

NOMINATION OF ALAN D. BERSIN

HEARING

BEFORE THE

COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF

ALAN D. BERSIN, TO BE COMMISSIONER OF CUSTOMS,
DEPARTMENT OF HOMELAND SECURITY

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MAY 13, 2010
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Printed for the use of the Committee on Finance

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U.S. GOVERNMENT PRINTING OFFICE

67-977—PDF

WASHINGTON : 2010

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**NOMINATION OF ALAN D. BERSIN,
TO BE COMMISSIONER OF CUSTOMS,
DEPARTMENT OF HOMELAND SECURITY**

THURSDAY, MAY 13, 2010

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:11 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Conrad, Bingaman, Wyden, Cantwell, Grassley, Bunning, and Cornyn.

Also present: Democratic Staff: Bill Dauster, Deputy Staff Director and General Counsel; Amber Cottle, Chief International Trade Counsel; Ayesha Khanna, International Trade Counsel; Hun Quach, International Trade Analyst; and Mary Baker, Detailee. Republican Staff: Nick Wyatt, Tax and Nomination Professional Staff Member; and Tony Coughlin, Tax Counsel.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR
FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The hearing will come to order.

Theodore Roosevelt said, "The virtues of courage, honor, justice, truth, sincerity, and hardihood made America." Mr. Bersin, President Obama has appointed you Commissioner of Customs and Border Protection, or CBP. As such, you and the agency that you lead must display the traits that President Roosevelt defined as indelibly American. You must show courage, honor, justice, truth, sincerity, and hardihood.

You, and the agency that you lead, are the face of America. Customs agents represent America to millions who come across our borders every year. When Americans return home from foreign soil, your agents greet them. When immigrants reach our borders, your agents meet them. When merchandise flows across our borders, your agents facilitate trade. When foreign merchants send goods to our country, you enforce our trade laws. When wrongdoers send hazardous products to our shores, your agents work to protect us.

Mr. Bersin, you have a tall order. Customs and Border Protection has a twin mission. It helps to maintain our economic security, and it helps to defend our national security. As you pursue your tasks as Commissioner, you must commit to carrying out both of your agency's twin missions, and you must do so with equal fervor.

You must remember that your agency's historical mission is to facilitate international trade. From the beginning, it enforced America's trade laws, and you must renew and strengthen your focus on this historical trade mission. You must do so, not at the expense of your security mission, but in concert with it. I expect you to bring as much sincerity and hardihood to this task as I know you will bring to securing our Nation's borders.

International trade is a vital component of the American economy. In 2009, America imported more than \$1.5 trillion of goods. Our economy simply cannot function without the smooth flow of international trade. Last summer, Senator Grassley and I introduced the Customs Facilitation Trade Enforcement Reauthorization Act, and we hope that this committee and this Congress will address Customs reauthorization this year.

As the Commissioner of Customs, you must carry out your duties and represent America with courage, honor, and truth, and you should display these virtues in your personal life, as well as in your professional capacity. At the heart of your credibility as the Commissioner of CBP will be the enforcement of the laws about whether employees are legally able to work here. This duty goes to the heart of the responsibilities of the Department of Homeland Security.

Mr. Bersin, while the Finance Committee was vetting your nomination we discovered that you failed to properly complete and maintain employment eligibility verification forms, otherwise known as I-9s. You failed to do so for any of the 10 household employees whom you employed over the past 2 decades. As the person responsible for securing the Nation's borders, your failure to follow the law in this matter is unacceptable.

During the April recess, President Obama exercised his power to make recess appointments. Among those appointment was yours. The Constitution gives the President that right. But it is also the right of the Senate, and the role of this committee, to review your record and decide whether you will be allowed to continue your service beyond 2011.

The committee has a constitutional responsibility to the American people to carefully review nominations in its jurisdiction, and, as a nominee for Commissioner, you have a responsibility to provide complete and honest information.

Now, however, that you have been appointed, it is now your duty to both facilitate our economic security and to ensure our national security. As you do so, I urge you to consider carefully the traits that President Roosevelt described as "quintessentially American." I urge you to adopt these traits as you fulfill your new leadership responsibilities, and I urge you to conduct yourself and your agency in a manner that brings pride to your office, your people, and your country.

Now to our witness. But first, the Senator from California, Senator Boxer, has asked to introduce our witness.

Senator Boxer, we are very, very honored to have you here. Why don't you proceed?

**STATEMENT OF HON. BARBARA BOXER,
A U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Thank you so much, Mr. Chairman and members of the committee.

I would ask unanimous consent that you would place into the record Senator Feinstein's statement on behalf of Alan Bersin.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Feinstein appears in the appendix.]

Senator BOXER. I am so pleased to be here today to introduce Alan Bersin, President Obama's nominee to be Commissioner of the U.S. Customs and Border Protection. Mr. Bersin, who has been serving as Commissioner since March, is a trusted public servant with a wealth of experience and knowledge on issues critical to the mission of U.S. Customs and Border Protection: border security, enforcing the law, and protecting our Nation's homeland and economic security.

I have known Alan for many years, and in 1993 I recommended that President Clinton nominate him to serve as the U.S. Attorney for the Southern District of California. In addition to his U.S. Attorney's duties, he was named by Attorney General Janet Reno to be her Special Representative for U.S. Border Issues.

As the border czar, Alan was responsible for coordinating all Federal law enforcement activities on the southwest border, stretching from Texas to California. He made strengthening the southwest border and cracking down on drug smugglers his top priorities.

It was during this time that Alan learned of the many challenges facing law enforcement personnel on the border, a perspective that has served him well as Assistant Secretary for International Affairs and Special Representative for Border Affairs at the Department of Homeland Security, and now as U.S. Customs and Border Protection Commissioner.

Mr. Chairman and members, Californians understand the mission and the work of U.S. Customs and Border Protection very well. Many of my constituents work for CBP, and countless other Californians have frequently contacted CBP officials, whether they are local law enforcement officials who help protect our border and prevent the flow of illegal drugs; port officials and transportation workers who move cargo in and out of California's land and sea-ports; or business owners seeking a steady, safe, and legitimate flow of goods between nations.

Californians also know Alan Bersin very well. Throughout his career, Alan has gained the confidence and the respect of leaders in both parties. He was appointed California's Secretary of Education by Republican Governor Schwarzenegger; and my friend Jerry Sanders, the Republican Mayor of San Diego, selected Alan to lead the San Diego Regional Airport Authority.

Alan also has led the San Diego County School District, served on the California State Board of Education, taught law at the UC Berkeley's Boalt Hall and the University of San Diego School of Law, and he served as Special Counsel to the Los Angeles Police Commission.

Governor Schwarzenegger has called Alan "an expert on border security issues" who "knows the importance of encouraging legiti-

mate international trade and travel.” Californians know that Alan understands the key role U.S. Customs and Border Protection plays in securing our borders, keeping Americans safe, and protecting U.S. economic interests. This is a very important time for U.S. Customs and Border Protection.

Our Nation faces many challenges and threats at the border, with illegal immigration, drug smuggling, and violence in Mexico threatening our border communities. In addition to defending our borders, every day CBP officials deal with the enormous task of ensuring the safety and security of trade cargo that enters the U.S., preventing intellectual property theft and counterfeiting, and enforcing trade laws.

They also ensure safe and legitimate travel in and out of the U.S.; patrol nearly 7,000 miles of land border with Mexico and Canada; and process over 57,000 truck, rail, and sea cargo containers. They seize illegal drugs, they apprehend criminals, and they inspect cargo for harmful agricultural pests. They serve on the front line in so many critical areas, and Alan Bersin is uniquely qualified to lead this agency. So, I join those Republicans and Democrats alike who say to you, please move forward with this confirmation. We thank you so very much for the opportunity to be here.

The CHAIRMAN. Thank you, Senator, very much. We deeply appreciate your advising the committee of what course we should take. Thank you.

Senator BOXER. Thank you very much, Mr. Chairman.

The CHAIRMAN. All right. Mr. Bersin, your full statement will also be in the record. Why don't you proceed?

STATEMENT OF HON. ALAN D. BERSIN, NOMINATED TO BE COMMISSIONER OF CUSTOMS, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Mr. BERSIN. Thank you, Mr. Chairman. Good morning, Chairman Baucus, members of the committee. I thank you for this opportunity to appear here today.

Senator Baucus, I look forward, in the context of these questions and answers, to responding very directly to the concerns and to the values that I share. In 20 years of public service, the reputation for truthfulness and straightforwardness is one that I have cherished and nourished with care, and I need to clarify and set straight in your mind, and in the minds of the members of this committee, any doubts to the contrary.

Let me begin by introducing members of my family who are here today, if I may, Chairman Baucus.

The CHAIRMAN. If you would, please. We would appreciate that very much. Have them stand, too, so we can all see them.

Mr. BERSIN. First, my wife, Judge Lisa Foster, a judge in the Superior Court of San Diego County, CA.

The CHAIRMAN. Judge Foster, welcome. Good to have you here.

Mr. BERSIN. Second, Mr. Chairman and members of the committee, our daughter, Alissa, who is employed by McDevitt and Company, affiliated with the Urban Outfitters Company in Philadelphia. Third, Zach Miller, Alissa's fiancé. They will be married in just over 2 weeks in California.

The CHAIRMAN. Congratulations, both of you.

Mr. BERSIN. And lastly, a near member of the family, Karen Heinrich, who has been at my side in assisting in school systems, as well as in law enforcement in San Diego, Sacramento, and now at CBP in Washington.

The CHAIRMAN. Welcome, Karen.

Mr. BERSIN. Mr. Chairman, Ranking Member Grassley, members of the committee, I am deeply appreciative and humbled by President Obama's nomination of me to serve as Commissioner of the U.S. Customs and Border Protection, and I am grateful for the support and the confidence of Secretary Janet Napolitano.

The work of CBP is critical to our country's economy and security, and I want to take a moment to thank the men and women of CBP for the job they do. CBP's personnel are on the front lines of defending our country from terrorists to transnational criminals, and they also play a role, an important one, in facilitating trade and travel. They do so at a great risk, and all too often with ultimate sacrifice. Before joining you here this morning, Senators, I participated as part of Police Week and the Valor ceremony for Customs and Border Protection, which will continue this afternoon. We commemorate those men and women who have given their lives in the service of the country and the agency.

It is an honor to work with the men and women of Customs and Border Protection, and I look forward to discussing with you, as I have begun to do with them, my vision for CBP and my fitness and qualifications for the job.

I have spent most of my adult life living and working along the border, and I have seen firsthand the challenges and the issues involved with border security and with facilitating economic activity, trade, and travel across the border.

My jobs have reached from the private sector as a corporate attorney practicing commercial law to law enforcement as U.S. Attorney, the Attorney General's Southwest Border Representative, and most recently as Homeland Security's Assistant Secretary for International Affairs and Secretary Napolitano's Special Representative for Border Affairs.

My public service has included participation and leadership in the educational sector as superintendent of schools in San Diego, the California Secretary of Education, and then I moved on as chairperson of the San Diego County Regional Airport Authority.

My experiences are varied, but in these jobs and as a private citizen I have been involved in many of the issues that are the day-to-day bread-and-butter concerns of Customs and Border Protection. These include border security; law enforcement; working with international partners; working with the public and with trade groups; facilitating the lawful movement of trade and travel; and running, leading, and managing large and complex organizations.

CBP has critical security and trade missions. My experience in the private sector and government has convinced me that these two missions, facilitating trade and ensuring security, which are often presented as being antithetical or zero sum, can in fact be complementary. When we apply the right strategies and marshal the right combinations of personnel, infrastructure, and technology, we

can increase our security, and we can facilitate the flows of lawful trade and lawful travel.

The key, I believe, is to segment the flows of people and goods by the level of risk they present. Risk segmentation allows us to focus our law enforcement resources on the people or goods that we know are dangerous or about which we know the least, and in turn minimize delays for the goods and people we know are not dangerous, but are lawful and legitimate.

Trusted traveler programs like SENTRI, FAST, NEXUS, and Global Entry are examples of such an approach. By allowing travelers to volunteer for appropriate screening and background checks, CBP is able to quickly process pre-approved, low-risk travelers and focus on other travelers about whom we know less.

The same, Senators, applies to cargo and goods in trusted shipper programs such as the Customs-Trade Partnership Against Terrorism, or C-TPAT. To be clear, nonetheless, our over-arching mandate is to protect the safety and the security of the American people.

The attempted bombing of Flight 253 on December 25th and the recent attempt to detonate a car bomb in Times Square makes clear that we continue to face serious threats. Every day, CBP officers and agents interdict and stop threats at and between our land, air, and seaports of entry. Empowering CBP's operators to do their job will be a focus of my time at CBP. That means making sure they have the resources, equipment, training, intelligence, and the leadership to support and fulfill their vital security missions.

I would like to thank you and your colleagues for the support you have shown CBP. With the resources Congress has provided, CBP has experienced unprecedented growth since 2004 and is now an agency of more than 57,000 employees. The Border Patrol has doubled in size, and we are more secure, with much work to be done.

I am sensitive to the concerns that CBP has not paid enough attention to facilitating international trade, concerns that are reflected in Senate bill 1631, the Customs Facilitation and Trade Reauthorization Act. What I want to make clear to you today, Senators, is my commitment to work with the Congress, the private sector, the trade community, and others within the Federal Government on trade facilitation issues.

I know the importance of international trade to the United States economy and to our remaining economically competitive. I also know that there are areas in which CBP can improve. I welcome some of the ideas in the Customs Reauthorization Act, and I look forward to working with you to implement them.

I want also to emphasize that intellectual property rights protection and consumer product safety, as well as trade security, are critical enforcement priorities for our agency. I pledge to take your concerns into account, to work with the trade community, to provide notice of our intended activities, and to remain as transparent as possible with Congress, the private sector, the trade community, and other agencies concerning decisions being made affecting trade at CBP.

Mr. Chairman, it is an honor to appear before you, the ranking member, the members of this committee. I look forward to our dialogue and to responding to any questions you may have.

The CHAIRMAN. Thank you, Mr. Bersin.
 [The prepared statement of Mr. Bersin appears in the appendix.]
 The CHAIRMAN. Senator Grassley?

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
 A U.S. SENATOR FROM IOWA**

Senator GRASSLEY. Mr. Chairman and members of the committee, I am late giving my opening statement because I had an amendment on the floor of the Senate, so thank you for this opportunity.

Welcome, Commissioner Bersin, and also welcome to your family and friends. This hearing reinforces the role that the Senate Finance Committee serves with respect to presidential nominations. The administration should learn from this hearing that the advice and consent role of the Senate is not something to be taken lightly, and that due diligence undertaken by the committee is not something to be simply brushed aside. I compliment the chairman for reinforcing that point with this hearing.

The nominee was recess-appointed on March 27, despite knowledge the administration had that the Finance Committee, on a bipartisan basis—and I want to emphasize bipartisan—had serious concerns with respect to conflicting information pertaining to the proper documentation of domestic staff hired by the nominee, and we should put that memo in the record, Mr. Chairman.

The CHAIRMAN. Without objection.

[The memorandum appears in the appendix on p. 149.]

Senator GRASSLEY. U.S. Customs and Border Protection plays a crucial role at our Nation's borders. The agency is charged with the dual mission of protecting our homeland and facilitating the legitimate flow of trade. It has 57,000 employees, and it enforces laws for over 40 agencies of the government. In fiscal year 2009, CBP processed \$1.7 trillion worth of imported goods, and collected about \$30 billion in duties and fees. So, very, very important.

As a result, decisions made by any Commissioner of Customs have a vast impact on the economic welfare of our Nation, and that is why it is imperative that the proper balance be struck between the agency's dual responsibilities.

For several years now, I have been concerned that the agency's Customs revenue and commercial functions have not been sufficiently prioritized. It is important that Commissioner Bersin restore the right balance. For example, full implementation of the Automated Commercial Environment and the International Trade Data System are critical to facilitating trade flows, yet the development of these systems is significantly behind schedule. I look forward to hearing how the Commissioner intends to get that implementation back on track.

Another concern that I would like to raise is the level of consultation between Customs and Border Protection and congressional oversight committees, as well as consultation between CBP and other Federal agencies. Over the past few years, there have been three instances in which CBP issued a preliminary ruling without consulting appropriately, and as a result CBP was forced to withdraw or suspend rulemaking. I would like to hear the Com-

missioner say whether he shares this concern and, if so, how he would address it as a priority.

Finally, I would note that last year Senator Baucus and I introduced the Customs Facilitation and Trade Enforcement Reauthorization Act to reauthorize CBP and reprioritize its trade functions, so any views on that bill would be very much appreciated. Instead of my oral presentation, I gave a shortened version of the longer statement, and I would like to have the printed longer statement take the place of what I have just said. I yield the floor.

[The prepared statement of Senator Grassley appears in the appendix.]

The CHAIRMAN. Thank you, Senator.

Mr. Bersin, I have three standard questions that we ask all nominees, and I will ask them now.

First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. BERSIN. No, sir.

The CHAIRMAN. Thank you.

Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BERSIN. No, Mr. Chairman.

The CHAIRMAN. Third, do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress?

Mr. BERSIN. I do so, except as otherwise required by law.

The CHAIRMAN. What would that be?

Mr. BERSIN. I do, sir.

The CHAIRMAN. Thank you. I have not heard any other witness make that reservation, and you have now withdrawn that reservation?

Mr. BERSIN. I have, sir.

The CHAIRMAN. Thank you.

Mr. Bersin, as Commissioner of Customs, you are responsible for enforcing America's immigration laws at our borders. During the Finance Committee vetting process, my staff found that you failed to timely complete and maintain legally required I-9 forms that verify your household employees were legally authorized to work in the United States.

Your failure to maintain I-9 forms clearly goes to the heart of your responsibilities as Commissioner of Customs and is obviously concerning. Can you explain to the committee why you failed to complete and maintain I-9 forms for your household employees?

Mr. BERSIN. Mr. Chairman, I want to emphasize that, from the beginning, the lack of I-9 forms has been fully disclosed, that in fact my wife and I, in the case of each of the employees who has been involved in our household over the last 20 years, their eligibility to work in the United States has been verified.

In each case, documentation of the same kind that is required with regard to the I-9—a form that is the occasion to fill out and maintain in the household files or in the business files passports, permanent resident cards, driver's licenses, Social Security cards—

in each case and with respect to each employee, we verified the eligibility of that person to work in the United States.

Similarly, with regard to each of those persons, we were sure to pay taxes due with regard to the employment, and all of those taxes were due and paid, with the exception of \$56 that was a deficit that our accountant, in connection with the committee staff, discovered and has been paid. But over 20 years, no employee ineligible to work in the United States has ever worked in our household. No employee who has worked in our household has not had taxes paid in connection with that employment.

Mr. Chairman, as I have acknowledged, my wife and I simply did not know, and were mistaken in not knowing, that an I-9 form was the form that needed to record the information that I have just alluded to: passport numbers, Social Security numbers, driver's licenses. Instead of having it on that form, we had it on a piece of paper that was in a file and maintained by us in our home. It was a mistake.

The CHAIRMAN. Is it not true, though, that when this vetting process began, at that point you did not provide any I-9s for any of your 10 employees?

Mr. BERSIN. We did not, because we did not know that they were necessary. But at the same time, Mr. Chairman—

The CHAIRMAN. And I am a little surprised you did not know it was necessary. When you were U.S. Attorney, were you aware at that time of I-9s?

Mr. BERSIN. Mr. Chairman, I was aware that in the business context that I-9s needed to be filled out so that they could be maintained by the business and available for inspection.

The CHAIRMAN. What was your experience with I-9s as U.S. Attorney?

Mr. BERSIN. There were investigations by the then-Immigration and Naturalization Service, looking to enforce civilly requirements of the Immigration Act. But at no time did I know and make the connection that in the domestic context of household employees that they were required. But I want to emphasize, Mr. Chairman and ranking member, that the same—

The CHAIRMAN. Isn't an employer an employer, whether a business employer or domestic employer?

Mr. BERSIN. There is no—

The CHAIRMAN. I-9s. These are forms issued by the Department of Homeland Security.

Mr. BERSIN. Sir, I am aware of the formal requirement now, and I have made clear that I acknowledge the error and the mistake and the violation, and will obviously see to it in the future that the form is filled out on the form prescribed by the government and maintained on that form. But I do want to emphasize that the underlying documentation was reviewed and that the eligibility of every employee who worked for us and with us was verified, and I believe that has been acknowledged by the committee staff.

The CHAIRMAN. I find it incredible that you did not know about the I-9 obligation. That just does not pass the credibility test.

Mr. BERSIN. Mr. Chairman, if I had known about it, if my wife had known about it, it would be of no difficulty—

The CHAIRMAN. But you were aware.

Mr. BERSIN [continuing]. To actually have put the information on the I-9 form. I did not know about it. I did not benefit by not having it in the file in that form. There was no reason why we would not do it if we knew it. We did not know that it applied to, in the case of employees since 2006, part-time house-cleaning help when we had verified their eligibility and had written down the documentation that indicated their eligibility to work.

The CHAIRMAN. So failure to fill out I-9s is something this committee should pay very little attention to?

Mr. BERSIN. Not at all.

The CHAIRMAN. That is, this piece of paper is worthless, in your view.

Mr. BERSIN. It is not—

The CHAIRMAN. Employers should not have to fill it out, and, if they do not fill it out, well, maybe sometime years later, maybe they get around to it. Even though the law provides it is the day of the hire, as I recall, that the employer must fill out his portion of the I-9, you are basically saying it is irrelevant.

Mr. BERSIN. I am not saying it is irrelevant, sir.

The CHAIRMAN. Just, so what? If you do not know about it, no big deal. Fill it out later when you get around to it. That is kind of what it sounds like.

Mr. BERSIN. No, sir. What I am saying is that it is a form, and I acknowledge the mistake of not having the information that we obtained in that form. But I am also saying that having the information on another piece of paper that is the same information shows the respect for the need to verify eligibility in a way that not having that information in the first place would indicate. If we had known of that form, we would have used it, because we had the information, were able to make it available to the committee staff. I believe that the substance of the immigration law was observed. That is not to say, and I think we have acknowledged—

The CHAIRMAN. Have we received those other documents that you—

Mr. BERSIN. Yes.

The CHAIRMAN. That you were referring to?

Mr. BERSIN. Yes. Yes.

The CHAIRMAN. What, in particular?

Mr. BERSIN. We had photocopies of the passport, of passport cards with regard to two employees. Two employees were U.S. citizens, and their passports were provided. The third employee was a permanent resident, and her permanent resident card was provided. I do not believe—as well as copies of Social Security cards, and in one case I believe a California driver's license.

The CHAIRMAN. The obvious question is, you know, the job is Commissioner of Customs. That is basically the person in charge of overseeing a lot of verification and the veracity and truthfulness of employees' or a person's status, and it just seems like you are pretty cavalier about I-9s, and you are basically saying, if I hear you correctly, that I-9s are not that important, that other documentation is fine, but I-9s are not that important. And you are saying that we should overlook the failure to fill out I-9s for employees, just overlook it?

Mr. BERSIN. Mr. Chairman, I am not denying the error, denying the violation with regard to the form in which the information was contained. What I am saying, and I say this as a former prosecutor, with regard to Immigration and Customs Enforcement that would be the enforcement agency, if a person—stepping back from my own personal situation—had the information called for by the I-9, copies of passports, copies of permanent resident cards, copies of Social Security cards, copies of this information to demonstrate the eligibility of the person to work in the United States, it would not remove the violation, but it would put into light and into context that failure to maintain the information in that form. That is as far as I would—

The CHAIRMAN. One more question.

Mr. BERSIN. I would say that there is a difference.

The CHAIRMAN. What documents did you think you had to provide, and where did you get that information with respect to each of those documents?

Mr. BERSIN. Senator, from the time that I was U.S. Attorney in the time of the Clinton administration, from the Zoë Baird incident on, I knew there were two requirements, and my wife and I verified each of those with regard to each employee over the next 20 years. The first is that people working in your household needed to be eligible to work in the United States, and you needed to see proof and evidence of that eligibility. We did that in the case of every employee. The second requirement was that household employees needed to be—you needed to pay household taxes with regard to people working in the household. Every employee over 20 years has the taxes paid for, and the documentation establishing that is not in dispute.

The CHAIRMAN. Senator Grassley?

Senator GRASSLEY. The Finance Committee memo on your nomination dated May 12 states that you received advice during the vetting process that some of your employees could be categorized as independent contractors. I want to know who gave you this advice, and in what capacity were they working on your nomination?

Mr. BERSIN. Senator Grassley, Ranking Member Grassley, let me put that statement in exchange with your staff in context. From 2006 until now, as indicated in response to the committee's questionnaire, we employed six people in our household. Three of them were providing house cleaning services part-time, 3 days a week.

The other three persons who worked in our household were college students who were from the local college in San Diego, Point Loma Nazarene College, who drove, from time to time, our children, since my wife and I both worked. Drove them to appointments and required school events or sporting events. They were paid on an hourly basis and they were—as I say, they used their own automobile to drive our students, our children.

Of those six employees, my wife and I treated all of them the same because, consistent with what I had said for the 2 decades, we looked to assure that they were eligible to work in the United States. We verified their eligibility.

The second is, we paid their taxes. It was only after the confirmation process and the vetting process that the distinction was made that suggested that the college students, who were paid on

an hourly basis, who worked sporadically, who used their own cars, were independent contractors. It appeared to me that that was a fair characterization. I regret making that distinction, Senator, because in fact we had not made that distinction in terms of paying their taxes and verifying their eligibility.

Senator GRASSLEY. Did somebody advise you on this? Because I am not questioning—I just want to get who gave you that advice, and in what capacity were they working on your nomination during the vetting process.

Mr. BERSIN. Senator, in connection with analyzing the nature of the employment duties, I received advice from within the Department of Homeland Security. I also received advice from lawyers and friends from outside of the government. I talked to people obviously in connection with the vetting process at the White House. I am responsible for having made the distinction, and I am accountable for that. It strikes me as a distinction that should not have guided my response to the committee staff.

Senator GRASSLEY. Well, did anybody advise you to not discuss the employee independent contractor switch with the committee? Did anybody advise you not to discuss that?

Mr. BERSIN. No, Senator, no. Not—not to that—that is a decision that I made. But I want to emphasize, Senator Grassley, that there was no intent, in fact, to conceal those three college students, because in fact they were listed on tax returns that were provided to the committee. Schedule H listed them. I mean, it was not a question that I stood to benefit in no way from having concealed the employment of those three students. Their names actually came to the attention of the staff because they were in the tax documents that we provided to the staff.

Senator GRASSLEY. All right. What advice would you give another nominee in a similar situation who had received similar advice?

Mr. BERSIN. Not to make distinctions that were not made at the time of hiring. That is to say, if there were no distinctions made in the way that people were treated in terms of verifying their eligibility and paying their taxes, I would not draw a distinction in the context of them analyzing it, looking backward.

Senator GRASSLEY. I would like to go on to another matter I wanted to discuss with you, and this comes from a November 18, 2009 story in the *San Diego Reader*. The story said you had a personal financial stake in a border real estate through a partnership called Otay Terminal. Is the word Otay?

Mr. BERSIN. Otay.

Senator GRASSLEY. Otay Terminal. That was created in October, 1996 with your relatives. During this time, you served as U.S. Attorney for the Southern District of California, and also as the Attorney General's Southwest Border Representative. In fact, your SF-278 indicates that you still have an interest in Otay Terminal properties. Would you describe it, and your involvement with it, and if you are related to any other investors in Otay property?

Mr. BERSIN. This was a family-organized—it was organized by my father-in-law, now deceased. I was a limited partner, along with my wife Lisa, and took no active role or involvement in the management. That property was disposed of 7, 8, or 9 years ago.

The Otay partnership that is reflected in the 278 does not include that property at the U.S.-Mexican border, on the edge of it.

Senator GRASSLEY. All right.

I do have a question, though. When the property was involved, was your involvement in this partnership appropriate, given your position as U.S. Attorney and as the Attorney General's Southwest Border Representative?

Mr. BERSIN. I believe so, Senator. There was no activity that I took, either in connection with the property or as U.S. Attorney, that affected the value or disposition of that real estate.

Senator GRASSLEY. So then maybe my last question is not appropriate. You do not have any interest now in Otay Properties? Is that what you are saying?

Mr. BERSIN. No, sir. Otay Properties Terminal is an LLC. It does not hold the property that was referenced in that article that you have just referred to.

Senator GRASSLEY. All right.

Well, then let me ask you this last question then. In your role as Commissioner of Customs and Border Protection, is it conceivable that what you do on the job could impact the value of these properties?

Mr. BERSIN. No, sir.

Senator GRASSLEY. All right.

The next person is, based on arrival, Mr. Bingaman, then Mr. Bunning, and then the Senator from Washington, then the Senator from Texas.

Senator BINGAMAN. Mr. Bersin, thank you for being here. Congratulations on your appointment to this important position.

Let me just state, I do not need to ask you any more questions on it—I think we have gone through this subject extensively here—but let me just state that in my view it is clear that you complied with the spirit of the immigration laws in that you had made a determination as to the legal status of employees, you kept records to verify that that had been done, and you paid taxes, as you pointed out, on those individuals. The fact that it was not done on this form is unfortunate, but not fatal in my view.

Let me ask about the job that you are taking on, because it is an extremely important job that you have already taken on. That is, as head of Customs and Border Protection, in my State of New Mexico, as you well know, this is an extremely important position. I am impressed with all of the background and experience you have had in trying to deal with border protection, particularly on the southwest border.

Let me ask about infrastructure along that border. One of the things that I have been pushing for is this problem of, what do we do about outbound inspections? It is clear when you look at the violence going on in Mexico, particularly in the City of Juarez and other northern Mexico cities, that much of that violence is fed by the ready availability of large amounts of cash, large amounts of weaponry that come across from the United States. I am concerned that we do not have in place the necessary infrastructure, the dedicated outbound inspection teams that we need to really monitor any of that. Is this something that is getting fixed? What is your view on this?

Mr. BERSIN. Yes. Senator Bingaman, the notion that we need to pay attention not only to matters coming north through our borders but rather going south, that the cycle of drugs, guns, and cash is actually one continuous cycle that requires an attention to out-bound as well as inbound, and cooperation with Mexico, is at the core of Secretary Napolitano's and the administration's approach to the problems on the southwest border.

Last March in 2009, when the Secretary announced the initiative with respect to the southwest border, she instructed Customs and Border Protection and ICE to engage in southbound checks on a regular basis. There are two parts to this, Senator. One was the creation of teams. Customs and Border Protection field operations, CBPOs, together with border patrol agents, detailed to the ports of entry, working with State and local police officers under Stonegarden grants, as well as Immigration and Customs Enforcement agents, started to do systematic inspections of cars going south.

The second part is what you alluded to with regard to technology. We do not have in most of the ports of entry, either on the northern border or southern border, a system of capturing data with regard to license plates going south. We do in some places, such as San Ysidro across from Tijuana. We are moving to remedy that in two ways, by creating license plate reading away from the port of entry and, where we have the footprint to be able to put the technology in place, we are looking to do that because we accept this as an important function of the agency.

Senator BINGAMAN. Yes. Let me just ask one more question on that very issue, because this license plate reading capability, as you indicated, is in place in a few locations. It is not in place in my State at any of the border entrances. I am told that the Drug Enforcement Administration owns and operates license plate readers at interior border patrol checkpoints. Does CBP have access to that information?

Is there a way to ensure that some kind of license plate reading capability be put in at all of these checkpoints so that we do not have—frankly, the problem of stolen vehicles in my State is a serious one, and particularly as you get toward the southern part of the State. But even in Albuquerque, a lot of cars get stolen and are never seen again, but the understanding is that they wind up in Mexico. So what more is being done on this license plate reader issue?

Mr. BERSIN. Senator, the Drug Enforcement Administration at the Department of Justice and CBP are engaged in discussions. We have developed a joint project. I met yesterday, as circumstances turn out, with Mr. Placido. We discussed the matter, and I believe we will have an arrangement up and working and a documentation of it in the very near future.

Senator BINGAMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Bunning?

Senator BUNNING. Thank you, Mr. Chairman.

I want to go back just to touch base so I can try to grasp how a former U.S. Attorney for, I guess, the Southern District of California—

Mr. BERSIN. Yes, sir.

Senator BUNNING [continuing]. Would not know Federal law, since your job as the Federal attorney, U.S. Attorney, would be to enforce the Federal laws in that area. You had 10 household employees since 1993, is my understanding. How many of these employees did you file or maintain a Form I-9 for verification of their legal status in the time frame that is required by Federal law?

Mr. BERSIN. We did not have the verification of eligibility, which was secured for each one of those employees, on the form required by law, Senator. We have acknowledged that from the beginning.

Senator BUNNING. So you did not know there was such a law or you did not comply with it?

Mr. BERSIN. I did not know that it applied to household help. And Senator, this is not a form that needs to be filed, it is a form that needs to be filled out—

Senator BUNNING. I can tell you, as an experienced person who, as a normal citizen of the United States, hired domestic employees, I knew about it, and I am not a Federal prosecutor. I am not a Federal U.S. Attorney for the Southern District of California, and I knew from the IRS that I had to file taxes for those people if they made over a certain amount of money.

So if you understand my difficulty, knowing your background, that you would not understand the requirements, it is extremely difficult for this committee, trying to get information and verify it—that they have difficulty understanding it also. When the Finance Committee asks, how many household employees you had since 2006, you told them three, when in fact there had been six. Why did you not reveal the other three household employees?

Mr. BERSIN. Senator, as I indicated in response to the ranking member—

Senator BUNNING. They were students.

Mr. BERSIN [continuing]. These were the three students who were—

Senator BUNNING. But you were paying them a salary.

Mr. BERSIN. No, we were not paying them a salary, sir. We were paying them hourly.

Senator BUNNING. Well, you were paying them by the hour. That is—

Mr. BERSIN. We were paying them hourly. They were not working on a regular schedule. They worked as needed. They used their own car to drive our daughters because we were—

Senator BUNNING. But you were paying taxes.

Mr. BERSIN. Yes, we were.

Senator BUNNING. All right. So you clearly treated all of those household workers as employees for tax purposes.

Mr. BERSIN. We did, Senator. And we did for purposes of verifying their eligibility to work in the United States, because, as you know, independent contractors or casual hires are not required to have the employer pay taxes or fill out I-9s.

Senator BUNNING. I am going to go back to the question that the ranking member asked. Who advised you to tell the Finance Committee that they were independent contractors? Was it someone connected to the Obama administration who was helping you through the vetting process, or did you, out of ignorance, just not list them on the I-9 form?

Mr. BERSIN. As I said, Senator Bunning, we did not—there was no intent to conceal the three college students. Their names appeared on Schedule H of the tax returns that were furnished to this committee. In fact, it was the way in which their names came up. With regard to the advice that we received regarding the treatment of them in a retroactive sense, as I indicated, we received advice and counsel from a variety of sources, but I am responsible for the decision that was made to make a distinction.

Senator BUNNING. You made that distinction yourself?

Mr. BERSIN. I made that distinction.

Senator BUNNING. All right.

Mr. BERSIN. And it had not been made at the time of hiring and employment.

Senator BUNNING. Before you were recess-appointed in March, I assume that the administration asked you whether you wanted to be recess-appointed. At that time, you knew you were not finished with our committee's vetting process, and you knew there were significant issues to be resolved. Why did you agree to be recess-appointed rather than let the committee process come to a conclusion?

Mr. BERSIN. I am, Senator, proud of having been appointed at a time when CBP needed leadership. It is a major agency for the reasons you indicated.

Senator BUNNING. We know that very well.

Mr. BERSIN. And particularly in the wake of the December 25 attempt over Detroit, the importance of having leadership in place was stressed by the administration. I appreciated that and do not believe it was the wrong decision, and I appreciate the committee having an opportunity to explore these issues.

Senator BUNNING. Please answer my question. Did you agree to be recess-appointed?

Mr. BERSIN. I did not say that I would not be. It was not my decision to make the—

Senator BUNNING. Were you asked?

Mr. BERSIN. I am honored—

Senator BUNNING. Were you asked by the administration whether you wanted to be recess-appointed?

Mr. BERSIN. I was asked whether or not I would accept the appointment, if made, and I said yes, sir.

Senator BUNNING. All right. Thank you. My time has expired.

The CHAIRMAN. Thank you, Senator.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. Mr. Bersin, good to see you. Thank you for your willingness to serve, and thank you for coming to the Pacific Northwest. Obviously, the northern border issues are of great interest to us, and the movement of goods and services also is a big part of our economy. So making sure that we have security, but the flow of commerce and individuals, is very important.

One of the issues that you helped us in trying to address was the relationship between Customs and Border Protection agents and local law enforcement, and particularly those living on the Olympic Peninsula area. So, I appreciate that.

How do you think we keep that relationship going? What are some of the lessons you think that we should learn from that, and how do we make sure that local law enforcement stakeholders are part of our national security infrastructure?

Mr. BERSIN. Senator Cantwell, I thank you for those comments. I also want to thank you for the assistance that your staff in Washington, and also people like Nancy Berry, have provided to us in your home State to actually build those relationships and sustain the partnerships that are critical to the operation of Customs and Border Protection, particularly on the northern border where we do not have the number of agents that we have elsewhere around the country in terms of airports and seaports, let alone on the southwest border where we have almost 18,000 agents.

So the multiplication of our presence, in partnership with State, local, and tribal authorities that your office has helped build, is a critical dimension to our activities in the north. And I think we have made progress, not only in terms of regular outreach and meetings jointly with the community, but law enforcement to law enforcement exchanges, such as in the interoperability of communications that I think hold out great promise for other partnerships around the country.

Senator CANTWELL. And do you think that Customs and Border Protection agents will lean more on law enforcement in the kind of communication and securities for the border? Obviously this is a highly sensitive issue when people are miles and miles and miles—miles—away from the border and all of a sudden are stopped and pulled over by someone whom they do not even recognize as a law enforcement entity.

Mr. BERSIN. I think, as you have recognized and I think as we have implemented in places like Blaine, where dispatch systems are actually shared between local law enforcement and Customs and Border Protection, specifically the Border Patrol, that this kind of collaboration and going out together to the community to explain the role of checkpoints to the community so that people understand why they are in place, and also are sensitive to the complaints that people raise about them, I think, is an ongoing feature of this collaboration and one that we have learned a lot from.

Senator CANTWELL. Good. And so you will keep taking that kind of communication back from the law enforcement and the community?

Mr. BERSIN. Absolutely.

Senator CANTWELL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Good morning, Mr. Bersin.

Mr. BERSIN. Good morning.

Senator CORNYN. Good to see you.

I want to start by asking you about the unmanned aerial systems being operated by Customs and Border Protection's Office of Air and Marine. As you know, CBP has five Predator drones. I have brought a nice little model of that so everybody can see what they look like.

But it is astonishing to me that the Department of Defense has 6,000 unmanned aerial vehicles in its inventory, and yet Customs and Border Protection, responsible for maintaining border security in our country, only has 5. As you know, three of them operate out of Arizona, two of them out of North Dakota. And yet, Texas, that has the largest, longest common border with Mexico, has none.

As you know, I have written, and I know Governor Perry has asked Secretary Napolitano to proceed with all dispatch to correct that oversight. At this point, we are still waiting for the FAA to issue a Certificate of Authorization, because somehow they just have been unable to deal with that on what I would consider to be a timely basis.

Can you tell me what CBP has done? Once that Certificate of Authorization is issued—well, first of all, let me ask you, have you done anything to encourage the FAA to move on that quickly? Then I would like for you to tell us what CBP has done to prepare for the issuance of that certificate so we can get a drone like this in the sky as soon as possible over Texas.

Mr. BERSIN. Senator Cornyn, the UAV COA that is under consideration by the FAA has been a matter of constant inquiry by us. With regard to the COA covering West Texas, there is another one that would cover the—actually, the sixth UAV that we have, the Guardian Maritime, will be based at Corpus Christi.

But with regard to the land Predator, the West Texas COA, it is my understanding that the legal deadline for issuance or consideration of the FAA is coming within a couple of weeks. In fact, we have been making regular inquiry. I have a meeting with FAA Administrator Babbitt next week in which we will, I trust, hear good news, because it is an absolutely essential dimension of homeland security and will become so even more as we move into the future.

So I think the other COA having to do with the Guardian, so-called Maritime Guardian Predator, is one that was filed more recently, and we will expect the FAA, in due course, to consider that. But Secretary Napolitano has given direction. I was present when she met with Governor Perry, and she is committed to this, as is CBP.

Senator CORNYN. Well, Mr. Bersin, I appreciate your answer. You can understand, given particularly—Senator Bingaman talked about, of course, the violence occurring in Mexico and growing concerns about the spill-over effects in the United States—why using the very best technology we have to provide security, both perception of security and real security at the border, is an absolute imperative. This is something that is very, very high on my priority list, very important to me. So, I hope that this happens without any more undue delay.

But I want to say we should not stop there. I know the SBInet has been dispatched, is unworkable, and assessment is being made as to what needs to replace it. We are all waiting to hear what that assessment is, because we know that the border is not secure. There were more than half a million people detained coming across our southern border last year, and who knows how many people actually come that are not detained and returned to their country. We know that, with the drugs, the weapons, the people being brought across the border almost at will by the cartels and other

organized criminal gangs, that this is a problem that has to be dealt with with a concrete plan.

Which gets me to the budget. The administration has requested an appropriation of \$11.17 billion for CBP for 2011, which is actually a 2.3-percent decrease, and in 2011 it amounts to a further decrease of \$318 million. What is the plan to increase the number of boots-on-the-ground Border Patrol, physical infrastructure, and technology so that the American people can be assured that the Federal Government is doing everything it possibly can to secure the border?

Mr. BERSIN. As you know, Senator Cornyn, since 2004, the Border Patrol has more than doubled in size. We now have a Border Patrol—

Senator CORNYN. Mr. Bersin? Mr. Bersin, I know that. That is good, but it is not good enough. That is what I want to know: what do we do? What is your plan going forward?

Mr. BERSIN. We have worked through, recognizing the fiscal constraints that we face as a Nation, that we will not decrease the number of Border Patrol agents on the ground. We, in fact, will maintain the steady state, notwithstanding the attrition that you see in an organization as large as that. With regard to the ports of entry, the CBPOs will also be maintained at a level just under 21,000 officers. We will, I believe, be seeking to readdress the 200 additional air and marine people that we need to maintain a steady state.

So, Senator, I take your point. I think you would agree that we are much better resourced than ever before, that we are seeing the benefits of that. There is additional work to be done. As we consolidate our efforts, I would expect that there will be further growth. But, together with the technology, whether it is UAVs or an adaptation of SBInet, we must, in fact, combine the technology with the infrastructure with the boots on the ground.

Senator CORNYN. Mr. Bersin, let me just say in conclusion, I share your concern also about making sure that our authorized ports of entry are properly resourced so that the legitimate commerce and trade, which benefits our Nation, as well as our trading partner, Mexico, to the south and to the north, that those be improved. But I would tell you that the status quo, in terms of staffing and deployment of technology when it comes to border security, is not acceptable to me.

I do not think it should be acceptable to the American people. We do not cut corners when it comes to our national security, when it comes to funding the Department of Defense; we do what it takes. The American people, I know, are committed to doing what it takes to make sure our Nation is secure.

I think the same thing applies to border security. The American people are terribly upset. They are scared, they are mad. They do not understand why we are not doing more to secure our border. So I would just suggest that we need a plan from the Department of Homeland Security, from Customs and Border Protection, about how to get it done, and then we need a price tag. Then Congress needs to deal with that as a responsible body, because the American people simply are not going to be satisfied with flat-line budg-

ets and no more Border Patrol agents because of budgetary concerns. It is important, but security is more important.

Thank you very much.

Mr. BERSIN. Thank you, Senator. I share your sense of urgency.

Senator CANTWELL. Senator Wyden is next.

Senator WYDEN. Thank you, Senator Cantwell.

Welcome to Mr. Bersin. Let me, if I could, turn to a different topic. I come to it because I chair, here on the Finance committee, the Trade Subcommittee. This is especially pertinent to our part of the world, that trade jobs pay better than do the non-trade jobs. In my home State, something like 1 out of 6 jobs depends on international trade.

If confirmed, you would play an especially important role in a key feature of this whole policy arena, and that is the enforcement of the antidumping and countervailing duty orders. Of course, the agency, CBP, plays an essential role in a whole host of enforcement efforts that are especially important at this time.

We are seeing illegal transshipment, particularly by the Chinese, falsified country of origin markings, under-valuation of goods to pay less duty, misclassification of goods, and the list goes on and on, as you know. In effect, the cumulative consequences of all this are U.S. industries forking over millions of dollars to try to fight these costly trade disputes just to keep from getting the consequences of illegal dumping and the harm that is faced as a result of the lack of enforcement.

I do have concerns that this agency, which is our frontline defense against unfair imports, is not adequately enforcing the orders that are on the books. So let us just walk, for a minute, through the tools at your disposal. First, let us start with, what specific actions are you prepared to take at this point to make sure that anti-dumping and countervailing duty orders are enforced?

Mr. BERSIN. Senator Wyden, with regard to the revamping, if you will, of CBP's mission on trade, in order to assure not only members of Congress, but also the trade community that we take as equally important and as complementary the promotion of trade, the promotion of American economic competitiveness as part of the security regime, we need to look at the antidumping and countervailing duty issue that you raised. I actually see it in the same context as intellectual property rights protection and consumer product safety protection.

So we need to promote trade, but we also need to enforce the trade laws. I am aware of the perception that we have not used the full power of the agency, as an executive agent at the ports of entry, to do that. So I have read with interest the draft Unfair Trade Reduction Act of 2010, and think that several of the tools that are in there should be considered as being important measures that we can use as we ramp up our enforcement profile.

I should say, though, that we need to put this in the context of the overall review of the trade function that has been initiated at CBP under my leadership to look at the resources, to look at the processes and the procedures that we use, and to look at, importantly, the relationships we have with other Federal agencies that we serve as executive agent, including USTR, Department of Commerce, and on the unfair trade side of the house.

But the kinds of tools that are in there need to be integrated into this review, with the notion that we should have uniform procedures to look at the allegations that are made, and to do it in a consistent way around the country. The concept that CBP ought to collect cash deposits from importers suspected during the course of investigation of evading antidumping and countervailing duty orders is another matter that obviously will be of great concern and consternation to trade, but with proper outreach and proper application and enforcement, that could be an important tool.

The notion that the Department of Commerce and the Department of Homeland Security, through CBP, should issue an annual report detailing allegations of violations in this field, actions that are taken investigatively, and any results obtained, I think, is an idea that should be looked at seriously. The old saw that if you do not measure it, you cannot manage it applies in terms of regulatory activity, as well as other areas.

Lastly, we are looking, in the entire review of the trade function, at the number of resources in terms of personnel that we devote to trade enforcement and promotion. CBP is an agency of just under 58,000 employees, and just under 900 are dedicated to the trade function. I have not been there long enough to know exactly how many more resources we need to devote to this, but I am confident that we do need to build up the personnel that look to this kind of investigation and penalty sanctioning.

Senator WYDEN. Mr. Chairman, my time is up. I am convinced—

The CHAIRMAN. No, go ahead, Senator, if you have more questions.

