

# **Transcript of Senate Homeland Security and Governmental Affairs Subcommittee on Disaster Recovery and Intergovernmental Affairs Hearing on Assessing Customs and Border Protection Corruption**

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Hearing Held on Thursday June 9, 2011

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PRYOR:

I will call our meeting to order here. I want to first, I want to welcome Senator Paul to his ranking membership of this subcommittee. This is the first time you have had a chance to sit in as the ranking member, so thank you for your service and for doing this, and look forward to working with you.

I would also like to thank our panelists today and the distinguished audience that is here today, because many of you all have been following these issues for a long time and I want -- just want to thank everyone for their attendance.

We are going to examine the progress of the U.S. Customs and Border Protection in preserving corruption in its -- excuse me, in preventing corruption in its work force as well as the work of the inspector general's office at the Department of Homeland Security and investigating and prosecuting those individuals who have been accused of corruption.

Securing the United States borders is a constant struggle for the residents of the border states, and for the government officials who represent them.

The Mexican cartels dominate drug trafficking into the U.S. Their operations and methods are sophisticated, ruthless and well-funded. Their notorious presence and power in Mexico is made possible by bribery and corruption, intimidation, paramilitary force and murder. The impact of their operations in the United States has been widespread.

This subcommittee held a hearing in March of 2010, at which we learned that the cartels' operations are changing. They used to rely mostly on stealth techniques and the U.S. distribution network with operations in an estimated 230 American cities, according to National Drug Intelligence Center. Three of those cities are in Arkansas.

The good news about the changing operations is that the heightened U.S. border defenses have put a squeeze on the cartels.

Unfortunately, these cartels are not easily deterred and they seek to regain an advantage by exporting to the U.S. their experience and success in bribing and corrupting government officials who can facilitate their business.

We must continue to do everything that we can to disrupt and prevent these gangs from penetrating our communities. That is why I am pleased that last year, the Congress passed and the president signed the Anti-Border Corruption Act of 2010. This bill is designed to complement CBP's work force integrity plan and prevent rogue border agents from being hired and retained.

The bill requires that CBP follow its own employment policies requiring polygraph tests of all new applicants for law enforcement positions. It also directs CBP to initiate background checks on all backlog employees within 6 months.

Hiring new border patrol agents will help secure our borders only if these agents are truly committed to protecting our country.

I look forward to hearing from Commissioner Bersin on the progress he has made in implementing this bill.

Another area of interest today is the ongoing concern about the lack of true collaboration and information sharing between the CBP and the inspector general's office, when it comes to investigating alleged acts of corruption.

Fighting corruption is vital to protecting our borders and securing our communities. We must aggressively attack and investigate these cases if we are going to end corruption within the U.S. law enforcement agencies. However, we must conduct these investigations in an efficient and collaborative way that leads to results in the quickest way possible.

Back -- based on reports, this does not seem to be the way we are currently operating when conducting these investigations.

I look forward to our witness comments in this area.

So, our witnesses today are both very experienced individuals; Commissioner Bersin of the CBP, and Charles Edwards, the Acting Inspector General at the Department of Homeland Security.

These gentlemen are leading much of the U.S. government efforts to fight against drug-related corruption. We welcome them. We look forward to their testimony.

But first, I would like to recognize Senator Paul.

PAUL:

Thank you very much, Mr. Chairman.

Thank you for coming to testify here today. I, like Senator Pryor, am concerned about the lawlessness south of our border and whether or not that creeps across the border.

I think the lawlessness has gotten so severe in Mexico, people fear traveling to Mexico. I mean, there is people who are now referring to Mexico as a failed nation state and is that an overstatement? I don't know. But I am worried about their lawlessness coming across our border.

Corruption is a problem, but I am also worried about their lawlessness coming and actually killing our law enforcement agents, our border patrol agents, our sheriffs, our citizens across the border. So I am very concerned with where we are.

I am also concerned about legal immigration and visas and whether or not we are monitoring those who we let into our country. Just this last week, in Bowling Green, we have captured two alleged terrorists who came in here on an asylum program.

We admitted, last year, 18,000 people from Iraq.

This, to me, sounds like a large number. I wonder, are we monitoring these people? Are we doing a good enough screening process?

This goes for a lot of other people who are coming here legally. It is not just illegal immigration I am worried about. I am worried about legal immigration, whether or not it is being monitored properly.

