

Hearing Transcript

House Appropriations Subcommittee on Homeland Security Hearing on President Obama's Fiscal 2017 Budget Proposal for U.S. Customs and Border Protection

March 1, 2016

CARTER:

Today we welcome Gil Kerlikowske in his third appearance before the subcommittee.

Commissioner, welcome.

KERLIKOWSKE:

Thank you.

CARTER:

We appreciate you being here and your service to DHS and the nation. We thank you for that.

Fiscal year 2017 budget for Customs and Border Protection is \$13.9 billion, an increase of \$686 million above fiscal year 2016.

Unfortunately, gimmicks in the department-wide budget have created a \$2 billion gap that requires this subcommittee to make hard choices. Therefore, the increase to CBP may not be affordable as -- when it's evaluated by the totality of this budget. And we discussed this between the two of us yesterday or the other day.

Commissioner, as you know, I discussed this with you. We're really concerned about CBP's hiring problems that have to be fixed. To secure and expedite trade, the budget requests funds for 23,861 CBP officers, which includes 2,000 officers funded in 2014.

Commissioner, taking four years to hire 2,000 CBP officers is way too long. I know you plan to send a request to the authorizers, asking them to pass legislation increasing the number of CBP officers. But why would they increase passenger costs, knowing that wait times don't deserve CBP, because CBP isn't likely to have these officers on board for years? 2014 and look where we are now.

Likewise, the Border Patrol is losing more agents than it can hire. Currently, CBP is 1,268 agents below the mandated floor. The budget takes advantage of this by decreasing the mandate for agents by 300. Unfortunately, the reduction isn't supported by any analysis, proving that border security won't be compromised as a result.

Commissioner, as you understand the important national security role these agents play, but we are concerned that CBP isn't able to sustain the existing workforce, let alone the mandated floor levels of the agents.

These are urgent problems which must be fixed. Now, we'll have to discuss how you plan to correct this spiral.

This request also includes a contingency fund for potential surge in unaccompanied children. We look forward to an update on the current estimates of the UACs.

Other increases include \$55 million for tactical communications, \$47 million for vehicles, \$26 million for aerostats and relocatable towers, and many other smaller increases.

I look forward to working with you over the next few weeks to determine the priority of these programs.

The request proposes a realignment for appropriation structures to be more mission-focused. While I know it was challenging, it is an effort that I have supported for several years. I want to commend you and your team for making the effort.

Lastly, Commissioner, sovereign nations control and manage their borders and sustain the integrity of their immigration systems. These objectives are your duty, and I expect nothing less from you and from the men and women of CBP.

Now let me turn to my distinguished member, Ms. Roybal-Allard, for remarks she may wish to make.

ROYBAL-ALLARD:

Thank you, Mr. Chairman.

And good morning, Commissioner. And welcome.

The discretionary budget request for U.S. Customs and Border Protection in fiscal year 2017 is \$11.3 billion, which is an increase of \$609 million above the fiscal year 2016 level.

About half of that increase, however, is attributable to the proposed transfer of the Office of Biometric Identity Management from NPPD to CBP.

You have served as commissioner now for nearly two years and CBP has made good progress in a number of areas under your leadership. And I'd like to highlight some of those. This includes the establishment of a Task Force West to support the Southern Border and Approaches Campaign; the assumption of criminal investigative authority for allegations of misconduct and use-of-force incidents involving CBP personnel.

The expansion of the pre-clearance program, which helps address threats before they reach our borders; a new use-of-force policy and the establishment of a use-of-force center of excellence; business transformation efforts that are reducing wait times for passengers and expediting the flow of commerce; good progress toward a more rigorous, technologically-based methodology for determining situational awareness at the border; a more risk-based approach to border security; and enhanced capacity to target high-risk individuals and cargo, including a new counter-network program focused on disrupting transnational criminal organizations.

So I think there is a lot that you can be proud of, even if there are still significant challenges that still remain.

One of those challenges has been the struggle to hire new agents and officers, and manage attrition, particularly for Border Patrol agents. As a result, the number of Border Patrol agents and CBP officers are significantly below the target levels, as the chairman mentioned.

Other ongoing challenges include humanely managing the influx of unaccompanied children and families fleeing violence in the Northern Triangle.

So I look forward to a productive conversation on these and other issues. And once again, I appreciate your joining us.

CARTER:

All right. Commissioner, we'll hear from you and what your comments are. We all have copies of what you submitted to us and, of course, they're entered for the record.

You may proceed.

KERLIKOWSKE:

Good. Well, Chairman Carter, Ranking Member Roybal-Allard and members of the subcommittee, good morning. During this past year, I've certainly had the firsthand opportunity to travel not only throughout the country and visit with thousands of our personnel, but also to meet with our international partners in customs and border protection, particularly in South America, Mexico and Canada, and these are countries we share common goals with, and strengthening both our countries' security, but also our economic growth.

I highlight this, because with all of our responsibilities to protect the United States from the entry of dangerous people and materials, we also have to facilitate the flow of lawful international travel and commerce.

And these goals are the same for many other countries. While I'm reminded of the diversity of our operational environments, the complexity of our mission and the commitment of our dedicated personnel.

And thanks to the critical resources that this committee has given to CBP, we've not only enhanced border operations, we've also laid the foundation for the changes that will increase CBP to be more operationally agile, effective and efficient.

Many of these changes are focused on (inaudible) \$13.9 billion reflects some of the progress that we've made and supports our continued investments in personnel, and technology and in initiatives that are going to strengthen our security and streamline our business process.

Detecting and preventing travel to the United States by a foreign terrorist fighter is our highest priority. And we recently made additional enhancements to the electronic system for travel authorization. We started immediately enforcing the restrictions in accordance with the Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015, and we canceled 17,000 travel approvals immediately.

We're expanding pre-clearance operations. I'd like to express my thanks to the subcommittee for the statutory changes that significantly improved the reimbursement mechanism to fund CBP's preclearance operations. It's a critical capability for detecting and addressing threats long before they ever arrive at our borders.

Furthermore, with the funding provided by the committee and the Consolidated Appropriations Act of 2016, we're initiating a counter- network operations in our National Targeting Center.

This capability enhances our comprehensive understanding of emerging threats, not only for foreign fighters, but also for drugs and human trafficking. And it advances our ability to disrupt the networks from that Targeting Center many of you have visited.

Along the Southwest border, we monitor and respond to the flow of unaccompanied children and families. The numbers in fiscal year '15 declined from their spike in '14, but we did see an increase in the numbers this past fall. And we remain concerned about seasonal increases later this year and in fiscal year 2017.

The budget requests a \$12.5 million increase in resources for CBP to provide for the safety and security of children and families who are temporarily in our custody, in addition to a contingency fund of up to \$23 million to support up to 75,000 children to ensure that we can respond to that potential surge.

Along with all of the border environments, our land, air and sea, continued investments in technology, surveillance technology, other operational assets really increase our situational awareness.

And the cornerstone of our approach to identify, disrupt and interdict illegal activities is key.

And recapitalizing some of the most essential equipment that was mentioned, radios and vehicles, increases our ability to respond quickly and to keep our front line officers and agents safe.

And we continue to improve the secure and efficient lawful movement of people and goods through the ports of entry. And that's a function critical to our economic competitiveness.

The budget request enables us to continue front line hiring efforts, incorporate new technologies into our travel and trade processes -- including biometric exit -- and expand our public-private partnerships, key components of our efforts to optimize resources, ease the flow of low-risk, lawful trade and travel, and free agents and officers to focus on high-risk cargo and high-risk people.

In all our operations across the nation and the globe, we continue to instill the highest levels of transparency and accountability. In this past year, we implemented new use-of-force policies, we continued to test camera technologies to find solutions that can meet the wide variety of operational terrains and climates where our agents and officers work.

Well, thank you for the opportunity to testify. Thank you for your support. And I'm happy to answer your questions.

CARTER:

Thank you, Commissioner.

Before we begin with the questioning, I want to recognize Hal Rogers, chairman of the Appropriations Committee, for any statement he wishes to make.

ROGERS:

Thank you, Mr. Chairman.

Commissioner Kerlikowske, Gil, good to see you again. Thank you for being here to discuss your budget for CBP.

I've greatly enjoyed our association and working together in your earlier chapter of your life, when you were director of the Office of National Drug Control Policy, the drug czar, and of course, your experience back home in the police of that wonderful city.

But in the drug czar role, you graciously took time away from your busy schedule to visit my Appalachian district to learn more about our challenges facing prescription drug abuse.

So, you bring a unique perspective, I think, to your job at the CBP.

As the prescription drug epidemic has exploded onto the national scene, now giving way to heroin, controlling the influx of this dangerous drug and the violence that it fuels in our border communities and elsewhere around the country is a top priority for you and for us.

So I look forward to hearing about your efforts to reduce the supply of opioids in the country.

