSCH: -- system is meant for.

SEC. JOHNSON: If I could just be permitted to finish my sentence.

REP. DEUTSCH: Please.

SEC. JOHNSON: There are some people who can and should be detained. Congress has got to allocate resources to enable us to do that. I also believe that there are instances where it is not necessary, given the costs to the taxpayer, to detain people who are in the system, and therefore alternatives to detention is something that can and should be looked at and funded by this Congress.

Now, arriving at the right balance between what we devote to those who should be detained and those who can be released as an alternative to detention is a difficult job that we have to continually evaluate to achieve that balance that ensures public safety and maximizes the efficient use of taxpayer dollars. So that's what I'm interested in doing, in working with the Congress to try to achieve.

REP. DEUTSCH: Yeah, unfortunately --

(Cross talk.)

REP. GOODLATTE: The time of the gentleman has expired.

REP. DEUTSCH: We don't -- we're not -- we're insisting on a mandate rather than engaging in that discussion.

(Cross talk.)

REP. GOODLATTE: The time of the gentleman has expired by over two minutes. And I would -- I would only add to the secretary's comment that right now there are over 860,000 such people who are under deportation orders and who are not detained and have not left the United States.

The gentleman from North Carolina, Mr. Holding, is recognized for five minutes.

REPRESENTATIVE GEORGE HOLDING (R-NC): Mr. Secretary, in the Supreme Court's decision of *Kendall versus the United States*, the Court stated that to contend with the obligation imposed on the president to see the law is faithfully executed implies a power to forbid their execution is a novel construction of the Constitution and entirely inadmissible. Would you agree with that?

SEC. JOHNSON: Without knowing who wrote it, I agree with that, yes, sir.

REP. HOLDING: Good. Do you think the DHS has been living up to the Supreme Court decision?

SEC. JOHNSON: I believe that's my obligation as the head of the agency, and that's what I seek to do.

REP. HOLDING: Good. Now, in recent press reports I learned that DEA Administrator Leonhart was called onto the carpet by the attorney general for apparently her desire or expression of wanting to enforce the drug laws in the United States as they're on the books, particularly the marijuana laws. And I was surprised that the attorney



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general, chief law enforcement officer, would have a problem with another law enforcement officer, you know, wanting to uphold the laws of the United States.

So with that in mind, I was listening to your response to Mr. Nadler a little bit earlier today and I was refreshed because, you know, he was asking you about the scanning of ship containers, and you said, well, that you had looked at it and it's a duly passed law, and being a duly passed law that it's your job to enforce it.

And, you know, you echo that with my question about Kendall versus the United States, that it's your job to enforce duly passed laws.

So, you know, as you're doing the review in the department, you know, ahead of -- you know, for the president, to let the president know about enforcement priorities, so if you were to do this review and come back and say, well, I've had various field hearings with the rank and file, the boots on the ground, I'm hearing from them, you know, I've looked at the resources of the department, I've looked at the challenges that we have, you know, in the interest of public safety; you know, we have gang members coming across the border infiltrating our immigrant communities here, we have, you know, drug dealers coming across the border, we have child molesters, violent felons; you know, we're picking them up, we're not able to detain them all, we have many tens of thousands that have been released, I've seen that; you know, the deterrent effect of not enforcing the laws is terrible, you know, we have now people lining up at the borders trying to get across the borders because they don't believe that we're enforcing the laws, I've seen that -- and you tell the president, you know, in talking to the rank and file, you know, morale is down amongst our agents, they believe that, you know, their mission is to enforce the laws, they want to enforce the laws, they believe they're being inhibited from doing so.

So you make this review and you come to the president and say, you know, the laws are duly passed and I believe it's my duty, you know, to enforce the laws and that's what I intend to do -- do you think, based on your experience with the president, that he he will say to you, well, you know, you're hired to do a job, confirmed to do a job, go do your duty, do your best to uphold your oath and enforce the law?

Do you think he would have a different response of, well, what you're telling me doesn't really match what I believe that the policies of the United States ought to be, and they don't match with my politics, and they don't match what I'd like the law to be? So do you think the president, like the attorney general, would call you on the carpet and have some concerns, you know, if you were to come back with a review as I described?

SEC. JOHNSON: That's a good question. Let me -- and I appreciate the way you articulated it, because I've been not just the head of a department of our government, but the senior lawyer for the largest department of our government, and I've had occasions to make some really tough legal judgments over the first four years of this administration in our -- in the conduct of our counterterrorism policies.

Let me answer the question this way. I am appointed by this president; my political loyalty is to him. I have a higher obligation to the law, to the Constitution and the laws duly enacted by this Congress. And I will not participate in something that I do not believe squares with my legal obligations, which are higher than any other obligation except perhaps the obligations I owe to God to conduct myself in this office. That's the oath I took.

The district judge who swore me in, administered the oath to me, said, you're about to take an oath. Your oath is not to homeland security; your oath is to the Constitution. And I believe that. I believe that very passionately.

So my highest obligation is to the law. And I think I have a pretty good understanding of the law, as a lawyer, as someone who's been a government lawyer. And I conduct myself within the mainstream of legal interpretations of duly enacted laws by Congress and the Constitution. That is at least how I've sought to conduct myself in public office, and I hope to continue to do so.

REP. HOLDING: Thank you for your answer.

REP. GOODLATTE: Thank you.

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Before I turn to the gentleman from Florida, let me announce to the members and to you, Mr. Secretary, that a vote series has begun. That vote series includes five votes. And we have probably time to get the gentleman from Florida Mr. Garcia, and the gentleman from Florida Mr. DeSantis, in before we have to go for that vote series, but then that's going to take us at least 30 minutes.

Mr. Secretary, what is your schedule? Are you able to return? Because we have several members on both sides who want to ask questions. Or --

SEC. JOHNSON: I have -- I have appointments this afternoon, sir, but I am happy to stay as long as you need me.