We have 40,000 students coming to this country from all over the world. Are they would-be attackers? The people who attacked us on 9/11 were here on student visas. They were overstaying their visas. Was anybody monitoring them? Are we overseeing where the students are, who are in our country now? Are we overseeing the refugee process?

One of the guys in Bowling Green, that was captured and alleged to be part of terrorism was in jail in Iraq. His fingerprints were on an IED, an unexploded IED. His fingerprints were in our database for 2 years before we figured it out.

I don't know that we are doing a good enough job. I think as a country, we are spending an amazing amount of resources on screening everyone universally, as if everyone is a potential terrorist. I think that is a mistake.

We are combing through everybody's bank records.

We are invading the privacy of everyone in our country.

We are doing pat down and strip searches of six-year-olds in our airports.

But are we spending enough time and resources targeting those who would be attackers? Or potential attackers of our country?

So, I want to learn a little bit more about how the visa process is working, whether or not we are overseeing the people who have been admitted to our country and whether or not there are sufficient safeguards to protect our country in the legal immigration aspect.

Thank you.

PRYOR:

Thank you.

Now, sometimes we say that these people don't need any introduction and it, really on these two, you really don't.

So, I am just going to be very brief and just say our first witness today is Alan Bersin. He is the Commissioner at the U.S. Customs and Border Patrol. We look forward to hearing from you, Mr. Bersin.

And then we will hear from our next witness, Charles Edwards. He is the Acting Inspector General at the Department of Homeland Security.

Thank you very much for being here.

We have a timing system today and I think we are doing 5 minutes on the opening statement. So if you could keep yours to 5 minutes.

We will submit your written statements for the record. So those will be made part of the record. But we look forward to hearing from you and we look forward to good discussion afterwards.

Mr. Bersin?

BERSIN:

Good morning, Mr. Chairman, Ranking Member Paul. It is an important day at -- for me to appear here before you to update you on the progress that U.S. Customs and Border Protection is making to combat corruption and maintain integrity within our work force.

Senator Pryor, you and this committee have been an important force in getting recognized the threat that we face on the U.S.- Mexican border and generally in terms of the men and women of CBP now, 60,000 strong, 48,000 of whom are on the front line of protecting this nation and its borders.

You recognize, and we emphasize, the commitment, bravery, vigilance and character demonstrated by the vast majority of CBP agents and officers, who indeed put their lives on the line to protect this nation.

Having said that, we recognize that there are bad apples in the barrel and it is our job to minimize those and it is our job to prevent corruption, detect it when it happens, prosecute it after

investigating with -- in concert with other federal agencies and the United States Attorney's Office and the Department of Justice.

Unfortunately, CBP employees have and will continue to be targeted by criminal organizations, as the chairman suggested, and as the ranking member confirms.

As we continue to see successes in our efforts to secure our nation's borders, our adversaries continue to grow more desperate in their attempts to smuggle humans and illegal contraband into this country.

Our most valuable, as well in some rare cases, our most vulnerable resources are our employees.

I am here today to candidly confront, with you, this vulnerability and the steps that we are taking with your assistance, the assistance of the administration, to mitigate this threat.

Recently, I put forward my first statement of intent and policy, as the commissioner of the CBP, after a year of service, outlining specific and high-level propositions to be incorporated into all aspects of CBP's interactions with the public, with other law enforcement and within our own institutions.

That statement of intent and policy dealt with integrity. It outlined the absolute importance that we attach to integrity in the discharge of our duties.

We pride ourselves on being a family. However, when one of our own strays into criminality, we do not forgive him or her.

Such was the case with Martha Garnica, a CBPO who betrayed her country, betrayed her fellow officers, betrayed her trust and now sits in federal prison for 20 years as she so richly deserves.

We recognize that we need to confront this and we are doing so with the help of the resources and with the help of the Anti-Border Corruption Act that this chairman and this Senate and Congress passed and the president signed.

Since 2004, in October, 127 CBP personnel have been arrested, charged or convicted of corruption. This breach of trust is something that we do not stand for and while 7 years and tens of thousands of employees have been besmirched by this -- these evidences of corruption, we take each and every one of them seriously.

The Anti-Border Corruption Act of 2010, which the chairman championed, is one of the first steps to address the issue of corruption within the work force before it can take hold.