Over 60,000 employees, CBP is one of the world's largest law enforcement agencies, if not the largest. You're tasked with protecting the United States through a number of critical missions, including preventing the illegal entry of terrorists, weapons, narcotics from the air, sea and land.

On a typical day, I'm told, CBP welcomes nearly 1 million visitors, screens more than 67,000 cargo containers, arrests more than 1,100 individuals and seizes nearly 6 tons of illegal drugs. That's a day's work. You're busy, to say the least.

And before going into the merits of your budget request, I'd like to express my sincere gratitude to the men and women under your charge, including yourself, who serve our great nation, many of whom put themselves in harm's way on a daily basis to keep the homeland safe and secure.

Your fiscal '17 budget request, \$13.9 billion, which constitutes an increase of \$687 million above the current level, I want to commend you on the improvements you've made to the Visa Security program, although I do have some concerns with the gaps that still remain. And I also look forward to the expansion of the pre-clearance program, which will push our borders further and further out.

Your appearance here today and our testimony on this issue reminds me of this subcommittee in 2003, when we ushered it into existence and I became the first chairman of this subcommittee. And have followed fairly closely since the activities of the department. And it's a tough, tough job.

Mr. Chairman, you're trying to meld together some 22 federal agencies. I think there's 16 different unions and like, 20 different pay scales. So the work continues and we've got our work to do, as well.

But you're on the front line. There's many positive things in your budget request. I'm deeply disappointed by the efforts to ratchet down border security and enforcement of our immigration laws.

For example, the budget proposes a reduction of 300 Border Patrol agents, decreasing the statutory floor to 21,070, at a time when drug cartels from Mexico and elsewhere are flooding our communities, urban and rural alike, with heroin. We've never seen the like, and yet the budget proposes we cut back on the people fighting that surge and that scourge in our country.

Others in the administration have rightfully labeled the abuse of opioids as a national epidemic. And I cite Tom Frieden, the director of Centers for Disease Control, who says that overdose deaths, heroin and prescription pills, are taking more lives than car wrecks in the country. He calls it a national epidemic. And yet, we hear from the administration, well, let's cut back on trying to fight it.

Well, don't be surprised if things are different when we get through with your budget in that regard.

We lose a hundred Americans every day to abuse. And yet, you've proposed to reduce our first line of defense against the entry of these dangerous, deadly drugs, without the benefit of any supporting analysis that Border Patrol's mission won't be compromised.

As I mentioned, you've been to my district, you've seen firsthand how these drugs are destroying rural communities in Appalachia. And of course, you've been all over the country and you see the same.

While you and I agree that reducing demand through treatment and education is critical, we mustn't lose sight of the fact that enforcement remains a critical prong of our holistic strategy on this scourge. Stakes are high and we must do everything in our power to combat this scourge.

I look forward to continuing to work with you to provide the resources that you need to do just that.

Another crisis that is being caused by the drug cartels is the massive influx of unaccompanied alien children and families at our Southern border. We've seen a surge in drug cartel and gang violence across Central and South America, fueled by the production and trafficking of drugs. These thugs and murderers are wreaking havoc on millions of people, forcing many to flee to other countries, including the U.S.

Recently, there's been an unprecedented spike in unaccompanied minors crossing our Southern border. In the first four months of fiscal '16, Border Patrol has apprehended 20,000 unaccompanied alien children. That's double the number that were apprehended in the same time frame last year.

Unfortunately, this humanitarian crisis does not appear to be subsiding anytime soon, the reality of which is reflected in your budget submission. You've requested resources to support a revised baseline of 75,00 unaccompanied child apprehensions, as well as a contingency fund should that number be exceeded.

Our committee will analyze this request, and my hope is that we can provide the necessary resources for CBP to handle the influx of these children at our borders.

In addition, virtually half of the 5.2 percent increase in your budget request comes from the transfer of \$305 million for the Office of Biometric Identity Management, which as you know, like fees, requires authorization from other committees.

Unfortunately, the president has sent us a budget after budget after budget that requests large increases in funding and offsets them by using budget gimmicks, like increasing taxes and fees that he knows are dead on arrival here on the Hill.

Finally, I'd be remiss if I didn't mention President Obama's executive order on immigration. As you know, this still remains one of the most divisive issues in Congress and in the country, indeed, at large.

The president's unilateral action demonstrates that he has no intention of working with Congress or respecting our constitutional authority. Unfortunately, you and your agency are caught in the middle of this fight, and it has made passing an annual appropriations bill for the Department of Homeland Security incredibly difficult.

It also makes it impossible to move forward on any meaningful immigration reform while the president remains in office.

So, Mr. Commissioner, thank you for being here today. Thank you for your service to your country. And we thank you for leading this agency.

CARTER:

Thank you, Mr. Chairman.

Commissioner, I'm going to start off with the questioning here.

And the flag I raised as I was talking to you, staffing is something that you are concerned about, I'm concerned about, and I want us to discuss it.

We'll talk first about the Border Patrol and afterwards about aviation hiring.

I understand that the Border Patrol is currently 1,268 agents below the mandated personnel floor of 21,370, a floor that's not new, it's been around for a while. So the under-execution of agents is not due to hiring up to a new level as it is with the Customs officers, but sustaining the existing workforce.

I'm going to have a series of questions. We're going to pause and let you answer some of those, then we'll move on.

What are you doing to address the hemorrhage of agents from the Border Patrol? I would note that while we have been hiring CBP officers, we have consistently lost Border Patrol agents over the last year.

To ensure that stations are manned to the suggested and needed levels, do you foresee a need to reinstate a hardship designation for certain stations or create other incentives to help prevent the attrition of agents?

With the reduction of overall numbers, do you anticipate a need to reexamine and restructure how the Border Patrol mans stations and forward operating bases?

KERLIKOWSKE:

So, I share very much the concern that we've discussed on this hiring issue. And for the Border Patrol to be in a downward spiral, which means that we are not able to hire as fast as attrition, is very concerning.

I've talked with your staff also about the number of programs that we've put in place, particularly to speed up the process. So in these new hiring hubs, we can get people through in 160 days until, at times, well over a year. That's important.

The close cooperation with the Department of Defense, as people leave the Department of Defense and the active duty military, to be able to hire them into the Border Patrol or into Customs and Border Protection is particularly important.

Working with Congress on additional pay for some of the very difficult locations that they work, on hardship reimbursement would be particularly helpful along with things that we've discussed around the age issues.

When we talk about the Border Patrol, you know, we realize that their salaries were cut anywhere from 3 to \$5,000 as a result of the AUO, the additional overtime money.

But we've now transitioned to the Border Patrol Pay Reform Act. You should be very happy to know that 96 percent of the Border Patrol agents who have now opted into the number of hours that they would work have opted into the maximum number. So instead of a 40-hour work week, they will work a 50-hour work week for the additional money, which they are clearly deserving of.

And in turn, that actually results in us getting more boots on the ground.

CARTER:

The F.Y. '17 request calls for a reduction of 300 in the overall strength of the Border Patrol. However, we understand that many stations along the Southern border are facing staffing setbacks for a variety of reasons. There's no empirical data to inform how many agents we need.

How do you justify a reduction in manning when CBP cannot articulate a validated requirement for the number of Border Patrol agents, combined with the technology requirements to surveil the border? When will we see a validated requirements and resourcing model similar to the model used by the Office of Field Operations?

KERLIKOWSKE:

Yeah, I don't think there's anything that's more frustrating to the executives of the Border Patrol or myself or certainly the secretary on not being able to have a set of metrics that actually said how many Border Patrol agents do you actually need?

It has been unbelievably difficult and complex, and it's as complex as when we tried to decide how many police officers we needed in Seattle versus how many police officers were needed in a city like Washington, D.C.

But we're closer. We're much closer now to developing that set of metrics that would be helpful.

And as you know, the offset in the reduction of the 300 personnel would be to fund radios, improvements in the radio system, the vast majority of which would go to the Border Patrol and to their vehicles, many of which now are reaching a lifespan that makes them not as serviceable as they should be.

And there's nothing more frustrating than having an agent who can't go out to do patrol, because the radio is not operable or because of the vehicle. So we're looking at using those funds for that.

CARTER:

Commissioner, while we have long discussed the hiring of Customs officers and Border Patrol agents, I'm equally as concerned with the vacancy for area interdiction agents.

Marine interdiction agents and air crew enforcement agents, by your own numbers, CBP is 12 percent below the goal for air interdiction agents, 93 below the goal of 775 agents.

How can we efficiently utilize our air assets if we don't have enough pilots to fly the aircraft? It's my understanding that Corpus Christi is only manned to fly two, maybe three missions at a time, yet we have six P-3s and three UASs stationed at the facility.

Do we hire more agents or rehire or retire the aircraft? Or are vacancies impacting air operations?

Further, I hear pilots coming out of the military, who have been flying combat missions overseas, are failing the CBP polygraph. What is CBP doing to address hiring and polygraph issues? How do we address air crew vacancies for the P-3s, who are mostly former Navy, when the Navy is no longer training P-3 air crews?