REP. GOODLATTE: Well, we will make you as comfortable as possible, and we will return promptly after the vote series, but we'll get two more out of the way before we go, and that'll save you some of the time.

So the chair recognizes the gentleman from Florida, Mr. Garcia, for five minutes.

REPRESENTATIVE JOSE (JOE) GARCIA (D-FL): Thank you, Mr. Chairman.

Mr. Secretary, good afternoon. Thank you for your service, and I want to thank you for your ongoing review, as well as your willingness to meet with the different caucuses who are trying to pass and move forward on comprehensive immigration reform.

Mr. Secretary, we're coming on our second anniversary of the DACA program. Can you give a brief overview of how you think it's working?

SEC. JOHNSON: I'm sorry. What was that?

REP. GARCIA: Can you give a brief overview on how you think it's working -- the DACA --

SEC. JOHNSON: I -- we've had something like 600,000 people enroll so far. It's a large number of people. I think our department has done a pretty good job of enrolling those people and administering this program.

And we're reaching a stage where we're going down the road of renewal, and that's not a -- it's not a big revelation. It's not a big secret. And so I would anticipate that the DACA will continue. I am looking -- I am interested in understanding the program better to see if there are ways that we can more effectively administer this program. But my general sense is that the program is working reasonably well.

REP. GARCIA: Thank you. I recently met a young man in my district named Julio (sp). Julio (sp) came to the United States from Honduras a month after his 16th birthday, after -- missing the DACA cutoff by one month, just one month.

After graduating from high school, he worked construction, never thinking he'd be able to go to college. His parents didn't graduate high school. But he eventually, given the -- was given the opportunity at a university in my area, Miami Dade College and now Florida International University, where he's become a campus leader. Julio (sp) is an asset to our community, but when he finishes college, he's sort of (not high visibility ?). So do you think that allowing him to stay wouldn't -- would -- don't you think that allowing him to stay would be in the spirit of the DACA program?

SEC. JOHNSON: Is it within the -- certainly there is a spirit of the DACA program that reflects the special nature of people who cross the border as children. I think in any program like that, that involves large numbers of people, you have to have cutoffs and deadlines and clear parameters. We can't have a case-by-case judgment made with respect to how we're going to administer this program for 600,000 people. So I think there need to be clear guidelines, clear rules.

But you know, certainly the case you describe is within the spirit of what we're trying to achieve with the program.

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REP. GARCIA: Thank you. On another note, jurisdictions throughout the country have expressed frustration and skepticism through the Secure Communities program, including Miami-Dade County formally refusing detainer requests. As part of your review, are you looking into this area?

SEC. JOHNSON: Yes. Yes, I am -- I'm very troubled by how this program's being administered and the reaction we're getting from a lot of governors and mayors, and I think we need to do a better job.

REP. GARCIA: Mr. Secretary, again, thank you for your service. Thank you for your ongoing review.

SEC. JOHNSON: Thank you.

REP. GARCIA: I'll yield back the balance of my time.

REP. GOODLATTE: Thank the gentleman.

Recognize the gentleman from Florida, Mr. DeSantis, for five minutes.

REPRESENTATIVE RONALD DESANTIS (R-FL): Thank you, Mr. Chairman.

Welcome, Mr. Secretary.

SEC. JOHNSON: Good (afternoon ?).

REP. DESANTIS: I was looking through this list of the 36,000 criminals who were released, and you know, some of this stuff is really, really troubling when you look at serious, serious crimes -- homicide, sexual assault, robbery, aggravated assault, domestic violence. I mean, do you agree, just as a general rule, that if somebody illegally enters the United States and they're committing crimes that endanger the life, liberty or property of the American people, that -- the response from our policy and our government should be that those individuals are sent back to where they came from, correct?

SEC. JOHNSON: Yes.

REP. DESANTIS: OK.

SEC. JOHNSON: Yes.

REP. DESANTIS: And so I noticed in the response that you sent to the committee that there were certain numbers of criminals who were enumerated as having been released because of binding legal precedent. So for example, there were 10 individuals released whose crimes were classified as homicide, willful kill, gun, and the reason, according to the response, was because you're only allowed to hold them for a certain amount of time.

And I think in those situations it's because the parent country will not accept them back. Is that -- is that a fair guess as to why we would be releasing people who committed -- who are out there mowing people down with a firearm?

SEC. JOHNSON: I know in many cases a person is released on conditions because we do not think we have the legal authority to continue to hold them.

REP. DESANTIS: And you can't support them. Is that -- is that the nub? I'm just trying to figure out --

SEC. JOHNSON: That could -- that could be one of the reasons, but I hesitate to try to give a broad categorization of 36,000 different --

REP. DESANTIS: But are there certain instances where there are violent criminals who the host countries have not allowed us to return them? Has that in fact happened?

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SEC. JOHNSON: That is probably the case.

REP. DESANTIS: OK. So my question to you is have you notified the State Department that this is the case, because there's a Statute 8 U.S.C. 1253delta which basically says that upon notification the secretary of state is supposed to order the consular offices in those foreign countries to discontinue granting visas until those countries are willing to accept back their foreign nationals. So have you notified the secretary of state that this has happened? And if not, why not? And if not, will you do so in the future?

SEC. JOHNSON: I'd have to check. I'd have to check.

REP. DESANTIS: OK.

(Cross talk.)

REP. DESANTIS: If you could do that, that would be helpful because the statute imposes a duty on the secretary of state. I think we may begin to get some headway if we just were to comply with the laws.

One of the things I saw, there were over 15,000 convictions for DUI. And you see reports where there are illegal immigrants driving drunk and killing people. And I was alarmed when I saw an anonymous ICE official state that two convictions for DUI simply aren't enough to warrant detention and removal. This is putting the American people's lives in jeopardy. It's a very serious offense.