Senator WYDEN. Well, thank you very much, Mr. Chairman. This is just a quick point. Clearly, Mr. Bersin is talking about some of the ideas that you and I have been discussing, Mr. Chairman, to try to step up enforcement. I think the general direction we are talking about, and you have highlighted some of the points, is clearly the direction to go in.

I mean, you have American industry spending significant sums to defend themselves against unfair imports, and then you say to yourself, how is it that they have to monitor compliance with existing orders, particularly when they walk away and say that compliance and enforcement is the government's job at the agency that you are talking about?

So, Mr. Chairman, I am encouraged by the response we have gotten, and I want to highlight again, I know you have had a long-standing interest in these kinds of issues, and I want to work very closely with you, as we have been doing on all these trade matters. I thank you for this time.

The CHAIRMAN. Thank you, Senator.

I have a few more questions, back on I-9s. It is my understanding, Mr. Bersin, that, when you were first contacted by our staff during the vetting process, you indicated that there were three employees that I guess were in question, and you did provide documentation with respect to those three. Is that correct?

Mr. BERSIN. Yes, sir.

The CHAIRMAN. It is also my understanding that, with respect to other employees in addition to the three, you did not volunteer to

the staff that those employees worked for you, but that that issue arose during the vetting process when staff asked you questions about whether you had further employees. At that time, you indicated, when asked by the staff, that you had additional employees in addition to those three. Is that correct?

Mr. BERSIN. Yes, Senator. As I indicated to Senator Bunning, the six employees included the three that we had discussed and the three college students.

The CHAIRMAN. Right. And is it correct that you provided documentation for the first three?

Mr. BERSIN. That is correct.

The CHAIRMAN. Is it also true that you did not provide documentation for subsequent employees?

Mr. BERSIN. When my wife and I met with the committee staff in March, we supplied information regarding the payment of taxes for people who were employed by us. We indicated that we had verified the eligibility. I do not recall that the staff followed up to ask us for the actual documentation of the college students' eligibility to work in the United States.

The CHAIRMAN. But did you, on your own, provide documentation for all the subsequent employees? That is, those in addition to the first three?

Mr. BERSIN. After the—no, sir, we did not provide the California driver's licenses and the Social Security numbers that we had. We could do that.

The CHAIRMAN. I am just curious.

Mr. BERSIN. I did not think there was an issue about that.

The CHAIRMAN. I am just curious. Your basic position is, I-9s are not important so long as you provide the documentation. You did provide documentation for the first three, but did not provide documentation for the other employees, except, it sounds—I would like to clear this up—it sounds like on kind of a sporadic, ad hoc basis.

Mr. BERSIN. Senator, I am told that we did. I do not recall having supplied the actual copies of the driver's licenses and Social Security cards, but they are available. There was no reason not to provide them. I do not believe the staff asked specifically for the documentation. We would be delighted to provide it.

The CHAIRMAN. I am just surprised that you did not get everything for every employee right off the top and clear this thing up. I am surprised you did not do that.

Mr. BERSIN. Senator, in fact, the committee questions went to employees employed by us after 2006. Because I was concerned that the staff had the impression that we were not being forthcoming, my wife flew out from California, we sat with your staff, and we did not limit it to 2006. We went back to the 20 years of employees that we hired after getting married in 1991, and having a first child together in 1992, and we went through all of the employees that we hired without regard to date.

I must say that I think we were so completely forthcoming during that meeting and remained willing to demonstrate that there was never a case in which we failed to pay taxes for someone employed in our household or verify their eligibility to work in the United States.

The CHAIRMAN. All right.

The next question I have is about your dedication to commerce. It is clear that you have a deep background with respect to security issues. From 2009–2010, you were at the Department of Homeland Security; you were the border czar. From 2006–2009, you were a member of the California Board of Education, and apparently you were the chairman of the San Diego County Regional Airport Authority. That is not a lot of security, but there is a lot of security that is involved in those jobs.

From 2005–2006, you were Secretary of Education. From 1998, I guess, to 2005, you were a Superintendent of Public Education. Prior to that, you were U.S. Attorney for the Southern District of California. So, first of all, I commend you for your public service.

Mr. BERSIN. Thank you.

The CHAIRMAN. Second, it is pretty apparent that your service was in two areas, primarily: education and also in prosecution/border czar kind of security issues, law enforcement. Education and law enforcement. I do not see anything here with respect to commerce. I am quite concerned, frankly, that you do not have a lot of either experience or dedication to commerce. In fact, I listened quite closely to your opening statement, and I did not hear very much there with respect to commerce.

Could you just tell us a little bit more about what you are doing to enforce that side of it?

Mr. BERSIN. Senator, respectfully, you have covered the part of public service, yes, that is two-thirds of my career, one-third in law enforcement and one-third in education. But I spent 20 years as a corporate and commercial lawyer, deeply involved in trade and commercial matters. I represented—intellectual property rights protection was a part of my caseload, and I had more commercial cases by far than I did any other kind of case.

My commitment to trade facilitation and the trade functions of CBP was demonstrated while I was the prosecutor when I worked to create and helped to have the Congress pass the authorization for the SENTRI system, which is a trusted traveler program that is intended to segment the traffic, along the lines that I indicated in the opening statement, for the purpose of actually distinguishing between lawful traffic, traffic that could be expedited, from traffic that needed to be inspected.

With regard to my work as Assistant Secretary of International Affairs at Homeland Security, I have been very much involved in looking at CBP's trade functions, and frankly I have understood not only the committee's concern reflected in your preparation and filing and proposing of Senate Bill 1631, but also frankly the trade community concerns about CBP's transparency and its commitment to increasing the resources that it devotes to trade enforcement and trade promotion. All of this has been very much a matter of concern to me and a matter to which I am committed.

The CHAIRMAN. How are you going to know whether you have succeeded or not when you finish, when you leave your job? How are you going to know whether you succeeded on the trade side?

Mr. BERSIN. I think there are a number of metrics that we can look at in terms of seizures of counterfeit goods, looking, in Mr. Wyden's concern, the levying and collection of countervailing duty and antidumping restrictions. I think there are a whole series of

measures that will tell us whether or not we are getting the results in the trade arena that we need to have. I think there——

The CHAIRMAN. What do you think the best measures are? What would be two, three, or four good measures?

Mr. BERSIN. In terms of trade promotion, I would look at the——

The CHAIRMAN. Trade promotion, and also stopping unlawful goods from entering our borders.

Mr. BERSIN. Well, we need to see the amount of time, for example, that it takes to come into the United States, the inspection time, the complaint by the trade that we are not moving the traffic as quickly as we can, I think, is one great concern that I have heard as I have gone out to the trade organizations.

The notion that we do not provide adequate notice to the trade of changes we intend to make in our rulings and revisions, I think, is another area in which we can get a very good read as to whether or not we have improved, not only the substance and the reality of our commitment to trade, but also the perception of it, not only in the Congress, but in the trade community.

I think we can look at the extent to which we have devoted resources to good effect in the area in terms of the number of petitions that are handled, the time it takes to handle petitions, the time in which we handle the drawbacks filed by the trade. I think there are a whole series of readily available measures along those lines that we can look at to assess the progress.

The CHAIRMAN. What I would like you to do is submit to this committee six of the most important metrics, those that you think are most important that you think will help us as a country determine whether or not we are making progress in this area.

Mr. BERSIN. I would be pleased to do that.

[The information appears in the appendix on p. 42.]

The CHAIRMAN. And then I am going to review these with you, maybe 6 months from now. I would like you to give me the six most important metrics, and I want you to give me the time table during which we will review these metrics to see the degree to which you have made progress.

Now, I am going to tell you this. You are going to be Commissioner for a certain period of time, at the very least. We want to work together. I mean, this is a 2-way street here. So, if you have areas where you need help, let us know, we want to help. But the main thing is getting the job done.

So, you write that letter to us. I would like to see that letter by the end of this week. We may respond and suggest another metric or two that we also think makes most sense. But I would deeply appreciate that.

What percentage of world software do you think is pirated? Just a rough guess.

Mr. BERSIN. Senator, I would not hazard a guess, but I do know that the degree of it is unacceptable and that the trade community is conscious of the problem, in the same way that I could not give you a good answer to how many films are pirated and how many copies of counterfeit textiles are coming into the country, or handbags. I would hesitate. I would say——

The CHAIRMAN. Do you not think, as Commissioner, you ought to know or have an idea how much is pirated, how much from the United States is pirated?

Mr. BERSIN. I think we can look at what the seizures have been and project, but I have learned, in terms of the security feature—and I see this in much the same way—that being able to project what is not being captured or seized is a hazardous calculation, and I would want to be in a much more informed position to be able to give you an assessment of that.

The CHAIRMAN. Do you not think you ought to know, in each of these key areas? Should you not have just numbers at your fingertips, like that?

Mr. BERSIN. I do not believe—

The CHAIRMAN. At least what the scope of the problem is and how well Customs is handling it?

Mr. BERSIN. Yes, sir.

The CHAIRMAN. Instead of platitudes and generalities and so forth, we need data, we need specifics.

Mr. BERSIN. I agree that data is better, and we need to have data. But in any event, having that baseline data still is not a sure guide to the trees that are falling in the forest when no one is there to hear them.

The CHAIRMAN. It is better than nothing, is it not?

Mr. BERSIN. Educated guesses and—

The CHAIRMAN. You are an educator. It is better than none.

Mr. BERSIN. Educated guesses are better than nothing, but you need to take into—

The CHAIRMAN. Your best shot, your best try. Do the best you can to find out that number. Would you be amazed if you learned that 43 percent of world software is pirated?

Mr. BERSIN. I would find that as unacceptable as figures far less than that, sir.

The CHAIRMAN. What percentage in China do you think is pirated?

Mr. BERSIN. I know, from my visits in the educational context with China, that there is an enormous amount of pirated counterfeit goods on sale there, and on sale elsewhere in the world that are—

The CHAIRMAN. I am talking about China right now. In China, the rates of software piracy, would the numbers of 94 percent for the year 2000 and 79 percent for the year 2009 surprise you? That is what they are. Russia, 94 percent in 2000; Russia, 2009, 67 percent. So we are doing a little better. Brazil, it is about the same, 58 percent. Globally, the percentage of pirated software increased from 37 percent in the year 2000 to 43 percent in 2009.

Do you feel we have the ability to deal with this problem? I understand that you are a nuts and bolts guy, not a software guy.

Mr. BERSIN. Actually, Senator, having worked in California, I understand the piracy of software. I understand the critical nature of software and intellectual property rights protection to our economy. I understand that deeply. I have been involved in it as a lawyer, and also as a prosecutor, where we worked to stop the counterfeited goods coming over from Mexico. So, I understand this issue and the importance of it very well, sir.

The CHAIRMAN. I am just telling you, a lot of businessmen come into my office, and I am concerned at the degree of intensity with which they are very upset with their products which are pirated and stolen.

Mr. BERSIN. I am familiar with those complaints and those concerns.

The CHAIRMAN. But they are rising in intensity. I am just telling you.

Mr. BERSIN. Yes.

The CHAIRMAN. So you know what you have to do, your job.

Mr. BERSIN. I understand that.

The CHAIRMAN. All right. We will deal with the metrics. You also know there is another border besides Mexico.

Mr. BERSIN. I know that very well, sir.

The CHAIRMAN. Have you been up there?

Mr. BERSIN. I have been there often.

The CHAIRMAN. You have? Where have you been?

Mr. BERSIN. I have been to Maine 2 weeks ago. I have been to, as Senator Cantwell indicated, Seattle. I have been to Detroit, Windsor. I have been to the Holton sector up in New York State and Vermont, and I would have gone to Montana, had a senior Senator been there to greet me. [Laughter.]

The CHAIRMAN. Well, you could have gone anyway.

Mr. BERSIN. Well, I know Montana from travel there, but I meant in an official capacity, sir.

The CHAIRMAN. Yes. Well, you know we have a long border, about 545 miles. We only have three ports through which commercial vehicles can pass. It is a huge problem. The operational hours at some of these ports have been dramatically reduced. So what are your plans to refocus and get a little more commerce going across our borders?

Mr. BERSIN. With respect to—

The CHAIRMAN. The northern border, especially Montana.

Mr. BERSIN. Yes. With respect to the northern border, as you know, we have implemented the pilot program to expand the hours at Wild Horse, and we want to see whether or not in fact, if we provide those extended service hours, whether or not the traffic would require that we extend them. We are always willing to assess that. I think that our record has been good in that respect, where we conduct the analysis and where there is a demonstrated need and a response by the community to make those extended hours permanent.

I think there is also, in rural areas and at ports of entry, a need to be willing to look at flexible use of technology that assures our security, but also permits people who use the border regularly to register so that they can be given access at certain times of the day when we are not there with people on the ground.

The CHAIRMAN. I am especially concerned about intellectual property violation, frankly, because it is rising. It is counterfeit medicine, for example, that threatens the health of our consumers. The authorization bill that we hope to pass will give Customs more authority and resources to seize IPR-infringing goods. What additional authority would you like to have to do your job?

Mr. BERSIN. We appreciate the concern. I want to first see how far we can go, in the enforcement efforts that we have initiated. There have been two major developments that I want to apply and then be in a position to talk about what additional authorities we may need.

Those two efforts are, first, the Intellectual Property Enforcement Center that Immigration and Customs Enforcement has established. We participate in it in the investigations that ICE is doing into intellectual property violations or suspected violations. That is a partnership that I think we need to assess to see how far we are hampered by lack of authority and what other obstacles there may be.

The second major development is the opening up of the CTAC, the Commercial Targeting and Analysis Center, that really represents the first time in which we are trying to use the sophisticated databases and targeting rules that we have proven so valuable in the security context, and to do this in the trade context, to look at the same notion of risk management, risk segmentation, and layered security in the area of trade enforcement as we do in terms of protecting against terrorism and transnational crime.

The CHAIRMAN. What are you doing about concerns about the safety of imported toys and children's products? What are you doing about that? Because it is a huge problem.

Mr. BERSIN. Yes it is, Senator. Two and a half weeks ago, I met with Chairman Inez Tenenbaum with the Consumer Product Safety Commission. We entered into a Memorandum of Understanding in which members of the CPSC are actually co-located at the CTAC, the Commercial Targeting and Analysis Center.

I had a call this week with Inez Tenenbaum, and we have agreed that we will convene a group of agencies for which Customs and Border Protection serves as the executive agent so that we can start to take an entire, more unified, whole U.S. Government approach to issues not only of consumer product safety, but also intellectual property enforcement.

The CHAIRMAN. What about the additional costs that importers have to bear because of a greater need for them to show compliance with U.S. trade laws? Is that not putting additional burden on them?

Mr. BERSIN. Yes.

The CHAIRMAN. What should we do about that?

Mr. BERSIN. There is no question that, every time we impose a regulatory requirement, there is a cost involved. I have heard the complaint that the chairman just articulated in my meetings with trade organizations, which I began the first week on the job. This week I was with COAC, the Commercial Operations Advisory Committee, in Philadelphia. I heard the same complaints.

Basically, Senator, I think what we are talking about here is a reciprocal obligation. The reciprocal obligation is that, if we impose a requirement that results in additional costs to business, we provide the benefit of the bargain to the business.

The CHAIRMAN. How do you do that?

Mr. BERSIN. We do that by seeing that there is an expedited movement of goods, processes, of paperwork, as well as the movement of containers in the maritime and aviation context, and the

movement of trucks across the land border. This has to be a win-win situation in which business and government promote American economic competitiveness and economic prosperity.

The CHAIRMAN. Well, the legislation that we hope to pass here provides for such benefits, that is, so that those who are doing a good job get some benefit of this whole process here.

Mr. BERSIN. I understand there are important dimensions of the bill that do that.

The CHAIRMAN. What safeguards are you putting in place to ensure that CBP consults fully with this committee and other agencies before making significant decisions?

Mr. BERSIN. I think a commitment to transparency, openness, and notice is the hallmark or the keystone of that approach. When I met with the COAC committee in Philadelphia this past Tuesday, I made that commitment to them. I believe it was well-received. We had a 4-hour meeting in which the subcommittees that have been established reported on their work.

I understand the importance of consultation. I understand the importance of rebuilding the trust and confidence of the trade community, as well as members of Congress, in the notion that we can have both security and prosperous trade together. We need not sacrifice one to get the other.

The CHAIRMAN. All right. This committee does not like to be blindsided, so, if something is coming up and you think that Congress should know about it, I would like a telephone call in advance.

Mr. BERSIN. Yes, sir.

The CHAIRMAN. I do not want to read about something that is pretty significant in the newspapers or from my constituents. I want to hear it first from you. All right. I am about ready to wrap up here, unless you have something you want to say.

Mr. BERSIN. Senator, I appreciate the opportunity. I want to express again my concern at the impression that may have been conveyed to your staff in the course of the vetting process. Senator, for 20 years now I have engaged in public service, as you noted, as a U.S. Attorney, as a member of the Department of Justice, as a school superintendent, as California's Secretary of Education, as a Chairman of the Airport Authority, and more recently in DHS as the Assistant Secretary and Special Border Representative.

In each of those positions, my reputation for truthfulness and directness—indeed, candor, sometimes believed to be at a fault—is what I prize most. I have been confirmed by five legislative bodies in four different levels of government. I take my reputation for truthfulness and candor as the core.

The first lesson that my children learned is that your word is your bond, and I want, over time, Senator, to have the opportunity to earn that trust and confidence on the substantive matters, but also on the values that you articulated in quoting Teddy Roosevelt at the outset of this hearing.

The CHAIRMAN. I appreciate that, and I appreciate your answering questions posed by this committee. But I must say, I still remain concerned. Since 1853, the Customs Service has had responsibility for patrolling our borders. Your agency retains the authority to secure the borders from unlawful entry of persons and goods.

Frankly, I believe your failure to complete and maintain I-9s goes to the heart of your duties as Commissioner of Customs, the heart of your agency's responsibilities to secure our borders. To credibly enforce the law, you must first follow the law.

Nevertheless, you have been appointed as Commissioner. Your term will expire at the end of next session. In the meantime, we have important duties to fulfill, and I hope you will fulfill them very well, and I look forward to working with you on the metrics that we are going to work with to see what progress we can undertake between now and the end of next year.

Mr. BERSIN. Thank you, Senator.

The CHAIRMAN. Thank you.

The hearing is adjourned.

[Whereupon, at 11:50 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Hearing Statement of Senator Max Baucus (D-Mont.) Regarding the Nomination of Alan Bersin to be Commissioner of Customs

Theodore Roosevelt said: "the virtues of courage, honor, justice, truth, sincerity, and hardihood . . . made America."

Mr. Bersin, President Obama has appointed you Commissioner of Customs and Border Protection, or CBP. As such, you and the agency that you lead must display the traits that President Roosevelt defined as indelibly American. You must show courage, honor, justice, truth, sincerity, and hardihood.

You, and the agency that you lead, are the face of America. Customs agents represent America to millions who cross our borders every year.

When Americans return home from foreign soil, your agents greet them. When immigrants reach our borders, your agents meet them.

When merchandise flows across our borders, your agents facilitate trade. When foreign merchants send goods to our country, you enforce our trade laws.

And when wrongdoers send hazardous products to our shores, your agents work to protect us.

Mr. Bersin, you have a tall order.

Customs and Border Protection has a twin mission. It helps to maintain our economic security. And it helps to defend our national security.

As you pursue your tasks as Commissioner, you must commit to carrying out both of your agency's twin missions. And you must do so with equal fervor.

You must remember that your agency's historical mission is to facilitate international trade. From the beginning, it enforced America's trade laws. And you must renew and strengthen your focus on this historical trade mission.

You must do so, not at the expense of your security mission, but in concert with it. I expect you to bring as much sincerity and hardihood to this task as I know you will bring to securing our nation's borders.

International trade is a vital component of the American economy. In 2009, America imported more than \$1.5 trillion of goods. Our economy simply cannot function without the smooth flow of international trade.

Last summer, Senator Grassley and I introduced the Customs Facilitation and Trade Enforcement Reauthorization Act. And we hope that this Committee and this Congress will address customs reauthorization this year.

As the Commissioner of Customs, you must carry out your duties and represent America with courage, honor, and truth. And you should display these virtues in your personal life, as well as your professional capacity.

At the heart of your credibility as the Commissioner of CBP will be enforcement of the laws about whether employees are legally able to work here. And this duty goes to the heart of the responsibilities of the Department of Homeland Security.

Mr. Bersin, while the Finance Committee was vetting your nomination, we discovered that you failed to properly complete and maintain Employment Eligibility Verification forms, or I-9s. You failed to do so for any of the 10 household employees whom you employed over the past two decades.

As the person responsible for securing our nation's borders, your failure to follow the law in this matter is unacceptable.

During the April recess, President Obama exercised his power to make recess appointments. Among those appointments was yours. The Constitution gives the President that right.

But it is also the right of the Senate, and the role of this Committee, to review your record and decide whether you will be allowed to continue your service beyond 2011.

This Committee has a Constitutional responsibility to the American people to carefully review nominations in its jurisdiction. And as a nominee for Commissioner, you have a responsibility to provide complete and honest information.

Now, however, you have been appointed. And it is now your duty both to facilitate our economic security and to ensure our national security.

As you do so, I urge you to consider carefully the traits that President Roosevelt described as quintessentially American. I urge you to adopt those traits as you fulfill your new leadership responsibilities. And I urge you to conduct yourself, and your agency, in a manner that brings pride to your office, your people, and your country.

TESTIMONY OF

ALAN D. BERSIN

**NOMINATED TO BE COMMISSIONER OF
U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY**

**COMMITTEE ON FINANCE
UNITED STATES SENATE**

**May 13, 2010
Washington, DC**

Chairman Baucus, Senator Grassley, members of the Committee, it is a privilege to appear before you today to discuss my qualifications to lead U.S. Customs and Border Protection (CBP) and the important work we do to protect the American public while facilitating international trade and travel.

I am honored that President Obama appointed me to lead an agency that is so important to the security and the economic vitality of our country, and I am grateful for the continuous support and confidence of Secretary Napolitano. I recognize that this Committee has an important responsibility to evaluate my qualifications to serve in this position, and I stand ready to answer any questions you may have about my background and vision for CBP.

CBP's job is enormous – and complicated – and important not only to the security of our country, but also to our economy. We protect America's way of life, and we must do so while collecting revenue, enforcing intellectual property and other laws at the border, and facilitating legitimate commerce and travel.

CBP is responsible for verifying the integrity of every person or vehicle crossing our land borders, every passenger who lands in our airports or seaports, and every product that arrives on our shores. We protect more than 7,000 miles of border on our Northern and Southern borders, and with the Coast Guard, we guard 95,000 miles of maritime borders. Each year, more than 11 million maritime containers arrive in our seaports. At our land borders, another 11 million arrive by truck and 2.7 million by rail. We are responsible

for knowing what is inside, whether it poses a risk to the American people, and ensuring that the proper revenues are collected.

As Commissioner, I want to continue to use the considerable resources that you in Congress have provided CBP – for personnel, technology, and infrastructure – to protect the American public from dangerous people and dangerous things. At the same time, I want to focus on expediting secure trade and travel so that commerce flows faster, the cost of doing business diminishes, our country remains competitive in an era of economic globalization, and our economic recovery is sustainable over the long run.

Background and Qualifications

My experience in the private and public sectors has prepared me to lead CBP in its dual security and trade-related missions. As a corporate lawyer from 1975 to 1992, I practiced commercial law in a business context, including numerous matters involving trade and finance. During this time period, the matters I worked on included a variety of contractual, intellectual property, piracy, and counterfeiting issues.

From 1993 to 1998, I served as the United States Attorney for the Southern District of California and, from 1995 to 1998, as the Attorney General's Southwest Border Representative. These positions provided extensive leadership and interagency opportunities in border security, immigration and narcotics enforcement, facilitation of legitimate cross-border transit of people and goods, coordination of federal strategies and activities with local and state law enforcement agencies, and cooperative cross-border

public safety efforts with Mexican authorities. An important dimension of this work involved demonstrating that enhanced security is part and parcel of supporting increased trade. In the Clinton Administration, I was an early proponent of the “trusted traveler” SENTRI program, first implemented at land ports of entry in Southern California. More recently, my work as Special Representative for Border Affairs and Assistant Secretary for International Affairs at DHS has provided me further opportunities to advance this perspective, as well as experience in implementing it.

My position as Chairperson of the San Diego County Regional Airport Authority from 2006 to 2009 provided me significant experience with issues attendant to major infrastructure, including matters of security and facility master planning and construction. Finally, my involvement in the education sector – as Superintendent of Public Education in the San Diego City Schools from 1998 to 2005, as California Secretary of Education from 2005 to 2006, and as a Member of the State Board of Education from 2005 to 2009 – afforded me additional useful experience and knowledge of the state and local policy making processes.

Security and Trade

My experience in the private sector and government has convinced me that the goals of security and commerce are not antithetical; they are complementary. We must – and can – have both. By focusing law enforcement efforts on the relatively small fraction of goods and people who pose a threat to public safety and economic prosperity, we can reduce the costs and inconvenience of legal commerce and travel while better detecting

and intercepting potential threats to public safety. The challenge for CBP, in coordination with other agencies of government both inside and outside the United States, then, is to segment flows of people and goods by the level of risk. We facilitate the movement of people and goods about which we have sufficient, reliable information, and we focus our enforcement resources on those people and goods about which we know nothing or have derogatory information.

One key element of this strategy is the creation of trusted traveler and shipper programs, which now include more than 700,000 enrollees. CBP currently operates Secure Electronic Network Traveler Rapid Inspection (SENTRI), Free and Secure Trade (FAST), and NEXUS. These programs are designed to expedite CBP processing for pre-approved, low risk, trusted travelers by providing dedicated inspection processes in the land, air, and marine environments. All applicants are subject to thorough and continuous background checks, collection of biometrics, and an interview with a CBP officer. Another example is the Global Entry trusted traveler pilot program, which began in 2008. This program streamlines the screening process for pre-approved, low-risk air travelers through biometric identification – allowing CBP to improve customer service at airports and concentrate our resources on higher-risk travelers. The program currently operates at 20 airports nationwide, with more than 47,000 members enrolled.

The Customs-Trade Partnership Against Terrorism (C-TPAT) brings the same concept of risk management to trusted shippers. This is a voluntary public-private sector partnership program that recognizes that CBP can provide the highest level of cargo security only

through close cooperation with participants in the international supply chain: importers, carriers, consolidators, licensed customs brokers, and manufacturers. Through this initiative, CBP asks businesses to ensure the integrity of their security practices and verify the security guidelines of their business partners within the supply chain. Today, C-TPAT includes over 9,800 members, which benefit from a reduced number of CBP inspections (they are examined five times less frequently than non-members). C-TPAT members can also join the Importer Self Assessment program, which establishes and validates trade compliance standards to identify low risk importers. Currently ISA has 206 members. We need to take these and similar programs to the next level.

Private Sector Concerns

I am aware of the concerns expressed by the trade community that CBP has not given sufficient priority to its trade facilitation mission. S. 1631, the Customs Facilitation and Trade Enforcement Reauthorization Act, reflects longstanding concerns by the Committee and the trade community regarding CBP's commitment to trade facilitation and security, the cumulative cost of government decisions on the trade community, and the lack of consultation and transparency in the decision making process. I look forward to working with you to address many of the problems that the bill seeks to address.

We have asked the trade community to assume its fair share of the burden – to exercise reasonable care in customs matters, to provide information to better understand the parties to a transaction, and to invest in the resources necessary to keep up with current requirements. CBP needs to strive continually to provide an environment built upon

predictability, transparency, and uniformity in the importing process. We need to weigh the cumulative costs of our decisions on business and, when possible, provide for simplified commercial processing. CBP and the trade community must be partners, allowing CBP to multiply our presence by leveraging both parties' expertise.

I firmly believe that transparency and consultation in the decision making process is good government. This does not mean satisfying everybody all the time. That is an impossibility. What it does mean is reinvigorating the role of the Advisory Board on Commercial Operations (COAC) and ensuring adequate consultation on significant rulings and regulations with stakeholders inside and outside of government. Transparency in government is a key commitment of this Administration, and I commit to improving our communication and consultation with all of our stakeholders.

Border Protection

CBP's trade mission is of critical importance, but the first responsibility of the Department of Homeland Security is the protection of the American public. The attempted bombing of Flight 253 on December 25 and the recent attempt to detonate a car bomb in Times Square make clear that we continue to face serious threats.

To meet its mission requirements, CBP has undergone unprecedented growth since 2004. Thanks to the support of Congress, CBP is now an agency of more than 57,000 employees. The Border Patrol is better staffed today than at any time in its 85-year history, with the number of agents nearly doubling from approximately 10,000 in 2004 to

more than 20,000 in 2009. Of 652 miles of tactical infrastructure that field commanders have identified as necessary, we have completed 646 miles of pedestrian and vehicle fencing. To adapt to an ever-changing threat environment, we have highly trained agents, officers, and analysts who use sophisticated targeting, detection, and other forms of technology in their work. In short, we are more secure than ever before.

As I begin my tenure as Commissioner, CBP must adapt to the current fiscal environment. We must expand our capabilities by more carefully aligning our resources with our mission requirements, leveraging advances in technology, and building partnerships. In short, we need to work smarter.

Border enforcement is a means to an end; that end is to prevent dangerous people and things from causing harm to our society. To accomplish this goal, we must stop thinking of border security simply as the defense of a legal boundary. Instead, we must aim to secure the flow of people and goods coming through our country, intercepting threats as far away as possible. By doing this, we can increase our security while, at the same time, facilitating the lawful flow of people and goods. As Commissioner, one of my central goals will be to identify the best way CBP can respond at each stage in the movement of a potentially dangerous shipment or person toward our shores. Accomplishing that goal will require closer partnership with the private sector; border communities; foreign governments; state, local, and tribal law enforcement; and other federal agencies – all of which have access to crucial information that CBP needs to do its job.

Conclusion

CBP's twin missions of security and trade facilitation are not in conflict, but are complementary. Many liken our mission to finding a needle in a haystack. We must find terrorists, criminal aliens, and unlawful entrants in a daily flow of nearly one million passengers and pedestrians every day. We must find weapons, illicit drugs, currency, dangerous plants, and counterfeit goods in the midst of more than 57,000 truck, rail, and sea containers and more than 270,000 incoming vehicles every day. One important way to accomplish our mission is to use intelligence to reach inside the haystack to find the needle. Another important way – and I believe the key to trade facilitation – is to blow more hay away from the needle. This means focusing less attention on those who have gained our trust by providing reliable, advance information. CBP has already made great strides in the use of technology to target passenger and cargo risk. But there is great opportunity for improvement.

Once again, it is a privilege to appear before you today. I look forward to answering any questions that you may have.

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

Commissioner

JUN 1 2010

The Honorable Max Baucus
Chairman
Committee on Finance
Washington, DC 20510

Dear Chairman Baucus:

During my appearance before the Senate Finance Committee on May 13, you raised concerns that U.S. Customs and Border Protection (CBP) had focused on border security at the expense of its trade mission. You asked that I furnish the Committee with a list of metrics to assist it objectively to assess CBP's trade-related performance. Although this list should be considered a work in process, I am submitting to you a series of measures that can help track CBP's progress in key areas of commercial enforcement and trade facilitation. CBP aims for high scores on these metrics and for marked improvement where current performance is weaker.

As I indicated in my testimony to the Committee, security and commerce are not mutually exclusive. Through effective risk segmentation and targeting, these objectives are, in fact, complementary as indicated in the Quadrennial Homeland Security Review Report. Accurate targeting enables CBP to focus its inspection resources and associated delays not on trusted partners, but on actors more likely to violate the law. CBP's enforcement and trade facilitation efforts can be measured in several ways that reflect both the efficiency (expedited flow) of legitimate trade crossing U.S. borders and the effectiveness of CBP's efforts to protect the American economy from unfair trade practices, illicit commercial enterprises, and unsafe products. These metrics include the following:

Metric 1: Rates of material compliance of all importations with applicable U.S. laws, based on entry summary compliance measurement reviews. This is an overall compliance measurement.

Metric 2: Rates of detection of unsafe products, illicit or otherwise non-compliant cargo that represent a risk to public health and safety or U.S. economic security. This is the trade discrepancy rate of cargo transactions.

Metric 3: Rates of detection for imported cargo that is not compliant with U.S. law, including the requirement to correctly pay applicable duties, taxes, and fees. This is the targeting rate of transactional entry.

Metric 4: Rates of material compliance of all importations with the requirement to correctly pay applicable duties, taxes, and fees. This is the revenue gap.

The Honorable Max Baucus
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Metric 5: Rates of material compliance of all importations by importers designated as "managed accounts" or "trusted partners". This is the compliance rate for managed accounts.

Metric 6: Speed at which compliant imports clear CBP, as measured on a timeline beginning with lading and broker transmission of entry information through CBP clearance processes (rated on an index with different weights for different characteristics / type of goods).

Metric 7: The reduction in required paper-based documentation on imported goods, and penalties for importers designated as "managed accounts" or "trusted partners" as compared to all importers.

Metric 8: Participation in partnership programs expressed as a percentage of all cargo by value that is imported by participants in all CBP partnership programs.

CBP has a strategic plan for trade and continues to develop a wide range of performance measures. I look forward to learning the Committee's views regarding the utility of the foregoing measures and other metrics in achieving our shared objective to maximize CBP's commercial enforcement and trade facilitation results. I propose that our staffs convene at their earliest mutual convenience to review these metrics.

Very truly yours,



Alan Bersin
Commissioner

cc: The Honorable Charles E. Grassley

**SENATE FINANCE COMMITTEE
STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

A: BIOGRAPHICAL INFORMATION

- 1. Name: (Include any former names used.)**
 - Alan Douglas Bersin
- 2. Position to which nominated:**
 - Commissioner of Customs, Department of Homeland Security
- 3. Date of nomination:**
 - September 29, 2009
- 4. Address: (List current residence, office, and mailing addresses.)**
 - Residence:

 - Office:

 - Mailing Address:
- 5. Date and place of birth:**
 - October 15, 1946; Brooklyn, NY
- 6. Marital status: (Include maiden name of wife or husband's name.)**

7. **Names and ages of children:**

8. **Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)**

- Yale Law School, 1971-1974, Juris Doctor, 1974
- Oxford University, Balliol College, Rhodes Scholar, 1969-1971, no degree awarded
- Harvard College, 1964-1968, A.B. (Government) magna cum laude, 1968
- Abraham Lincoln High School, Brooklyn, NY, 1960-1964, High School Diploma, 1964

9. **Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)**

- Assistant Secretary, Department of Homeland Security, Office of International Affairs and Special Representative for Border Affairs, April 2009-present
- Senior Fellow, School of Education, University of California, Davis, Davis, CA, January 2009
- Member and Board Chairman, San Diego County Regional Airport Authority, San Diego, CA, December 2006 – April 2009
 - appointed by Mayor Jerry Sanders and Confirmed by the San Diego City Council, December 2006
- Lecturer at Law, Boalt Hall, University of California, Berkeley, Berkeley, CA, 2006-2007
- Lecturer, Graduate School of Education, Stanford University, Palo Alto, CA, 2005 - 2006
- Member, State Board of Education, State of California, May 2005 – April 2009
 - Appointed by Governor Arnold Schwarzenegger, and confirmed by the California State Senate, April 2006
- Secretary of Education, Office of the Governor, State of California, Sacramento, CA, July 2005 - December 2006
 - Appointed by Governor Arnold Schwarzenegger, July 2005
- Member and Chairman, California Commission on Teacher Credentialing (CCTC), 2000-2003
 - Appointed by Governor Gray Davis, and confirmed by the California State Senate, June 2000
- Superintendent of Public Education, San Diego City Schools, San Diego, CA, 1998-2005
 - Appointed Superintendent of Public Education, July 1, 1998
 - Selected as the 18th superintendent for San Diego City Schools by the Board of Education of the San Diego Unified School District
- United States Attorney, Southern District of California, San Diego, CA, 1993-1998
 - Appointed by President Bill Clinton, and confirmed by the United States Senate, November 1993
 - Attorney General's Southwest Border Representative; U. S. Department of Justice, San Diego, CA, 1995-1998

- Visiting Professor of Law, School of Law, University of San Diego, San Diego, CA, 1992-1993
 - Partner, Munger, Tolles & Olson, Los Angeles, CA, 1978-1992; Associate, 1975-1977
 - Adjunct Professor, University of Southern California Law School, 1982
 - Adjunct Professor, Occidental College, 1975
 - Executive Assistant, Los Angeles Board of Police Commissioners, 1974-75
 - Teaching Assistant, Yale College, 1973
 - Teaching Assistant, University of New Haven, 1973
- 10. Government experience: (List any advisory, consultative, honorary, or other part-time service or positions with Federal, State or local governments, other than those listed above.)**
- Vice Chairman, San Diego Ad Hoc Airport Regional Policy Committee; 2008-April 2009
 - Member, San Diego City Charter Review Committee, 2006-2007
 - Member, San Diego/Tijuana Binational Port Council, 1998
 - Chair, Southwest Border (Federal Law Enforcement) Council, 1996-1998
 - Member, Attorney General's Advisory Committee of United States Attorneys, 1995-1998
 - Chair, U.S. Border Research Technology Center, 1995-1998
- 11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)**
- Chairman, San Diego County Regional Airport Authority, December 2006 – April 2009
 - Chairman, Advisory Committee, Silicon Border, 2008-2009
 - Consultant, American Institutes for Research, 2007-2009
 - Senior Fellow, School of Education, University of California at Davis, January – April 2009
 - Lecturer at Law, Boalt Hall (Law School), University of California, Berkeley, 2006 - 2007
 - Lecturer, Stanford University Graduate School of Education, 2005 - 2006
 - Partner/Associate, Munger Tolles & Olson, CA, 1975-1992
 - Chairperson, Visiting Committee for Harvard Graduate School of Education, 2006-2009
 - Co-Chair, Pacific Council on International Policy/Mexican Council on Foreign Relations Task Force re: Rethinking the Mexican-US Border: Cooperative Solutions to Common Problems, 2008-2009
 - President/Chairman, Board of Directors, Education Sector, 2007-2009
- 12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)**

Current Memberships:

- Member, Board of Overseers, Harvard University, since 2004
- Council on Foreign Relations, since 1999
- Pacific Council on International Policy, since 1996
- City Club of San Diego, since 1992
- Association of American Rhodes Scholars, since 1975
- National Association of Former U.S. Attorneys, since 1999
- Alaska Bar Association, since 1982
- California State Bar, since 1975
- American Bar Association, since 1975

Past Memberships:

- Member, Visiting Committee for Department of Athletics, Harvard University, 2000 - 2009
- Member, Steering Committee, Smart Border Task Force, San Diego Chamber of Commerce, 2008 - 2009
- Member, Statewide Leadership Council, Public Policy Institute of California, 2008-2009
- Member, California State Board of Education, 2005 - 2009
- Member, Advisory Board, National Council for Teacher Quality, 2006 - 2009
- Member, Advisory Board, National Association of Charter School Authorizers, 2008 - 2009
- Affiliated Scholar, Center for American Progress, 2007
- Member, Council of Visitors, California Western School of Law, 2002 - 2009
- Member, Board of Directors, Democrats for Education Reform, 2007 - 2009
- Member, Board of Advisors, San Diego Dialogue, 1998 - 2001

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.
 - None
- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
 - None
- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.
 - Democratic National Committee Victory Fund-Obama Campaign, \$28,500 (2008)
 - Committee for Change, \$6500 (2008)
 - Hillary Clinton for President, \$2300 (2008)
 - Jerry Sanders for Mayor, \$320 (2008) – San Diego, CA

- William Gore for Sheriff, \$500 (2008) – San Diego, CA
- Marty Block for Assembly, \$1000 (2008) – San Diego, CA
- Scott Peters for (San Diego) City Attorney, \$320 (2008) – San Diego, CA
- Jan Goldsmith for (San Diego) City Attorney, \$320 (2008) – San Diego, CA
- Kevin Johnson for Mayor (Sacramento), \$1,250 (2008) – Sacramento, CA
- Center on Policy Initiatives, \$500 (2007) – San Diego, CA
- Rocky Delgadillo for (California) Attorney General, \$1000 (2006)
- Wall for Congress, \$175 (2005) – Michigan
- Friends of Juan Vargas, \$1800 (2005) – San Diego, CA
- Jonathan Levey for Congress, \$250 (2005) – Los Angeles, CA
- Kerry/Edwards Victory 2004, \$2000 (2004)
- Better Government Association of San Diego, \$500 (2004) – San Diego, CA
- Committee to Elect Loretta Sanchez (Orange County), \$100 (2003) – California
- Katrina Swett for Congress, \$250 (2002) – New Hampshire
- Al Gore for President, \$4600 (2000)
- Barbara Boxer for Senator, \$1000 (1998)
- Gray Davis for Governor, \$1000 (1998)

14. Honors and Awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement.)

- Elwood P. Cubberley Lecture, Stanford Graduate School of Education, 2006
- Courageous Community Leadership Award, San Diego Regional Chamber of Commerce, 2003
- Fowler Harper Fellowship Lecture, Yale Law School, 2002
- Learned Hand Award, American Jewish Committee, 2001
- Viejas Tribal Council Leadership Award, 2001
- Distinguished American Award – National Football Foundation and Hall of Fame, Walt Zable Chapter, 2000
- Thomas Jefferson School of Law; Doctor of Laws, Honorary, 2000
- Mexican American Business Professional Association (MABPA) Education Award, 2000
- Morgan Award, LEAD San Diego, 1998
- Peacemaker Award, San Diego Mediation Center, 1997
- California Western School of Law; Doctor of Laws, Honorary, 1996
- Harvard Varsity Club Hall of Fame, 1995
- University of San Diego; Doctor of Laws, Honorary, 1994
- Rhodes Scholar, 1969
- Phi Beta Kappa, 1968
- All Ivy, All New England, and All-East Football Teams, 1967

15. Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

- “Professionalizing the Occupation of Teaching in a Time of Transition” with Mary vixie Sandy, in *Measurement Issues and Assessment for Teaching Quality*, Sage Publications, 2009
- “Getting Beyond the Facts: Reforming California School Finance,” with Michael W. Kirst, and Goodwin Liu, The Chief Justice Earl Warren Institute of University of California Berkeley Law School Issue Brief, April 2008.
- “Urban Education at Work and At Risk: Reflections from San Diego,” in *Urban School Reform: Lessons from San Diego*, Harvard Education Press, 2005.
- “Making Schools Productive: The Point of Accountability and the Key to Renewal,” Education Week, April 20, 2005.
- “Threshold Order: Bilateral Law Enforcement and Regional Public Safety on the U.S./Mexico Border,” University of San Diego Law Review, Vol. 35, No. 3, Summer 1998.
- “The Rule of Law at the Margin: Crafting A Border Prosecution Policy,” Georgetown Immigration Law Journal, Vol. 12, No. 2, Winter 1998.
- “El Tercer Pais: Reimventing the U.S.-Mexico Border,” 48 Stanford Law Review 1413 (1996)
- “Reinventing Immigration Law Enforcement in the Southern District of California,” Federal Sentencing Reporter Vol. 8, No. 5, March/April 1996.

16. **Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with two copies of each formal speech.)**

I do not prepare formal texts. During the past five years I have addressed chambers of commerce, trade groups and groups of local governmental representatives regarding security and trade facilitation and aviation-related infrastructure, as well as committees in the California legislature on educational issues. Unfortunately, I have not maintained a list of speeches delivered during this period. I have retained my calendar from the past two years, and I have created a list of speeches recorded as having been given from January 1, 2007 – September 30, 2009.

2007 Date	Forum	Location
Jan 9	International Relations/Pacific Studies –Leadership Dialogue	University of California San Diego – La Jolla, CA
Jan 19	Graduate School of Education – Education Reform	University of Arkansas Fayetteville, AR
Jan 25	Institute of the Americas – “Tequila Talk”	University of California, San Diego, La Jolla
Feb 5	We The People Awards, Civic Education	Sacramento, CA
Mar 17	Committee on University Resources Annual Symposium	Harvard University, Cambridge, MA
Mar 27	Mission Valley Lions Club	San Diego, CA
Mar 30	Wallace Foundation Conference on Education Leadership	New York, NY

Apr 26	School of Education Leadership Series	University of Washington, Seattle, WA
May 7	Regionalism Course Guest Speaker	San Diego, CA
May 25	MILMEC (Retired Military Assoc.)	San Diego, CA
Jun 1	Newcomers Club	La Jolla, CA
Jun 13	Forum Fronterizo Panel w/Doris Meissner	San Diego, CA
Aug 9	San Diego Rotary	San Diego, CA
Aug 10	Point Loma Rotary	San Diego, CA
Sep 10	CEO Roundtable	San Diego, CA
Sep 11	Land Use Association	San Diego, CA
Sep 11	ExEd re Education Reform	Los Angeles, CA
Sep 14	Asian Business Association	San Diego, CA
Sep 24	Educational Testing Service Symposium	Palo Alto, CA
Sep 27	Hispanic Chamber of Commerce	San Diego, CA
Oct 24	National Assoc of School Boards Conf. Panel	New York, NY
Nov 16	Charlotte-Mecklenburg School District Leadership Meeting	Charlotte, NC
2008		
Jan 17	Harvard Faculty Roadshow	Santa Monica, CA
Jan 24	American Institutes for Research Learning Event	Washington, DC
Feb 20	Institute of the Americas – “Tequila Talk” w/Consul General Remedios Gomez Arnau	University of California, San Diego, La Jolla
Feb 21	Southern California Leadership Council Border Conference (Chamber of Commerce)	San Diego, CA
Mar 11	Builders, Owners, Managers Association	San Diego, CA
Mar 25	Downtown Partnership	San Diego, CA
Mar 26	Los Angeles Chamber of Commerce/US Chamber of Commerce	Los Angeles, CA
Apr 25	Association of Environmental Professionals	San Diego, CA
May 2	University of California Faculty Conference	Sacramento, CA
May 16	Woodrow Wilson Inst. Conference	Palo Alto, CA
Jul 22	Education Industry Conference panel	San Diego, CA
Aug 12	La Jolla Rotary	La Jolla, CA
Sep 2-3	Pacific Council on International Policy Task Force	Mexico City
Sep 12	Executive Seminar	Phoenix, AZ
Sep 16	Urban Land Institute	San Diego, CA
Oct 15	American Enterprise Institute Conf.	Washington, DC
Oct 28	San Diego International Airport Bonding & Contracting Assistance Program	San Diego, CA
Oct 29	University of San Diego Leadership Series	San Diego, CA

Nov 20	Hunter College Faculty Seminar	New York, NY
2009		
Jan 22	Institute of the Americas – “Tequila Talk”	University of California, San Diego, La Jolla
Feb 5	University of San Diego Leadership Series	San Diego, CA
Feb 13-14	Pacific Council Task Force Meeting	San Diego, CA
Mar 31	Democrats for Education Reform	Denver, CO
Apr 15	Border Action Network	El Paso, TX
May 1	U.S. District Court, Southern District of California Judges Conference	Newport Beach, CA
May 21	Office of Intelligence Operations Coordination, CBP	Washington, DC
May 27	City Club	San Diego, CA
May 28	Border Patrol Chiefs Conference	El Paso, TX
Jun 4	Homeland Security Advisory Council	Albuquerque, NM
Jun 9	Governor’s Homeland Security Advisory Committee	Arlington, VA
June 18	Fresh Produce Association	Tucson, AZ
June 18	Border Action Network	Nogales, AZ
Jun 23	Express Association of America	Washington, DC
Jun 25	US Mexico Chamber of Commerce Conference	Washington, DC
Jul 9	Testimony before House Government Relations Subcommittee	Washington, DC
Jul 22	PERF Immigration Summit	Phoenix, AZ
Aug 5	Local Law Enforcement Stakeholders	Calexico, CA
Aug 5	Local Law Enforcement Stakeholders	El Centro, CA
Aug 6	Border Rights Group	Yuma, AZ
Aug 10	Southwest Border Task Force	El Paso, TX
Aug 10	Border Security Conference Panel	El Paso, TX
Aug 12	Border Enforcement Security Task Force	San Antonio, TX
Aug 12	Denver City Club	Denver, CO
Aug 17	Trade/Facilitation Stakeholders	Blaine, WA
Aug 18	Local Stakeholders	Port Angeles, WA
Aug 19	Border Stakeholders	Seattle, WA
Aug 19	Washington Council on International Trade	Seattle, WA
Sep 2	Annual Homeland Security Conference	Monterey, CA
Sep 10	Border Rights Stakeholders	San Diego, CA
Sep 10	Institute of the Americas Tequila Talk	La Jolla, CA
Sep 11	Transborder Institute/LEAD Meeting	San Diego, CA
Sep 21	Assistant U.S. Attorney’s Office Conference, Southern District of Texas	Houston, TX
Sep 23	Southwest Border Sheriffs Coalition	Winterhaven, AZ

17. Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

My experience in both the private and public sectors qualifies me for the position of Commissioner, U.S. Customs and Border Protection in the Department of Homeland Security. As a corporate lawyer at Munger, Tolles and Olson (1975-1992), I practiced commercial law in a business context, including numerous matters involving trade and finance. Of particular relevance was my engagement with a variety of contractual and intellectual property issues, including piracy and counterfeiting. Regarding the latter, I represented the Motion Picture Association of America in a protracted dispute with the Government of Venezuela.

