

Hearing Transcript

Senate Homeland Security And Governmental Affairs Committee Hearing on the Nomination of Elaine Duke to be Deputy Secretary of Homeland Security

March 8, 2017

Good morning. The hearing will come to order.

We are meeting today to consider the nomination of Ms. Elaine Duke to be deputy secretary of the U.S. Department of Homeland Security.

Ms. Duke, welcome.

Senator Portman, welcome. I think you'll -- you've got your position there, but you'll hopefully come up on the dais here.

I do want to welcome Ms. Duke's family.

And I'll let you introduce your family during your opening remarks.

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

The mission statement of this committee is pretty straightforward and I appreciate my new ranking member adding to it, but it's pretty -- it's simple to state: to enhance economic and national security of America and promote a more efficient, effective and accountable government.

And certainly on the -- from the homeland security side of it, we're really talking about the primary goals of securing our border, securing our homeland, our cyber assets, cyber-security, protecting critical infrastructure, and combating violent extremists in any form.

And, you know, Ms. Duke, I appreciated the time you spent in the office. I thought it was interesting and completely supportive of, I think, the management style and the management directive (ph) -- directive (ph) between yourself and the secretary.

Sounds like Secretary Kelly is going to be the boots on the ground, looking to front lines, finding out what's happening there really at the point of the spear. And you'll be back -- back here in Washington, D.C., holding down the fort.

And you realize, because you've been there before, there are a number of challenges with the department. And so I appreciate your experience, I appreciate your willingness to serve.

And so, I don't have a whole lot more to say. I'll let Senator Portman do the introduction. But we'll first turn it over to Senator McCaskill for her opening statement.

MCCASKILL:

Thank you, Senator -- Chairman Johnson.

And welcome, Ms. Duke.

I always like it when a valuable public servant returns. And it's one of the things I think that is most frustrating about the current political climate is that there are too many people out there giving the impression that everybody who works in government is somehow lazy or corrupt or not dedicated.

And clearly you've made a choice which is not based on finances to come back to this work, and I am very appreciative of that. And I think the American people should be too.

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

When Secretary Kelly's nomination was in front of this committee, I told him he was going to need a topnotch deputy for management. I'm pleased to see that he has, in fact, chosen someone with significant managerial experience, but someone also who's shown a respect for taxpayer dollars.

Since the nomination, my staff and I have heard from many DHS former employees and officials about your strong qualifications for this position. It includes a formal endorsement signed by the previous five deputies -- deputy secretaries of homeland security attesting to your integrity and skill. I've been glad to hear from each of these endorsements because you face a formidable task. The Department of Homeland Security is the third largest federal agency in this country, with a \$46 billion budget. It is charged with some of the most important duties in our government such as overseeing cybersecurity, immigration, homeland defense and emergency management.

It is also an agency that has faced persistent challenges of unity of effort, acquisitions and personnel. As you have acknowledged, DHS continues to struggle with cohesion and mission among its many components. Many of its acquisition programs have been plagued by backlogs, delays and budget shortfalls. In terms of employee morale, the department is consistently ranked as one of the worst places to work in federal government.

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

As the chief operating officer of this agency, I expect that you will always approach new and existing programs with a critical eye on how they can effectively achieve their missions and more

efficiently spend taxpayer dollars. As the department continues to be thrust into the spotlight and entrusted with some of the highest priorities of this administration, the job of deputy secretary in maintaining high operational standards, and particularly acquisition standards, in this evolving environment will be difficult.

I was pleased to see that you've made a strong written commitment to responding to requests for information from any member of this committee. And I underline any member of this committee. So far, the Department of Homeland Security has done a very poor job of responding to such requests.

Since becoming ranking member of this committee, I have sent a number of requests for information in order to uphold my duty to oversee the agency and its actions. The DHS is failing to uphold its duty to respond to these requests. So far, I have outstanding requests about the implementation and details of President Trump's numerous executive orders; requests about how the department is going to respond to GAO reports and recommendations regarding whistleblower protections and the acquisition of the border wall; and even a request for two statutorily mandated cybersecurity reports to Congress that were due over a month ago.

In addition, this complete lack of transparency escalated to the point where ICE refused my invitation to appear at a hearing last week. If you are truly committed to transparency, I hope that you will agree with me that this is absolutely unacceptable.

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

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

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

JOHNSON:

Thank you, Senator McCaskill.

I would ask unanimous consent to enter the letter that you mentioned written to us by James Lloyd (ph), Michael Jackson (ph), Paul Schneider (ph), Jane Lute (ph), and Alejandro Majorkas (ph), that are supportive of Ms. Duke's confirmation here into the record, as long as -- as well as my opening statement.

I will say just in terms of oversight, this committee is dedicated to oversight over the department. I think our first order of business, though, is to make sure that we staff and confirm positions like

the deputy secretary and certainly give you an opportunity to get in your position, enact your policies, give them time to actually work so we can start assessing them.

JOHNSON:

But as Senator McCaskill did note, there are a number of reports that are due and that's going to be kind of a catch-up process for you. But this committee will be dedicated to working very closely with you to make sure that you succeed in your mission. But we will provide the necessary oversight at the appropriate time.

And with that, I would like to call on Senator Rob Portman who'd like to introduce Ms. Duke.

PORTMAN:

Thank you, Mr. Chairman. I appreciate the opportunity to do so.

And let me say first that I agree with both of you on the importance of this position at a critical time at the Department of Homeland Security. And therefore, it is my privilege to be here to introduce Elaine Duke.

We need her. She is the nominee for deputy secretary, a key management role, as has been discussed. And I believe General Kelly and the men and women at the Department of Homeland Security and our country, in fact, are really fortunate that she is willing to step forward and serve again. She's got experience. She's got a great perspective. She has integrity, and I think that will serve her and the department well.

We are proud to claim her as an Ohio native. She grew up in North Olmsted in the Cleveland area. Her dad, Frank Constanzo (ph), is a first-generation American; still a very proud Cleveland resident.

I've known Elaine's uncle for over 25 years. She indicated to me this morning she hoped that he had not shared with me any of her teenage stories and he has not. He has only shared good things and he's a very proud uncle, as well as a good friend and neighbor of mine. The pride in Elaine's accomplishments, in fact, run deep throughout her entire family. They're rooting for her today.

She has a very distinguished career in public service. As you know, she started her career as a GS-7 contract specialist for the U.S. Air Force. Over the next 28 years, she assumed roles of increasing responsibility in the Air Force, the Navy, the Federal Railroad Administration, the Smithsonian and finally Department of Homeland Security, where in 2008 she was confirmed by the Senate to serve as under secretary for management.

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

As members of this committee know well, now over 14 years ago, after the establishment of the Department of Homeland Security, there are significant management challenges that remain: integrating the various cultures and processes and systems of 22 components so the department continues.

Frankly, in my view, it's been more difficult than I'd hoped it would be. We needed, in my view, to have consolidation of these responsibilities to better protect our country, but we still have a long way to go in ensuring all these cultures come together in an appropriate way.

So establishing adequate headquarters level of support, oversight of department functions in particular major acquisition programs is still a work in progress. Recruiting, retaining, leading nearly 200,000 department employees is an evolving challenge.

I think Ms. Duke is well qualified to help Secretary Kelly tackle these challenges. And again, I trust that he will rely on her significantly for a number of his most critical management initiatives in the department. I'm sure we'll have a very fruitful discussion with the nominee today. And I plan to ask her a few tough questions myself.

