

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

Hearing on the nomination of Chris Magnus (CBP Commissioner)

October 19, 2021

Questions from Chairman Wyden

Question 1: Commitment on Forced Labor & Transparency

Chief Magnus, if confirmed, you will be overseeing the full gamut of U.S. efforts to exclude products made with forced labor from commerce—including investigations, remediation where possible, and prohibiting the entry of products determined to be made with forced labor. In this capacity, you have to work with humanitarian groups, foreign governments, third-party auditors, importers, and others to stop these practices. At the same time, you have to facilitate the flow of legitimate trade.

It is critical that all stakeholders understand what CBP is doing and the magnitude of your work. CBP already provides quarterly data on the number of Withhold Release Orders issued, the number of shipments stopped, and the value of that cargo. That is essentially the final results of your work, but there is very little insight into the front end or investigation stage.

In line with recommendations made to CBP by the Government Accountability Office (GAO) in October 2020, if confirmed, will you commit to provide public summary data describing the number of allegations received, open investigations, suspended or inactive investigations, and other relevant information on a regular basis?

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Answer: Forced labor is an assault not only on bedrock American values, but on American companies' ability to compete in a fair marketplace. If confirmed, I absolutely commit to providing the data you request, consistent with GAO's recommendations to CBP.

As we discussed, it is important that CBP strike a balance between, on the one hand, ensuring sufficient transparency so that good actors have the information they need to comply with rules and regulations relating to forced labor content – and on the other hand, protecting the integrity of ongoing investigations into potential bad actors.

I believe that the vast majority of companies want to play by the rules. If confirmed, I will work hard to ensure that these companies, including small businesses and mom and pop shops without the resources of large corporations, have the information they need to succeed in doing so. I appreciate your leadership on this issue, and would look forward to working with your office and this committee, as well as with GAO, to address this critically important issue.

Question 2: Commitment on Tech - Electronic Device Border Searches

As Commissioner, you'll have authority over CBP's practices with respect to electronic device searches at the border. As you know, when Americans enter or leave the country, their phones and electronic devices can be searched without a warrant due to something known as the "border search exception" to the Fourth Amendment.

I believe this exception is a load of baloney. Crossing the border shouldn't give the government a free pass to throw out our Constitutional rights and thumb through our phones without any suspicion of wrongdoing.

Now, the 9th Circuit has limited CBP's authority to conduct warrantless device searches to illegal content. However, everywhere else in the country, CBP can conduct warrantless searches for anything of interest.

Chief Magnus, this double standard makes no sense. If confirmed, are you open to considering adopting the same policy, nationwide, that CBP already follows in our home states of Oregon and Arizona?

Answer: Upholding Americans' constitutional rights to privacy is critically important to me. I believe we can respect Fourth Amendment protections against unreasonable search and seizure while ensuring our border is secure against threats to our national security. As a police chief in a community near the border, I have heard concerns from community members regarding secondary searches that they felt were not necessary, including seizures of phones and other devices containing their personal information.

If confirmed, I absolutely commit to reviewing CBP's current policies relating to border searches to ensure they are based in evidence and firmly rooted in the federal government's statutory authorities. As part of that review, I certainly commit to closely reviewing the standard set by the 9th Circuit, and to considering adoption of that standard at ports of entry nationwide, provided it is feasible to do so without compromising our national security. If confirmed, I look forward to working with your office on this important issue.

Question 3: Taiwan

Taiwan is an important partner of the United States in the Indo-Pacific region. It is currently a member of our Visa Waiver program and Global Entry. I believe it is important to continue to strengthen and expand our cooperation with such a strong democratic partner.

Taiwan applied to join CBP's Preclearance program last year. However, its application was rejected earlier this year without any political leadership at CBP.

If you are confirmed, do you commit to review and reconsider Taiwan's application?

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Answer: I certainly recognize the importance of the United States' partnership with Taiwan and understand the significance of the relationships that CBP establishes with Taiwanese

counterparts. While I'm not familiar with Taiwan's Preclearance application or the reasoning behind CBP's decision, I do know that the Preclearance program is an important tool in CBP's layered and risk-based approach to border and national security. I understand there are a number of standards and thresholds as part of CBP's process to establish a Preclearance location, and if confirmed, I would certainly review the application and decision made on Taiwan's application.

Question 4: Women in CBP Workforce

Chief Magnus, an area of serious concern is CBP's standing as a federal agency with the fewest women per capita in its workforce. The agency has long struggled to maintain a workforce of women. Recent reporting indicates that women make up 5% of CBP agents, while women typically comprise an average of 15% of the workforce in every other federal law enforcement agency. In fact, the ratio of men to women among Border Patrol agents trails behind that of the U.S. Marines. This gender disparity affects CBP's ability to effectively represent the population it serves and may negatively impact the agency's ability to engage with women, families, and children.

If you are confirmed, what steps will you take to address this gender disparity within CBP's workforce? Will you commit to seeking input from women currently and formerly employed by CBP for their insights on how CBP can better recruit and retain women to increase representation?

Answer: I absolutely commit to working to address the significant gender disparity within CBP's workforce if I am confirmed as CBP Commissioner. As a law enforcement officer with four decades' experience, I know well the challenges we face in addressing gender disparity in policing. Like you, I believe that law enforcement agencies are at their best when they are representative of the communities and populations they serve. Our practices and policies are enriched and bettered when members of the force understand firsthand the concerns of those we serve. In CBP's case, those communities may be as diverse as the traveling public, the business community, and vulnerable asylum seekers.

If confirmed, I will seek to understand the areas in which CBP may have fallen short in the past, including recruiting, pay, specific benefits and policies, retention, and professional development. I commit to working to identify and address any obstacles to hiring and retaining women in our workforce, including in CBP leadership.

In addition, you have my commitment to seek out input from women who currently serve or have previously served within CBP and other federal law enforcement agencies to understand what policies and practices may help to address gender disparities. Throughout my career, I have worked closely with many incredible women law enforcement leaders, and would hope to continue to draw on their collective wisdom in this area if confirmed, including when it comes to hiring for key leadership roles.

United States Senate Committee on Finance
Hearing on “The Nomination of Chris Magnus, of Arizona, to be Commissioner of U.S.
Customs and Border Protection, Department of Homeland Security”

October 19, 2021

Questions for the Record for Chris Magnus

Senator Cortez Masto

Question 1

If confirmed, will you consider placing trained child welfare professionals within CBP facilities that hold children and require proper training for all CBP personnel who interact with children?

Answer: Throughout my career in public safety, few things have been more important to me than how we treat children. If confirmed, I will absolutely consider any and all measures we can take to improve the welfare of children in our care and custody, and that certainly includes requiring proper training and placing specialized professionals in CBP facilities if appropriate.

As both President Biden and Secretary Mayorkas have said, a Border Patrol station is no place for a child. I agree firmly with their statements. My understanding is that this spring, the Administration significantly decreased the amount of time children spent in CBP custody by surging vetting and other resources to the border. In addition, I understand that CBP has taken steps to hire contract medical specialists to provide care tailored to children in the agency’s custody, and that similar efforts are proposed at our ports of entry. If confirmed, I am interested in learning more about this effort, and certainly support any efforts to ensure that children in CBP’s care and custody receive necessary medical intervention and care as early as possible. I commit to making it a priority to understand what treatment is available to children in CBP’s care, regardless of the duration of their time in our care, and to requesting additional resources from Congress as appropriate. I would be pleased to work with your office and this Committee to do so.

Finally, it is critical that all CBP personnel receive proper training to carry out their roles, especially those who may be coming into contact with vulnerable children. If confirmed, I would be happy to work with your office, and this Committee, to identify and address any gaps in training.

Question 2

If confirmed, how will you balance the need to facilitate efficient trade while keeping our ports safe and secure?

Answer: I recognize that the core of CBP’s mission is ensuring the safety and security of the American people, while also facilitating the flow of legitimate trade and travel through our nation’s ports of entry. Enforcing U.S. trade laws, while safeguarding the flow of lawful trade, helps ensure a balanced playing field for American workers, businesses, and consumers.

If confirmed, I will work to ensure that CBP has the appropriate staffing levels at the ports to manage the efficient and secure clearance of cargo, and will not hesitate to advocate within the Administration, and with Congress and this Committee, for additional resources if necessary. I will also prioritize the development and modernization of technology resources, like the Automated Commercial Environment (ACE) system, inspection equipment, and other tools to meet the demands of both the facilitation and security missions.

I also recognize that CBP's ability to successfully facilitate trade and enforce trade laws requires strong relationships with a wide array of stakeholders. The Commercial Customs Operations Advisory Committee (COAC) and other trade groups, small businesses, labor organizations, federal, state, and local partners, and many others all have a role in facilitating the flow of legitimate cargo across our borders. I have built relationships with diverse groups of stakeholders throughout my law enforcement career, and would welcome the opportunity to continue to do so if confirmed to lead CBP.

Question 3

Air travel and transport is crucial to my home state of Nevada's economy and the workers who make it a top global destination for visitors all over the world. We know our local economy still has further to go until we see business and international travel fully come back. As we welcome our international visitors back, we need to ensure that our customs and security operations are running as effectively as possible.

What policies will you include at our airports to restore safe ease of entry to travelers seeking to visit places like Nevada and how will you work with our Airport Authority to ensure efficient transport of goods and trade compliance?

Answer: Ensuring the efficient and secure flow of lawful trade and travel are primary missions for CBP, and are critical drivers for the nation's economy, particularly at the state and local level. If confirmed, I will focus on staffing and technology to ensure the agency is prepared to meet rising need as international passenger traffic increases. I will review the agency's staffing processes to ensure that CBP is able to meet the passenger and cargo clearance demands across the country. The role of technology and automation in these processes cannot be overlooked, and I will leverage the agency's use of biometrics to speed traveler clearance, promote trusted traveler programs to expedite processing, and look to public-private partnerships to augment CBP's capabilities at key ports of entry.

I will certainly be open to working closely with airport authorities, and other trade and travel stakeholder groups. In the course of my confirmation process, I have had the opportunity to meet with many of these groups and learn from them about the current challenges facing the industry, as well as potential solutions. If confirmed as CBP Commissioner, I will prioritize spending time in the field, meeting with the agency's frontline personnel, as well as the key partners with whom CBP works to efficiently facilitate and secure the movement of cargo and people across our borders. I will also encourage CBP's leaders and personnel in the field to build and expand upon relationships with those key stakeholders, improving communication at the local and

regional levels to ensure coordinated facilitation and enforcement are the norm at the nation's ports of entry.

Question 4

In addition to ensuring that ports-of-entry at our domestic airports are adequately staffed to handle the increase in passengers once our international borders reopen, we also must make sure that staffing vacancies are filled at CBP's preclearance locations in Canada, the Caribbean, and elsewhere. These preclearance locations provide strategic screening operations before travelers and their baggage arrive in the United States, which strengthens our risk-based security system, relieves workload pressures at our domestic ports-of-entry, and expedites arriving passengers continuing on their journey.

With preclearance staffing levels down significantly due to the COVID-19 pandemic, how do you plan to replenish the CBP officers at the preclearance locations?

Answer: I certainly recognize that COVID-19 has dramatically impacted the volumes of international travel, and if confirmed, I will review CBP's staffing levels and processes across the organization. As with any staffing decisions, if confirmed, I will want to balance needs across all U.S. ports of entry and Preclearance locations, and will work closely with air carriers and foreign partners to ensure the agency meets the demands in those Preclearance locations. As you note, the agency must be prepared to meet the increasing volumes in international travel in order to serve our travelers here in the United States, and Preclearance is a key part of the agency's security and facilitation capabilities.

United States Senate Committee on Finance
Hearing on Chief Chris Magnus, Nominee to be Commissioner of U.S. Customs and Border
Protection
October 19, 2021

Questions for the record for Chief Chris Magnus, Nominee to be Commissioner of CBP
Senator Carper

Question 1

Trade and Expediting Goods Across the Border

Chief Magnus, if confirmed you will oversee the Office of Field Operations within CBP, which conducts inspections and enforces immigration and customs laws at designated ports of entry.

As you know, U.S. ports are facing some of the heaviest congestion they have seen in years, and shipments of goods are being delayed across the country in large part due to the impacts of the pandemic.

Senator Cornyn and I have introduced legislation, the Customs-Trade Partnership Against Terrorism or C-TPAT Pilot Program Act. This bill would expand a successful program within CBP that allows trusted merchants to voluntarily submit themselves to enhanced screening and information sharing in exchange for a fast-track customs clearance process for imported goods.

1. If confirmed, will you commit to working with me and Senator Cornyn on this legislation?

Answer: If confirmed as CBP Commissioner, one of my top priorities will be to ensure CBP does its part to ease historic congestion brought about by the COVID-19 pandemic at our ports of entry. As you know, the current supply chain challenges will require coordination and cooperation among many public and private sector partners, state and local governments, port authorities and operators, commercial operators in trade, freight, and logistics, and the labor organizations whose men and women transport and unload goods and crew cargo ships. CBP's role in screening and vetting cargo can be made more efficient through pilot programs such as C-TPAT, which allows merchants to provide additional information in order to receive expedited screening, similar to TSA's Pre-Check or CBP's Global Entry program.

I appreciate your and Senator Cornyn's leadership to identify and expand this pilot program within CBP. If confirmed, I certainly commit to reviewing this legislation and would be happy to work with your offices to address this very important priority.

2. And additionally, if confirmed, what steps would you take to evaluate CBP's work to effectively screen freight at the border?

Answer: If confirmed, I commit to learning as much as I can regarding CBP's freight screening operations at our ports of entry. As you note, historic supply chain difficulties brought about by the pandemic have highlighted the need for CBP to continue innovating to expedite screening at our ports of entry, while ensuring threat detection is not compromised.

I understand that in recent years, significant investments have been made to modernize CBP's vehicle scanning platforms, including in places like the Port of Wilmington. I look forward to working with CBP's Office of Field Operations and INVENT office, among other entities within DHS, to learn more about current freight screening capabilities, as well as what is in development to detect ever-changing threats while ensuring speedy movement of goods through our checkpoints. In addition, I commit to an open dialog with your office, this Committee, and CBP's stakeholder community to ensure concerns are speedily and securely addressed.