During the Clinton Administration, I served as the United States Attorney for the Southern District of California (1993-1998) and as the Attorney General's Southwest Border Representative (1995-1998). These positions provided deep involvement and extensive leadership and interagency opportunities in the matters of border security, immigration and narcotics enforcement, facilitation of legitimate cross-border transit of people and goods, coordination of federal strategies and activities with local and state law enforcement agencies, and cooperative cross-border public safety efforts with Mexican authorities. An important dimension of this work involved demonstrating that enhanced security is part and parcel of supporting increased trade. I participated during the Clinton Administration as a principal proponent of the "trusted traveler" SENTRI program, first implemented at land ports of entry in Southern California. More recently, my work as Special Representative for Border Affairs and Assistant Secretary for International Affairs in DHS has provided me further opportunities to advance this perspective and experience in implementing it.

My position as Chairperson of the San Diego County Regional Airport Authority (2006-2009) provided me significant experience with issues attendant to major infrastructure, including matters of security and facility master planning and construction. Finally, my involvement in the education sector [as Superintendent of Public Education in San Diego City Schools (1998-2005) and as California Secretary of Education (2005-2006) and Member of the State Board of Education (2005-2009)], has afforded me additional useful experience and knowledge of state and local policy making processes.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. **Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.**
 - Yes.
2. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**

- No.
3. **Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.**
- No.
4. **If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.**
- Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.**
- In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.
2. **Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**
- In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.
3. **Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.**
- I have been involved with legislation concerning educational issues during my service as California Secretary of Education (2005-2006), Member of the California State Board of Education (2005-2009), Member and Chairman of California Commission on

Teacher Credentialing (2000-2003) and Superintendent of Public Education in San Diego City Schools (1998-2005). These issues included substantive (curriculum, professional development and assessment) and budgetary matters. I visited members of the legislature and occasionally testified before the senate and assembly education committees.

4. **Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)**

- In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. **Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.**

6. **The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:**

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (e.g., March to December 1995), and the number of hours spent on the representation.

- Not applicable.

D. LEGAL AND OTHER MATTERS

1. **Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.**

- No.

2. **Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.**

- No.

3. **Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.**

- I was involved in a divorce/child custody proceeding in Los Angeles Superior Court arising from the dissolution of my first marriage. The litigation resulted in a decree of dissolution and judgment of joint legal custody of our daughter in August 1983.
- In 1983, following a series of surgeries arising from complications resulting from a severely broken right leg, I commenced a medical malpractice action against the attending physician. I subsequently dismissed the action voluntarily.
- As a practicing lawyer at Munger, Tolles & Olson from 1975 – 1992, I was sued along with the law firm in connection with the two following matters:
 - I (and Munger, Tolles & Olson) was sued in Los Angeles Superior Court in June 1985 in a cross-complaint by a slumlord against whom I had brought suit (on a pro bono basis) on behalf of the nonprofit Las Familias Del Pueblo organization. The cross-complaint was dismissed on demurrer in 1985.
 - Together with our client (a securities firm), my law firm, (Munger, Tolles & Olson) and I were sued in Los Angeles Superior Court in August 1985 for malicious prosecution by a customer of the brokerage. The suit was settled before trial on a “nuisance” basis by our firm’s insurance carrier; the firm’s client proceeded to trial against the plaintiff and judgment was entered in its favor.
- In addition, a former paralegal that I had hired to work at Munger, Tolles & Olson brought an EEOC complaint alleging racial discrimination after the firm terminated his employment based on my recommendation due to unsatisfactory job performance. After an initial inquiry, EEOC closed the case in March 1991 with no further action involving me or the law firm.
- Since 1992, I have been engaged continuously in public service as United States Attorney for the Southern District of California (1993-1998); as Superintendent of Public Education in San Diego City Schools (1998-2005); as a Member and Chairman of the California Commission on Teacher Credentialing (2000-2003); as California Secretary of Education (2005-2006); as a Member of the California State Board of Education (2005 – 2009); and as Board Chair for the San Diego County Regional Airport Authority (2006 - 2009). While serving in these positions, I have been named

as a defendant in several lawsuits related to policy issues and to decisions made as part of my official duties. None of these complaints led to a judgment of personal liability against me.

4. **Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.**
 - No
5. **Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.**
 - No additional material information except as set forth above.

E. TESTIFYING BEFORE CONGRESS

1. **If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?**
 - Yes.
2. **If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?**
 - Yes, except as otherwise required by law.

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

United States Senate
Committee On Finance

HEARING ON THE NOMINATION OF MR. ALAN BERSIN
TO BE COMMISSIONER OF CUSTOMS AND BORDER PROTECTION
MAY 13, 2010

Questions From Senator BaucusQuestion 1:

CBP needs to strike the right balance between its historic responsibility of facilitating trade with its new responsibility of securing our borders. These two interests are equally important. But they are not mutually exclusive. What will you do to appropriately balance these two priorities? How can we refocus CBP's efforts on trade facilitation? How will you ensure top officials within CBP are accountable to all stakeholders, including Congress?

Answer: I strongly believe that securing our borders and facilitating trade and travel are not only complementary missions, but they are actually mutually reinforcing. By focusing law enforcement efforts on the relatively small fraction of goods and people that pose a threat to public safety and economic prosperity, we can reduce the costs and inconvenience to legal commerce and travel, strengthen our country's economic competitiveness, and build long-term sustainability to support our economic recovery. This risk-based focus will simultaneously enable us to devote more time and resources to the detection and interception of potential threats to public safety, further enhancing our national security.

Advancing and implementing this notion—that security and facilitation are mutually reinforcing goals—is one of my top priorities as Commissioner, and I have identified five specific ways to accomplish this.

First, we will expand and enhance a risk-based targeting approach. Our central challenge in managing the flows of people and goods is to effectively and efficiently segment cargo and travelers based on the associated level of risk and threat. We will separate those people and goods about which we know the most from those about which we know the least. We do this now by directing algorithms at people and cargo that are high risk, but I have directed that we use algorithms to also identify those that are low risk, which will aid in confirming the legitimacy and expediting the processing of lawful trade and travel.

Eighty or ninety percent of the problems we experience are caused by an estimated five to fifteen percent of the people and trade we process as they approach our borders. The vast majority of people and goods pose little or no risk. Focusing our efforts on the unknown and lesser known

traffic allows us to redistribute our law enforcement resources and more efficiently utilize the time and expertise of our officers and agents.

Second, we will expand our trusted traveler and shipper programs and we will encourage widespread participation in them. We will work to demonstrate to the public and private sectors that participating in these programs—including sharing necessary information with us in a timely manner—is actually in their best interest. In trusted shipper programs, it will allow us to lower the cargo's risk score and process goods much faster. For trusted travelers, advance information allows CBP to conduct risk assessment that expedite processing of those who present the lowest risk. Today, there are 9,800 members in the Customs-Trade Partnership Against Terrorism (C-TPAT), our partnership with private industry, and 750,000 participants in our trusted traveler programs: Secure Electronic Network for Travelers Rapid Inspection (SENTRI), NEXUS, Free and Secure Trade (FAST), or Global Entry. We will aim to significantly expand those numbers.

Third, we will “push the borders out,” including moving appropriate processing operations away from the physical U.S. borders. Particularly with regard to trade and travel, we must understand that border management cannot and must not occur solely at the jurisdictional line. While we must continue to utilize our unique authorities at the border, we must also understand that people and goods move across our borders as flows—flows that can begin well before they reach the physical borderline.

Our job is to secure and expedite those flows. Pushing our borders out will ensure the security of people and goods earlier in the flows and throughout the entirety of the flows. Doing so will both enable more efficient processing upon arrival into the United States and will add layers of enhanced security. This will inherently involve working with our partners to secure the movement of commerce from beginning to end: from factory floor; through a particular method of conveyance (ship, rail, truck, or air); across the physical border; and to its ultimate destination. This will relieve the pressure that builds at the ports of entry and can reduce wait times and minimize costs to business since products are moving faster through the supply chain to market. Not everything needs to happen at the physical border itself.

However, understanding that supply chains extend outside the United States, we will also work to establish and expand agreements with other countries to build confidence in, and seek validation of, their supply chain security processes. This is most critical with our two North American Free Trade Agreement (NAFTA) partners: Canada and Mexico. That is why I have directed that we significantly improve our bi-national and multi-national coordination with these and other key partner nations. We are already working closely with our partners, but more needs to be done to advance these partnerships. We must move toward a continental security approach: securing and expediting the flows of people and products into, out of, and within the North American continent.

Fourth, we will build, expand, and modernize ports of entry, as appropriate. Inadequate and outdated supporting infrastructure at and around the ports of entry remains a critical problem. Much of the existing infrastructure was built decades ago and was never intended to house the type of technology or the number of personnel needed in today's globalized commercial and post-9/11 security environments.

We need to rethink how we manage the border. More ports with adequate supporting infrastructure mean more secure access to more markets. This is good for trade, good for security, and good for the economy.

Finally, we will significantly improve our partnership with the trade community. This is critically important to achieving our goals of expediting the lawful flows of people and goods and enhancing the security of our nation. Many in the trade community have made significant investments to raise the security bar across their operations and have devoted countless hours helping us develop and implement our security programs. We have been and continue to be tremendously appreciative of their support, guidance, expertise, and patience. Our relationship through forums, such as the Commercial Operations Advisory Committee (COAC), the Trade Support Network, and the Trade Ambassadors has been indispensable to advancing both security and facilitation of trade.

Recognizing the value of these relationships, I have directed that CBP increase its collaboration with, and accountability to, stakeholders, and this has already begun. On a weekly basis staff from the Office of Field Operations' Trade Operations Division, the Office of Trade Relations, and the Office of International Trade interact via teleconference to discuss efforts to enhance and expedite trade facilitation. This occurs within the framework of the Trade Facilitation Subcommittee to the COAC. The same offices have held Webinars with the trade community as outreach on new policies before implementation, in an effort to enhance the community's understanding and preparation. Just recently CBP and the Consumer Product Safety Commission held one such Webinar.

Additionally, to further emphasize the importance of understanding that security and facilitation are mutually reinforcing goals, I recently convened a Trade Conference in Washington for almost 200 of CBP's trade policy managers and field operators from all over the country. As Commissioner, I have set a new tone for the agency and have created a sense of urgency in improving our trade operations and trade relationships. I have made outreach to the private sector a top priority.

Under my leadership, CBP will continue to provide monthly briefings for members of the Senate Finance Committee staff on topics including current trends, initiatives, contemplated policy updates or changes, and upcoming rulemaking. These meetings foster collaborative dialogue between CBP and the Committee. CBP will continue to tailor the monthly briefings to address issues of interest to the Committee. In addition, I stand ready to meet with members and staff of the Committee to discuss issues of interest or concern.

Question 2:

Long stretches of rural America are at a disadvantage when it comes to accessing foreign markets. Agriculturally-rich parts of our country, such as Montana, depend on the flow of trade across our borders. But Montana needs more resources to keep this trade flowing. The customs reauthorization bill I introduced with Senator Grassley establishes a pilot

program to expand the number of 24-hour commercial ports along under-served portions of our land borders. What are your plans to increase resources on the northern border, especially in underserved areas like Montana?

Answer: I understand and appreciate the Committee's concern that CBP provide adequate resources to the northern border. Since 2005, CBP has increased the number of CBP officers on the northern land border by 551. This is an increase of 16.8%. While there are staffing constraints in the current fiscal year, you have my assurance that CBP will strive to staff locations of need. In the State of Montana, CBP has three 24-hour commercial ports of entry: Roosville, Sweetgrass and Raymond. In November 2009, CBP changed the designation of Roosville from a permit port of entry to a commercial port of entry, which increased the number of commercial ports of entry in Montana from two to three.

I have emphasized to my senior leadership that the northern border is among my top priorities and have specifically directed that we advance our efforts to improve security and expedite the flow of legitimate trade and travel there. The northern border is a unique and challenging environment, and CBP has taken significant steps to increase staffing and assets, leverage partnerships, develop improved intelligence, employ risk-based targeting systems, and develop and utilize the newest technologies to address and reconcile various gaps and vulnerabilities. However, given the unique nature of the northern border environment, I have directed specific focus on improving collaborative efforts with our federal, state, local, and Canadian partners in building on this foundation. Initiatives are also underway to enhance security along the northern border ranging from information sharing efforts with our Canadian counterparts and other federal, state, and local agencies, to the research and development of new technologies suitable for the northern border's unique climate and terrain.

Question 3:

I am concerned that CBP recently shortened the operational hours at the Port of Wild Horse. I have received numerous letters from Montanans who share my concern about CBP's decision. Many of our ranchers and farmers changed their business practices to take advantage of the expanded hours. And I understand these expanded hours utilized existing CBP staff and resources. Given the disruption caused by these shorter hours, what kind of analysis did CBP conduct in deciding to reduce the operational hours at the Port of Wild Horse? What will you do to ensure Montana's farmers and ranchers have full access to the Port of Wild Horse? What are your plans to ensure Montana farmers and ranchers have full access to the ports on the northern border? Given the disruption caused by these shorter hours, what kind of analysis did CBP conduct in deciding to reduce the operational hours at the Port of Wild Horse?

Answer: CBP will extend the summer hours through October 2010 and will continue the arrangement again next year from March through October 2011. As part of this continued extended hours study, CBP will participate in the local working group to conduct extensive outreach with the local community and encourage use of the port. As part of the study, CBP will continuously monitor traffic volume of both commercial and private vehicles and will explore

the possibility of extending a period of the pilot to 24-hour operations. We look forward to working with you, your staff, and the trade community in Montana on this project.

Question 4:

Counterfeit medicines threaten the health of our consumers. And pirated goods threaten the economic viability of our software and recording industries. Our customs reauthorization bill gives CBP stronger authority and resources to seize goods that infringe U.S. intellectual property. What are your views on these provisions? Does CBP currently have sufficient tools and resources to enforce U.S. IP laws? What is your strategy to ensure proper enforcement and collection of penalties owed to the United States? And how will you coordinate with other agencies to improve your IP enforcement efforts?

Answer: I recognize the vital role CBP plays in protecting consumers from harmful medications and supporting the economic viability for all of U.S. industry, including the copyright industries through its trade facilitation function. Security and trade are two sides of the same coin, and we must protect our country while helping to ensure that our industry sectors remain competitive in a global trading environment.

At the request of Congress, CBP has prepared a Five-Year Strategy for IPR enforcement that is a ground-breaking effort to enhance CBP's IPR enforcement. This strategy, which CBP has transmitted to Congress, lays out specific initiatives for improving IPR enforcement. These include private sector partnership programs to facilitate legitimate trade, enhanced targeting and training to increase interdictions of IPR infringing goods, and levying penalties and conducting audits more effectively to deter IPR violations. The strategy leverages our resources and partnerships with U.S. industry, other federal agencies, and foreign governments in a comprehensive plan to attack IPR infringement throughout the international trade process. Resources would be allocated to investments in human capital, technology procurement, training, travel/temporary duty assignments, and administration to support implementation of the strategy.

Although CBP has prepared the Five-Year Strategy, CBP is committed to working now to enhance and improve its IPR enforcement. CBP is expanding its joint operations with willing trade partners and is also conducting additional enforcement operations, some in conjunction with Immigration and Customs Enforcement (ICE).

CBP is also working with the Intellectual Property Enforcement Coordinator to implement the Administration's Joint Strategic Plan for IPR enforcement which includes a review of current law. CBP is working on several initiatives in this regard to enhance IPR enforcement. These include the following:

- enhancing information sharing with rights holders to assist enforcement;
- providing relief from penalties for parties who voluntarily disclose IPR violations to CBP; and
- seeking authority to penalize exporters of IPR infringing goods.

The President's FY 2011 budget request includes a request for \$25 million for CBP for IPR enforcement. This funding would be used to implement CBP's Five-Year IPR Strategy, and CBP will deploy personnel in accordance with the objectives of the Five-Year Strategy and the Resource Optimization Model (ROM) that CBP submits to Congress as required by the Safety and Accountability for Every (SAFE) Port Act.

With respect to specific provisions in the reauthorization bill regarding seizures, although the language proposed in Section 238 is a step toward resolving the issues pertaining to authority to share samples with rights holders prior to seizure of goods, it may not go far enough to expressly authorize CBP to disclose information necessary for rights holders to provide an opinion as to whether detained items are genuine or counterfeit. CBP recommends that this provision be modified to authorize CBP to disclose at its discretion to relevant rights holders not only samples of the items themselves, but also photographs or descriptions of detained items, and packaging or documentation accompanying such items, sufficient to allow the rights holders to provide an opinion as to whether the items are infringing. CBP also recommends that this provision be modified to authorize CBP to disclose the same types of disclosures to assist in enforcement of all intellectual property rights enforced by CBP, i.e., copyrights, trademarks, and trade dress as well as infringing goods subject to International Trade Commission exclusion orders, and products violating the Digital Millennium Copyright Act.

Question 5:

It is important that travelers, whether originating from the United States or coming to visit the United States, are aware of U.S. IP laws. Does CBP play a role in educating these travelers on U.S. IP laws? Does CBP need greater authority to seize goods when the associated trademark or copyright is not recorded? When inspectors encounter suspicious goods that appear to be counterfeit or piratical, but the trademark or copyright has not been recorded at CBP, how do inspectors respond? And what is the status of the 2004 proposed rule to facilitate the recordation process and strengthen the enforcement procedures for sound recordings, motion pictures and other audiovisual works?

Answer: I agree that it is important that both visitors and citizens of the United States are aware of American intellectual property (IP) laws while within our borders. As Commissioner, I will ensure that CBP works with our federal partners and private sector stakeholders to educate the traveling public.

CBP has begun this process, but more needs to be done. CBP currently publishes information about the IPR laws regarding importation of infringing merchandise in the "Know Before You Go" pamphlet and an informed compliance publication on intellectual property rights. Both documents are available on the CBP.gov website. These publications serve to educate travelers before they leave the U.S. and may possibly purchase counterfeit or piratical goods available abroad. Educating the consumers as they enter the U.S. at one of our ports of entry having already made the purchases abroad may be too late in the process to be an effective deterrent measure. CBP recommends that information for travelers regarding violations of IPR and

educational campaigns toward that end may best be coordinated by other government agencies such as the Department of State and the private sector.

CBP officers who encounter counterfeit or clearly pirated goods that have not been recorded with CBP have authority to seize the goods pursuant to civil and criminal provisions of the United States Code.

CBP is reviewing the 2004 proposed rule to facilitate the recordation process for audio/visual works. The agency has recently completed a feasibility study on linking its recordation system with the registration systems of the U.S. Patent and Trademark Office and the Copyright Office. The study found that CBP's recordation process accounts for a negligible percentage of the time required for completion of the registration/recordation process. Recordation processing averages two days while copyright registration takes nine to twenty-two months. In addition, private sector stakeholders, through CBP's Federal advisory committee, the Advisory Committee on Commercial Operations (COAC), have indicated that the proposed rule does not address current concerns. Industries that rely on copyright protection for goods that are not sound recordings, motion pictures, and other audio-visual works would not benefit from the proposed rule, and for many audio/visual works, online piracy has replaced optical disc piracy as the top enforcement issue.

Question 6:

In the past three years, how many IPR audits were conducted? With what result? What was the total amount of penalties assessed and collected? From how many companies? Does CBP have a mechanism for using the information gathered from IPR audits to sharpen border enforcement?

Answer: Data showing the total number of audits (2007-2009) and the total penalty recommendation/assessment for the same period are provided as follows:

FISCAL YEAR	NUMBER AUDITS COMPLETED	PENALTIES ASSESSED	PENALTIES COLLECTED	NUMBER OF COMPANIES COLLECTED FROM
2007	17	\$502,984	\$20,000	1
2008	12	\$0	\$11,360	1
2009	16	\$902,326	397,264	1
	45	\$1,405,310	428,624	3

The Commercial Enforcement Analysis and Response (CEAR) process is designed to identify high risk violations, determine suitable enforcement responses to those violations, and promptly carry out an enforcement action in a uniform manner. The multidisciplinary CEAR teams meet regularly at the service ports across the country, as well as the at the CBP Headquarters level.

During CEAR meetings, the team of experts including CBP Regulatory Audit, bring forward identified violations, and develop a course of action for that violation. Commonly, referrals are made by Regulatory Audit based on findings during the audit of a company, including violations related to IPR. The CEAR group may develop and implement a plan based on the Regulatory Audit findings, including referrals for penalty, monitoring of importer activity, and referrals for further investigation to be conducted by ICE.

Question 7:

As recent CBP seizure statistics indicate -- so many infringing products are known to come from a relatively small number of our trading partners. (Take China, for example, which was the source for 79 percent of the \$260M worth of IPR-related seizures performed in FY 2009. Other major violators include Hong Kong, India, Taiwan and Korea, which, with China, account for approximately 90 percent of seized IPR-infringing imports.) What plans are being undertaken by CBP and its various components to help reduce the supply, such as to coordinate with those countries' customs officials on measures to address these problems at their source?

Answer: I recognize the global dimension of the counterfeiting problem and have been actively engaging with foreign customs administrations bilaterally and in international forums such as the World Customs Organization (WCO) and Asia-Pacific Economic Cooperation (APEC). CBP has been engaged in several successful joint operations with foreign customs and law enforcement, including the European Union, Canada, and Mexico, and is pursuing additional joint operations. CBP serves as a key subject matter expert advising the United States Trade Representative (USTR) in the ongoing Anti-Counterfeiting Trade Agreement (ACTA) negotiations.

Recently, I dispatched the Deputy Commissioner to China to address this critical issue. Coming out of that visit, CBP and the General Administration of China Customs (GACC) now have in place a Memorandum of Cooperation (MOC) to strengthen border enforcement of IPR in China through exchanges of enforcement information, sharing of practices, and cooperation with the private sector. Following on this important initiative, CBP and GACC are developing an action plan that will serve to expand and accelerate implementation of various aspects of the MOC.

CBP takes pride in being recognized as a world leader in IPR border enforcement, particularly in the areas of targeting and risk management. At the same time, it recognizes the need for much additional effort on its part in this country. In the past year, CBP has provided subject matter experts for regional training and capacity-building programs in Uganda, Mali, Ukraine, Thailand, Peru, Brunei, India, Egypt, Panama, Argentina, Vietnam, and the Dominican Republic.

CBP has also posted attachés at several source countries for counterfeit and pirated goods, including China, Hong Kong, India, and Korea. The attachés work with representatives of the host countries and embassy colleagues on a range of trade law enforcement issues, including IPR. Our engagement with Taiwan is one notable success story in working to correct the IPR

problems that used to plague our bi-national relationship. The U.S. now enjoys an excellent relationship with Taiwan IPR enforcers.

Question 8:

A lack of proper review upon the initial entry of goods entering the United States can lead to a profound gap between what is being described on the manifest and what is actually being imported—and I am concerned by the degree to which this is happening. According to the CBP, commodity code classification errors result in millions of dollars lost each year due to duty underpayments, yet CBP officers put just 0.06 percent of the estimated 100 million import lines through post entry compliance examinations. What more can we do to ensure that the manifest descriptions of shipments accurately represent the goods that are entering this country?

Answer: I appreciate the Committee's concern over lost revenue resulting from commodity code classification errors. Additional procedural background may help clarify the problem. The import process involves three stages, with varying types of information at varying degrees of specificity provided during each stage. These can be divided into: (1) manifest data; (2) cargo entry data; and (3) summary data. This data is used differently by the security, narcotics, and trade arms of CBP, and as cited, differs in quality and specificity. CBP requires that import data provided during the summary phase (when duties are finally paid) is more refined and discrete, resulting in distinct differences between manifest data and summary data.

Correcting manifest data and correcting misclassification errors at the summary data stage are two completely separate concerns. Misclassification errors at the summary data stage are more than a data quality issue; they are treated as an enforcement issue because revenue collection is involved during that part of the import process. Additionally, even if data is corrected at the manifest stage, it could still be wrong at the summary stage, given the differences in specificity. This is why CBP focuses much of our revenue enforcement effort at the summary stage, as there are no duties being paid at the time of manifest.

CBP conducts a Trade Compliance Measurement (TCM) annually each fiscal year to collect objective statistical data to determine the compliance of commercial imports with U.S. trade laws, regulations and agreements. The TCM is also used to estimate the revenue gap, a statistically calculated estimate of potential revenue loss from noncompliance.

Methodology

CBP has conducted a Compliance Measurement (CM) annually since FY 1995 to survey the universe of all import transactions entering the United States. In FY 2006, the CM program was split into a TCM for trade compliance, and a separate cargo Security CM (SCM) for supply chain security measurement related to anti-terrorism (referenced here only to make a distinction between the trade TCM).

The TCM methodology is the standardized and accepted means for determining compliance for trade objectively, and it has served as a starting point for other statistical measurement programs

within CBP. In addition, the TCM program has also been reviewed and approved by groups such as Government Accountability Office (GAO), the Department of Homeland Security Office of Inspector General (DHS IG), and outside auditors such as KPMG each year as part of the annual CBP Financial Audit.

The TCM program is focused on gathering information on trade and revenue compliance post-release. Samples are selected using a stratified random sampling methodology based on import characteristics, and reviews are conducted in a standardized way. Findings are recorded by field officers conducting the reviews and are statistically weighted to make an objective statement about compliance for all imports.

TCM forms the foundation of CBP's risk management approach in trade. It not only provides a baseline measure and trend for trade compliance and the revenue gap, but provides a valuable feedback loop directly back into targeting and operations. Many times TCM confirms our targeting efforts on known risks, but it also helps CBP identify emerging and previously unseen risks.

Measures

At mid-year FY 2010, the trade compliance rate as measured by TCM was 98.5%. TCM measures also show that trade compliance rates for CBP partnership programs such as Importer Self-Assessment (ISA) and major accounts were even higher than the overall rate, meeting or exceeding 99% at mid-year FY 2009. The mid-year FY 2009 revenue gap estimate is 1% of the \$30 billion dollars collected; the lowest in several years.

Question 9:

CBP has developed state-of-the art programs to detect imports that may threaten our national security. But goods that threaten the health and safety of American consumers or violate U.S. IP continue to cross our borders undetected. Our customs reauthorization bill directs CBP to apply its national security targeting methods to detect health, IP, and other trade violations. Can the information CBP currently collects for security purposes help your agency do a better job of assessing trade risks in advance of the shipments arriving at U.S. ports? Can this information help CBP better utilize its resources by facilitating the movement of low risk goods while dedicating more time on those that pose the highest risk to the U.S. economy?

Answer: I am open to the idea of using advanced security data, including Importer Security Filing (ISF) data, commonly known as "10+2 Data," for commercial enforcement purposes. It is important to note that since duties are paid at a later point in the entry process, such data may be of limited use in commercial targeting and enforcement for revenue violations, but I fully support deploying security targeting mechanisms to trade enforcement activities, as appropriate. However, we will also continue our efforts to maximize the effectiveness of targeting efforts using the data that is available, and we remain committed to developing new techniques and methodologies, such as risk modeling. I am committed to working with the Committee and trade community to assess the merit and feasibility of such a proposal.

Question 10:

Goods that infringe U.S. IP pose significant risks to consumer health and safety and our nation's economy. CBP shares the responsibility to protect American consumers from these risks, but has failed to devote sufficient resources to these missions. Increased numbers of import specialists, trade specialists, inspectors, attorneys, auditors, and criminal investigative agents should result in more seizures, more fines and prosecutions, less infringing products and a stronger market for legitimate products. The customs reauthorization bill Senator Grassley and I introduced authorizes specific staffing dedicated to fulfilling CBP's trade priorities. What is CBP's current staffing level for IP enforcement and import safety? How have these levels changed in the last 5 years to respond to changing risks and priorities? And what are your plans for hiring, training, and deploying IP specialists?

Answer: In the past five years, CBP has undergone a number of organizational changes to combat the ever-changing risks we face at our Nation's borders. Notably, CBP has created and staffed divisions at the Headquarters level within the Office of International Trade to focus exclusively on two of our priority trade issues, IPR and Import Safety. In addition, the Office of International Trade has created a centrally-located targeting unit to enhance the efforts of the government to address import safety issues. The Import Safety Commercial Targeting and Analysis Center serves as a fusion center for CBP and other government agencies to combine resources and share targeting and analysis expertise and tools in order to achieve our common missions of protecting the American public from harm caused by hazardous and unsafe imported products and goods. CBP is also a partner in the interagency National IPR Coordination Center. Our targeting and interdiction successes have enabled CBP to be the leading source of referrals to the IPR Center for criminal investigation.

CBP's approach is to leverage its resources by training frontline officers to recognize multiple risks, and to provide dedicated experts behind the frontlines to advise and assist frontline officers with the complexities associated with IPR enforcement. The Administration's concern is that dedicating resources to particular trade functions (such as IPR enforcement) will constrain the Executive Branch's ability to organize the operations of the agency to meet changing requirements and limits its flexibility to deploy resources and staff to respond to changing threats.

The President's FY 2011 budget requests \$25 million for CBP for IPR enforcement, which would be used to implement the 5-Year Strategy for IPR. With regard to that portion of the funding that would be allocated to human resources, both existing personnel and new hires would be trained and deployed to implement the strategy. Numbers of personnel hired in each specialty will be determined based on the strategy and ROM that CBP submits to Congress as required by the SAFE Port Act.

Import Specialist teams are aligned with the industries, tariffs, and issues identified in the trade strategy plan for the anti-dumping/countervailing duty, IPR, textiles, import safety, and revenue priority trade issues (PTI). Import Specialist teams concentrate their efforts on issues related to

more than one PTI and the team structure focuses the Import Specialist workforce on CBP's mission of counter-terrorism, enforcement, and trade compliance and facilitation. As an example, a commodity team focusing on an industry such as wearing apparel may be involved with several of the PTIs in the course of a single day. Clearly they are involved with the textile PTI, but the transaction they are reviewing may also involve a garment which bears an infringing mark of a noted retail outlet (IPR). Additionally, if the transaction involves a child's garment suspected of not being manufactured to flammability standards, they would be dealing with import safety. This is why historically CBP does not dedicate Import Specialists to any one PTI. By aligning as we do, we perform a multifaceted trade mission that protects our intellectual property, the health and safety of the American Public, and our economy.

In July 2009, OFO finalized the update to the Import Specialist Allocation Model (ISAM). The ISAM equitably distributes Import Specialist positions based on certain workload and risk factors. The ISAM is updated approximately every three years to reflect changes in trade and the agency's priorities. The ISAM does not predict the optimal staffing level for Import Specialists. The ISAM equitably allocates a fixed number of positions to the ports based on the relative distribution of the quantity and complexity of the work. To determine the appropriate staffing levels at the ports of entry, the ISAM focuses on the critical trade programs, significant workload elements and the Agency's priority trade issues, which included IPR and Import Safety.

OFO has a combined resource optimization model/resource allocation model for tracking the staffing of Fines, Penalties and Forfeitures (FP&F) and Seized Property Specialist positions. The model is based on assigned caseloads/number of items seized for each position respectively. This breakout is based on the total number of violations—whether trade or enforcement related to determine staffing levels for the agency as a whole and for each of the Service Ports individually. OFO has just completed an upgrade of its FP&F Officer position nationwide due to the increased complexity of the position relating to CBP's diverse enforcement mission, and it is in the interagency process of reviewing the FP&F paralegal and Seized Property Specialist positions for an upgrade of the journeyman positions.

Question 11:

American consumers are increasingly concerned about the safety of imported toys and other children's products. How is CBP responding to these concerns? How will CBP work with other agencies to prevent dangerous products from getting into the hands of our children? Do you believe a forum, such as the Import Safety Working Group proposed in my customs reauthorization bill, would help in improving the federal response to prevent the importation of goods that could harm U.S. consumers?

Answer: I agree with the Committee that import safety is a very serious concern, and under my leadership, CBP will continue to treat it as a Priority Trade Issue (PTI). As a PTI, CBP will focus its resources, and enforcement and facilitation efforts, by using a strategically layered, risk-informed approach on high risk areas that are concerns to U.S. consumers.

CBP has had a long history of working with other government agencies and will continue to fortify these partnerships by working together in addressing import safety concerns. In particular, CBP has been working very closely with the Consumer Product Safety Commission (CPSC), which regulates toys and children's products. CBP and CPSC have been successful in multiple areas, including but not limited to joint targeting and operations as well as co-location, partnership programs. These collaborations between CBP and CPSC are just some examples of how CBP works with other government agencies to prevent dangerous products from getting into the hands of our children.

CBP has always benefited from better communication among our federal partners, and interagency forums encourage dialogue among the regulating agencies while permitting the facilitation of trade of legitimate cargo at the border. CBP is currently an active member of two workgroups: the Import Safety and Food Safety Interagency Workgroups. CBP believes that the continuation of such groups is necessary to maintain its course of addressing import safety in a collective manner.

CBP is responding to these concerns by increased activity and cooperation with many other agencies that play a role in the protection of the American consumer. CBP continues to partner with ICE in the national initiative known as "Operation Guardian" under the Action Plan for Import Safety, which was reported to the President in November 2007. Under "Operation Guardian," various recommendations and action steps have worked toward the prevention of, intervention of, and response to potential health and safety risks associated with imported products. Based partially on the success of "Operation Guardian," CBP initiated the creation of port Import Safety Committees (ISCs) that serve to advance import safety enforcement efforts as well as identify methods to improve mechanisms for coordination and cooperation among other agencies. These port ISCs bring together other federal government agencies to discuss and implement approaches to interdict a variety of illegally imported products that may bring harm to the American consumer.

More specifically, ports such as Savannah, Georgia and New York, New York have run operations that seek to examine importations of toys by importers to determine compliance with lead standards, IPR, small parts, and country of origin marking. An operation undertaken by the Port of Seattle has been focusing on baby rattles, pacifiers, bike helmets, and cigarette lighters as they relate to CPSC marking requirements, registration, lead content, strangulation hazards, and small parts. Each of these ports work in conjunction with co-located CPSC Compliance Investigators to protect the American consumer.

Question 12:

CBP plays an important role in administering and enforcing our trade laws. And CBP's policy decisions have a sweeping effect on international trade. As a result, H.R. 4954, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) required CBP to consult with the trade community, other agencies, and Congress before making significant policy decisions. CBP, however, has persisted in making major decisions without proper consultations. And this has resulted in policies that violate our international trade

obligations. What safeguards are you putting in place to ensure that CBP consults fully with this Committee and other agencies before making such decisions?

Answer: You have my commitment that under my leadership, CBP will improve its level of consultation with the Senate Finance Committee. Consultation between the executive and legislative branches is essential to sound government, and I am committed to improving the transparency of CBP's decisional processes and its collaboration with external stakeholders. In my brief tenure as Commissioner, I have established a Trade Integrated Planning and Coordination Cell (TIPCC) to design CBP's future trade business processes and manage trade risk. I have directed that the TIPCC work closely with the trade community, Congress, and other stakeholders from the outset of this process. I have also directed that CBP continue to provide monthly briefings for members of the Senate Finance Committee staff on topics including current trends, initiatives, contemplated policy updates or changes, and upcoming rulemaking. These meetings foster collaborative dialogue between CBP and the Committee. CBP will continue to tailor the monthly briefings to address issues of interest to the Committee. We will also flag such issues in monthly meetings with USTR.

Question 13:

The customs reauthorization bill Senator Grassley and I introduced requires CBP to consult with Congress on (1) the status and substance of international negotiations relating to the customs and trade laws of the United States, or of foreign countries; and 2) mutual recognition arrangements or similar agreements between the United States and a foreign government providing for mutual recognition of supply chain security programs. How will you foster an open dialogue with this Committee to ensure full consultation on matters relating to the customs and trade laws of the United States and/or mutual recognition arrangements or similar agreements between the United States and a foreign government?

Answer: I understand and respect the Committee's oversight and legislative jurisdiction over CBP's customs and trade responsibilities, and I believe that cooperation with the Committee is essential to the formulation of sound trade policy. Under my leadership, CBP will ensure that the Committee's views are taken into account when considering new customs regulations and practices. CBP will also continue to meet on a recurring, monthly basis with the Committee to ensure the proper consultation prior to the introduction of significant rulemaking or mutual recognition type arrangements to ensure that the Committee is aware of decisions significantly affecting CBP operations or policy.

Question 14:

In the past two years, CBP has issued regulations, rulings, and interpretations that have significantly changed CBP's prior practice. And some of these rulings were issues in contrast to our international trade obligations. While Executive Order 12866 provides for a regulatory interagency review process, it is not utilized for CBP rulings or interpretive letters. To ensure CBP's rulings and interpretive letters conform to the international trade

obligations of the United States, my customs reauthorization bill establishes an interagency Customs Review Board. How can the Customs Review Board help CBP ensure its regulations, rulings, and interpretations are consistent with our international trade obligations?

Answer: The Administration recognizes that it is essential that other agencies with a role in international trade be consulted in order to ensure that all U.S. government priorities are taken into account when proposing or adopting a proposed change to a customs regulation, interpretation or practice. I understand that there is concern that this review board would duplicate OMB's EO 12866 review process for those regulations that constitute significant rulemaking and that are already subject to interagency review. This could result in a process that could delay rulings.

Question 15:

CBP has expressed concerns regarding its ability to administer all customs revenue functions that have been delegated from the Secretary of Treasury to the Secretary of the Department of Homeland Security (DHS) because some of those customs revenue functions are carried out by ICE. Customs revenue functions are defined in section 415 of the Homeland Security Act of 2002 (6 U.S.C. 215). Please identify which of the functions defined in section 415 are carried out by ICE rather than CBP.

Answer: None of the revenue functions defined in section 415 of the Homeland Security Act of 2002 is exclusively carried out by ICE.

ICE works with CBP in carrying out investigative duties as they relate to the enforcement of the customs and revenue function. ICE was created to protect the security of the American people and homeland by vigilantly enforcing the nation's immigration and customs laws. Accordingly, ICE shares the law enforcement authorities enumerated in Title 19 of the United States Code with CBP.

Question 16:

ACE and ITDS are the keystone to trade facilitation. These programs will significantly reduce paperwork and expenses for American companies. And these programs will provide the government with real-time data and improved information sharing among agencies. We have invested billions of dollars in these programs over the years. And it is about time they are completed. How will you prioritize the remaining ACE functions? How will you ensure the timely completion of ACE? And what role can CBP play to operationalize ITDS in the near future?

Answer: I recognize the Committee's legitimate concern over the development and implementation of ACE and ITDS. Under my leadership, CBP will continue to focus on developing and deploying functionality that stakeholders have identified as priorities including

post summary corrections, document imaging, and rail and sea manifest. In addition, CBP will lay the groundwork for the future deployment of cargo release functionality, air manifest, and the remaining entry summary types. In FY 2011, ACE will transition to a steady-state, operations and maintenance phase, and further development will be deferred while business and technical requirements for future development are clearly defined. In other words, ACE will continue, but ACE releases will be dependent on the development of clear, complete business cases and will be defined in smaller segments of functionality, using a continuous integration approach with more frequent deliveries. Additional funding will be requested as business cases are completed. Looking beyond to FY 2012 and FY 2013, CBP will focus on completing cargo release functionality, air manifest, and the remaining entry summary types in ACE. Throughout this process, CBP will continue to work closely with participating government agencies and the ITDS Board of Directors to identify, prioritize, develop, and deploy functionality of importance to these stakeholders.

Question 17:

CBP currently has an Office of International Trade, which was originally created under SAFE Port Act. As it currently exists within CBP, the Office of International Trade is lead by an Assistant Commissioner, which is the same as other security-related Offices, including the Office of Field Operation, the Office Border Patrol, the Office of Intelligence and Operations Coordination, and the Office of Air and Marine. As CBP Commissioner, how will you ensure the trade-related efforts of the Office of International Trade are not subsumed to CBP's border security and law enforcement activities?

Answer: The mission of CBP is to ensure the security of the American people by preventing and interdicting dangerous people and shipments attempting to cross our borders, and to ensure our Nation's economic security by expediting the flow of legitimate trade and travel that is critical to a vibrant economy. My view is that trade and security are two sides of the same coin and that they are mutually reinforcing. They are both a function of risk segmentation, risk management, and layered security, and efforts to expedite legitimate trade will simultaneously enhance security by focusing resources on the unknown and lesser known traffic. I will expect full and equal participation from all operational, policymaking, and mission support resources across the agency to accomplish the CBP mission.

I will ensure that my senior managers, both within the Office of International Trade and the Office of Field Operations where all of our trade related functions are performed, ensure that there is appropriate staff, equipment, and training for all employees involved in trade related efforts. I will ensure that staff is appropriately allocated and that the allocation is continually reviewed so that we are sure that our trade workforce is in the right place to facilitate legitimate trade and enforce violations of trade law. I will ensure that we have in place measures that will adequately demonstrate that trade-related issues are given the priority status that is required.

Question 18:

The Office of International Trade was established in 2006. In October 2008, CBP split the Office of International Affairs and Trade Relations (INATR) into two offices, one for dealings with foreign governments and one for dealings with the private-sector. These offices have existed for several years. Please describe the recent performance of the International Trade, International Affairs, and Trade Relations offices. Please provide a description of how each office has improved in its performance in the past few years.

Answer: As I indicated above, I have established a Trade Integrated Planning and Coordination Cell (TIPCC) to redesign CBP's trade business processes and manage trade risk. Central to this enterprise is an evaluation of the working relationships among offices within CBP.

The creation of the Office of International Trade (OT) consolidated the trade policy, program development, and compliance measurement functions of CBP into one office. The Office provides uniformity and clarity for the development of CBP's national strategy to facilitate legitimate trade. Through coordination with international partners and other U.S. government agencies OT has increased the enforcement of intellectual property rights, the identification of risks to detect and prevent the importation of contaminated agricultural or food products, and the enforcement of free trade agreement eligibility. Through partnership programs, OT has streamlined the flow of legitimate shipments and fostered corporate self-governance as a means of achieving compliance with trade laws and regulations, thereby promoting trade facilitation. OT's risk-based audit program has continued to respond to allegations of commercial fraud and to conduct corporate reviews of internal controls to ensure importers comply with trade laws and regulations.

Now that Trade Relations has separated from the Office of International Affairs (INA), INA's primary objective is to establish relationships with foreign governments through unified coordination of CBP international activities in order to achieve CBP, DHS, and foreign policy goals. In FY 2008, INA realigned offices geographically to improve communications and awareness of international resources and expertise available to assist CBP offices in partnering with foreign governments.

With Trade Relations (TR) back as an independent staff office within the Office of the Commissioner, it is better able to serve as an objective and independent problem resolution resource for the international trade community on issues elevated to the Commissioner. Trade Relations, headed by a Director, also has the lead responsibility for managing CBP's outreach and communications with the international trade community on new programs, policies or initiatives, and changes to existing ones. In this role, TR is responsible for ensuring the views of the international trade community are represented within CBP. Realignment of TR within the Office of the Commissioner has ensured that TR has the necessary visibility and support for its mission among CBP's senior leadership and component offices.

Question 19:

GAO found that further improvements in CBP's trade enforcement efforts are hindered by a lack of integration between the ports and CBP's trade policy office. This is why my bill establishes a Deputy Assistant Commissioner for Customs Facilitation and Trade Enforcement within the Office of Field Operations. Among the many duties of this position, the Deputy Assistant Commissioner assists in the oversight of customs facilitation and trade enforcement activities at the ports and ensures coordination between the Office of Field Operations and the Office of International Trade. What suggestions do you have to improve the coordination and integration of port operations within the Office of Field Operations and the Office of International Trade? And how will you ensure two-way communication where the Office of Field Operations is helping to inform the Office of International Trade's policies and the Office of International Trade's policies are properly implemented and enforced within the Office of Field Operations?

Answer: As previously mentioned, I have established a Trade Integrated Planning and Coordination Cell (TIPCC) to design CBP's future trade business processes and manage trade risk. The TIPCC's responsibilities include evaluating the level of communication and integration between the Office of Field Operations and the Office of International Trade.

Recognizing that this is a work in progress, I can report that communication between the two offices has improved since the early days of the re-organization. Senior managers from both offices worked collaboratively to achieve a communication protocol that has enhanced communication between OT and field personnel. OT will continue to work closely with the Trade Operations Division (TOD) within OFO to effectively communicate policy, procedures, and guidance to the field offices and ports managed by OFO. OT has the capability to distribute policy memoranda directly to the Directors Field Operations (DFO) and Assistant Directors Field Operations/Trade (ADFO/T). DFOs and ADFOs/T then utilize the field office and port chains of command to ensure policy reaches all levels of personnel. TOD assists the DFOs and ADFOs/T in oversight to ensure policy is followed. Both ADFOs/T and TOD provide feedback to OT in the event policy changes are required to support emerging trade practices.

I have directed that TOD continue to coordinate frequent conference calls regarding policy between OT and the ADFOs/T. OFO's Field Liaison Division will continue to host bi-weekly DFO conference calls which include OT agenda items for discussion/explanation.

I have further directed that TOD/OFO continue to meet on a recurring basis with all divisions within OT in order to ensure that policy discussions involving import safety, IPR, textiles, antidumping and countervailing duties (AD/CVD), trade agreements and commercial enforcement result in clear concise policy that effectively utilizes OFO's resources in the field.