But I hope we can then move forward after constructive dialogue and get her to the floor for a vote. And get her in place. We need her and we need her now at the Department of Homeland Security.

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

JOHNSON:

Thank you, Senator Portman. I'm hoping you're not going to delve into her teenage years.

(LAUGHTER)

It is a tradition of this committee to swear-in witnesses. So if you'll rise and raise your right hand.

Do you swear the testimony you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

DUKE:

I do.

JOHNSON:

Please be seated.

Ms. Elaine Duke has had a career in government spanning nearly 30 years. Beginning as a contracting officer at the U.S. Air Force and culminating with her Senate confirmation as the under secretary for management at the Department of Homeland Security on June 27th, 2008.

To remain in that position under President Obama, and ultimately retired (ph) in 2010, but has agreed to answer the call to return to the department seven years later. Ms. Duke holds a BS degree in Business Management from Southern New Hampshire University and an MBA from Chaminade University. Ms. Duke, I am grateful for your commitment to the Department of Homeland Security and your willingness to serve. You hold the (ph) floor.

DUKE:

Mr. Chairman, ranking member McCaskill, and distinguished senators of this committee, thank you for holding this hearing to consider my nomination to become Deputy Secretary of Homeland Security. And thank you, Senator Portman, for the kind introduction.

My Midwestern upbringing really shaped my values and made me the person I am today, and I'm proud to call myself a Buckeye. First, I'd like to extend my thanks to President Trump and Secretary Kelly for the great trust they have placed in my abilities to manage the department's daily operations. I'm very honored to be nominated for this position.

I'd like to thank the former deputy secretaries of Homeland Security for their encouragement throughout this process. I draw strength and inspiration from their support and counsel.

I'd like to introduce my family who is here with me today, my husband Harold, my youngest son Jason, and my youngest sister Cynthia. I'd like to specifically recognize my husband for supporting my decision to return back to service. It is a sacrifice for our lifestyle and I'm grateful for his unwavering support and his service to our country by virtue of my service.

Also, my son Brian, who's not with me here today, has provided me encouragement and support throughout this process.

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

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

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

In the last eight years of my 28 years of public service, I served at the Department of Homeland Security. I understand the complex challenges of DHS's missions, the complex oversight, the

diverse concerns of its many missions, the urgency in its work, and the complex (ph) of running such a large department. But I also know that department employees are the most dedicated and passionate civil servants from (ph) whom I have ever had the pleasure of working. If confirmed, I pledge to lead them in producing results for our beloved nation.

Additionally, if confirmed, I promise to lead DHS in enforcing the law with respect and integrity. I will be honest in my assessments and recommendations, and relentless in pursuing excellence. My (ph) such commitments are critical at this juncture in homeland security. I will do everything in my power to preserve our liberty, enforce our laws, and protect our citizens. I recognize the many challenges facing DHS, and if confirmed, I will partner -- I look forward to partnering with all of you in protecting the homeland.

I fully understand the role of Congress in its oversight and support to the department. Throughout my career in government, I have always strived to work in a collaborative manner with members of Congress and their staff and other oversight agencies. I will continue this approach with Secretary Kelly. I thank you for this opportunity and am happy to answer your questions at this time.

JOHNSON:

All right (ph) Ms. Duke. I've got three baseline questions. First of all, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you've been nominated?

DUKE:

No, Mr. Chairman.

JOHNSON:

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

DUKE:

No.

JOHNSON:

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

DUKE:

I do.

JOHNSON:

Thank you. Again, Ms. Duke, appreciate your willingness to serve. Having served, having gone back in the private sector, running a successful consulting business on the outside, you've certainly (ph) (inaudible) your opening statement, but I just want to ask, you coming from the heart (ph), why are you willing to do this again? This -- you know this is not going to be an easy job. Again, I appreciate the sacrifice that your husband, your family incurs, while this is a 24/7 job. Can you just explain in your own words why?

DUKE:

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

JOHNSON:

Can you describe to me just bullet point -- and it doesn't have to be three, but your top priorities? Maybe top three if you've got them? What is the first think you're going to address?

DUKE:

The first think I'm going to address is the men and women of homeland security and thank them for their support through the process. In terms of within the department, the first think I would address was bringing the components together, and having our own cabinet, if you will, and starting to lead in that joint operations that we need to better secure our homeland.

JOHNSON:

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

DUKE:

I think that -- I have two major explanations. One is, they haven't been communicated with completely and respected within the -- always, within and outside. I think that what I would try to do is make them understand the value of the mission and the contact of the mission, so they understand how important it is, they understand the system they're working in and how much it's valued.

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

JOHNSON:

As -- having served in this community now for six years, recognizing when the department was set up, it was a number of agencies, 22 agencies cobbled together, each (inaudible) requirements two different committees or subcommittees of Congress and (inaudible) in determining the number but it's a lot. First of all, how did you deal with that in the previous service and can you just, kind of, speak to how distracting that is to the men and women within the Department of Homeland Security in terms of keeping your eye and your concentration and your focus on your real mission of keeping the homeland safe and secure?

DUKE:

Well, the way I dealt with it in my last service and will now is understand - is a mutual respect. We have three branches of government for a reason and I respect your oversight role and I'll always treat it with that respect.

It does become one of the nearly full time jobs of leaders to manage that so that the workforce can actually do their job. One of the ways that I would like to do it and I offer this to most of you in my initial meetings is to work with you in a collaborative and (inaudible) way so the need to have formal hearings is less diminished.

We can work at issues in other ways and move the ball forward.

JOHNSON:

One thing that has frustrated me - I'm coming (ph) from manufacturing background, I'm - I need information. To solve any problem you need information. This has been unbelievable frustrating my inability to get decent information. One thing I've noticed in President Trump's executive order's almost to an order there's always some requirement in there for more information, better information to move forward and make a decision.

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

DUKE:

I do agree with you. Yes.

JOHNSON:

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

DUKE:

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

JOHNSON:

OK. With that I'll turn it over to Senator McCaskill.

MCCASKILL:

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

DUKE:

Yes.

MCCASKILL:

So, I am pleased to hear that she lives in Cass County in Raymore right south of Kansas City and we'll be happy to welcome you to the state as frequently as you need to come to get the granddaughter fix.

Which, I have a feeling you'll need in the coming days because of the stress that you're endure. Mrs. Duke, I assume because of your background in acquisition, you believe that any large capital expenditure should have a cost benefit analysis.

DUKE:

Yes, I do.

MCCASKILL:

And, you're aware of course that there has been no cost benefit analysis performed on this wall.

DUKE:

Yes and I understand that CBP is preparing that.

MCCASKILL:

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

DUKE:

There is currently no money other than existing money in the CBP bisfid (ph) account.

MCCASKILL:

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

DUKE:

Yes. That is correct.

MCCASKILL:

It is my understanding that in order to keep congressional oversight and congressional power in check, which I believe that all the members of Congress want as it relates to executive orders, that there has to be a sign off by the ranking and Chair of the appropriations subcommittee for those reappropriations.

DUKE:

Yes. That's my understanding.

MCCASKILL:

And, are you aware that has not occurred?

DUKE:

I am aware.

MCCASKILL:

OK. So, we have no sign off for reprogramming what so ever on this wall? And, we have no cost benefit analysis for the wall. Now, let me go further, part of that analysis must be that when you spend money in one area and take it away from another area you've got to analyze the threat risk and we've spent a lot of time on threat risk at the Department of Homeland Security.

DUKE:

Yes.