Question 2

Immigration Reform

For years, I have worked with my colleagues on both sides of the aisle to achieve comprehensive immigration reform. Unfortunately, we still face a number of issues in our immigration system that need to be addressed.

As you know, the men and women of CBP are on the frontlines each day confronting the challenges created by an immigration system in need of reform.

1. *To that end, what issues do you predict CBP will face given the need to drastically reform our nation's immigration policies and procedures?*

Answer: As I noted in my confirmation hearing, I do believe our immigration system is fundamentally broken. Agents trained to secure the border between our ports of entry are often charged with processing vulnerable children and families seeking asylum protections at our borders, often in cramped Border Patrol stations far from needed medical services. In the course of my confirmation process, it has become clear that these concerns are shared by members and stakeholders from all parts of the political spectrum.

Although the men and women of CBP have overwhelmingly risen to meet this incredibly difficult challenge, the current system has no doubt led to issues in terms of safety of migrants, Border Patrol agents, and border communities; border security between the ports of entry; and agent morale.

If confirmed, I would certainly hope to work with Congress on a bipartisan basis to address the current, broken system.

With that said, regardless of whether immigration reform is passed by Congress, if confirmed, I commit to acting as an honest broker to understand the law enforcement, border security, resource, and personnel challenges that CBP faces, and to identifying common-sense solutions wherever possible. As one example, I understand there is bipartisan agreement on the need to recruit and hire Border Patrol Processing Coordinators, a position that would reduce some of the current administrative burden on Border Patrol agents so they can get back to the roles for which they are trained, and to ensure CBP effectively meets its obligations within the asylum process. If confirmed, I would hope to identify solutions like these in a broad range of areas to address our current challenges. I am grateful for your continued efforts to advocate for bipartisan immigration reform, and if confirmed, I hope to work with you and this Committee on commonsense solutions to address the challenges CBP currently faces.

2. *How will you work with your counterparts to make sure these challenges are heard and addressed at all levels of the agency?*

Answer: A difficult challenge is that no single agency or even Department within the federal government has jurisdiction over the entire system. CBP, ICE, USCIS, HHS, DOJ, and other agencies each play a role in enforcing and administering laws relating to

immigration and border security, and in caring for vulnerable children arriving at our borders. And the State Department has a large role to play in helping to address the conditions that lead so many, including from the Northern Triangle region of Central America, to make the journey to the U.S. Interagency cooperation and communication are therefore critically important to addressing the current challenges.

If confirmed, I commit to building close working relationships with partner agencies within and outside of DHS, and to serving as an honest broker when it comes to CBP's needs on the ground. As a police chief, I believe in hearing from frontline officers and the community whenever possible. I will make it a priority to understand issues officers are seeing on the ground, and will share that intelligence to senior levels within the Department as best I can.

Senator Menendez
Questions for the Record for Chris Magnus
Senate Committee on Finance
October 19, 2021

Questions for Chris Magnus

Cargo Security and Examinations

One third of all containers on the east coast of North America comes through Port New York and New Jersey. In 2020 and despite the pandemic, the Port handled a record high 7.6 million TEUs. The Port of Newark is one of the largest ports in our nation and contains multiple outlets to air, sea, and rail cargo.

1. What is the percentage, on average, of cargo containers being scanned in our ports today?

Answer: While I'm not aware of the specific percentages, if confirmed, I will certainly look into CBP's scanning capabilities. I look forward to working with your office to understand the specific needs or any gaps that may exist, and to address any concerns.

2. Non-Intrusive Inspection (NII) Systems are critical for CBP's ability to quickly and effectively examine large volumes of commercial traffic at our ports of entry, what factors are used by CBP to prioritize funding for (NII) systems between our land borders and seaports?

Answer: While I'm not fully versed on CBP's criteria for prioritizing NII investments, I understand that Congress has provided significant funding in recent years to expand NII systems. If confirmed, I look forward to reviewing that process to understand how the agency makes funding decisions for these important systems, and would be pleased to work with your office to learn more about your priorities when it comes to screening at ports of entry.

3. NII technology is a cornerstone of CBP's multilayered strategy of enforcement. Is muon tomography scanning technology effective at identifying anomalies within the contents of dense cargo containers that enter our seaports?

Answer: I agree that NII technology is a critical component in CBP's cargo security mission. While I'm not currently aware of muon tomography scanning technology's capabilities or effectiveness, if confirmed, I look forward to reviewing the technology to understand how it might augment the agency's current scanning capabilities at our seaports.

CBP Oversight and Accountability

During the hearing you were asked about the incidents involving border patrol agents using force against Haitian migrants at the border in Del Rio, and about how you planned to make sure agents were following U.S. and international law when encountering asylum seekers and refugees at the border. You responded that you planned to rely on training and hiring practices to address the issue. A new Human Rights Watch report, details systematic abuses by border patrol agents from 2016-2021, including sexual assault, and a lack of accountability for those responsible for such abuses. The report relied on internal records that were released only as a result of Freedom of Information Act (FOIA) litigation.

4. What measures would you take as CBP commissioner to address the concerns raised in this report? Please detail how will you bring specific accountability to individual victims and improve serious deficits in transparency, oversight, and accountability within the agency.

Answer: Humane and respectful treatment of those with whom we interact is CBP's highest responsibility, and the allegations made in that report represent gross violations of that charge. I agree that a full, fair, and impartial investigation is necessary in any instance in which officers are alleged to have violated the law or policy, or mistreated migrants in any way. If confirmed, I will seek out the status of investigations relating to the allegations you mention, and to ensure action is taken in response to any allegations found to be substantiated.

In my 13 years as a police chief, I have worked hard to establish the principle of "internal procedural justice" in each department I have led. This principle says that within a police department, officers should be able to understand the actions of their leadership, and face fair and predictable consequences for their own actions. My officers know that I believe in full, fair, and impartial investigations of any allegations of wrongdoing. They know that if they are found to have acted appropriately, I will stand behind them one hundred percent. Likewise, if they are found to be in the wrong, there will be swift, impartial accountability and consequences up to and including termination. This system provides justice not only for the public, and for the officers, but for the majority of their colleagues who carry out a difficult law enforcement mission under challenging circumstances honorably each day. If confirmed, I will set forth the same expectations for the men and women of CBP.

Finally, I believe in candor and transparency with the public in the agencies I lead. Though this is not always the easiest or most politically advantageous path, I have found that sharing information with the public we serve, including about the challenges we face, is the only way for us to improve. If confirmed, I commit to working with this committee and others to improve oversight of CBP, and to requesting additional resources if needed.

"Remain in Mexico" Policy (Migrant Protection Protocols, MPP)

The Administration issued a memo to terminate the Trump-era Return-to-Mexico (MPP) program in June of this year, but is now moving to reinstate the program as required by a federal court order. Since the Biden administration took office, there have been another 6,356 reports of

kidnapping, rape, torture, and other attacks against migrants blocked at ports of entry or expelled to Mexico by DHS and forcibly returned to Mexico under MPP.

Earlier this year, I urged the Administration to issue a new termination memo for the Migrant Protection Protocols. A new DHS memo will help clarify that the agency was deliberate and thoughtful in its approach to rescission of MPP, and that the agency's decision was neither arbitrary nor capricious but a sound exercise of judgement after extensive review of both the MPP program's numerous problems and its fundamental lack of necessity.

5. Will you work to support the process of issuing a new memo terminating the MPP program? Can you provide a timeline for when this memo will be issued?

Answer: I share your humanitarian concerns regarding the previous iteration of the MPP program, and admire your leadership in encouraging treatment of migrants that upholds our responsibilities to provide asylum protections under the law. If confirmed as CBP Commissioner, I will uphold the law, including our statutory obligation to provide asylum protections to those found eligible and to secure our borders, as well as any court orders by which the Department and CBP are currently bound. I will certainly provide decisionmakers within DHS and the Administration with any information requested as they develop options to comply with recent court orders, while upholding our asylum obligations under statute.

As I am not yet in the agency, I cannot speak to the timeline for a new DHS memo relating to the MPP program, and would refer you to the Department.

Questions for the Record

Ranking Member Crapo

1. Question for Chris Magnus (CBP Commissioner Duties)

If confirmed you will oversee the largest law enforcement agency and the second-largest revenue-collecting source in the federal government. Your duties would cover the core missions of counterterrorism, border security, and trade enforcement, and facilitating travel of over 410 million people through ports of entry, including managing nearly 60,000 employees and a budget of over \$18 billion— half of which is discretionary.

- Mr. Magnus, are you prepared to lead and carefully carry out these significant responsibilities? If so, can you tell me how your previous experience may qualify you to do so?

Answer: As a police chief with four decades of law enforcement experience, I have a proven track record of transformational leadership, and a history of building diverse and unexpected stakeholder coalitions to further public safety objectives. I have lived alongside both borders, and have a keen understanding of the various ways trade and immigration can affect communities. And I believe that my reputation for serving as an honest broker, as well as a willingness to take politically unpopular positions, will serve me well in this role.

Like many members of this Committee, I am awed by CBP's storied, 230-year history enforcing customs laws and facilitating trade on behalf of the United States. The men and women I've met in the course of preparing for this role are exceptionally dedicated, knowledgeable, and competent, and I am committed to working hard to gain a fraction of their knowledge on the many complicated issues that make up the agency's trade portfolio. I also look forward to continuing to learn from members of this Committee, many of whom have studied these issues for decades, as well as from the many members of CBP's large and diverse stakeholder community with whom I have interacted during this process—and to working together to address the various challenges facing our trade and border communities.

In each of the police departments I have led, I have built relationships with city managers, mayors, and elected officials based on mutual candor and respect, even when we disagree. In negotiations with the union that represents my current officers, I won trust by listening to their needs and acting as an honest broker. Following those negotiations, I led a successful effort to convince Tucson's City Council to give our officers the largest pay increase in the city's history—an ambitious proposal which ultimately passed unanimously. Not only was this the right thing to do by my officers, but I believe it was necessary to ensure our highly trained officers would stay with the Department. If confirmed, I will act as an honest broker on issues affecting CBP's missions, and I will advocate fiercely to ensure the men and women who make up CBP's workforce receive fair pay and have the resources needed to do their jobs.

Currently, I lead a department of over 1,000 employees in Tucson, Arizona, less than an hour from the U.S. southern border. During previous surges, I have experienced firsthand the impacts on border communities when federal agencies lack a plan to coordinate with state and local agencies to care for and house migrants. If confirmed, I would seek to improve those relationships. In addition, I will seek to the best of my ability to de-politicize the mission of CBP, and to reestablish a focus on professionalism, training, and building a culture of leadership and accountability, consistent with the high standard of trust our agents and officers hold with the public.

As I mentioned during my confirmation hearing, there will no doubt be areas in which I take a different view than my colleagues in the Administration. Throughout my career, I certainly have not been afraid to advocate politically unpopular positions if I believe they are in the best interests of my workforce and mission. With that said, I also will not shy away from the reality that some facets of our broken immigration system can only be addressed through legislative reform. As an outsider to the agency, I believe my fresh eyes and willingness to question standard practices may prove to be an asset as we look for ways to address the challenges at the southern border.

Finally, I have focused throughout my career on the concept of “internal procedural justice,” which says that within a police department, officers should be able to expect fair and predictable consequences for their actions. My officers know that I believe in full, fair, and impartial investigations of any allegations of wrongdoing. They know that if they acted properly, they will have my full support—and if they acted wrongly, there will be swift, impartial accountability and consequences up to and including termination.

In recent years, much of the good work done by the men and women of CBP has been overshadowed in the public eye by reports of wrongdoing, often without any public resolution. If confirmed, I will work to promote a culture that rewards the overwhelming majority of CBP’s workforce who do the right thing every day, while holding bad actors accountable.

2. Question for Chris Magnus (Trade Facilitation and Enforcement)

The discussion regarding trade facilitation and trade enforcement is often discussed as a trade-off. In other words, if you want to process trade efficiently, you have to give up something in terms of security.

To me, that’s wrong. Trade facilitation and trade enforcement are complementary. Pre-screening at foreign ports, for example, reduces commercial burdens for goods, but also catches threats earlier.

- If confirmed, how would you work to address CBP’s responsibilities with respect to trade facilitation and trade enforcement? Please include any particular programs or technologies which you think need prioritization, as part of your answer.

Answer: I agree that both trade facilitation and enforcement must be complementary priorities, particularly within CBP's mission and operations. Effectively enforcing U.S. trade laws, while safeguarding the flow of lawful trade, helps ensure a balanced playing field for American workers, businesses, and consumers.

If confirmed, I will ensure that CBP has the appropriate staffing levels at the ports to manage the efficient and secure clearance of cargo. I have heard about staffing needs in conversations throughout the nomination process, and I want to ensure that the agency is best able to meet the facilitation and enforcement needs at ports of entry nationwide. I would also want to extend this conversation to the agency's trade experts and leaders, with proper resourcing for key teams within the Office of Trade, the Centers of Excellence and Expertise, and other key areas that contribute to CBP's enforcement of forced labor, intellectual property rights, anti-dumping and countervailing duty, and other critical trade laws.

I will also prioritize the development and modernization of technology resources, like the Automated Commercial Environment (ACE) system, inspection equipment, and other tools to meet the demands of both the facilitation and security missions. I have been encouraged to hear about CBP's efforts to modernize and innovate in both the facilitation and enforcement areas, particularly with tools like blockchain and data analytics. These tools become more important as our international trade and travel traffic increases, and as CBP staffing demands increase.

I also want to ensure that CBP's efforts to modernize align with the agency's authorities, which is why, if confirmed, I commit to learning more about the 21st Century Customs Framework and how the agency can work with Congress to ensure CBP has the tools and authorities to meet the complex enforcement and facilitation needs of the international trade landscape.