Question 20:

GAO has continuously identified problems within CBP related to the inadequate level of staffing at the agency. In reviewing its staffing needs, CBP's Resource Allocation Model

found that thousands more CBP officers are needed to carry out the commercial operations. How can we ensure sufficient CBP personnel at U.S. ports of entry? How should we address the staffing issue in our custom reauthorization bill to ensure CBP has adequate personnel focused on its trade mission?

Answer: I appreciate the Committee's concern about staffing levels at U.S. ports of entry. CBP is continuously challenged as an agency on how to best address the critical requirements to secure the border and to facilitate trade and travel. CBP's Office of Field Operations (OFO) uses the Workload Staffing Model (WSM) as a decision-support tool to assist in strategically determining CBP Officer (CBPO) manpower requirements. OFO then applies its resource allocation process to integrate operational and budgetary decisions on where available resources will go.

The WSM acts as a notional guide in the allocation of CBPOs for the trade mission. It is a decision support tool and does not eliminate the judgment of experienced personnel when making decisions on allocating staff to support our trade mission. The WSM assesses staffing needs based on workload data, processing times, complexity, and threat levels. It provides an optimum level of staffing for CBPOs for each port of entry. CBP must also take additional factors into account when allocating staff, such as overtime constraints, special enforcement initiatives, specific local issues, and the unique attributes of each port.

The WSM cannot entirely capture the complexity of the trade operations at the ports of entry, nor accurately determine resource requirements at the local level; hence there is a need for additional work to determine the actual staff allocation. Further considerations that factor in to determining staffing levels at ports of entry, in addition to those listed above, include balancing CBP's staffing needs against the agency's ability to hire, train, and deploy officers in a timely manner. Staffing needs at the ports of entry also are determined in part by the training capacity at the Federal Law Enforcement Training Center (FLETC) and the physical constraints of current facilities and infrastructure.

Finally, CBP is also challenged by the uncertainty of having to rely on spending authority from the level of user fee collections.

Question 21:

On a typical day, CBP officers work on the front lines at 327 ports of entry processing over 57,000 truck, rail, and sea containers. Those CBP officers may encounter a wide-range of trade issues, from counterfeit products and unsafe consumer goods to undeclared shipments seeking to evade U.S. anti-dumping orders. It is important that CBP personnel receive thorough training on trade issues as part of their basic training to address this range of issues. It is also important that they get the opportunity to continuously build on this training. How will you ensure CBP personnel receive adequate training on trade issues to ensure full enforcement of U.S. customs and trade laws? How will you ensure increased frequency and availability of this training for CBP personnel?

Answer: I agree that training in trade-related issues is critically important to CBP's workforce. To provide adequate training on crucial trade issues such as IPR, product safety, and enforcement of trade agreements, the current training program contains multiple courses and lessons that address OT's programs, systems, and elements.

The current CBP Integrated Training (CBPI) program addresses the Container Security Initiative program, the Harmonized Tariff Schedule, targeting of high-risk commodities utilizing ACS, protection of U.S. consumer rights including IPR, and the multiple trade agreements which are enforced by CBP.

In conjunction with customary instruction obtained through classroom lecture, trainees receive hands-on computer systems training using the Automated Commercial System (ACS) and ACE programs for cargo targeting which relates directly to programs that traditionally fall under OT. Additionally, trainees must complete a 4-hour lab where they can demonstrate their ability to target high-risk commercial shipment inspections.

Following is a detailed description of the trade-related training received by Import Specialists, Entry Specialists, and the Advanced Training Division.

Field Operations Academy Basic Import Specialist Training Program:

Import Specialists assist the CBP Officers in enforcing the commerce laws of the United States.

The Basic Import Specialist Training (BIST) provides the Import Specialist with the tools necessary to determine the admissibility of imported merchandise, the correct classification in accordance with the Harmonized Tariff System of the United States (HTSUS), and to ensure the correct duty rate is being applied in accordance with the myriad of preferential trade agreements that have been implemented. The following are the BIST lessons that pertain to admissibility and classification.

During Basic training, Import Specialist trainees gain mission essential knowledge and expertise in:

- CBP Law
- Trade Process Overview
- Admissibility/Other Government Agencies
- Examining Merchandise
- Quota and Visa
- ACS Cargo Examinations
- Intellectual Property Rights
- Fundamentals of Agriculture
- Country of Origin Markings
- Merchandise Activity
- Trade Activity
- Antidumping and Countervailing Duties
- Obtaining Information
- Introduction to commodity classification
- General Rules of Interpretation 1 – 6

- Trade Programs / North American Free Trade Agreement
- Fraud

Upon returning to the port, the Import Specialist is assigned to a commodity specialist team (CST) that specializes in a certain portion of the HTSUS. Uniformity is striven for by use of the Quality and Uniformity Information Control System (QUICS). QUICS is the main conduit for the Field Import Specialist (FIS) to tap into the expertise of the National Import Specialists (NIS) located in New York City, New York. The NIS periodically presents seminars for the FIS on their specialty.

Field Operations Academy Entry Specialist Training:

During basic training, Entry Specialists are given mission critical instruction in the protection of commerce by checking cargo admissibility issues to ensure proper payment of duties, taxes and fees. Entry Specialists review quota entry requests to ensure that established duty rates have not been compromised because of transshipment with the intent to circumvent quota restrictions.

Field Operations Academy Advanced Training Division:

The Field Operations Academy Advanced Training Division has oversight of several training courses, which have some focus on OT issues with emphasis on targeting in the trade environment. While in advanced training programs, field officers gain a better understanding of the overall trade process as a whole, to include, proper shipping paperwork for a wide range of commodities, importation process, biohazard shipments, agriculture shipments, basic skills necessary to identify and interdict those shipments that pose a possible threat to the U.S.; and finally, those skills necessary to identify and interdict threats in the outbound environment.

Question 22:

U.S. businesses have worked closely with CBP and DHS in implementing a number of trade security measures, including the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Many of those businesses have invested millions of dollars in these programs. And while necessary, these programs are impacting our nation's competitiveness. The SAFE Port Act, which codified the C-TPAT program, suggests a number of benefits for each C-TPAT member tier. Please describe the trade benefits each C-TPAT member tier receives today. Please describe how the system of C-TPAT benefits has changed since the program was created. What specific improvements would you like to make under the C-TPAT program? And please describe any specific program that may be appropriate for the future.

Answer: CBP has progressively improved the incentives to participate in the C-TPAT program since 2005. The C-TPAT tiered benefit system is designed to provide a reduction in the Automated Targeting Score for importer partners commensurate with their status in the program and results in fewer CBP examinations. CBP data indicates that C-TPAT importers are on average 4 times less likely to undergo an exam than non-C-TPAT importers. Other C-TPAT benefits include:

- Priority processing for CBP inspections. (Front of the Line processing for inspections when possible).
- Assignment of a Supply Chain Security Specialist C-TPAT SCSS, which is a CBP expert who works with the company to validate and enhance security throughout the company's international supply chain.
- Dedicated cargo lanes on the southern and northern borders (FAST Lanes).
- Stratified Exam Benefit (provides relief to program members in the form of cost savings).
- In July 2009, CBP issued Guidelines for the Assessment and Cancellation of Claims for Liquidated Damages for Failure to Comply with the Vessel Stow Plan, Container Status Message, and Importer Security Filing Requirements (commonly referred to as "10+2") and C-TPAT partners will be eligible for additional mitigation of up to 50% of the normal mitigation amount.

Working closely with partners in the trade community is essential to CBP's missions of security and facilitation, and I am committed to close cooperation with C-TPAT members to continue to improve the benefits of the program. Additionally, under my leadership, CBP will also continue to have an open dialogue with the COAC, American Association of Exporters and Importers (AAEI) and the National Customs Brokers and Freight Forwarder Association (NCBFAA) as well as other trade groups with respect to benefits. CBP will consider specific benefit proposals put forward by the trade community which are relevant to a security program and within the authority of CBP to grant.

Question 23:

In recent years, U.S. companies have been subject to numerous requirements to ensure that imports comply with U.S. customs and trade laws. These programs impose significant costs on American businesses. And these businesses should be recognized for their long record of compliance. Our bill does that by establishing the Customs Facilitation Partnership Program for importers that have a history of complying with U.S. customs and trade laws. It also directs CBP to provide trade benefits to those importers that meet CBP's minimum criteria. What steps do you currently take to recognize those importers with a long history of complying with U.S. customs and trade laws? What suggestions do you have to improve recognition of such importers?

Answer: I recognize that as the trade community provides additional information to help the government segment and manage risk, the government has a reciprocal obligation to speed the movement of legitimate cargoes across our borders. CBP has offered significant benefits to trusted shippers, but more needs to be done.

CBP offers several programs that provide trade benefits to those companies who have a history of complying with U.S. trade and customs laws: C-TPAT was developed to strengthen and improve the overall security of the international supply chain and United States border security. C-TPAT members receive tiered benefits, including a reduction of an importer's Automated Targeting System score, priority cargo searches and reduced cargo exams, and an expedited release of cargo regardless of the DHS threat level, a further reduction in cargo examinations, and priority when they are selected for cargo examinations. The Importer Self Assessment (ISA) program recognizes those trade compliant companies who assume responsibility for managing their own compliance, in exchange for less CBP oversight. ISA participants are exempt from certain comprehensive compliance audits.

Moving towards a system of managing by account is an important part of providing benefits to importers with records of consistent compliance. Currently, CBP has put together a working group to look at a variety of action plans dealing with the concept of managing by account. One of the action plans being worked on by the working group is the Single CBP Partnership Program which is assessing the potential for joining partnership programs under a "tiered" system to support a combination of trade and security benefits as well as supply chain management. Such a program would support other initiatives to remove the "firewall" between security/trade programs, initiatives and approaches to risk management.

Question 24:

CBP is responsible for enforcing our antidumping and countervailing duty laws. But a GAO report that Senator Grassley and I released in April 2008 identified over \$600 million of uncollected antidumping and countervailing duties owed to the United States. I am very concerned about these findings. American workers and companies face real threats from unfair and illegally priced imports. And they depend on CBP to fully enforce our trade laws. How will you ensure the gap in uncollected duties is minimized? What do you plan to do to improve CBP's enforcement efforts in this area?

Answer: Collection of AD/CVD remains a priority for CBP. CBP vigorously pursues collection of all delinquent debt consistent with the Federal Claims Collection Standards applicable to all federal agencies but subject to specific standards required by law. Specifically with regard to dumping duties, their collection has been problematic for many years. The factors that create the problems have long been identified by CBP and confirmed by various reports, e.g., GAO reports, conducted during the past decade. The U.S. AD/CVD system is a retrospective system, meaning that the AD/CVD that CBP collects at the time of entry are only estimated duties. The actual AD/CVD that an importer is required to pay are not known until the Department of Commerce (DOC) conducts a review of the AD/CVD order, which is usually 1 to 2 years after entry has occurred. However, DOC's review is subject to judicial review by the Court of International Trade, often delaying the final determination of the amount due for several years. If the actual AD/CVD rate established by DOC's review is greater than the estimated AD/CVD paid at entry, CBP is required to issue a bill to the importer to collect the additional duties.

A substantial portion of uncollectible duty is the result of differences between the cash deposit rate and the assessment rate, as well as the fact that the amount of continuous bonds are insufficient to cover those differences. This problem is exacerbated by CBP's reliance on bond coverage in the case of undercapitalized importers and by the lengthy delay that often occurs between importation and the final resolution of all applicable legal challenges. There are importers who are unwilling or unable to pay the actual duties and go out of business when CBP issues a bill.

CBP has undertaken several measures to mitigate the collection risks going forward. For example, continuous bonds serve as an insurance policy for CBP; if an importer defaults, CBP can collect the secured amount from the surety that issued the bonds. To ensure better collection rates, CBP instituted a process of reviewing all continuous bonds monthly for bond sufficiency and requiring single transaction bonds (STBs) as additional security on a shipment-by-shipment basis when appropriate.

Question 25:

A February 2010 independent audit of CBP's financial statements for fiscal years 2009 and 2008 found that ports are not completely or properly monitoring the post audit in-bond process due to staffing levels at the ports and an increased focus on other CBP programs. Current Automated Commercial System (ACS) limitations also constrain CBP's ability to accurately monitor the in-bond process, both at headquarters and at the ports. The audit found that CBP's inability to effectively monitor the in-bond process and verify the arrival of in-bond merchandise at the port level leads to a potential loss in revenue. What steps is CBP taking to address the issues identified by this independent audit? How will you ensure that in-bond shipments are reconciled?

Answer: In order to address this issue, CBP Headquarters took the following steps: First, all field officers were directed to monitor their ports, and ensure that all Transportation In-Bond Manifest (TINMAN) audits are being performed, and to report to HQ each month that the assigned audits were completed. Although CBP acknowledges that during GAO and KPMG audits, findings were made that the audits were not being performed, it appeared to be a documentation issue versus a performance issue. Consequently, CBP HQ issued further instructions in February 2010 mandating that each port maintain proper records regarding the performance of the required in-bond audits.

Due to systematic issues, some performed audits still appear in the CBP system as not having been performed. CBP is currently working to create a better in-bond audit system in the Automated Targeting System (ATS), that will address the known systemic programming problems being experienced in Automated Commercial System (ACS), as well as deliver a far better oversight capability, so that CBP managers both in the field and HQ can readily track in-bond audits. The new audit functionality will be delivered concurrent to ACE Multi-Modal Ocean and Rail Manifest requirements (M1) delivery.

CBP HQ believes that the new in-bond audit system and HQ guidance memoranda (both those currently in effect as well as guidance that will be issued specific to the new ATS module) will

address the shortcomings that have been identified in past audits. There can be no updates to the system until after M1 deployment and after CBP has the opportunity to evaluate the new system.

Question 26:

The current Advisory Committee on Commercial Operations of CBP (COAC) is expected to address a number of issues in the twelfth session. These include commercial enforcement and uniformity, international efforts to harmonize customs practices and procedures, strategic planning, northern and southern border issues, and import safety. COAC members are selected from representatives of the trade or transportation community served by CBP or others who are directly affected by CBP commercial operations and related functions. The members must represent the interests of either importers and their agents or those associated with the carriage of international freight. Each interest must have at least one representative on the Committee. In what way is the agriculture industry currently represented in COAC? Are there any other industries you feel need representation in the expanded advisory committee? Are there other steps that should be taken to make the COAC more effective?

Answer: COAC plays a critical role in strengthening CBP's commercial processes, and I am committed to fostering CBP's working relationship with that body. Currently several customs brokers with expertise and knowledge of agriculture shipments are represented on COAC. Another COAC member is employed by a large food importer and previously served as Associate Administrator of the U.S. Department of Agriculture's Foreign Agricultural Service (FAS), who was responsible for USDA's international activities, including trade negotiations, disputes, development initiatives, and other agriculture industry related concerns. In August 2008, COAC created a subcommittee that specifically deals with agricultural issues. The subcommittee is composed of members from the trade community who represent agricultural associations or work for agriculture-related companies.

Based on the industry diversity and subject matter expertise represented on the current 11th term COAC, most industry viewpoints are represented. In addition, COAC may create subcommittees (currently there are eight) which bring in additional viewpoints and expertise as desired to support committee work. CBP continues to seek members that bring even more diverse viewpoints and expertise to the committee, such as small/mid-sized businesses, agriculture industry representatives, petroleum industry representatives, and businesses from key geographical areas.

To increase COAC effectiveness, CBP convened a work planning effort at the beginning of the 11th term with COAC members and CBP leadership. Through this effort the committee identified core work areas for the upcoming term, including the establishment and tracking of project milestones and deliverables for these work areas.

Question 27:

CBP and United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) formed a joint task force that published recommendations in June 2007 to strengthen the agriculture quarantine and inspection function. As CBP Commissioner, how will you ensure these task force recommendations are considered when prioritizing CBP's agriculture and safeguarding mission? How will you support APHIS staff and the agriculture mission within CBP's management and leadership structure? How will you ensure CBP is staffed and empowered at levels equivalent to other functional mission areas in CBP?

(1) As CBP Commissioner, how will you ensure these Task Force recommendations are considered when prioritizing CBP's agriculture and safeguarding mission?

Answer: CBP is committed to ensuring that the agriculture recommendations receive the highest priority. We have established committees with APHIS and state departments of Agriculture to oversee the actions taken by the Joint Agency Task Force (JATF) and CBP. One such committee is the Agriculture Quarantine Inspection Partnership Council. That group is a Federal-State Government council responsible for providing advice, recommending direction, and providing open communication to the Animal and Plant Health Inspection Service (APHIS)/CBP JATF (meeting at least semi-annually). Another such committee is the Agriculture Steering Committee that evaluates select JATF recommendations. In addition, an agriculture subcommittee of COAC exists to ensure that concerns and issues affecting the Trade are addressed and brought to the attention of the Commissioner.

In 2007, the Secretary of Homeland Security announced the new office of Agriculture Operational Oversight within CBP's Office of Field Operations, Agriculture Programs and Trade Liaison. The position, Deputy Executive Director, is responsible for ensuring that agriculture operations run effectively, efficiently and consistently throughout all CBP field offices. The position has enhanced communication and outreach among our agriculture partners and stakeholders and ensures that appropriate supplies and equipment are provided to the agriculture specialists at every port. This office is the point of contact for the Joint Agency Task Force and facilitates the Agricultural Quarantine Inspection Partnership Council.

To enhance communication and information sharing with our partners and agriculture stakeholders, CBP created Agriculture Enforcement Alerts for distribution. The Alerts are created using Significant Agriculture Incident Reports. The Alerts provide a snapshot of the foreign agriculture risks approaching the nation. These timely alerts provide the state departments of Agriculture enough information to engage with U.S. Department of Agriculture (USDA) Animal and Plant managers to discuss potential opportunities for surveys.

CBP is dedicated to educating its own employees, Congress, the traveling public, the trade and other government agencies (both state and federal) about the vitally important role that CBP plays in the fight against the accidental or deliberate introduction of exotic plant pests and foreign animal diseases.

CBP continues to participate in regional and national meetings at the state and federal level and with other stakeholder groups. We seek out opportunities at the field office and local level to participate in outreach including recruitment related initiatives. Numerous government and other representatives have visited our ports of entry to see firsthand CBP's conduct of the agriculture mission and our efforts in protecting the homeland.

(2) How will you support APHIS staff and the agriculture mission within CBP's management and leadership structure?

Answer: In supporting the agriculture mission, CBP needs to staff (at equivalent levels) the management and leadership infrastructure. To fulfill this, CBP has created a comprehensive GS-401 agriculture career ladder and has created a comprehensive recruitment strategy for entry level CBP agriculture specialists. CBP has created, tested, and established agriculture liaison positions. We have a dedicated liaison staffed at APHIS Headquarters one day a week. APHIS, through collaboration with OFO, has permanently filled an APHIS liaison position staffed at the Agriculture Programs and Trade Liaison office one day a week. These liaison positions have greatly improved and strengthened communication and information sharing between agencies and our stakeholders.

In further enhancing inter-agency collaboration, we have established additional direct conduits for information flow, networking, and communication by the creation of an agriculture liaison in California – to be stationed at USDA's State Plant Health Director's office in Sacramento (effective June 2010) and an agriculture liaison in Florida – to be stationed at USDA's State Plant Health Director's office in Gainesville (in early 2011). We have an agriculture liaison slated to be established in Texas by FY 2011.

These liaison positions will promote the agriculture mission of CBP, foster stronger relationships with APHIS, State departments of Agriculture, and our stakeholders. These positions will enhance communications and facilitate the flow of information between CBP, our agriculture partners, and stakeholders. Once established, these positions will expand their area of responsibility to the East Coast and adjacent islands, along the Southern border, and throughout the West Coast to Hawaii and Alaska.

In addition we have revitalized the local Pest Risk Committees nationwide to enhance the communication, collaboration, and partnership between CBP, APHIS and State departments of Agriculture. These committees, whose membership will also include the agriculture liaisons, will strive to identify, detect, and close down the pathways of exotic plant pests and foreign diseases from entering the country.

(3) How will you ensure CBP is staffed and empowered at levels equivalent to other functional mission areas in CBP?

Answer: Through the effort and action of the Joint Agency Task Force, the structure and leadership implementation action plan identified the need for a robust agriculture leadership and management career ladder. To this end, CBP has brought in an objective independent contractor to review, create, and develop an agricultural resource allocation model and response

optimization model. These models will enable CBP to identify appropriate levels of agriculture specialists nationwide at all ports of entry.

This model will take into consideration all pathways and environments and all components of the agriculture mission. This model was developed by input and participation of APHIS and other components within CBP to ensure all needs were included in the functioning model. Additionally, the very important component of agricultural risk has been incorporated into this model.

CBP will work to ensure the agriculture management structure is as equivalent as necessary to similar components through the established performance measures and the continual monitoring by our agricultural partners and stakeholders.

Question 28:

FDA has several enforcement tools available under the Federal Food, Drug and Cosmetic Act to protect consumers of honey, including imported honey. While FDA has authority for inspection, enforcement, consideration of citizen petitions, and otherwise, and permits the Agency to utilize its finite resources to address the most pressing public health priorities, I'm concerned that CBP does not have enough tools and resources dedicated to help FDA identify these shipments. I'm also concerned that CBP does not have enough tools and resources to target shipments of honey that are circumventing the payment of duties owed to the United States. What steps has CBP taken with FDA to ensure imported honey (1) does not pose a risk to the health or safety of U.S. consumers; (2) is properly labeled with the country of origin; and (3) is not circumventing U.S. customs and trade laws?

Answer: I take all matters involving the health and safety of U.S. consumers very seriously. Your question appears to concern importations of sweeteners sometimes referred to as "honey blends." Honey blends are a mixture of sweeteners and honey which are sometimes created to legally circumvent the dumping duties on honey. Since there is not a large demand in the marketplace for honey blends, it is believed that these blends are being falsely marketed by importers as pure honey, which is a violation of Food and Drug Administration (FDA) regulations.

CBP has researched this issue, and via laboratory analysis, has attempted to assess the claim that the honey blend is not subject to antidumping duty. CBP has the equipment and the expertise to detect chemical compounds that have been added to honey and are forbidden from import. For some time, CBP labs have been able to detect when sweeteners are added to honey. Because artificial sweeteners can have some constituents that are similar to natural honey, however, it is difficult to identify the percentage of sweetener that has been added.

In addition to the above mentioned laboratory testing, CBP has also periodically requested country of origin and contaminant testing of honey importations. No health and safety violations were found. On honey blend issues that fall under FDA's purview, CBP recently provided

expertise and guidance to our partners in ICE and FDA for the creation of a multi-agency operation to shut down the misrepresentation of blended honey as pure honey.

Like all food products entering the commerce of the United States, importers or their agents are required to provide additional "Prior Notice" data upon entry. This data includes information about the site specific manufacturer of the honey, the FDA Food Facility Registration Number of the manufacturer, ultimate consignee information, and other shipment data. Prior Notice and customs entry data are collected by CBP through the broker entry process and forwarded to FDA electronically, where they are reviewed for Bio-Terrorism concerns at a CBP/FDA co-located facility where the agencies share law enforcement targeting tools. CBP and FDA also coordinate commercial targeting efforts for health and safety concerns at the Commercial Targeting and Analysis Center. Through these avenues, CBP and FDA are coordinating efforts to identify shipment targets, coordinate sampling and laboratory testing, and take appropriate enforcement action on shipments determined to be noncompliant with U.S. trade laws.

**What steps has CBP taken with FDA to ensure imported honey:
(1) Does not pose a risk to the health or safety of U.S. consumers;**

Answer: Under the umbrella of Operation Guardian and the Presidential Food Safety Working Group Task 44, CBP Laboratories and Scientific Services (LSS) is collaborating with the FDA on several food safety issues including honey. Task 44 states: "As needed, FDA and [USDA] FSIS may request that CBP conduct collection and testing of imported food samples on their behalf. FDA and FSIS should collaborate with CBP to ensure testing conducted by CBP is consistent with FDA and FSIS standards and addresses particular needs of FDA and FSIS regarding the safety of incoming products." FDA has shared its screening and confirmatory methodologies and reporting standards with CBP LSS for the determination of unapproved substances in honey, such as chloramphenicol and fluoroquinolones.

CBP LSS performs analysis for these contaminants only when requested to do so by CBP Officers. CBP is also prepared to assist the FDA with this testing, if requested to do so. CBP LSS is not a part of the FDA surveillance programs for honey and, therefore, do not make these analyses routinely unless specifically requested by FDA to do so.

(2) Is properly labeled with the country of origin; and

Answer: As part of the CBP LSS Country of Origin (COO) program, CBP labs have the capability of determining the country of origin of honey based upon statistical discriminant analysis and canonical distribution of the trace metals within the sample. This COO of honey capability was recently utilized in Operation Honey Pot, an operation devised for the detection of honey shipments with suspect fraudulently declared COO. Country of Origin determinations can only be made when CBP has authentic reference samples from the appropriate honey producing regions of the foreign country.

(3) Is not circumventing U.S. customs and trade laws?

Answer: CBP LSS, in cooperation with other CBP offices (Field Operations, International Trade, and International Affairs) and DHS Immigration and Customs Enforcement (ICE), continuously strive to strengthen the COO program by working with foreign countries to obtain authentic samples from their honey producing regions. CBP and ICE have made many sample collection trips at the request of nations willing to provide authentic reference samples. Some honey producing countries have not been receptive to CBP proposals for providing authentic honey reference samples taken from the specific regions where the honey is produced.

As a result from one of CBP laboratory reports in Operation Honey Pot, the CBP Savannah Laboratory provided testimony in a Franks Hearing held in the U.S. District Court for the Western District of Washington at Seattle. This type of hearing is held to determine if a search warrant was properly issued. In this instance, a search warrant had been issued based, in part, on lab analysis that indicated that the country of origin of imported honey was not consistent with what was stated to CBP at time of entry. At issue were millions of dollars in anti-dumping duties and possible criminal prosecution of the defendant. The judge ruled in favor of the Government and held that the evidence recovered during execution of the search warrant was admissible in court.

Question 29:

CBP operates a number of 24-hour commercial ports of entry along the northern and southern border. On average, how many CBP full-time equivalents (FTE) are required to operate such a port? Please provide a list of the 10 smallest U.S. ports of entry that operates as a 24-hour commercial port of entry in terms of FTEs? Please provide a list of the 10 largest U.S. ports of entry that operates as a 24-hour commercial port of entry in terms of FTEs?

Answer: The average number of FTEs for each 24-hour commercial port depends on port workload, environment and other requirements. Currently there are no 24-hour commercial ports along the Southwest Border. The Northern Border is broken down as follows:

Port	Field Office	Trucks	24/7 Commercial Operations
Detroit, MI	Detroit FO	107,757	Y
Buffalo-Niagara Falls, NY	Buffalo FO	72,655	Y
Port Huron, MI	Detroit FO	52,544	Y
Blaine, WA	Seattle FO	27,564	Y
Champlain-Rouses Point, NY	Buffalo FO	23,421	Y

Pembina, ND	Seattle FO	15,897	Y
Alexandria Bay, NY	Buffalo FO	14,341	Y
Sumas, WA	Seattle FO	12,001	Y
Sweetgrass, MT	Seattle FO	10,863	Y
Derby Line, VT	Boston FO	7,729	Y

- The top 10 largest 24-hour commercial ports have a maximum of 580 FTEs to a minimum of 110.

Port	Field Office	Trucks	24/7 Commercial Operations
Beecher Falls, VT	Boston FO	962	Y
Fort Kent, ME	Boston FO	955	Y
Roosville, MT	Seattle FO	898	Y
Warroad, MN	Seattle FO	745	Y
Baudette, MN	Seattle FO	615	Y
Limestone, ME	Boston FO	493	Y
Richford, VT	Boston FO	491	Y
Skagway, AK	Portland FO	292	Y
Dalton Cache, AK	Portland FO	231	Y
Vanceboro, ME	Boston FO	203	Y

- The 10 smallest 24-hour commercial ports of entry have a maximum of 18 to a minimum of 4.

Question 30:

1.5 million head of cattle crossed the northern border in 2008. But USDA does not have sufficient numbers of port veterinarians to allow for 24-hour staffing at all U.S. commercial ports of entry. Inspection of live animals also requires substantial daylight which would not be available, and offloading animals at night can pose a risk. How does CBP cope with these restraints in processing live animal cargo at the 327 U.S. ports of entry? Does CBP have established policies on how to address the processing of goods that require clearance from these other government agencies? What steps has CBP taken to work with USDA to facilitate trade in live animals?

Answer: The clearance of live animal importations are under the purview of USDA APHIS and Veterinary Services (VS). CBP's role is principally to verify the presence of necessary import documentation, for example, health certificate and import permit, and refer the animal shipment to the USDA Port Veterinarian.

For most of the approved crossings for live animal shipments on the northern border (exception of 3), the USDA Port Veterinarian is co-located with CBP personnel at the port of entry. Shipments arriving after-hours at these locations and without an after-hours appointment with the

Port Veterinarian are refused entry and notified of when to return and of the Port Veterinarian's contact information so that they may obtain an appointment. For areas where the Port Veterinarian and clearance facility is located some miles away from the port of entry, the shipment is referred to the Port Veterinarian during normal working hours or allowed to proceed to wait for Port Veterinarian with appointment. CBP also collects extra copies of entry documentation to allow for VS reconciling of shipments referred by CBP with shipments processed by VS. All protocols are mutually agreed to by CBP and APHIS.

Live animal shipments normally arrive at ports of entry that are serviced by USDA within 24-hours. Air shipments of livestock are normally met by the Port Veterinarian to assure prompt processing of the animals and to decontaminate the aircraft. All ports of entry are aware of local VS personnel coverage hours and contact information.

Question 31:

In a 2008 report, GAO recommended CBP heighten the requirements for a company applying to be an importer of record. This would help CBP improve the collection of duties and address other enforcement issues in the anti-dumping and countervailing duty program. The customs reauthorization bill requires CBP to establish a program to assign and maintain a database of importer of record numbers. Do you agree with GAO's recommendation?

Answer: I support the establishment of a cost-effective importer of record program as outlined in section 215 of the reauthorization bill. These authorities would serve to strengthen the work that Commerce's Import Administration does in conjunction with CBP in order to improve the collection of duties and address other enforcement issues in the antidumping/countervailing duty program.

Question 32:

In January 2010, the DHS Office of Inspector General conducted a report on CBP's Cargo Targeting and Examination programs. The report found that improvements can be made in the process for changing or deleting targeting rules used to identify high-risk shipments by better defining terms, documenting rule change decisions, and documenting the testing and evaluation of rule changes. What steps is CBP taking to address the concerns raised in this report? What performance measurements will you implement to ensure successful targeting? How will you ensure proper oversight over the program?

(1) What steps is CBP taking to address the concerns raised in this report?

Answer: Based on the corrective action provided to the OIG, this recommendation is considered resolved and closed. The OIG evaluation of CBP's corrective action plan is as follows:

“CBP concurred with our recommendation and recognizes the critical need to document each stage of the process utilized for analyzing and developing ATS rules. To this end, CBP developed a documentation process to capture and record information that includes the rationale for rule changes, definitions of terminology, and the utilization of tools. The Office of Intelligence and Operations Coordination has introduced more formality into the rules process by implementing a structure to guide national conferences, rule evaluation, targeting development, and process management. In addition, a structure has been added to the existing processes for rules development and management oversight. We consider the actions taken by CBP to be responsive to the recommendation. This recommendation is now resolved and closed.”

(2) What performance measurements will you implement to ensure successful targeting?

Answer: National Targeting Center-Cargo (NTC-C) determines the need of national user defined rules, which are initiated based on targeting certain high risk shipments based on entity or commodity driven data. The user defined rules are revisited and checked for validity/applicability on a periodic 120-day cycle. An impact analysis is conducted at the Watch Commander level and corrective action would be taken by modifying or deleting the user defined rules. Additional rules are initiated and inputted on an as needed basis as new threats and trends emerge, dictated by intelligence or other enforcement data.

(3) How will you ensure proper oversight over the program?

Answer: NTC Watch Commanders and OIOC Program Managers periodically review the national system rules utilized within national security weight sets to ensure that the rule sets are working within established parameters. When a problem is identified, NTC-C management will notify OIOC who will initiate corrective actions and perform further oversight. In reference to NTC-C created national user defined rules, review for impact and viability is completed by a Watch Commander before being input into the system. Periodic review will take place for continued applicability.

Question 33:

In his State of the Union, President Obama proposed doubling exports in the next five years as part of the National Export Initiative (NEI). What do you see as CBP’s role in the NEI? And what steps will you take as CBP Commissioner to ensure the smooth flow of U.S. exports?

Answer: The President’s National Export Initiative (NEI) aims to promote exports through, among other things, the development of a single control list with a single licensing agency, designation of a primary law enforcement coordination agency, and development of a single Information Technology (IT) system. CBP’s role is to implement the goals of the NEI strategy to streamline enforcement of export laws while ensuring the flow of lawful U.S. exports.

CBP supports this initiative in several ways. In coordination with ICE, CBP plays a critical role in the development of a centralized, investigative fusion center for export control. To promote the flow of legitimate exports, CBP has begun a series of webinars designed to advise the trade

community on best practices and current CBP processes for exporting goods. CBP is also working with the Bureau of the Census to develop national training and outreach programs. Part of this effort involves responding to questions from individuals or companies related to export compliance. CBP, in coordination with ICE and the licensing agencies, has streamlined the license determination process which has resulted in significant decreases in the cargo detention periods and costs associated with exports. Finally, CBP continues its efforts to expand the automation of electronic manifests in CBP automated systems and increase the use of intelligence for targeting. The use of electronic information for national security targeting in conjunction with other federal law enforcement investigative agencies' efforts facilitates trade by targeting the highest risk shipments, reduces the paper-based mandates currently relied on for exports, increases compliance and ensures the smooth flow of U.S. exports.

Question 34:

CBP, along with other agencies, target U.S. exports as well as U.S. imports. What tools does CBP use to target U.S. exports? How do you ensure a consistent application of CBP's export targeting procedures? What measurements does CBP use to ensure effective use of staffing and resources?

(1) What tools does CBP use to target U.S. exports?

Answer: CBP uses the Automated Targeting System (ATS)-Outbound as the outbound cargo targeting module to assist in identifying exports that pose a high risk of containing goods that are controlled via export licenses, permits and license exemptions: under or undeclared; fraudulent, or to be shipped to sanctioned or embargoed countries or entities. CBP conducts analysis of the Electronic Export Information (EEI) that exporters file electronically via the Automated Export System (AES). The EEI data is sorted based on a set of rules or criteria and is evaluated in a comprehensive fashion. The information assists CBP officers with targeting and identification of export cargo that pose a potential export security risk. CBP automated systems identify the risk associated with the specific export cargo for such export violations as the illegal export of controlled goods, smuggled currency, illegal narcotics, precursor and essential chemicals used to manufacture narcotics, stolen vehicles, and other contraband.

(2) How do you ensure a consistent application of CBP's export targeting procedures?

Answer: To ensure a consistent application of export targeting procedures, CBP identifies high-risk exports in the following manner:

- Conducting daily targeting sweeps of all export cargo at the NTC-C.
- Using experienced CBP personnel to establish rules or criteria based on proven techniques.
- Reviewing the criteria for targeting shipments to ensure that the criteria are effective.
- Querying other law enforcement databases, such as TECS to determine if any of the parties involved with the shipment have a history of past violations.

The use of the ATS-Outbound assists CBP by:

- Enabling a uniform level of review for all cargo being exported;
- Standardizing criteria so that the ports conducting local targeting are using the same criteria;
- Facilitating targeting based on any information available to the CBP officers; and
- Enabling ad-hoc queries of targeting data and other data provided by other U.S. Government export control agencies.

(3) What measures does CBP use to ensure effective use of staffing and resources?

Answer: CBP OFO re-established the Outbound Enforcement Division (OED) in March 2009. OED was initially tasked with addressing the export of guns and currency into Mexico. OED has expanded its focus to include exports controlled under various export regulations, such as the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), the Office of Foreign Assets Control (OFAC) regulations for sanctions and embargoes, and the Foreign Trade Regulations (FTR).

OED is using the OFO's Resource Allocation Model to determine the appropriate staffing levels at the port level to ensure there is sufficient staffing. Additionally, OED is working with CBP OFO Facilities and Office of Administration Facilities Management and Engineering (FM&E) to develop standard resource models for each port based on the export volume for the ports.

Question 35:

CBP's role in facilitating exports are: (1) to enforce other U.S. government agencies' laws and regulations through the examination of export documentation and inspection of outbound cargo; (2) the detention of shipments where a violation is suspected; (3) the initiation of enforcement actions for those shipments found to be in violation of export control laws and regulations; and (4) the facilitation of the lawful exportation of American goods and services. The Administration expressed concerns regarding the lack of authority provided in the customs reauthorization bill, S. 1631, for CBP to enforce export-related trade laws. Please list all of the export-related trade laws CBP is authorized to enforce.

Answer: CBP exercises export enforcement functions relating to items regulated pursuant to the Export Administration Act (EAA) (and previous acts in this area). See 50 U.S.C. App. § 2411. Although the EAA has expired, the provisions of the EAA and the Export Administration Regulations (EAR) continue in full force and effect pursuant to powers vested in the President by The International Emergency Economic Powers Act (IEEPA). See Exec. Order 13222 (Aug. 17, 2001). In addition, pursuant to the International Traffic in Arms Regulations (ITAR), CBP maintains inspection authority regarding exports or attempted exports of defense articles or technical data. 22 C.F.R. § 127.4(b). The Trading With the Enemy Act (TWEA) (50 U.S.C. App. §§ 1 et seq.) enforcement functions were first delegated to the Department of the Treasury, U.S. Customs Service by the President in 1917. Currently, in cooperation with the Treasury Department Office of Foreign Assets Control (OFAC), CBP enforces this law and

various other economic sanctions against hostile targets to further U.S. foreign policy and national security objectives, including those contained in The International Emergency Economic Powers Act (IEEPA) (50 U.S.C. §§ 1701-1706).

CBP has authority to seize and forfeit goods in violation of export laws. See 22 U.S.C. § 401; 19 U.S.C. § 1595a(d); 50 U.S.C. App. § 2411(a). Specific export control laws that CBP enforces include 22 U.S.C. § 401 (permitting the seizure of munitions of war and other articles exported contrary to law); 22 U.S.C. § 2778 (authorizing the President to control import and export of defense articles and materials); 31 U.S.C. § 5316 (providing reporting requirements on export and import of monetary instruments); 50 U.S.C. § 783(b) (restricting the transmission of classified information); 18 U.S.C. §§ 793-798 (restricting the transfer of national defense information); and 18 U.S.C. § 1956 (prohibiting the transfer of monetary instruments to a place outside of the United States with the intent to promote unlawful activity). CBP also enforces the Bank Secrecy Act, which provides authority to CBP to “stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing the United States” to ensure compliance with the requirement to report the importation or exportation of monetary instruments. 31 U.S.C. § 5317(b).

Question 36:

The DHS Office of Inspector General (IG) reported in 2007 that “outbound shipments are not consistently targeted and inspected by CBP Officers at the ports for compliance with federal export laws and regulations”. The DHS IG attributes this inconsistent enforcement to three reasons: (1) insufficient resources devoted to the function; (2) insufficient information necessary to effectively monitor the program; and (3) insufficient performance measures to evaluate program results. This further illustrates my long standing concern about the lack of dedicated trade resources and personnel at CBP. What steps has CBP taken to address these issues? How will you ensure CBP devotes a sufficient level of resources and personnel to successfully carry out its trade mission?

(1) What steps has CBP taken to address insufficient resources devoted to the function?

Answer: CBP established the Outbound Enforcement Division in March 2009 to address in part resources and staffing dedicated to export cargo, in addition to developing targeting resources and training for CBP officers to ensure consistent enforcement of the various export control regulations. CBP is currently developing a directive that will focus on outbound. This directive would mandate that each port would establish outbound enforcement teams based on a locally conducted threat assessment. The Outbound Enforcement Division is working with CBP Office of Administration Facilities Management and Engineering (FM&E) on the development of standardized port resource models that will include outbound enforcement resources based on the size of the port and the export volume.

(2) What steps has CBP taken to address the issue of insufficient information necessary to monitor the program?

Answer: CBP is working with the Bureau of the Census (Census) to reduce the number of shipments that are exempt from filing the Electronic Export Information (EEI). CBP and Census are also working to reduce the number of companies that participate in the Option 4 (post departure) filing program to those companies exporting very low risk commodities, which includes cargoes such as fruits, vegetables and bulk ores. Additionally, Census has agreed to eliminate the filing exemptions for personal effects and vehicles, regardless of value or destination. CBP is working to develop the ability to accept pre-departure export manifests for both vessels and aircraft. This will provide CBP with additional data to target high risk commodities more effectively and efficiently.

(3) What steps has CBP taken to address the issue of insufficient performance measures to evaluate program results?

Answer: CBP is using the enforcement results from FY 2009 and 2010 to establish preliminary baseline performance measures for a number of enforcement categories. These preliminary baselines will include targets for the seizure of ITAR, EAR, OFAC violations, the number of Census penalties issued, currency seizure statistics, and the number of stolen vehicles recovered. Other performance measures will include the number of outreach sessions conducted by Outbound Enforcement Division.

Questions from Senator Charles Grassley

Question 1:

There have been instances in which CBP pursued rulemaking without engaging in adequate consultation with the Finance Committee and with other relevant executive agencies such as the Office of the United States Trade Representative. How will you address this concern in the management of the agency?

Answer: You have my commitment that under my leadership, CBP will improve its level of consultation with the Senate Finance Committee and other relevant executive agencies, including USTR prior to engaging in rulemaking. Currently, CBP provides monthly briefings for staff members of the Senate Finance Committee on topics including current trends, initiatives, contemplated policy updates or changes, and upcoming rulemaking. I have specifically directed that the Office of Congressional Affairs keep me apprised of engagement with Congress on this important matter.

Question 2:

S. 1631 provides for various changes to CBP's organizational structure. The intent of the bill is to increase the accountability of the agency to both Congress and to the public with respect to the agency's commercial trade functions. In particular, S. 1631 creates a new position of Principle Deputy Commissioner, to be appointed by the President, confirmed by the Senate, and focused on the commercial trade responsibilities of the agency. What is your view on these organizational changes? Do you have any recommendations for otherwise improving CBP's organizational structure?

Answer: I support many of the goals of S. 1631 and understand the Committee's concerns that are expressed in the bill. Although the Administration agrees that CBP needs to focus appropriate attention on its commercial trade responsibilities, it has concerns about the establishment of a Principal Deputy Commissioner, new Office of Trade, or other mandatory organizational changes. I am a strong supporter of ensuring that CBP carries out both its security and trade related responsibilities. You have my commitment that I will work with your staff to address organizational issues within CBP.

Question 3:

As Commissioner of Customs, what are your specific priorities for administering the commercial trade responsibilities of the agency? Have you had an opportunity to review the resources available to the agency to accomplish these priorities? Can you identify any shortcomings in the resources available?

Answer: As CBP Commissioner, I am committed to fully enforcing our trade laws, including enforcing AD/CVD orders; improving the enforcement of intellectual property rights; and deploying additional ACE functionality. A particular effort that CBP is undertaking is exploring a “management by account” initiative that has the potential to provide a critical foundation upon which CBP can design its’ future trade business process to innovatively meet the ever-increasing demands of international trade. The desired outcome of this focused effort will place the Agency in a better position to determine where to dedicate our available resources in a tactical sense and identify areas that will require fortification in order to achieve our secure border-trade mission in a holistic manner.

Question 4:

The development and implementation of the CBP’s next-generation computer system is critical to improving the facilitation of legitimate trade across our borders. However, full implementation of ACE and ITDS has been significantly delayed. Have you had an opportunity to review the agency’s efforts to date to implement ACE and ITDS? What is the current status of ACE and ITDS implementation? When will ACE and ITDS be completely up and running?

Answer: I have reviewed CBP’s efforts to implement ACE and ITDS. CBP is actively involved with the ITDS Board of Directors and fully supports the vision of a single-window system for reporting import and export information to the government. Development and deployment of functionality within ACE to support the vision of ITDS is a priority of CBP. In FY 2010, CBP is focusing on developing and deploying functionality that stakeholders have identified as priorities including post summary corrections, document imaging, and rail and sea manifest. In addition, CBP will lay the groundwork for the future deployment of cargo release functionality, air manifest, and the remaining entry summary types. In FY 2011, ACE will transition to a steady-state operations and maintenance phase. During this time period, CBP will focus its efforts on clearly defining the business and technical requirements to drive future development. Looking beyond to FY 2012 and FY 2013, CBP will focus on completing cargo release functionality, air manifest and the remaining entry summary types in ACE. As we move forward, CBP will continue to work closely with the ITDS Board of Directors and participating government agencies to assess and prioritize future ACE functionality within the broader context of resource and technical environment constraints.

Question 5:

S. 1631 would repeal the current statutory firewall that prevents information that is submitted for security purposes from being used for commercial enforcement purposes. If the government is already receiving this information, and use of the information could lead to the identification of goods that do not conform to U.S. customs and trade laws, then it seems to me that such information should be utilized for that purpose. Do you agree?

Answer: I am open to the idea of using advanced security data, ISF data, commonly known as "10+2 Data," for commercial enforcement purposes. It is important to note that since duties are paid at a later point in the entry process, such data may be of limited use in commercial targeting and enforcement for revenue violations, but I fully support deploying security targeting mechanisms to trade enforcement activities, as appropriate. However, we will continue our efforts to maximize the effectiveness of targeting efforts using the data that is available, and remain committed to developing new techniques and methodologies, such as risk modeling.

CBP has put together a working group to look at a variety of action plans dealing with the concept of managing by account. One of the action plans being worked on by the working group is the Single CBP partnership program which is assessing the potential for joining partnership programs under a "tiered" system to support a combination of trade and security benefits, as well as supply chain management. Such a program would support other initiatives to remove the "firewall" between security/trade programs, initiatives and approaches to risk management.

Question 6:

Have you had an opportunity to review the degree of collaboration between CBP and foreign customs services with respect to enforcing customs laws? For instance, can you suggest specific ways in which we can improve our collaboration with the Chinese government in order to achieve better protection of intellectual property rights and reduce the volume of counterfeit goods imported into the United States?

Answer: Yes, I have reviewed CBP's collaboration with foreign customs services with respect to customs laws enforcement. CBP engages with foreign customs services bilaterally and in international forums such as the WCO. Over the years, CBP has been engaged in several successful joint operations with foreign customs and law enforcement agencies, including the European Union, Canada, and Mexico, and I am encouraging additional joint operations in the future

In the past year, CBP has provided subject matter experts for regional training and capacity-building programs in Uganda, Mali, Ukraine, Thailand, Peru, Brunei, India, Egypt, Panama, Argentina, Vietnam, and the Dominican Republic. CBP has also posted attachés at several source sources for counterfeit and pirated goods, including China, Hong Kong, India, and Korea. The attaches work with representatives of the host governments and embassy colleagues on a range of trade law enforcement issues, including IPR.