Now, Chairman Smith wrote to ICE before you were DHS secretary, asking them to launch removal proceedings against illegal immigrants with prior convictions for drunk driving. So my question for you -- Secretary Napolitano I don't think responded affirmatively -- will you honor former Chairman Smith's request and protect innocent American lives by detaining these individuals who have these multiple DUI convictions?

SEC. JOHNSON: Well, I hesitate to give a categorical response to broad -- to individual cases without knowing the circumstances of the individual cases. In general, I believe that someone who represents a threat to public safety who is removable should be detained and removed.

REP. DESANTIS: And that would include someone -- you would say multiple convictions for DUI, a repeat performer, that that person poses a threat to public safety?

SEC. JOHNSON: I generally regard DUI as a significant misdemeanor.

REP. DESANTIS: A question about U.S. citizens negatively affected by some of the administration's policies. There was an article the New York Times recently about the DACA program, and basically what they said was the department had to devote so much -- so many resources to doing the DACA that these U.S. citizens are now seeing their wait times go up if they want to bring in a foreign national who is a spouse or family member.

So my question to you is, you know, do you find it troubling that legal immigrants and U.S. citizens who simply have been playing by the rules are suffering due to the administration's desire to grant these benefits, which, you know, we can both agree were not statutorily mandated. This is administrative discretion, as you said. Does it bother you that U.S. citizens are getting the short end of the stick in some instances?

SEC. JOHNSON: My understanding is that that was a temporary phenomenon that abated after a period of time. And my understanding is that that is not the case now.

REP. DESANTIS: So you don't think that that was good that that happened? You agree that there's a problem?

SEC. JOHNSON: I agree that those who are lawfully in this country who are seeking citizenship should not have to wait an unduly long period of time to obtain that, yes.

REP. DESANTIS: Very well, I yield back.

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REP. GOODLATTE: The chair thanks the gentleman. The committee will stand in recess and we will resume immediately following the series of votes. (Sounds gavel.)

(Recess.)

REP. GOODLATTE: (Sounds gavel.) The committee will reconvene. I want to again express my thanks to Secretary Johnson for his forbearance in giving us as much time as he has today.

And we'll turn now to the gentleman from Pennsylvania. Mr. Marino is recognized for five minutes.

REPRESENTATIVE THOMAS MARINO (R-PA): Thank you, Chairman. Welcome, Secretary. My notes aren't with me, so I'm going to do the best that I can as far as asking you some questions. You made -- and I apologize -- you were at a press conference or you were at an event that you made a comment concerning that people here in this country -- and I don't know if you referred to it as illegals here deserve to become citizens. Do you recall that?

SEC. JOHNSON: Say that again? I'm sorry.

REP. MARINO: The illegals here -- now, and I'm not sure if you used the word "illegal," but you say the people that are here undocumented deserve to become citizens because a lot of children grew up here. Do you recall that statement?

SEC. JOHNSON: I don't think that's what I said.

REP. MARINO: (Inaudible) -- it was in the media, and I take with a pound of salt what I read in the media. So my question is, though, what type of illegals that are here -- and I don't mean -- I don't want you to do a broad category -- should go back? Could you give me an example of people that we do not -- that should not be here if they are here illegally?

SEC. JOHNSON: Well, under our existing enforcement priorities, those who are here undocumented who are convicted of felonies, convicted of serious misdemeanors, convicted of multiple misdemeanors, who are repeat re-entrants, who are fugitives from a final immigration order are considered priorities for removal, and that's where we devote our resources in the removal process, so in general, what we say is those who represent threats to border security, national security, public safety.

Now, there's a lot of devil in those details, obviously.

REP. MARINO: Sure.

SEC. JOHNSON: And you didn't exactly ask me this, but I think that there deserves to be greater clarity in how we define what our removal priorities should be.

REP. MARINO: OK.

SEC. JOHNSON: But I put them in several different buckets, including threats to border security, those who abuse the immigrations enforcement system in some way.

REP. MARINO: Here's the complex question that I get a great deal of the time when I'm not only traveling in my district but around the country concerning immigration. What do we do with the children that are born here in this country, that their parent or parents are here illegally and their parent or parents have a serious criminal record?

SEC. JOHNSON: That's a very good question.

REP. MARINO: It's a conundrum. It's -- it really is. And I just -- do you have any insight on that at this point? I know that you have only been in your position for several months.

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SEC. JOHNSON: Hopefully -- I can't -- I can't characterize every case. Hopefully, in that circumstance, there's a parent in this country who's in a position to care for his or her child.

REP. MARINO: That does not have a serious criminal record?

SEC. JOHNSON: That does not have a serious criminal record.

REP. MARINO: OK. I'm going to switch gears here a little bit to Guantanamo Bay. You said that you think that we need to close that operation down, and you said we had some 130, 1(50) --

SEC. JOHNSON: I think at this point there are less than 160.

REP. MARINO: Still detained there.

SEC. JOHNSON: Yes.

REP. MARINO: What do we do with those people?

SEC. JOHNSON: Well, they should either be prosecuted in our military commission system. And I --

REP. MARINO: That we agree on.

SEC. JOHNSON: I was part of the reform effort in 2009. We had at one point been in discussions with the state of Illinois about a facility in Thomson, Illinois. Or they should be transferred back to their home countries consistent with suitable security arrangements.

But, you know, we're at a point where we're at the toughest cases. At one point, the population at Guantanamo was over 600, maybe close to 800. And the easier cases have left. The harder cases are the ones that still remain. And so obviously it's -- we've got to deal with this population at some point or another, in one way or another, which could include possible continued (law board ?) detention, as long as that legal authority still exists at some alternative location.

But I believe that Guantanamo is a facility, for a variety of reasons, that should be closed at some point, including the cost to the taxpayer right now that it represents.