I also recognize that CBP's ability to successfully facilitate trade and enforcement trade laws requires strong relationships with a wide array of stakeholders. The Commercial Customs Operations Advisory Committee (COAC) and other trade groups, small businesses, labor organizations, federal, state, and local partners, and many others all have a role in safeguarding the flow of legitimate cargo across our borders. I have built relationships with diverse groups of stakeholders throughout my law enforcement career, and would welcome the opportunity to continue to do so if confirmed to lead CBP.

3. Question for Chris Magnus (21st Century Customs Framework)

A major CBP initiative is its 21st Century Customs Framework. A key element of it is to improve CBP's visibility into supply chains. Such visibility can help address any number of problems, including attempts to evade antidumping and countervailing duties.

However, I want to make sure we do not simply collect data for the sake of having data. In fact, too much information can be counterproductive and prevent us from identifying threats or challenges. We need to collect the right type of data, and leverage it efficiently, including with stakeholders and our foreign partners.

- If confirmed, how would you make sure CBP’s data collection efforts are not unreasonably burdensome?

Answer: I agree that data collection and other enforcement efforts must not be overly burdensome, particularly for small businesses that may not have the same level of resources as larger companies. If confirmed, I will seek out input from the stakeholders most likely to be adversely impacted by any CBP data requirements. I know the Commercial Customs Operations Advisory Committee (COAC) plays an important advisory role, and I will engage closely with COAC to understand the impacts of any agency proposals. I would also expand these discussions to include other trade groups, small businesses, labor organizations, federal agency partners, and many others that might impact or be impacted by CBP’s facilitation and enforcement priorities. I have spent much of my career building relationships with a broad range of stakeholders, and would continue to do so if confirmed to lead CBP.

4. Question for Chris Magnus (Critical Race Theory)

On June 10, 2021, the Federal Law Enforcement Officers Association (the Association), which represents federal law enforcement officers and agents across 65 federal agencies and supports U.S. Border Patrol Agents and Officers, issued a letter to the Chairman and Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs to express concern over a nominee’s “embracement of radical theories such as ‘critical race theory.’”

The Association letter called into question the “nominee’s ability to neutrality, fairness, and impartiality.” It further explained that extremist views have no place in the federal workforce, and that radical theories “stand in stark contrast to the Administration’s own positions on wanting to unite our nation.”

Separately, the Association’s leadership came out against President Biden’s COVID-19 vaccine mandate that includes the federal workforce, stating that it “villainizes employees” for having concerns or being hesitant to being vaccinated. The Association’s President said that “our federal government should trust its employees to make their own medical decision under consultation with their doctor, not mandate by their employer.” The Association’s President is also quoted as saying that “Vaccination should be promoted through education and encouragement—not coercion.”

- Do you agree with the Association’s position against President Biden’s COVID-19 vaccine mandate, which includes the federal workforce generally and U.S. Border Patrol Agents and Officers in particular?

Answer: As a former paramedic and emergency medical technician with four decades' experience in public safety, I take public health concerns very seriously. I am supportive of any and all appropriate measures necessary to combat the spread of COVID-19, including mandating vaccinations for federal agents whose jobs entail frequent contact with the public.

With that said, I commit to serving as an honest broker in understanding the concerns of CBP's workforce across all areas. If confirmed, one of my first priorities will be to spend time with frontline agents to get a sense of the issues and concerns they face so that I am better able to advocate for their interests in the future. If there are reasonable steps I can take to show their concerns are being heard, I will always be open to doing so.

- Do you agree with the Association's concerns about incorporating what it characterizes as "radical theories such as 'critical race theory,'" given the Association's suggestion that embracing such ideology within the Customs and Border Protection agency could call into question issues of neutrality, fairness, and impartiality?

Answer: If confirmed as CBP Commissioner, I will view it as my responsibility to foster an inclusive and professional environment in which officers, agents, and administrative personnel treat one another with respect, enjoy the support of their respective leadership teams, and feel empowered to contribute to CBP's mission to the best of their ability each day. I believe that the principles of equality, fairness, and mutual respect are critical to such an environment.

5. Question for Chris Magnus (Critical Race Theory)

The Federal Law Enforcement Officers Association (the Association), on September 28, 2021, issued a press release expressing its support for U.S. Border Patrol Agents and Officers working to maintain safety and security at our borders. According to the press release:

"The Administration repeatedly claims 'the border is not open,' yet the wave of individuals entering the country illegally and the lack of resources and personnel to respond to these entrances makes it clear the border is functionally open...The Administration must be honest about the crisis on the ground and give federal law enforcement officers deployed to our borders the tools to enforce the law...The answer is simple; the Administration must reinstitute the border policies that work, including the Remain in Mexico policy and denial of asylum or other claims without the supporting evidence. The safety of all Americans requires a return to rule of law at the border."

- Do you agree with the Association's assessment of a crisis situation at the border and, if not, what, in particular, do you disagree with in the portions of the Association's September 28, 2021 press release provided above?

Answer: If confirmed as CBP Commissioner, my job will be to enforce the laws as written by Congress and interpreted by the courts. I agree that the current level of

encounters at the southwest border presents significant challenges, particularly combined with an immigration system that most members seem to agree is broken. Border Patrol agents are often charged with performing administrative and processing roles they were not hired to do, and for which they may lack training. This situation presents difficulties not only for the agents, who face low morale at a time of very high encounters, but for migrant safety and the integrity of our asylum system, which is not adequately staffed to adjudicate claims quickly.

If confirmed as CBP Commissioner, I will be responsible for enforcing the law and facilitating trade. I will advise decisionmakers regarding what I see on the ground, and will advocate for resources, staffing, training, and support to allow CBP's workforce to carry out its mission. In some cases, this will mean hiring additional Border Patrol Processing Coordinators to assist in transferring vulnerable minors to HHS custody, or helping ensure asylum seekers are processed in a safe, fair, and orderly manner. In others, it may mean advocating for investments in technology, such as surveillance towers, sensors and other detection capabilities; recruiting and pay incentives; and other resources in order to help agents and officers do their jobs efficiently and safely.

United States Senate Committee on Finance
Hearing to Consider the Nomination of Chris Magnus, to be the Commissioner of U.S.
Customs and Border Protection, Department of Homeland Security
OCTOBER 19, 2021

Questions for the Record for CHRIS MAGNUS

Senator LANKFORD

Question 1

As you are aware, over 1.5 million migrants were encountered by CBP this fiscal year. Of those 1.5 million, 958,795 were processed under Title 42 and 582,856 were processed under Title 8.

Has Title 42 been an effective tool for managing the flow of migrants to the Southwest border?

Answer: As you know, Title 42 is a public health authority held by the CDC, and my understanding is that it has proven to be an effective and useful tool to limit entry into the country as public health authorities have worked to slow the spread of COVID. With that said, I agree with many who say that we need a plan for when the public health emergency ends, as we cannot rely on this temporary authority on a permanent basis for border enforcement.

Question 2

What are your plans for managing the flow of migrants to the Southwest border after the CDC lifts the Title 42 authority?

Answer: If confirmed as CBP Commissioner, my responsibility will be to enforce the law. I agree that public health authorities designed to slow the spread of a pandemic should not be used or viewed as a method to have a functioning immigration system. If confirmed, I commit to quickly review and assess the current planning for the end of Title 42, and to working with your office and others as appropriate to ensure CBP has the tools it needs, including through comprehensive reform to fix the current, broken system.

Question 3

The Obama Administration called for certain reforms to the asylum process, including to the Trafficking Victims Protection Reauthorization Act of 2008, to address the treatment of unaccompanied minors who cross the Southwest border.

Do you believe that reforming Section 235 of the Trafficking Victims Protection Reauthorization Act, specifically the provisions regarding unaccompanied minors from contiguous countries, would make your job more or less difficult? Why?

Answer: I am not intimately familiar with the details of Section 235 of the Trafficking Victims Protection Reauthorization Act, but if confirmed, I commit to learning about this legislation, including from my colleagues from the State Department and from your office and others in Congress. Speaking very broadly, it is apparent to me that a severe backlog of cases in immigration courts means we are unable to expeditiously grant asylum protections to those who are eligible, while quickly sending others home—the hallmark of a functioning system. In the course of my confirmation process, it has become clear that these concerns are shared by members and stakeholders from all parts of the political spectrum, and if confirmed, I will continue to urge Congress to take up bipartisan reform, as I believe it is crucial to improving our border security while ensuring fairness for migrants.

Question 4

During the hearing and in our meeting, we discussed the need to reform the asylum program in order to ensure it works properly.

What specific aspects of the asylum program need reform, and what does that reform look like in your opinion?

Answer: As you and I discussed, it is clear to me that our immigration system is broken. Under the current system, we are unable to expeditiously grant asylum protections to those who are eligible, while quickly sending others home—the hallmark of a functioning system. Agents hired and trained to secure the border between our ports of entry are often charged with processing vulnerable children and families seeking asylum protections at our borders, often in cramped Border Patrol stations far from needed medical services. As we have seen in previous years, as well as this summer, unanticipated surges of large numbers of migrants to our southern border can overwhelm CBP resources and capacity in any given sector, leading to safety and health risks for both migrants and CBP personnel. In the course of my confirmation process, it has become clear that these concerns are shared by members and stakeholders from all parts of the political spectrum.

If confirmed, my responsibility will be to enforce the law and facilitate trade, not to set immigration policy. With that said, I certainly commit to advising decisionmakers, including Congress, regarding what I see on the ground, to advocating for adequate resources, staffing, training, and support to allow CBP's workforce to carry out its mission, and to working cooperatively with Congress on a bipartisan basis to provide CBP input on legislative proposals to fix our broken immigration system.

Question 5

During the hearing, you stated that you believed the border situation was “urgent” but you failed to call the ongoing situation a crisis. Leaked information obtained by the *Washington Post* and *NBC News* suggests that CBP encountered more than 192,000 migrants during September 2021. Assuming these numbers are accurate, CBP would have encountered over 1.7 million migrants this fiscal year – the most in recorded history.

Can you please share your assessment of this ongoing situation at the Southwest border and the Administration’s response to that situation?

Answer: I agree that the current level of encounters at the southwest border presents significant challenges. Border Patrol agents are often charged with performing administrative and processing roles they were not hired to do, and for which they may lack training. This situation presents difficulties not only for the agents, who face low morale at a time of very high encounters, but for migrant safety and the integrity of our asylum system, which is not adequately staffed to adjudicate claims quickly. What’s more, as we have seen in previous years, as well as this summer, unanticipated surges of large numbers of migrants to our southern border can overwhelm CBP resources and capacity in any given sector, leading to safety and health risks for migrants and CBP personnel, increased time in CBP custody for unaccompanied minors, and transportation and logistical challenges that might otherwise be avoided. Although the men and women of CBP have overwhelmingly risen to meet this incredibly difficult challenge, the current system has no doubt led to issues in terms of safety of migrants, Border Patrol agents, and border communities; border security between the ports of entry; and agent morale.

As I noted in my confirmation hearing, I do believe our immigration system is fundamentally broken. In the course of my confirmation process, it has become clear that these concerns are shared by members and stakeholders from all parts of the political spectrum. If confirmed as CBP Commissioner, my job will be to enforce the laws as written by Congress and interpreted by the courts—but I would also certainly hope to work with Congress on a bipartisan basis to address the current, broken system.

Question 6

If confirmed, you have committed to “making a difference.” What steps would you take to make a difference with regards to the ongoing situation at the Southwest border?

Answer: If confirmed, I commit to acting as an honest broker to understand the law enforcement, border security, resource, and personnel challenges that CBP faces, and to identifying common-sense solutions wherever possible. As one example, I understand there is bipartisan agreement on the need to recruit and hire Border Patrol Processing Coordinators, a position that would reduce some of the current administrative burden on Border Patrol agents so they can get back to the roles for which they are trained, and to ensure CBP effectively meets its obligations within the asylum process. If confirmed, I would hope to identify solutions like these in a broad range of areas to address our current challenges, and to work with you and this Committee on commonsense solutions to address the challenges CBP currently faces.

In addition, throughout my career, I have worked hard to improve officer morale in the Departments I've led, including by addressing resource issues, as well as tough topics like officer resiliency and mental health. If confirmed, I want to do as much as I can to improve morale, resiliency, and retention within Border Patrol, the Office of Field Operations, Air and Marine Operations, and CBP generally.

CBP's officers and agents have a challenging job, and remote areas near our borders in particular are difficult areas for recruiting and retaining personnel. As CBP Commissioner, I do not intend to try to lead from my desk, but instead want to get out to the borders and ports of entry to speak with frontline agents and officers, and understand the issues they experience when it comes to resourcing, training, and support from their leadership. In addition, I would look forward to working with your office to better understand the concerns you have heard, and to identify solutions to address them.

Question 7

Given that around 1.7 million migrants illegally crossed the border this year, what operational or policy changes that have been implemented by the current Administration should be changed in order to make a difference and respond to the ongoing crisis? If confirmed, what will your plans be for implementing those policy changes?

If confirmed as CBP Commissioner, I will be responsible for enforcing the law and facilitating trade. I certainly agree with you that the current level of encounters at the southwest border presents significant challenges. If confirmed, I commit to acting as an honest broker to advise decisionmakers regarding what I see on the ground, including what I'm hearing from frontline Border Patrol agents.

In addition, I will absolutely advocate for resources, staffing, training, and support needed to allow CBP's workforce to carry out its mission. In some cases, this will mean hiring additional Border Patrol Processing Coordinators to assist in transferring vulnerable minors to HHS custody, or helping ensure asylum seekers are processed in a safe, fair, and orderly manner. In others, it may mean advocating for investments in technology, such as surveillance towers, sensors and other detection capabilities; recruiting and pay incentives; and other resources in order to help agents and officers do their jobs efficiently and safely. Finally, I will continue to urge Congress to take up bipartisan legislative reform, as I believe it is crucial to improving our border security while ensuring fairness for migrants.

Question 8

The Fifth Circuit ordered that the Biden Administration resume the Migrant Protection Protocols. If confirmed, you would be involved in this process.