Each CBP Representative office abroad provides assistance, service, leadership and liaison coordination with counterpart agencies and the trade community:

- Ensures U.S. national security through implementation of in-country cargo and passenger risk based selectivity programs. CBP wants to achieve heightened levels of both enforcement and facilitation through risk management. It is imperative that the

maritime and air cargo trade lanes are safe and not exploited by individuals or entities who have intentions of harming our country;

- Promotes fair trade through intellectual property rights (IPR) protection, anti-dumping enforcement, etc.
- Assists in detecting and deterring the flow of contraband, narcotics, illicit goods and stemming the flow of currencies from such transactions.
- Enhances public service and revenue collections by responding to inquiries involving the transaction value or computed value of merchandise shipped to the United States and suspected fraudulent invoicing or fixing combinations.
- Assists other U.S. agencies at our front lines through interception of unsafe products and goods. In this respect, the voluntary CBP Importer Self Assessment – Product Safety program will facilitate the flow of goods from firms who have demonstrated to CBP that efforts are being made to ensure safety.

CBP Beijing coordinated the first meeting between CBP OT, the CPSC, and the Chinese National Certification, Accreditation and Administration (CNCA).

The CBP attachés meet regularly with counterpart agencies to explain the U.S. expectations and efforts at seeking mutually beneficial collaborations.

The CBP Beijing office works closely with the American Chamber of Commerce in China by maintaining close contact with and responding to all trade-related questions. One objective is to leverage the trade community to encourage GACC to jointly cooperate with CBP to better serve our nations through enhancing national security, as well as promoting trade facilitations. CBP facilitates the rapid movement of low-risk goods in partnership with the trade community, which operates using the just-in-time delivery business models. The promotion of trade will ultimately increase revenues for our nation.

On the topic of CBP Beijing's activities to promote IPR protection in China, I recently dispatched the Deputy Commissioner to China to meet with GACC on April 22, 2010 with the following outcomes:

- Both sides agreed to establish a Working Group consisting of CBP and GACC officers. The Working Group would meet once per year on the side of the Joint Committee on Commerce and Trade (JCCT).
- Both sides agreed to create an annual action plan to implement the bilateral IPR MOC. The first task of the Working Group is to draft an action plan.
- Both sides agreed to improve the quality and relevance of the seizure information exchange.

- Both sides agreed to expand areas of cooperation.

In 2009, CBP Beijing and GACC were jointly awarded the "Top Ten Cases" Award by the Quality Brands Protection Committee of China (QBPC), Association of Enterprises with Foreign Investment as a result of the seizure of over 100,000 pairs of counterfeit Nike sneakers.

A CBP Beijing representative was a panelist at former Ambassador Clark T. Randt's 7th Annual IPR Roundtable in Beijing. The Attaché's panel topic was "Team USA - Government Plans in China." The focus was on new Chinese IPR legislation, resulting strategies, and the implications for U.S. businesses. CBP Beijing was able to spotlight the agency's IPR enforcement posture and reiterated to the trade on the need to work together on our shared goals. Over 350 members of the U.S. trade community attended.

The CBP Beijing office arranged for a government-to-business digital video conference (DVC) among CBP Headquarters, U.S. Embassy officers, U.S. Consulates in Shanghai and Guangzhou, and the American Chamber of Commerce in China and its sister chapters in Shanghai and Guangzhou. Topics of discussion included compliance with the Lacey Act, 10+2 - Importer Security Filing requirements, and C-TPAT. This was the first ever DVC hosted by a CBP Attaché office. The trade community reacted positively to the opportunity for interaction with the CBP Headquarters subject matter experts.

At the request of the Chairman of the Customs committee of the American Chamber of Commerce in China, a CBP Beijing representative participated in an IPR Customs Border Enforcement seminar. Other attendees included members of the U.S. Chamber of Commerce, China Customs IPR Division Director and the Chinese Ministry of Commerce Legal Director. The key topic of discussion was GACC's new IPR legislation and how it differs from the previous version and U.S. laws and regulations.

The CBP Office of International Affairs continuously assesses the effectiveness of CBP agreements with foreign governments and develops comprehensive reporting on any detected shortcomings.

Question 7:

Have you had an opportunity to review CBP's working relationship with U.S. Immigration and Customs Enforcement when it comes to the enforcement of U.S. customs and trade laws? How can the Finance Committee help to improve that working relationship?

Answer: I am committed to forging a close and cooperative relationship among agencies within and outside of DHS. CBP and ICE have maintained a very close working relationship since the creation of DHS. CBP and ICE continually communicate and collaborate on initiatives such as Operation Guardian, a multi-agency approach to import safety. CBP officers and ICE personnel work side-by-side in our International Mail Facilities on operations, such as Operation Stamp Out, which seeks to combat the rise in the importation and distribution of counterfeit U.S. Postal money orders, stamps, and meter stamps into the United States; Operation Global Hoax,

which targets the importation of counterfeit DVDs; and Operation Apothecary, which targets the illegal online sale and supply of medicines to the public. Extensive and effective communication and collaboration of both agencies has been the reason for the effectiveness of these operations.

CBP developed the CEAR process which is designed to identify high-risk violations, determine suitable enforcement responses to those violations, and promptly carry out an enforcement action in a uniform manner. The multidisciplinary CEAR teams, comprised of CBP and ICE members, meet regularly at the service ports across the country. Additionally, the Headquarters Commercial Enforcement Analysis and Response (HQ CEAR) Board is composed of representatives from various components from CBP Headquarters and ICE. The HQ CEAR Board serves as a forum for discussion of issues regarding trade enforcement, to identify challenges CBP faces in trade enforcement, develop remedies for those challenges, and identify best practices within trade enforcement activities. The CEAR process enhances CBP and ICE commercial enforcement programs by effectively prioritizing commercial enforcement issues and allocating resources; properly determining and evaluating suitable commercial enforcement responses; and monitoring the status of all commercial enforcement referrals made through the CEAR process. Through this process, CBP and ICE work well at addressing enforcement issues and strive for timely resolution.

CBP is also represented at the ICE-led National Intellectual Property Rights Coordination Center (IPR Center), which is the U.S. government's clearinghouse for investigations into the theft of intellectual property, including counterfeiting and piracy.

Additionally, representatives from CBP regularly provide instruction at the ICE Commercial Fraud Training Course, which is attended by representatives from both ICE and CBP. The joint agency training approach speaks to the continuous efforts being made by both agencies to collaborate on identifying commercial fraud, build on expertise to develop strong, actionable cases, and utilizing the networking component of the cross-training to further build relationships between the two agencies. An increase in this type of training would further improve the working relationship between ICE and CBP.

Question 8:

The Department of Homeland Security administers the customs laws by virtue of a delegation of authority from the Department of the Treasury. Have you had an opportunity to consider how well this delegation of authority operates in practice? Are there lapses in regulatory coordination between the two departments? Are there ways in which the Finance Committee can help to improve such coordination?

Answer: The delegation of authority regarding the issuance of regulations works well because there is close coordination between the two departments. The Secretary of the Treasury retains sole authority to approve regulations concerning certain subject matters and all regulations concerning other matters are delegated to DHS. Through processes that are in place, CBP informs Treasury of all regulations CBP is preparing so Treasury can inform CBP if it believes a regulation being formulated is within its purview, and CBP keeps DHS informed of all

regulations that it prepares for Treasury. I take a personal interest in ensuring the smooth continuation of this working relationship and welcome the Committee's suggestions for improvement.

Question 9:

In this day and age, advances in technology have made it easier to produce counterfeit goods. And, the proliferation of counterfeit goods raises safety concerns for U.S. consumers. Do you have any recommendations for ways to improve the level of coordination between CBP and the business community to help safeguard American consumers?

Answer: Under my leadership, CBP will continue to work closely with rights holders, including sharing enforcement information with them to the extent permitted by law and regulation. CBP currently has an online recordation system for trademarks and copyrights that allows rights owners to electronically record their trademarks and copyrights with CBP. This IPR recordation system has significantly reduced the time required to process paper applications. In addition, the IPR recordation system makes basic information relating to protected rights readily available to CBP personnel and has significantly facilitated IPR seizures by CBP. Today, there are over 25,000 trademarks and copyrights recorded with CBP. We encourage copyright and trademark holders to provide reference material and training to supplement the information in the recordation system. CBP would like to partner with copyright and trademark holders to make this type of information more readily available to our officers throughout the country.

In addition, training is vital to giving our officers the knowledge and skills they need to effectively enforce IPR. CBP's IPR enforcement strategy includes providing more comprehensive training to our officers, as well as leveraging technology to deliver increased training. In concert with our internal efforts, our copyright and trademark holders partners play a valuable role in IPR enforcement by training officers to identify counterfeit and pirated goods. The ports often accept IPR product identification training to familiarize officers and import specialists with the characteristics of genuine products so that they will be better able to distinguish genuine articles from infringing goods.

Furthermore, copyright and trademark holders may also use e-Allegations, CBP's online process for reporting unlawful imports and exports, including suspected IPR violations. The e-Allegations involving intellectual property rights are routed directly to CBP's IPR National Targeting and Analysis Group for investigation and enforcement action. Trade groups and manufacturers' representatives request opportunities to provide product information, product information identification techniques and sometimes information on companies that they suspect of counterfeiting or pirating their intellectual property.

Question 10:

I've heard from U.S. honey producers that significant volumes of honey are being imported into the United States from non-traditional sources that do not appear to have the capacity to produce such volumes of honey domestically. This raises a concern that the true country of origin of such honey is not being declared, particularly in light of the imposition of significant antidumping duties on imports of honey from China. Are you aware of this issue? What is your view of Section 309 in S. 1631, which addresses concerns that honey is being imported into the United States in violation of U.S. customs and trade laws? What steps can CBP take to address concerns over illicit transshipment of honey imports?

Answer: I am aware of the claim that honey is being imported from non-traditional sources of honey. To combat the illegal transshipment of honey, CBP has targeted suspect shipments, performed cargo examinations, requested COO laboratory testing, requested production records for honey importations, audited suspect honey importers, and made numerous referrals of suspect importers to ICE. CBP continues to identify potential transshippers and requires additional security as a condition of release of potentially transshipped merchandise.

Illegal circumvention of antidumping rules, particularly by transshipment, is a difficult issue to tackle. Frequently, much of the investigation must be done overseas. Some of our trading partners have made it impossible to visit foreign exporters to verify the origin of the product. Additionally, when suspect importers are requested to provide verification of the origin or value of their products, they sometimes disappear. For example, when two importers suspected of undervaluing honey importations were contacted by CBP, they reportedly fled the country and returned to China.

It is problems like this which make it very difficult to investigate antidumping circumvention. Despite the difficulties involved, CBP, in coordination with ICE, has had numerous accomplishments in stopping the illegal circumvention of the honey anti-dumping rule. Some of the highlights are:

- A special operation in 2008 targeted shipments of honey for transshipment through Russia. It resulted in numerous enforcement actions including seizures, refusals, the assessment of antidumping duties, and the arrest of two corporate officers. Close to \$3 million in honey had been transshipped.
- Another special operation conducted from 2008 through 2009 addressed undervaluation of Chinese honey to reduce the amount of antidumping duty. CBP determined that two importers were undervaluing Chinese honey and were assessed \$12.6 million in unpaid deposits. Additional research during this operation led to the assessment of \$10.6 million on another importer found to be undervaluing honey from China.
- CBP continues to target suspected honey imports for transshipment. More violations have been found and CBP has worked closely with ICE to build investigations and cases against the importers. For example, CBP coordinated efforts with ICE to shut

down a scheme in which Chinese honey was being transshipped through Vietnam. As a result of a subsequent investigation, CBP seized four containers of honey with a domestic value of \$432,176, and made 13 shipments of honey subject to \$2.8 million in antidumping duties.

In further support of our efforts to confirm country of origin for honey shipments, the CBP Savannah Laboratory recently provided testimony in a Franks Hearing, an ICE-led prosecution held in the U.S. District Court for the Western District of Washington. This type of hearing is held to determine if a search warrant was properly issued. In this instance, as indicated above, a search warrant had been issued based, in part, on lab analysis that indicated that the country of origin of imported honey was not consistent with what was stated to CBP at time of entry. At issue were millions of dollars in anti-dumping duties and possible criminal prosecution of the defendant. The court ruled in favor of the U.S. government making the evidence recovered during execution of the search warrant admissible in court.

CBP also remains sensitive to health and safety concerns surrounding additives, like antibiotics, which may alter the imported product. CBP laboratories have the capability to perform FDA confirmatory analysis methods for unapproved antibiotics within honey, and forward any violative results to FDA for regulatory review and action.

Question 11:

I'm concerned that the views of the Commercial Operations Advisory Committee are not getting the level of attention and consideration they've received in the past from CBP. S. 1631 addresses this concern by elevating the position of co-chair of the committee to the Assistant Secretary of Homeland Security for Policy and Planning, while the Commissioner of Customs is named a deputy co-chair, along with the Director of the Immigration and Custom Enforcement. What is your view of this change in the structure of the committee?

Answer: Since the Committee's purpose is to advise on the commercial operations of CBP, COAC is most effectively chaired by the officials responsible for CBP's commercial operations. It would be difficult to manage and administer an advisory committee with Co-Chairs and Deputy Co-Chairs from multiple agencies. It is unclear what benefits there would be to expanding the already extremely broad mission of this committee to include ICE matters that may not fall within the committee's scope of advice and recommendations related to CBP's commercial operations. As Commissioner, I am committed to consulting with and considering the views of COAC.

Question 12:

What efforts are being undertaken by CBP to ensure the secure movement of merchandise in-bond through the United States?

Answer: CBP is building reporting and tracking capabilities into ACE Multi-Modal Ocean and Rail Manifest requirements (M1) that will greatly improve CBP's ability to exercise oversight of the in-bond system. These improvements will allow CBP to discover violations much sooner, allowing CBP to better protect the revenue. Also M1 is being programmed to allow up to 50 seals to be added to the in-bond record. CBP is working with other government agencies to better coordinate enforcement and tracking of in-bond shipments. Lastly, CBP is making several changes to the in-bond regulations which will also significantly improve CBP's ability to track in-bond shipments across the country.

Question 13:

Are you familiar with the provision in S. 1631 that would require CBP to station full-time personnel dedicated to the enforcement of intellectual property rights at the top 10 ports of entry that seize infringing merchandise? What is your view of this provision? Do you have any additional suggestions for improving the enforcement of intellectual property rights at the U.S. border?

Answer: The protection of IPR is one of the greatest challenges our country faces in the twenty-first century. CBP understands that some copyright and trademark holders believe that dedicating resources in ports of entry is the way to improve IPR enforcement. However, CBP believes that dedicated IPR resources in ports may reduce enforcement because there could be an organizational tendency towards reliance on only these resources for IPR enforcement, which may result in an overall decrease in enforcement. CBP's preferred approach is to leverage its resources by training frontline officers to recognize multiple risks, and to provide dedicated experts behind the frontlines to advise and assist frontline officers with the complexities associated with IPR enforcement.

CBP has released to Congress and will soon announce a 5-Year Strategy for IPR Enforcement that lays out our vision for a more effective IPR enforcement process and initiatives for achieving it. Initiatives include establishing private sector partnership programs to facilitate legitimate trade, enhancing targeting and training to increase interdictions of IPR infringing goods, and levying penalties and conducting audits more effectively to deter IPR violations. The strategy leverages our resources and partnerships with U.S. industry, other federal agencies and foreign governments in a comprehensive plan to attack IPR infringement throughout the international trade process.

The President's FY 2011 budget includes a request for \$25 million for CBP for IPR enforcement. This funding would be used to implement the strategy. Resources would be allocated to

investments in human capital, technology procurement, training, travel/temporary duty assignments, and administration to support implementation of the strategy.

CBP OFO trade personnel are aligned with the industries, tariffs, and issues identified in the trade strategy plan for the AD/CVD, IPR, textiles, import safety, and revenue PTI. CBP OFO trade personnel concentrate their efforts on issues related to more than one PTI. As an example, trade personnel assigned to a commodity team, examination team or targeting team focusing on an industry, such as wearing apparel, during the course of a single day, may be involved with several of the PTIs. Clearly they are involved with the textile PTI. In addition, the transaction they are reviewing may also involve a garment which may also bear an infringing mark of a noted retail outlet (IPR). If the transaction involves a child's garment suspected of not being manufactured to flammability standards, they would be dealing with import safety. This is why CBP does not historically dedicate certain trade assets, such as Import Specialists, to any one PTI. By aligning as we do, we perform a multifaceted trade mission that protects our intellectual property and the health and safety of the American Public and our economy.

Additionally, CBPOs may be assigned to the trade mission on a rotating basis. When they are, their focus is similar to that of other personnel, i.e., it is multifaceted to address all of the identified PTIs. CBPOs are the only division of CBP personnel that are not always assigned to trade issues.

Question 14:

Are you familiar with the provision in S. 1631 that would require CBP and ICE to prepare a joint strategic report to Congress every 2 years that provides a comprehensive plan to enforce U.S. customs and trade laws? Do you appreciate the value of requiring this report? What is your view of this provision? Do you have any additional suggestions for improving the enforcement of U.S. customs and trade laws at our ports of entry?

Answer: Yes. I am familiar with the requirement and recognize the value of coordinated planning to leverage the assets and resources of both agencies. We regularly work with ICE to coordinate enforcement approaches in areas, such as intellectual property rights, textiles and free trade enforcement, and import safety. Recent examples of collaboration between CBP and ICE include joint operations, such as Operation Guardian and Mirage, which dealt with import safety and valuation issues, and on the development of the Intellectual Property Enforcement Coordinator (IPEC) Strategic Plan. CBP looks forward to continued cooperation and collaboration with ICE both on the development of strategy and its coordinated execution.

CBP is committed to the enforcement of U.S. customs and trade laws at our ports of entry. The CBP Trade Strategy provides CBP with a framework that brings all of our trade resources in alignment and leverages the strength of each function. There is constant coordination between the ports and CBP Headquarters, including an annual Trade Conference, which was instituted as one means of coordinating trade enforcement resources within CBP.

Question 15:

During your hearing, held on Thursday, May 13, you said in response to a question from the Chairman that you collected identification information from various documents in order to establish that each of your domestic employees were eligible to work in the United States. You said that you maintained that information in a paper file that you retained in your home. On November 6, 2009, the Finance Committee sent you several written questions, including the following: "Please provide the Forms I-9 completed for each of your household employees employed during and since 2006. If Forms I-9 were not completed, please provide the documentation that was considered to establish the legal status of each of the employees." Your response to this question indicated you had employed three individuals during and since 2006, but the Committee would later discover that the true number was six. Why didn't you provide the documentation you used to establish legal status for all of your employees when you were asked to do so last November? Additionally, you said, also in response to questions from the Chairman, that you did not recall Committee staff asking for documentation of the eligibility to work in the United States of some of your employees. How do you reach this conclusion given the wording of the question asked of you in writing on November 6, 2009? During your hearing you stated a willingness to provide the eligibility documentation you had previously not provided. If you have this documentation, why didn't you provide it the Committee when you were initially asked for it? Please provide all documentation of the eligibility for employment in the United States that you have for all your present and past employees. (Personal information will not be printed in the hearing record.)

Answer: In my testimony, interviews, and written statements to the Committee, I have consistently acknowledged that, while I paid all applicable employment taxes and verified that new hires were authorized to work in the United States, I did not complete a Form I-9 for each individual subject to the requirement. This was a mistake for which I accept full responsibility.

During the Committee's inquiry into this issue, I provided, without exception, truthful information in response to every question posed. When asked, as indicated above, for Forms I-9 for each "household employee employed during and since 2006," I considered the term "employee" to be legally distinct from independent contractors. I accordingly identified and provided relevant documentation for three individuals during this time period who were clearly employees: Emelia Perez, Andrea Guerrero, and Silvia Sanabria. These individuals provided part-time house cleaning services and, in the case of Ms. Perez, child care services.

I did not include other individuals because they either worked prior to 2006 or were not "employees" under the applicable regulations (8 CFR § 274a.1(f)), which explicitly exclude independent contractors. The three individuals that I excluded as independent contractors were college students from Point Loma Nazarene University, located in our neighborhood, whom we paid on an hourly basis to drive our children from time to time to appointments, school events or sporting activities, since both my wife and I were employed full-time.

As I acknowledged in my testimony before the Committee, I should not have made a legal distinction between independent contractors and employees in my responses to the Committee

because it did nothing but cause confusion and misunderstanding in this process. My wife and I paid applicable taxes and determined eligibility of these three individuals to work legally in the United States, just as we had the other three individuals. For each, we examined documents that were sufficient to complete Forms I-9. In some instances, we checked U.S. Passports or Permanent Resident Cards. In other instances, we checked a combination of driver's licenses and Social Security Cards. None of the Social Security Cards contained a legend indicating that issuance of the card did not authorize employment in the United States. My wife maintained that information in a file in our home.

I have attached documentation of employment eligibility for all individuals who performed work in our household since the time my wife and I married in 1991. Because all but one of these individuals no longer provide services for my family, and because some provided services between 10 and 18 years ago, we have not maintained all of our records for each of these workers. We have, however, contacted every one of these persons and they have signed a Form I-9 (Ms. Perez, Ms. Guerrero and Ms. Sanabria) and/or provided an affidavit attesting to their legal status, eligibility to work, and the procedures followed at the time they were hired. These affidavits are attached.

Question 16:

On February 11, 2010, you supplied the Finance Committee with three recent Forms I-9 with a written statement that identified them as “currently dated I-9 forms for the three individuals my wife and I have hired over the last 11 years.” Why did you state you had hired three individuals over the past 11 years when the actual number is 9? Why didn't you offer to provide the eligibility information for all of your employees that, during your hearing, you said you had maintained in a paper file?

Answer: My February 11, 2010, statement was a response to a Committee question pertaining to employees whom my wife and I had hired since 1999. We excluded people we had hired prior to 1999. In addition, as I reviewed this matter in connection with the confirmation process, I distinguished between employees who are subject to I-9 requirements and independent contractors who are not subject to such requirements. I considered those who provided child care or performed housekeeping work to be employees. I considered the students from Point Loma Nazarene University who drove our children from time to time to be independent contractors, per the applicable regulations (8 CFR § 274a.1(f)).

Applying this distinction between employees and independent contractors, as I did in my February 11 response, it is correct to say that we hired only three “employees” over the course of those 11 years: Emelia Perez, Andrea Guerrero, and Silvia Sanabria. The other individuals hired during this time period were college students from Point Loma Nazarene University who drove our children from time to time to appointments, school events or sporting activities. At the time of my February 11 response, I classified those students as independent contractors who were not subject to I-9 requirements and outside the scope of the Committee's question. Although the distinction between employees and independent contractors is well founded in the law and I-9 regulations, I should not have made a legal distinction between independent contractors and

employees in my responses to the Committee because it did nothing but cause confusion and misunderstanding in this process. My wife and I paid applicable taxes and determined eligibility of these three individuals to work legally in the United States, just as we had the other three individuals. For every individual who provided service to our family, we examined documents that were sufficient to meet Form I-9 requirements. For some individuals, we checked U.S. Passports or Permanent Resident Cards. For other individuals, we checked a combination of driver's licenses and Social Security Cards. In all instances, we collected social security numbers to complete our tax returns and examined driver's licenses to ensure that each was licensed to drive our children.

To clarify the record and allay the Committee's concerns, I gave a full explanation of the additional student drivers at the staff interview on March 17, 2010, and during my hearing appearance on May 13, 2010.

Question 17:

In responding to a question from myself, you stated that the names of the three college students you had employed during and since 2006 were listed on your tax returns on "Schedule H, Household Employment Taxes." You stated that this showed there was no intent on your part to conceal the college students you employed. Are you aware that names of domestic employees are not listed on the Schedule H? The tax returns for 2005, 2006, 2007, and 2008, you provided to the Committee include, for 2005, and 2006, copies of "Form 2441: Child and Dependent Care Expenses." This form does list the names of household employees. However, the Forms 2441 you provided to the Committee only list the names of two of the three college students you employed during and since 2006. Was it your intent to disclose the names of only five of the six individuals you employed during and since 2006? If you were aware that your tax returns disclosed the names of any of the college students you employed during or since 2006, why didn't you disclose those names in response to the Committee's written question to you of November 6, 2009? If you were aware that your tax returns disclosed the names of any of the college students you employed during or since 2006, why did you indicate, in your written statement provided to the Committee on February 11, 2010, that you had employed only three individuals in the past 11 years? These three individuals did not include any college students.

Answer: As I indicated in my hearing testimony, I had no intent to conceal the existence of student drivers because I listed student drivers on tax returns that I had provided to the Committee. One of the individuals, Vanessa Williams, worked as a student driver in 2007 but was not listed on a Form 2441. In our 2007 tax return, my wife and I did not claim a credit of \$120 related to Ms. Williams that we were entitled to receive. At the time of filing, our accountant believed that we had at least \$3,000 in dependent care benefits related to my wife's employment by the State of California and that we were not eligible to claim an additional credit. For this reason, he did not prepare a Form 2441 for the credit. Upon review, he determined that our dependent care benefits were actually \$2,400. He determined that we could have qualified for a credit based on \$600 in compensation to Ms. Williams. If we had claimed the credit, we

would have been entitled to 20% of that amount, or \$120. I have attached a letter of explanation to this effect from our accountant.

As I indicated above, when asked for Forms I-9 for each “household employee employed during and since 2006,” I distinguished employees from independent contractors. I accordingly identified and provided relevant documentation for three individuals during this time period who were clearly employees: Emelia Perez, Andrea Guerrero, and Silvia Sanabria. These individuals provided part-time house cleaning services and, in the case of Ms. Perez, child care services for a period of time when our children were younger.

I did not include other people who worked for my family because they either worked prior to 2006 or were not “employees” under the applicable regulations (8 CFR § 274a.1(f)), which explicitly exclude independent contractors. The three individuals that I excluded as independent contractors were students from Point Loma Nazarene University whom we paid on an hourly basis to drive our children from time to time to appointments, school events or sporting activities.

As I acknowledged in my testimony before the Committee, I should not have made a legal distinction between independent contractors and employees in my responses to the Committee because it did nothing but cause confusion and misunderstanding in this process. My wife and I paid applicable taxes and determined eligibility of these three individuals to work legally in the United States, just as we had the other three individuals. For each, we examined documents that were sufficient to complete Forms I-9. In some instances, we checked U.S. Passports or Permanent Resident Cards. In other instances, we checked a combination of driver’s licenses and Social Security Cards.

Question 18:

You have said that you were unaware that you were required to fill-out a Form I-9 for each of your domestic employees. However, you also said that you believed that you observed the substance of the immigration law. Given your stated lack of familiarity with the Form I-9, how do you know that when you hired each of your employees, you collected sufficient information to establish eligibility to work in the United States? How do you know you were observing the substance of the law, when you didn’t know what the substance of the law was?

Answer: As I indicated during my hearing appearance before the Committee, from the time I was a U.S. Attorney, I was mindful of two requirements: The first was that household workers needed to establish with documentation their eligibility to work in the United States. The second was that employers of household workers needed to pay all applicable taxes. Although we did not properly complete Form I-9 for each individual, we did verify the eligibility of each such person to work in the United States and pay applicable taxes. For some individuals, we checked U.S. Passports or Permanent Resident Cards. For other individuals, we checked a combination of driver’s licenses and Social Security Cards. In all instances, we collected social

security numbers to complete our tax returns and examined driver's licenses to ensure that each was licensed to drive our children.

Had we known that we were required to complete Forms I-9 in the context of household workers, we certainly would have done so. All of our workers unquestionably were authorized for employment in the United States and all provided documents that were sufficient to complete the required Form I-9.

Question 19:

You referred to many documents, such as passports, Social Security Cards, and drivers licenses in your comments before the Finance Committee. Can you specify exactly which documents you checked for each of the 10 employees you eventually disclosed to the Finance Committee?

Answer: My wife verified the identity and employment authorization of every person who performed work for us. Because all but one of these individuals no longer provide services for my family, and because some provided services between 10 and 18 years ago, we have not maintained all of our records for each of these workers. My wife recalls that she examined the following documents for each of these individuals as listed below.

Those documents identified in italics are no longer in our possession. The attached affidavits from Gillian Stafford, Emily Kilgore (nee Gleason), Katie Boyd (nee Wagner), Robyn Kochon (nee Smith), Jana Cramner, Vanessa Williams, and Leah Purdue, however, confirm the fact that we did examine their records at the time of hire.

1. Silvia Sanabria: Social Security Card, permanent resident card
2. Andrea Guerrero: driver's license, *Social Security Card*, U.S. passport
3. Emelia Perez: driver's license, Social Security Card, U.S. passport
4. Gillian Stafford: *permanent resident card, driver's license, Social Security Card*
5. Emily Gleason: *driver's license, Social Security Card*
6. Katie Wagner: *driver's license, Social Security Card*
7. Robyn Smith: *driver's license, Social Security Card*
8. Jana Cramner: *driver's license, Social Security Card*
9. Vanessa Williams: *driver's license, Social Security Card*
10. Leah Purdue: *driver's license, Social Security Card*

Question 20:

In responding to questions from the Chairman, you indicated that, as a U.S. Attorney, you were familiar with the Form I-9 through investigations by the then Immigration and Naturalization Service (INS). Please elaborate on your involvement with INS investigations. Why were you in a position to have knowledge of INS investigations, and what did you do with any information arising from such an investigation? As a U.S.

Attorney, did you or your office pursue cases against businesses or individuals where failure to establish eligibility to work in the United States was an issue?

Answer: As I indicated during my hearing appearance, from 1993 to 1998, I served as U.S. Attorney for the Southern District of California and, in that capacity, was the chief federal law enforcement officer in that jurisdiction. During that time, between 88 and 114 Assistant U.S. Attorneys served under my supervision, prosecuting criminal cases and representing the United States in civil actions before the federal courts. During that time period, I also served as the Attorney General's Southwest Border Representative. While serving in those positions, I frequently interacted with Mark Reed, first when he served as Immigration and Naturalization Service (INS) District Director in San Diego and then as an INS Regional Director. Mr. Reed and I generally discussed employment-related investigations by the INS and problems of proof in prosecuting large employers because of their purported reliance on counterfeit documents. As set forth in the attached affidavit of Mark Reed, we discussed unlawful employment practices by large employers and did not discuss I-9 compliance by small businesses or individual households. To the best of my recollection, no INS investigation resulted in a criminal prosecution or a civil complaint during my tenure as U.S. Attorney.

Question 21:

In responding to questions from the Chairman, you stated that you were concerned that some had the impression that you had not been forthcoming during the vetting of your nomination. You said that because you were concerned, your wife flew out from California to meet with Committee staff. You and your wife met with Finance Committee nominations staff on March 17, 2010. Isn't it true that this meeting was instigated by the Finance Committee? Isn't it true that notice was given by the Committee before this meeting that the Committee had questions regarding the names found on your Forms 2441 that were not mentioned in any of your written answers previously provided to the Committee? The Committee asked, on November 6, 2009, about household employees you had employed and additionally, you stated in writing on February 11, 2010, that you had employed three individuals over the past 11 years. Why didn't the Committee finally learn how many employees you had employed, both during and since 2006, and also during the past 11 years, until March 17, 2010?

Answer: After I submitted answers to the Senate Finance Committee questionnaire on September 29, 2009, DHS's Office of Legislative Affairs began to request a staff interview to address any outstanding issues. After I responded to additional sets of questions, the Committee staff scheduled a staff interview for March 17, 2010. Prior to the interview, the Committee staff indicated that it had questions about names appearing on tax returns that I had submitted to the Committee for review.

The Committee did not request that my wife appear for interview. Because I was concerned that the Committee staff had reached the wrong conclusion about my candor, my wife, who has direct knowledge of many of the relevant facts concerning Forms I-9, traveled to Washington, D.C. to

address any questions posed by the staff. During the staff interview, we answered questions about the persons that we hired going back to 1991 when we married.

As explained above, my February 11, 2010, statement was a response to a Committee question pertaining to employees whom my wife and I had hired since 1999. We did not include people we had hired prior to 1999. In addition, as I reviewed this matter in connection with the confirmation process, I distinguished between employees who are subject to I-9 requirements and independent contractors who are not subject to such requirements. I considered those who provided child care or performed housekeeping work to be employees. I considered the college students from Point Loma Nazarene University who drove our children from time to time to be independent contractors.

Applying this distinction between employees and independent contractors, as I did in my February 11 response, it is correct to say that we hired only three "employees" over the course of those 11 years: Emelia Perez, Andrea Guerrero, and Silvia Sanabria. The other individuals hired during this time period were students from Point Loma Nazarene University who drove our children from time to time to appointments, school events or sporting activities. At the time of my February 11 response, I classified those students as independent contractors who were not subject to I-9 requirements and outside the scope of the Committee's question. Although the distinction between employees and independent contractors is well founded in the law and I-9 regulations, I should not have made a legal distinction between independent contractors and employees in my responses to the Committee because it did nothing but cause confusion and misunderstanding in this process. My wife and I paid applicable taxes and determined eligibility of these three individuals to work legally in the United States, just as we had the other three individuals. For individual workers, we examined documents that were sufficient to meet Form I-9 requirements. For some workers, we checked U.S. Passports or Permanent Resident Cards. For other workers, we checked a combination of driver's licenses and Social Security Cards. In all instances, we collected social security numbers to complete our tax returns and examined driver's licenses to ensure that each was licensed to drive our children.

In an attempt to clarify the record and allay the Committee's concerns, I gave a full explanation of the additional student drivers at the staff interview on March 17, 2010, and during my hearing appearance on May 13, 2010.

Question 22:

When did it occur to you to think of any of your employees as independent contractors? Did you think of any of your employees as independent contractors before the Finance Committee asked you for Forms I-9 for your employees? Can you describe the technical differences between an employee and an independent contractor? Why was it appropriate to think of these individuals as independent contractors?

Answer: At the time we hired the household workers and student drivers and verified their eligibility to work in the United States, and during all periods when we paid them for their services and taxes in connection with that compensation, my wife and I did not distinguish

between employees and independent contractors. During the process of nomination and confirmation for my current position, it became clear to me that the I-9 regulations draw a clear distinction between employees and independent contractors.

As I have testified, I should have completed Forms I-9 for all of our workers, regardless of legal arguments that I could have asserted for having not done so. My decision during this Committee's consideration of my nomination to distinguish between employees and independent contractors, which has a sound basis in law, has unfortunately led to much confusion and misunderstanding. Title 8, United States Code, Section 1324A(a)(1)(B) imposes immigration verification obligations on U.S. employers, including households. The regulations implementing this law, however, explicitly exempt independent contractors and those engaged in casual domestic employment from any requirement to complete or retain Forms I-9. Title 8, Code of Federal Regulations, Section 274a.1(f) defines employee to mean "an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section." Subsection (j) defines independent contractors as those "who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results." The regulations set forth a list of factors to guide the determination. The student drivers were independent contractors because they provided their own cars, were guided only as to results (i.e., where and when to drive) rather than their means and methods, made their services available to the general public, and were available to offer services to a number of clients at the same time.

Question 23:

Your SF 278, Executive Branch Personnel Public Financial Disclosure Report, discloses a promissory note for Silicon Border Holding Company among your assets. According to a November 18, 2009, report in the San Diego Reader, this company seeks to build an industrial park just south of the border in Mexico. How long have you been involved, and in what capacity, with Silicon Border? How will you ensure that what you do as Commissioner of Customs and Border Protection will not impact your ability to collect on this note? Was and is your involvement in this project appropriate given your earlier role as U.S. Attorney, your most recent position as Special Representative for Border Affairs at the Department of Homeland Security, and your current role as Commissioner of Customs? How could your role as Commissioner of Customs not significantly impact any investment dependent on activity around the U.S./Mexico border?

Answer: As stated in Form SF 278, dated October 2009, I served as chair of the advisory committee of Silicon Border Holding Company from February 2008 until April 2009. On April 30, 2009, I signed an ethics agreement stating that I had resigned from this position and held a promissory note. In the agreement, I expressly agreed not to participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of Silicon Border Holding Company, LLC, to repay the promissory note unless I first obtained a written waiver, pursuant to 18 U.S.C. § 208(b)(1). The Department of Homeland

Security's Designated Agency Official and the U.S. Office of Government Ethics both concluded that this agreement would ensure compliance with the conflicts of interest laws and regulations that would apply to me as Commissioner of U.S. Customs and Border Protection.

Question 24:

Explain why it is appropriate for you, as Commissioner of Customs, to have any financial interest at all in any activity occurring near or across the U.S./Mexico border?

Answer: My ownership of a promissory note issued by Silicon Border Holding Company is appropriate so long as I do not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of that entity to repay its obligations or, alternatively, obtain a waiver pursuant to 18 U.S.C. § 208(b)(1).

Question 25:

Do you believe that lawful possession of a valid California Driver's License establishes eligibility for employment in the United States? Is it possible for a person to lawfully have a valid California driver's license but yet not be eligible for employment in the United States?

Answer: A California driver's license is one of several documents identified on Form I-9 as sufficient to establish the identity of a worker. It can, in combination with a Social Security Card or other documents identified in Form I-9, establish eligibility for employment in the United States. In the absence of other documents, it is possible for a person to have a valid California driver's license but yet not be eligible for employment in the United States.

Question 26:

In all cases where you did not obtain a Form I-9 "List A" identification from your employees, did you obtain both a Form I-9 "List B" identification as well as a "List C" identification?

Answer: Yes. Please see response to Question 19 above.

Questions from Senator Hatch**Question 1:**

Commissioner Bersin, we have all witnessed a steady increase of violence this last year at the Southwest border. Therefore, it seems logical as the level of violence increases so should the presence of the Border Patrol. Yet, it is my understanding Border Patrol staffing levels will remain at the same level as provided for in the current fiscal year. Considering the serious challenges at the border, should we not be increasing our Border Patrol staffing to meet the level of violence we are currently experiencing?

Answer: Certainly the dangerous trend of increased drug cartel violence in Mexico is alarming, and the threat that the violence could spill over into the United States is a matter of significant concern that we are monitoring very carefully.

The drug trafficking organizations (DTO) currently operating in Mexico are engaged in an armed, violent struggle to control shrinking drug routes and territories. These DTOs are targeting and killing rival cartel members with significant frequency and very publicly; they're intimidating and killing Mexican police and other government officials in a similar fashion.

The drug violence in Mexico resulting from inter- and intra-cartel conflict, and the violence directed at Mexico's security forces, are not likely to cross the U.S. border at anywhere near because the level it is occurring in Mexico inasmuch as the two factors driving most of the violence in Mexico – intense competition over key trafficking routes, and the struggle for dominance over a network of corrupt officials – are not applicable to drug operations inside the United States.

The U.S. Border Patrol partners with local, state, and federal law enforcement agencies to combat and stop border crime-related violence and will continue to do so in order to effectively mitigate the threat to our communities. U.S. Border Patrol agents protect and defend America's borders, but they also protect our communities at and beyond the immediate border. Congressional provisioning of funds to add 1,000 additional Border Patrol agents and other federal officers and the planned deployment of troops from the National Guard to the Southwest Border are important steps taken to augment the response capabilities of federal law enforcement at the border.

Question 2:

Commissioner Bersin, It is my understanding to date, \$761 million has been authorized for the Secure Border Initiative Network. In March, Secretary Napolitano decided the virtual fence on the border with Mexico was such a failure it no longer deserved continued funding. Instead, she has directed investment in commercially-available technology to secure our border from illegal entries. Therefore, let me ask you the same questions I asked Secretary Napolitano when she appeared before the Senate Judiciary Committee last month: Has SBInet yielded any benefit to the taxpayer? When combined with the

pedestrian fence, how effective are functional portions of the virtual fence in stopping the flow of illegal immigrants from entering the United States from Mexico? Do you think we should build more reinforced physical fencing along the Southwest border?

Answer: In short: (1) SBInet has yielded some benefit to the taxpayer, but we are in the midst of a detailed analysis to determine whether the value is worth the cost, particularly going forward; (2) the currently functional portions of the SBInet system have assisted in thousands of apprehensions and tens of thousands of pounds of drug seizures; and (3) our analysis suggests that our current fence deployment is appropriate for our current needs, but we will continue to evaluate that as the dynamics on the border evolve over time. I will briefly expand on those short answers.

The extended delays and cost growth of the SBInet development were two of the key factors that led Secretary Napolitano to freeze SBInet Block 1 deployments beyond Tucson-1 and Ajo-1, and to direct an extensive, Department-wide re-assessment of the program. The Secretary is committed to a deliberative and objective analysis of its state before proceeding any further with the program. We are currently conducting that analysis and have some initial, but not yet conclusive, results. The initial results tend to suggest that certain pieces of the SBInet development have merit and could support future technology needs. However, the original, very expansive design of SBInet, appears to be a questionable investment. We will know more after we complete more of the analysis.

The Block-1 program had significant issues, including delays in schedule and increases in cost, and the first deployment of the SBInet Block 1 system (Tucson-1) has not yet completed its testing and operational evaluation. However, even though the first deployment of SBInet is not yet fully operational, it is being used by the Border Patrol on a part-time non-interference basis during the night shifts when it is not undergoing final engineering evaluation. Initial, qualitative feedback from the Border Patrol suggests that the SBInet construct of fixed sensor towers connected within a common operating picture can be a powerful tool in providing situational awareness for field agents, enhancing agent safety, and helping them stop illegal border activity. Our continued analysis efforts will include quantitative measures of system performance that will help us confirm or modify the qualitative assessments we have today.

With respect to your second question, we are finding that the system has operational utility and that there has been at least some value derived from the taxpayer's investment. Most of our experience comes from the predecessor prototype that has been in operations since 2007. The prototype, known as P-28, was a proof-of-concept technology demonstration to validate an integrated land-based sensor system. The leave-behind capability continues to provide a viable operational benefit to Border Patrol agents. CBP continues to use P-28 to support operations, learn lessons to improve future systems, and refine concepts of operations for the most efficient employment of CBP resources. As of May 2010, P-28 has assisted agents in 6,506 apprehensions and the seizing of over 24,000 pounds of marijuana.

Although fencing remains an important tool in achieving effective control of our nation's borders, it is only one element of CBP's strategy which includes the proper mix of tactical infrastructure, technology, and personnel. CBP has initiated a threat-based approach to both near

and long term resource deployment decisions based on quarterly and annual threat assessments, and will continue to utilize this approach to determine future physical fencing deployment needs along the southern border.

Question 3:

Commissioner Bersin, there are a number of aspects of the Baucus-Grassley customs bill which I support, including the centralization of CBP trade facilitation efforts in a new Office of Trade. This new office will be run by an assistant commissioner. However, I was hoping to learn your thoughts on another provision of this bill. Specifically, the repeal of Section 343(a)(3) of the 2002 Trade Act. This would allow CBP to use the mandatory advanced information submitted by importers for commercial enforcement. Many business groups are concerned about this provision and have recommended a compromise where, according to Inside Trade, “CBP would be allowed to use 10-plus-two data to improve advanced targeting for intellectual property rights violations or import safety violations, but would not be allowed to compare advance data against entry data and assess penalties of any discrepancies exist.” What are your thoughts on the original proposal and the proffered compromise?

Answer: I am open to the idea of using advanced security data, including ISF data, commonly known as “10+2 Data,” for commercial enforcement purposes. It is important to note that since duties are paid at a later point in the entry process, such data may be of limited use in commercial targeting and enforcement for revenue violations, but I fully support deploying security targeting mechanisms to trade enforcement activities, as appropriate. We will continue our efforts to maximize the effectiveness of existing targeting efforts using the data that is available, and will work to develop new techniques and methodologies, such as risk modeling.

Question 4:

Commissioner Bersin, many business groups have advocated the expansion of account-based management systems such as the Customs-Trade Partnership Against Terrorism or C-TPAT. What can we do to improve account-based management systems, like C-TPAT? Where do you recommend we expand the use of account-based management systems?

Answer: CBP is exploring a “Management by Account” approach that could have a significantly beneficial result for both the trade community and CBP. These efforts will focus on applying risk management principles by account, assessing the potential for joining partnership programs to maximize benefits, and ways to streamline certain complex post-entry processes. I have directed that CBP engage in substantial consultation with the trade community and the Committee as we move forward in this exploration.

Question 5:

Commissioner Bersin, despite expanded enforcement efforts and dramatically increased seizures, counterfeits and pirated goods continue to flood into this country. What are the legal, jurisdictional and resource impediments preventing CBP from dramatically reducing the importation of these illicit goods?

Answer: Under my leadership, CBP has released, and will announce shortly, a 5-year strategy for IPR Enforcement that identifies key challenges to creating a more effective IPR enforcement process. These include lack of advance information on legitimate imports, a legal framework focused on seizure of goods, difficult infringement determinations, inadequate private sector partnerships, and low penalty collections. CBP's strategy takes into account the changes in trade, technology, and IPR infringement that have occurred since many laws and regulations were written, and the resulting enforcement procedures put into place. Successful implementation of the strategy will require legal reform, technological changes, and process redesigns, as well as cooperative efforts between CBP and its stakeholders.

Achieving effective resource allocation is largely dependent on targeting efficiency improvements. Right now our officers are directed often to look at merchandise that in most cases turns out to be legitimate merchandise. We have been looking at ways of making our enforcement exams more efficient. If we can achieve that, we will address the issues of misdirected resources, as well as increasing trade facilitation. CBP is looking to deploy a new IPR Predictive Risk Model with the expectation that better targeting will ensure more efficient use of our inspectional resources and less delay in releasing legitimate cargo.

Question 6:

Commissioner Bersin, CBP has sophisticated targeting capabilities to identify high-risk shipments entering the United States. However, these capabilities are primarily used for the prevention of the importation of articles which pose an immediate threat to our national security. Why are these targeting mechanisms not employed, to a greater degree, in IPR enforcement?

Answer: I am open to the idea of using advanced security data, including ISF data, commonly known as "10+2 Data," for commercial enforcement purposes and I fully support deploying security targeting mechanisms to trade enforcement activities, as appropriate. This could be used to augment existing admissibility targeting efforts on IPR violations. CBP's current position on the use of this data is driven by the legal prohibition from doing so, as much as the process by which the ISF design was negotiated with the importing community where it was made clear that this data would not be used for trade targeting purposes. Barring these concerns, CBP would certainly use this information for IPR targeting, if allowed. CBP will continue our efforts, as well as develop new techniques and methodologies such as the IPR Risk Model. This data driven model adds an additional level of screening for IPR violations both nationally and at a port level.

Question 7:

Commissioner Bersin, according to the Government Accountability Office, though seizures of illicit IP goods has increased, CBP has collected less than one percent of IP related penalties assessed from 2001 through 2006. In fact, in 2006 alone, \$136 million in penalties were never collected. What specific legal and policy changes will you institute to ensure the greater collection of IP penalties?

Answer: I agree that this is a problem. CBP has statutory authority to seize and forfeit merchandise bearing counterfeit marks. CBP is considering amending Treasury Decision 99-76 (T.D.), to permit CBP FP&F Officers to assess civil fines at or under the domestic value of the merchandise seized for the first violation, and at not less than two times the domestic value and not more than the manufacturer's suggested retail price (MSRP) for the second and subsequent violations where CBP has previously assessed a civil penalty. Because the penalties are assessed at the MSRP of the genuine goods, petitioners often claim that the civil fines are excessive and their ability to pay is minimal. As a result CBP accepts settlements in these cases for nominal amounts relative to the amount of the penalty.