KERLIKOWSKE:

So, one of the difficulties in hiring for air and marine is that it's a very competitive environment. In one of my last flights, the first officer had been a pilot for us in San Diego and was now flying for Delta. And so we know and we've seen this huge increase in both domestic passenger travel and also international travel by air. So we're in a competitive environment.

One of the difficulties has been, though, that this requirement that a pilot coming out of the military must also undergo the same level of scrutiny or screening that someone hiring from outside would go through. Quite frankly, they come with a top secret clearance if they're a pilot in the military. I don't see any reason why we can't continue to work with the Office of Personnel Management and others to bring them on board much more quickly without going through as many hoops as we would go through for others.

The last thing that I'd mention is that amongst all those different job descriptions in air and marine, we have, I think, four different pay scales. And we are interested in working toward the same law enforcement pay system that the FBI and the Marshals and DEA have, which is law enforcement availability pay, LEAP pay, which provides an additional 25 percent of their salary for the extra hours that they would normally work. And we'd kind of like to level that playing field for all of them.

So we'll continue to keep working on that. But of course, I think you know, too, our push has been to hire, with the appropriated money, the additional Customs and Border Protection officers, plus to stop the bleeding in the Border Patrol.

CARTER:

Ms. Roybal-Allard?

ROYBAL-ALLARD:

Commissioner, I would like to go back to the whole issue of border security and the fact that we don't have enough Border Patrol manpower there.

And we also hear a lot about the fact that, you know, we have to secure our border. And when I go back home, I hear a lot of anxiety about that, because the impression is that our borders are fairly open and that they're unprotected.

In practical terms, how does CBP define its border security mission? And what are the essential measures by which we should be judging CBP's performance?

KERLIKOWSKE:

So we look very much, particularly with the Border Patrol, between the ports of entry, we look very much at the security at the Border Patrol. Do they have operational awareness or what we'd call situational awareness? Do they know the number of people that may be attempting and the particular areas that they're coming across?

They also have the information and the liaison with their state, and city and county partners all along the border. And we know that many of those border cities, from El Paso to San Diego to Tucson, have some of the lowest crime rates of any of the large cities in the country.

So understanding and recognizing that there are also places, and this is where we use our unmanned aircraft, that there are also places that are so desolate and so rugged and so difficult that we're not seeing people attempt in any way, shape or form to cross or enter the border illegally.

Well, if they're not using those locations, we need to take those finite Border Patrol resources and allow them and put them in the places where we do have greater numbers.

But you know, as a police chief, I was always held accountable for managing our people, responding quickly, making sure they were trained and had the equipment they needed, but I was never held accountable for a crime-free city, whether it was Buffalo or Seattle. There will always be gaps. And we will work very hard to make sure that those gaps are narrowed.

ROYBAL-ALLARD:

I'd like to go now to an issue that we discussed during last year's hearing, and that's the treatment of unaccompanied Mexican children who cross the border, which is different from those children that are coming from Central America.

Last July, GAO released a report on the treatment of unaccompanied children in DHS custody, which made a number of recommendations pertinent to Mexican children.

GAO found that CBP personnel were not appropriately following the requirements of the Trafficking Victims Protection Reauthorization Act.

For instance, CBP forms lacked specific indicators and questions agents and officers should use to assess whether a child has credible fear of returning to Mexico, could be at risk of being trafficked if returned, or was capable of making an independent decision to voluntarily return.

The report also found that CBP personnel did not document the basis for the decisions they made relative to these factors. GAO found that CBP repatriated 95 percent of unaccompanied Mexican children it apprehended between 2009 and 2014, including 93 percent of Mexican children under the age of 14, even though CBP's 2009 memorandum on the treatment of unaccompanied children states that children under 14 are generally presumed to be unable to make an independent decision.

I saw that the department recently signed new repatriation agreements with Mexico. And to what extent were those agreements in response to the GAO report? And what specific changes to repatriations do they entail?

KERLIKOWSKE:

Well, as a result of the questions in the discussion last year and also as a result of the GAO, we did a new series of training for the Border Patrol to make sure that those questions are appropriately asked and that the responses are appropriately recorded for that decision involving Mexican children.

At the same time, within the last month, Assistant Secretary Bersin and Director Saldana from ICE were in, I believe, Arizona to sign new repatriation agreements with Mexico to make sure that there was close coordination with the government of Mexico upon returning someone, so that they wouldn't be returned at night, they wouldn't be returned in an environment that may be considered hostile or dangerous, and that their property -- whatever property they crossed the border with -- would be also returned with them.

So I think that progress in the training and progress in the additional repatriation agreement with Mexico is helpful. And as you know, the vast majority of the unaccompanied children that we are apprehending are coming from the three Central American countries and really not Mexico right now.

ROYBAL-ALLARD:

I see that my time is up.

Thank you, Mr. Chairman.

CARTER:

Chairman Rogers?

ROGERS:

Mr. Commissioner, you and I have been working many times together over the years to curtail drug trafficking and abuse. I've said many times and I've heard you say it many times that there is no one answer to the problem, that it does take enforcement, treatment and education, a holistic approach.

The president's budget rightly puts prescription drug and heroin abuse in the forefront, but largely focuses on treatment and the demand side of the equation.

If we want to see any further success in treating victims of abuse and educating the public about the danger that's present, I think that we've got to be sure that enforcement on the front end is emphasized, and in fact, ironclad.

Your agency is charged with protecting the borders and you've got the primary role to play in all of this. DEA says heroin seizures in the U.S. have increased in each of the last five years, nearly doubling from 2010 to 2014.

Your agency reports seizing over 9,600 ounces of heroin during fiscal year '14. And yet, your budget would reduce the number of agents patrolling our borders by some 300.

How can you justify taking boots off the ground, in spite of this huge increase in heroin interdiction?

KERLIKOWSKE:

Mr. Chairman, I go back to a couple of things. One is that on the heroin issue, the majority of any heroin that we seize is not between the ports of entry, it's smuggled through the ports of entry, whether it's in San Isidro or El Paso, or whether it's at JFK Airport.

Heroin seizures almost predominantly are through a port of entry and either carried in a concealed part of a vehicle or carried by an individual.

We don't get much heroin that's seized by the Border Patrol coming through. And I think, just because there are a lot of risks to the smugglers and the difficulty of trying to smuggle it through.

But when I look at the number of Border Patrol agents that we are already down and I look at offsetting, being able to provide additional radio equipment and additional vehicles as a result of

using some of that money or the majority of that money to the Border Patrol, I think it's a decision that will help.

We know that technology is better for their safety and it's also better to get them out to be able to patrol.

ROGERS:

Changing subjects. The Visa Waiver Program permits citizens of 38 different countries to travel to the U.S., either for business or tourism purposes up to 90 days without a visa. In return, those 38 countries must permit U.S. citizens to remain in their countries for a similar length of time.

Since its inception in 1986, that program has evolved into a comprehensive security partnership with many of America's closest allies. The department administers the Visa Waiver Program in consultation with the State Department, and they utilize a risk-based, multi-layered approach to detect and prevent terrorists, serious criminals and other bad actors from traveling to this country.

With the advent of the terrorist era that we're in now, the Congress deemed it impossible to live with that kind of a free border program with 38 countries in the world for fear of terrorist infiltration undetected.

So, we passed the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, which established new eligibility requirements for travel under the Visa Waiver Program to include travel restrictions.

They don't bar a person from coming to the U.S. point blank, but they do require that the traveler obtain a U.S. visa, which then gives us the chance to investigate the background of the person.

So in December, that law was passed. Can you outline for us the programmatic changes concerning aliens from these countries, how soon you'll be able to implement the changes if they're not already there?

KERLIKOWSKE:

So Secretary Johnson several months before the passage of this authorized an additional series of questions to be put into the ESTA, this system in which we would record information with more detail and more specificity.

For instance, more specificity when it comes to the location that a person would be staying, additional contact information, such as cell phone and email, those types of pieces.

And then when the law was passed, particularly the fact of dual citizenship with the four countries that were outlined, we canceled 17,000 travel approval requests that had already been basically approved.

As you know, this ESTA system lasts. You can use it within a two-year window.

One thing that isn't always recognized with this system, though, is that a person is continually vetted. Those names are run against databases every 24 hours. So if you applied and you weren't going to travel for another eight or nine or 10 months, every single day your name would be run against the series of databases because we don't want you suddenly to say now I'm going to go ahead and use the ESTA, it's already been approved, I'm going to get on a plane. And we say, well, wait, in the last 48 hours or 72 hours, some information of a derogatory nature came up and needs to be worked on.

We work closely with the Department of State. I testified recently at two hearings on this issue. I think the fact that we were able to cancel those 17,000 visas or ESTAs and require that those individuals then go back to an embassy or a consulate and get a waiver and we will continue, including standing up with the National Targeting Center along with the State Department personnel sitting right next to us, a terrorist prevention group that will look at this much more in-depth on a 24-hour basis.