MCCASKILL:

In fact, some of the cuts that are being proposed by our defense I couldn't agree with more. Because, there was a whole lot of money wasted there in light of the threats that face our country. A lot of money on something that wasn't really a threat when we had real threats that were not being addressed.

So, are you aware of any analysis that's been done that would say that it makes more sense to build a wall places along the boarder where the boarder patrol even says they don't want it or need it?

And, at the same time, take a cut to the Coast Guard that would seriously impair the ability for us to intercept heroin that is the most deadly problem facing our country.

DUKE:

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

MCCASKILL:

The same thing would apply to the TCA cuts that are being proposed to pay for this wall where no one has said that that wall is actually going to make us demonstrably safer or secure. The TCA cuts, the viper (ph) teams are being propose to be cut an of course the viper (ph) teams are the ones that we rely on to keep our airports safe.

In light of the tragedies that have occurred around the world. Has there been any analysis that the viper (ph) teams are less important than part of the wall in places where there really is no utilitarian reason for a wall because of the geography of the boarder?

DUKE:

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

MCCASKILL:

So, I know you're aware that good acquisition planning requires not only a focus on the present contract but lifecycle. I know, you're very familiar with this because of your work in acquisition. Are you aware of any lifecycle cost that has been conducted prior to the presolicitation notice that has been sent out on the boarder wall prototype acquisition?

DUKE:

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

MCCASKILL:

Do you believe that it is appropriate? If in fact the total cost is above \$300 million, which qualifies and a level one acquisition, I think, we can all agree this is gonna be more than \$300 million, why would you be conducting a request for information for long terms stratgegy for the boarder wall when you have not had this kind of lifecycle analysis?

DUKE:

A request for information will give us industries input into that lifecycle of analysis. What is the state of the art and what industry believes might be reasonable. And, that would be an input to the cycle analysis.

MCCASKILL:

Do you think it's appropriate to conduct acquisition requests for information at the same time? Do you think that's appropriate or is that not good government?

DUKE:

I think that ...

MCCASKILL:

That's certainly not what a business would do. I can assure you.

DUKE:

I think that the - taking a segmented approach will redo (ph) an instant proportion of boarder security in the look in the longer term is something that tend to deliver better results.

MCCASKILL:

What about the cost of land acquisition and litigation? I was on the boarder a few weeks ago and I noticed this incredible waste of resources because there's these big gaps in the existing wall where these is no gate. And, there's a boarder agent that sits there in a truck 24/7 at every opening.

Very expensive, in terms of lifecycle costs. But, that is because of the litigation that has been going on for a decade over land acquisition. Now, has anybody factored in any cost, have you seen any analysis ever done, because I don't believe in looking at the numbers I've looked at they've ever included land acquisition, the cost of imminent domain, the government seizing some of the most valuable farmland in Texas.

I have never seen a cost analysis of that. Are you aware if any exists?

DUKE:

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

MCCASKILL:

Another thing that bugs me is the government does pen and pencil on legal costs because they're just government lawyers. I would ask you to commit to make an analysis of what the legal costs have surrounding these half a dozen gates I've seen.

Forget about the border patrol agent that sits there around the clock, but what about the legal and the delays and all of the costs associated with that. I would like to see an analysis of what that time is costing our government in terms of the legal analysis, because certainly a business would also do that analysis.

I can commit, Senator, to using that going forward. I do not know if the data exists to go retroactively, but I will-- I believe that is a valid cost in the cost estimate going forward. I'd really be interested to see if, in the original 600 and some miles we built, if there was ever any pen and pencil about and acquisition cost in legal, in litigation.

If there wasn't, then certainly that's a flaw that we would expect to be corrected. I have many more questions. I think you've got a very daunting job in front of you and I look forward to a very cooperative relationship in terms of being able to get information and being able to perform the oversight that this committee, that I've been honored to be a part of, regardless of which party holds the presidency. Thank you.

DUKE:

Thank you, Senator.

JOHNSON:

Senator Portman.

PORTMAN:

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

Let me ask you about a couple specific things, if I could, that have come up recently. One is the role of the department in these increasing incidents of threats and attacks on Jewish community centers, on Jewish day schools, on cemeteries. By the way, this isn't just with regard to the Jewish community. Yesterday there was a bomb threat with regard to the Islamic community right outside of my hometown of Cincinnati.

The mosque actually received a bomb threat which has happened over time, including after 9-11. My sense is that there is more the Department of Homeland Security can do. Over the last week or so, Senator Peters who is here on our panel and was here a moment ago. I'm sure he'll come back. We drafted a letter and it was a letter to you, to your boss. It was also to the FBI and also to the Justice Department.

Making sure that you're aware of what's going on around the Country and asking for your additional help. By the end of that process of asking colleagues if they wanted to join us, every single member of this committee signed that letter. In fact, every single member of the Senate signed that letter. That never happens.

We had a hundred Senators sign that letter. What it said is we need help and we need you to understand the importance of this. I met with the Jewish community in Cincinnati, Columbus and Cleveland last week, in Columbus, and they gave me a lot of specific ideas that they're looking for. I know Secretary Kelly vowed to support communities last week.

He talked about the department's Protective Security Advisors, so the PSA Program. This is welcome, but I think there is more to do. One is these nonprofit security grants and that program. So, I'd like you to address that at the end of my question to see whether that's being properly resourced and what you know about that program from your previous service.

I think there's a real need for better information sharing from what I hear from the communities back home, specifically regarding the Fusion Centers and getting that information down to the local communities, so local law enforcement knows what the threat information is, what the trends are. Opening up that flow back to the local community I think is really important.

It doesn't always happen. Better training is another thing. There's this group called the National Protection and Programs Directorate. It deals with a lot of this. So, what I'm asking you today is to make a commitment to us that you will take a fresh look at this area, given this increasing evidence that there is more of a threat out there, and actual attacks if you look at the desecration of the cemeteries, including one in the home state of our ranking member I know she's spoken out on.

My sense is again that all of my colleagues are hearing from their constituents back home about this. So, if you could give me that commitment today that you will take a fresh look at this along with John Kelly and get back to us on what you think the department can do more effectively.

DUKE:

I give you that, my commitment. Crimes based on religion are against our constitution and cannot be tolerated. Excuse me. My knowledge of the specific grant program is limited. I will get back to you on that and I do look forward-- I know the benefit of working with governors and the state and local and getting information from them, from boots on the ground and again through the Fusion Centers getting operation intelligence back out to them.

Again, I think info-sharing, going back to the data issue and getting things timely and complete is very important and I expect additional work on the Fusion Centers and enhancing their performance to be part of our leadership.

PORTMAN:

Thank you. Second question I have is about this heroine epidemic. Chair and ranking member have been very involved in this. I mentioned it today, but we've got a situation now where more and more families are facing this challenge of addiction. We have a new drug called Fentanyl which is a synthetic heroine, as you know, coming in from overseas.

Fentanyl, Carfentanil, U-4. It comes by various names. To give you an example of what's happening in my home state, between 2014 and 2015, we believe there was a doubling of overdoses and deaths related to Fentanyl. If you look at this year, just last month, the shortest month of the year, we had the most deaths in your hometown of Cleveland, Ohio that we've had from overdoses.

Most of those overdoses were because of Fentanyl, often being mixed with heroine. I'm told by law enforcement back home that the Fentanyl is now being sprinkled on Marijuana. This is incredibly deadly stuff, 30-50 times more powerful than heroine, and it's killing people. Unlike heroine, which does come over the Southern Border, as was talked about. One of the reasons we need a secure border is to be able to stop more of that and increase the price for that that does get through, because that would help.