Have you received any briefings from CBP or DHS on the resumption of the Migrant Protection Protocols?

Answer: The briefings I received from CBP or DHS regarding the resumption of the Migrant Protection Protocols only included publicly available information.

Question 9

If confirmed, what steps would you take as CBP Commissioner to comply with the Fifth Circuit's order and resume the Remain in Mexico program?

If confirmed as CBP Commissioner, I will uphold the law, including our statutory obligation to provide asylum protections to those found eligible and to secure our borders, as well as any court orders by which the Department and CBP are currently bound. I will certainly provide decisionmakers within DHS and the Administration with any information requested as they develop options to comply with recent court orders while upholding our asylum obligations under statute.

Question 10

Have you met with the Border Patrol Council prior to your nomination hearing? If confirmed, what will your relationship to the Border Patrol Council be?

Answer: I have met with the Border Patrol Council prior to my nomination hearing, and they have a standing invitation to come and meet with me in Tucson whenever they would like. In each of the police departments I have led, I have placed great importance on relationships with my officer, including the labor unions that represent them. In negotiations with the union that represents my current officers, I won trust by listening to their needs and acting as an honest broker. Following those negotiations, I led a successful effort to convince Tucson's City Council to give our officers the largest pay increase in the city's history—an ambitious proposal which ultimately passed unanimously. Not only was this the right thing to do by my officers, but I believe it was necessary to ensure our highly trained officers would stay with the Department.

If confirmed as CBP Commissioner, one of my first priorities will be to spend time with frontline agents to get a sense of the issues and concerns they face so that I am better able to advocate for their interests in the future. If there are reasonable steps I can take to show their concerns are being heard, I will always be open to doing so. I will act as an honest broker on issues affecting CBP's missions, and I will advocate fiercely to ensure the men and women who make up CBP's workforce have the resources needed to do their jobs.

Question 11

During the hearing, Senator Warren asked you about the incident in Del Rio involving horseback units in U.S. Border Patrol. You answered that the "images were troubling" and that you thought it was "very important that we be fair and allow the investigation to move in whatever direction it does as facts are gathered." You then commented that you were not going to "prejudge" the investigation.

As you are aware, President Biden stated in response to the images: “I promise you: those people will pay. . . . There is an investigation underway right now and there will be consequences. . . . It’s an embarrassment. . . . It’s beyond an embarrassment. It’s dangerous, it’s wrong. It sends the wrong message around the world. It sends the wrong message at home. It’s simply not who we are.”

In light of the remarks quoted above, do you believe that President Biden has “prejudged” the investigation? Please answer yes or no.

In light of the remarks quoted above, do you believe that President Biden’s comments were “fair” to the parties involved? Please answer yes or no.

Have you received any briefing or information on this investigation or situation prior to your hearing?

If you are confirmed and the parties involved are cleared of wrongdoing upon conclusion of the investigation, will you commit to providing a public apology to the parties involved?

Answer: As a police chief for over 13 years, my job has been to ensure my workforce has the full support of its leadership, while making clear that any allegations of wrongdoing will be swiftly investigated, and substantiated allegations met with swift, impartial consequences. If confirmed as CBP Commissioner, I will make the same commitment to the men and women of CBP. I have not been briefed on any non-public information relating to this incident, but my understanding based on public information is that the investigation is ongoing, and that findings are results have not yet been shared. If confirmed, I am committed to transparency and accountability, and would see no problem with releasing the results of the investigation to Congress, and if at all possible, the public. In addition, you have my commitment that I will fiercely advocate for the independence of internal investigations within CBP.

With that said, in general, I shared the reaction of many to the images we saw from Del Rio. Regardless of whether policies were violated, a discussion about tactics is in order. As a police chief, I have long questioned the appropriateness and safety of using horse patrols to apprehend subjects in crowds or within close proximity, rather than for transport through remote areas and tracking and detection. I believe this practice risks the safety of officer and subjects. If confirmed, I commit to better understanding the use of horse patrol in crowds, and would be happy to share my findings with Congress.

Question 12

There are different technological solutions to addressing drug interdictions at our ports of entry, and these solutions implicate a complex acquisition process.

Can you walk me through your understanding of the technologies that are available for drug interdiction at our ports?

Answer: My understanding is that CBP takes a layered approach to drug interdiction at ports of entry, using an array of technology and capabilities to target, inspect, and ultimately interdict illicit drugs at ports of entry. This includes sophisticated automation and targeting tools, which use intelligence and advance information to identify potential smuggling attempts before even reaching a port. At the ports, technologies like non-intrusive inspection equipment allow CBP personnel to scan cargo containers, vehicles, and packages to detect opioids or other illicit narcotics. I also recognize from my years in law enforcement that other tools and capabilities, like drug-detection canines, are an important and effective complement to higher tech solutions. While all these tools are critical to stopping drugs from entering the U.S., it is important that they be integrated in a way that serves CBP personnel, and allows CBP Officers to quickly clear legitimate cargo and travelers, and focus on the enforcement mission.

If confirmed, I will work closely with your office, the Committee, and leaders and experts in the technology sector to understand what other innovations are available and could be effectively and efficiently implemented in the field.

Question 13

What inspection processes are in place for northbound traffic at our ports of entry, and how would you improve those processes to better catch the drugs that flow through those ports?

Answer: While I am not fully versed on CBP's inspection processes at ports of entry along the southwest border, I know that the agency employs a layered, risk-based approach to inspecting northbound cargo and travelers. This starts with advanced targeting and analytics, using data, intelligence, and information sharing to identify potential bad actors and criminal networks attempting to smuggle illicit narcotics into the U.S. This targeting process, led in large part by the agency's National Targeting Center, puts actionable information in the hands of CBP personnel at the ports, who can use scanning technology, canines, and their training to effectively identify and interdict northbound narcotics smuggling attempts.

If confirmed, I will spend time with CBP's experts to get a better understanding of what needs exist in the field, and to identify gaps where technology, staffing, information sharing, or other tools can enable them to more effectively interdict illicit drugs. I will also establish relationships with my counterparts in Mexico to see where better intelligence and information sharing could support our work at the ports. I will also be eager to learn from you and your staff about what gaps may exist, where technology may be available, and what partnerships could help CBP more effectively stop the flow of drugs into the U.S.

Question 14

What inspection processes are in place for southbound traffic at our ports of entry, and how would you improve those processes to better catch the firearms and cash that flow through those ports?

Answer: I share your concerns about the southbound flows of cash and firearms from the U.S. If confirmed, I will certainly work with CBP's experts and others to gain a better understanding of the specific inspection and enforcement efforts underway. There is also an important role for CBP's partners at the federal, state, and local levels. From my time in local law enforcement, I know that departments and agencies at all levels, particularly those operating near the southwest border, have access to information that could be useful to southbound interdiction efforts. I will encourage CBP's field and headquarters leadership to better gather and share information that would enhance the enforcement mission. I would take a similar approach with counterparts in Mexico, working with them to gain a clearer understanding of areas for further collaboration that might enable better southbound enforcement.

Question 15

What are your plans for addressing the different standards for inspection and for more quickly acquiring and deploying effective tech?

Answer: If confirmed, I will certainly look into inspection standards for both northbound and southbound traffic, as well as the technology acquisition and deployment processes in the port environment. I want to gain a better understanding of where disparities may exist and how improvements can and should be made. CBP's role stopping the smuggling of contraband and illicit goods, in both directions, is critical to communities on both sides of the border. I recognize that the trade and travel communities, state and local stakeholders, Congressional offices, and international partners have equities in these standards and deployment of any new technology. I am also eager to work with you and your colleagues to address any legislative solutions that might be necessary to improve our inspection efforts and secure targeted investment in technology that supports CBP's mission.

Question 16

U.S. Customs and Border Protection (CBP) and the General Services Administration (GSA) jointly share responsibility over managing our ports. CBP retains some land use acquisition and use authority and through that authority does retain the sole custody over certain ports, but GSA often jointly manages our ports and related with CBP. Further complicating matters, GSA often draws funds from the Federal Building Fund to invest in port modernization projects. The Federal Building Fund also funds Federal office buildings across the states and Federal courthouses.

Can you walk me through your understanding of the relationship between GSA and CBP?

If confirmed, what steps would you take to improve this relationship?

Answer: As you know, GSA's mission is very broad, particularly with regard to maintenance and investment in federal buildings and facilities. My understanding is that GSA and CBP work together to prioritize port infrastructure projects and investments, and GSA ultimately manages many of these improvement projects. If confirmed, I will meet with GSA leadership to better

understand how state and local, along with CBP's priorities at ports of entry fit into that mission. More importantly, I will advocate for infrastructure investments at ports with significant needs nationwide, as I have heard from an array of stakeholders citing concerns about ports in need of critical investment and improvement.

I am eager to work with you, your Congressional colleagues, and other stakeholders in the trade and travel communities to better understand the port investment process and support critical modernization where most needed.

Question 17

You have previously criticized the border wall and have written that you think that there are better ways to address border security. As you are aware, Congress had appropriated a sizeable amount of money to CBP to build the border wall, and around \$1.9 billion dollars remained available for obligation when President Biden took office.

If confirmed, what will your plans for those \$1.9 billion be?

Answer: I am not categorically opposed to any measure, and as you and I discussed, I absolutely think physical barriers play a role in our border security along with technology and personnel. For example, in remote stretches of desert, I understand fencing is useful to slow down vehicles traveling at high speeds so that they can be identified and apprehended. With that said, I believe there are many areas along the border where additional barrier likely does not make sense, either because the environment is too remote, the terrain provides a natural barrier, or technological solutions are more appropriate. In addition, I understand that much of the land along the border in Texas presents legal challenges that were not present in New Mexico, Arizona, and California where more significant sections of wall had previously been completed.

With that said, I am not currently in a position to evaluate how effective or appropriate investments in physical barriers may be, compared with other needed investments, including in technology, such as surveillance towers, sensors and other detection capabilities; recruiting and pay incentives; and other resources in order to help agents and officers do their jobs efficiently and safely. If confirmed, I intend to speak with as many front line Border Patrol agents as possible to understand their needs on the ground, and I commit to seeking the resources and investments needed to ensure they can effectively and efficiently carry out their duties. I would be pleased to work with your office and others to better understand your views on these issues.

Question 18

If confirmed, will you commit to following:

- *Closing sections of the border wall where the gates still need to be hung?*
- *Completing sections of the border wall where there are already purchased materials?*

- *Powering gates in sections of the border wall where ranchers cannot access their lands?*
- *Rebuilding sections of the border wall where the levees have not been put back in?*
- *Carrying out the contracts for and installing fiber optic cables, lights, cameras, and other technologies across the U.S./Mexico border?*

Answer: If confirmed, I am open to considering any option that increases the effectiveness of our Border Patrol agents while maintaining the safety of agents, migrants, and the surrounding communities, and which does not unnecessarily harm the nearby environment, and to advocating for the adoption of such commonsense approaches to the best of my ability. As you and I discussed, I believe technology is a critical piece of our border security mission, and I will not hesitate to advocate for needed resources to assist the men and women of the Border Patrol in carrying out their work. In addition, I understand that you and a number of other members have concerns and questions relating to gates in the wall that remain unfinished.

With that said, I am not yet familiar with the details of all of the contracts or proposals you mention, and am not currently in a position to evaluate how effective or appropriate they may be compared with other needed investments. I am also not aware of the entire universe of considerations that may be present in evaluating some of these options. For example, I understand that much of the land along the border in Texas presents legal challenges that were not present in New Mexico, Arizona, and California where more significant sections of wall had previously been completed.

If confirmed, I intend to speak with as many front line Border Patrol agents as possible to understand their needs on the ground, and to working with your office and others to understand the concerns you have relating to our border security investments. In general, I hope you will find that I am open to advocating for common-sense solutions regardless of the political implications, so long as these solutions advance agent and migrant safety and do not do unnecessary harm to the surrounding communities. If confirmed, I commit to seeking the resources and investments needed to ensure that the men and women of Border Patrol can effectively and efficiently carry out their duties.

Question 19

The CBP Preclearance program is the strategic stationing of CBP personnel at designated foreign airports to inspect travelers prior to boarding U.S.-bound flights. Currently, CBP has more than 600 officers and agriculture specialists at sixteen Preclearance locations in Canada, Ireland, the Bahamas, Bermuda, Aruba, and the United Arab Emirates. With Preclearance, travelers bypass CBP and Transportation Security Administration (TSA) inspections upon U.S. arrival and proceed directly to their connecting flight or destination. Preclearance is a key element of our national border and customs strategy that prevents inadmissible travelers and goods from

boarding U.S.-bound flights, while also expanding economic benefits of tourism, trade and travel for the U.S. and partner countries.

CBP has been working towards a goal of preclearing as many as one-third of U.S. bound travelers by 2024. Do you intend to continue the agency's pursuit of that objective? What next steps will you take to expand Preclearance access at airports and terminals worldwide?

Answer: I share your view that the Preclearance program is an important and innovative tool for both economic and security partnerships around the world. I recognize the critical role of the Preclearance program in the agency's layered and risk-based approach to border and national security, as well as its impact on the partner nations in which Preclearance locations operate. I understand there are specific standards as part of CBP's process to establish a Preclearance location, as well as any partner country's ability to provide funding and authorities for Preclearance operations. If confirmed, I will certainly review the agency's plans to expand Preclearance operations, while also balancing those needs with staffing demands at U.S. ports of entry.

Question 20

In 2016, CBP and the Government of Taiwan initiated exploratory discussions about establishing Preclearance at Taoyuan International Airport (TPE), which is the 11th businesses airport worldwide.

In your assessment, would Preclearance at TPE be beneficial to the U.S. economy?

As Commissioner, will you commit to continuing these exploratory discussions and working constructively with Taiwan towards the goal of establishing Preclearance at TPE?