REP. MARINO: Thank you, and I yield back.

REP. GOODLATTE: The chair thanks the gentleman.

Recognize the gentleman from Rhode Island, Mr. Cicilline, for five minutes.

REPRESENTATIVE DAVID CICILLINE (D-RI): Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for being here. I want to begin by saying that I think the suggestion that this administration has not been properly enforcing the immigration law is almost laughable. The United States today, under this administration, spends more on immigration than all other federal law enforcement agencies combined. There have been record removals. This administration has formally deported more people than any president in history. Record detentions. This administration has detained more people than any president in history. Record prosecutions. Immigration offenses have now become the most prosecuted crimes in the federal courts, and our borders are more secure than ever. Over the last five years, border incursions have decreased to levels not seen since the 1970s.

So this notion of somehow we can't do comprehensive immigration reform because this administration can't be trusted to enforce immigration law is totally belied by the facts. And I think that the American people know that.

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My first question really is that the thing that concerns me tremendously is the large number of individuals who are being detained and deported each year who have committed no violation other than those related to their undocumented status, people who have American- citizen children, American-citizen spouses, who have worked all the years that they've been here, and, frankly, people who would qualify for legal status under the bipartisan Senate-passed immigration bill and the House proposal H.R. 15.

And I hope, Mr. Secretary, that as you assess where you will put your priorities for prosecution, that you will take into account that those individuals, many of them are in fact likely to be permitted to pursue legal status and it would seem that those shouldn't be priorities in terms of the prosecution that you're -- as you evaluate kind of what the priorities of the department are.

And I would like to ask you now to move to a question about guns. As you know, according to the GAO, a number of individuals that are on the terror watch list have illegally purchased firearms in the United States in recent years. And according to the most recent GAO study, individuals on the terror watch list tried to buy guns and explosives 1,453 times between February of 2004 and December of 2010. On 1,321 occasions, 91 percent of those attempts, the FBI was not able to block gun and explosives sales to suspected terrorists.

So my first question is, do you support legislation that would ensure that the federal government has the ability to block gun sales to those on the terror watch list? And secondly, some of my colleagues who have raised concerns about this have raised concerns about the accuracy of the terror watch list. And I'd like to hear from you as to whether or not there are efforts underway to update that list as compared to maybe the status of it five or 10 years ago when there was some concern about who was on it.

SEC. JOHNSON: Consistent with the position of this administration, I support sensible gun control laws. I believe that part of our mission in the Department of Homeland Security is to train, prevent, educate with regard to mass shootings. And we've done that. Secret Service, through our FEMA grants, we try to help communities better respond to mass shootings, and we obviously see far too many of these in this country.

And so, irrespective of motive, when a tragedy occurs that involves multiple deaths, whether it's a terrorist-motivated bomb plot or a mass shooting, the department is prepared to do what we can to try to prevent these acts, to minimize the fallout from these acts, to provide grants to communities to better prepare for these acts, by way of first responders and so forth. And so we do what we can.

REP. CICILLINE: But Mr. Secretary, what I'm asking about is specifically a GAO study that said in 91 percent of the occasions, the federal government or the FBI was not able to block a gun or explosives purchase by an individual on the terror watch list. My question is, do you support legislation that would ensure that the federal government has the ability to block gun sales or explosives sales to individuals on the terror watch list?

SEC. JOHNSON: I'd have to study the GAO report more specifically before I took a position.

REP. CICILLINE: OK. Well, I would ask, and I'd look forward to working with you on this. This is a very serious issue where individuals are placed on the terror watch list because they are dangerous and they have been identified as terrorists, and they have the ability to go in and buy a gun or buy explosives. That is unimaginable to most Americans, and so I urge you to read that report, and look forward to working with you to make sure that we prevent such individuals from having access to firearms.

And with that, I yield back, Mr. Chairman.

REP. GOODLATTE: Thank you. The chair thanks the gentleman and recognizes the gentleman from North Carolina, Mr. Coble, for five minutes.

REPRESENTATIVE HOWARD COBLE (R-NC): Thank you, Mr. Chairman.

Mr. Secretary, good to have you on the Hill. My secretary, in responding to a post-hearing question from the record, you -- following your confirmation hearing, you were asked whether you had any concerns with the current

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interior enforcement policies and efforts at ICE, and you stated -- and I quote -- "I have not reached no conclusion at this point, but I anticipate that if confirmed, I will become fully immersed in this issue," close quote.

Several months have passed since that time, Mr. Secretary. Do you have any concerns with the current interior enforcement policies and efforts at ICE?

SEC. JOHNSON: Thank you for that question. I have immersed myself in this issue to the extent I am able to do so in five months, and I've spent a lot of time talking to our ERO work force. One of the things that's apparent to me is, our guidance for enforcement could use consolidation and added clarity. I'm struck by the fact that our guidance exists in a whole series of written documents -- memoranda issued by ICE leadership dating back to 1976 all the way into 2012.

It's a whole series of things. And so if one wanted to fully understand what our removal priorities are, what our enforcement policies are, he'd have to look at a whole series of documents. There's no one place you could go to do that, and in many places, I think it lacks clarity.

So I'm interested in trying to build clarity and trying to consolidate all of this guidance, which would be a very huge project. I also think that our removal work force has some morale issues. I think they could use a pay raise. A lot of them are capped at GS-9 and are upset about the fact that they can't go any higher. And I've talked to people in our work force who are contemplating leaving ERO to go to a lower-paying job where they have greater pay opportunities, and I think that's unfortunate.

So -- I mean, those are just two issues that occur to me, but I continue to learn more and more about interior enforcement all the time, but these are two issues that strike me, in response to your question.