ROGERS:

Are you properly staffed to handle this increased workload?

KERLIKOWSKE:

In the budget, we requested an additional, I believe, 40 personnel to go to the Targeting Center. I would think that frankly if there's a real jewel in the crown of CBP when it comes to prevention, I would say our National Targeting Centers for cargo and passenger anticipation of things that could be dangerous or people that could be dangerous.

And I know a number of members and a number of staff have visited it. And I would encourage them to see that 24/7 operation.

But asking for these additional people, including working in a Counter Network Division to work on human smuggling and drug smuggling is a good prevention technique.

ROGERS:

The legislation also required program countries to validate passports, report lost or stolen passports, use INTERPOL screening and start passenger information exchange agreements. Can you tell us what these requirements are and how they'll be put in place?

KERLIKOWSKE:

Yeah. They must vet or they must check that foreign passport against INTERPOL's lost and stolen database. They must do that.

And the requirement, you know, with visa waiver that I think is not often talked about, but is really quite helpful, is the fact that it brings these countries who are like-minded, who want to prevent

terrorism and want to prevent smuggling, it brings us together in a better information-sharing environment.

We have in CBP a permanent liaison to INTERPOL. We have two permanent liaisons to EUROPOL policing. And we have at our immigration assistance program a number of CBP personnel at airports where they don't do enforcement on foreign territory, but they certainly work closely with their foreign counterparts.

And I think that's part of the benefit of, frankly, the Visa Waiver Program. It brings us together to all assess risk and to realize that we're all in the same boat.

ROGERS:

The legislation directed you to terminate program countries for failure to comply with certain requirements. Do you foresee the termination of any countries from the program?

KERLIKOWSKE:

I'm not familiar with that. I know that Secretary Johnson in counsel with Secretary Kerry and also the director of the Office of National Intelligence just added three additional countries to the original four that Congress passed.

So that increases our workload, but it also improves our risk assessment and our safety and security.

ROGERS:

Thank you, Mr. Commissioner, for your service.

KERLIKOWSKE:

Thank you.

CARTER:

Mr. Price?

PRICE:

Thank you, Mr. Chairman.

Welcome, Commissioner. Glad to see you here again.

KERLIKOWSKE:

Thanks.

PRICE:

I want to pick up where the ranking member left off on the question of border security, how you conceive of that going forward in terms of the mix of elements that would go to make up the kind of situational awareness and border security you're talking about.

I understand this is a mix of personnel, infrastructure and technology that we're talking about here. I share the concern that's been expressed repeatedly this morning about the shortfall in personnel that this budget would apparently leave us with, something like 700 Customs officials, 1,300 Border Patrol agents.

My own view, and I think it's widely shared, is that in the long term, true and effective border security isn't going to be achieved, even with all the money we might throw at it, without comprehensive immigration reform.

And since it's been brought up here this morning, I think maybe a little reality check is in order.

The president in fact pushed very hard in cooperation with the Congress for years for comprehensive immigration reform. And he worked effectively at it and successfully with the Senate. The Senate passed a bipartisan immigration reform bill.

But then the House never took it up. That's the problem. That's the problem with comprehensive immigration reform.

And it was only after months, indeed years of that kind of stonewalling that the president did take executive action. It was limited action, it is very well-reasoned and legally sound action, I believe, to exercise a degree of prosecutorial discretion with respect to whom we initiate immigration enforcement on.

And of course, then the Republicans take that executive action as a new excuse, a new excuse not to act. So frustratingly we fall short, fall short of the comprehensive immigration reform that might deal with this larger issue.

So we return to border security. And that issue, too, has become inflamed in recently months, thanks largely to the presidential campaign.

People with little or no immigration enforcement or policy experience, including some high-profile presidential candidates, have said once again we can simply build a fence. We can seal the Southern border. And one actually says we can send the bill to Mexico.

Now, when I was chairman of this committee the fence loomed very large. And we appropriated on this subcommittee for hundreds of miles of pedestrian and vehicle fence. We attempted, with mixed success I have to say, to exercise some measure of cost/benefit analysis with these various segments of the fence. But we built it.

There was a huge political push all of the time to build that fence. Well, now it's back. Now the fence is back, and I'm going to give you a chance to comment explicitly on this.

So what does a secure border look like? And do we need more fence?

KERLIKOWSKE:

It does mean that when we have that situational or operational awareness and we know what's coming and where our gaps are, that that's particularly helpful.

And the fence that has been built, I think it's approximately 600 miles of different types of fencing, including tactical fencing, very high fencing, double and triple fencing in some locations, and some to prevent a vehicle.

The Border Patrol uses that type of technique and those types of fence technologies in order to move people that may be attempting to come across into different locations where they can have more resources.

We also, you know, clearly recognize that anyone who has traveled and spent time on the border, as I think everyone of the members here has, that there are lots of locations in which fencing and walls would not be able to be built, would not work and would not be able to withstand.

And even with the fencing that we have, we spend considerable resources repairing and keeping that fencing in line. So you know, we think it's the combination of all of the other things that we do, tactical aerostats, patrols, infrared, fixed towers, ground sensors, on and on and on, that make for a more secure border.

PRICE:

Would it be your judgment that the budget you've submitted gets that balance right in terms of the mix of elements going forward? Are there major gaps, major omissions that you would look to be addressed in later years?

KERLIKOWSKE:

No, I think the budget that we've submitted is a very realistic budget. I think that I would be very happy, as I'm sure every member of the committee would be, if we could hire and, again, get the number of Border Patrol agents and Customs and Border Protection officers fully trained and on the job, that right now that is the number-one priority.

Because regardless of all the technology, this is still a very labor-intensive and people-oriented kind of business, whether it's at a port of entry or between the ports of entry.

But I think we've submitted a realistic budget that will help us get there. And quite frankly, the committee has been very supportive of a number of initiatives in the past. And I think that's why we've made progress.

PRICE:

Thank you.

Thank you, Mr. Chairman.

CARTER:

Mr. Stewart?

STEWART:

Thank you, Mr. Chairman.

Commissioner, thank you for your many years of service, and to your peers as well, law enforcement all around the country. It's a difficult time to be in law enforcement and want you to know that many of us support you and the efforts that you're trying to undertake.

I'm going to ask you a couple of questions and I don't think you're going to be able to answer them, at least I'll be a little surprised if you are, but I'd kind of like to explore do we know what we don't know and how good of a feel we have on some of these things that we may not, you know.

For example, I appreciated and I wanted to follow up on the chairman's conversation about the Visa Waiver Program. And you indicated there and it's in your written testimony something like 17,000 who have been denied or revoked today on the ESTA program.

Do we have any idea of those 17,000, is that 90 percent of those who maybe, you know, we should have identified, is it 50 percent? Do you have a sense for how successful that is?

KERLIKOWSKE:

The 17,000 are the dual citizens with those four countries.

STEWART:

Right. So that's fairly easy to identify.

KERLIKOWSKE:

And I would tell you that looking at it, it is a mix of people. Have we been able to -- is there somebody in that mix that probably might not have or should not have gotten that? I think that's very possible.

But also, it's people who have fled Iran during the overthrow of the shah in 1979 that haven't been to Iran in 40 years, but still have dual citizenship.

STEWART:

Yeah.

KERLIKOWSKE:

And they were canceled, too. So you know, it was a broad brush, widely supported by certainly Congress and the president.

STEWART:

But that's a relatively easy thing to do, identify those who have the dual citizenship of those targeted countries.

KERLIKOWSKE:

Right.

STEWART:

And I'm guessing you identified most of those people, wouldn't you say?

KERLIKOWSKE:

Well, we identified them through the fact that they had already -- we knew in the system that they were dual citizens.

STEWART:

Much harder, though, to identify those that the visa waiver legislation required us to identify, those who had traveled to some of these serious, not Syria, but some of these questions or countries question.

Do you have a sense for how successful we've been in identifying those people? And let me elaborate and then I'll allow you to answer.

That's a much harder thing to do. And we need partners in order to do that. They may be traveling from Europe that we would be unaware of that travel were it not for our European partners or counterparts who have made us aware of that.

And Department of Homeland Security, the director really was pretty firm on several countries, France, Belgium, Germany, Italy, Greece, gave them a February 1 deadline to fix what he called crucial loopholes.

Can you give us an update on how our partners are doing in providing us this information? Because again, we would be unaware of it without their input and they hadn't done a good job of doing that previous. Have they gotten better? Are our partners doing a better job of giving us that information?

KERLIKOWSKE:

Visa waiver, it results in a lot of partnerships, including the exchange of information. So one, the relationship, particularly after the attacks in Paris, continues to get strengthened about the necessity of exchanging and sharing information.

You are exactly correct when you talk about that it is much more difficult then to detect people because of either broken travel.