But this Fentanyl comes by the U.S. Mail System and there's a recent study done by the U.S. China commission saying that it's being produced primarily in China, sometimes in India, sometimes in other countries and sent to the United States by the U.S. mail. The reason the traffickers are using the U.S. mail system is because if they send it through another means, particularly the UPS's or the FedEx's they have to provide electronic data up front.

Where it's from. What's in it. Where it's going. With the mail system, they don't have to provide that. So, it's the preferred way of sending this poison into our communities. I'd like your commitment today that you will work with us on legislation called the stop act that most of the members of this committee have been involved with.

Some have been cosponsors of. It's bipartisan legislation. Amy Klobuchar and I, from Minnesota, introduced it again recently and it basically just says, with regard to the mail system, give law enforcement the tool to require that electronic data so that they can target these packages. They can't look at millions, but they can look at hundreds.

The customs and border protection people I've talked to privately say, "Absolutely, we need this tool. Local law enforcement is desperate to have it." So, could you give us a commitment today that you will work with this committee to insure that we can get this legislation moving and begin to stop some of this poison from coming into our communities?

DUKE:

I give you my commitment that we understand that the drug problem is a bipartisan. I heard from every member of this committee as I met with them on it and commit to working forges to securing against that threat to our people. Yes.

PORTMAN:

Thank you. And again, this is one that is not going to be the silver bullet to stop drug abuse in our Country, but it will stop some of this poison from coming in which is the new major threat we're seeing, which is one of the issues. Fentanyl, unbelievably, is now less expensive than some of these other drugs that are opioids that are causing so much devastation in our communities.

They break up the families and crime and other issues. Finally, I've just got a few seconds left, but regard to cyber security, I just want to echo what my colleagues have said already about the importance of that in your new role. We tried very hard to give you the tools to be able to get better people in house, more flexibility in hiring.

If you make a commitment to us today to look into that issue and tell us what you need that you're not getting to be able to get the best people at DHS and other departments that are working with you on pushback and the cyber security threat.

DUKE:

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

JOHNSON:

Thank you, Chairman. Senator Hassan.

HASSAN:

Thank you, Mr. Chairman, and good morning miss (ph). Thank you for meeting with me in my office. Thank you for your long career in public service and I'll give a special shout out, anybody who studied in New Hampshire is good in my book. Thank you very much for being here.

I want to just start by echoing what Senator Portman was just alluding to. I'm a cosponsor on the STOP Act. My State, as his, has been just devastated by this epidemic and in particular now, the use and importation of Fentanyl. What we're hearing, among other things, is how creative the drug cartels are. This is moneymaking business for them. They do not care about people's lives.

We are going to need to work together, all levels of government, to stop it. Both addressing the supply as well as the demand side. So, I'm grateful for the discussion we had about it. I'm grateful for all of the members of this committee who are committed to helping stop this epidemic and I was very glad to hear you just now talk about the importance of information sharing.

As a former Governor, I know the importance of sharing Fed., State, Local, especially around this issue. So, thank you for your commitment and understanding of that. We spoke briefly in my office about your commitment. You mentioned it in your testimony and your policy questionnaire, to a threat based approach to decision making.

I'm wondering if you could just briefly talk a little bit more about what that means to you and what you think the department needs to do.

DUKE:

Yes, Senator. What that means to me is that we have a limited number of resources in the United States and when we are making decisions with Homeland Security resources, we must spend every incremental dollar on the solution that's going to buy down the most risk. These are important decision both in the budget cycle, in moving personnel resources and going forward.

That requires good data. It changes over time and we just need to be on top of that.

HASSAN:

Well, thank you. So, I am then following up on that, talk a little bit about one of the things that the ranking member also mentioned concerning TSA cuts. Last September, the Director of the National Counter-terrorism Center, Nick Rasmussen, testified before this committee that, and these are his words, "Terrorist's remain focused on aviation targets, because the recognized damage may result from even unsuccessful attempts to down air-craft or against airline terminals as well as the high loss of life and the attention media devotes to these attacks."

So, the report that we saw yesterday in Politico indicated that the office of management budget is considering making a number of cuts to the Department of Homeland Security in order to pay for the President's border wall and to hire more boarder and immigration officers. Among the cuts was an 11% reduction in TSA's budget or a little under one billion dollars.

That's truly a devastating cut and it means less security against aviation threats from Al Qaeda and ISIS. So, do you support cutting aviation security to pay for the President's border wall?

DUKE:

I commit to you that I will look at the budget. DHS, every mission is important and really under-resourced at the critical time. Secret Service, the Coast Guard with its human trafficking, fight drug and addiction. So, I commit that I will look at the budget very carefully if confirmed.

HASSAN:

Well, I thank you for that commitment. I would just suggest that if we are truly committed to threat based management at DHS and if the Director of the National Counter-terrorism says that terrorists want to attack our aviation system that the suggestion that we cut a billion dollars from aviation security is very, very concerning. So, I hope you will take a close look at it and that you'll be able to come back to this committee and commit to fighting cuts to TSA.

DUKE:

I will. And I will also use the intelligence from that organization and others.

HASSAN:

Oh my good-- Thank you. The other thing I wanted to do was follow up a little bit on my colleague's questions and concerns around the opioid epidemic. We talked about how devastating it is. We know that the flow of narcotics absolutely contributes to the epidemic, but it's not the only route to send.

Reports are pouring through which drugs get into our Country. The security of our northern border lacks resources and attentions paid to our southern border, a key precursor drug is being shipped in country from China in particular and it's poisoning our young people and killing them. Additionally, our maritime borders stretch thousands of miles and have been a popular way for drug smugglers for years and as mentioned by the ranking member, the Coast Guard plays a key role in interdicting maritime drug shipments.

So, again, going back to the Politico article yesterday which reported that ONB was considering cutting Coast Guard's budget by 14% or about \$1.5 billion, and I would suggest that the U.S. Coast Guard is already falling pretty under-resourced. Again, this is a cut being suggested by the ONB in order to pay for the President's wall. I'm having a hard time understanding the logic of a move like this.

If we build a wall along the Southern Border and gut the Coast Guard in the process, what we've seen from these drug cartels is that they're creative and I just think that incentivizes the cartels to smuggle more drugs across our maritime boundaries. So, I'm really looking for you to be able to outline steps to ensure that DHS employs a comprehensive approach to battling narcotics trafficking, stopping the opioid epidemic.

And don't just focus-- The Southern Border security is incredibly important, but we have to be smart about this and we have to use what you call this threat based assessment process. I'm really concerned that, from what I'm reading, the administration is not following that path. So, I'm just hoping I can get a commitment from you to really help do this in a strategic way.

DUKE:

I will. I know you recognize also that this is a very much interagency function, but DHS does play a part of this. I committed to Senator Heitkamp to visit the Northern Border to learn more about its geography and the threat there. And you're right, the Coast Guard does play an important mission in drug interdiction also in addition to the land. So, you have my commitment.

HASSAN:

Thank you. And the last thing I'd say is just the other thing that we should all be thinking about. Law enforcement has spoken very compellingly about the fact that we can't arrest our way out of this opioid epidemic. That it's going to take a combination of prevention, treatment, as well as law enforcement.

So, I look forward to having further conversations with you about how DHS can partner in that effort, too.

DUKE:

Thank you.

HASSAN:

Thank you.

JOHNSON:

Senator Harris?

HARRIS:

Thank you.