I look forward to discussing with you, this morning, the steps that we have taken in order to implement that act and be prepared to meet its deadlines.

We recognize that there is work to be done. We are committed to doing it. And I believe you will be satisfied that we have made a good start along the path to being able to meet these deadlines.

We also need, frankly, Mr. Chairman, to recognize that our best defense against corruption are the men and women at CBP themselves. And therefore, we have taken on the so-called code of silence within our institution.

When we ask our officers to uphold the honor, integrity of their service, we add security to the border.

Mr. Chairman, again, let me thank you for the Anti-Border Corruption Act and the role you played in securing it. I look forward to answering your questions and the ranking member's as we proceed this morning.

Thank you, sir.

PRYOR:

Thank you.

Mr. Edwards?

EDWARDS:

Good morning, Chairman Pryor, Ranking Member Paul and distinguished members of the subcommittee.

I am Charles K. Edwards, Acting Inspector General for the Department of Homeland Security.

Thank you for inviting me today, to testify about OIG's role in the effort to eliminate corruption in the CBP work force, a threat that strikes at the foundation of securing our nation's borders.

The smuggling of people and goods across the nation's borders is a large-scale business, dominated by organized criminal enterprises. The Mexican drug cartels, today, are more sophisticated and dangerous than any other organized criminal group. They use torture and brutality to control their members and intimidate or eliminate those who may be witnesses or informants to their activities.

The drug trafficking organizations also turn to corrupting DHS employees.

Border corruption impacts national security. A corrupt DHS employee may accept a bribe for allowing what appear to be undocumented aliens into the U.S., while unwittingly helping terrorists enter the country.

Likewise, what seems to be drug contraband could be weapons of mass destruction such as chemical or biological weapons.

OIG has made investigation of employee corruption a top priority. In accordance with the Inspector General Act of 1978 and the Homeland Security Act of 2002, the OIG exists as an independent element within DHS, tasked with coordinating, conducting and supervising investigations relating to DHS programs and operations.

These statutes vest the OIG with a primary responsibility within DHS for investigating allegations of criminal misconduct of DHS employees.

The idea of statutory independence and its dual-reporting responsibilities to the department and to the Congress make it ideally situated to address employee corruption.

Inspectors general play a critical role in assuring transparent, honest, effective and accountable government.

The organizational independence of OIG criminal investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust.

The DHS management directive plainly establishes OIG's right to first refusal to conduct investigations of criminal conduct by DHS employees and the right to supervise any such investigations that are conducted by DHS internal affairs components.

It is the OIG's policy to investigate all allegations of corruption of DHS employees or compromise of systems related to the security of our borders and transportation networks.

The department's internal affairs offices play a useful role to the OIG, by enabling the OIG to leverage its resources.

CBPIA focuses on preventive measures to ensure the integrity of CBP work force through pre-employment screening of applicants, including polygraph examinations, background investigations of employees and integrity briefing that help employees recognize corruption signs and dangers.

These preventive measures are critically important in fighting corruption and work hand-in-hand with OIG's criminal investigative activities.

The OIG has been tirelessly -- working tirelessly in an honest attempt to negotiate a cooperative working arrangement that will detail CBPIA agents to the OIG, to participate in investigation of CBP employees along with ISOPR.

These additional assets are especially necessary as the CBP work force continues to expand significantly while OIG remains relatively flat.

DHS OIG works cooperatively with external law enforcement agencies on border corruption matters, involving DHS employees.

A key component of our investigative strategy is to leverage our limited resources and share intelligence with other law enforcement agencies. DHS OIG participates with border corruption task forces in many parts of the country. These cooperative relationships serve to ensure that different law enforcement agencies are not pursuing the same targets which duplicates efforts, and places law enforcement agents' safety at risk.

In conclusion, I appreciate the subcommittee's attention and interest in the work for the OIG to investigate corrupt employees within DHS work force. We will continue to aggressively pursue these investigations with all resources at our disposal and in cooperation with law enforcement at all levels to ensure that employee corruption does not jeopardize our national security.

Chairman Pryor, this concludes my prepared remarks. I would be happy to answer any questions that you or the ranking member may have.

Thank you.

PRYOR:

Thank you, Mr. Edwards. Thank you very much.