REP. COBLE: I thank you, Mr. Secretary. Mr. Secretary, George Washington University law professor Professor Jonathan Turley -- in fact, he's appeared before our committee several times -- I'm sure you know him --

SEC. JOHNSON: I do know him.

REP. COBLE: -- by name and reputation. Hold the House Judiciary Committee that abusing the concept of prosecutorial discretion, and I'm quoting the professor now. "President Obama has nullified part of the law that he simply disagrees with. It is difficult to discern any definition of the faithful execution of the laws that would include the blanket suspension or nullification of key provisions. If the president can claim sweeping discretion to suspend key federal laws, the entire legislative process becomes little more than a pretense," he said.

Do you agree with Professor Turley?

SEC. JOHNSON: Without reading his entire testimony, I'm inclined to agree with the passage that you read.

REP. COBLE: And so am I.

SEC. JOHNSON: In terms of blanket exemption in the enforcement of a law -- doesn't really look like an act of prosecutorial discretion. So I -- and this is similar to the exchange I had with Congressman Gowdy -- I think that there is a line that can be drawn between prosecutorial discretion and simply a blanket inability or unwillingness to enforce the law in its entirety. I don't think that's prosecutorial discretion.

REP. COBLE: Well, when I said I agreed, I agreed with the fact that it appears little more than a pretense. That's what I meant when I said I agreed with the professor.

Thank you for being here, sir, and I yield back, Mr. Chairman.

REP. GOODLATTE: Chair thanks the gentleman and recognizes the gentleman from New York, Mr. Jeffries, for five minutes.

REPRESENTATIVE HAKEEM JEFFRIES (D-NY): Well, thank you, Mr. Chairman.



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And thank you, Secretary Johnson, for your presence here today, for your service to this country. And let me just state for the record, I had the opportunity and the privilege to work under Mr. Johnson as a young attorney and am confident that the skill and ability that he has obviously has served the country well in his prior capacity and will continue to serve the country well as you move forward as our homeland security secretary. So we're thankful, and I'm certainly thankful for that.

I wanted to ask a few questions about immigration and whether our system is broken, and if so, you know, how we might resolve it, based on some of the things that you mentioned in your oral as well as in your written testimony. We've got about 11.4 million undocumented individuals in this country right now. Is that figure about correct?

SEC. JOHNSON: Yes, that's what I understand the estimate to be. I've seen 11.5 (million), 11.4 (million), somewhere in there.

REP. JEFFRIES: And now, what is the likelihood that these individuals, in any significant number, will self-deport?

SEC. JOHNSON: I think the likelihood is next to zero that they will all self-deport. I think we have to be realistic about that situation. They're not going away.

REP. JEFFRIES: And what's the feasibility that we as the United States government, Homeland Security, any apparatus that we have available can engage in mass deportation of such a significant number?

SEC. JOHNSON: It -- with any realistic -- I mean, it can't be done. We have to accept the fact that we have 11.5 million undocumented immigrants in this country. We have to deal with them. I don't think we should allow them to continue to exist in a state of legal ambiguity or in a dark hole. I think from my homeland security perspective, I would rather deal with this population, encourage them to be held accountable, encourage them to pay taxes, get on the books and get on an earned path to citizenship so that they go through the necessary background checks, they're in a position where they can work, legally, and we reckon with this problem, which is why I'm a strong supporter of immigration reform. I think that we have to be realistic about the place we're in with respect to these 11 1/2 million people.

There are states now where they are permitted to have driver's licenses. California's Supreme Court says that an undocumented immigrant in this country can practice law. So they're not going away. They're not going to self-deport. I would rather see us reckon with this population than to continue in the state of legal ambiguity we're in right now.

REP. JEFFRIES: Well, I certainly take that position. I think most reasonable people would conclude, obviously, based on the fact that self-deportation is impractical, unlikely to occur, and mass deportation is impractical in terms of any execution, and we got 11.4 million-plus undocumented individuals, we need to deal with them appropriately. But we need to address that situation. So I appreciate those observations.

Now, you expressed concern earlier today and in your testimony that there's been a substantial increase in the number of unaccompanied minors who have been entering into this country. And it's my understanding that that phenomenon really is -- began to occur sometime in the fall of 2011, and we've seen a significant increase in and around that moment. What are some of the factors, if any, that are leading to this substantial increase in those Central American countries that we've experienced?

SEC. JOHNSON: I think that the phenomenon is driven largely by the circumstances in those countries, in those Central American countries, and the levels of violence, the levels of poverty, because -- and when you look at -- when I see these children and ask, at McAllen Station, where are you from, they tell us, Honduras, El Salvador, Guatemala. And you just look at the situation in those countries, and you have a readily available answer to your question.

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And so I want to try to work with these governments to stem this tide and to see what we can do to add to their own border security and deal with some of the underlying problems that are causing this phenomenon. But it's -- I think the principal reason we're seeing this is because of what's happening in the source countries.

REP. JEFFRIES: Now, you know, what can we do proactively to address not just the underlying violence, which seems to be a problem, you know, as it relates to some of the drug cartels potentially being pushed out of Mexico into Honduras, Guatemala, El Salvador in a manner that those countries weren't prepared to address, creating a chaotic situation? But also, there appears to be an absence of any meaningful child protective system in those countries, and then the absence of border security.

I mean, is there opportunity here for us, through your leadership, through the leadership of others, for the United States, for Congress potentially to get behind assisting Central American countries to our southern border beyond Mexico in a manner that could alleviate what I think is a humanitarian crisis that we have to deal with for those who actually make it?

SEC. JOHNSON: I think, first of all, it requires a whole-of- government approach by our government, executive branch and Congress; DHS and other agencies of our government -- and this is something I've had conversations about with my Cabinet counterparts who all recognize and appreciate the problem. I think it requires a whole-of- government approach in homeland security, national security and law enforcement, and I think it requires an engagement with the government of Mexico because this problem is also their problem. People who migrate from Central America to the United States migrate through Mexico, and many of them stop there.