Mr. Chairman, on the topic of immigration, I request unanimous consent following that two items be entered into the record. One is a transcript from a hearing that I held in Los Angeles, a forum on the topic of immigration. The second is a letter from the Coalition for Immigrant Rights -- for Human Immigrant Rights, of Los Angeles discussing how the president's executive action has instilled fear in immigrant communities.

JOHNSON:

Without objection.

HARRIS:

Thank you.

(inaudible) thank you for your many, many years of service, and thank you to your family for allowing you to reenter. I've several questions of you. You have, in your questionnaire and in your interviews, resonated with me several points that you've made in terms of principles that you hold to be important, including that we have good relations, that government have good relations with the people that we serve, and that there is trust between government and the people that we serve. And your comment suggests to me that you also prioritize transparency and consistency in the way that we do our work as government officials. So, I thank you for that.

So, on that point, I will tell you, based on the discussions that I've had, the forums I've held, many of my constituents need clarity on the decisions that have been made through the executive order and the memos that have been issued by the Department of Human Services -- of Homeland Security.

And so, I have here right now a poster that my staff has created of General Kelly's confirmation hearing. Can you see it from there? It's a bit small.

But basically he talked about his highest priorities, and mentioned that he would create priorities in terms of who would be deported and who would be the focus of ICE and CBP. And then the memorandum from February 20th lists seven categories, and in those categories we see that we have, one, people that have been convicted of crimes. Then it goes on to say people who have been charged, but not been convicted or found to be guilty. It goes on to mention people who have committed acts which constitute a chargeable offense. And then other factors, including seven in that those, that in the judgment of an immigration officer otherwise pose a risk to public safety or national security.

You have said many times, including at least three times in this hearing, that you have limited resources. We all do. And so, we have to make priorities and triage in many situations.

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

DUKE:

The most important is the people that have been in criminal -- it's the number, sub-category one.

HARRIS:

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

DUKE:

I believe these are, if you were (inaudible) these in descending order, I think the main effect of that memorandum is to not exempt any categories that currently are under the current law passed by Congress.

HARRIS:

So, it is your opinion that these are listed in descending order of priority?

DUKE:

Yes.

HARRIS:

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

DUKE:

I think that...

HARRIS:

Because there is no clarity right now...

DUKE:

I can't commit that.

HARRIS:

... in terms of what those folks on the ground are supposed to do as their priority for who they will pick up, who they will detain.

DUKE:

I will commit that, if there is continued lack of clarity, that we will have more clarity.

I know that ICE was issuing a memo that is not issued yet; and I can work with you on making sure that has the clarity so that you can explain it to your constituents in a way, and show them that that is (inaudible) understands. But there is still the prioritization.

HARRIS:

OK, and I'll emphasize that it's most important to my constituents that the officials in the department actually explain it to the troops on the ground.

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

DUKE:

Both both number three -- number three also requires judgment, and all our law enforcement officials in this country, whether they're federal or state or local, have to have judgment. They have the federal law enforcement training where they learn that. They both practice law enforcement. And in the federal...

HARRIS:

But they need to be trained on specific factors that they should consider, and that's the way that we actually evaluate whether they're exercising good judgment or not. Would you agree?

DUKE:

Yes. And that...

HARRIS:

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

DUKE:

Yes, that is part of their law enforcement training.

HARRIS:

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

DUKE:

I do not know at this time. I can get back to you whether there's been incorporation to the training specifically.

HARRIS:

Please do.

And on February 17th, there was a memo from acting CBP Commissioner Kevin McAllen -- or McAleenan -- which indicates that to meet the hiring goals of the executive order, which is that there would be 15,000 new officers, that we would have to lower CBP hiring standards.

And as you probably know, during a hiring surge at the department between 2006 and 2012, there were a lot of unintended consequences, which required then that Congress in 2010 mandate that the CBP use polygraph testing to blunt infiltration of the agency by drug cartels. However, it's my understanding that now, as part of the need to hire 15,000 new officers, there is a suggestion that the polygraph testing would no longer occur. Do you agree with that?

DUKE:

We will not lower standards to do that hiring.

HARRIS:

What about the polygraph testing?

DUKE:

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

HARRIS:

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

DUKE:

I don't have enough data, to be honest, Senator, to comment on that, but I will look into it if confirmed immediately.

HARRIS:

So, in your many years of service with the department, you don't have information about whether the efficacy of a polygraph test in the hiring of these officers?

DUKE:

Yes, I know that the polygraph has efficacy; but is there a degradation in workforce if it is eliminated, I do not have that data.

HARRIS:

OK, thank you.

JOHNSON:

Senator Heitkamp?

HEITKAMP:

Thank you, Mr. Chairman.

And it's great to see you again, and thank you for a lovely visit in my office. Since we had an opportunity to talk, there's been a number of things that have occurred within the Department of Homeland Security, but one thing that really caught my attention is the discussion of a policy that would, in fact, separate mothers from their children at the border. How much time have you spent in the triangle countries in Central America?

DUKE:

Very little, other than vacations. No official duty.

HEITKAMP:

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

DUKE:

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

HEITKAMP:

In fact, we knew that the murder rates per capita are the highest in these countries, especially El Salvador. Many of the people who are migrating, many of the people who are on the move, are in fact escaping very, very desperate conditions; and it's not just economic migration, it's migration to get away from the terror. Obviously, these folks -- there's been a U.N. project to take a look at refugeeing in place, whether it's in Costa Rica, Belize, southern Mexico, Nicaragua; there's been a lot of discussion about how we deal with the crisis in Central America, which is obviously having an effect.

But how do we deal with the visual of a Border Patrol agent taking a baby away from a mother at the border?

DUKE:

OK. That is a bad visual. I think what we do is we go to two underlying areas.

One is, we have to separate adults from children, potentially, because of threats we've heard against children; and also, we have to address the fact of how danger (sic) it is to illegally immigrate into the country. And I think that the reference you're making to separating mothers and children, or adults and children, was one thing that Senator -- that Secretary Kelly said is a possibility to help address this threat against children who are illegally migrating.

HEITKAMP:

So, the strategy is not to figure out how, through the State Department, we can effectuate support for refugees in place, which would be my preference, that people stay in the community as we work with these countries to stabilize their economies and stabilize their security. So, it's not our problem, and the solution is to take babies away from mothers.

DUKE:

That's absolutely...

HEITKAMP:

That's the best solution we have in the United States of America to deal with this crisis.

DUKE:

No. No, it is not.

Absolutely, Secretary Kelly and I have had short discussions, but are committed to looking at both what we call the push affect and the pull affect; and the push affect would be the areas you're talking about, Senator, of fleeing violence. They're leaving for a reason. And we are committed with the other appropriate agencies to looking at both sides.

HEITKAMP:

Yes, well, I can tell you that, for every mother who would be seeing someone seeking asylum in this country, fleeing from rape, murder, and potential destruction of her family, it's not a very humanitarian way to deal with this crisis; and I think there are other ways.

And I think that the threat of taking mothers away from children may, in fact, provide a deterrence. I get that. But it doesn't solve the problem in our hemisphere. And if we don't deal with the problem in our hemisphere, we will continue to have disruption, and that disruption will continue to find a place for a criminal element in our country.

DUKE:

Agreed.

HEITKAMP:

And so, I just wanted to wage my strong opposition to taking babies away from their mothers.

DUKE:

Yes (inaudible).

HEITKAMP:

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

And so, how committed do you think the agency is, or the agency during your tenure, to actually pushing back against strategies that won't keep us any safer, that are, in fact, irrational deployments of federal dollars at the same time we're opening up the maritime borders, we're opening up the ports of entry called airports, we're not securing the northern border? But yet we're building a wall

at huge cost, and a wall that many people who live on the border, including the congressional people, including at least one senator, thinks is absolutely the wrong strategy?