Let me start with you, if I may, Mr. Edwards.

On this chart, my understanding is you provided these numbers to the committee as part of your testimony today. And I see a big upswing in the number of investigations.

Do you know why that is?

Why are you seeing a pretty dramatic spike there in the number of investigations?

EDWARDS:

Well, actually, the 38 percent increase in complaints against CBP since 2004, from 3,112 to 4,162, these increases are because we have to -- as the act that was passed last year, we need to go back and CBP needs to go back -- do their background investigations of polygraphs of the employees because we find 60 percent of the employees who go through these don't pass it because of the corrupt criminal background in their background.

PRYOR:

Yes.

EDWARDS:

So there is a big spike in that.

PRYOR:

OK. So you are saying that -- say that again? That we are -- as you are doing more of the polygraphs, more and more is showing up?

EDWARDS:

Well, we -- I mean, we had a huge backlog.

PRYOR:

Right.

EDWARDS:

And now CBP has gone back and has done that. Without doing that, there was a huge spike.

PRYOR:

OK.

EDWARDS:

And we still haven't caught up.

PRYOR:

Yes.

EDWARDS:

And we are hoping by 2012, we are able to do a 100 percent.

PRYOR:

I have got you. Yes. Perfect.

That makes sense.

Now there is also a pie chart that you provided to the subcommittee that is part of your testimony. And in this pie chart, the navy blue, these are open, named, CBP employee investigations. And I think the named is important because it doesn't mean it is all, but it is the one that a certain category of them at least.

So, there is 613 total. And the navy blue is for corruption. That may be hard to see for the audience, it is 44 percent. And then red is civil rights and the green is suspicious behavior. So if you add the corruption and the suspicious behavior together, you get 78 percent.

That -- those seem like alarming numbers to me. And could you talk about that a little bit?

EDWARDS:

Well, corruption is abuse of public power -- abuse of public power for private gain. Examples are bribery, smuggling, tariff (ph), disclosure of sensitive law enforcement information.

The cartels, the drug business, organized criminal enterprises, they are becoming very sophisticated.

So they are trying to infiltrate our CBP work force.

And as our investigations -- we have to get to the root of the problem. If we just go out and get rid of that one employee, we still haven't gotten to the bottom of the problem.

So -- and there is a huge percentage of it that is unnamed. And we have recently established forensic analysis units to get to the bottom of this.

PRYOR:

OK.

Did you want to comment on that, Mr. Bersin?

BERSIN:

Mr. Chairman, I think, as you know, we are openly confronting the issue and the challenges that we face. And I want to point out I commend the OIG as well as CBPIA and the FDI in terms of actually the number of investigations that have started.

I think we have to recognize, though, and put in perspective that it is the kind of emphasis that the agencies are giving to the problem, that put more resources into the problem, that begin, in the first instance, to see an increase in the number of cases that are open.

So more cases have been respond -- referred by CBPIA to the CHICNAS (ph), the joint information system, and in fact those cases are being taken at a greater rate by DHS OIG, for which we are thankful.

But this is an issue of attention and focus and resource allocation.

PRYOR:

Let me follow-up on that, if I can, Mr. Bersin. Because one of the things that you have had a really large backlog on is your periodic reinvestigations. And I think you went through some numbers in your opening statements, but could you go through those again in terms of how many periodic reinvestigations you have completed so far?

BERSIN:

Yes, sir. We recognized that under the Anti-Border Corruption Act, we have -- we are obliged, as a matter of law, to complete the period reinvestigations by the end of 2012. We will meet that objective by July of 2012.

We also understand the polygraph responsibilities. Every employee, pre-employment, will be polygraphed as of January 2013.

Where we stand today, and as you know, we have been working and keeping your staff and you informed of this, but we have 15,197 periodic reinvestigations of backlog. All of those have been initiated, but they remain pending. And to be precise, as of May 31 of this year, 5,386 periodic reinvestigations have been adjudicated. 92 19, 9,219, are pending investigation or adjudication.

What we have done to be sure that we are online to meet this, notwithstanding the hiring requirements of the Southwest Border Supplemental Bill, is to have the professional services division of internal affairs, that handles this, have devoted the bulk of their resources to these periodic reinvestigations.