And so I've had this conversation with the government of Mexico about doing more, and I believe that there is a recognition of the problem in our partnership with that government. And I believe that there is the mood and a climate to address the problem. I've had that conversation with the seniormost members of the Mexican government and I think that they want to help, and I think -- I think the -- my sense is that we are in a position right now to make some progress with the Mexican government on that issue.

REP. JEFFRIES: Thank you. My time is up; I yield back.

REP. GOODLATTE: The time of the gentleman has expired. And I want to say that I have had the same opportunity to speak with senior Mexican officials who've said the same thing, which is a change in their attitude toward their southern border, and any assistance the U.S. gives to them to help secure that border with Guatemala I think will pay dividends for both Mexico and the United States. So I would certainly encourage it.

The chair recognizes the gentleman from Georgia, Mr. Collins, for five minutes.

REPRESENTATIVE DOUG COLLINS (R-GA): Thank you, Mr. Chairman.

I wasn't -- (inaudible) -- wasn't going here, but I sat here and listened. I have some other questions I'm going to get to, but -- we just spoke of -- and my good friend from New York brought this up -- that there are 11.4, 11.5, I think -- there are some who think it's higher, lower, it doesn't really matter. But these 11.4 million are -- and we use the words "undocumented" -- they're not here -- they're not here on a lawful status, correct?

SEC. JOHNSON: For the most part, that's correct.

REP. COLLINS: No, no. Are they here in a lawful status or not?

SEC. JOHNSON: For the most part, that's correct. I mean, some of the -- some of them -- (inaudible) --

REP. COLLINS: OK, no, no, no. Reclaiming my time. Either -- you can't have it both ways. If they're here in a legal status, then they're not undocumented and not here -- they're here legally, if they have a -- some form of legal status. When you say -- and I think this is the problem of a political agenda or a want-to or a feeling -- it's not legal ambiguity if you are here and we talk about a group of people that are undocumented and not here properly. That's not a legal ambiguity. So it concerns me that we take this conversation -- and (I like ?) that you've answered a lot of

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questions on both sides, very concerned about that we can't define a secure border, that's a different issue. I will be submitting questions to you for the record on that.

But just a moment ago, to the whole -- we would not be having this discussion in a large sense if these 11 point whatever million were here and there was a legal ambiguity on their status here. There -- no legal ambiguity. One side wants to do it differently. There's another side of which we've taken steps on this committee to work toward resolving this issue.

So I just -- I want to go to something else, but I just don't think it's being very honest with the committee to say that there's a legal ambiguity here. If there were, this would be a whole different discussion. But I do have a question.

SEC. JOHNSON: Sir, there is -- there is legal ambiguity in that they are here undocumented, but there are states that permit them to have drivers' licenses. I consider that an ambiguous legal state. And we have to fix it. The system is broken. We're not going to -- we're not going to deport 11 1/2 million undocumented immigrants in this country. You and I both know that. We've got to deal with this population one way or another.

REP. COLLINS: And have you -- have you -- (inaudible) -- reclaiming my time. Have you heard me say that? Have you heard me say that?

SEC. JOHNSON: We have to deal with --

REP. COLLINS: Have you heard me say that I would deport 11.4 million people?

SEC. JOHNSON: But we have to recognize they're not going away --

REP. COLLINS: Have you heard me, Mr. Secretary -- Mr. Secretary, I'm not asking you to give a roundabout answer. Have you heard Congressman Doug Collins say that we need to deport 11.4 million people?

SEC. JOHNSON: No, I have not.

REP. COLLINS: Yes or no?

SEC. JOHNSON: No, I have not.

REP. COLLINS: I want to move on to something else, because we're obviously not going to see eye to eye on this at this point, because I do believe there needs to be a fix, but if we can't even agree on the facts, if there's not legal ambiguity here, there's a problem.

One of the things I do think we are making progress on is in the effort of the border protection and also homeland security in dealing with IP issues and intellectual property issues coming across the border and patent-infringing goods making entry into the U.S. This is something that is -- the intellectual property aspect is very important to me, also to my state of Georgia. Could you provide me with a brief update on the Border Patrol's efforts to develop processes which we can expect over the month to work on this issue of patent-infringing products coming across the border and areas that this has been discussed in the --

SEC. JOHNSON: I'm happy to have that discussion and engage in a conversation with you, with any other member about border security. Yes, sir.

REP. COLLINS: OK. I just asked the question. The question is, is -- what -- can you brief me on the updates of the border -- (inaudible) -- in dealing with patent-infringing products, other things dealing with the IP -- intellectual property -- issues coming across our border? Just update me or give me an update, if you can. If not, can you supply it in writing on issues that are going on?

SEC. JOHNSON: Yes. Yes, I can. I will. Yes.

REP. COLLINS: OK. Supply it in writing? OK.

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In February of this year Director Kubiak testified on behalf of DHS in front of the House Energy and Commerce Subcommittee. He stated in his written testimony that ICE is working closely with Border Patrol to adopt best practices to ensure their limited resources are focused on finding the most egregious violators as it relates to IP theft. Is this correct?

SEC. JOHNSON: I believe so, yes.

REP. COLLINS: OK. Could you share what some of the best practices are that are being adopted?

SEC. JOHNSON: I can do that in writing, sure.

REP. COLLINS: OK.

In looking -- and further, I've also been concerned -- and I -- and I will just sort come back and just sort of finish up here -- been concerned with the releases and the detentions, and we've discussed this. That's been discussed ad nauseam as far as the policy. But I do have a question. Are you willing to provide me with identifying information regarding any criminal alien released in Georgia since 2012, so I can provide appropriate congressional oversight on behalf of the citizens of my district?