Answer: I certainly recognize the importance of the United States' partnership with Taiwan and understand the significance of the relationships that CBP establishes with Taiwanese counterparts. While I'm not familiar with the details of Taiwan's Preclearance application, I do know that the Preclearance program is an important tool in CBP's layered and risk-based approach to border and national security. I understand there are a number of standards and thresholds as part of CBP's process to establish a Preclearance location, and if confirmed, I will certainly review the application and any decisions made regarding Taiwan's application.

Questions for the Record
Senator Chuck Grassley

Nomination of Chris Magnus to be Commissioner of U.S. Customs and Border Protection

1. During our exchange in your confirmation hearing, you committed to providing a response in writing regarding what, in your view, is the statutory basis for the Notice to Report process that has been utilized by U.S. Customs and Border Protection (CBP) in recent months. Please provide that response here.

Answer: It is my understanding that Notices to Report are a form of prosecutorial discretion.

2. During our exchange regarding the Notice to Report process during your confirmation hearing, you stated that “Obviously, the better practice would be to have individuals be Noticed to Appear as opposed to Noticed to Report.” That being the case, will you commit to expeditiously terminating the Notice to Report process and returning CBP to the standard practice of issuing Notices to Appear if confirmed as Commissioner of CBP?

Answer: It is my understanding that Notices to Report are not currently being issued by CBP. With that said, if confirmed, I certainly commit to working towards a goal of maximizing issuance of Notices to Appear where warranted, while at the same time minimizing the length of time that individuals spend in CBP facilities.

3. Earlier this year, the Biden Administration announced the creation of “humanitarian exceptions” to the order issued by the Centers for Disease Control and Prevention (CDC) pursuant to Section 362 and 365 of the Public Health Service Act, commonly referred to as the Title 42 order.

During our exchange in your confirmation hearing, I asked you for your views on the scope of humanitarian exceptions to the Title 42 order and the extent to which they should be utilized. In response, you said that you would “need to learn more about” the exceptions and have more information in order to answer the question.

- I hope that you have been able to learn more about the Title 42 humanitarian exceptions since that time, and I would like you to provide a response to that question here.

Answer: Thank you for the additional time to respond. As you know, Title 42 is a public health authority held by the CDC. It is my understanding that the Administration retains the ability to set its own immigration priorities, including providing humanitarian or other exceptions to the rule, if it deems appropriate. I would defer to Administration and public health officials as to the appropriate balance between providing some humanitarian relief to vulnerable families, while taking steps to limit the spread of the COVID-19 pandemic. Moreover, if confirmed, I will certainly comply with any decision by the judicial branch related to the implementation of the CDC’s Title 42 public health authority.

4. If confirmed as Commissioner of CBP, will you commit to working faithfully and expeditiously to re-implement the Migrant Protection Protocols (MPP) in compliance with the August 13th federal district court order from the Northern District of Texas?

Answer: If confirmed as CBP Commissioner, I will uphold the law, including our statutory obligations to provide asylum protections to those found eligible and to secure our borders, as well as comply with any court orders by which the Department is bound.

5. As you are aware, there have been widespread media reports regarding videos and photographs of mounted Border Patrol agents, who are employees of CBP, positioned on the banks of the Rio Grande River attempting to disperse Haitian migrants who were crossing the river.

These photos and videos led to the creation of a false narrative that mounted Border Patrol agents were engaged in the “whipping” of migrants, a claim the photographer himself has publicly refuted. Despite that, numerous senior Administration officials, including Secretary Mayorkas and President Biden, have made harsh public statements about the agents and their actions. DHS is currently undertaking an internal investigation of the matter.

- If this internal DHS investigation confirms that the Border Patrol agents involved did not, in fact, whip any migrants, will you – if confirmed as Commissioner of CBP – commit to ensuring that they receive a public apology on behalf of the agency for the way that they have been portrayed in recent weeks?

Answer: If confirmed as Commissioner, ensuring the integrity and fairness of our internal procedural justice process will be one of my highest priorities. This means that officers should be able to expect a fair, impartial investigation in any instance of alleged wrongdoing. I commit that if the current investigation finds that these officers to have acted properly, they will have my full support. Conversely, if they acted wrongly, they will face swift and impartial consequences.

As I stated during my confirmation hearing, if confirmed, I am committed to transparency and accountability, both for agency leadership and our agents, and would see no problem with releasing the results of the investigation to Congress, and if at all possible, the public.

6. In written testimony to the Senate Judiciary Committee on December 12, 2018, you said that you agreed with the statement that constructing physical barriers along the southern border was a “medieval solution to a modern problem.”

In 2006, Congress passed the Secure Fence Act, which authorized the construction of hundreds of miles of fencing/physical barriers along the southern border. It passed the U.S. Senate by a vote of 80-19, and was supported by 26 Democratic senators - including then-Senator Barack Obama, then-Senator Hillary Clinton, then-Senator Joe Biden, and

Senator Schumer.

- Do you believe that, in voting for passage of the Secure Fence Act of 2006, 80 United States senators, including three future Democratic Party presidential nominees and two future Democratic presidents, voted for a “medieval solution to a modern problem?”

Answer: As you may have seen in the written statement you reference, the quote likening the border wall to a “medieval solution to a modern problem” was by an elected Republican sheriff and colleague of mine here in Arizona, who is responsible for policing a community with 125 miles of border. I believed at the time, and still do, that a physical barrier in itself is an incomplete solution to our border security, and must be combined with technology and people in the right places in order to be effective.

- Are you opposed to the construction of any new physical barriers along the southern border?

Answer: I am not categorically opposed to any measure. With that said, I believe there are many areas along the border where additional barrier likely does not make sense, either because the environment is too remote, the terrain provides a natural barrier, or technological solutions are more appropriate.

- Do you believe that physical barriers have any role to play in securing the southern border? If not, why not? If so, how and where do you think they should be deployed?

Answer: I absolutely think physical barriers play a role in our border security, along with technology and personnel. For example, in remote stretches of desert, I understand fencing is useful to slow down vehicles traveling at high speeds so that they can be identified and apprehended.

7. In response to one of my questions during our exchange at your confirmation hearing, you said, “I think it’s very important that local communities do work with federal agencies that include ICE and the Border Patrol.”

My understanding is that it is commonplace for chiefs of police in border communities to have an open working relationship with the Border Patrol Chief in their area. For example, it is my understanding that the Chief of Police in McAllen, Texas, has an open working relationship with the Chief Border Patrol Agent in the Rio Grande Valley Sector. I believe that similar dynamics exist in the El Paso, El Centro, Del Rio, San Diego, and Yuma Sectors.

- Prior to your nomination, how open was your working relationship with the Chief Border Patrol Agent in Tucson Sector?

Answer: As you note, as a local police chief, I have always found relationships with federal, state, and other law enforcement agencies incredibly important.

There have been several Sector Chiefs in Tucson during my time there. I had a positive relationship with the current USBP Tucson Sector Chief prior to my nomination to this position, and it has remained that way in the six months since.

- Can you give me specific examples of the times you spoke with and worked with the Chief Border Patrol Agent in Tucson Sector?

Answer: My Department holds monthly meetings with the current USBP Sector Chief, including in the six months since I was nominated to serve as CBP Commissioner.

8. Again, in response to one of my questions during our exchange at your confirmation hearing, you said, “I think it’s very important that local communities do work with federal agencies that include ICE and the Border Patrol.”

In March 2017, it was reported that the Tucson Police Department, of which you serve as Chief, impeded a Border Patrol operation.

The case involved an individual named Carlos Erazo-Velasquez who escaped from Border Patrol custody after being taken to a hospital for evaluation. Erazo-Velasquez had been taken into custody for illegal entry and assaulting an agent during his initial detention. Some reports indicated that, in addition to ceasing efforts to assist Border Patrol in the case, the Tucson Police Department went so far as to refuse the Border Patrol’s request to set up an incident command post in a police department substation parking lot.

Reports indicated that the Tucson Police Department apparently made these decisions due to the “current political climate” surrounding immigration enforcement.

- Given that you were the Chief of Police in Tucson at the time, can you provide an explanation for the Tucson Police Department’s actions in this case?

Answer: In the incident you describe, the Tucson Sector Border Patrol contacted my department to request assistance in locating an individual who had escaped their custody. We worked closely with their officers to search for the individual for over two and a half hours, as well as devoting numerous additional resources to support the search for the escaped individual. I would have to direct you to the source of the story cited above for an explanation as to that version of it.

- Do you deny that the “political climate” surrounding immigration enforcement at the time played any role in the Tucson Police Department’s decision-making in this case?

Answer: Yes, I do. The request to set up in a substation parking lot was denied because it was not located near the escapee’s last known whereabouts.

9. There are approximately 1.2 million illegal immigrants in the United States with final orders of removal, meaning that they have received due process and have been ordered

removed from the United States by an immigration judge. Do you agree that they should all be removed from the United States in an expeditious manner?

Answer: I agree that immigrants with final orders of removal are subject to deportation from the United States. With that said, in my experience as a police officer, I am very familiar with the concept of officer discretion, and believe most, if not all, police chiefs would say they find it necessary in order to focus on threats to public safety. In relation to the example above, I would defer to ICE as the agency charged with interior enforcement as to whether removal is feasible or appropriate for all 1.2 million individuals referenced here.

10. If reports are correct, CBP will soon confirm that in Fiscal Year 2021 it had the highest ever number of encounters with illegal immigrants attempting to cross the southern border in any fiscal year since records began. Do you agree with former Border Patrol Chief Rodney Scott that this unprecedented surge at the southern border poses a national security threat?

Answer: I think there's no question that the current high level of encounters at the southwest border has an impact on Border Patrol resources and bandwidth. It is my understanding that many of those encounters are repeat attempts under Title 42 public health authorities and may be a historic anomaly, but that doesn't reduce the impact of the current situation on Border Patrol's workforce.

With that said, one of CBP's core missions is securing America's borders. I take discussion of potential threats to our national security seriously, and if confirmed, I commit to seeking up to date briefings on the current threat landscape, and to requesting additional support from our partners if appropriate.

11. Do you believe that COVID-19 vaccines should be mandated for illegal immigrants before they are released from DHS custody into the interior of the United States?

Answer: As a former paramedic and emergency medical technician with four decades' experience in public safety, I take public health concerns very seriously. I am supportive of any and all appropriate measures necessary to combat the spread of COVID-19, including but not limited to mandatory testing and vaccinations for migrants in the federal government's custody.

If confirmed, I commit to working with partners at the state and local level, as well as within the federal government, to ensure we are taking all appropriate steps to mitigate the potential spread of COVID-19.

12. During an October 20th roundtable event hosted by House Minority Leader Kevin McCarthy, the Mayor of Uvalde, Texas, – which is within the Del Rio Sector – described how he has repeatedly requested that Border Patrol provide him with data and statistics regarding the illegal immigrant population being encountered by Border Patrol in the area.

According to the Mayor, he received the following response from Border Patrol:

“I was told point blank from Border Patrol that they are not going to give me any information – nor are they going to give any mayor or any county judge any information going forward because they’ve been told from Washington not to give it to us.”

- If confirmed as Commissioner of CBP, will you commit to looking into this issue and, if such a policy has been put in place regarding CBP information sharing with state and local partners, will you commit to expeditiously reversing it?

Answer: Yes. In my current roles as a private citizen and police chief, I am not aware of any such policy, and in fact I have found CBP’s enforcement statistics Web site to be very comprehensive and informative. If confirmed, I would absolutely set a tone of coordination, cooperation, and mutual respect with state and local governments and law enforcement agencies, as I have enjoyed with state and Federal partners throughout my career in policing.

13. As you are likely aware, there is currently a crisis in our global supply chains. This crisis has been caused by a number of factors and has resulted in shipping delays, congested ports, a backlog of shipping containers, and increased prices of goods. If confirmed, how do you plan to manage the supply chain crisis and mitigate its effects on American workers and consumers?

Answer: I could not agree more that preserving and reinforcing America's supply chain is one of our top priorities, and is certainly something that I care deeply about. I also recognize, particularly as we approach the busy holiday season, that the urgency surrounding this issue is only increasing. Although CBP is only one actor at the ports, and certainly not the only entity that has responsibility for the smooth movement of goods through the ports, it plays a very important role. If confirmed, I would want to ensure that the agency has the appropriate staffing at ports, and that CBP is working closely with port authorities, carriers, brokers, labor groups, and other key partners in the trade community to meet the increasing cargo screening and clearance demands.

I will also prioritize the continued modernization of technology resources, like the Automated Commercial Environment (ACE) system, inspection equipment, and other tools to meet the demands. These systems can have serious impacts on the flow of cargo, and ensuring that these tools are well-resourced and updated is critical to that facilitation mission. These tools become more important as our international trade and travel traffic increases, and as CBP staffing demands grow.

14. Trade enables us to engage economically with consumers around the world, which is very important since 95% of the world’s consumers live outside the United States. However, ports around the globe, specifically in the U.S. are packed with ships waiting to be offloaded. Some of these ships have been sitting for a longer period of time than it took

for them to cross our oceans. If confirmed, how will you address this backlog of shipping containers and congestion within our ports?

Answer: I share your concerns about the backlog of cargo ships at ports across the country and recognize the urgency of addressing these delays. As you know, while CBP is critical to the efficient flow of cargo through our ports, the agency is only one piece of this larger situation. If confirmed, I would want to ensure that the agency is staffing the ports at the appropriate levels, and is meeting the demands to process and clear cargo as it arrives. In support of the President's guidance, I would ensure CBP is flexible and proactive, surging personnel or adjusting hours as necessary. I would also ensure that CBP leadership and staff are working closely with port authorities, local governments, carriers, labor groups, and other key partners in the trade community to respond to existing and emergent needs.

In addition to adjusting operations on the front line, I will prioritize technology and automation that supports the facilitation of legitimate cargo. CBP's ongoing maintenance and improvement of the Automated Commercial Environment (ACE) system is critical to the smooth flow of cargo. Tools like ACE are the critical backbone to the agency's cargo operations, and if confirmed, I will ensure these systems and tools are prepared to meet current and future demands.