So while the task has been complicated by the additional hirings that the supplemental bill have provided us, we don't complain about those, but it does add to another 1,500 fiscal -- actually, 1,250 additional cases, so to speak, to the backlog.

But we are on target, Mr. Chairman, to meet the requirements of the act.

PRYOR:

And how many do you think you will have completed by the end of 2011, which is the end of this year?

BERSIN:

I wouldn't -- we have not -- we have three -- the difference between -- let us see. We have in the area of 800 that are in adjudication now. So I suspect that we are talking, between now and the end of the fiscal year, perhaps 1,200. So we have a fair amount to do, but we expect that we will be online to meet the end of fiscal year 2012 deadline.

PRYOR:

If you do the reinvestigations and the polygraphs, what percentage of the employees turn up with an issue? What percentage are you catching?

BERSIN:

Well, in the last number, the one that was referenced by my colleague, the inspector general, was that 60 percent present an issue. It depends on the population that you polygraph. And the nature of the issue differs and what we are attempting to do, because of the expense involved, of -- in polygraphing, is actually to have a process in which we can see rise to the top those applicants who are less likely to face issues in a polygraph examination.

But the number will depend on the actual population of applicants that you put through the examination.

PRYOR:

So you are not saying 60 percent is the number of folks that are showing corruption. You are saying that they are showing some sort of...

BERSIN:

Absolutely not.

PRYOR:

What is your sense of the number of applicants who are -- who somehow get tagged with corruption?

Do you know that?

BERSIN:

I could not give you a specific number.

I will tell you, in the course of reviewing these, we do come across cases in which people are -- reveal themselves to either have criminal backgrounds, outright criminal backgrounds, or links to organized criminal elements based in Mexico or gangs based in the United States, which disqualifies them.

But I think it would be a disservice to the applicant pool to suggest that this is a large or even significant percentage.

What we have to do is be sure that we have the filter that captures each and every one of those. But I don't, particularly given my background in education, I don't think that this is a generation of young people that presents generally more problems than my generation did.

PRYOR:

I am going to ask one more question and then I will turn it over to Senator Paul here in just a second.

But this is a question really from another context and that is, the FMCSA, the Federal Motor Carrier Safety Administration is doing a pilot project for Mexican trucking companies to bring materials in. And I really have two questions there for you.

One, have you heard from FMCSA on this? And are you all taking any special precautions or any special procedures for these Mexican- owned trucking companies bringing goods into the United States?

BERSIN:

So, Mr. Chairman, this is the pilot program to move away from the drayage (ph) issue, which will permit Mexican long-haul carriers to actually cross the border, not have to reconnect and continue on into the United States.

In the first instance, this is a Department of Transportation Safety certification issue. We, of course, will be involved in clearing and inspecting cargo containers contained on those trucks. And we are keeping abreast of developments as this pilot unfolds. But it is a safety issue in the first instance and then it presents the same issue of inspection, targeting, risk management, that we do with regard to each of the 27,000 trucks that enter this country every day.

PRYOR:

Yes.

The reason I am asking, of course, is because if the Mexican drug cartels are successful in corrupting local officials and police and judges, potentially, and military and who knows who else, it seems to me pretty likely they could also corrupt these Mexican trucking companies. And they could just bring matters in, unless we pay special attention to them. So that would be a concern of mine.

The other question I have is something that I have talked to DOT about, is about the challenges you have had in your agency about finding corruption there and the drug cartels trying to corrupt -- actively, in some cases, successfully corrupt our agents there.

I have asked them to reach out to you about some of the lessons you have learned in terms of making sure that their work force that is going to be down on the border, maintain their integrity. And I have -- have they had a chance to reach out to you yet?

BERSIN:

We haven't specifically talked, but we do work together on the interagency policy coordination on the border and I will reach out for the department -- to my colleague at the Department of Transportation.

PRYOR:

That would be great.

Mr. Paul?

PAUL:

Mr. Bersin, do you keep a database on all those who are visiting our country on a visa? Travel visa or a student visa?

BERSIN:

Senator Paul, what CBP does in terms of admissibility of everyone who crosses into the United States every day, and we have a million people coming into the United States every day that are -  
- whose admissibility is handled by CBP officers at airports, land ports and seaports. So we have

a record of every person entering into the country and the basis on which he or she does so. Yes, sir.

PAUL:

OK.

Do you also have a record of when they leave?