So we rely, one, on a partner, another partner in another government to perhaps tell us about that. Also, people do self- declare about having traveled to one of the countries.

And then lastly, when you enter the United States and that passport is gone through by that Customs and Border Protection officer, just as we did during Ebola screening, we do come across people that have traveled to one of those countries. I think 2011 was the cutoff data that you put in place.

STEWART:

So Commissioner, being short on time, let me just ask the question simply. Department of Homeland Security asked these identified partners, they gave them a February 1 deadline to close these loopholes. Would you say that they've done that effectively?

KERLIKOWSKE:

I'd say they're much better, but I couldn't answer for every one of them and I'd be happy to provide that information to you or your staff.

STEWART:

I wish you would.

KERLIKOWSKE:

OK.

STEWART:

And I think it's something it's we're going to have to, you know, keep our eye on, because some of them are more effective than others.

And let me ask very quickly, one of the things that we identified and I think many of us recognized as something that we had to expand our capabilities, and that was using social media to identify some who may be entering our country and pose a threat.

In San Bernardino, there was indications that there were some social -- I'm not talking about the radicalization, I'm talking about those who were maybe radicalized, trying to enter a country. And if we had used social media as a tool, we would raise the red flags and be able to say this person is someone we should look more closely at.

Previous to that, we hadn't done a good job of that. I don't think it was a policy to use that tool. Can you update us, how is that being implemented with using social media to identify those individuals who may be a threat as they're trying to enter the country?

KERLIKOWSKE:

Sure. The social media checks would certainly apply throughout DHS to USCIS, to ICE, et cetera. And Secretary Johnson has stood up a task force within DHS to look at expanding and moving forward on the ability to research and use information and social media that applies DHS-wide, not just for CBP.

STEWART:

Yeah. And do you know when that task force is supposed to give their report?

KERLIKOWSKE:

I believe General Taylor from intelligence and analysis is in charge as the chair of that task force. I don't know the date.

STEWART:

OK. We'll find out and we'll follow up with that.

KERLIKOWSKE:

OK.

STEWART:

Thank you.

KERLIKOWSKE:

Thank you.

STEWART:

Thank you.

CARTER:

Mr. Cuellar?

CUELLAR:

Thank you, Mr. Chairman.

Commissioner, thank you. I believe you said earlier this might be your last hearing. And I just want to say thank you so much for all the many years of service. I appreciate it.

And also appreciate your moderate approach to this. I'm from the border. Laredo is 96 percent Hispanic, most Hispanic city percentage-wise in the country.

I think people know my policies. You know, I'd like to see a moderate approach. We don't want to see open borders. We believe if somebody's put in detention they ought to be treated fairly, but that we should have detention, have some sort of deterrent.

At the same time, we believe in immigration reform, sensible immigration reform.

At the same time, we think the wall is a 14th century solution to a 21st century problem that we have.

So we'd like to see the moderation there because we want to see order at the border. And you know, just don't want to get political, but if the folks that I represent on the border wouldn't give me 95, 90 percent of the vote every time I run, so I assume they support my policies, which is pretty much what you do also, a moderate approach.

One of the things we've been talking about lately is to extend our border beyond the U.S.-Mexico border because we spend billions of dollars on the U.S.-Mexican border.

A couple of years ago, I think we put about 80 (million dollars), \$85 million to help Mexico secure the Southern border with Guatemala. I saw some figures that over a period of time they actually deported more people than Border Patrol did over the same amount of time. So just \$80 million did a lot to help Mexico extend, for us to extend our border.

We were in Costa Rica. The Cubans, that's totally different issue. But we were there, the Costa Ricans were telling us in December that the people who are coming in, trying to get into the U.S., they had people from Ghana, Somalia, Nepal and literally name the country and they were there.

So my question to you in extending the border out besides the U.S.-Mexico border, what else can we do to help the Mexicans and our Central American folks to help us secure our border? Because the more we stop outside the U.S. border, the better it is for us.

So if you want to address biometric equipment, training we can do. I know you're doing that, but what can we do to step this up?

KERLIKOWSKE:

Congressman, I think the government of Mexico has done a really admirable job, particularly in the last year-plus, in increasing and improving their border.

CBP and other components of DHS have a number of advisers and technical assistance, both in places like Tapachula and other locations, but also within Mexico City.

We visited the training center for those personnel. We visited the detention facility, I visited it particularly. They have made marked progress in the work that they've done.

And I think we couldn't be more pleased with the government of Mexico as a partner in this. So we'll continue to look at, can we assist in biometric identification processes, other types of things?

But I think the last thing, and probably the most important in all of this, would be that if those three Central American countries, Honduras, El Salvador and Guatemala, had better safety, better security, a better educational system for people and better hope for the people that live in those countries, they wouldn't be fleeing and making an incredibly dangerous journey to the United States.

As Ms. Roybal-Allard and I sat on the floor with a father not that long ago and his 4-year-old daughter, and he said, you know, we had several murders down the street. He said the last thing I needed to do is to leave my wife with one of our other children and for myself and my daughter to flee, this is in El Salvador, to flee and try to get to the United States where his mother lives. But he said, I can't raise her in that environment.

If those countries are more stable, I think people don't want to pick up and leave and come here.

CUELLAR:

Well, I hope you work with the State Department. Because as you know, Mr. Chairman, and members of the committee, we added \$750 million working with (inaudible) for Central America, the Northern Triangle. So hopefully you all are part of that process, because the more we extend our security out, instead of playing defense on the 1-yard line, but extend it to the 20-yard line, the better it is.

So there were \$750 million that hopefully you all will work with the State Department.

Thank you so much for your time and effort and your service.

KERLIKOWSKE:

It would be really helpful to have an ambassador, too, in Mexico to be able to work with.

CUELLAR:

Oh, I agree. I think Roberta Jacobson should be the ambassador and it's unfair that she's been delayed for something that has nothing to do with Mexico. It's very unfair to Mexico.

CARTER:

Dr. Harris?

HARRIS:

Thank you very much.

And thank you for being before the committee. And thanks for your service. You know, we've got your resume here and it's pretty impressive, including, of course, your service over at the Office of National Drug Control Policy.

So I'm going to follow up with what the chairman of the full committee asked about a little bit, which is the role of your organization now in controlling drug traffic.

I think there was testimony last year that your department or, you know, U.S. Customs and Border Protection doesn't have a zero- tolerance policy. That in fact people found crossing the border with marijuana or other drugs, actually there's no zero tolerance, you actually don't refer for prosecution everyone who attempts to enter our country and poison our youth.

So I've got to ask you, why?

KERLIKOWSKE:

I don't actually know of any policy like that. I know that people are apprehended with drugs, whether it's small amounts that they're carrying for some personal use, or whether it is multi-ton or multi-kilo loads. All of those, to my knowledge, would be referred to the United States attorney and it would not be up to Customs and Border Protection to make a decision for the Department of Justice as to whether or not prosecution would be accepted.

And frankly, if I did find out that we did have a policy where we were making those decisions rather than where they belonged with the Department of Justice I would reverse that policy very quickly.

HARRIS:

Well, you were head of the Office of National Drug Control Policy.

KERLIKOWSKE:

Right.

HARRIS:

Would you be disappointed with the Department of Justice if in fact they had set minimum amounts of marijuana to be brought into this country before it would be prosecuted?

KERLIKOWSKE:

I would tell you that...

HARRIS:

I mean, that seems like it would be a waste of time for your agents. Your agents go, you track them down, you find the drugs, they think they did a great job, you turn it over to the DOJ and DOJ looks the other way and says we're too busy.

KERLIKOWSKE:

I would tell you that I understand that, depending on the U.S. attorneys offices along the border, from Texas to California, that the number-one client for prosecutions is Customs and Border Protection.

We keep them busy with everything possible. I think there are clearly going to be cases that they are not going to, and these are questions better answered by them, but I think there are clearly cases that, given the finite resources that they have, that they are not going to be able to accept for prosecution, either because of prosecutorial merit or because they've set some guideline.

But I would tell you that we make those referrals all the time and we're happy to make sure that they have everything.

I have assigned five attorneys in our office to be cross- designated as assistant United States attorneys just to help out in those areas so that they can have additional prosecutors. And if we need to assign more attorneys to do that to help them out, then that's what we'll have to do.

HARRIS:

Thank you very much. You know, I was a little disappointed when back in 2009, I guess, you know, the administration decided and I think you agreed to stop using the term "war on drugs."

And honestly, I think if you look at the heroin epidemic we have now, it's exactly the result of the leadership of the country saying that we no longer have a war on drugs. Just my personal opinion, rhetorical question.

Let me go on to the Visa Waiver Program, because I just have a question about this. Because as you know, part of the controversy is that this decision was made to, on a case-by-case basis, permit waivers for people, business people from Iraq or Iran who are conducting business, I believe those are the two case-by-case, can you tell us, since that program was put in place, how many, since it was case-by-case, who makes those case-by-case decisions?