Magnus Confirmation Hearing Questions

Submitted by Senator Cornyn

October 22, 2021

Blood Plasma Donations

For over 30 years, Customs and Border Protection has allowed donors with B-1/B-2 visas and border crossing cards to enter the United States for the purpose of donating blood plasma. These donors were able to receive a small payment in connection with their donations – just as any plasma donor residing in the United States would receive. There is urgent need to collect plasma, as it is the essential ingredient used to create therapies in treating an array of rare and serious diseases, many of which are life-threatening. Recently, CBP issued a new policy that finds payment to B-1/B-2 visa holders as equivalent to engaging in labor for hire and, as such, plasma donors are no longer able to rely on B-1/B-2 visas and border crossing cards to enter the United States to donate plasma. Should you be confirmed, would you seek to reverse this recent harmful change in CBP policy and return to the system under which B-1/B-2 visa holders can cross the border, donate life-saving plasma, and receive payment, just as any American citizen would?

Answer: I certainly recognize the importance of blood plasma in an array of medical therapies and interventions. While I am not familiar with the reasoning behind CBP's recent policy guidance on B-1/B-2 visa holders' eligibility to enter the U.S. to donate blood plasma, if confirmed, I will certainly review the decision and share any additional information with your office.

**Senator Rob Portman
Post-Hearing Questions for the Record
Submitted to Chris Magnus**

**Nomination of Chris Magnus to be Commissioner of U.S. Customs and Border Protection
Tuesday, October 19, 2021**

1. If confirmed, do you commit to installing the technology capability already paid for at the border which includes sensors, cameras, communications, and lighting to be able to give your Border Patrol officers the opportunity to be able to respond more effectively and more efficiently?

Answer: If confirmed, I am open to considering any option that increases the effectiveness of our Border Patrol agents while maintaining the safety of agents, migrants, and the surrounding communities, and which does not unnecessarily harm the nearby environment, and to advocating for the adoption of such commonsense approaches to the best of my ability. As you and I discussed, I believe technology is a critical piece of our border security mission, and I will not hesitate to advocate for needed resources to assist the men and women of the Border Patrol in carrying out their work.

Although I am not immediately familiar with each of the specific technology purchases you mention, if confirmed, I would be happy to work with your office to learn more.

2. From the perspective of safety for both migrants and Border Patrol agents, is it safer or more dangerous for asylum-seekers to pay human smugglers and drug cartels to cross the Rio Grande river in the middle of the night compared to going to a U.S. port of entry?

Answer: Without any additional context, I would say it is certainly more dangerous both for migrants, and for agents, to travel through the Rio Grande in the dark than it would be to approach a U.S. port of entry.

3. When Customs and Border Protection is asked why the vast majority of alleged asylum seekers are crossing the border avoid the ports of entry, they respond that the ports are not equipped to handle these asylum seekers. If confirmed, do you commit to requesting the resources and cooperation of other agencies of the federal government so that our ports of entry can be equipped to decrease danger to migrants and Border Patrol agents?

Answer: If confirmed, I would certainly be open to considering any solutions that could increase migrant and agent safety while upholding our obligation to provide asylum protections to those eligible under the law. As we have seen in previous years, as well as this summer, unanticipated surges of large numbers of migrants to our southern border can overwhelm CBP resources and capacity in any given sector, leading to safety and health risks for migrants and CBP personnel, increased time in CBP custody for unaccompanied minors, and transportation and logistical challenges that might otherwise be avoided.

With that said, I believe such a proposal would require significant engagement with CBP's Office of Field Operations, as well as our partners in GSA, who I understand hold many of the leases for CBP's land ports of entry, and with Mexican authorities on the other side of the border to ensure the safety and feasibility of such a proposal. From my experience visiting ports of entry in Arizona, many of the traffic lanes around our ports of entry already experience significant pedestrian traffic, which can be dangerous both for the pedestrians and for vehicles attempting to enter and exit the U.S. If confirmed, I would be happy to work with you and others on this Committee to learn more about this proposal and understand how it might best be carried out.

4. Despite the fact that asylum seekers are walking up to Border Patrol agents to turn themselves in, it is estimated that there are still over 1,000 migrants or "got-aways" who evade apprehension each day at the border. If confirmed, will it be acceptable to you that 1,000 people cross daily without authorization or screening into the United States?

Answer: The role of the Border Patrol is to secure the border, including by ensuring individuals who cross between the ports of entry without authorization are apprehended. If confirmed, I will work to ensure that Border Patrol is empowered and resourced to achieve this mission and to reduce the likelihood that unauthorized crossers are able to evade apprehension.

5. The Department of Homeland Security concluded that border apprehensions decreased by at least 70% in the following sectors of the border where a barrier was installed: Yuma, San Diego, El Paso, and the Rio Grande Valley. Do you agree or disagree with the Department of Homeland Security that previous border wall installation has been effective?

Answer: I certainly believe that physical barriers placed in the right areas can be effective elements of an overall border security strategy and help Border Patrol agents carry out their jobs. The construction of limited physical barriers, including in some of the areas you named, likely helped to reduce apprehensions over the last 15 years, especially in concert with other factors including dramatic increases in CBP funding for technology and personnel, and changes in push factors including fundamental changes to Mexico's economy. And I agree that physical barriers, and technology, can help agents decide where migrants cross, which may be important for any number of safety reasons.

6. Other than public messaging that our borders are not open, what specifically will you do to reverse the trend of rising numbers of migrants arriving from outside of Mexico and the Northern Triangle?

Answer: If confirmed, I will work closely with our partners in the State Department and across the administration to understand what is driving the recent uptick in irregular migration from countries outside the region, and to find ways to address it. In addition, I will work with CBP attachés to build and strengthen relationships with our counterparts in Mexico and Central America in order to share intelligence on mass movements or trends forming south of the U.S. border, and potentially south of Mexico's borders. This recent

trend is a tough problem, and I certainly would want to work closely with Congress to find ways to address this issue, as well as on comprehensive reform to fix our current, broken system.

7. CBP publishes some monthly statistics on migrants' country-of-origin but neglects to list all nationalities of migrants who are encountered at the southwest border, including from special interest areas. If confirmed, will you commit to providing our committee the full data regarding the country-of-origin on a monthly basis?

Answer: Yes. If confirmed, I will seek to be as transparent as possible with Congress. I would be happy to work with you in your role on this Committee, as well as in your capacity as Ranking Member of the Homeland Security and Governmental Affairs Committee to ensure you receive data on a regular basis.

8. What role do local police agencies have with their federal partners on matters involving unlawful migrants who commit crimes here?

Answer: As a local police chief, if a crime is committed in my city, my first responsibility is to ensure the public safety of our community by enforcing the laws of Tucson and the State of Arizona, so my role would be to arrest the individual who committed the crime. In addition, my department frequently works closely with federal law enforcement partners such as DEA on a variety of issues, including assisting in investigations, interdictions, and arrests of subjects involved in federal crimes, and I consider those partnerships a vital part of our public safety mission.

In Tucson, as in most other local jurisdictions, it is up to the city's elected government, not the police, to set policy related to carrying out enforcement of federal civil immigration laws. As I mentioned during my confirmation hearing, in the jurisdictions where I have worked, city attorneys have advised the police department not to hold individuals on a request from ICE unless there is a warrant to do so, on the grounds that doing so could violate their Constitutional rights.

9. The Enforce and Protect Act allows Customs and Border Protection (CBP) to investigate companies who evade anti-dumping and countervailing duties. Do you support the creation of an Administrative Protective Order (APO) process to facilitate confidential information sharing with interested parties under this program?

Answer: CBP plays an important role in enforcing against evasion of anti-dumping and countervailing duties, particularly in helping level the playing field for American workers, business, and consumers. In my discussions with members of the trade community, I have heard that the Enforce and Protect Act has enabled CBP to make great strides in its overall enforcement and collection of anti-dumping and countervailing duties, while also providing important transparency to the domestic industry and other impacted by these unfair, illegal practices. While I am not familiar with the Administrative Protective Order (APO) concept in this context, if confirmed, I will certainly look into its potential use for both enforcement and transparency, recognizing the value of sharing information with trade stakeholders impacted by these unfair practices.

10. Do you believe EAPA should allow petitioners to file allegations when the importer is unknown? Specifically when companies and stakeholders see evasion occurring by tracking prices and market dynamics but do not know who is doing it. This would increase the use of EAPA and avoid delays caused by companies having to hire investigators to track down alleged EAPA violators on their own before coming to CBP with a formal allegation.

Answer: I have heard a lot from members of the trade community about anti-dumping and countervailing duty collection and enforcement, and understand that it is often the importers and businesses who can first identify unfair practices and potential evasion within their industries. From my career in law enforcement, I also understand the value that leads and evidence from interested parties can provide an investigative agency. If confirmed, I will closely review options for CBP to gather this type of information, as well as any impediments that may exist for interested parties seeking to provide this information for further review by CBP's enforcement experts.

11. If confirmed, will you support making these improvements to EAPA? Do you believe either of these changes require additional legislation?

Answer: As I have come to understand, EAPA has significantly improved enforcement and transparency around anti-dumping and countervailing duty investigations, and if confirmed, I would certainly be interested in reviewing these and other proposals to build upon that success. I would be eager to work closely with your office and your Congressional colleagues, the trade community, and CBP's trade enforcement experts to understand what changes can and should be made, and what improvements require legislative action.

United States Senate Committee on Finance
Hearing to Consider the Nomination of Chris Magnus, of Arizona, to be Commissioner of
U.S. Customs and Border Protection, Department of Homeland Security, vice Kevin K.
McAleenan, resigned
October 19, 2021
Questions for the Record

Senator Pat Toomey

Mr. Chris Magnus

Question 1

During your hearing, you noted several times that the immigration system is “broken,” but declined to lay out a specific plan for how to address the problems at the border within the current immigration system. Experts have cited that one of these problems is the admittance of thousands of migrants into the United States, often without adequate procedures to ensure they will pursue their immigration cases in immigration court once they have been released into the country.

- a. *Do you agree that there are tools in current immigration law that CBP could use to limit the number of migrants being admitted into the interior of the country?*
- b. *If yes, please provide 2 specific examples.*
- c. *If confirmed, would you use these tools to limit the number of migrants admitted into the interior of the country? Why or why not?*

Answer: As I noted during my confirmation hearing, I do believe we have an immigration system that is fundamentally broken. It is apparent that a severe backlog of cases in immigration courts means we are unable to expeditiously grant asylum protections to those who are eligible, while quickly sending others home—the hallmark of a functioning system. In the course of my confirmation process, it has become clear that these concerns are shared by members and stakeholders from all parts of the political spectrum, and if confirmed, I will continue to urge Congress to take up bipartisan reform, as I believe it is crucial to improving our border security while ensuring fairness for migrants.

With that said, in answer to your question, since March 2020, CBP has been effecting removals at the southwest border under Title 42 public health authorities held by the Centers for Disease Control. The use of these authorities has dramatically limited the number of migrants allowed entry during the public health emergency, although recently humanitarian exceptions have been made for some families and children. In addition, Border Patrol agents continue to carry out CBP’s limited role in the asylum process by issuing Notices to Appear to migrants seeking asylum protections at our ports of entry. If paired with a sufficiently resourced immigration court system under current law, this practice could reduce the number of migrants awaiting court cases in the interior, as those with invalid claims were denied asylum and returned to their home countries.

If confirmed as CBP Commissioner, I commit to continuing to maximize issuance of Notices to Appear while reducing time spent in CBP facilities, particularly during

COVID, and to effecting Title 42 removals at the border, with humanitarian exceptions, for as long as public health authorities keep the restrictions in place.

- d. *Do you agree that there are tools in current immigration law that CBP could use to better ensure that migrants who are admitted into the United States actually pursue their immigration cases as required under immigration law?*
- e. *If yes, please provide at least 1 specific example.*

If confirmed, would you use this tool to ensure that migrants admitted into the interior of the country pursue their immigration cases in immigration court? Why or why not?

Answer: Yes and yes. If confirmed, I certainly commit to working towards a goal of maximizing issuance of Notices to Appear, while at the same time minimizing the length of time that individuals in our custody spend CBP facilities. In addition, I would seek to work in partnership with ICE to increase enrollments in Alternatives to Detention, which helps ICE to track individuals awaiting immigration court dates, as well as case management services which help individuals understand and comply with their immigration obligations based on their unique circumstances.

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October 19, 2021

Questions for the Record for Chris Magnus

Senator Daines

Question 1

Do you think Title 42 removals have been an effective tool in helping deter illegal migration?

Answer: Title 42 is a public health authority held by the CDC, and my understanding is that it is not specifically intended as a deterrent, but instead provides a tool to limit entry into the country for the duration of a public health emergency. I believe it has proven to be an effective tool for that purpose as we have worked to slow the spread of COVID. With that said, I agree with many who say that we need a plan for when the public health emergency ends, as we cannot rely on this temporary authority on a permanent basis for border enforcement. Moreover, I certainly will comply with any court order relating to the implementation of CDC's Title 42 public health authority.

Question 2

Do you have concerns with the impact President Biden's vaccine mandate will have on the CBP workforce?

Answer: As a former paramedic and emergency medical technician with four decades' experience in public safety, I take public health concerns very seriously. I am supportive of any and all appropriate measures necessary to combat the spread of COVID-19, including mandating vaccinations for federal agents whose jobs entail frequent contact with the public.

With that said, I commit to serving as an honest broker in understanding the concerns of CBP's workforce across all areas. If confirmed, one of my first priorities will be to spend time with front-line agents to get a sense of the issues and concerns they face so that I am better able to advocate for their interests in the future. If there are reasonable steps I can take to show their concerns are being heard, I will always be open to doing so.

Question 3

How would you seek to address some of the issues around lack of housing in remote border locations that officers are experiencing?