BERSIN:

We do not have a biometric exit system in place yet. We have been working within DHS to look at the exit system. And there have been a number of pilots that have been handled by U.S.-VISIT, TSA and CBP, in terms of coming up with a recommendation as to how an exit system can be reliably handled, recognizing that the airport context is one that is a manageable environment.

But the land borders are actually the environments that present the greatest challenge to our exit verification.

PAUL:

When you have to do customs on the way in, do you have to do customs on the way out?

BERSIN:

Only when we do outbound inspections, which we are doing on the U.S.-Mexican border, in keeping with our new relationship with Mexico. But we do not, for the most part, do exit except on a surge basis, on -- in places like the northern border.

PAUL:

So there is a million people coming into the United States every day, from out -- from other countries.

BERSIN:

Yes, sir.

PAUL:

Then...

BERSIN:

Well, returning U.S. citizens.

PAUL:

Right.

BERSIN:

It's a mix.

PAUL:

Because to my problem, and I am still concerned about, is the people who get here, do we know if they are overstaying their visas? Do we know if they are obeying the rules of their student visas? That then gets under whose purview? Who is checking that? Is that ICE? Or who is checking to see whether someone overstays their visa?

BERSIN:

This would be a responsibility of DHS in terms of homeland security investigations on visa overstays. But this is an issue that, as you suggested, in your opening remarks, it is one that has to be handled on a risk management basis. This has to be an ability to identify a high-risk entrance into the country. Because we do not, obviously, have the resources, nor should we be devoting equal resources, to every one of those million people.

PAUL:

And the million people may also involve a lot of U.S. citizens who are just coming back.

BERSIN:

And then a lot of times...

PAUL:

I am on a business trip to London. I am coming back. So that is part of the million. Can you break the million down further? How many of them are visiting us from another country?

BERSIN:

I will supplement the record.

PAUL:

Yes.

BERSIN:

I can't do it off the top of my head.

PAUL:

But I would think that that is what we need to do. I mean, if you were looking at a million, you would find out that if 500,000 of them are U.S. citizens traveling on business, obviously they wouldn't be -- as someone needing as much scrutiny.

Middle Eastern countries might need a little bit more scrutiny, but we would have to do good police work to do that.

But then if we also -- it almost seems like once you narrow that down, you do need to know who comes in and who leaves and the difference between the two is those who are overstaying their welcome. We have -- live in such an electronic age that you would think, even if you are going across in a car in Canada, that that would be entered into a data bank and should be easily reconcilable with who is overstaying their welcome here.

And I just think after 9/11, we sort of -- we have done so many things to think that we are all terrorists that universally we have to scrutinize everybody to the nth degree.

Instead of doing what I think would just be good police work, it would be less expensive, less intrusive to our privacy, but looking at the people who did attack us and who continue to attack us and not really U.S. citizens.

BERSIN:

The essence of our system at CBP and across DHS, increasingly, is risk management. It is exactly that. It recognizes that we have limited resources and that we have to do targeted attention.

And after making a risk assessment, in terms of trusted shippers, high risk shippers, trusted travelers, high-risk travelers, we then have to segment the traffic to permit us to deal with in sequence.

But just to indicate that your general point, I couldn't agree with more. But when we look at a Faisal Shahzad, who is a U.S. citizen, naturalized, we have to recognize that this risk assessment system can't just cut at a certain category.

PAUL:

Yes, it is not just U.S. citizenry, but I mean if you are a U.S. citizen and you have been to Yemen three times in the last year and you are not a businessman who has business or woman, in Yemen, you might -- that might be a red flag for us. So you are right, it is not as simple as what your religion is, the color of your skin or any of that. It is more complicated.

But it is a whole host of figures that we need to look at and then excluding the people who are traveling frequently on business. It is the same, though, as what we are doing in our country though, with the TSA. How many people fly every day within the U.S.? A million or more fly every day, but I think we are wasting resources and not doing as good of police work and we are distracted from the real police work we could do because we have to treat everybody universally as a potential terrorist.

But anyway, I would recommend that at some point in time, and it sounds like this is an ongoing that we do talk about, monitoring who comes in and who leaves. And it should be very easy to determine from that.

But I don't get a good feeling that a decade after 9/11 we know where everyone in the country is, who is on a student visa and whether they are obeying the rules, how often they are being checked, whether or not they are in the country and obeying the rules of their entry.