When are we actually going to have a discussion, not about whether we let the bids, as Senator McCaskill has been talking about, whether we actually ask for people to bid on these projects, when are we going to have a discussion on whether this is actually the right deployment of resources?

DUKE:

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

HEITKAMP:

Yes, but you said in addition to the wall. What I'm saying is that we need to rethink all of border security. We need to really have a conversation, lots of great ideas from law enforcement, local law enforcement, we can do a better job.

Some discussions about actually clearing the brush so that you can detect people in a mild boundary. There are some really creative ideas that are being discussed on the southern border that, if you deploy all the resources on the wall, you aren't going to get to that discussion. Because you're going to be fighting eminent domain, you're going to be fighting the local people on building this wall.

And it just seems to me that someone needs to say, "Stop. Let's really evaluate this." And if we believe public opinion polling, it's not something the American public thinks will make them more secure.

And so, I just really hope -- and you're a common-sense person, you've been in the agency, I know. You obviously will work for the president, and I understand that. But we need to have someone in an agency that actually looks at what situational awareness means and how we best deploy the resources.

And so, I hope you take that message back to the secretary. Proud to support you, as you know, and we had a great talk about the northern border; but there's a lot of things that are happening now that will be irreversible if we don't have a strategy.

DUKE:

And I will engage with those governors and local politicians also in gathering data about the southern border.

JOHNSON:

Thanks, Senator Heitkamp.

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

DUKE:

Yes, I will come.

JOHNSON:

And we'll call you to do that.

Senator Tester?

TESTER:

Thank you, Mr. Chairman.

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

I want to touch a little bit on what Senator Heitkamp said, because on the northern border, when I got elected 10 years ago and was on this committee, I took Mr. Secretary up to the northern border in the Bush administration. And we went north of a little town called Turner, and there were a number of farmers and ranchers up there; and being new to this position, I just asked them silly questions like, what's your relationship with the CBP? And they said, the one person I talked to, said, "I wouldn't stop and help them if they had a flat tire."

So, the relationship wasn't good; and I think that relationship is critically important for our security, whether it's on the north, or whether it's on the south. I think that relationship is improved greatly, I still think it could be improved some more.

I think the point that Senator Heitkamp made about, if these folks are working against us on the northern border, it really is going to cost us a lot more money to make it secure, I just hope you take that to heart. I serve on a homeland security subcommittee on appropriations, Senator John Boozman is the chairman, I'm a ranking member on that.

There has been a request, has been referenced earlier in this discussion, about \$20 million that will be reprogrammed in the Department of Homeland Security for the purpose of our wall. My question to you is, is that going to be the only purpose for the \$20 million?

DUKE:

I'm not . . .

TESTER:

To do a pilot on a wall?

DUKE:

I'm not familiar with that reprogramming request. As an adviser, I haven't been involved in those discussions, but I will engage, if confirmed.

TESTER:

OK, that's cool.

So do you think the \$20 million, if for a study for a wall, is the right way to spend that money for national security interests on the southern border?

The reason I say that is because I don't think there is anybody in this room, and certainly nobody on this dais, that doesn't think that the security of this country is critically important. We know that money is finite and so we have to get the biggest bang for the buck.

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

DUKE:

I think that we should test things before we deploy them.

TESTER:

Yes.

DUKE:

We have to test not only, are they effective in securing the border, but are they sustainable? So for that purpose a pilot program, I think, would be useful.

TESTER:

I want to ask it to you this way, would you be opposed to carving out part of that money to be used for technology? As a way to secure the border, not entirely, but in places where the wall might not be the most effective way to do it.

Because of a number of reasons, whether it's landscape, or eminent domain, or whatever it might be.

DUKE:

I'm not sure if there's any pilot's necessary on technology now, I'd have to look into that, but I do know the plan does not just include physical barrier; it includes continued technology and infrastructure.

TESTER:

So what you're telling me is that there's certain places on that southern border, would be technology and not a wall?

DUKE:

I do not know if it's an either, or, but there is to my knowledge, no intent to discontinue use of technology; a multi-layered approach to the southwest border.

TESTER:

I think you're a smart lady. I think you're very well fit for this job and I intend to support you.

Don't you think it would be wise to at least determine what the best avenue is, whether it's a line in the ground like you talked to the Dulles folks? To determine if there's a tunnel going underneath or something walking over the top.

Or whether it's drones, or whether it's manpower, or whether it's a wall. To get the most bang for the money and to be able to really ensure this country's national security on our borders, doesn't that make more sense than to just say, "Well we're just going to focus on a wall and after we get that done, maybe we'll spend another \$30 billion on something else." It didn't quite do the job we anticipated.

DUKE:

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

TESTER:

OK.

And on this \$20 million, is due to reprogrammed, I'll go back to the original question I had.

Would you be opposed to carving out part of that to be utilized for technology resources on the ground, on the southern border specifically?

DUKE:

I don't have the information to either be for or opposed at this time.

TESTER:

What role do you think Canada and Mexico play in our border security?

DUKE:

A strong one, our relationship with those countries are essential.

TESTER:

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

DUKE:

I know that Secretary Kelly and I would be working on strong relations, he's already been to Mexico and Guatemala. The relationship between homeland security and the United States, and our bordering countries would be strong.

TESTER:

OK, good, so you're going to basically do what you think you need to do to establish those relationships, whether it be with Mexico or Canada, to make sure that folks are talking.

DUKE:

Yes, and because of . . .

TESTER:

Hopefully the fights up above don't impact that.

DUKE:

Because the secretary's role at SouthComm, he has some preexisting relationships that are very strong in the southern border area.

TESTER:

With Mexico? OK.

Operation Stonegarden, we talked a little bit about in my office, I just want to make sure I know where you're at on funding for Operation Stonegarden. Where you at?

DUKE:

I am supportive of the program.

TESTER:

OK, and it goes back to the original question that Senator Heitkamp has. Those are the kinds of partnerships that I think we can utilize on the northern and the southern border, to be able to get the most bang for the buck.

I intend to vote for your confirmation. I appreciate you being here today and I appreciate you putting yourself up for this position.

DUKE:

Thank you, Senator Tester.

JOHNSON:

Thank you, Senator Tester.

By the way, a real world example of the effectiveness of fencing. Read our report, the result of my trip to Israel right before Christmas. 143 miles of fence, put up in two years, cost of about \$2.9 million per mile, cut the illegal immigration rate from 16,000 crossing their southern border to 18. One, eight.

By the way Prime Minister Netanyahu said the problem, actually three problems with fencing is tunnels, tunnels, tunnels. But still, not perfect, but is pretty darn effective.

Senator Lankford.

LANKFORD:

Thank you Mr. Chairman.

Thank you for being here and I appreciate our conversation in my office, to be able to talk to a lot of these issues before. You've done a lot of work in acquisitioning contracting.

This has been an area that the IGE has noted for a while as a struggle for DHS. I want to be able to talk out loud on a couple of things with you.

To be able to ask you questions about DHS's major acquisition programs tend to cost more than expected, take longer to deploy than planned, or deliver less capability than promised. That came out of the IGE's report of late.

One of the questions I have for you is how do we fix that? Because we're talking about multiple major acquisition programs here.

How do we make sure that at the end of the day, the taxpayers got what they paid for?

DUKE:

I think the single most initiative that has begun and needs to be strengthened, is really developing good requirements based on operational needs before we get started. In the earlier days of homeland security, we tended to move quickly, maybe before we were ready.