Answer: If confirmed, I want to learn as much as I can about this problem. Border Patrol agents have a difficult job, and remote areas are particularly challenging locations in which to recruit and retain officers. They deserve the support of their agency in ensuring housing needs are met. As CBP Commissioner, I do not intend to try to lead from my desk, but instead want to get out to the northern and southern borders, speak with frontline agents and officers, and understand the

issues they face. In addition, I would look forward to working with your office to better understand the concerns you are hearing, and to identify solutions to address them.

Question 4

How will you work to ensure full staffing along the northern border given the large numbers of CBP staff that were relocated to the southern border to deal with the crisis there?

Answer: CBP's mission is to secure our borders regardless of their geographic location. I certainly recognize that current operational demands at the southern border has impacted staffing levels at our northern border. More broadly, I am concerned about the potential impacts on the workforce of repeated transfers to different locations, especially if they are remote. If confirmed, I commit to reviewing CBP's staffing levels and processes across the organization, and to requesting resources as appropriate to carry out our mission at both borders.

Question 5

With the coming reopening of the US-Canada border, will you ensure that all Points of Entry return to pre-pandemic hours of operation?

Answer: The recent announcement that the northern border will be reopened to non-essential travel means that CBP must be prepared to meet increasing volumes of travel at northern ports of entry. If confirmed, I would want to ensure that the agency has the appropriate staffing at ports, and that CBP is working closely with local stakeholders, including from the trade and travel communities, to meet the service needs for both travel and cargo screening. I look forward to working with you, Senator Tester, and others along the northern border to ensure staffing needs are met.

Question 6

How will you work to address some of the challenges with morale in the workforce due to many officers belief that leadership is more concerned with politics than having their backs?

Answer: I have been fortunate enough to serve as a public safety officer for over 40 years. In that time, I have served alongside public safety officers with many different political ideologies and backgrounds. However, despite any differences, my fellow officers and I have found unity in our commitment to protecting our community, serving the men and women within our jurisdiction, and upholding the laws that govern our localities. If confirmed, I intend to work hard to ensure that the men and women of CBP are united and driven by these same commitments.

Question 7

Will you commit to full transparency and provide briefings to any member who requests one with regard to the work CBP is doing to screen and vet Afghan evacuees?

Answer: Yes. If confirmed, I commit to responding fully to briefing and oversight requests from Congress on any topic in CBP's remit, including its role in screening and vetting Afghan nationals.

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Questions for the Record for Chris Magnus

Senator Young

While the questions below are numerically separated by theme for clarity and convenience, some may include sub-part questions denoted alphabetically. **Please note that individual responses to each sub-question are expected** and that a single response to multiple sub-questions will be treated as unresponsive.

For the purposes of questions that clearly end in “yes or no,” answers other than “yes” or “no” will similarly be deemed unresponsive to such questions.

Question 1

Chief Magnus, in your discussion with Senator Daines during your hearing you agreed with the recommendation of operational Border Patrol agents that “additional barrier or wall could be useful” to help secure our border and that there are “gaps where that could make sense.”

During my questioning, you stated that you were not familiar with the Department of Homeland Security’s (DHS) recent announcement about cancellation of the border contracts. I was disappointed that your preparation for this hearing did not include familiarizing yourself with recent U.S. Customs and Border Protection (CBP) decisions regarding our border security.

In preparation for answering the below series of questions, I would ask that you now familiarize yourself with that announcement, dated October 8, 2021, and available here:

<https://www.dhs.gov/news/2021/10/08/dhs-terminate-border-barrier-contracts-laredo-and-rio-grande-valley>.

Although the press release is scant on details, it announces the cancellation of “all border barrier contracts located in the Rio Grande Valley Sector” and “the remaining border barrier contracts” within the Laredo Sector. I understand that you are not at CBP and therefore do not know the precise details about these contracts. However, the release clearly identifies the sectors affected by this decision – sectors that alone accounted for nearly half of *all* encounters by CBP along the Southern Border in August 2021.¹

¹ <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component>

- (a) Do you believe that physical barriers placed in porous areas of the border slow down individuals attempting to enter the United States illegally and help prevent CBP from being overrun, yes or no?

Answer: Yes, I absolutely think physical barriers play a role in our border security, along with technology and personnel. For example, in remote stretches of desert, I understand fencing is useful to slow down vehicles traveling at high speeds so that they can be identified and apprehended.

- (b) Given the extreme challenges present in the Laredo and Rio Grande Valley Sectors, including media reports regarding the situation in these and nearby areas, do you believe that it is prudent to cancel border barrier contracts in these sectors, yes or no? Please explain your reasoning.

Answer: In my current role as a private citizen, I have not reviewed the detailed locations and justifications for specific contracts for border barrier. I agree that the current situation at the border presents serious challenges, and if confirmed, I will speak with Border Patrol personnel to better understand needs on the ground, and commit to seeking the resources and investments needed to ensure they can do their jobs.

- (c) From an operational lens, would you agree that these regions may in fact be the precise kind of areas that would benefit from a physical border barrier, yes or no?

Answer: If confirmed, I would certainly be open to considering any solutions that could increase migrant and agent safety while upholding our obligations under the law. As we have seen in previous years, as well as this summer, unanticipated surges of large numbers of migrants to our southern border can overwhelm CBP resources and capacity in any given sector, leading to safety and health risks for migrants and CBP personnel.

With that said, I am not familiar with the details of the contracts or proposals you mention, and am not in a position to evaluate how effective or appropriate they may be compared with other needed investments. In general, I understand that much of the land along the border in Texas presents legal challenges that were not present in New Mexico, Arizona, and California where more significant sections of wall had previously been completed. If confirmed, I intend to speak with as many front line Border Patrol agents as possible to understand their needs on the ground, and I commit to seeking the resources and investments needed to ensure they can effectively and efficiently carry out their duties.

- (d) If confirmed to this position, do you commit to reinstating the border barrier contracts identified in the above-referenced October 8th announcement, yes or no? If your answer is “no,” please explain.

Answer: If confirmed as CBP Commissioner, my job will be to enforce the law. I commit to looking into any and all tools available to help the Border Patrol do its job safely, humanely, and effectively. With that said, I am not familiar with the details of the

border barrier contracts referenced above, or with internal considerations relating to these and other investments, and cannot commit to reinstating them.

- (e) Based on media reports and the publicly-released DHS data, please identify or elaborate on any other geographic areas or sectors you believe a physical border barrier would aid enforcement.

Answer: In my current role as a private citizen, I have not reviewed the detailed locations and justifications for specific contracts for border barrier. If confirmed as CBP Commissioner, my job will be to enforce the law. I commit to looking into any and all tools available to help the Border Patrol do its job safely, humanely, and effectively.

Question 2

- (a) If confirmed as CBP Commissioner, do you commit to ensuring that policies, tools, and resources utilized by CBP officers will be driven by operational effectiveness rather than political optics, yes or no?

Answer: In my 40 year law enforcement career, I have always been driven by the mission of enforcing the law, and supporting the men and women I lead. Additionally, I have advocated for a number of politically unpopular positions when I believed they were right. If confirmed as CBP commissioner, I am committed to continuing to act as an honest broker in advocating for my workforce and for CBP's missions.

- (b) If confirmed to this position, do you commit to being transparent with members of the U.S. Senate, whether in the minority or majority, and provide timely and substantive responses to questions or concerns that are raised regarding border enforcement policy? Please answer yes or no.

Answer: Yes. If confirmed as CBP Commissioner, I will be responsible for enforcing the law, not for setting policy. With that said, if confirmed, I commit to transparency and communications with Congress and the general public regarding CBP's operations, and will do my best to answer any question I can.

Question 3

Chief Magnus, I found it troubling during our dialogue at the hearing that in preparation for that hearing that you did not familiarize yourself with 8 U.S.C. § 1325, which is the operative statute criminalizing unauthorized entry into the United States. In preparation for the below questions, I would ask that you now review that statute.

- (a) Do you agree that 8 U.S.C. § 1325 makes it a federal crime for an individual to enter or attempt to enter the United States at any point other than a border inspection point or other official port of entry, yes or no?

Answer: I agree that 8 U.S.C. Section 1325 is the operative statute governing unlawful

entry into the United States, although the statute appears to impose civil, not criminal penalties and would therefore be a civil violation. With that said, as I stated during my confirmation hearing in an exchange with Senator Grassley, I believe unlawful entry should remain against the law.

- (b) Do you believe that the law of the United States should be upheld and that criminals should be handled in accordance to the law, yes or no?

Answer: As a police officer for over four decades, I believe that my bona fides in relation to criminals and upholding the law are clear.

In your dialogue with Senator Cornyn during the hearing, you refer to what you call “discretion” by law enforcement relating to “which laws will be enforced and how they’ll be enforced.”

If confirmed, will you commit to enforcing 8 U.S.C. § 1325 in its entirety on an unbiased and uniform basis, without engaging in selective enforcement?

Answer: If confirmed as CBP Commissioner, my job will be to enforce the law without fear or favor. As I noted in my exchange with Senator Cornyn, I believe most if not all police chiefs would say they find the use of officer discretion necessary in order to focus limited resources on threats to public safety. But, I certainly will not be in a role to make policy decisions regarding enforcement, and commit to treating border crossers equally in accordance with the law.

If your answer to part (c) above is “yes,” please explain how you reconcile that response with your decision to refuse assistance to U.S. Immigration and Customs Enforcement, who were presumably seeking to enforce 8 U.S.C. § 1325, among other statutes, while serving as Tucson Police Chief? If your answer to part (c) above is “no,” please explain in detail the legal and public policy rationale for declining uniform enforcement.

Answer: I regret that I am not aware of the incident to which you are referring. In my career as TPD Chief, have worked closely with state, federal, and local law enforcement, including ICE, DEA, CBP Tucson Sector, and others, to ensure public safety and effect and assist in interdictions, investigations, and arrests, and the like, often in difficult and dangerous circumstances for my officers as well as our federal partners. I consider those partnerships a vital part of our public safety mission.

With that said, in Tucson, it is up to the city’s elected government, not the police, to determine policies or laws related to using local resources to carry out federal civil immigration laws. As I mentioned during my confirmation hearing, in Tucson and other jurisdictions where I’ve worked, our attorneys have advised the police department not to hold individuals based on a mere request from ICE, but to require a warrant to do so, on the grounds that detaining individuals for civil violations outside our jurisdiction could violate individuals’ Constitutional rights.

- (c) Do you believe there is a difference between a law enforcement officer using their “good discretion” in the field, as you referenced officers are trained to do during your hearing, and an agency-wide directive that calls for the non-enforcement of federal statute, such as the unprecedented guideline released by Secretary Mayorkas on September 30, 2021?²

Answer: If confirmed as CBP Commissioner, I will not have a role in carrying out ICE’s enforcement mission. With that said, my understanding is that the enforcement priorities maintain recent border crossers as a priority, as well as defer to the discretion of field agents when it comes to criminal backgrounds. While I cannot speak to the policy behind this decision, I believe most if not all law enforcement officers would say they find use of officer discretion necessary in order to focus limited resources on threats to public safety, and I certainly support and understand the Secretary’s prioritized approach.

Question 4

In your dialogue with Senator Menendez during the hearing, you stated that a “full and thorough investigation is necessary before any final conclusions are drawn” regarding the actions of Border Patrol agents that responded to the surge of mostly Haitian migrants in the Del Rio Sector of the Southern Border. I appreciate your commitment to ensuring these agents are given fair treatment, but I have concerns that not all in the Biden-Harris administration share that commitment.

In the wake of footage of Border Patrol agents on horseback attempting to block migrants from entering the county illegally, our country’s leaders were quick to vilify the agents in the press while leaving out key contextual details. President Biden stated, “I promise you, those people will pay. There will be an investigation underway now and there will be consequences. There will be consequences.”³ Jen Psaki, the White House Press Secretary, has described the images as “horrible and horrific.”⁴ Vice President Harris said she was “deeply troubled” by the “horrible” incident and planned to discuss the matter with DHS Secretary Mayorkas.⁵ Secretary Mayorkas himself stated he “was horrified” and that the photographs of the incident “troubled him profoundly.”⁶

- (a) Chief Magnus, do you believe that the Border Patrol agents involved can reasonably expect a fair investigation while the President, Vice President, and DHS Secretary have all but announced their guilt already?

Answer: As a police chief for over 13 years, my job has been to ensure my workforce has the full support of its leadership, while making clear that any allegations of wrongdoing will be swiftly investigated, and substantiated allegations met with swift,

² <https://www.dhs.gov/news/2021/09/30/secretary-mayorkas-announces-new-immigration-enforcement-priorities>

³ <https://www.washingtontimes.com/news/2021/sep/24/biden-vows-there-will-be-consequences-after-outrag/>

⁴ <https://www.nbcnews.com/politics/white-house/white-house-says-horses-will-no-longer-be-used-border-n1279950>

⁵ https://www.washingtonpost.com/politics/mayorkas-border-patrol-haitians/2021/09/21/fd1fd09c-1ad4-11ec-a99a-5fea2b2da34b_story.html

⁶ <https://www.forbes.com/sites/jemimamcevoy/2021/09/21/homeland-security-chief-says-videos-showing-migrant-mistreatment-at-border-troubled-me-profoundly/?sh=652b37d92f3f>

impartial consequences. If confirmed as CBP Commissioner, I will make the same commitment to the men and women of CBP. My understanding is that the investigation is ongoing, and that findings and results have not yet been shared. As I stated during my confirmation hearing, if confirmed, I am committed to transparency and accountability, and would see no problem with releasing the results of the investigation to Congress, and if at all possible, the public.

With that said, in general, I shared the reaction of many to the images we saw from Del Rio. Regardless of whether policies were violated, a discussion about tactics is in order. As a police chief, I have long questioned the appropriateness and safety of using horse patrols to apprehend subjects in crowds or within close proximity, rather than for transport through remote areas and tracking and detection. I believe this practice risks the safety of officer and subjects. If confirmed, I commit to better understanding the use of horse patrol in crowds, and would be happy to share my findings with Congress.

(b) Based on your decades of experience in law enforcement, do you believe that President Biden and others biased the investigation with their statements?

