

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
March 9, 2011

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Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Oversight Of The Department Of Homeland Security  
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I welcome Secretary Napolitano. Thank you for being with us today. Consistent with the Judiciary Committee's oversight responsibilities, today's hearing will focus on the current activities, challenges, and accomplishments at the Department of Homeland Security.

Let me begin by acknowledging your recent decision to delay the implementation of the Real ID Act. I am certain that this was a decision that was not taken lightly. But I appreciate your desire to give states more time to make progress. This delay also gives lawmakers more time to work toward an alternative to Real ID, and continue the efforts initiated in the last Congress. I suspect that your delay of Real ID implementation was welcome news to many of the Governors who were in Washington last week.

It is worth reminding the American public just how extensive the Department's responsibilities are—domestic security, including airline security and border security, natural disaster response, the Coast Guard, and immigration enforcement and benefits are all within the Department. The Department's various agencies have enormously important national security responsibilities.

We need only look to the work that Immigration and Customs Enforcement (ICE) is doing both in the United States and abroad. The cartel-related violence on both sides of our Southern Border is a serious and continuing problem. The recent attack on two ICE agents in Mexico is a particularly appalling escalation of this situation. I know that you and Attorney General Holder have been working cooperatively on this investigation and that some progress has been made. Our cooperative relationship with Mexico was front and center in the visit from President Calderon last week. We must strengthen and preserve the partnership to achieve security in both nations.

The Department is also challenged with protecting our security and preserving our right to privacy. As the Department takes steps to respond to emerging threats and keep Americans safe, many citizens have raised legitimate concerns about the intrusiveness of security measures. Recent concerns about airport screening procedures highlight the persistent tension between privacy and security in our daily lives. We can all agree that the security of air travel is critical. But Americans cherish their rights to privacy and liberty. They expect to be treated with dignity as they travel and pass through security screening. Americans will only tolerate so much in the way of intrusiveness, especially as they travel domestically.

For many Americans, the use of X-ray scanning machines that produce a detailed body image is a bridge too far. And for many Americans, the alternative of a pat-down is even more difficult to tolerate, especially as we receive reports of physically invasive searches. I understand there is an effort among the TSA and the manufacturers of these scanners to develop new software that would render images without anatomical detail, and in a truly anonymous manner. I would like to hear more today about how the Department is addressing this matter.

Many Americans also have concerns about the potential health effects of these scanners. TSA asserts that the health effects of these scanners are negligible, but not everyone in the scientific community shares that view. The bottom line is that back-scatter X-ray technology exposes traveling citizens to radiation. We should not dismiss any citizen's

health concerns and must support independent assessment of any associated health effects. This is particularly true if the technology may affect pregnant women, children, and people with medical conditions. I urge you to continue to assess this technology and to invite independent experts to study potential health effects.

What was not reassuring was the recent report in USA Today that the Department wasted million of dollars paying contractors to develop and study covert surveillance systems to look under people's clothing while they were on the move. The report is about not one but two contracts to develop such scanners in 2005 and 2006.

It would be a mistake to underestimate the value that American citizens place on their privacy. Debates in Congress and around the country on proposals like the Real ID Act and the PATRIOT Act should make clear that the right to privacy and the principles of the Fourth Amendment remain important to the American people. When we listen to the concerns of citizens, and take concrete steps to respond, I expect that citizens will be far more accepting of the security measures they are asked to accept.

Finally, we cannot set aside the need to reform our Nation's broken immigration system. I continue to firmly believe that without a practical, humane solution to address the millions of undocumented people living and working in the United States, we will never have true border security or an orderly system of immigration. Throwing more taxpayer dollars at immigration enforcement or to the Southern Border alone will not provide a lasting or fundamental solution. Nor does it provide an economical solution. Given the Department's well documented efforts in the area of immigration enforcement, including record deportations, the enhancement of E-Verify, widespread audits of businesses, and substantially increased activity along our borders, it is time we looked seriously at the other components that make up smart reform.

And I want to thank you for working with me to protect refugees and asylum seekers. I was gratified by the announcement in December 2009 of a new parole policy for asylum seekers. Statistics for the first year of implementation of that policy should be released soon, but I am told that they will show a significant increase in the number of asylum seekers who pass credible fear and are paroled. This is a very positive shift and I thank you for it.

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