There is a limit to what CBP can expect a violator to pay, and in the aggregate, the minimum assessment thresholds can create large penalties that dwarf the amounts that we are able to collect. In FY 2006 CBP assessed 526 penalties in 217 IPR cases totaling \$136.7 million. Only \$368,000 was collected, less than 1% of total penalty assessments. These cases can be broken down into two groups: (1) cases assessed at \$500,000 or less (about 80% of all cases), and (2) cases where the assessment amount is more than \$500,000 (about 20% of all cases). CBP closes about half of all cases assessed at \$500,000 or less with a total collection amount of about 10% of the assessed value; in cases when the assessment amount is more than \$500,000 (which is 20% of all cases, but 80% of the all assessed value), CBP closes only about 15%. The collection amount of these cases is less than 1% the original assessed value.

It is CBP's position that assessing penalties at the domestic value would increase the penalty collection rates and make the penalty assessment more equitable. CBP has the statutory authority to assess penalties up to the MSRP of the merchandise as if it were genuine at the time of seizure. Currently, CBP generally assesses the penalty at the manufacturer's suggested retail price MSRP of the seized merchandise. The T.D. provides presently for the assessment of any penalty following the forfeiture of the seized merchandise rather than following seizure of the merchandise, which is permitted by statute. We are proposing removal of the forfeiture requirement to make the T.D. align with the plain language of the statute.

CBP has recognized a need to adjust the current policy on the issuance of civil penalties under the provision of Title 19, United States Code (U.S.C), Section 1526(f). Generally, CBP has issued a penalty to the importer of record or the ultimate consignee. Upon the amendment of the T.D., CBP will implement a new policy wherein a civil penalty pursuant to 19 U.S.C. 1526(f) will be assessed against any party who directs, assists financially or otherwise, aids or abets in the importation of merchandise seized under 19 U.S.C. 1526.

In order to accentuate law enforcement tools and to aid in our efforts to identify all parties involved with the importation of IPR, goods in violation of IPR, and to increase the number of IPR civil fines with an increased collection rates, CBP will implement this new procedure in coordination with the National IPR Center. CBP will provide the National IPR Center with the names of all known culpable parties associated in the IPR seizure. The National IPR Center will research the named parties to identify all viable assets. This information will assist CBP in its collection of these penalties.

Additionally, CBP is collaborating with the recently created Department of Justice IP Task Force to increase IP civil enforcement efforts. Discussion to date include the planning of an IP Civil Enforcement Workshop, at which representatives from CBP and DOJ will work to understand trends in civil case referrals, identify best practices, and develop guidelines for the development and referral of solid IP civil enforcement cases to DOJ for civil prosecution. Discussions also include the coordination of national IP enforcement initiatives and joint press events to inform the public of our collaborative efforts.

Question 8:

Commissioner Bersin, as you know, owners of trademarks and copyrights may record their marks and copyrights with CBP. This facilitates CBP's mission to prevent and detect illegal imports. What is CBP doing to encourage recordation of trademarks and copyrights? What is your position on proposals, to gain a more seamless process by integrating: 1) the trademark registration process and the CBP recordation process; and 2) the copyright registration process and CBP recordation process?

Answer: CBP actively encourages copyright and trademark owners to record their registered rights with CBP, as recordation facilitates CBP's IPR enforcement and provides a higher level of protection for the trademark or copyright. CBP's outreach to encourage recordation includes individual consultations with copyright and trademark holders, participation in conferences, webinars, and other events, and publication of information on the agency's website.

CBP, the U.S. Patent and Trademark Office (USPTO), and the Copyright Office examined the feasibility of electronically linking the registration systems and the CBP recordation system in a report submitted to Congress earlier this year. The agencies identified and examined three options for creating a more seamless registration/recordation process. All three options are feasible if sufficient new resources are allocated for development and ongoing management by all three agencies, and would likely raise awareness among the rights holders of the benefits of recording with CBP. While CBP recognizes there may be potential benefits to some copyright and trademark holders of such a link, we note that there is a lack of consensus among copyright and trademark holders regarding the need for changes to the current process, and that the U.S. government would accrue additional costs to create a system for which the potential benefits are inconclusive.

CBP will work with copyright and trademark holders to further examine the benefits to industry of a better integrated system, and will revisit this issue with USPTO and the Copyright Office

based on the outcome of these efforts. Creation of a more seamless system would require a four-way partnership between CBP, USPTO, the Copyright Office and copyright and trademark holders.

Question 9:

Commissioner Bersin, I must admit my disappointment the President decided to proceed with a recess appointment despite bi-partisan opposition. The issues raised during the vetting process are serious. The Constitutional role of Congress is undermined if Members are not provided with accurate and timely information. In addition, I do not understand how a person of your background: a Harvard undergraduate, a Rhodes scholar, a Yale Law School graduate, and the former US Attorney for Southern California -- the prime law enforcement official responsible for enforcing federal immigration law in that area -- could forget the basic legal prerequisite which all small businesses owners and individuals must comply with when they hire someone. I also thought it was disingenuous when the committee asked you about this matter you responded by saying you believed some of these workers were independent contractors. However, your tax records show them to be your employees. Commissioner, your areas of responsibility are essential to our national security and health of our economy. The nation will suffer if those who are tasked with enforcing the laws are not completely forthright with the legislative branch. What specific steps are you going to take to rebuild the trust between this committee and the office which you hold?

Answer: In my testimony, interviews, and written statements to the Committee, I have consistently acknowledged that, while I paid all applicable employment taxes and verified that new hires were authorized to work in the United States, I did not complete a Form I-9 for each individual subject to the requirement. This was a mistake for which I accept full responsibility.

During the Committee's inquiry into this issue, I provided, without exception, truthful information in response to every question posed. When asked by the Committee for Forms I-9 for each "household employee employed during and since 2006," I considered the term "employee" to be legally distinct from independent contractors. I accordingly identified and provided relevant documentation for three individuals during this time period who were clearly employees: Emelia Perez, Andrea Guerrero, and Silvia Sanabria. These individuals provided part-time house cleaning services and, in the case of Ms. Perez, child care services.

I did not include other individuals because they either worked prior to 2006 or were not "employees" under the applicable regulations (8 CFR § 274a.1(f)), which explicitly exclude independent contractors. The three individuals that I excluded as independent contractors were college students from Point Loma Nazarene University, located in our neighborhood, whom we paid on an hourly basis to drive our children from time to time to appointments, school events or sporting activities, since both my wife and I were employed full-time.

As I acknowledged in my testimony before the Committee, I should not have made a legal distinction between independent contractors and employees in my responses to the Committee

because it did nothing but cause confusion and misunderstanding in this process. My wife and I paid applicable taxes and determined eligibility of these three individuals to work legally in the United States, just as we had the other three individuals. For each, we examined documents that were sufficient to complete Forms I-9. In some instances, we checked U.S. Passports or Permanent Resident Cards. In other instances, we checked a combination of driver's licenses and Social Security Cards. None of the Social Security Cards contained a legend indicating that issuance of the card did not authorize employment in the United States. My wife maintained that information in a file in our home.

I have attached documentation of employment eligibility for all individuals who performed work in our household since the time my wife and I married in 1991. Because all but one of these individuals no longer provide services for my family, and because some provided services between 10 and 18 years ago, we have not maintained all of our records for each of these workers. We have, however, contacted every one of these persons and they have signed a Form I-9 (Ms. Perez, Ms. Guerrero and Ms. Sanabria) and/or provided an affidavit attesting to their legal status, eligibility to work, and the procedures followed at the time they were hired. These affidavits are attached.

I respectfully disagree with the suggestion that I have been disingenuous in this process. I do regret, however, that decisions I made during the confirmation process caused some on the Committee to doubt my trustworthiness for the office that I hold. I would hope that members of the Committee recognize this as the result of human error and consider it in the context of my 20 years of public service as a U.S. Attorney, school superintendent, California's Secretary of Education, chairman of an airport authority, and more recently in the Department of Homeland Security as the Assistant Secretary for International Affairs and the Secretary's Special Border Representative. In each of those positions, I earned a reputation for honesty which I intend to build upon as Commissioner of U.S. Customs and Border Protection.

I recognize that I need to rebuild trust with the Committee moving forward. Essential to this is frequent and candid communication. This is not to say that I will always agree with Committee members on how to lead the agency. I will, however, listen carefully to the views of Committee members, take them into account, and clearly communicate my decisions.

My actions to date as Commissioner demonstrate a recognition of many of the Committee's key concerns and a willingness to address them in a spirit of candor and cooperation. I have recognized repeatedly and publicly the Committee's legitimate concern that CBP has given inadequate attention to its commercial enforcement and trade facilitation missions. I have directed CBP to conduct a top to bottom review of its trade-related processes and have already produced to the Committee a set of trade-related performance metrics. CBP and Committee staff are already working together to ensure that these help move us toward our shared objective. Since becoming Commissioner, I have met and conferred repeatedly with representatives of the trade community and private sector.

I have also taken into account criticisms that CBP has not been transparent enough in its decisional process. To improve communication, I have established a mechanism to identify CBP rulings that are likely to interest Committee members and to give the Committee early notice

prior to publication. I have directed that CBP leadership continue to meet regularly with the Committee staff to discuss any issues of possible interest or concern. I am, moreover, personally available to discuss such issues at any time. I hope and trust that clear communication and mutual respect and my track record as Commissioner will build a sound foundation of trust and confidence for the future.

Questions from Senator Bingaman**Question 1:**

Re: Border Commerce/ Ports of Entry. Wait times: It is my understanding that CBP does not have any uniform border-wide methodology for measuring wait times at ports of entry. Each port has its own way of determining what the “current” crossing delay is at each port. Do you believe that it is important for CBP to establish standardized criteria for calculating port delays? If so, what is the timeline for deploying technology that can measure wait times in a uniform manner? It is my understanding that CBP does not have any specific office that calculates or tracks the economic impact of delays on trade and other commercial activity on a regular basis. Considering that port delays have a significant economic impact, it makes sense for CBP to work with other relevant departments, such as the Department of Commerce and the Department of Transportation, to develop this information. Do you agree? Would you commit to taking steps toward this goal?

Answer: I believe that it is extremely important to establish standardized criteria for calculating port delays and CBP agrees that the current methodology for measuring private and commercial vehicle wait times is not ideal. For this reason, I have been working with a bi-national border wait time work group comprised of Canada Border Services Agency, Transport Canada, U.S. Department of Transportation, and Federal Highway Administration, to pilot technologies to automate and provide a standard methodology and formula for measuring wait times. I commenced a pilot program in the summer of 2010 to develop accurate, timely, and consistent wait time data. The data will be used by CBP to make informed management decisions regarding port operation and staffing needs and infrastructure investments at land ports of entry. This technology test and evaluation phase is nearing completion. It is expected that the four agencies will quickly transition to working on implementation of a solution at the two test locations.

Wait times are also an important concern for travelers and those involved with or affected by international travel and trade. For the land ports of entry, in 2008 to further refine the measurement of land border wait times, CBP defined wait time measures as, “the time it takes, in minutes, for a vehicle to reach the primary inspection booth after arriving at the end of the queue.” This land border measurement definition eliminated the inspection time from the calculation and is more indicative of actual border wait times. Based on this concept, CBP currently publishes hourly border wait time data on the CBP website, www.cbp.gov. This data is accessible by all regional and state traffic management stakeholders and federal agencies for economic impact analysis.

The automated wait time measurement solution being piloted for this summer will also improve CBP transparency by enabling land border wait times to be easily shared with participating federal agencies and regional traffic management centers. The automated wait time solution is anticipated to reduce delays in freight movement and loss of business income at regional, state

and national levels, and reduce environmental costs by decreasing pollution and carbon emissions associated with heavy congestion.

CBP is committed to working collaboratively with relevant stakeholders, including the Department of Transportation and DOC, as well as Canada and Mexico, toward the goal of developing border delay information that can be used to accurately calculate economic impacts, as well as lead to improvements in border management.

Question 2:

Re Staffing: While the size of Border Patrol has increased significantly over the last five years, the staffing levels at ports have not increased at a rate necessary to meet the agency's dual trade facilitation and border security missions. What are your specific plans to ensure there is adequate staffing at ports of entry along the Southwest border?

Answer: I appreciate your concern about the need to ensure adequate staffing on the border. To accomplish this at the ports of entry along the Southwest Border, in FY 2010, CBP allocated 70% of the entry level CBPO hires to the Southwest border. CBP is conducting a study of all staffing allocations using the CBPO Workload Staffing Model (WSM) to determine adequate staffing at Southwest border ports of entry with possible redeployment of existing assets from other locations to Southwest border ports. WSM is a decision-support tool to assist in strategically determining CBPO manpower requirements. Then CBP OFO applies its resource allocation process to integrate operational and budgetary decisions to where available resources will go.

CBP's WSM for CBPOs acts as a notional guide in the allocation of CBPOs for the trade mission. It is a decision support tool and does not eliminate the judgment of experienced leadership when making decisions on allocating staff to support our trade mission. The WSM assesses staffing needs based on workload data, processing times, complexity, and threat levels; it provides a nationally optimal level of staffing for CBPOs for each port of entry. CBP also must take additional factors into account when allocating staff, such as overtime constraints, special enforcement initiatives, specific local issues, and the unique attributes of each port.

Question 3:

Re Santa Teresa: Rapidly expanding economic development in the Santa Teresa –San Jerónimo area as well as a new four-lane road from Cd. Juárez to the crossing point has resulted in a large increase in traffic at the port. Northbound travelers coming from Juárez can now reach the port in about 15 minutes (it used to take about one hour). Building at least two additional passenger lanes would allow the port to accommodate current and future traffic, and provide a cost-effective way to increase overall port capacity in the El Paso region (the lanes are estimated to cost a total of approximately \$4 million). When there is rapid economic development in a particular area that increases port traffic dramatically, what process does CBP/GSA have in place to expedite necessary construction? Considering that there is a substantial backlog of large-scale port renovation

projects, do you believe it makes sense for CBP to prioritize smaller port modernization projects which can increase regional capacity at a relatively low cost? The port lacks some basic infrastructure such as a pedestrian sidewalk. Individuals crossing at the port, including children, must walk in line with the cars going through the port. What is CBP's timeline for building an appropriate sidewalk at the port and addressing this safety hazard? Are there any plans for increasing staffing at the port and/or expanding the hours of operation?

Answer: I understand your concern about modernizing Santa Theresa and other smaller ports of entry. It would be helpful to begin generally with an explanation of the procedure used to identify modernization priorities. CBP's project prioritization methodology, used to establish its capital investment plan for modernization of the Land Ports of Entry (LPOEs), consists of five steps:

1. Gathering data using the Strategic Resource Assessment (SRA) process;
2. Ranking the facilities by identified needs;
3. Conducting a sensitivity analysis on the initial ranking of needs;
4. Assessing project feasibility and risk; and
5. Establishing an executable capital investment plan.

CBP conducts SRAs cyclically to compare port modernization needs against 60 distinct criteria in the following four categories:

- Mission and Operations
- Security and Life Safety
- Space and Site Deficiency
- Personnel and Workload Growth

CBP employs the data collected through the SRA to present a uniform picture of needs across ports along the northern and southern U.S. borders. Next, CBP ranks ports based on criticality of need for modernization by calculating a combined score for each location using the data points collected in the SRA and the criteria of the predefined four categories, adjusted to reflect the relative weight of each category to the port's overall score. This overall score represents CBP's initial needs assessment of relative urgency at a given port compared with the national inventory of ports. This initial ranking, however, does not represent the final prioritization or investment strategy. CBP applies two additional analyses to develop a prioritized investment plan for LPOE modernization projects.

CBP applies a sensitivity analysis of the initial ranking to determine if the results should consider factors unaccounted for through the standard SRA process, such as any unique regional or local conditions. Recent examples of this type of data sensitivity include identification of new manufacturing developments immediately adjacent to an existing port facility that increase the demand for commercial processing capacity, facility damage resulting from floods that occurred after the SRA, and the development of new land port facility proposals in the same transportation region as an existing facility. This information helps CBP identify additional drivers,

constraints, and legislative mandates that may change the critical needs ranking. CBP incorporates sensitivity analysis factors in the development of an initial prioritization list.

CBP then evaluates the proposed project's feasibility and risks associated with its implementation, such as environmental conditions, cultural and historic preservation requirements, or land acquisition issues. In addition, CBP considers the likely availability of funding to determine whether sufficient resources exist to execute a project.

Once CBP arrives at a final prioritization of proposed modernization projects, it develops a capital investment plan. This capital investment plan divides the project list into feasible annual work plans that reflect the analytical conclusions and incorporate project phasing and funding requirements. CBP updates the capital investment plan annually, taking into account any changes to DHS's mission and strategy, changing conditions at the ports, and factors discovered in the course of projects already underway. In addition, CBP and the General Services Administration (GSA) work together to identify smaller port modernization projects which can increase regional capacity at a relatively low cost and execute them alongside the capital investment plan.

CBP and the GSA, as port owner, continue to explore opportunities to fund projects at Santa Teresa to improve cross-border facilitation and the safety of the traveling public and personnel. CBP and GSA have been in discussions with local stakeholders and the New Mexico Department of Transportation (NMDOT). I have directed CBP to keep me informed of this process.

With respect to staffing, CBP determines staffing levels and hours of operation based on a variety of factors that include the historical volume of traffic, the different types of trade and travel crossing the border at specific locations, and the overall management of resources. We continue to monitor developments at Santa Teresa, as well as the entire inventory along the Southwest border, to ensure we are maximizing utilization of our staffing resources and hours of operation across the border to minimize wait times and ensure inspectional efficiency.

I look forward to working with you to evaluate staffing and other resource requirements at the Santa Teresa Port of Entry.

Question 4:

Re: Laser Visas (border crossing cards): As you know, pre-screened Mexican nationals holding Border Crossing Cards are currently permitted to travel 25 miles into the United States for a period of up to 30 days to shop, conduct business, or visit family. However, because most of New Mexico's larger border communities are along the I-10 corridor and not situated within the 25-mile limit, individuals wishing to travel to these areas must pay additional I-94 fees (\$6 per person). Existing regulations provide an exception for Arizona (which has a 75 mile limit) to allow travelers with Border Crossing Cards to visit Tucson. I strongly believe that a similar exception makes sense for New Mexico and that it would bolster the economic activity in the region. Would you commit to reviewing these

regulations to see if changes could be made to allow individuals holding Border Crossing Cards to visit cities such as Las Cruces, Deming, and Lordsburg?

Answer: CBP believes creating additional mile-limits beyond those already existing would make an inconsistent situation along the Southwest border even more inconsistent. There would be a 25-mile restriction in California and Texas, a 75-mile restriction in Arizona, and another restriction in New Mexico. Enforcement of our Immigration laws would be more difficult since would-be illegal immigrants would have easier access to many of the east-west main travel routes, and would circumvent Border Patrol checkpoints in New Mexico (and would likely circumvent the major checkpoints in Texas). Finally, creating additional mile-limits would make more it more difficult to establish an immigration violation, since it would allow aliens to travel further without an I-94.

Question 5:

Border Security Forward Operating Bases: Given the large scope of terrain covered by Border Patrol in the boot heel of New Mexico, Border Patrol agents based at the Lordsburg station are often unable to respond in a timely manner to apprehend illegal border crossers. Forward Operating Bases (FOBs) are an important strategic staging tool to increase Border Patrol's ability to rapidly respond to emergencies and to conduct routine patrols. It is my understanding that CBP is considering establishing two FOBs in the boot heel (Antelope Wells and Animas Valley at a cost of approximately \$3-5 million each). What is the current timeline for establishing the FOBs? What are the barriers to making this reality? If funding is the primary obstacle, would CBP be supportive of including additional funding for this purpose as part of the FY11 budget? Has CBP considered requesting funding from the Treasury Forfeiture Fund (TFF) for this purpose?

Answer: CBP's FY 2010 and FY 2011 budgets do not include funds for the Antelope Wells and Animas Valley Forward Operating Bases (FOB). The recently enacted FY 2010 supplemental appropriations act included \$6 million for forward operating bases. CBP is currently evaluating options for this funding.

Both Antelope Wells and Animas Valley Forward Operating Bases are pending initiation contingent on the identification of funds. The FOB projects have estimated costs of approximately \$3 million to \$5 million each. If funding is allocated, CBP anticipates that it will take approximately 12 to 18 months to establish the FOBs.

CBP has considered funding from the Treasury Forfeiture Fund (TFF), but the primary focus of the TFF is the funding of seizure and forfeiture related work, such as vaults and storage of seized property (vehicles, drugs, etc). It also has robust competition for its limited funds.

Question 6:

Air Support: One of the challenges in patrolling certain areas of the border, such as the New Mexico boot heel, is that the vast, rugged terrain is often difficult to traverse on the ground. Are you aware of any plans to acquire and use helicopters in the El Paso Sector, and specifically in the Lordsburg area? If so, what is the timeline for the procurement and deployment of these aerial assets?

Answer: For many years, CBP has based at least two helicopters in Deming, New Mexico, for the purpose of providing aerial support to U.S. Border Patrol agents and ICE special agents in the rugged Boot Heel area of southwestern New Mexico. CBP Office of Air and Marine (OAM) has already assigned one newer generation AS350 helicopter with sensor technology to its Deming Air Unit, with another one on the way, to begin replacing older OH-6 helicopters. The OAM air assets are tactically controlled by the Border Patrol Sector Chief and routinely provide helicopter support to ground agents and ICE in New Mexico from OAM's El Paso Air Branch in El Paso, Texas.

Question 7:

Maintenance of Border Roads: While the increase in border security operations has made a positive difference in terms of enhancing security, it has also caused some challenges for border residents. One of the primary complaints that I hear is that Border Patrol is not helping to maintain roads that they use heavily (including roads both immediately adjacent to the border and other roads frequently used by Border Patrol for interdiction or patrol). How is CBP attempting to mitigate some of the unintended consequences of increased border enforcement, particularly the increased toll placed on unimproved private and government-owned roads degraded by heavy use by Border Patrol? What specific steps are being taken to address this issue in New Mexico? Can CBP provide data that tracks its use of private border roads to better help inform maintenance plans and resource needs? Is CBP's Comprehensive Tactical Infrastructure Maintenance and Repair (CTIMR) contracting process on track? How will it impact New Mexico?

Answer: I understand the concern this issue poses for local residents and will direct my staff to work with your staff to further explore solutions to this issue. The Comprehensive Tactical Infrastructure Maintenance and Repair (CTIMR) program is intended to cover the maintenance and repair of the Border Patrol's tactical infrastructure within five specific work categories, to include fence and gates, roads and bridges, drainage and grates, vegetation clearing and debris removal, and lighting and electrical components.

Border Patrol field commanders from each sector have submitted their requirements for maintenance and repair under CTIMR. Currently, there are 3,100 miles of roads identified as requiring repair or maintenance under CTIMR throughout the Southwest border. Approximately 150 miles are located in New Mexico, with additional mileage under review. The CTIMR contract is on track with awards covering all nine Southwest border sectors. While the impacts

of CTIMR are currently unknown for any specific location, there are numerous identified requirements within the five work categories in New Mexico.

Question 8:

Border Communication Coverage: Due to inadequate communication infrastructure and coverage, border residents in certain areas are unable to report illegal activity and call for help during emergencies. What specifically is CBP doing to support efforts to improve emergency communication and cell coverage along the southern border?

Answer: DHS has appointed CBP the lead agency to direct the Department's approach to promoting commercial cellular service coverage along the border. CBP's Office of Information Technology is leading this effort. CBP is working with DHS Office of Public Affairs to coordinate the inter-agency efforts and communicate existing capabilities and efforts being planned to improve the public's ability to communicate under emergency situations along the border. This effort will also support longer term DHS efforts to move to the next generation wireless network for law enforcement and other first responders.

CBP has identified commercial wireless services that are available to border residents in the immediate and near term:

- Devices are currently available that provide a one-way satellite communication distress notification, including a GPS location, to a local 911 number or emergency responder as configured by the user. These devices do not provide voice services.
- Satellite phone service is currently available to private citizens through commercial providers. Citizens can sign up to buy devices and plans based on their individual requirements and circumstances. Satellite coverage is not ubiquitous and is dependent on a variety of conditions including satellite coverage, atmospheric conditions, terrain, etc.
- CBP is currently waiting for AT&T to complete pre-production testing and provide hybrid wireless devices (both cellular and satellite) for operational testing and evaluation along the Southwest border by CBP personnel. The device is incrementally larger than a Blackberry, operates on AT&T's cellular network and is capable of manually being switched to satellite coverage when cell phone coverage is not available. AT&T's intent is to offer this device to individual subscribers for a purchase price for the device and monthly recurring charges based on usage.
- Each of the major carriers also own truck and trailer mounted systems to extend cellular coverage over limited distances, for short times, during disaster recovery operations. These systems are designed specifically for limited duration disaster recovery operations, are in many ways a point solution, and do not provide the ubiquitous extension of cellular coverage required to cover large expanses of terrain.

Longer term solutions include extending cellular coverage through the construction of permanent cellular towers. In 2008, CBP requested a number of carriers to conduct limited studies and provide rough order of magnitude costs to extend commercial cellular coverage in selected areas in Arizona and New Mexico. The findings of the studies indicated that due to the topography of the region, extensive tower construction was required. The effort to extend cellular coverage dictated long project completion times and high capital costs. CBP will continue to work with commercial vendors to identify potential solutions.

Question 9:

Outbound Inspection Strategy: It is my understanding that CBP employs a “pulse and surge” strategy at ports of entry as part of its efforts to identify illegal weapons and drug proceeds leaving the country, and that there are few ports with dedicated outbound inspection teams that are consistently operational. The lack of comprehensive outbound coverage at the ports creates the opportunity for traffickers to avoid inspection by waiting until the “surge” is complete or by utilizing ports without these teams. While we have been making progress in seizing a larger portion of weapons and bulk cash, we are still only interdicting a very small amount of the estimated flow (for example, last year CBP and ICE seized only about \$30 million of the estimated \$15-\$20 billion in bulk cash that is smuggled across the U.S. southern border every year). What is the percentage of ports along the southern border that have dedicated outbound inspection teams? Does CBP intend to increase the number of such teams? If so, what is the timeline for doing so? It is my understanding that CBP does not have target goals with regard to the percentage of outgoing vehicles, cargo, etc. that is to be inspected (i.e., 100 percent, 50 percent, or 5 percent). Why is this? In your view, what seizure rate of arms or bulk cash would translate to a significant disruption of criminal operations?

(1) What is the percentage of ports along the southern border that have dedicated outbound inspection teams?

Answer: All four (4) Southwest Border Field Offices have personnel dedicated to outbound inspection teams and conduct outbound operations on a daily basis. The uniqueness of each port, workload and staffing levels are utilized by the ports of entry along the southern border to determine the outbound staffing levels.

(2) Does CBP intend to increase the number of such teams? If so, what is the timeline for doing so?

Answer: CBP employs a “pulse and surge” strategy for outbound operations on the Southwest border. “Pulse and surge” operations are short in duration and involve periodic outbound inspections followed by periods without inspections. This allows CBP to manage staffing, maintain the element of surprise, prevent operations from being predictable, counter the use of “spotters,” and to control the flow of outbound traffic.

By the end of FY 2010, CBP will have approximately 336 personnel trained and deployed along the Southwest border to conduct outbound operations. The 336 personnel include the original 100 CBP officers that were routinely conducting outbound operations prior to March 2009; 120 CBP officers provided for by the FY 2009 appropriations; and the 116 Border Patrol agents currently supporting outbound operations along the Southwest border. During FY 2010, CBP plans to hire 50 CBP officers plus an additional 63 for a total of 113 CBP officers.

By the end of FY 2011, CBP will have approximately 449 personnel trained and deployed to conduct outbound "pulse and surge" operations along the Southwest border.

(3) It is my understanding that CBP does not have target goals with regard to the percentage of outgoing vehicles, cargo, etc. that is to be inspected (i.e., 100 percent, 50 percent, or 5 percent). Why is this?

Answer: CBP employs a "pulse and surge" strategy for outbound operations. CBP's goal is not to examine a specific percentage (e.g., 100 percent, 50 percent, 5 percent, etc.) of all conveyances and cargo departing the United States. CBP's goal is identify and examine those conveyances and cargo posing the highest risk. This includes those personally owned or commercial conveyances selected by officers during pulse and surge operations or commercial exports identified via CBP's Automated Targeting System (ATS). ATS screens all export information provided to the U.S. Government as required under Census regulations to include licensable commodities.

All eight railroad crossings on the U.S.-Mexico border are conducting 100 percent scanning of outbound rail cars. Operationally, rail cars are scanned while the train is moving and many times an anomaly may be detected as the rail car enters Mexico. Notification protocols have been developed with Mexican Customs for the inspection of suspect rail cars in those circumstances.

(4) In your view, what seizure rate of arms or bulk cash would translate to a significant disruption of criminal operations?

Answer: Because of the adaptability of Mexican DTOs, and the uncertainties regarding the flows of contraband, it is difficult to quantify a baseline seizure rate for firearms or bulk currency. CBP has identified the need to improve facilities, increase staffing, enhance the automated systems and engage in regulatory reform to ensure CBP's outbound mission evolves to counter the identified threats.

Question from Senator Lincoln

Question 1:

Many industries and workers in Arkansas, ranging from steel to catfish, rely on the enforcement of trade laws and agreements in order to maintain a level playing field with their competitors. Foreign countries and exporters need to play by the same rules our producers and manufacturers abide by. Yet, the GAO reported that more than \$600 million in antidumping duties have gone uncollected since 2001, mostly involving imports from China. This is a serious problem that must be addressed by customs and other agencies. As part of a process to review existing practices, I understand that the Department of Commerce is debating whether to change the collection system from a "retrospective" to a "prospective" one. Agricultural producers and industrial manufacturers in my state are concerned by a shift towards prospective collection, seeing it as less accurate than the current system. Others believe that a change is warranted in order for the U.S. to conform to international standards and to increase predictability. As Commissioner, how do you view the current system of collection? Which system would you recommend as part of this review process? And finally, what role does enforcement of existing rules play in the efficiency and degree of duty collection.

Answer: Collection of AD/CVD remains a priority for CBP. CBP vigorously pursues collection of all delinquent debt consistent with the Federal Claims Collection Standards applicable to all federal agencies but subject to specific standards required by law. Specifically with regard to AD/CVD, their collection has been problematic for many years. The factors that create the problems have long been identified by CBP and confirmed by various reports, e.g., GAO reports, conducted during the past decade. One of the main factors contributing to uncollected AD/CVD duties is the U.S. AD/CVD retrospective collection system itself. Under this system, final AD/CVD liability for importers is often not known until years after the original import transactions. There are importers who are unwilling or unable to pay the actual duties and go out of business when CBP issues a bill. CBP has undertaken several measures to mitigate the collection risks going forward, such as instituting a process of reviewing all importers' continuous bonds (which basically serve as an insurance policy for CBP) monthly for bond sufficiency

CBP recommends the adoption of a prospective AD/CVD collective system, in which final AD/CVD liability is established at the time of importation. A prospective AD/CVD system would alleviate the collection issues faced by CBP under the retrospective AD/CVD system since the amount of duty assessed at entry would be the final amount owed. This type of system would also substantially reduce the administrative burden on CBP resources associated with a retrospective system, and allow CBP resources to more fully focus on AD/CVD enforcement issues, such as circumvention of the AD/CVD law to avoid paying duties. A prospective system would also benefit importers (and by proxy consumers) who would know with greater certainty the AD/CVD duties due upon entry rather than at some point in the future.

Question from Senator Crapo

Question 1:

I understand the U.S. Department of Homeland Security is one of several government agencies involved in the Congressionally-mandated Next Generation Air Transportation System (NextGen)/Joint Planning and Development Office (JPDO) initiative focused on transformational modernization of the national aviation system. What role does Customs have in the NextGen/JPDO initiative process, and is this process a priority for Customs? Please also provide your perspective on the value of interagency collaboration in the context of this NextGen/JPDO multiagency and industry partnership.

Answer: CBP has been involved with NextGen/Joint Planning and Development Office (JPDO) projects since 2004. Most recently CBP OAM participated as an active contributor to the JPDO Integrated Surveillance Study Team (ISST). The purpose of the ISST was to provide a consolidated interagency report detailing top-level integrated surveillance requirements and gaps out to the 2025 time frame. As a result of the findings and recommendations from the ISST, three subsequent working groups were formed. CBP OAM was the lead DHS representative on the JPDO Integrated Surveillance Working Group, Enterprise Architecture Working Group, and participated with DHS Policy Development on the Integrated Surveillance Governance Working Group. These three working groups were formed to reconcile overlapping roles, responsibilities, authorities, and capabilities of the surveillance mission partners. The groups identified resources, surveillance gaps, and common surveillance requirements with both compliant and non-compliant airborne tracks.

As operators of approximately 300 aircraft, CBP OAM requires daily access to the National Airspace System to achieve Air Domain awareness in its mission of using coordinated and integrated air and marine forces to help protect the American people and nation's critical infrastructure. CBP cannot achieve this Air Domain awareness without the cooperation and collaboration of its interagency partners. In 2006, the President directed the development of a comprehensive National Strategy for Aviation Security in Presidential Directive-47 and Homeland Security Presidential Directive-16. As a result, the National Strategy for Aviation Security (NSAS) and the seven supporting Plans were authored by a concentrated effort among the interagency partners, including the JPDO staff, and were released by the White House. Further, the NSAS and a number of the Plans require further interagency actions and implementation of the plans to bridge toward the NextGen vision.

In 2005, the Department of Defense (DoD) and CBP Office of Air and Marine established the Long Range Radar Joint Program Office to provide oversight on the Service Life Extension Program (SLEP) of the FAA-maintained primary long range radar system. The FAA is responsible for the transition of general and commercial aviation to NextGen. However, the DoD national defense mission and the DHS national security mission require that the FAA maintains the conventional long range radar capability through 2025.

Question from Senator MenendezQuestion 1:

In your testimony, you recognized the need to balance both security and trade facilitation, an aspiration that I agree with wholeheartedly. In these challenging economic times, I fully support efforts to expand exports and improve trade facilitation critically important to growing U.S. businesses. However, with one of the busiest ports in the country in the state of New Jersey, I remain particularly concerned with the lack of progress by the Department of Homeland Security to implement 100 percent screening requirements on inbound cargo. Congress created this mandate for a purpose – it is not a suggestion or an aspiration, but a law. I have previously voiced my concerns that DHS and its subordinate agencies have not taken this requirement seriously enough and I question whether or not the administration is taking the steps necessary to make scanning more targeted and efficient. In fact, a Government Accountability Office report from December 2009 states that Customs and Border Patrol “has made limited progress in scanning containers at the initial ports participating in the [Secure Freight Initiative] program”; that it “has not developed a plan to scan 100 percent of U.S.-bound container cargo by 2012”; it “has not conducted a feasibility analysis of expanding 100 percent scanning, as required by the SAFE Port Act”; and that “the lack of a decision on a clear path forward” has prevented the agency from accurately assessing the overall costs. “I have said many times that we cannot just continue to respond to the last threat; we must think ahead in order to try to prevent the next one. Earlier this year, we were confronted with two pieces of homeland security intelligence that demonstrate why now, more than ever, we must not abandon the existing 100 percent mandate for port scanning. First, a report by the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism indicated that al Qaeda is as determined as ever to attack the United States with a weapon of mass destruction. Second, Director of National Intelligence Blair testified before the Senate Armed Services Committee that an attempted terrorist attack on the United States within the next six months is a “certainty. These most recent reminders of the threats we face – and the immediacy of those threats – are also reminders about the need to make good on plans to ensure that all inbound cargo is safe. Security experts have repeatedly asserted that our seaports are viewed by terrorists as a prime point of entry for weapons or weapon materials, and we cannot get by with less than adequate security measures. As Commissioner of Customs and Border Protection, I’d like you to provide an update on what steps you and your agency are taking in concert with DHS to analyze the path forward to achieve 100 percent screening. Further, I would like your commitment to provide periodic detailed updates on the agency’s progress.”

Answer: DHS initiated an interagency development process for global supply chain security which commenced in February 2010. This process will result in a “National Strategy to Secure the Flow of Commerce in the Global Supply Chain.” This Strategy will fulfill the requirements of Section 201 of the SAFE Port Act, will build upon other recently developed documents such as the 2010 “Quadrennial Homeland Security Review” and the 2010 “National Security Strategy,” and will provide a U.S. government vision for global supply chain security

across all modes of transportation for enhancing the security of the people, goods, conveyances, and infrastructure that make up this system. This Strategy will be completed later this Fall and will set a path forward to address the 100 percent maritime cargo scanning requirement.

In the meantime, CBP has sought to maximize the security of U.S.-bound maritime cargo by maintaining an effective risk-based strategy. CBP has accordingly developed a prioritized approach that focuses future deployments of overseas scanning operations to locations of strategic importance. CBP believes this approach maximizes the security and trade facilitation benefits resulting from the collection of additional scan data, and enhances CBP's risk-based, layered strategy towards securing maritime cargo.

By focusing 100 percent scanning in locations of strategic interest, CBP has made significant progress towards deploying scanning operations to the Ports of Karachi, Pakistan; Shuaiba, Kuwait; Aqaba, Jordan; and Alexandria, Egypt. These locations will allow CBP to test new technology in an effort to overcome many of the challenges revealed in the initial pilot ports and provide a diverse range of port environments to move forward with the creation of scanning capabilities.

CBP will continue to provide semi-annual reports to Congress on the status and progress of 100 percent scanning.

AFFIDAVIT

OF

KATIE LYNN BOYD

I, Katie Lynn Boyd, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State of Washington. I have personal knowledge of the facts stated herein.
2. I was born in the United States and am a citizen of the United States. I married in 2004; my maiden name was Katie Lynn Wagner. My social security number is
3. From August 2003 until May 2004, while a student at Point Loma Nazarene University, I worked part-time for Alan Bersin and Lisa Foster. My responsibilities included driving Madeleine and Amalia Bersin to appointments, school events and sporting activities.
4. Mr. Bersin and Ms. Foster obtained my services through the university job board. Once hired, Mr. Bersin or Ms. Foster would ask me to transport one or both children to particular events. I would do so if my school or other obligations permitted. I used my own car, paid for my own gas and car insurance, and was available to perform similar services for other families during that time, subject to my responsibilities at college.
5. At the time of hire, I presented and Lisa Foster personally examined information on my driver's license and Social Security Card.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Katie Boyd
Katie Boyd

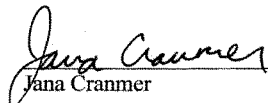
Executed this 26 day of July, 2010, in the County of Snohomish, Washington.

AFFIDAVIT
OF
JANA CRANMER

I, Jana Cranmer, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State of California. I have personal knowledge of the facts stated herein.
2. I was born in the United States and am a citizen of the United States. My Social Security number is
3. From January 2006 until December 2006, while a student at Point Loma Nazarene University, I worked part-time for Alan Bersin and Lisa Foster. My responsibilities included driving Madeleine and Amalia Bersin to appointments, school events and sporting activities.
4. Mr. Bersin and Ms. Foster obtained my services through the university job board. Once hired, Mr. Bersin or Ms. Foster would ask me to transport one or both children to particular events. I would do so if my school or other obligations permitted. I used my own car, paid for my own gas and car insurance, and was available to perform similar services for other families if my school obligations permitted.
5. At the time of hire, Lisa Foster requested that I produce and personally examined information on my driver's license and Social Security Card.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Jana Cranmer

Executed this 29th day of August, 2010, in the County of San Mateo, California.

STATE OF CALIFORNIA : AFFIDAVIT
: :
COUNTY OF SAN DIEGO : ss:

I, Emily Kilgore, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State of California. I have personal knowledge of the facts stated herein.
2. I was born in the United States and am a citizen of the United States. I married in 2003; my maiden name was Emily Gleason.
3. From August 1999 until May 2002, while a student at Point Loma Nazarene University, I worked part-time for Alan Bersin and Lisa Foster. My responsibilities included driving Madeleine and Amalia Bersin to appointments, school events and sporting activities.
1. Mr. Bersin and Ms. Foster obtained my services through the university job board. Once hired, Mr. Bersin or Ms. Foster would ask me to transport one or both children to particular events. I would accept the tasking if my school or other obligations permitted me to do so. I used my own car, paid for my own gas and car insurance, and was available to perform similar services for other families during that time, subject to my responsibilities at college.
2. At the time of hire, I presented and Lisa Foster personally examined information on my driver's license and Social Security Card. I do not recall whether or not she recorded the information.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Emily Kilgore

Executed this 23 day of June, 2010, in the County of San Diego, California.

AFFIDAVIT
OF
ROBYN KOCHON

I, Robyn Kochon, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State of California. I have personal knowledge of the facts stated herein.
2. I am a citizen of the United States. I married in 2007; my maiden name was Robyn Smith. My Social Security number is
3. From September 2004 until December 2005, while a student at Point Loma Nazarene University, I worked part-time for Alan Bersin and Lisa Foster. My responsibilities included driving Madeleine and Amalia Bersin to appointments, school events and sporting activities.
4. Mr. Bersin and Ms. Foster obtained my services through the university job board. Once hired, Mr. Bersin or Ms. Foster would ask me to transport one or both children to particular events. I would do so if my school or other obligations permitted. I used my own car, paid for my own gas and car insurance, and was available to perform similar services for other families, if my school obligations permitted.
5. At the time of hire, Lisa Foster requested that I produce and personally examined information on my driver's license and Social Security Card.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Robyn Kochon


Executed this 4 day of August, 2010, in the County of San Diego, California.

STATE OF CALIFORNIA : AFFIDAVIT
:
COUNTY OF SAN DIEGO : ss:

I, Leah Perdue, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State of California. I have personal knowledge of the facts stated herein.
2. I was born in the United States and am a citizen of the United States.
3. From October 2008 until December 2008, while a student at Point Loma Nazarene University, I worked part-time for Alan Bersin and Lisa Foster. My responsibilities included driving Madeleine and Amalia Bersin to appointments, school events and sporting activities.
4. Mr. Bersin and Ms. Foster obtained my services through the university job board. Once hired, Mr. Bersin or Ms. Foster would ask me to transport one or both children to particular events. I would accept the tasking if my school or other obligations permitted me to do so. I used my own car, paid for my own gas and car insurance, and was available to perform similar services for other families.
5. At the time of hire, Lisa Foster personally examined information on my driver's license and Social Security Card. I cannot recall whether or not she recorded the information.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Leah Perdue


Executed this 30 day of June, 2010, in the County of San Diego, California.

STATE OF MONTANA : AFFIDAVIT
COUNTY OF LEWIS AND CLARK: ss:

I, Gillian Stafford, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State of Montana. I have personal knowledge of the facts stated herein.
2. I became a naturalized citizen of the United States March 3, 1993.
3. From 1993 to 1999, I worked in the home of Alan Bersin and Lisa Foster. My responsibilities included house cleaning services and the provision of child care for Madeleine and Amalia Bersin.
4. At the time of hire, I was a lawful permanent resident of the United States. At that time, Lisa Foster personally examined information on my Permanent Resident Card. She also examined information on my driver's license and Social Security Card.

I declare under the penalty of perjury under the laws of the State of Montana that the foregoing is true and correct.



Gillian Stafford

Executed this 14 day of July, 2010, in the County of Lewis and Clark, Montana.

STATE OF CALIFORNIA : AFFIDAVIT
: :
COUNTY OF SAN DIEGO : ss:

I, Vanessa Williams, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State of California. I have personal knowledge of the facts stated herein.
2. I was born in the United States and am a citizen of the United States.
3. From January 2007 until April 2008, while a student at ~~Point Loma Nazarene~~ ^{had just finished my last semester @ PLNU &} ~~University~~ ^{was attending Kaplan}, I worked part-time for Alan Bersin and Lisa Foster. My responsibilities included driving Madeleine and Amalia Bersin to appointments, ^{University} school events and sporting activities. _w
4. Mr. Bersin and Ms. Foster obtained my services through the university job board. Once hired, Mr. Bersin or Ms. Foster would ask me to transport one or both children to particular events. I would accept the tasking if my school or other obligations permitted me to do so. I used my own car, paid for my own gas and car insurance, and was available to perform similar services for other families if my school obligations permitted.
5. At the time of hire, Lisa Foster requested that I produce and personally examined information on my driver's license and Social Security Card. I cannot recall whether or not she recorded the information.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Vanessa Williams
Vanessa Williams

Executed this 30 day of June, 2010, in the County of San Diego, California.

1994STATE OF ARIZONA : AFFIDAVIT
:
COUNTY OF PIMA : ss:

I, Mark Reed, do hereby swear, certify, and affirm that:

1. I am over the age of 18 and am a resident of the State Arizona. I have personal knowledge of the facts stated herein.
2. Prior to my retirement from government service, I served as Central Regional Commissioner in the Immigration and Nationalization Service (INS), responsible for border patrol, investigation, detention and removal, adjudication, and inspection operations from the northern to southern U.S. borders in the central region of our country.
3. Alan Bersin served as U.S. Attorney for the Southern District of California from 1993 to 1998, and as the Attorney General's Southwest Border Representative from 1995 to 1998. From 1994 to 1998, I served as district director of the INS in San Diego. During that time period, we had many discussions about the need to sanction larger employers who hired workers who were not authorized for employment in the United States. We discussed in general terms INS worksite investigations and, in particular, how the prevalence of counterfeit documents complicated prosecutions against employers. To the best of my recollection, my office did not present any cases to the U.S. Attorney's Office for prosecution or filing of a civil complaint against an employer during that time period for failure to verify employment authorization.
4. Although Alan Bersin and I discussed the need to enforce the laws against the unlawful employment of aliens, we never discussed this subject in the context of household employees or small businesses. Our discussions related to large scale violations by large employers.

I declare under the penalties of perjury under the laws of the State of Arizona that the foregoing is true and correct.



Mark Reed

Executed this 29th day of June, 2010, in the County of Pima, Arizona.

Lawrence S. Poster, CPA

P.O. Box 3131
16092 San Dieguito Road
Rancho Santa Fe, CA 92067

Tel: (858) 759-6870
Fax: (858) 756-0641
email: lsposter@aol.com

August 4, 2010

To Whom It May Concern:

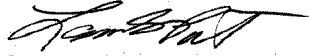
I have been the tax accountant for Alan Bersin and his wife, Lisa Foster, for many years. In that role, I prepared their federal and state income tax returns for 2007, which included Schedule H but did not include Form 2441. That form was not included because I believed that no credit was available to the taxpayers.

Form 2441 is used to claim a credit for certain dependent care expenses, which is limited to \$3,000 per dependent. In 2007, only one daughter qualified as a dependent for these purposes.

To calculate eligibility for the credit, the \$3,000 in compensation noted above must be reduced by dependent care benefits that were provided by an employer and excluded from the employee's W2 taxable compensation. In 2007, I believed that Lisa Foster had at least \$3,000 in those dependent care benefits on her W2 from the State of California. In reviewing that W2, however, I found that the dependent care benefits were actually \$2,400. Thus, they should have qualified for a credit based on \$600 of compensation to the caregiver(s). If Alan Bersin and Lisa Foster had claimed the credit, it would have been 20% of that amount or \$120.