Answer: I don't know enough to know what impact statements had on this particular case, but if confirmed, you have my commitment that I will fiercely advocate for the independence of internal investigations within CBP.

I have had the opportunity to visit the border and meet some of the brave men and women of Border Patrol, an agency that has long struggled with officer morale due to vilification in the media and by certain elected officials. I worry this challenge with morale has only worsened during the crisis at our Southern Border this past year.

How do you plan to address the feeling among agents and officers who feel unsupported and under-resourced?

Answer: Throughout my career, I have worked hard to improve officer morale in the Departments I've led, including by addressing resource issues, as well as tough topics like officer resiliency and mental health. If confirmed, I want to do as much as I can to improve morale, resiliency, and retention within Border Patrol, the Office of Field Operations, Air and Marine Operations, and CBP generally. CBP's officers and agents have a challenging job, and remote areas near our borders in particular are difficult areas for recruiting and retaining personnel. As CBP Commissioner, I do not intend to try to lead from my desk, but instead want to get out to the borders and ports of entry to speak with frontline agents and officers, and understand the issues they experience when it comes to resourcing, training, and support from their leadership. In addition, I would look forward to working with your office to better understand the concerns you have heard, and to identify solutions to address them.

(c) Do you believe that events such as what we saw in Del Rio – where Administration officials made snap judgments, withheld context, and were quick to blame Border Patrol officers based on inflammatory tweets – is worsening this issue and could result in further retention issues at CBP?

Answer: I don't know enough to know what impact statements may have on officer morale. With that said, you have my commitment that if confirmed, I will fiercely advocate for the independence of internal investigations within CBP.

- (d) If confirmed to this position, do you commit to ensuring these officers receive a prompt and unbiased investigation into this matter?

Answer: Yes. I believe one is already underway, and if confirmed, I will certainly commit to ensuring that it is concluded promptly and in an unbiased way.

- (e) If confirmed to this position, do you commit to restoring mounted patrols to enable Border Patrol officers to efficiently and safely navigate the terrain along the Southern Border?

Answer: As a police chief, I have long questioned the appropriateness and safety of using horse patrols to apprehend subjects in crowds or within close proximity, which I believe risks the safety of officer and subjects, rather than for transport through remote areas and tracking and detection.. With that said, my understanding is that mounted horse patrols along the southwest border for the purposes you describe has not stopped, except for temporarily in Del Rio. If confirmed, I commit to better understanding the use of this tactic in crowds, and would be happy to share my findings with Congress.

Of the 30,000 migrants who crossed into the Del Rio Sector during the Haitian migrant surge last month, Secretary Mayorkas confirmed that more than 12,000 have been released into the United States. That's the size of a small city – in fact, it would rank in the largest 10% of Indiana communities. The logistical challenge of moving such a crowd is enormous, but what truly concerns me is how the Biden-Harris administration could be caught so off guard.

- (f) How does a caravan of illegal immigrants the size of Bedford, Indiana, show up at Del Rio and the U.S. government is completely unprepared?

Answer: I share your concern regarding the lack of visibility into developing mass movements south of our southern border. If confirmed, I commit to speaking directly with front-line border patrol agents to understand what informal intelligence is available on the ground, and to address any breakdowns in the flow of information to decisionmakers in Washington. I will build and maintain open lines of communication with my colleagues in the State Department, ICE-HSI, and my counterparts in Mexico, the Northern Triangle countries and Canada, to improve visibility south of our border to ensure we are better prepared to address surges in the future.

- (g) Reports indicate that similar caravans continue to build in Central America and Mexico.⁷ What steps are necessary to ensure that CBP's intelligence is properly tracking and preparing for such waves?

Answer: As a private citizen currently outside the agency, I don't yet know how best to address this question, but agree it is an important one. If confirmed, I will make it a priority to understand how CBP tracks and prepares for mass movements, any efforts underway to improve tracking, and any areas in which we can do more to improve our visibility.

Earlier this month, I joined a number of my colleagues in asking Secretary Mayorkas about DHS's use of Title 42 authority,⁸ which permitted the deportation of the vast majority of migrants in this influx due to the public health risks associated with such mass migrations. We are still awaiting Secretary Mayorkas's response to our letter.

- (h) Do you agree that Title 42 is an important tool to control public health as the world grapples with the pandemic, yes or no?

Answer: Title 42 is a public health authority held by the CDC, and my understanding is that it has proven to be an effective and useful tool to limit entry into the country as public health authorities have worked to slow the spread of COVID. With that said, I agree with many who say that we need a plan for when the public health emergency ends, as we cannot rely on this temporary authority on a permanent basis for border enforcement.

- (i) If it is true that over half of the migrants in this migrant surge remain in the United States – either detained or released – does that strike you as DHS utilizing its Title 42 authority properly?

Answer: Title 42 is a public health authority held by the CDC. It is my understanding that the Administration retains the ability to set its own immigration priorities, including providing humanitarian or other exceptions to the rule, if it deems appropriate. I would defer to Administration and public health officials as to the appropriate balance between providing some humanitarian relief to vulnerable families, while taking steps to limit the spread of the COVID-19 pandemic.

More broadly, tools designed to slow the spread of a pandemic should not be what we rely on in order to have a functioning immigration system. If confirmed, I would look forward to working with Congress on comprehensive reform to fix the current, broken system.

⁷ <https://www.nbcnews.com/politics/immigration/border-apprehensions-hit-new-yearly-high-another-migrant-caravan-gathers-n1281995>

⁸ <https://www.young.senate.gov/newsroom/press-releases/young-gop-colleagues-press-dhs-for-answers-on-release-of-haitian-migrants-into-us>

- (j) If confirmed to this position, do you commit to providing Secretary Mayorkas with the information necessary to respond to our October 6, 2021 letter and encourage him to respond promptly, yes or no?

Answer: Yes. If confirmed, I will work with DHS to ensure it has the necessary data and information from CBP to promptly respond to congressional correspondence, including your letter.

Question 5

During the past year of record-breaking illegal migration into the United States, over 100,000 of those apprehended by CBP have been unaccompanied children. This underscores the grave dangers associated with encouraging individuals to seek refuge in the United States through illegal means, rather than by utilizing proper channels. In a chilling report by the New York Post,⁹ it appears as though the Biden-Harris administration has been flying thousands of underage migrants to New York in the middle of the night, and it has been similarly reported that migrants have been bussed across the nation. Clearly the border crisis does not just impact border towns along our nation's southwest border, but it has fifty-state impact.

- (a) In your decades of experience leading law enforcement departments across the nation, did you expect consistent openness and transparency from state or federal agencies whose operations impacted the city you were entrusted to protect? Why or why not?

Answer: Yes. As a police chief, cooperation and coordination with federal agencies relating to operations that would affect my city have always been critically important, particularly with fellow law enforcement agencies. It is not clear whether CBP has any involvement with the reports you describe, but regardless if confirmed I will strive to ensure that we are maintaining open lines of communication and coordination with the state and local communities in which we work.

- (b) Do you believe that it would be improper for the federal government to transport migrants from their place of apprehension to a different jurisdiction without full and open cooperation with the relevant governors, mayors, and elected officials?

Answer: During previous surges, I have experienced firsthand the impacts on border communities when federal agencies lack a plan to coordinate with state and local agencies to care for and house migrants. Transportation of migrants into Tucson in response to the 2018 surge with no coordination with local leaders or plan for their care and housing presented a real challenge for our community and my Department, as well as for the migrants. If confirmed, I would want to look into your concern and understand CBP's role, if any, and would certainly commit to working to improve our coordination and communication with state and local governments.

- (c) If confirmed to this position, do you commit to providing timely and substantive updates to senators and members of Congress related to migrants that are relocated into their

⁹ <https://nypost.com/2021/10/18/biden-secretly-flying-underage-migrants-into-ny-in-dead-of-night/>

constituencies, including advanced notice before such relocation occurs, yes or no? If your answer is “no,” please explain.

Answer: Yes. If confirmed, I will strive to ensure that we are maintaining open lines of communication and coordination with the state and local communities in which our operations are carried out, and with the Congressional delegations that represent them.

Question 6

In addition to the record number of migrant encounters that CBP has reported in its monthly data releases over the past year, the agency also tracks so-called “got-aways” that refer to illegal crossings that are tracked directly or indirectly – such as through drone surveillance technology – but are never apprehended or pursued for a variety of reasons. Recently, former Border Patrol Chief Rodney Scott, a 29 year veteran of the Border Patrol, stated that there have been over 400,000 documented got-aways over the past year.¹⁰ While CBP publishes monthly records of its apprehensions at the border, I would like to see more transparency about the number of individuals CBP is tracking each month that are *not* apprehended by Border Patrol officers.

If confirmed to this position, do you commit to providing Congress with monthly updates regarding the number of got-aways being tracked by CBP, along with their methods of entry and intelligence related to human or drug trafficking by those who seek to evade ports of entry? Please answer yes or no. If your answer is “no,” please explain why Congress and the American people do not deserve this kind of transparency.

Answer: If confirmed, I would be happy to look into how CBP tracks data relating to “got-aways,” or instances in which individuals evade detection or apprehension at the border, to learn more about the technology and analysis that underlie these estimates, and to provide information to Congress.

Question 7

I have heard escalating concerns from my constituents regarding the record backlog of processing items for entry into U.S. commerce at the shipping ports. As the most manufacturing intensive state in the country, Indiana manufacturers rely on timely access to inputs. I understand that the pandemic is the cause of some of this congestion. However, many shipping ports suffered chronic gridlock prior to the pandemic that was only exacerbated by supply chain disruptions. Businesses in my state cannot simply endure costly delays that last for months on end. Delays mean that business is lost, perishable goods spoil, seasonal products become unsellable, and major manufacturing processes are put on hold.

- (a) If confirmed, how do you anticipate addressing the backlog present at our shipping ports, both in the near-term and long-term?

¹⁰ <https://www.washingtonexaminer.com/news/many-sneaked-over-southern-border-and-got-away-in-past-year>

Answer: I could not agree more that addressing supply chain delays and the backlogs at ports of entry is a top priority, and is certainly something that I care deeply about. I also recognize that the urgency surrounding this issue is only increasing, particularly as U.S. manufacturers try to meet strong consumer demand. Although CBP is only one actor at the ports, and certainly not the only entity that has responsibility for the smooth movement of goods through the ports, it plays a very important role. If confirmed, I would want to ensure that the agency has the appropriate staffing at ports, that CBP is working closely with key stakeholders to meet the increasing cargo screening and clearance demands.

I will also prioritize the continued modernization of technology resources, like the Automated Commercial Environment (ACE) system, inspection equipment, and other tools to meet the demands. These systems can have serious impacts on the flow of cargo, and ensuring that these tools are well-resourced and updated is critical to that facilitation mission. These tools become more important as our international trade and travel traffic increases, and as CBP staffing demands increase.

- (b) How will you engage the business community to ensure that their concerns are addressed and problems can be tackled?

Answer: Stakeholder engagement has always been a priority for me. If confirmed, I will ensure that CBP leadership and staff are working closely with key partners in the trade community, including the Commercial Customs Operations Advisory Committee (COAC) and other trade groups, small, medium, and large businesses, labor organizations, federal, state, and local partners, and many others all have a role in the flow of legitimate cargo across our borders. I have built relationships with diverse groups of stakeholders throughout my law enforcement career, and would welcome the opportunity to do so if confirmed to lead CBP.

Question 8

As you know, an important component of our international air travel security apparatus is the CBP Preclearance process, which allows Americans and foreigners flying into the United States to undergo immigration and customs screening at their point of departure. This process both allows travelers to expedite their arrival into the United States and allows CBP to stop inadmissible travelers or goods before they step foot on a plane. Because of legal jurisdictional challenges that surround the program, such preclearance systems rely on bilateral agreements between the U.S. and host countries – currently, there are 16 such sites between 6 countries. The last U.S. customs preclearance facility to open was at the Abu Dhabi International Airport in 2014, with dozens of applications having stalled in the meantime.

- (a) Chief Magnus, are you supportive of expanding U.S. preclearance capabilities as a way to foster commercial and recreational revitalization as the world recovers from the COVID-19 pandemic?

Answer: I share your view that the Preclearance program is an important and innovative tool for both economic and security partnerships around the world. I recognize the critical role of the Preclearance program in the agency's layered and risk-based approach to border and national security, as well as its impact on the partner nations in which Preclearance locations operate. I understand there are specific standards as part of CBP's process to establish a Preclearance location, as well as any partner country's ability to provide funding and authorities for Preclearance operations. If confirmed, I will certainly review the agency's plans to expand Preclearance operations, while also balancing those needs with staffing demands at U.S. ports of entry.

- (b) Currently, there are CBP preclearance relationships with nations in North American, Europe, and the Middle East. Do you believe the U.S. should focus its next preclearance agreements with other regions of the world, such as the Indo-Pacific?

Answer: I recognize the significance and value of CBP's Preclearance locations around the world, and the critical role of the Preclearance program in the agency's layered and risk-based approach to border and national security. I understand there are a number of standards and thresholds as part of CBP's process to establish a Preclearance location, including risk-assessments specific to potential locations and regions. If confirmed, I will review the agency's focus on any regions globally, including the Indo-Pacific. I would also welcome the opportunity to learn more from you and your staff about any specific regions with potential for partnerships.

On September 29, 2020, CBP announced an expansion of the Preclearance program and invited interested foreign airports to apply for partnership. Among those that applied was the Taoyuan International Airport in Taiwan.

- (c) Do you believe that Taiwan would be a good fit for the nation's first preclearance agreement in the Indo-Pacific?

Answer: I certainly recognize the importance of the United States' partnership with Taiwan and understand the significance of the relationships that CBP establishes with Taiwanese counterparts. While I'm not familiar with the details of Taiwan's Preclearance application, I do know that the Preclearance program is an important tool in CBP's layered and risk-based approach to border and national security. I understand there are a number of standards and thresholds as part of CBP's process to establish a Preclearance location, and if confirmed, I will certainly review the application and any decisions made regarding Taiwan's application.