KERLIKOWSKE:

The process, if there was a request, and there's never been a request and to my knowledge there is not even a pending request for anyone to use that example, but we would use the unit or the group that we stood up in the National Targeting Center to review those.

There are a series of questions that a person would have to answer if in fact, for example, it was a business case.

We know that there are waivers already in existence, general waivers in the law for government officials and for military. But there would be a whole series of questions and we would have to validate through that system.

But right now, I don't know of a single, there is not a single pending request or even one that's been made.

HARRIS:

So Iran's objection seems to be much ado about nothing?

KERLIKOWSKE:

I don't know if it's merely too early in the process for some of these additional requests, but I do know that no request has been made.

HARRIS:

OK. And just one final point, and this would be pretty brief. It has to do with the integrated fixed towers contracts.

These were, you know, supposed to be important parts, the certification was delayed. Now there's no -- is there money in the budgets for the rest of these towers? Are they going to proceed on time?

KERLIKOWSKE:

There is money. And they are proceeding on time. The Border Patrol was required under the contract, and rightly so, to certify that these expensive pieces of technology are actually operational and are helpful. And I think as many members of the committee know, the attempt to build a virtual wall in SBI Net resulted in pretty significant investments of taxpayer dollars in some technology that did not prove to be useful to the agents on the ground that actually needed it.

As I understand it, the Border Patrol has certified that the integrated fixed tower is a useful, helpful tool that expands their visibility on the border.

HARRIS:

Thank you very much.

Yield back.

CARTER:

Dr. Harris, you'll recall that I mentioned it's a pretty strong rumor, at least on the Texas border, of the 200 pound rule on marijuana. I didn't get a response from the attorney general when I asked her about that.

Mr. Young?

YOUNG:

Thank you, Mr. Chairman.

Commissioner, welcome. Nice to see you. Thanks for what you do.

I want to talk a little bit about Customs and Border Protection's use of UASs, unmanned aerial systems. And I had gone down to the border last year, early last year, and noticed things, UAVs and aerostats. And can you talk a little bit about where those are being used, how they're being used and where they're being used?

Are you seeing a drop in border activity? Because it seems to me like many times this can simply be a real deterrent by seeing these intimidating blimps or drones up in the sky. And can you just reassure us or talk about the relationship between using the UASs in conjunction with your agents? And is one meant to supplement the other? You're not phasing out agents with the use of UASs, are you?

Can you just talk a little bit about this?

KERLIKOWSKE:

No, they're all designed to enhance and kind of, even in my earlier statement, the fact that it's still a labor- intensive job, it still requires boots on the ground. But it can be greatly enhances with technology.

So I think the tethered aerostats are particularly helpful, with the camera systems that are in them.

YOUNG:

Do you know about how many aerostats we have now?

KERLIKOWSKE:

I think we're at five and we just put another one in McAllen area, so I think we're now moving to six aerostats.

They're fairly expensive to operate because we use contractors to operate them. But frankly, I don't want to take a Border Patrol agent off the road and then have them operate the mechanics of the tactical aerostat.

So I think they are helpful. I'll be down in McAllen next week for my 12th or 13th trip and the agents down there feel that they are a definite deterrent and visible.

I kind of thought that even if we had some extras, without the equipment we ought to just put them up in the air and see how that works, kind of like when we'd park a police car with nobody in it and see if people slowed down.

YOUNG:

Or the inflatable tanks they used in World War II.

KERLIKOWSKE:

On the road. But we'll have to see if they take up my idea.

YOUNG:

Thank you for that.

Last year I asked you about guidance given to CBP personnel to keep the administration's policies in mind and if these priorities supersede the law. And last month, the House Judiciary heard testimony from a CBP agent that undocumented immigrants are no longer given a notice to appear order and are released without any means of tracking their whereabouts.

You know, I have serious concerns about this and I know some of my colleagues do as well. Are agents being directed to ignore the law? Or is this coming from within their own decision-making or are they given guidance on ignoring the law on this?

KERLIKOWSKE:

Well, they shouldn't be releasing anyone. And the Border Patrol shouldn't be issuing the notices to appear, without going through and without having ICE, Immigration and Customs Enforcement. So we don't need to be in that.

I mean, I think everyone is very familiar with policies in the past called catch and release in which people were not documented, reports were not as well-written, people weren't questioned. There is no one that's apprehended today, unless they're under the age of 14, that isn't fingerprinted and photographed, that isn't debriefed about how did you get here, was there a smuggling involved, who did you pay, how much did it cost, all of that information.

But we don't need and don't want and I would not stand by if the Border Patrol was releasing people without going through all of the formalities that are required.

YOUNG:

Well, did this concern you when this Border Patrol agent gave this testimony before the Judiciary Committee on this about...

KERLIKOWSKE:

So the concern I have is quite often the Border Patrol Council, which is the union, is probably not the most knowledgeable organization about what's actually going on.

I think unlike, you know, when I have police officers in Seattle, they would follow the law, then there is room within the law to actually do things. And if they weren't happy with doing that, it's kind of like, well, if you really don't want to follow the directions that your superiors, including the president of the United States and the commissioner of Customs and Border Protection, then you really do need to look for another job.

YOUNG:

Well, there's some serious concerns out there that the law is not being enforced. And last year when, with ICE, Saldana was here and she gave intimations and pretty much a statement saying that their goals and principles and priorities should take precedence, even over the law.

And so that's very concerning to myself and many others on this panel and just throughout America, wondering why if it's not happening, the law is not being enforced. It's a very serious thing. I urge you to keep an eye on that, please.

KERLIKOWSKE:

Thanks.

YOUNG:

Thank you.

CARTER:

All right. I think we'll start a second round.

First, going back to something one of my colleagues brought up, I think Mr. Harris.

The integrated fixed towers, the reality is that the first certification of one of these towers was last Friday. Am I correct? So it's a very, very current event.

KERLIKOWSKE:

Yes.

CARTER:

And on those towers, here's the question that Texans would like to know, when will your budget install towers in Texas? Or what will you use in Texas if not integrated fixed towers?

KERLIKOWSKE:

So I think that part of the delay with the integrated fixed towers was the fact that that contract was protested. And as we know, when a contract is protested it takes a long time then to overcome that.

But that fixed tower in Arizona is up and working. We know that the additional aerostat in Texas is very helpful. And if there are other locations, including those within Texas, in which that fixed tower would make a difference, then I would like to move forward with that.

I couldn't be more specific, but I'm happy to get back to you on that.

CARTER:

Well, it wouldn't be the first time that we have looked around and seen resources going to Arizona that we really needed in Texas. So I think I'm required to ask that question.

KERLIKOWSKE:

I got the message.

CARTER:

OK.

(LAUGHTER)

CUELLAR:

I agree.

CARTER:

We understand that the department's exploring an outcome-based approach to metrics that would measure the effectiveness of our border security. How is CBP working with the secretary on this initiative? And how will it change the current CBP metrics which are more input-based instead of outcome-based?

And what does the preliminary data suggest for border security between and at ports of entry? I understand the results differ compared with existing metrics.

KERLIKOWSKA:

Yeah, the secretary, and I think everyone, including CBP and the Border Patrol, is frustrated with either the lack of metrics or the metrics that exist. What do they really tell you?

And almost like I believe it was Dr. Harris, you don't know what you don't know would be one of the questions.

So the secretary brought in a number of people from the Department of Defense and others that have been working pretty closely with all of us to gather as much information as possible about what are the measures and what should be looked at and what are the determinations that would be most useful in things like determining the number of Border Patrol Agents, how secure is the border, what are we missing, et cetera.

It's very complex. I don't know the exact timeline, but I know that he is absolutely focused and intent on trying to have this done and out certainly before he leaves office.

CARTER:

So you don't really know anything, the difference between, you know, between input and outcome basis? Do you have some examples as to what the differences might be?

KERLIKOWSKA:

I don't. The last briefing I had from the people that had come over from defense was probably three or four months ago. So I'm not all that familiar with where they are now, because they wanted to gather a lot of information from ICE, not just Border Patrol, but also at our ports of entry.

CARTER:

Well, if you got anything that gives us a hint, would you share it with us?

KERLIKOWSKA:

I'll be happy to.

CARTER:

OK.

Ms. Roybal-Allard?

ROYBAL-ALLARD:

Thank you, Mr. Chairman.

And I think if we look back on the record of the last hearing last year, I do not believe that Saldana said or implied that the law should not be followed.

Commissioner, late last year, you briefed me on the results of CBP's review of body-worn cameras, which this committee supported as a way of potentially increasing accountability for CBP personnel as well as protecting them from unfounded allegations of misconduct.

The budget request includes \$5 million to continue examining how body-worn cameras might be used across CBP's varied operational environments while also looking at how the expanded or more efficient use of other camera technologies could be beneficial.

Can you elaborate on how this funding will be used and how that activity will be different from the feasibility study that CBP conducted last year?