SEC. JOHNSON: I believe we -- I believe we're in a position to do that, and I will do that, yes, sir.

REP. COLLINS: OK. We'll provide that.

Again, Mr. Secretary, I do appreciate your work. I am very concerned with the answers, especially as our first part of our discussion, because some of these things are not legal ambiguities. They're things that need to be fixed. If they were not, then we wouldn't be looking at it from the perspective we are. And that is why there's such conversation on this.

With that, Mr. Chairman --

REP. GOODLATTE: Would the gentleman yield?

REP. COLLINS: It's yours, Mr. Chairman.

REP. GOODLATTE: I'd just add to your concern that the REAL ID Act, which deals with making sure that driver's licenses, other forms of identification help to prevent the kind of tragedy that occurred on 9/11, 2001 -- that act makes it very clear that a state conferring a driver's license on someone who's not lawfully present in the United States does not in any way confer a legal status on that individual whose presence is here.

REP. COLLINS: And Mr. Chairman, you're correct in that, and that's why there is still not legal ambiguity here. There's a problem with a law that provides something else.

REP. LOFGREN: Would the gentleman yield?

REP. COLLINS: It's the chairman's time.

REP. GOODLATTE: I will yield an additional minute to the gentleman from Georgia, so he can yield to the gentlelady --

REP. COLLINS: I yield to the gentlelady from California.

REP. LOFGREN: I just think that -- and I appreciate the gentleman from yielding -- that there are certainly incidences -- and I'm sure Mr. Labrador has also run into this in his practice -- where someone doesn't have documents, but they are in fact legally present in the United States. It's not all that rare, surprisingly enough. I would just add that into the mix --

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REP. COLLINS: Well, and reclaiming my time -- and I do agree with the gentlelady, who -- we agree on many different things -- I think in this instance, though, I think when you discuss 11.4 million, the implication was --

REP. LOFGREN: I'm not --

REP. COLLINS: -- they're all here under legal ambiguity, and that is not the case, and is --

REP. LOFGREN: I am not suggesting that that is --

REP. COLLINS: -- and muddies the water greatly in what we're doing.

Mr. Chairman, I yield back.

REP. GOODLATTE: The chair thanks the gentleman and recognizes the very patient gentleman from Idaho, Mr. Labrador, for his questions.

REPRESENTATIVE RAUL LABRADOR (R-ID): Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for being here with us today.

I want to start with some -- something good because we're going to get to some issues that we're going to disagree on. But I actually really admire your answers to Mr. Deutch. I don't know if you remember the exchange that you had just a few minutes ago or about an hour ago about the number of beds. I want to make sure that your answer is really clear. There is nothing in the law that is mandating you to put 34,000 people in -- on these beds. Is that correct?

SEC. JOHNSON: I don't read the law that way. It doesn't read that way.

REP. LABRADOR: It doesn't read that way. And I keep hearing that --

SEC. JOHNSON: That's beds, not people.

REP. LABRADOR: That's the way I read it as well, and I commend you for your answer. I was actually a little bit confused thinking maybe that was the interpretation of the administration and I appreciate that you clarified that. I don't read the law that way either.

Now, I do believe that a critical part of immigration reform is a robust ag and non-ag guest-worker program. Do you agree that such a program is important?

SEC. JOHNSON: Yes.

REP. LABRADOR: I think that the evidence, at least in my mind, is pretty clear that a guest-worker program can end illegal immigration. For example, the Bracero program did it in the 1960s, in my opinion. The Congressional Research Service found that the Bracero program only works when combined with greatly increased law enforcement efforts.

So here's the problem: Employers in my district are telling me that legal workers, people who are actually coming to the United States legally, are absconding to work in the black market, and they're being told that they won't be removed from the United States by ICE agents or others. Do you agree that ICE's priorities are maybe undermining one of our legal programs that is actually meant to deter illegal immigration?

SEC. JOHNSON: That sounds like a problem, yes.

REP. LABRADOR: We're hearing again and again in our district that people are leaving, for example, the sheep-herding program and moving on to other industries, and that the ICE agents don't have the resources or are being told not to pick up these agents (sic). And I'm very concerned about that.

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Now, your testimony also indicated that there's no way that illegal aliens will depart. In fact, you just stated a few minutes ago that the likelihood is nearly zero. And let me tell you that I disagree with you vehemently. In fact, my experience is totally different. So my actual experience as an immigration lawyer has been totally different than what your testimony is today. In my experience, many did leave prior to the bars banning illegal aliens from returning for a decade or more. You're obviously familiar with the three- and 10-year bars and the permanent bars. Is that correct, Mr. Secretary?

SEC. JOHNSON: Familiar with what? I'm sorry.

REP. LABRADOR: Are you familiar with the bars that are in the law right now where if you're here illegally in the United States you must return to your home country before you can return to the -- to the United States legally?

SEC. JOHNSON: Yes. Yes. To be clear, what I said -- Congressman Jeffries asked me, what is the likelihood that those 11.5 million people will all self-deport? And I said, the likelihood of that happening with regard to 11.5 million people is near zero.

REP. LABRADOR: That's what I want to clarify.

SEC. JOHNSON: Do people self-deport? Yes.

REP. LABRADOR: And people will do it --

SEC. JOHNSON: They individually self-deport.

REP. LABRADOR: -- if we have the incentives in the law. Do you agree with that?

SEC. JOHNSON: I agree that there should be disincentives to engage in illegal migration.

REP. LABRADOR: Correct. So if, for example, we remove the three- and 10-year bars, if we repeal those bars that are in the law, don't you think many people would depart and, in essence, self-deport so they can reapply legally to the United States?

SEC. JOHNSON: I don't have any -- I don't have any empirical evidence one way or another to be able to answer that question in a --

(Cross talk.)