That caused too many changes, and stops and go's in the programs. With the unity of effort, if confirmed, I will be focusing on having those operationally driven requirements before we go out and start acquiring something.

Secondly, consistent oversight within the department through the chief acquisition officer. Also, if confirmed, I will continue to look towards modular approaches to acquisitions, rather than trying to buy these big, huge fixes that are too complex to deploy effectively.

LANKFORD:

So what does that mean for off the shelf technology?

For instance, because there has been an emphasis at times to say, "We're different, we have to have our own specialized piece of technology developed just for us", rather than an off the shelf piece, that also has already been tested, it's already been proven.

DUKE:

I think that there needs be a mix and, if confirmed, I would encourage that. I would mandate, I guess, that one of S&P's roles be to look at those items that can either be used commercially, or with minor modifications be used in a homeland security application.

Looking towards industry to have already developed, rather than major R&D programs.

LANKFORD:

Thank you.

As we talked about before, as well, DHS has spent 13 years trying to be able to pull together their H.R. system. That's a long time to try to pull together a H.R. system.

Now what typically happens is every two years there's an emphasis on it. There's a new plan of how we're going to attack it, then leadership changes and it never gets done, and then there's another two year plan to do it.

There's a renaming of the previous plan, there's a new attack for it, a new plan, and for 13 years the H.R. system continues to flounder. How do we move from that's an ongoing issue, to that's a settled issue?

DUKE:

I think the focus has been on the system and I think that's an inappropriate focus. The approach has to be at a jointness, that we are one department, and we're going to have the appropriate jointness in hiring and staffing.

Then the system flows through that. I don't think we've had to this date that agreement, and that is what'll drive through the deputies of the components.

Then I believe the system will flow from that.

LANKFORD:

OK, let me ask you an easy question. How do we solve the moral issue?

This has been an issue for a while at DHS. These are some great folks that are patriots that want to be able to serve the nation and for whatever reason, there's been ongoing moral issues among DHS employees.

How does that get solved?

DUKE:

I think we solve that by giving them the authority and the tools, and the judgement to do their job. We reinforce how much we value their ability to do the job.

The secretary and I lead by managing that which needs to be managed, so it enables them to be free to do their jobs. Actually, communicating better, not just about their little piece, but having them understand the system.

I think those are always important. It is very difficult to work at DHS and we need to recognize that.

LANKFORD:

Yes.

So I would say two things with it, one is, people have a greater sense of joy in doing their job when they know their job is significant. Tom Carper, who serves on this committee as well, that is this ongoing statement that he comes back to over and over again, "People love to do what is significant."

They do a very significant national security task. I think when they're allowed to do the job that they wanted to do, the reason they applied and came.

I think that reaffirms again to know, "I'm doing something's that valuable and I'm getting to do what I came to do."

The second part of that is to be able to help pull the ideas that they have in the field, of what needs to be fixed. To actually get to this committee, so we can fix them. There's, at times, a tension between the ideas in the field and they see the obvious things that need to be done, but there's a barrier between this committee and the individuals in the field; the ideas are not coming all the way to us.

You can help us help them and the moral. To be able to know that this committee wants to hear the ideas from the field, of how things can be fixed.

They see the conflicts in the law and in regulatory issues, and they know, "I wish I could do this, but I can't do this and I'm stuck." If we hear that, that'll help us to be able to help them and stand by them as well.

Let me talk briefly on some immigration issues, as well. I know this is something the secretary's been very, very passionate about. It's not just our in case our southern, or northern, or maritime borders, but in the case of our southern border, the southern border of our southern border.

That is the relationship between Guatemala and Mexico. We're dealing with a tremendous amount of illegal immigration coming into the country, is from areas that come from that Mexico-Guatemala border.

What can be done to be able to help us work with the Mexican authorities, as they enforce their southern border?

DUKE:

I think the relationships, what we have here, is we have a joint purpose. We have a common ground and I think that what we have to do is work with the enforcement and the demands side in the United States.

Again, that isn't the demand management isn't as much a DHS role, we're part of the solution.

LANKFORD:

Right.

DUKE:

We have to work as a country on that side. Then, I think, on the international side our role in helping them with some of those push factors related to the crime, and the economy, and keep a good partnership in helping them when they're trying to help themselves as world leaders.

LANKFORD:

Well there are things that I know have been proposed in the past. The Northern Alliance and the Alliance for Prosperity that the United States has partnered with Central America.

Obviously those three countries, Guatemala, Honduras, and El Salvador, if their ideas specifically on the implementation of that or things that need to be done differently. That is something I served on the state foreign ops subcommittee, we are very interested in getting input from DHS on it, as well.

That doesn't need to just be a state department focus, you also have a portion of that.

One last question that I want to be able to bounce off you, that is this issue of operational control. The NDAA required DHS to come up with some sort of metrics and definition for what does operational control mean; of our borders.

Do you know what the status of that is? Or any recommendations for them?

DUKE:

Yes. DHS is working to come up with the metrics behind operation control, that's very important. As the chairman mentioned, not only for the wall where it's proven effective in other countries.

We have got to know the effectiveness of the individual pieces of border security, like the fencing and the wall. Like the technology, but also across the border in general.

We have to have those performance results and that is working, and we are committed to that.

LANKFORD:

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

DUKE:

Absolutely.

The definition is in the Executive Order, this is a metrics to measure the definition.

LANKFORD:

Right.

The metrics will be the key aspect for us.

DUKE:

Yes.

LANKFORD:

OK, thank you.

Thank you, Mr. Chairman.

JOHNSON:

There's been a request for a second round of questioning, which I'll honor. We'll go to another round of seven minutes, beyond that'll be written questions for the record.

Senator McCaskill.

MCCASKILL:

Yes.

Let me start with Secret Service budget. Let me preface this remark, I don't want anyone to misinterpret my question here.

I think the President and his family deserve around the clock protection. That is not the argument, the argument is, clearly, there's going to be a lot more money needed.

Because the secret service now has to protect Trump Tower, it has to protect Mar-a-Lago since the President goes there almost every weekend. It's going to have to protect his sons who travel constantly on international business.

I want a commitment from you that the budget will not only reflect an appropriate increase request for the secret service. As you know, one of the issues we've had in the secret service, we finally turned the corner on is hiring and having enough people. So there is not this stress associated with a work pace that is totally unrealistic.

I want a commitment that the budget will reflect the needs of the Secret Service in light of the additional protection that is going to be required with this president.

And most importantly, where that money is coming from? What part of Homeland Security is going to take a hit for the additional protection that the president's family demands because of this greatly expanded playing field of protection that is necessary for President Trump?

DUKE:

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

MCCASKILL:

Yes, and I think that that is really important that that is transparent. I don't want to get into the details of what the Secret Service is spending money on, but top-lines certainly have to be transparent to the public. Agreed?

DUKE:

Yes.

MCCASKILL:

All right. I want to also talk about the technology. I've got to tell you that what is going on on the Border Patrol. I didn't have one border agent say the first thing they needed was a wall. They said I think 76 miles of a wall would be helpful, but they said it was more technology. And particularly in the processing centers, they don't have enough bandwidth in terms of their internet signal to even use the technology that they have.

They can't activate the kiosks with the radio frequency. And since we know that more people are over-staying visas than they are coming across the border illegally, it seems to me that technology to support this radio frequency embedded in the visa card is pretty damn important.