KERLIKOWSKE:

Yes, ma'am. So we've tried to move beyond the fact that, one, Customs and Border Protection is a very camera-rich environment now. Every port of entry, certain checkpoints, lots of locations and including all the cameras that are along the border. So we have lots of cameras and we use a lot of cameras.

But expanding the cameras in two areas would be particularly helpful. One is that our marked vehicles do not have dash cameras, as many police departments have, like Los Angeles and others. We want to be able to use part of that \$5 million to put those cameras in those vehicles because we do end up in apprehensions and pursuits, et cetera, where that record would be helpful.

Expanding cameras at the checkpoints, the permanent checkpoints, the number would be helpful.

And also on our boats. We've had two fatal incidents, one off the coast of California and one with the British Virgin Islands within the last year, fatalities involving enforcement actions. And our boats are not equipped with those cameras.

The difficulty that we've had with body-worn cameras, and our air and marine agents will be testing them out as they interact with people at locations, but the difficulty with the body-worn cameras for our Border Patrol agents is that we did not find a camera that withstood the environment that they worked in, for more than about three months.

Since that time, we have had a number of discussions with vendors who have come forward with either ideas or ways to improve those cameras, because we think it would be helpful.

And you know, I spent time over coffee with a number of the agents who field tested the cameras. You know, they were very positive about it. The Border Patrol Council, the union in this particular case, has indicated support for body-worn cameras.

So we'll keep looking at the technology.

ROYBAL-ALLARD:

OK. And how long do you anticipate that this next phase will take? And when can we anticipate that CBP will make a decision about improving and expanding the use of cameras, including the body-worn cameras?

KERLIKOWSKE:

It's relatively easy to improve and expand on the cameras in all of the locations that I talked about, except for the agents out in the field in the rough terrain.

I would certainly make it a goal of mine before I leave office at the end of this year to make sure that we've developed body-worn cameras that agents can wear and rely upon.

ROYBAL-ALLARD:

And what progress has been made in addressing the major procedural and policy challenges associated with using the cameras?

KERLIKOWSKE:

I think the most help that we've gotten has been from the nongovernmental organizations who are very involved in body-worn camera issues for state and local law enforcement, they have been a part of the discussion over what would be the best policies.

But we also know, and I think the city of Los Angeles looked at a price tag just for that city alone of over \$50 million and wants to make sure, and I think you've brought this up, too, Mr. Chairman, you know, there are huge numbers of costs when it comes to retaining information, FOIA request, et cetera.

And all of that needs to be included in the analysis.

ROYBAL-ALLARD:

OK. When you arrived at CBP, I and many others had significant concerns about allegations of the improper use of force and other types of misconduct among CBP personnel. And a short time later in 2014, you updated CBP's use-of-force handbook, incorporating many of the

recommendations made by the inspector general and in the Police Executive Research Forum's review of CBP use-of-force cases and policies.

You also announced the establishment of a use-of-force center of excellence. The budget request for F.Y. '17 includes a \$4.2 million increase for the center, which is based on CBP's Advanced Training Center in Harper's Ferry.

Can you elaborate on the purpose of the center, what it has accomplished to date and how the proposed funding increase would be used?

KERLIKOWSKE:

So the center has been particularly helpful in two areas, one is less-lethal technology. There are a variety of less-lethal, from tasers to pepper ball launchers and on and on, that can be used before having to resort to the use of a firearm. And so part of the work that they do is the training and looking at that new equipment.

The other is the simulators. So we are in the process of purchasing 21 simulators that will be assigned throughout our field of operations, from Spokane, Washington, to Florida, where agents and officers can go through a simulation.

We make our own videos based upon the environment particularly that the Border Patrol works in. At the same time, we added a variety of fencing to the Border Patrol training facility in Artesia, New Mexico, so that agents could actually practice before they ever leave training, could actually practice in the environment that they were going to be operating in.

So we've seen great progress in that area and we'd like to make more. And that's part of the request.

ROYBAL-ALLARD:

Have you see the use-of-force instance decreased over the past year?

KERLIKOWSKE:

So our assaults on agents so far, year to date in this fiscal year, are down about, I believe, 25 or 30 percent. So assaults on agents are down.

We released our use-of-force information and our uses of force were, even though last year we did see a flattening or the same number of assaults on agents, we saw a reduction in the use of force by agents. And part of that is a result of better policy, better training, better equipment, et cetera.

ROYBAL-ALLARD:

Thank you.

YOUNG:

(PRESIDING) Thank you.

Question, as you well know, it is critical for CBP officers to be able to transmit information they've gathered (inaudible) national security purposes. Concerned about some findings issued by the Homeland Security Committee that while CBP officers can pass along information collected at our borders, the process isn't (obviated) and it's not incorporated into the federal government's other intelligence and travel databases.

I see you're requesting \$48 million for (inaudible) intelligence staffing. I want to be sure, and I know everybody does, and maybe you can talk a little bit more about this, about the integration and collaboration between systems and technologies to address this and make sure this information is not being missed.

KERLIKOWSKE:

Yeah, when I arrived at CBP and examined each of the components, including the Office of Intelligence, I saw that the Office of Intelligence was very much tactical and very much focused on particular targeting. But that means that, as I described it, it was kind of a mile wide and an inch deep -- no, vice-versa. It was very much targeted or very much tactical.

And so it was very important that we brought in a new assistant commissioner who came from the Office of the Director of National Intelligence and the FBI and had been at the NSC and said let's broaden our intelligence scope and let's work more closely with the other intelligence agencies and feed the information to our targeting center. But let's not make our intelligence unit all targeting all the time.

We needed all of the other information. For instance, we're negotiating on pre-clearance with nine other countries. We need that broad-based intelligence. That's where we are, that's where we're headed. And the relationship with the intelligence community to be able to use or access other databases is progressing well.

YOUNG:

It's progressing well.

KERLIKOWSKE:

It is.

YOUNG:

Do you sense any impediments that you're facing that you need to overcome that we can help with?

KERLIKOWSKE:

No, we couldn't have better -- you can always help.

YOUNG:

Yeah.

KERLIKOWSKE:

But we couldn't have better partners than Director Clapper, than Director Comey and others. And I think they see the value and the importance of what CBP brings to the table on these issues.

YOUNG:

Thank you for that.

KERLIKOWSKE:

Thanks.

YOUNG:

Mr. Price?

PRICE:

Thank you, Mr. Chairman.

Commissioner, I'd like to ask you about two distinct, but related areas to push our borders outward, as we say. The first, cargo screening overseas; the second, pre-clearance for airline passengers.

First on the cargo screening, as you know, the 9/11 Act required CBP to scan 100 percent of maritime cargo originating in foreign ports prior to landing on American shores. For a variety of reasons, from costs to technological constraints to inadequate infrastructure at many harbors, this requirement remains illusive. Perhaps it's not ultimately possible.

I think this subcommittee has recognized that. In fact, in our 2016 report we acknowledged as much. We acknowledged the expectation that the department, in light of this, would provide to the Congress aggressive, alternative requirements that build on the layered secured capabilities achieved to date and that could be realistically achieved within the next two years, I'm quoting.

So we directed CBP to provide a briefing within 45 days of enactment on its near-term and longer-term plans for the improvement of maritime cargo scanning at foreign ports.

I just not so much a question as a comment. I do think you have a case to make here. There may be elements there. But I do think the subcommittee needs to be assured that in light of this very

difficult, perhaps impossible statutory requirement, that you are filling in the blanks with a risk-based screening process that we can rely on longer term.

So we put great stock in your filling out that information.

KERLIKOWSKE:

We do. The secretary has made it very clear the importance of this. We know we have a lot of screening systems in place, both overseas and here, but it does not meet the requirement of the law. And that's important.

And also, of course, the direction through the law for biometric exit. And that's why we've moved very aggressively since we were given the mandate in 2013 to move to a biometric exit process. We have a biographic exit program that is pretty robust, but we need biometric exit.

And I think the final part of this budget is the request that the Office of Biometric Information be moved to CBP, so that if you're going to hold me or the next commissioner accountable for biometric exit, we would have the tools and the resources to actually make that happen.

PRICE:

But my reference is to this prior statutory requirement for screening overseas. And as I said, this subcommittee, on a bipartisan basis, has been cognizant of the difficulties there, but at the same time we do need to be filled in as to what the short and long-term plans look like for the screening of particularly risky cargo coming from overseas.

Now, pre-clearance, airline passengers, this has been, in some instances, a very uncontroversial process involving Canada, Ireland, other countries; in the case of Abu Dhabi, not so uncontroversial.

Nonetheless, it seems to me it's had a very solid rationale, a security rationale, a rationale in terms of convenience to passengers. In other words, the case is pretty strong, but we need to make the case and we need you to understand how the department assesses the work done so far and what kind of projections you make into the future.