Should you have any further questions concerning this matter, please call me at (858) 232-7425.

Very truly yours,



Lawrence S. Poster, CPA

SUBMITTED BY SENATOR BOXER

**U.S. Senator Dianne Feinstein
Statement for the Record
Senate Committee on Finance**

**Nomination of Alan D. Bersin to be Commissioner of Customs,
United States Department of Homeland Security**

May 13, 2010

Mr. Chairman, I am very pleased that the Committee is considering the nomination of Alan Bersin to be Commissioner of Customs for the Department of Homeland Security. I have known Mr. Bersin for many years and believe he would be an excellent Customs Commissioner.

Mr. Bersin has a long career that exemplifies the smart and tough leadership required to protect our national security and serve the broader public interest in leading Customs and Border Protection. In 1993, President Clinton appointed Mr. Bersin to be the United States Attorney for the Southern District of California, where he served for nearly five years. As United States Attorney, Mr. Bersin managed the heaviest federal criminal caseload in the country. These prosecutions involved a full range of federal criminal violations, including immigration and narcotics offenses, in addition to violent and white collar crime.

Significantly to the Committee's consideration today, during that time, Mr. Bersin was the Attorney General's Southwest Border Representative, responsible for coordinating federal law enforcement on the border from South Texas to Southern California.

As the Southwest Border Representative, Mr. Bersin revamped inspection procedures by the Immigration and Naturalization Service and Customs to detect and deter narcotics trafficking and alien smuggling, while allowing the promotion of lawful cross-border commerce. In this capacity, he represented the United States in discussions with the Mexican government on immigration, narcotics, and other binational border issues.

After serving as United States Attorney, Mr. Bersin became Superintendent of Public Education in San Diego, the nation's eighth-largest urban school district, and the second-largest in California. While leading the San Diego schools, he launched a major reorganization of the district to focus its resources strategically on instruction.

By prioritizing and focusing on the strengths of both teachers and students, he helped to build student achievement, while supporting teachers. In the same way, Mr. Bersin will build on the talent of the hardworking employees of Customs and Border Protection and prioritize its resources to effectively achieve its mission.

Governor Schwarzenegger then appointed Mr. Bersin to serve as the State of California's Secretary of Education. He was also appointed to California's State Board of Education.

In 2006, Mr. Bersin became the Chairman of the San Diego Regional Airport Authority, where he was first elected Chairman by his colleagues and then appointed Chairman by the Mayor of San Diego, demonstrating the respect he earned from colleagues and executives alike.

Mr. Bersin then joined the Department of Homeland Security and served as Assistant Secretary for International Affairs and Special Representative for Border Affairs, also known as the "border czar." In that capacity, he served as Homeland Security Secretary Janet Napolitano's lead representative on border affairs and strategy regarding security, immigration, narcotics, and trade matters.

Since March, Mr. Bersin has been leading Customs and Border Protection. While acting as border czar and during his time as the head of Customs and Border Protection, Mr. Bersin has worked with state and local agencies to break down barriers between local entities and the federal government in order to achieve effective cooperation between multiple law enforcement agencies along the border. Mr. Bersin has also worked to find the common ground for collaboration and cooperation with the Mexican government that we need to ensure border security most effectively.

Mr. Bersin's background demonstrates his strong commitment to public service and his outstanding experience as an effective manager. Mr. Bersin's substantial expertise on border security, customs matters, and immigration makes him uniquely well-qualified to lead the United States Customs and Border Protection.

Given its responsibility for securing and facilitating trade and travel while enforcing hundreds of U.S. regulations, including immigration and drug laws, it is important that Customs and Border Protection's leadership be in place and fully empowered as soon as possible. I urge all of the members of the committee to confirm Mr. Bersin as Commissioner of Customs.

United States Senate
Committee on Finance



Sen. Chuck Grassley · Iowa
Ranking Member

Opening Statement of Sen. Chuck Grassley
Hearing, Nomination of Alan Bersin to be
Commissioner of Customs, U.S. Department of Homeland Security
Thursday, May 13, 2010

Today, the Committee meets to consider President Obama's nomination of Alan Bersin to be Commissioner of Customs in the Department of Homeland Security. I'd like to welcome Commissioner Bersin to the Finance Committee. I would also like to welcome his family and friends who are present.

This hearing serves to reinforce the role that the United States Senate, and the Finance Committee in particular, serves with respect to Presidential nominations. I hope the Administration learns from this hearing that the advice and consent role of the Senate is not something to be taken lightly, and that the due diligence undertaken by the Committee is not something to be simply brushed aside.

The nominee was recess appointed on March 27, despite knowledge by the Administration that the Finance Committee, on a bipartisan basis, had serious concerns with respect to conflicting information pertaining to the proper documentation of domestic staff hired by the nominee. A Finance Committee memo on these issues has been prepared, and I ask unanimous consent that this memo, with attachments, be printed in the hearing record.

U.S. Customs and Border Protection, also known as CBP, plays a crucial role at our nation's borders. The agency is charged with the dual mission of protecting our homeland and facilitating the legitimate flow of international trade. There are over 57,000 employees within CBP, and the agency enforces laws related to over 40 government agencies. In fiscal year 2009, CBP processed \$1.7 trillion worth of imported goods and collected about \$30 billion in duties and fees.

As a result, decisions made by the Commissioner of Customs have a vast impact on the economic welfare of our nation. This is of particular importance at a time when our economic security is increasingly dependent upon international trade.

And, that's why it's imperative that the proper balance be struck between the agency's dual responsibilities. For several years now, I've been concerned that the agency's customs revenue and commercial functions have not been sufficiently prioritized.

It's important that Commissioner Bersin restore the right balance. For example, full implementation of the Automated Commercial Environment and the International Trade Data System are critical to facilitating trade flows. Yet, the development of these systems is significantly behind schedule and over budget. I look forward to hearing how the Commissioner intends to get implementation back on track.

Another concern I would like to raise is the level of consultation between CBP and congressional oversight committees, as well as consultation between CBP and other federal agencies. Over the past few years there have been three instances in which CBP issued a preliminary ruling without consulting appropriately, and as a result, CBP was forced to withdraw or suspend its rulemaking. I want to hear from the Commissioner whether he shares this concern, and if so, how he will address it as a priority.

Finally, I would note that last year Senator Baucus and I introduced the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009, to reauthorize CBP and reprioritize its trade functions. I look forward to hearing from Commissioner Bersin his views on our bill, and I hope to see the Committee consider this legislation in a markup before the August recess.

SUBMITTED BY SENATOR GRASSLEY

MEMORANDUM FOR FINANCE COMMITTEE MEMBERS

From: Senate Finance Committee Staff

Date: May 12, 2010

Re: Alan Bersin Nomination

This memo describes the results of the Senate Finance Committee staff review of documentation submitted by Alan D. Bersin in connection with his September 29, 2009 nomination to be Commissioner of U.S. Customs and Border Protection (CBP) in the U.S. Department of Homeland Security (DHS). President Obama recess appointed Mr. Bersin on March 27, 2010. Mr. Bersin's nomination was resubmitted to the Senate on April 21, 2010. Mr. Bersin was confirmed by the Senate in November, 1993, to be the United States Attorney for the Southern District of California.

Background

Finance Committee staff has conducted a routine review of Mr. Bersin's Senate Finance Committee Questionnaire, his tax returns for 2006, 2007 and 2008, and his financial disclosure statements. As part of this review, a due diligence meeting was held with the nominee on March 17, 2010. Majority and minority staff have submitted two rounds of written questions and made oral requests before the due diligence meeting in order to obtain complete, accurate and consistent answers from the nominee. The nominee responded to both rounds of questions and provided additional information on two additional occasions before the due diligence meeting with staff. Questions regarding one issue, Form I-9, Employment Eligibility Verification, have been determined appropriate to bring to the attention of Committee members. These questions include whether Mr. Bersin complied with legal requirements to complete and retain Forms I-9, and whether the nominee provided complete answers in response to questions from the Finance Committee regarding individuals who worked for him.

The Department of Homeland Security leads the unified national effort to secure America, which includes preventing terrorist attacks and securing our nation's borders while facilitating lawful immigrants, visitors and trade. As the head of an agency within DHS, Mr. Bersin's responsibility as the Commissioner of Customs and Border Protection is to carry out Customs and Border Protection's dual mission of protecting our nation's borders while facilitating the flow of legitimate trade and travel. CBP is the primary U.S. border security agency and shares immigration enforcement responsibilities with two other agencies within DHS; U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE). USCIS is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities. ICE is responsible for immigration enforcement functions including investigating, identifying, arresting, prosecuting, detaining and deporting those who violate U.S. immigration laws. During the vetting process, the Committee routinely applies greater scrutiny to a nominee's activities that bear a relationship to the duties of the position the nominee seeks.

Forms I-9, Employment Eligibility Verification

Form I-9, Employment Eligibility Verification, is required to document that each new employee is authorized to work in the United States. The Form I-9 is issued by DHS (USCIS). The employee section must be completed no later than the time of hire and the employer section must be completed within three business days of the time of hire and then retained by the employer.

Mr. Bersin met with majority staff in August of 2009. Staff notes from that meeting indicate that Mr. Bersin stated he had an I-9 for his nanny. When asked in writing about this response, the nominee responded, "If I stated that Ms. S had an I-9 in August, 2009, then I misspoke and apologize for any misunderstanding." A Form I-9 for this employee dated 11/12/2009 subsequently was submitted to the Committee.

Mr. Bersin has employed ten household employees since 1993. Six of the ten individuals were in his employ during some portion of the time period beginning in 2006 covered by the Committee review. Beginning with his November 13, 2009 response to the Committee, until the date of his due diligence meeting with the Committee on March 17, 2010, Mr. Bersin identified three of the individuals as employees and did not identify any other individuals as employees or independent contractors. The remaining seven employees were identified by Mr. Bersin at the March 17, 2010 due diligence meeting.

Mr. Bersin did not timely and completely prepare and maintain Forms I-9 for any of the ten household employees he employed, as required by law. One I-9 was timely prepared by an employment agency, but the employee did not sign or date the form and Mr. Bersin's spouse, Lisa Foster, signed the form but did not enter the date that she signed it. Mr. Bersin stated that all employees were legally authorized to work in the United States, and copies of identification documents provided to the Committee confirm this statement for the three employees initially identified by Mr. Bersin on November 13, 2009. It appears that the nominee was not familiar with the Form I-9 requirements to establish that an employee was legally authorized to work in the United States, but the nominee's statements to staff indicate that the requisite information to establish eligibility for employment was reviewed at the time each individual was hired. Identification documents for the seven employees that subsequently were disclosed to the Committee were not requested or provided; the Committee has no indication that these individuals were not legally authorized to work in the United States.

The nominee treated all ten of the individuals as employees for purposes of issuing Forms W-2 and for reporting household employment taxes; these taxes in general were paid fully and timely. Mr. Bersin filed amended individual returns, Form 1040X, for 2006 and 2007 to pay Federal Unemployment Taxes (FUTA) that had not been timely paid in the amount of \$56 for each year. The nominee indicated that some of the individuals were paid by the hour, and some were paid salaries. In the Committee's initial written inquiry to Mr. Bersin, the nominee was asked to provide Forms I-9 for each household employee employed during and since 2006. In response, Mr. Bersin identified three individuals who worked for him during that time, a copy of the incomplete I-9 initiated by the employment agency for one of the employees, and an I-9 dated 11/12/09 for another employee hired in October of 2008. Copies of the October, 2008, employee's social security card and permanent resident card also were submitted.

The nominee was asked additional questions. On February 11, 2010, Mr. Bersin provided copies of identification documents to establish the legal status of all three identified employees. On March 4, 2010, the nominee submitted to the Committee updated Forms I-9 for two of the three employees. One was dated 1/27/2010, and one was dated 1/29/2010. The Form I-9 dated 11/12/09 was not updated. He indicated that these were “currently dated I-9 forms for the three individuals my wife and I have hired over the last 11 years.” He stated his agreement that it is “extremely important” for employers to verify the eligibility of individuals to work prior to hiring them, and said at the time he hired two of the individuals, he and his wife believed that I-9 forms were not required for this type of domestic housecleaning service.

A further review of the nominee’s tax returns identified two employees in addition to the three that Mr. Bersin had identified in his responses to the Committee.

Due Diligence Meeting

Mr. Bersin was accompanied by his wife, Lisa Foster, at the due diligence meeting. The nominee was asked by Committee staff about the number of employees that he had retained. In response, Mr. Bersin identified ten employees in total that he had hired, beginning in 1993. Six of the employees were in his employ at some point since 2006, the period covered by the Committee’s initial inquiry. Nine of the ten had been hired in 1999 or later. He stated that he knew employees must be legally eligible to work in the United States, but he was unaware that employers were required to complete and maintain Forms I-9 for household employees. Mr. Bersin said he knew of the existence of the Form I-9, as it had come up in his work as U.S. Attorney for the Southern District of California.

Ms. Foster explained that she had obtained an employer identification number, registered with the State of California to obtain a state identification number, and paid employment taxes for all employees. She described how she reviewed documents, including social security cards, passports and drivers’ licenses, at the time the employees were hired – although not necessarily all of those documents for each employee. She stated it did not occur to her to obtain I-9s. When asked why they didn’t realize they needed to complete an I-9 after the employment agency prepared an I-9 for their second employee in 1999, they both said they didn’t realize what they had [the I-9]. Ms. Foster told Committee staff that she didn’t know why she didn’t pay more attention to the incomplete I-9 initiated by the employment agency, or why she didn’t date it.

The nominee was asked why he had identified only three employees since 2006 when there were actually six. The nominee explained that during the vetting process, the distinctions between employees and independent contractors were raised. He concluded the other three may be independent contractors and Forms I-9 would not have been required. He said he had not filed amended tax returns to treat the individuals as independent contractors. None of his staff had been treated as independent contractors prior to his nomination and vetting process. He explained that he had first focused on the distinction between employees and contractors when responding to the Committee’s I-9 questions. When asked why the other three were treated as employees for purposes of employment taxes, and whether reclassifying them as independent contractors was a rationalization provided to Committee staff for not filling out Forms I-9, Mr.

Bersin responded, "That could be." He indicated he was troubled by the fact they made a mistake and took that way out. He stated he didn't think the issue of classifying workers was black and white, that he thinks of it as a continuum. The nominee acknowledged that, regarding the workers' classification, he made a mistake and that he "should not have lawyered it."

The nominee was asked why he had not disclosed to the Committee that he had changed the classification of the individuals from employee to independent contractor. He responded that "I should have done that." He said he was accountable for this and regrets this very much. The nominee was asked whether the reclassification of workers was initiated by him. He stated he received advice during the vetting process, but should not have taken it. He stated he was responsible. He acknowledged his error and said it was an honest mistake, and that he had learned from it.

When asked to reconcile his characterization of the issue as an honest mistake and his failure to notify the Committee that he had decided certain workers treated as employees should be reclassified as independent contractors, Mr. Bersin stated that he should not have made the distinction, even though arguably it could be made. The nominee did not explain on a technical level why he thought some of his employees could be classified as independent contractors.

Attachments:

Attachment A: Senate Finance Committee Questionnaire, Financial Data, Question 10

Attachment B: Schedule H and Form 2441 from 2005 Form 1040 (Employees #5 and #1)

Attachment C: Schedule H and Form 2441 from 2006 Form 1040 (Employees #6 and #1)

Attachment D: Schedule H from 2007 Form 1040

Attachment E: Schedule H from 2008 Form 1040

Attachment F: Responses to Round 1 of written questions dated November 13, 2010: Question 11, with 2006 and 2007 Forms 1040X; Question 15, with Forms I-9; and Question 16 (Employees #1, #2, and #3)

Attachment G: Responses to Round 2 of written questions dated February 11, 2010, with declaration from employee #3 (Employees #1, #2, and #3)

Attachment H: third submission, not in response to written questions, dated March 4, 2010, with Forms I-9 (Employees #1, #2, and #3)

Attachment I: Notice of New Employer Identification Number Assigned, from State of California to Lisa Foster

Attachment J: Annual Payroll Tax Return for 2004 and Quarterly Report of Wages and Withholdings for first quarter of 2004, State of California (Employees #4 and #1)

Attachment K: Annual Payroll Tax Return for 2005 and Quarterly Report of Wages and Withholdings for first quarter of 2005, State of California (Employees #5 and #1)

Attachment L: Annual Payroll Tax Return for 2006 and Quarterly Report of Wages and Withholdings for first quarter of 2006, State of California (Employees #6 and #1)

Attachment M: Annual Payroll Tax Return for 2007 and Quarterly Report of Wages and Withholdings for first quarter of 2007, State of California (Employees #1 and #7)

Attachment N: Annual Payroll Tax Return for 2008 and Quarterly Report of Wages and Withholdings for first quarter of 2008, State of California (Employees #2 and #7)

Attachment O: Representative Sample, Wage and Tax Statements (Employees #6, #7, and #8)

- [REDACTED] -
- Attachment A -

10. Have you paid all Federal, State, local, and other taxes when due (including extensions) for each of the past 10 years? If not, provide details.



- In 2005, 2006, and 2007, I inadvertently did not pay \$56 per year in FUTA taxes on household employees. My accountant apparently believed that FUTA was fully offset by the payment of state unemployment taxes, when in fact the offset should have reduced the FUTA rate from 5.6% to 0.8%. To correct the error, I filed amended tax returns for 2006 and 2007 and paid the additional taxes due. I have been informed that I can no longer file amended returns for 2005, but I have paid the amount due for 2005, \$56, to the U.S. Treasury. There are no state tax liabilities on account of this error.

AFFIDAVIT

_____, being duly sworn, hereby states that he/she has read and signed the foregoing Statement of Information Requested of Nominee and that the information provided therein is, to the best of his/her knowledge, true, accurate, and complete.

Subscribed and sworn before me this 21st day of October, 2009.

Notary Public

District of Columbia 188
Subscribed and Sworn to before me
this 21st day of October, 2009
Helga Taylor Bosley
Helga Taylor Bosley, Notary Public, D.C.
My commission expires July 14, 2014

Attachment B

SCHEDULE H (Form 1040)	Household Employment Taxes (For Social Security, Medicare, Withheld Income, and Federal Unemployment (FUTA) Taxes) Attach to Form 1040, 1040NR, 1040-SR, or 1041. See separate instructions.	OMB No. 1545-1971 2005 (Attachment) Page No. 44
Department of the Treasury Internal Revenue Service		
Name of employer ALAN D. BERSIN & LISA A. POSTER		Social security number _____ Employer identification number _____

- A** Did you pay any one household employee cash wages of \$1,400 or more in 2005? (If any household employee was your spouse, your child under age 21, your parent, or anyone under age 18, see the line A instructions on page H-3 before you answer this question.)
- Yes. Skip 1.
 No. Go to line B.
- B** Did you withhold federal income tax during 2005 for any household employee?
- Yes. Skip line C and go to line 6.
 No. Go to line C.
- C** Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2004 or 2005 to all household employees? (Do not count cash wages paid in 2004 or 2005 to your spouse, your child under age 21, or your parent.)
- No. Stop. Do not file this schedule.
 Yes. Skip lines 1-6 and go to line 10 on page 2. (Calendar year taxpayers having no household employees in 2005 do not have to complete this form for 2005.)

Social Security, Medicare, and Income Taxes		
1 Total cash wages subject to social security taxes (see page H-4)	1	28,032.
2 Social security taxes. Multiply line 1 by 12.4% (124)	2	3,476.
3 Total cash wages subject to Medicare taxes (see page H-4)	3	28,032.
4 Medicare taxes. Multiply line 3 by 2.9% (29)	4	813.
5 Federal income tax withheld, if any	5	
6 Total social security, Medicare, and income taxes (add lines 2, 4, and 5)	6	4,289.
7 Advance earned income credit (EIC) payments, if any	7	
8 Net taxes (subtract line 7 from line 6)	8	4,289.

- 9** Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2004 or 2005 to household employees? (Do not count cash wages paid in 2004 or 2005 to your spouse, your child under age 21, or your parent.)
- No. Stop. Enter the amount from line 8 above on Form 1040, line 62. If you are not required to file Form 1040, see the line 8 instructions on page H-4.
 Yes. Go to line 10 on page 2.

BERSIN, ALAN D.

Federal Unemployment (FUTA) Tax

10 Did you pay unemployment contributions to only one state? (If you paid contributions to New York State, check "No.")		Yes	No
	10	X	
11 Did you pay all state unemployment contributions for 2005 by April 17, 2006? Fiscal year filers, see page H-4	11	X	
12 Were all wages that are taxable for FUTA tax also taxable for your state's unemployment tax?	12	X	

Next: If you checked the "Yes" box on all the lines above, complete Section A.
If you checked the "No" box on any of the lines above, skip Section A and complete Section B.

Section A

13 Name of the state where you paid unemployment contributions CA

14 State reporting number as shown on state unemployment tax return 0% RATE

15 Contributions paid to your state unemployment fund (see page H-4) 15

16 Total cash wages subject to FUTA tax (see page H-4) 16

17 FUTA tax. Multiply line 16 by .008. Enter the result here, skip Section B, and go to line 26 17

Section B

18 Complete all columns below that apply (if you need more space, see page H-5):

(a) Name of state	(b) State reporting number as shown on state unemployment tax return	(c) Taxable wages (as defined in state act)	(d) State experience rate period		(e) State experience rate	(f) Multiply col. (c) by .054	(g) Multiply col. (e) by col. (f)	(h) Subtract col. (g) from col. (f). If zero or less, enter -0-	(i) Contributions paid to state unemployment fund
			From	To					

19 Totals 19

20 Add columns (f) and (i) of line 18 20

21 Total cash wages subject to FUTA tax (see the line 16 instructions on page H-4) 21

22 Multiply line 21 by 6.2% (.062) 22

23 Multiply line 21 by 5.4% (.054) 23

24 Enter the smaller of line 20 or line 23 24
(New York State employers must use the worksheet in the separate instructions and check here)

25 FUTA tax. Subtract line 24 from line 22. Enter the result here and go to line 26 25

Total Household Employment Taxes

26 Enter the amount from line 8 26 4,289.

27 Add line 17 (or line 25) and line 26 27 4,289.

28 Are you required to file Form 1040?
 Yes. Stop. Enter the amount from line 27 above on Form 1040, line 62. Do not complete Part IV below.
 No. You may have to complete Part IV. See page H-5 for details.

Address and Signature - Complete this part only if required. See the line 28 instructions on page H-5.

Address (number and street) or P.O. box. If mail is not delivered to street address Apt., room, or suite no.

City, town or post office, state, and ZIP code

Under penalties of perjury, I declare that I have examined this schedule, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete. No part of any payment made to a state unemployment fund (other than a credit wage, or to be deducted from the payments to employees).

Employer's signature Date

11-29-05 Schedule H (Form 1040) 2005

Form **2441** Child and Dependent Care Expenses
 Department of the Treasury Internal Revenue Service (99) Attach to Form 1040. See separate instructions.
 Name(s) shown on Form 1040: **ALAN D. BERSIN & LISA A. FOSTER**
 Your social security number: [REDACTED]

Before you begin, you need to understand the following terms. See Definitions on page 1 of the instructions.
 * Dependent Care Benefits * Qualifying Person(s) * Qualified Expenses

Persons or Organizations Who Provided the Care - You must complete this part.
 (If you need more space, use the bottom of page 2.)

S
1

1	(a) Care provider's name	(b) Address (number, street, apt. no., city, state, and ZIP code)	(c) Identifying number (SSN or EIN)	(d) Amount paid
	[REDACTED]	[REDACTED]	[REDACTED]	4,712.
	[REDACTED]	[REDACTED]	[REDACTED]	23,320.

Did you receive dependent care benefits? No Yes
 No -> Complete only Part II below.
 Yes -> Complete Part III on page 2 next.

Caution. If the care was provided in your home, you may owe employment taxes. See the instructions for Form 1040, line 62.

Credit for Child and Dependent Care Expenses
 Information about your qualifying person(s). If you have more than two qualifying persons, see the instructions.

(a) Qualifying person's name		(b) Qualifying person's social security number	(c) Qualified expenses allowed and paid in 2004 for this person (enter in column 4)
First	Last		
[REDACTED]	BERSIN	[REDACTED]	14,016.

3 Add the amounts in column (c) of line 2. Do not enter more than \$3,000 for one qualifying person or \$6,000 for two or more persons. If you completed Part III, enter the amount from line 32.

4 Enter your earned income. See instructions.

5 If married filing jointly, enter your spouse's earned income (if your spouse was a student or was disabled, see the instructions); all others, enter the amount from line 4.

6 Enter the smallest of line 3, 4, or 5.

7 Enter the amount from Form 1040, line 38.

8 Enter on line 8 the decimal amount shown below that applies to the amount on line 7.

If line 7 is:			If line 7 is:		
Over	But not over	Decimal amount is	Over	But not over	Decimal amount is
\$0	15,000	.35	\$29,000	31,000	.27
15,000	17,000	.34	31,000	33,000	.28
17,000	19,000	.33	33,000	35,000	.29
19,000	21,000	.32	35,000	37,000	.30
21,000	23,000	.31	37,000	39,000	.31
23,000	25,000	.30	39,000	41,000	.32
25,000	27,000	.29	41,000	43,000	.33
27,000	29,000	.28	43,000	No limit	.20

9 Multiply line 8 by the decimal amount on line 8. If you paid 2004 expenses in 2005, see the instructions.

10 Enter the amount from Form 1040, line 46, minus any amount on Form 1040, line 47.

11 Credit for child and dependent care expenses: Enter the smaller of line 9 or line 10 here and on Form 1040, line 48.

LHA For Paperwork Reduction Act Notice, see separate instructions. Form 2441 (2005)

[REDACTED] BERSIN, ALAN D.

Dependent Care Benefits

12	Enter the total amount of dependent care benefits you received in 2005. Amounts you received as an employee should be shown in box 10 of your Form(s) W-2. Do not include amounts reported as wages in box 1 of Form(s) W-2. If you were self-employed or a partner, include amounts you received under a dependent care assistance program from your sole proprietorship or partnership.	12	8,000.
13	Enter the amount forfeited or carried forward to 2006, if any (see the instructions)	13	
14	Subtract line 13 from line 12.	14	8,000.
15	Enter the total amount of qualified expenses incurred in 2005 for the care of the qualifying person(s)	15	14,016.
16	Enter the smaller of line 14 or 15	16	8,000.
17	Enter your earned income. See instructions	17	
18	Enter the amount shown below that applies to you. <ul style="list-style-type: none"> • If married filing jointly, enter your spouse's earned income (if your spouse was a student or was disabled, see the instructions for line 5). • If married filing separately, see the instructions for the amount to enter. • All others, enter the amount from line 17. 	18	
19	Enter the smallest of line 16, 17, or 18	19	8,000.
20	Enter the amount from line 12 that you received from your sole proprietorship or partnership. If you did not receive any such amounts, enter -0-	20	
21	Subtract line 20 from line 14	21	8,000.
22	Enter \$5,000 (\$2,500 if married filing separately and you were required to enter your spouse's earned income on line 18)	22	5,000.
23	Deductible benefits. Enter the smallest of line 19, 20, or 22. Also, include this amount on the appropriate line(s) of your return (see the instructions)	23	
24	Enter the smaller of line 19 or 22	24	5,000.
25	Enter the amount from line 23	25	
26	Excluded benefits. Subtract line 25 from line 24. If zero or less, enter -0-	26	5,000.
27	Taxable benefits. Subtract line 26 from line 21. If zero or less, enter -0-. Also, include this amount on Form 1040, line 7. On the dotted line next to line 7, enter "DCB"	27	3,000.

To claim the child and dependent care credit, complete lines 28-32 below.

28	Enter \$3,000 (\$6,000 if two or more qualifying persons)	28	3,000.
29	Add lines 23 and 28	29	5,000.
30	Subtract line 29 from line 26. If zero or less, stop. You cannot take the credit. Exception: If you paid 2004 expenses in 2005, see the instructions for line 9	30	0.
31	Complete line 2 on page 1 of this form. Do not include in column (c) any benefits shown on line 29 above. Then, add the amounts in column (c) and enter the total here	31	
32	Enter the smaller of line 30 or 31. Also, enter this amount on line 3 on page 1 of this form and complete lines 4-11	32	

Attachment C

**SCHEDULE H
(Form 1040)**

Household Employment Taxes
(For Social Security, Medicare, Withheld Income, and Federal Unemployment (FUTA) Taxes)
▶ Attach to Form 1040, 1040NF, 1040-SS, or 1041.
▶ See separate instructions.

OMB No. 1545-0047
2006
OMB No. 1545-0047

Department of the Treasury
Internal Revenue Service

Name of employer

Social security number

Employer identification number

ALAN D. BERSIN & LISA A. FOSTER

A Did you pay any one household employee cash wages of \$1,500 or more in 2006? (If any household employee was your spouse, your child under age 21, your parent, or anyone under age 18, see the line A instructions on page H-9 before you answer this question.)

- Yes. Skip lines B and C and go to line 1.
 No. Go to line B.

B Did you withhold federal income tax during 2006 for any household employee?

- Yes. Skip line C and go to line 5.
 No. Go to line C.

C Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2005 or 2006 to all household employees? (Do not count cash wages paid in 2005 or 2006 to your spouse, your child under age 21, or your parent.)

- No. Stop. Do not file this schedule.
 Yes. Skip lines 1-8 and go to line 10 on page 2. (Calendar year taxpayers having no household employees in 2006 do not have to complete this form for 2006.)

Social Security, Medicare, and Income Taxes

1 Total cash wages subject to social security taxes (see page H-4)	1	25,584.	1
2 Social security taxes. Multiply line 1 by 12.4% (.124)	2		3,172.
3 Total cash wages subject to Medicare taxes (see page H-4)	3	25,584.	3
4 Medicare taxes. Multiply line 3 by 2.9% (.029)	4		742.
5 Federal income tax withheld, if any	5		
6 Total social security, Medicare, and income taxes. Add lines 2, 4, and 5	6		3,914.
7 Advance earned income credit (EIC) payments, if any	7		
8 Net taxes (subtract line 7 from line 6)	8		3,914.

9 Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2005 or 2006 to household employees? (Do not count cash wages paid in 2005 or 2006 to your spouse, your child under age 21, or your parent.)

- No. Stop. Enter the amount from line 8 above on Form 1040, line 62. If you are not required to file Form 1040, see the line 8 instructions on page H-4.
 Yes. Go to line 10 on page 2.

LHA For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Schedule H (Form 1040) 2006

510291
12-07-06

BERSIN, ALAN D.

Federal Unemployment (FUTA) Tax

	Yes	No
10 Are you required to pay unemployment contributions to only one state?	X	
11 Did you pay all state unemployment contributions for 2006 by April 15, 2007? Fiscal year filers, see page H-4.	X	
12 Were all wages that are taxable for FUTA tax also taxable for your state's unemployment tax?	X	

Next: If you checked the "Yes" box on all the lines above, complete Section A.
If you checked the "No" box on any of the lines above, skip Section A and complete Section B.

Section A

13 Name of the state where you paid unemployment contributions **CA**

14 State reporting number as shown on state unemployment tax return

15 Contributions paid to your state unemployment fund (see page H-4) **15** **245.**

16 Total cash wages subject to FUTA tax (see page H-4) **16**

17 FUTA tax. Multiply line 16 by .008. Enter the result here, skip Section B, and go to line 26 **17**

Section B

18 Complete all columns below that apply (if you need more space, see page H-6):

(a) Name of state	(b) State reporting number as shown on state unemployment tax return	(c) Taxable wages (as defined in state act)	(d) State experience rate period		(e) State experience rate	(f) Multiply col. (c) by col. (d)	(g) Multiply col. (f) by col. (e)	(h) Subtract col. (g) from col. (c). If zero or less, enter -0-	(i) Contributions paid to state unemployment fund
			From	To					

19 Totals **19**

20 Add columns (f) and (i) of line 19 **20**

21 Total cash wages subject to FUTA tax (see the line 16 instructions on page H-4) **21**

22 Multiply line 21 by 6.2% (.062) **22**

23 Multiply line 21 by 5.4% (.054) **23**

24 Enter the smaller of line 20 or line 23 **24**

25 FUTA tax. Subtract line 24 from line 22. Enter the result here and go to line 26 **25**

Total Household Employment Taxes

26 Enter the amount from line 8. If you checked the "Yes" box on line C of page 1, enter 0 **26** **3,914.**

27 Add line 17 (or line 25) and line 26 **27** **3,914.**

28 Are you required to file Form 1040?
 Yes. Stop. Enter the amount from line 27 above on Form 1040, line 62. Do not complete Part IV below.
 No. You may have to complete Part IV. See page H-5 for details.

Address and Signature - Complete this part only if required. See the line 28 instructions on page H-5.

Address (number and street) or P.O. box. If mail is not delivered to street address

City, town or post office, state, and ZIP code

Apt, room, or suite no.

Under penalties of perjury, I declare that I have examined this schedule, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete. No part of any payment made to a state unemployment fund defined as a credit wage, or to be so, deducted from the payments to employees.

Employer's signature _____ Date _____

BERSIN, ALAN D.

Form **2441** Child and Dependent Care Expenses
 Department of the Treasury
 Interest Payment Service (98)
 Name(s) shown on return
ALAN D. BERSIN & LISA A. FOSTER

OMB No. 1545-0074
2006
 Attachment
 Schedule No. 21
 Your social security number

Attach to Form 1040 or Form 1040NR.
 See separate instructions.

Before you begin: You need to understand the following terms. See Definitions on page 1 of the instructions.
 • Dependent Care Benefits • Qualifying Person(s) • Qualified Expenses

Persons or Organizations Who Provided the Care - You must complete this part.
 (If you need more space, use the bottom of page 2.)

#6
 #1

1	(a) Care provider's name	(b) Address (number, street, apt. no., city, state, and ZIP code)	(c) Identifying number (SSN or EIN)	(d) Amount paid
	[REDACTED]	[REDACTED]	[REDACTED]	3,224.
	[REDACTED]	[REDACTED]	[REDACTED]	22,360.

Did you receive dependent care benefits?
 No → Complete only Part II below.
 Yes → Complete Part II on page 2 next.

Caution: If the care was provided in your home, you may owe employment taxes. See the instructions for Form 1040, line 62, or Form 1040NR, line 67.

Credit for Child and Dependent Care Expenses
 2 Information about your qualifying person(s). If you have more than two qualifying persons, see the instructions.

(a) Qualifying person's name	(b) Qualifying person's social security number	(c) Qualified expenses you incurred and paid in 2006 for this person listed in column (a)
First Last		
[REDACTED] [REDACTED]	[REDACTED]	25,584.

3 Add the amounts in column (c) of line 2. Do not enter more than \$3,000 for one qualifying person or \$6,000 for two or more persons. If you completed Part III, enter the amount from line 33

4 Enter your earned income. See instructions

5 If married filing jointly, enter your spouse's earned income (if your spouse was a student or was disabled, see the instructions); all others, enter the amount from line 4

6 Enter the smallest of line 3, 4, or 5

7 Enter the amount from Form 1040, line 88 Form 1040NR, line 36

8 Enter on line 8 the decimal amount shown below that applies to the amount on line 7

If line 7 is:			If line 7 is:		
Over	But not over	Decimal amount is	Over	But not over	Decimal amount is
\$0 - 15,000		.35	\$29,000 - 31,000		.27
15,000 - 17,000		.34	31,000 - 33,000		.26
17,000 - 19,000		.33	33,000 - 35,000		.25
19,000 - 21,000		.32	35,000 - 37,000		.24
21,000 - 23,000		.31	37,000 - 39,000		.23
23,000 - 25,000		.30	39,000 - 41,000		.22
25,000 - 27,000		.29	41,000 - 43,000		.21
27,000 - 29,000		.28	43,000 - No limit		.20

9 Multiply line 8 by the decimal amount on line 8. If you paid 2006 expenses in 2006, see the instructions

10 Enter the amount from Form 1040, line 48, minus any amount on Form 1040, line 47, or Form 1040NR, line 43, minus any amount on Form 1040NR, line 44

11 Credit for child and dependent care expenses. Enter the smaller of line 9 or line 10 here and on Form 1040, line 48, or Form 1040NR, line 45

[REDACTED] BERSIN, ALAN D.

Dependent Care Benefits		
12 Enter the total amount of dependent care benefits you received in 2006. Amounts you received as an employee should be shown in box 10 of your Form(s) W-2. Do not include amounts reported as wages in box 1 of Form(s) W-2. If you were self-employed or a partner, include amounts you received under a dependent care assistance program from your sole proprietorship or partnership.	12	5,000.
13 Enter the amount, if any, you carried over from 2005 and used in 2006 during the grace period. See instructions.	13	
14 Enter the amount, if any, you forfeited or carried forward to 2007. See instructions.	14	
15 Combine lines 12 through 14. See instructions.	15	5,000.
16 Enter the total amount of qualified expenses incurred in 2006 for the care of the qualifying person(s).	16	25,584.
17 Enter the smaller of line 15 or 16.	17	5,000.
18 Enter your earned income. See instructions.	18	[REDACTED]
19 Enter the amount shown below that applies to you. <ul style="list-style-type: none"> • If married filing jointly, enter your spouse's earned income (if your spouse was a student or was disabled, see the instructions for line 6). • If married filing separately, see the instructions for the amount to enter. • All others, enter the amount from line 18. 	19	[REDACTED]
20 Enter the smallest of line 17, 18, or 19.	20	5,000.
21 Enter the amount from line 12 that you received from your sole proprietorship or partnership. If you did not receive any such amounts, enter -0-	21	
22 Subtract line 21 from line 15.	22	5,000.
23 Enter \$5,000 (\$2,500 if married filing separately and you were required to enter your spouse's earned income on line 19).	23	5,000.
24 Deductible benefits. Enter the smallest of line 20, 21, or 23. Also, include this amount on the appropriate line(s) of your return. See instructions.	24	
25 Enter the smaller of line 20 or 23.	25	5,000.
26 Enter the amount from line 24.	26	
27 Excluded benefits. Subtract line 26 from line 25. If zero or less, enter -0-	27	5,000.
28 Taxable benefits. Subtract line 27 from line 22. If zero or less, enter -0-. Also, include this amount on Form 1040, line 7, or Form 1040NR, line 8. On the dotted line next to Form 1040, line 7, or Form 1040NR, line 8, enter "DCB".	28	
To claim the child and dependent care credit, complete lines 29-33 below.		
29 Enter \$3,000 (\$6,000 if two or more qualifying persons).	29	3,000.
30 Add lines 24 and 27.	30	5,000.
31 Subtract line 30 from line 29. If zero or less, stop. You cannot take the credit. Exception. If you paid 2005 expenses in 2006, see the instructions for line 9.	31	0.
32 Complete line 2 on page 1 of this form. Do not include in column (c) any benefits shown on line 30 above. Then, add the amounts in column (c) and enter the total here.	32	
33 Enter the smaller of line 31 or 32. Also, enter this amount on line 3 on page 1 of this form and complete lines 4-11.	33	

Attachment D

SCHEDULE H
(Form 1040)

Department of the Treasury
Internal Revenue Service

Household Employment Taxes

(For Social Security, Medicare, Withheld Income, and Federal Unemployment (FUTA) Taxes)

▶ Attach to Form 1040, 1040NR, 1040-SS, or 1041.
▶ See separate instructions.

OMB No. 1545-1971

2007

Attachment
Sequence No. 44

Name of employer

Social security number

Employer identification number

ALAN D. BERSIN & LISA A. FOSTER

A Did you pay any one household employee cash wages of \$1,500 or more in 2007? (If any household employee was your spouse, your child under age 21, your parent, or anyone under age 18, see the line A instructions on page H3 before you answer this question.)

- Yes. Skip lines B and C and go to line 1.
- No. Go to line B.

B Did you withhold federal income tax during 2007 for any household employee?

- Yes. Skip line C and go to line 6.
- No. Go to line C.

C Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2006 or 2007 to all household employees? (Do not count cash wages paid in 2006 or 2007 to your spouse, your child under age 21, or your parent.)

- No. Stop. Do not file this schedule.
- Yes. Skip lines 1-9 and go to line 10 on page 2. (Calendar year taxpayers having no household employees in 2007 do not have to complete this form for 2007.)

Social Security, Medicare, and Income Taxes

1 Total cash wages subject to social security taxes (see page H-4)	1	26,717.
2 Social security taxes. Multiply line 1 by 12.4% (.124)	2	3,313.
3 Total cash wages subject to Medicare taxes (see page H-4)	3	26,717.
4 Medicare taxes. Multiply line 3 by 2.9% (.029)	4	775.
5 Federal income tax withheld, if any	5	
6 Total social security, Medicare, and income taxes. Add lines 2, 4, and 5	6	4,088.
7 Advance earned income credit (EIC) payments, if any	7	
8 Net taxes (subtract line 7 from line 6)	8	4,088.

9 Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2006 or 2007 to all household employees? (Do not count cash wages paid in 2006 or 2007 to your spouse, your child under age 21, or your parent.)

- No. Stop. Enter the amount from line 8 above on Form 1040, line 62. If you are not required to file Form 1040, see the line 9 instructions on page H-4.
- Yes. Go to line 10 on page 2.

LHA For Privacy Act and Paperwork Reduction Act Notice, see page H-7 of the instructions.

Schedule H (Form 1040) 2007

110001
10-01-07

BERSIN, ALAN D.

	Yes	No
10 Did you pay unemployment contributions to only one state?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11 Did you pay all state unemployment contributions for 2007 by April 15, 2008? Fiscal year filers, see page H-4.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12 Were all wages that are taxable for FUTA tax also taxable for your state's unemployment tax?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Next: If you checked the "Yes" box on all the lines above, complete Section A.
 If you checked the "No" box on any of the lines above, skip Section A and complete Section B.

Section A

13 Name of the state where you paid unemployment contributions CA

14 State reporting number as shown on state unemployment tax return [REDACTED]

15 Contributions paid to your state unemployment fund (see page H-5) 15 375.

16 Total cash wages subject to FUTA tax (see page H-5) 16

17 FUTA tax. Multiply line 16 by .008. Enter the result here, skip Section B, and go to line 26 17

Section B

18 Complete all columns below that apply (if you need more space, see page H-5):

(a) Name of state	(b) State reporting number as shown on state unemployment tax return	(c) Taxable wages for defined in state act	(d) State unemployment rate period		(e) State unemployment rate	(f) Multiply col. (c) by col. (e)	(g) Multiply col. (f) by col. (h)	(h) Subtract col. (g) from col. (f). If zero or less, enter -0-	(i) Contributions paid to state unemployment fund
			From	To					
19 Totals <u>19</u>									
20 Add columns (f) and (i) of line 19 <u>20</u>									
21 Total cash wages subject to FUTA tax (see the line 16 instructions on page H-5) <u>21</u>									
22 Multiply line 21 by 6.2% (.062) <u>22</u>									
23 Multiply line 21 by 5.4% (.054) <u>23</u>									
24 Enter the smaller of line 20 or line 23 <u>24</u>									
25 FUTA tax. Subtract line 24 from line 22. Enter the result here and go to line 26 <u>25</u>									

Total Household Employment Taxes

26 Enter the amount from line 8. If you checked the "Yes" box on line O of page 1, enter -0- 26 4,088.

27 Add line 17 (or line 25) and line 26 (see page H-5) 27 4,088.

28 Are you required to file Form 1040?
 Yes. Stop. Enter the amount from line 27 above on Form 1040, line 62. Do not complete Part IV below.
 No. You may have to complete Part IV. See page H-5 for details.

Address and Signature - Complete this part only if required. See the line 28 instructions on page H-5.

Address (number and street) or P.O. box if mail is not delivered to street address Apt, room, or suite no.

City, town or post office, state, and ZIP code

Under penalties of perjury, I declare that I have examined this schedule, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete. No part of any payment made to a state unemployment fund claimed as a credit was, or is to be, deducted from the payments to employees.

Employer's signature _____ Date _____

[REDACTED] BERSIN, ALAN D.

Attachment E

**SCHEDULE H
(Form 1040)**

Household Employment Taxes
(For Social Security, Medicare, Withheld Income, and Federal Unemployment (FUTA) Taxes)
▶ Attach to Form 1040, 1040NR, 1040-SS, or 1041.
▶ See separate instructions.

OMB No. 1545-1971

2008
Attachment
Sequence No. 44

Department of the Treasury
Internal Revenue Service (IRS)

Name of employer

Social security number

Employer identification number

ALAN D. BERSIN & LISA A. FOSTER

A Did you pay any one household employee cash wages of \$1,600 or more in 2008? (If any household employee was your spouse, your child under age 21, your parent, or anyone under age 18, see the line A Instructions on page H-4 before you answer this question.)

- Yes. Skip lines B and C and go to line 1.
 No. Go to line B.

B Did you withhold federal income tax during 2008 for any household employee?

- Yes. Skip line C and go to line 5.
 No. Go to line C.

C Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2007 or 2008 to all household employees? (Do not count cash wages paid in 2007 or 2008 to your spouse, your child under age 21, or your parent.)

- No. Stop. Do not file this schedule.
 Yes. Skip lines 1-9 and go to line 10 on page 2. (Calendar year taxpayers having no household employees in 2008 do not have to complete this form for 2008.)

Part I Social Security, Medicare, and Federal Income Taxes

1 Total cash wages subject to social security taxes (see page H-4)	1	20,039.	
2 Social security taxes. Multiply line 1 by 12.4% (.124)	2		2,485.
3 Total cash wages subject to Medicare taxes (see page H-4)	3	20,039.	
4 Medicare taxes. Multiply line 3 by 2.9% (.029)	4		581.
5 Federal income tax withheld, if any	5		
6 Total social security, Medicare, and federal income taxes. Add lines 2, 4, and 5	6		3,066.
7 Advance earned income credit (EIC) payments, if any	7		
8 Net taxes (subtract line 7 from line 6)	8		3,066.

9 Did you pay total cash wages of \$1,000 or more in any calendar quarter of 2007 or 2008 to all household employees? (Do not count cash wages paid in 2007 or 2008 to your spouse, your child under age 21, or your parent.)

- No. Stop. Include the amount from line 8 above on Form 1040, line 60, and check box b on that line. If you are not required to file Form 1040, see the line 9 Instructions on page H-4.
 Yes. Go to line 10 on page 2.

LHA For Privacy Act and Paperwork Reduction Act Notice, see page H-7 of the Instructions.

Schedule H (Form 1040) 2008

810951
11-19-08

BERSIN, ALAN D.

Part II Federal Unemployment (FUTA) Tax

	Yes	No
10 Did you pay unemployment contributions to only one state?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11 Did you pay all state unemployment contributions for 2008 by April 15, 2009? Fiscal year filers, see page H-4	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12 Were all wages that are taxable for FUTA tax also taxable for your state's unemployment tax?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Next: If you checked the "Yes" box on all the lines above, complete Section A.

If you checked the "No" box on any of the lines above, skip Section A and complete Section B.