REP. LABRADOR: Well, you should look into that because I actually did that with many of my clients when I was an immigration lawyer. And even when the bars were in place, if there was a high likelihood that they could return even in spite of the bars, they would actually go back to their home country and return to the United States. Don't you think it would be positive if we actually --

SEC. JOHNSON: Intuition says if there's a shorter period of time that you have to go back and then wait, you're more likely to go back.

REP. LABRADOR: So right now the waiting period is three-to-10 years. Well, actually if we remove those bars and they know that they can return legally -- for example, a U.S. citizen's spouse knows that they can go back to their home country and they can return legally within a matter of months instead of three-to-10 years. Don't you think they would probably more likely be willing to do that?

SEC. JOHNSON: Intuition says that if the wait period is shorter, people are more likely to go back, if the wait period is short.

REP. LABRADOR: So don't you think that would be a good first step for us to actually start with something like that where we could actually make a small change in the law and encourage a lot of people? In my estimations and

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others' it's about 25 percent of the people that are here illegally who currently qualify for some legal status but for the bar. Don't you think that would be a good first step for us to --

SEC. JOHNSON: Well, it's hard to comment on that proposal in isolation to the exclusion of everything else that's in the works in comprehensive immigration reform.

REP. LABRADOR: So you would rather have nothing than at least have one area where we can fix the status of people that are here illegally by having them go back to their home country and return in a legal status?

SEC. JOHNSON: There are many things about our immigration system that needs to be fixed --

REP. LABRADOR: So you --

SEC. JOHNSON: -- and I hope this Congress will act on them.

REP. LABRADOR: And you don't want to fix one of them? You want an all-or-nothing approach.

SEC. JOHNSON: I think that we have an opportunity, on a comprehensive basis, either in one bill or several bills, to fix a whole multitude of problems that I think every member of this committee realizes exist.

REP. LABRADOR: So your answer is if we don't do it comprehensively, then we should fix nothing about the current system?

SEC. JOHNSON: I won't -- I won't be categorical in that way. I am saying that I would encourage the Congress to think about immigration reform in a whole variety of areas and not just one.

REP. LABRADOR: No, we can do that. I -- and I agree with you. But if we can fix something today, if tomorrow we could get something passed that gets rid of the bars so we can help a group of people that are here illegally return legally after they return to their home country, you would be opposed to that?

SEC. JOHNSON: Sir, I would encourage you to think about the whole range of -- (inaudible) --

REP. LABRADOR: But you don't want to answer that question. You would -- again, I just -- your answer is you want all or nothing. That's what you're saying.

SEC. JOHNSON: No, I didn't -- I didn't say that. I am encouraging the Congress to think about --

REP. LABRADOR: Oh, I know that you encourage --

SEC. JOHNSON: -- a comprehensive solution to this problem.

REP. LOFGREN: Would the gentleman yield? If I may, the --

REP. LABRADOR: My time has expired.

REP. GOODLATTE: The gentleman will suspend. The gentleman's time has expired, but the chair would recognize the gentleman for an additional minute -- (inaudible) --

REP. LOFGREN: I just note that really, it's up to the Congress to decide what to legislate, and the secretary doesn't get to decide.

REP. LABRADOR: And I yield back -- and I reclaim my time. And I agree with that, but the position of this administration, and as has been demonstrated by the secretary and has been demonstrated by a lot of the comments that have been made by the other side and by the president, is that they want an all-or-nothing approach. And I think that's rather unfortunate because we could actually fix --

REP. LOFGREN: I don't think that's what the secretary said.

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REP. LABRADOR: We could -- we could fix --

SEC. JOHNSON: For the record, I have not said that.

REP. LABRADOR: But you won't answer the question. If you --

SEC. JOHNSON: (Inaudible) -- I have not said that.

REP. LABRADOR: You won't answer the question if it would be OK for us to actually fix one portion of the immigration system that I think is actually preventing people from returning to their home country and coming back legally.

And I yield.

REP. LOFGREN: If the gentleman would further yield, I would encourage him to bring that and many other items up to the floor for a vote.

REP. LABRADOR: We will. (Laughter.)

REP. GOODLATTE: The chair thanks the gentleman.

And the chair especially thanks the secretary. You've been very generous with your time. And I believe by my count, you've taken questions from 32 of the 39 members of this committee. And we know that there were some questions asked that you were not prepared to answer, wanted to do some research on, and if you would respond to those questions in writing, as well as to any other questions that members of the committee may propound to you in writing, we would very much welcome that.

Also want to take note of one other issue that was raised by the gentleman from Georgia and the gentleman from California and thank you for this, and that is with regard to the REAL ID. As you know, the REAL ID Act allows states to issue driver's licenses to illegal immigrants as long as the licenses are REAL ID compliant, something, by the way, that I am not -- I'm not in favor of having states issue licenses to people not lawfully here, but be that as it may, REAL ID compliant means that they clearly note that the driver's license cannot be used for federal purposes and that they have markings that clearly make it different from regular driver's licenses.

At the beginning of May, your department rejected California's illegal immigrant license design pursuant to the REAL ID, and I thank you for that. I think it was an absolutely correct decision. That decision was made because it did not have markings that made it clearly different from normal licenses. That was a great decision, and I want you to know that there are a number of members of Congress who support that decision and thank you for having made it.

SEC. JOHNSON: Just doing my best to comply with the law, Congressman.

REP. GOODLATTE: Thank you, Mr. Secretary.

This concludes today's hearing. We thank the secretary for joining us. Without objection, all members will have five legislative days to submit additional written questions for the witness or additional materials for the record.

And with that, the hearing is adjourned. (Sounds gavel.)

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**Person:** BARACK OBAMA (87%); JEH JOHNSON (79%); BOB GOODLATTE (73%)

**Geographic:** DISTRICT OF COLUMBIA, USA (79%); UNITED STATES (95%)

**Load-Date:** May 30, 2014

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