So I wonder here, and you may want to submit more for the record, but I wonder here if you could briefly give us an assessment, how many places this is going on, what do you think would be desirable in terms of the future reach of this pre-clearance effort. What kind of process report can you give?

KERLIKOWSKE:

So the discussion with 10 airports in nine countries is continuing on. It's very robust. Tonight I'll be meeting in New York with a group, a country, seven people flying in from another country to discuss final discussions. I believe that before the end of this calendar year that we will have several

signed agreements with countries for pre-clearance. And then I believe in 2017, preclearance operations will actually be operational in a couple of those locations.

For safety, security, for benefit to the traveler, for cost to the taxpayer, I don't think, and certainly with the support that Congress has given on this, I don't think we can go wrong with pushing our borders out.

PRICE:

Abu Dhabi in particular, do you have any comments on how that's worked, and particularly on the security benefits of that arrangement?

KERLIKOWSKE:

The last numbers I looked at, which were several months ago, well over a thousand people who wanted to fly from Abu Dhabi to the United States, our recommendation to the airline was that if they arrived they would be deemed inadmissible. And the airline then made a decision not to admit them.

And that doesn't mean just citizens from UAE, but that's people that have flown through Abu Dhabi to then continue-on travel.

So from a security standpoint, I think it makes sense, but I'm very pleased that in the negotiations with the current negotiations, all of these locations have American flag carriers that fly into and out of them.

PRICE:

That's the requirement going forward.

KERLIKOWSKE:

Yes.

PRICE:

It was not true of Abu Dhabi at the time.

KERLIKOWSKE:

Right.

PRICE:

That seems remarkable just on the face of it. A thousand you say?

KERLIKOWSKE:

Yes.

PRICE:

Do you think those thousands of people otherwise would have come to this country and be dealt with at one of our ports of entry? Or is there something attracting these people to maybe try their luck?

KERLIKOWSKE:

They would have been deemed -- I mean, we do apprehend and deny admissibility every single day. And they would have landed in the United States. They would have been deemed inadmissible based upon the information we had.

The airline would have been required to place them on the next flight back, the next return flight. They would have been held during that, they would have been incarcerated during that period or maintained in a secure location until getting back on that flight where we escorted them back on the plane and they left the United States.

PRICE:

Thank you.

Thank you, Mr. Chairman.

CARTER:

(PRESIDING) Dr. Harris?

HARRIS:

Thank you very much.

Let me ask a little bit about the OIG report on the forward operating bases, which I'm sure you've seen, and I understand and they, you know, say, you know, your organization responded.

But it seems it's pretty serious because these are pretty important operating bases. Are you committed to addressing all the problems they found?

KERLIKOWSKE:

The first problems and the ones that were certainly most significant involved the quality of the water. And we made changes.

One of the difficulties with an organization this vast and this widely dispersed is that sometimes by the time the information gets to me it's like, you know, what is being done and how many days has this already gone.

I've made it clear that the safety and security our personnel, whether it's in where they work, is key to that.

So these forward operating bases, which can be quite helpful, but are also quite remote, need to be secure and they need to be well- maintained and we need to work with our staff and the GSA to make sure these locations are better.

HARRIS:

OK, thank you. I appreciate that, because you're right, our agents do need to have secure facilities and, you know, good facilities where they're working.

With regards to export enforcement, I just have a question. Obviously, the sanctions that prohibit U.S. exports to Iran still remain in full effect with the exception for civilian aircraft. But what is, you know, what steps are you doing now that there's this, you know, enhanced relationship with Iran to monitor for illegal exports, to make sure that we're not, you know, exporting illegally to Iran?

KERLIKOWSKA:

You know, exports for any customs organization in the past, including ours, did not see the same level of scrutiny and review that certainly imports see.

Over the last several years, we've taken a number of steps to do a much better job of looking at what is leaving. There is a program in which large numbers of exports from well-known manufacturers here in the United States may leave the country, but that the manifests of what was leaving the country would not be transmitted until it was already on a ship and already going out.

So we're working with industry because we want the manifests in advance before it ever gets on a boat or ever gets the ability to leave.

And we also need to make sure that we're working closely with the intelligence community and others on things that may be exported to a country that could be hostile to us, that they never get to that country.

HARRIS:

Fine. And one final question. I'm just not sure this is, you know, your jurisdiction. But the homeland security sector is supposed to deny entry to the U.S. of any Iranian citizen seeking to enter the U.S. to study for a career in the fields of energy, nuclear science and nuclear engineering.

Makes great sense. You know, we don't need to train our enemies. And under the JCPOA, the law is to remain in effect for the next eight years.

My concern is, and again maybe you have knowledge of how this works, but you know, look, I have five children, four have been to college, all four have changed their majors when they were in college. Someone can come here and say, no, I'm not going to study nuclear engineering, go to school, and in fact take nuclear engineering courses.

Do we have a safeguard to make sure that Iranians don't come here and literally gain access to what I believe is the best education in the world, technical education in the world, to go back and build weapons against us? I mean, how do we safeguard against that?

KERLIKOWSKE:

You know, Dr. Harris, it isn't in my...

HARRIS:

That's probably ICE, isn't it, I imagine?

KERLIKOWSKE:

I don't have that information. Or USCIS. But we'll be happy to get with your staff and figure out who the best people are.

HARRIS:

If you would, I'd appreciate that because that's of some concern to me. Because you know, people can come here and, you know, we don't know their intention. They'll fill out a form and say that, you know, they want to be a, you know, a history major and end up in an engineering school learning things that will come back to bite us.

Thank you very much. I yield back.

CARTER:

Mr. Cuellar?

CUELLAR:

Mr. Chairman, thank you so much.

Two questions dealing with trade. Where are we on the full 2,000 CBP officers? I know at one time we were delayed because of a breach of security backgrounds. Where are we with that?

And then tell us a little bit about the agricultural specialist staffing issue. And again, you know my history about Laredo being the largest (inaudible) and then the valley has a lot of agriculture.

So tell us where we are on those two issues.

KERLIKOWSKE:

Sure. One, I'd be remiss if I didn't thank you for speaking to our personnel when they have their large personnel meetings and talking to them about professionalism and their responsibilities and on and on. It means a great deal when a member of Congress spends time with them. So that's very helpful.

We are about 700 Customs and Border Protection agents below the 2,000 that we would have hired. Remember, we've had a lot of, you know, a lot of attrition.

In December we hit the highest number ever of Customs and Border Protection agents on board. So we're making progress with them. That's particularly helpful.

We also did not ever have a staffing program or a workload analysis for our agriculture specialists.

And quite frankly, after 2003 and the fact that we were put together as a result of that, combining in the Department of Homeland Security, it was all security all the time. And our agriculture specialists, who are the most highly educated, by the way, of our workforce, did not receive, in my estimation, as much support as needed.

And when you think about the things that can harm this country, from pests and diseases in agriculture, we've worked pretty hard to try and improve and increase and show the recognition for the important work that they do.

But the staffing model will be helpful.

CUELLAR:

OK. Second question has to do with a letter that Governor Abbott and myself wrote to the secretary. And I see the response and I told the secretary I respectfully disagree, especially I think the chairman said a while ago that you all are 12 percent below the goal for air interdiction officers. Is that correct?

KERLIKOWSKE:

Yes.

CUELLAR:

Yes. So if there is air crew vacancies and we provided funding, full funding to the National Guard -- and again, I disagree with the way the secretary had looked at it. And you know, he does a great

job and I appreciate it. But he was looking at it one month, from December to January, when actually when you look at the longer one, it's, you know, it's actually 171 percent increase on just unaccompanied kids, 102 percent on families.

But regardless of all that, but if we're short, we have vacancies, the National Guard got funded, I would ask you all, with all due respect to the letter I got from the secretary, I would ask you all to look at that again one more time.

Because, Mr. Chairman, I am going to request some language, especially if we fund it, that we put that back again, especially if your numbers are correct and they've been confirmed that 12 percent under the goal of air interdiction.

And all we want to do is provide the men and women the support, air support. I can understand if we didn't provide the funding blame Congress, but in this case we did provide the funding.

So again, you don't have to give an answer. I would just ask you to just respectfully consider our request again.

KERLIKOWSKE:

Certainly. And we would never blame Congress.

(LAUGHTER)

CUELLAR:

And again, my last question. Again, Commissioner, thank you for all and I wish you the best for the end of this year. And again, I really appreciate your dedication and the men and women that serve along with you. Thank you so much.

KERLIKOWSKE:

Thank you very much.

CARTER:

Commissioner, I, too, want to join my friend from Texas in thanking you for your hard work.

Please convey our appreciation and thanks to all the members of the U.S. Customs and Border Protection Agency. They do a tough job in a tough environment.

And as we talk and question, we all know, because all of us have been there, and those that haven't are going to go, because they need to know the kind of rough environment that you all have to work in.

And we hope God blesses each and every one of you. Thank you.

KERLIKOWSKE:

Thank you.