Section A

13 Name of the state where you paid unemployment contributions **CA**

14 State reporting number as shown on state unemployment tax return **[REDACTED]**

15 Contributions paid to your state unemployment fund (see page H-5) **15** | **535.**

16 Total cash wages subject to FUTA tax (see page H-5) **16** | **7,000.**

17 FUTA tax. Multiply line 16 by .008. Enter the result here, skip Section B, and go to line 26 **17** | **56.**

Section B

18 Complete all columns below that apply (if you need more space, see page H-5):

(a) Name of state	(b) State reporting number as shown on state unemployment tax return	(c) Taxable wages (as defined in state act)	(d) State experience rate period		(e) State experience rate	(f) Multiply col. (c) by .054	(g) Multiply col. (c) by col. (e)	(h) Subtract col. (f) from col. (g). If zero or less, enter -0-	(i) Contributions paid to state unemployment fund
			From	To					
19 Totals.....									19
20 Add columns (f) and (i) of line 19						20			
21 Total cash wages subject to FUTA tax (see the line 16 instructions on page H-5)						21			
22 Multiply line 21 by 8.2% (.082).....						22			
23 Multiply line 21 by 5.4% (.054).....						23			
24 Enter the smaller of line 20 or line 23						24			
25 FUTA tax. Subtract line 24 from line 22. Enter the result here and go to line 26						25			

Part III Total Household Employment Taxes

26 Enter the amount from line 8. If you checked the "Yes" box on line C of page 1, enter -0- **26** | **3,066.**

27 Add line 17 (or line 25) and line 26 (see page H-5) **27** | **3,122.**

28 Are you required to file Form 1040?
 Yes. Stop. Include the amount from line 27 above on Form 1040, line 60, and check box b on that line. Do not complete Part IV below.
 No. You may have to complete Part IV. See page H-5 for details.

Part IV Address and Signature - Complete this part only if required. See the line 28 instructions on page H-5.

Address (number and street or P.O. box if mail is not delivered to street address) Apt., room, or suite no.

City, town or post office, state, and ZIP code

Under penalties of perjury, I declare that I have examined this schedule, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete. No part of any payment made to a state unemployment fund claimed as a credit was, or is to be, deducted from the payments to employees. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Employer's signature Date

Paid Preparer's signature Date Check if self-employed Preparer's SSN or PTIN

Preparer's Firm's name (or yours if self-employed) EIN

Use Only address, and ZIP code Phone no.

Attachment F

Attached.

11. Your response to Questions F.10 of the Questionnaire indicates that you have filed amended returns to pay FUTA taxes for 2006 and 2007. It does not appear this correction was included in the amended returns filed on January 26, 2009. Please clarify if it was, and, if not, please provide only the relevant pages of the new 1040Xs that were filed.

Amended returns for 2006 and 2007 were filed in October 2009 to pay the FUTA tax. Copies of the relevant pages are attached.

Household Employees

15. Please provide the Forms I-9 completed for each of your household employees employed during and since 2006. If Forms I-9 were not completed, please provide the documentation that was considered to establish the legal status of each of the employees.

1 [redacted] - Hired in mid to late 1990s; terminated employment 6/30/07. [redacted] was hired through an employment agency. My wife reviewed [redacted] U.S. Passport (No. [redacted]) and her Social Security card (No. [redacted]) at the employment agency, and signed an I-9 that the agency had prepared. The I-9 is attached. It does not appear to be dated, but my wife recalls signing it at the employment agency at the time she hired [redacted]

2 [redacted] - Hired 7/07; terminated employment 7/08. [redacted] is a U.S. citizen. She is [redacted] daughter and was born in the United States. My wife

3

[REDACTED] - Hired 10/08; currently employed. My wife reviewed her Permanent Resident Card and Social Security card at the time of hiring. An I-9 Form was filled out 11/09. Copies of all three items are attached.

16. Were Forms W-2 timely provided to each of the employees and submitted to the IRS?

W-2 forms were timely provided to the employees. We submitted the W-2 forms, accompanied by a W-3 form, to the Social Security Administration as required.

Exemptions. See Form 1040 or 1040A instructions. Complete this part only if you are:
- Increasing or decreasing the number of exemptions claimed on line 6d of the return you are amending, or
- Increasing or decreasing the exemption amount for housing individuals displaced by Hurricane Katrina.

Table with 3 columns: Description, A. Original number of exemptions reported or as previously adjusted, B. Net change, C. Correct number of exemptions. Rows include: 25 Yourself and spouse, 26 Your dependent children who lived with you, 27 Your dependent children who did not live with you due to divorce or separation, 28 Other dependents, 29 Total number of exemptions, 30 Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending.

Table for 33 Dependents (children and other) not claimed on original (or adjusted) return. Columns: (a) First name, Last name, (b) Dependent's social security number, (c) Dependent's relationship to you, (d) Check if claiming child tax credit, (e) No. of children on 23 other, (f) lived with you, (g) did not live with you due to divorce or separation, (h) Dependents on 23 not entered above.

Explanation of Changes. Enter the line number from page 1 for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 2 of the instructions. Also, check here:
TAXPAYER INADVERTENTLY OMITTED FUTA TAX OF \$56.

Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.
If you did not previously want \$3 to go to the fund but now want to, check here.
If a joint return and your spouse did not previously want \$3 to go to the fund but now wants to, check here.

1040X 2006

Exemptions. See Form 1040 or 1040A instructions.

Complete this part only if you are:
 • Increasing or decreasing the number of exemptions claimed on line 6d of the return you are amending, or
 • Increasing or decreasing the exemption amount for housing individuals displaced by Hurricane Katrina.

	A. Original number of exemptions reported or as previously adjusted	B. Net change	C. Correct number of exemptions
25 Yourself and spouse Caution: If someone can claim you as a dependent, you cannot claim an exemption for yourself.			
26 Your dependent children who lived with you			
27 Your dependent children who did not live with you due to divorce or separation			
28 Other dependents			
29 Total number of exemptions. Add lines 25 through 28			
30 Multiply the number of exemptions claimed on line 29 by the amount listed below for the tax year you are amending. Enter the result here.			

Tax year	Exemption amount	But see the instructions for line 4 on page 4 if the amount on line 1 is over:
2007	\$3,400	\$117,800
2006	3,300	112,876
2005	3,200	108,478
2004	3,100	107,825

31 If you are claiming an exemption amount for housing individuals displaced by Hurricane Katrina, enter the amount from Form 8814, line 2 for 2005 or line 6 for 2006 (see instructions for line 4). Otherwise enter -0-

32 Add lines 30 and 31. Enter the result here and on line 4

33 Dependents (children and other) not claimed on original (or adjusted) return:

(i) First name	Last name	(ii) Dependent's social security number	(iii) Dependent's relationship to you	(iv) Check if applying this for only between	No. of children on 33 who:
					<input type="checkbox"/> lived with you <input type="checkbox"/> did not live with you due to divorce or separation Dependents on 33 not included above

Explanation of Changes
 Enter the line number from page 1 for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See page 2 of the instructions. Also, check here

TAXPAYER INADVERTANTLY OMITTED FUTA TAX OF \$56.

Presidential Election Campaign Fund. Checking below will not increase your tax or reduce your refund.

If you did not previously want \$3 to go to the fund but now want to, check here

If a joint return and your spouse did not previously want \$3 to go to the fund but now wants to, check here

1040X 2007

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

3

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)			City
State		Zip Code	Date of Birth (month/day/year)
City		State	Zip Code
Social Security #			

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A national of the United States (see instructions)
- A lawful permanent resident (Alien #)
- An alien authorized to work (Alien # or Admission #) until (expiration date, if applicable - month/day/year)

Employee's Signature: _____ Date (month/day/year): _____

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature: _____ Print Name: _____

Address (Street Name and Number, City, State, Zip Code): _____ Date (month/day/year): _____

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

	List A	OR	List B	AND	List C
Document title:	Permanent Resident Card				
Issuing authority:					
Document #:					
Expiration Date (if any):					
Document #:					
Expiration Date (if any):					

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) (11/16/08) and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agency's name and the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
_____	Lisa Foster	Employer
Business of Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)
_____		11/16/09

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) _____ B. Date of Rehire (month/day/year) (if applicable) _____

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title:	Document #:	Expiration Date (if any):
_____	_____	_____
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative		Date (month/day/year)
_____		_____

EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

1

1 EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee.)

Name: (Print or Type) Last	First	Middle	Birth Name
Address: Street Name and Number	City	State	ZIP Code
Date of Birth (Month/Day/Year)	Social Security Number		

I attest, under penalty of perjury, that I am (check a box):

1. A citizen or national of the United States.

2. An alien lawfully admitted for permanent residence (Alien Number A _____).

3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A _____, or Admission Number _____, expiration of employment authorization, if any _____).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature _____ Date (Month/Day/Year) _____

PREPARER/TRANSLATOR CERTIFICATION: (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature _____ Name (Print or Type) _____

Address (Street Name and Number) _____ City _____ State _____ Zip Code _____

2 EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)

Instructions:
Examine one document from List A and check the appropriate box, OR examine one document from List B and one from List C and check the appropriate boxes. Provide the Document Identification Number and Expiration Date for the document checked.

List A Documents that Establish Identity and Employment Eligibility	List B Documents that Establish Identity	List C Documents that Establish Employment Eligibility
<input checked="" type="checkbox"/> 1. United States Passport <input type="checkbox"/> 2. Certificate of United States Citizenship <input type="checkbox"/> 3. Certificate of Naturalization <input type="checkbox"/> 4. Unexpired foreign passport with attached Employment Authorization <input type="checkbox"/> 5. Alien Registration Card with photograph Document Identification # _____ Expiration Date (if any) _____	<input type="checkbox"/> 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State) _____ <input type="checkbox"/> 2. U.S. Military Card <input type="checkbox"/> 3. Other (Specify document and issuing authority) _____ Document Identification # _____ Expiration Date (if any) _____	<input type="checkbox"/> 1. Original Social Security Number Card (other than a card stating it is not valid for employment) <input type="checkbox"/> 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification <input type="checkbox"/> 3. Unexpired INS Employment Authorization Specify form # _____ Document Identification # _____ Expiration Date (if any) _____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature _____ Name (Print or Type) _____ Title _____
 Employer Name _____ Address _____ Date _____

- Attachment G -

February 11, 2010

Response to Senate Finance Committee Questions

Question: Forms I-9

|

1) [REDACTED] was hired in the mid-to-late 1990s and terminated employment in 2007. She was hired through an employment agency which prepared the I-9. Your wife reviewed [REDACTED] US passport and social security card and signed the I-9 that the agency prepared. The I-9 is not signed or dated by the employee. In addition to her signature, your wife appears to have printed her name, title, employer name and address, but did not date the I-9.

- a. Why did [REDACTED] not sign or date the Form I-9?
- b. Why did your wife not fill in the date when she completed the other boxes in the employer's section of the form?

In 1999, my wife and I contracted with [REDACTED], an employment agency in San Diego, CA to assist us in hiring a nanny to help care for our children. Recognizing the critical importance of hiring an individual who was eligible to work in the U.S. and to whom we could entrust the care of our children, we utilized the employment agency to ensure that a prospective employee passed a background check and was authorized to work in the U.S.

After interviewing [REDACTED], a U.S. citizen, my wife selected her for the position. The agency then provided my wife with a group of employment related documents, including, we believe, the I-9 form. My wife personally examined and recorded both [REDACTED] U.S. passport ([REDACTED]) and social security card ([REDACTED]).

information that also appeared on the I-9. She also examined [REDACTED] driver's license. After more than ten years, neither my wife nor [REDACTED] can recall why [REDACTED] did not sign or date the employee portion of the form, or why my wife did not fill in the date when she completed and signed the employer portion of the form.

My wife and I did take significant steps to ensure that [REDACTED] was authorized to work in the U.S. While the I-9 did not require the examination of additional documents where a U.S. passport was presented, my wife took the extra step of examining multiple documents for proof of identity and authorization to work, in this case, [REDACTED] driver's license and social security card. [REDACTED] began to work for us on September 7, 1999 and left our employment on June 22, 2007.

As part of an effort to assemble documents for the Committee, my wife recently contacted [REDACTED]. [REDACTED] confirmed she provided my wife with her U.S. passport, driver's license and social security card for examination at the employment agency prior to her employment. She provided my wife with a photocopy of the U.S. passport that she had presented at the initial interview, which is also attached.

2) 2) [REDACTED] The response regarding [REDACTED] was cut off. Please provide a complete response and provide her I-9. If no I-9 was secured, please describe the documentation you considered to determine her legal status.

By June of 2007, [REDACTED] was no longer working as a nanny, but rather was providing housekeeping services for my family three days a week. When [REDACTED] departed, she asked that her daughter [REDACTED], a U.S. citizen by birth, replace her on a part-time basis while attending community college. [REDACTED] was 19 at the time, newly married and in need of income. Even though we had known [REDACTED] since the age of eleven, my wife nonetheless examined and recorded the numbers on her driver's license [REDACTED], and her social security card [REDACTED], in order to ensure that she could legally work in the U.S. This documentation confirmed her identity and authorization to work.

My wife recently contacted [REDACTED] and reviewed her passport and driver's license. A photocopy of these items is attached. The substantive information is entirely consistent with that examined and recorded in 2007, supplemented by her passport.

3) 3) [REDACTED] was hired in 10/08. Your wife reviewed her permanent resident card and social security card at the time of hiring. An I-9 was filled out 11/09; the I-9 is dated 11/12/09 in the employer section and not dated in the employee section. When you met with [REDACTED] and [REDACTED] in August, 2009, you indicated that you had a nanny and that you had an I-9.

a. Why was an I-9 not completed at the time [REDACTED] was hired?

As with [REDACTED], [REDACTED] has only worked with my family in a part time capacity as a domestic housekeeper. My wife took steps to assure her eligibility to work before hiring her by reviewing and photocopying her Permanent Resident Card

██████████ and her social security card ██████████. We did not think an I-9 form was necessary when we hired ██████████ for part-time housecleaning work.

- b. *Why was an I-9 not completed when you learned you were under consideration to be nominated for a position with Homeland Security?*

Since the beginning of ██████████ employment, we have been fully prepared to demonstrate that ██████████ is eligible to work in the U.S. Later while going through the process of documenting proof of ██████████ work authorization and legal status in connection with this nomination, it appeared there was a benefit to formalizing and documenting our efforts through the completion of an I-9 form with the same information we obtained in 2008.

- c. *Why is the employee section not dated on ██████████ I-9?*

We asked ██████████ to complete an I-9 to further document her identity and eligibility to work. The form contains the same information she earlier supplied, and the substantive information is entirely consistent with that examined and recorded in 2008. We do not know why ██████████ did not date the form. However, ██████████ recalls signing the I-9 the same day in November 2009 when my wife gave her the form, and she has submitted the attached declaration to confirm that fact.

- d. *Why did you indicate you had an I-9 for your nanny during the meeting with Finance Committee staff in August of 2009?*

If I stated that ██████████ had an I-9 in August 2009, then I misspoke and apologize for any misunderstanding. As I noted above, we employed ██████████ as a casual domestic housekeeper who works on a part-time basis, not as a nanny, beginning in October 2008, when our youngest children were already sixteen (██████████) and fourteen (██████████). When we spoke in August, I did know that we had verified her identity and lawful permanent residence prior to hiring her.

I underline my belief that it is critically important that employers verify the eligibility of all potential employees. I have taken this responsibility seriously in my personal life and have strictly required all potential employees to provide documentation that proves they are eligible to work in the U.S. My wife and I have never hired anyone who has been unable to prove they are eligible to work in this country.

DECLARATION OF [REDACTED]

3

I, [REDACTED] declare:

1. I am over the age of 18, am suffering from no mental disability, and am legally competent to make this declaration.
2. I was hired in October 2008 to work part time as a domestic housekeeper at the Bersin residence.
3. Before I was hired and before I began performing any work, I presented to Lisa Foster, Alan Bersin's wife, the following forms of identification:
 - a. My Permanent Resident Card, No. [REDACTED]
 - b. My Social Security Card, No. [REDACTED]
4. On November 12, 2009, Lisa Foster presented me with a Form I-9 (Employment Eligibility Verification), to review and sign.
5. Immediately after reviewing the Form I-9 on November 12, 2009, I signed the Form I-9.
6. When I signed the Form I-9, I neglected to provide a date next to my signature. This was done unintentionally.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

[REDACTED]

02-10-2010
Date

Department of Homeland Security
U.S. Citizenship and Immigration Services

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Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name - Last #) [REDACTED]	First [REDACTED]	Middle Initial [REDACTED]	Maiden Name [REDACTED]
Address (Street Name and Number) [REDACTED]		Apt. # [REDACTED]	Date of Birth (month/day/year) [REDACTED]
City [REDACTED]	State [REDACTED]	Zip Code [REDACTED]	Social Security # [REDACTED]

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #) _____
- An alien authorized to work (Alien # or Admission #) _____
until (expiration date, if applicable - month/day/year) _____

Employee's Signature [REDACTED] Date (month/day/year) 1/27/2010

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature [REDACTED]	Print Name [REDACTED]
Address (Street Name and Number, City, State, Zip Code) [REDACTED]	Date (month/day/year) [REDACTED]

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: U.S. Passport Card		Calif. Driver's License		Social Security Card
Issuing authority: U.S. Dept. of State		State of Calif.		U.S. Dept. of H.H.S.
Document #: [REDACTED]		[REDACTED]		[REDACTED]
Expiration Date (if any): [REDACTED]		[REDACTED]		[REDACTED]
Document #: [REDACTED]		[REDACTED]		[REDACTED]
Expiration Date (if any): [REDACTED]		[REDACTED]		[REDACTED]

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) 9/7/1999 and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative [REDACTED]	Print Name Lisa Foster	Title Employer
Business Organization Name and Address (Street Name and Number, City, State, Zip Code) [REDACTED]		Date (month/day/year) 1.27.2010

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) [REDACTED]	B. Date of Rehire (month/day/year) (if applicable) [REDACTED]	
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.		
Document Title: [REDACTED]	Document #: [REDACTED]	Expiration Date (if any): [REDACTED]
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative [REDACTED]		Date (month/day/year) [REDACTED]

Department of Homeland Security
U.S. Citizenship and Immigration Services

**Form I-9, Employment
Eligibility Verification**

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #)
- An alien authorized to work (Alien # or Admission #) until (expiration date, if applicable - month/day/year)

Employee's Signature _____ Date (month/day/year) 01/29/2010

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature _____	Print Name _____
Address (Street Name and Number, City, State, Zip Code) _____	Date (month/day/year) _____

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: <u>US passport</u>		<u>Calif - Driver's License</u>		
Issuing authority: <u>US dept. of state</u>		<u>State of California</u>		
Document #: _____		_____		
Expiration Date (if any): _____		_____		
Document #: _____		_____		
Expiration Date (if any): _____		_____		

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) 6/25/00 and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative _____	Print Name <u>LISA FOSTER</u>	Title <u>Employer</u>
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) _____	Date (month/day/year) <u>1/29/2010</u>	

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) _____	B. Date of Rehire (month/day/year) (if applicable) _____
-----------------------------------	--

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: _____	Document #: _____	Expiration Date (if any): _____
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative _____		Date (month/day/year) _____

Attachment I

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
FRESNO CA 93888

DATE OF THIS NOTICE: 02-23-93
NUMBER OF THIS NOTICE: CP 575 B
EMPLOYER IDENTIFICATION NUMBER: [REDACTED]
FORM: SS-4 TAX PERIOD: N/A

LISA A FOSTER
SAN DIEGO CA [REDACTED]

FOR ASSISTANCE PLEASE
WRITE TO US AT:
INTERNAL REVENUE SERVICE
FRESNO CA 93888

BE SURE TO ATTACH THE
BOTTOM PART OF NOTICE
OR YOU MAY CALL US AT:

1-800-829-1040

TAX FORMS YOU MUST FILE:
942

NOTICE OF NEW EMPLOYER IDENTIFICATION NUMBER ASSIGNED

THANK YOU FOR YOUR FORM SS-4, APPLICATION FOR EMPLOYER IDENTIFICATION NUMBER (EIN). THE NUMBER ASSIGNED TO YOU IS SHOWN ABOVE. IT WILL BE USED TO IDENTIFY YOUR BUSINESS ACCOUNT, TAX RETURNS AND DOCUMENTS, EVEN IF YOU DON'T HAVE EMPLOYEES.

- 1. KEEP A COPY OF THE NUMBER IN YOUR PERMANENT RECORDS.
- 2. USE YOUR NAME AND THE NUMBER EXACTLY AS SHOWN ABOVE ON ALL FEDERAL TAX FORMS.
- 3. USE THE NUMBER ON ALL TAX PAYMENTS AND TAX-RELATED CORRESPONDENCE OR DOCUMENTS.

USING A VARIATION OF YOUR NAME OR NUMBER MAY RESULT IN DELAYS OR ERRORS IN POSTING PAYMENTS TO YOUR ACCOUNT. IT ALSO COULD RESULT IN THE ASSIGNMENT OF MORE THAN ONE EMPLOYER IDENTIFICATION NUMBER.

WE HAVE ESTABLISHED THE FILING REQUIREMENTS AND TAX PERIOD SHOWN ABOVE FOR YOUR ACCOUNT BASED UPON THE INFORMATION PROVIDED. IF YOU NEED HELP TO DETERMINE YOUR REQUIRED TAX YEAR, GET PUBLICATION 538, ACCOUNTING PERIODS AND METHODS, WHICH IS AVAILABLE AT MOST IRS OFFICES.

THANK YOU FOR YOUR COOPERATION.

KEEP THIS PART FOR YOUR RECORDS. CP 575 B (REV. 8-90)

ONLY RETURN THIS PART WITH YOUR CORRESPONDENCE IF YOU HAVE ANY QUESTIONS SO WE MAY IDENTIFY YOUR ACCOUNT. PLEASE CORRECT ANY ERRORS IN YOUR NAME OR ADDRESS. CP 575 B

YOUR TELEPHONE NUMBER BEST TIME TO CALL DATE OF THIS NOTICE: 02-23-93
() - EMPLOYER IDENTIFICATION NUMBER: [REDACTED]
FORM NUMBER: SS-4
TAX PERIOD: N/A

INTERNAL REVENUE SERVICE
FRESNO CA 93888

LISA A FOSTER
SAN DIEGO CA [REDACTED]

Attachment J

ANNUAL PAYROLL TAX RETURN FOR EMPLOYER OF HOUSEHOLD WORKERS



APPROVED EXTENSION TO:

PLEASE TYPE ALL INFORMATION

YEAR ENDED DEC. 31, 2004 DUE JAN. 1, 2005

DELINQUENT IF NOT POSTMARKED OR RECEIVED BY JAN. 31, 2005

YEAR 2004

LISA A FOSTER SAN DIEGO CA

EMPLOYER ACCOUNT NO.

Form with fields for P, C, U, S, T, A and EFFECTIVE DATE (Mo, Day, Yr)

DETAILED INSTRUCTIONS ARE LOCATED ON THE BACK

- CHECK BOX IF: No Wages Paid this Year, No Longer have Household Employees (Date), Revert to Quarterly Reporting (Date)

A. TOTAL SUBJECT WAGES PAID THIS CALENDAR YEAR 27,166.25

B. EMPLOYER'S UNEMPLOYMENT INSURANCE (UI) TAXES (Total Employee Wages up to \$7000 per employee per calendar year) 2,476.75 x 1.50 = 3,715.15

C. EMPLOYMENT TRAINING TAX (ETT) (Total Employee Wages up to \$7000 per employee per calendar year) 2,476.75 x 0.10 = 247.68

D. EMPLOYEE STATE DISABILITY INSURANCE (SDI) TAXES (Total Employee Wages up to a maximum limit of \$68,829 per employee per calendar year) 27,166.25 x 1.18 = 32,056.19

E. CALIFORNIA PERSONAL INCOME TAX (PIT) WITHHELD (Total PIT withheld per Forms W-2)

F. TOTAL TAXES DUE (Add items B3, C3, D3, and E)

G. LESS VOLUNTARY PREPAYMENT OF TAXES MADE DURING THE YEAR

H. BALANCE OF TOTAL TAXES DUE 520.19

INCLUDE EMPLOYER ACCOUNT NUMBER ON YOUR CHECK. Do not staple check to return. Make check payable to EMPLOYMENT DEVELOPMENT DEPARTMENT

I. Be sure to sign this declaration: I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature Lisa A Foster Title Employer Date 1-17-05



QUARTERLY REPORT OF WAGES AND WITHHOLDINGS FOR EMPLOYERS OF HOUSEHOLD WORKERS

APPROVED EXTENSION TO: _____

Instructions for completion are available on the back of this form.

PLEASE TYPE ALL INFORMATION

DELINQUENT IF NOT POSTMARKED OR RECEIVED BY APR 30, 2004 YR QTR 04 1

QUARTER ENDED MAR 31, 2004 DUE APR 1, 2004

EMPLOYER ACCOUNT NUMBER

LISA A FOSTER SAN DIEGO CA

PI C T S W A EFFECTIVE DATE Mo. Day Yr. WIC

A. NUMBER OF EMPLOYEES full-time and part-time who worked during or received pay subject to UI for payroll period which includes the 12th of the month.

1ST MONTH 2ND MONTH 3RD MONTH

B. No Payroll This Quarter

#4 #1

Table with columns: C. SOCIAL SECURITY NUMBER, D. EMPLOYEE NAME, E. TOTAL SUBJECT WAGES, F. PIT WAGES, G. PIT WITHHELD. Includes grand totals H, I, J.

K. I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature Title (Employer, Accountant, Preparer, etc.) Phone Date

You have received this Report of Wages and Withholdings for Employers of Household Workers, DE 3BHW, in lieu of the Quarterly Wage and Withholding Report, DE 6, because you have elected to pay taxes for your Household Workers on an annual basis.

You must file this report even if you had no payroll by marking Item B, and indicating "0" in each of the three boxes in item A, and in the Grand Total Boxes, Items H, I, and J.

MAIL TO: State of California / Employment Development Department / P.O. Box 826221 / MIC 28R / Sacramento, CA 94230-6221

Attachment K

ANNUAL PAYROLL TAX RETURN FOR EMPLOYER OF HOUSEHOLD WORKERS



APPROVED EXTENSION TO: _____

PLEASE TYPE ALL INFORMATION

YEAR ENDED DEC. 31, 2005 DUE JAN. 1, 2006 DELINQUENT IF NOT POSTMARKED OR RECEIVED BY JAN. 31, 2006 YEAR 2005

LISA A FOSTER
SAN DIEGO CA

EMPLOYER ACCOUNT NO. _____

P1	P2	C	P	U	S	T	A
EFFECTIVE DATE			Mo.	Day	Yc.		
			=	=	=		

DETAILED INSTRUCTIONS ARE LOCATED ON THE BACK

CHECK BOX IF: No Wages Paid this Year No Longer have Household Employees (Date) _____ Revert to Quarterly Reporting (Date) _____

A. TOTAL SUBJECT WAGES PAID THIS CALENDAR YEAR -----> 28,031.78

B. EMPLOYER'S UNEMPLOYMENT INSURANCE (UI) TAXES
(Total Employee Wages up to \$7000 per employee per calendar year)

(B1) WAGES	x	(B2) UI %	=	(B3)
<u>11,711.78</u>	(multiplied by)	<u>2.60</u>		<u>304.51</u>

C. EMPLOYMENT TRAINING TAX (ETT)
(Total Employee Wages up to \$7000 per employee per calendar year)

(C1) WAGES	x	(C2) ETT %	=	(C3)
<u>11,711.78</u>	(multiplied by)	<u>0.10</u>		<u>11.71</u>

D. EMPLOYEE STATE DISABILITY INSURANCE (SDI) TAXES
(Total Employee Wages up to a maximum limit of \$68,829 per employee per calendar year)

(D1) WAGES	x	(D2) SDI %	=	(D3)
<u>28,031.78</u>	(multiplied by)	<u>1.08</u>		<u>302.74</u>

E. CALIFORNIA PERSONAL INCOME TAX (PIT) WITHHELD
*(Total PIT withheld per Forms W-2) -----> ---

F. TOTAL TAXES DUE (Add Items B3, C3, D3, and E) -----> 618.96

G. LESS VOLUNTARY PREPAYMENT OF TAXES MADE DURING THE YEAR -----> ---

H. BALANCE OF TOTAL TAXES DUE -----> 618.96

INCLUDE EMPLOYER ACCOUNT NUMBER ON YOUR CHECK. Do not staple check to return. Make check payable to EMPLOYMENT DEVELOPMENT DEPARTMENT

I. Be sure to sign this declaration: I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature _____ Title _____ Phone (____) _____ Date _____
(Owner, Accountant, Preparer, etc.)



QUARTERLY REPORT OF WAGES AND WITHHOLDINGS FOR EMPLOYERS OF HOUSEHOLD WORKERS

APPROVED EXTENSION TO: _____

Instructions for completion are available on the back of this form.

PLEASE TYPE ALL INFORMATION

DELINQUENT IF NOT POSTMARKED OR RECEIVED BY MAY 2, 2005 YR 05 QTR 1

QUARTER ENDED MAR 31, 2005 DUE APR 1, 2005

EMPLOYER ACCOUNT NUMBER

LISA A FOSTER
SAN DIEGO CA

P C T S W A
 EFFECTIVE DATE: Mo. Day Yr. WIC
 = = =

A. NUMBER OF EMPLOYEES full-time and part-time who worked during or received pay subject to LI for payroll period which includes the 15th of the month.

1ST MONTH	2ND MONTH	3RD MONTH
2	2	2

B. No Payroll This Quarter

S
)

C. SOCIAL SECURITY NUMBER	D. EMPLOYEE NAME (FIRST, MIDDLE INITIAL, LAST)	E. TOTAL SUBJECT WAGES	F. PIT WAGES	G. PIT WITHHELD
[REDACTED]	[REDACTED]	1643.86	1643.86	
[REDACTED]	[REDACTED]	5720.00		
[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]			
H. GRAND TOTAL SUBJECT WAGES		7363.86	I. GRAND TOTAL PIT WAGES	
			J. GRAND TOTAL PIT WITHHELD	

K. I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature _____ Title _____ Phone () _____ Date _____
(Employer, Accountant, Preparer, etc.)

You have received this Report of Wages and Withholdings for Employers of Household Workers, DE 3BHW, in lieu of the Quarterly Wage and Withholding Report, DE 6, because you have elected to pay taxes for your Household Workers on an annual basis. This form will be mailed to you quarterly and an Annual Payroll Tax Return For Employer Of Household Workers, DE 3HW, will be mailed to you in the fourth quarter. This annual process is only available to employers who pay \$20,000 or less in household wages during the calendar year. If your wage estimate is understated and you do pay more than \$20,000 in wages in the calendar year, please follow the instructions on the back of this form under the "QUESTION" topic.

You must file this report even if you had no payroll by marking item B, and indicating "0" in each of the three boxes in Item A, and in the Grand Total Boxes, Items H, I, and J.

MAIL TO: State of California / Employment Development Department / P.O. Box 826221 / MIC 28B / Sacramento, CA 94230-6221

Attachment L

ANNUAL PAYROLL TAX RETURN FOR EMPLOYERS OF HOUSEHOLD WORKERS



APPROVED EXTENSION TO:

PLEASE TYPE OR PRINT ALL INFORMATION IN BLACK INK - DO NOT ALTER PREPRINTED INFORMATION
YEAR ENDED DEC. 31, 2006 DUE JAN. 1, 2007 DELINQUENT IF NOT POSTMARKED OR RECEIVED BY JAN. 31, 2007 YEAR 2006

LISA A FOSTER
SAN DIEGO CA

EMPLOYER ACCOUNT NO.

Table with columns: P1, P2, C, P, U, S, T, A. Includes fields for EFFECTIVE DATE (Mo, Day, Yr).

DETAILED INSTRUCTIONS ARE LOCATED ON THE BACK

- CHECK BOX IF: No Wages Paid This Year, No Longer Have Household Employees (Date), Revert to Quarterly Reporting (Date)

A. TOTAL SUBJECT WAGES PAID THIS CALENDAR YEAR -----> 25,584.12

B. EMPLOYER'S UNEMPLOYMENT INSURANCE (UI) TAXES (Total Employee Wages up to \$7,000 per employee per calendar year)
WAGES (B1) 24.12 x UI % (B2) 2.40 = (B3) 584.38

C. EMPLOYMENT TRAINING TAX (ETT) (Total Employee Wages up to \$7,000 per employee per calendar year)
WAGES (C1) 24.12 x ETT % (C2) 0.10 = (C3) 2.41

D. EMPLOYEE STATE DISABILITY INSURANCE (SDI) TAXES (Total Employee Wages up to a maximum limit of \$79,418 per employee per calendar year)
WAGES (D1) 25,584.12 x SDI % (D2) 0.80 = (D3) 20,467.30

E. CALIFORNIA PERSONAL INCOME TAX (PIT) WITHHELD (Total PIT Withheld per Forms W-2) -----> 0

F. TOTAL TAXES DUE (Add Items B3, C3, D3, and E) -----> 20,467.30

G. LESS VOLUNTARY PREPAYMENT OF TAXES MADE DURING THE YEAR -----> 0

H. BALANCE OF TOTAL TAXES DUE -----> 20,467.30

INCLUDE EMPLOYER ACCOUNT NUMBER ON YOUR CHECK. Do not staple check to return. Make check payable to EMPLOYMENT DEVELOPMENT DEPARTMENT

I. Be sure to sign this declaration: I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature _____ Title _____ Phone (____) _____ Date _____



QUARTERLY REPORT OF WAGES AND WITHHOLDINGS FOR EMPLOYERS OF HOUSEHOLD WORKERS

APPROVED EXTENSION TO: _____

Instructions for completion are available on the back of this form.

PLEASE TYPE ALL INFORMATION

DELINQUENT IF NOT POSTMARKED OR RECEIVED BY MAY 1, 2006 YR 06 QTR 1

QUARTER ENDED MAR 31, 2006 DUE APR 1, 2006

EMPLOYER ACCOUNT NUMBER

LISA A FOSTER
SAN DIEGO CA

Form with checkboxes for P, C, T, S, W, A and fields for Mo, Day, Yr, WIC, and EFFECTIVE DATE.

A. NUMBER OF EMPLOYEES full-time and part-time who worked during or received pay subject to UI for payroll period which includes the 1st of the month.

Table with 3 columns: 1ST MONTH, 2ND MONTH, 3RD MONTH. Values: 2, 2, 2.

B. No Payroll This Quarter

#6
)

Table with columns: C. SOCIAL SECURITY NUMBER, D. EMPLOYEE NAME, E. TOTAL SUBJECT WAGES, F. PIT WAGES, G. PIT WITHHELD. Includes grand totals at the bottom.

K. I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature [Signature] Title Employer Phone [Redacted] Date 4.16.06

You have received this Report of Wages and Withholdings for Employers of Household Workers, DE 38HW, in lieu of the Quarterly Wage and Withholding Report, DE 6, because you have elected to pay taxes for your Household Workers on an annual basis. This form will be mailed to you quarterly and an Annual Payroll Tax Return For Employer Of Household Workers, DE 3HW, will be mailed to you in the fourth quarter. This annual process is only available to employers who pay \$20,000 or less in household wages during the calendar year. If your wage estimate is understated and you do pay more than \$20,000 in wages in the calendar year, please follow the instructions on the back of this form under the "QUESTION" topic.

You must file this report even if you had no payroll by marking item B, and indicating "0" in each of the three boxes in item A, and in the Grand Total Boxes, items H, I, and J.

MAIL TO: State of California / Employment Development Department / P.O. Box 826221 / MC 288 / Sacramento, CA 94230-6221

Attachment M

EMPLOYER OF HOUSEHOLD WORKER(S)
ANNUAL PAYROLL TAX RETURN



APPROVED EXTENSION TO:

PLEASE TYPE OR PRINT ALL INFORMATION IN BLACK INK - DO NOT ALTER PREPRINTED INFORMATION

YEAR ENDED DEC. 31, 2007 DUE JAN. 1, 2008 DELINQUENT IF NOT POSTMARKED OR RECEIVED BY JAN. 31, 2008 YEAR 2007

LISA A FOSTER
SAN DIEGO CA

EMPLOYER ACCOUNT NO.

PI || P2 || C || P || U || S || T || A ||
EFFECTIVE DATE: Mo. Day Yr. - - -

DETAILED INSTRUCTIONS ARE LOCATED ON THE BACK

- CHECK BOX IF: No Wages Paid This Year No Longer Have Household Employees (Date) Revert to Quarterly Reporting (Date)

A. TOTAL SUBJECT WAGES PAID THIS CALENDAR YEAR -----> \$26,717.00

B. EMPLOYER'S UNEMPLOYMENT INSURANCE (UI) TAXES
(Total Employee Wages up to \$7,000 per employee per calendar year)
WAGES (B1) 17,837.2 X UI % (B2) 2.00 = (B3) \$356.74

C. EMPLOYMENT TRAINING TAX (ETT)
(Total Employee Wages up to \$7,000 per employee per calendar year)
WAGES (C1) 17,837.2 X ETT % (C2) 0.10 = (C3) 17.84

D. EMPLOYEE STATE DISABILITY INSURANCE (SDI) TAXES
Refer to publication Tax Rates, Wage Limits, and Value of Meals and Lodging (DE 3395) or our Web site at www.edd.ca.gov/taxrep/de3395.pdf
WAGES (D1) 26,717.00 X SDI % (D2) 0.60 = (D3) 160.30

E. CALIFORNIA PERSONAL INCOME TAX (PIT) WITHHELD
(Total PIT Withheld per Forms W-2) -----> 534.88

F. TOTAL TAXES DUE (Add Items B3, C3, D3, and E) -----> 648.82

G. LESS VOLUNTARY PREPAYMENT OF TAXES MADE DURING THE YEAR -----> 0.00

H. BALANCE OF TOTAL TAXES DUE -----> 648.82

INCLUDE EMPLOYER ACCOUNT NUMBER ON YOUR CHECK. Do not staple check to return.
Make check payable to EMPLOYMENT DEVELOPMENT DEPARTMENT

I. Be sure to sign this declaration: I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature Lisa Foster Title Employer Phone [REDACTED] Date 1/22/08



QUARTERLY REPORT OF WAGES AND WITHHOLDINGS FOR EMPLOYERS OF HOUSEHOLD WORKERS

Instructions for completion are available on the back of this form.

APPROVED EXTENSION TO: _____

PLEASE TYPE OR PRINT ALL INFORMATION IN BLACK INK - DO NOT ALTER PREPRINTED INFORMATION

DELINQUENT IF NOT POSTMARKED OR RECEIVED BY APR. 30, 2007 YR QTR 07 1

QUARTER ENDED MAR. 31, 2007 DUE APR. 1, 2007

EMPLOYER ACCOUNT NUMBER

LISA A FOSTER SAN DIEGO CA

Form with checkboxes for P, C, T, S, W, A and fields for Mo., Day, Yr., WIC, and EFFECTIVE DATE.

A. NUMBER OF EMPLOYEES full-time and part-time who worked during or received pay subject to UI for payroll period which includes the 15th of the month.

Form with boxes for 1ST MONTH, 2ND MONTH, 3RD MONTH.

B. No Payroll This Quarter

#1

Form row for employee #1 with fields C, D, E, F, G.

#7

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

Form row for employee #7 with fields C, D, E, F, G.

MAIL TO: State of California / Employment Development Department / P.O. Box 826221 / MIC 288 / Sacramento, CA 94230-6221

DE 38HW Rev. 5 (3-06)

CU-PA333

Attachment N



EMPLOYER OF HOUSEHOLD WORKER(S)
ANNUAL PAYROLL TAX RETURN

APPROVED EXTENSION TO: _____
PLEASE TYPE OR PRINT ALL INFORMATION IN BLACK INK - DO NOT ALTER PREPRINTED INFORMATION
DELINQUENT IF NOT POSTMARKED OR RECEIVED BY FEB. 2, 2009
YEAR ENDED DEC. 31, 2008 DUE JAN. 1, 2009 YEAR 2008

LISA A FOSTER
SAN DIEGO CA

EMPLOYER ACCOUNT NO. _____

PI || P2 || C || P || U || S || Y || A ||
EFFECTIVE DATE Mo. Day Yr. = = =

DETAILED INSTRUCTIONS ARE LOCATED ON THE BACK

CHECK BOX IF: No Wages Paid This Year
 No Longer Have Household Employees (Date) _____
 Revert to Quarterly Reporting (Date) _____

A. TOTAL SUBJECT WAGES PAID THIS CALENDAR YEAR -----> 20,040.91

B. EMPLOYER'S UNEMPLOYMENT INSURANCE (UI) TAXES
(Total Employee Wages up to \$7,000 per employee per calendar year)
WAGES (B1) 13,182.24 X UI % (B2) 1.50 = (B3) 197.73
(multiplied by)

C. EMPLOYMENT TRAINING TAX (ETT) TAXES
(Total Employee Wages up to \$7,000 per employee per calendar year)
WAGES (C1) 13,182.24 X ETT % (C2) 0.10 = (C3) 13.18
(multiplied by)

D. EMPLOYEE STATE DISABILITY INSURANCE (SDI) TAXES
Refer to publication *Tax Rates, Wage Limits, and Value of Meals and Lodging* (DE 3395) or our Web site at http://www.edd.ca.gov/pdf_pub_ctr/de3395.pdf
WAGES (D1) _____ X SDI % (D2) 0.80 = (D3) _____
(multiplied by)

E. CALIFORNIA PERSONAL INCOME TAX (PIT) WITHHELD -----> _____
(Total PIT Withheld per Forms W-2)

F. TOTAL TAXES DUE (Add Items B3, C3, D3, and E) -----> _____

G. LESS VOLUNTARY PREPAYMENT OF TAXES MADE DURING THE YEAR -----> _____

H. BALANCE OF TOTAL TAXES DUE -----> 371.23

INCLUDE EMPLOYER ACCOUNT NUMBER ON YOUR CHECK. Do not staple check to return.
Make check payable to EMPLOYMENT DEVELOPMENT DEPARTMENT

I. Be sure to sign this declaration: I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature _____ Title _____ Phone (____) _____ Date _____
(Employer, Accountant, Preparer, etc.)



EMPLOYER OF HOUSEHOLD WORKER(S) QUARTERLY REPORT OF WAGES AND WITHHOLDINGS

APPROVED EXTENSION TO: _____

Instructions for completion are available on the back of this form.

PLEASE TYPE OR PRINT ALL INFORMATION IN BLACK INK - DO NOT ALTER PREPRINTED INFORMATION

DELINQUENT IF NOT POSTMARKED OR RECEIVED BY APR. 30, 2008 YR QTR 08 1

QUARTER ENDED MAR. 31, 2008 DUE APR. 1, 2008

EMPLOYER ACCOUNT NUMBER

LISA A FOSTER SAN DIEGO CA

Form with checkboxes for P, C, T, S, W, A and fields for EFFECTIVE DATE (Mo, Day, Yr) and WIC.

A. NUMBER OF EMPLOYEES full-time and part-time who worked during or received pay subject to UI for payroll period which includes the 15th of the month.

B. No Payroll This Quarter

1ST MONTH 2ND MONTH 3RD MONTH with handwritten numbers 2, 5, 2

#2 #7

Table with columns for Social Security Number, Employee Name, Total Subject Wages, PIT Wages, and PIT Withheld. Includes handwritten entries for two employees.

K. I declare that the information herein is true and correct to the best of my knowledge and belief.

Signature Lisa Foster Title Employer Date 9-20-08

You have received this Employer of Household Worker(s) Quarterly Report of Wages and Withholdings (DE 38HW) in lieu of the Quarterly Wage and Withholding Report (DE 6) because you have elected to pay taxes for your household workers on an annual basis.

You must file this report even if you had no payroll by marking Item B, and indicating "0" in each of the three boxes in Item A, and in the Grand Total Boxes, items H, I, and J.

MAIL TO: State of California / Employment Development Department / P.O. Box 826221 / MIC 288 / Sacramento, CA 94230-6221

6

Attachment O

a Control number		OMB No. 1545-0008				
b Employer identification number (EIN)		1 Wages, tips, other compensation \$ 3224.12	2 Federal income tax withheld			
c Employer's name, address, and ZIP code Lisa Foster San Diego CA		3 Social security wages \$ 3224.12	4 Social security tax withheld \$ 201.51			
		5 Medicare wages and tips \$ 3224.12	6 Medicare tax withheld \$ 48.20			
		7 Social security tips	8 Allocated tips			
d Employer's social security number		9 Advance EIC payment	10 Dependent care benefits			
e Employer's first name and initial Last name		11 Nonqualified plans	12a See instructions for box 12			
f Employer's address and ZIP code		12a	12b			
		12b	12c			
		12c	12d			
15 State	16 Employer's state ID number	18 State wages, tips, etc. \$ 3224.12	17 State income tax	19 Local wages, tips, etc. \$ 3224.12	20 Local income tax	21 Locality name San Diego

Form **W-2** Wage and Tax Statement
Copy D—For Employer.

2006

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

7

Void <input type="checkbox"/> Employee's social security number [redacted]		OMB No. 1545-0008	
b Employer identification number (EIN) [redacted]		1 Wages, tips, other compensation 1658.00	2 Federal income tax withheld
c Employer's name, address, and ZIP code Lisa Foster [redacted] San Diego, CA [redacted]		3 Social security wages 1658.00	4 Social security tax withheld 126.63
		5 Medicare wages and tips 1658.00	6 Medicare tax withheld 24.04
		7 Social security tips	8 Allocated tips
d Control number 1		9 Advance EIC payment	10 Dependent care benefits
e Employee's first name and initial Last name Suff. [redacted] [redacted] [redacted]		11 Nonqualified plans	12a See instructions for box 12
		13 <input type="checkbox"/> Disability payments <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay	12b
		14 Other	12c
			12d
f Employee's address and ZIP code			
16 State Employer's state ID number CA [redacted]	16 State wages, tips, etc. 1658.00	17 State income tax	18 Local wages, tips, etc. [redacted]
		19 Local income tax	20 Locality name San Diego

Form **W-2** Wage and Tax Statement
Copy D—For Employer.

2008

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see the back of Copy D.

8

<input type="checkbox"/> Void <input type="checkbox"/> Employee's social security number OMB No. 1545-0006					
b Employer identification number (EIN)		1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and city and state		3 Social security wages		4 Social security tax withheld	
Lisa Foster San Diego, CA		5 Medicare wages and tips		6 Medicare tax withheld	
d Control number		7 Social security tips		8 Allocated tips	
e Employee's first name and initial Last name Suffix		9 Advance EIC payment		10 Dependent care benefits	
[Redacted] [Redacted] [Redacted] [Redacted]		11 Nonqualified plans		12a See instructions for box 12	
f Employee's address		13a Rollover		12b	
[Redacted] [Redacted]		<input type="checkbox"/> Rollover <input type="checkbox"/> Rollover <input type="checkbox"/> Rollover		12c	
16 State Employer's state ID number		19 State wages, tips, etc.		17 State income tax	
CA [Redacted]		1505-26		[Redacted]	
18 Local wages, tips, etc.		19 Local income tax		20 Locality name	
[Redacted]		[Redacted]		San Diego	

Form **W-2** Wage and Tax Statement
Copy D—For Employer.

2008

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notices, see the back of Copy D.