They can't even use it because they don't even have bandwidth at the processing center. I mean we're getting ready to go on a multi-billion dollar project that we haven't even done a cost-benefit analysis, and the processing centers don't have enough bandwidth. It is bizarre to me.

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

So -- and then lateral roads -- lateral roads kept being named to me by border agent after border agent. They see somebody and they can't get to them. So if we can't get lateral roads over these lands, I'm trying to figure out how we're going to do a wall.

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

DUKE:

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

MCCASKILL:

Will there be no request for appropriations for billions of dollars until all these studies have been completed, until the pilot has been completed and until the cost-benefit analysis has been done?

DUKE:

I honestly look forward to having those discussions with you if confirmed, but I do not know. I have not been involved in the budget request to date.

MCCASKILL:

Well, I know the chairman, and he talks about business all the time and how business does it. And I know that there is no way that a business would embark on a multi-billion dollar project without a cost-benefit in place.

And so I will be very disappointed if there is a request for a giant appropriation for something that the Border Patrol never mentioned to me as a top priority -- partially walls. I don't want to misrepresent what they said to me -- but these other components which don't seem to be a high priority in terms of the president's political speeches.

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

DUKE:

Yeah, I -- I have not had any discussions with the president, so I honestly don't know his intent.

MCCASKILL:

OK. Well, if that occurred, wouldn't you agree that that would have a dire impact on Mexico's cooperation with our country in terms of their southern border?

DUKE:

Yeah, I -- I -- I look forward to being engaged in that, and, you know, supporting the -- the president with information that -- that we have from Homeland Security that would affect that decision.

MCCASKILL:

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

DUKE:

I -- I'm not comfortable discussing... I have not been involved in that subject, and I understand your concerns, and I would work with the committee, and -- and as Secretary Kelly said, you know, he and I will advise the administration with facts, and we will continue to do that. And I -- I feel confident the president will -- will make the right decisions on that issue.

MCCASKILL:

Well, politicalization (ph) -- the political nature of issues being embedded within the Department of Homeland Security, you have acknowledged in front of this committee, is a problem. You've said in the hearing in 2015, when we were looking at this morale issue, you believe part of the morale problem is that employees were feeling, quote, "disenfranchised". You attributed this in part to the increasing politicization (ph) of DHS's work, stating, "DHS employees do have pride in their work, but my experience is that it is more politicized."

You went on to explain, the employees find it hard to feel like they're part of the mission, because a lot of the mission and the decisions are made politically. Do you remember saying the point I'm making, that the wall might fall firmly under that category if we have no cost/benefit analysis, if we're cutting off aid to Mexico, if we are, in fact, not giving the border patrol what they're asking for, but rather, what the president promised in a political context?

DUKE:

Yes. In my initial work in this administration, and how I became reinvented was connecting the - the career employees of DHS with the new administration to make sure that that alienation did not happen, and I feel confident we'll -- we'll move forward in that we -- we will use the career, and the great knowledge and experience to make the right decisions.

MCCASKILL:

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

DUKE:

Thank you.

JOHNSON:

If -- if I don't say it publicly from the dias, I almost say it 100 percent of the time talking to witnesses before a hearing, is the purpose of the hearings in this committee is to lay out a reality. You know, unvarnished truth, because that's the only way to solve a problem, which is why next week we're going to have a hearing, you know, hearing from people on the front lines at points of entry, points between the point -- points of entry, or ports of entry, and, you know, in the interior from ICE. So we're going to have front line enforcement officers, and we're going to lay out that reality. So I'm -- I'm looking forward to that, and I'm sure you will as well.

DUKE:

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

JOHNSON:

And again, that's what I'm certainly seeing from Secretary Kelly. He's getting down there, talking to the boots on the ground, and that's how you have to manage. Senator Harris.

HARRIS:

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

DUKE:

It is not a decision. The secretary, I talked to him personally about it. He considers it still a possibility. They're looking at a wide range of deterrents, and it was raised as a possible method of deterrence, but there is no decision made, and there is no implementation planned currently.

HARRIS:

So let's think of this as an opportunity for the public to weigh in before they make a decision. I would urge you to urge the secretary to think about this from the context of, to the Chairman's point, the details of what this would look like on the ground.

For example, if a family appears at the border, and of those children with that family are nursing babies, what would the policy be as it relates to that nursing baby and that mom? If a family arrives at the border, and among those children are toddlers who are potty training, what will the policy of the department be as it relates to the separation of those children from those parents? What will

the policy of the department be if they arrive at the border, and a child is sick, and needs comfort to be able to sleep through the night from his mother? What will the department's policy be?

Because those are very real scenarios that all of us who have parented a child know to be very real, and can be very traumatic if not taken into account in terms of the effect on those children and those families when we are leaving it up to whoever is from CBP or ICE, there to make the decision in their best judgement if they've not been given clear guidance and training on that issue.

So I would urge you to pass this on to the secretary, and also, in your capacity as number two of that department, if confirmed, to require that everybody be very clear about what this will mean, and be very clear about the details in terms of the training, and the protocols, and the policy.

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

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

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

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

DUKE:

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

HARRIS:

OK, I appreciate that. Thank you.

JOHNSON:

Senators, if you'd just stick around for a couple minutes, I'd like to tell you a story that might give you a little comfort.

Shortly after the issuance of the first executive order on, we'll call it, the travel ban, I got a text from my daughter, who was born with a congenital heart defect. She's 33 years old now. She had corrective surgery. She's actually a nurse practitioner, serving in neonato-intensive care units. And there was an article written about this little Iranian girl, little baby, that also had a heart defect that was scheduled for surgery at the, again, Oregon University, one -- one of the university hospitals in Oregon.

And so I -- I sent that to my staff, who immediately contacted DHS and the secretary, as well as I had it printed out. We were voting late at night. I gave it to Senator Wyden, who passed it along to Senator Merkley.

Secretary Kelly personally got involved. Now, this was not a situation where a visa had already been issued, and they were at the airport, and, you know, the EO had a -- an impact. But the secretary personally got involved. This little baby girl was admitted into the country without a visa, working with the State Department, very quickly, within hours.

And so just, the compassion from the secretary, from Ms. Duke, I think, will be demonstrated time and time again, to just provide a little comfort. We've got -- we have exceptional people that we've, you know, certainly in Secretary Kelly, that voted to confirm, I think, with Ms. Duke as well.

There -- there is no political party that has a monopoly on compassion.

HARRIS:

No, I -- I...

JOHNSON:

We -- we want to do this. We want to enforce our laws. We want to keep this nation safe, so...

HARRIS:

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

(CROSSTALK)

JOHNSON:

Oh, I'm sure.

HARRIS:

And the policies (inaudible)

(CROSSTALK)

JOHNSON:

Well, the good -- the good news is the baby did get admitted. Her surgery has been successful. I -
- I want to see the news article. I want to hear more information.

(CROSSTALK)

HARRIS:

(inaudible)

JOHNSON:

But there's privacy issues as well. But again, this was -- I thought that's a pretty good news story,
and again, that certainly demonstrated to me how quickly the secretary personally got involved.
The waivers that were granted... compassion to a little Iranian baby girl, I thought, spoke volumes.

But you know, appreciate your -- your good questions. Mr. Duke, again, thank you.

DUKE:

Thank you.

JOHNSON:

I want to thank your family. I'll come down and shake your hands after the hearing. You know,
this is commitment. You know the serious nature of the responsibility you're assuming, and I -- I
just want to thank you for it.

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

The hearing record will remain open until noon tomorrow, March 9, for the submission of
statements and questions for the record. This hearing is adjourned.