The other question I have, I don't know if you have the answer to this or not, is just what percentage of visas approved by the State Department and issued, I guess, in another country, once they come through customs, are then rejected?

Because that happens, right?

BERSIN:

Yes. When a visa is presented at a point of admission, there are circumstances in which the CBP officer will refuse admission and based on information that would be available and would alert the officer, the visa can be set up for revocation.

I would need to supplement, in terms of the millions with which we deal, what the actual percentage of revocation.

PAUL:

Yes. I would like to know because I mean it would be important to me, not the exact number, but if you are rejecting five percent of State Department visas, maybe that means you are just doing a good, supplementary job of the State Department. But if you are rejecting 30 percent, maybe it means the State Department is not doing a very good job, and not to point fingers, but we need to ask these questions, which gets us back to all these refugees and political asylum people we are letting in from Iraq. We need to know who is approving them? What kind of process is going on with this? And do you have anything to do with the refugee admittance into our country?

BERSIN:

CIS handles the status issues. We would be involved in the initial admissibility issues, as we would be with anyone presenting themselves for admission into the United States.

PAUL:

But it would go through the State Department first and then it would be when they come through the airport, you mean?

BERSIN:

To the extent that -- yes, if there is an admissibility issue. But the actual refugee status would be State Department and then the combination of citizen and immigration services at DHS.

PAUL:

Right.

And so you are not actually actively doing sort of extensive background checks on individuals? That is something the State Department is supposedly doing before they get to you?

BERSIN:

That is correct, Senator. But what we rely on is information that would give us an ability to make a risk assessment with regard to any of those people based on the collected data and databases available to the United States government.

PAUL:

All right.

Thank you very much.

If you could have any of that other information, I am interested in it. And I think there is a big picture here that we still all need to be pursuing, as far as the safety of our country.

Thank you.

PRYOR:

Thank you, Senator Paul. Good questions.

Let me go ahead and dive into a little bit of a follow-up from previous hearings and just other matters that we have worked on here, together. And that would be, I am interested in the way you two see your specific roles in investigation and my understanding is, and I have talked to both of you in both your offices about this. There has, in the past, been some, I guess I would say, friction? Or maybe -- I don't know if I would say gaps, but maybe some friction, some, maybe, disagreement about what the role should be. And my understanding is that you all have worked hard to try to address these. And also, I understand that you may be fairly close to doing some sort of written agreement on what your roles would be and I would like to get a status report on that.

Mr. Edwards, do you want to start there?

EDWARDS:

Sure.

Well, there are three reasons.

One, the IG's role is the inspector general plays a critical role in assuring transparency on an effective and accountable government, both personnel and organizational independence of OIG's investigators to carry out the work.

And then secondly, it is public trust.

And also, thirdly, avoiding duplication.

The statutory authority that IG has, we do all, 100 percent, of the criminal investigations, on all allegations.

We feel our position is CBPIA plays a complementary role, by -- and even Congress recognized that with the Anti-Border Corruption Act of 2010.

CBP does the integrity work by doing the pre-employment screening of applicants and -- including polygraph and background investigations.

I have worked, both myself and Alan, have been working together, trying to come up where CBPIA agents could work -- could be detailed to OIG and work on the OIG's supervision, to work some of the cases.

That gives Commissioner Bersin the information that he is looking for and the agreement that I, in fact, last night, signed and sent it over, I am waiting still for Alan to sign it, because I have to look into my independence, the statutory authority and the management directive where OIG has the lead. I think Alan recognizes that, but we just have, from his point, I think that he still has some differences, but I have done my part.

PRYOR:

Mr. Bersin?

BERSIN:

First, I should say, Senator, that what a difference 3 months makes.

So, yes, I think it is fair and it would -- the law enforcement professionals, both in OIG and IA will note that I say this respectfully when I say that there was more than tension and friction. There was outright confrontation and an unacceptable situation.

And this is not -- in most situations like this, it makes no sense to try to fix the blame, but rather fix the problem.

And I want to compliment both offices for endeavoring to do precisely that.

In April of this year, the inspector general reached out, very directly, and said that he wanted to discuss this issue and he wanted to see that working together we could actually reverse the history of the last few years, which again, was a function of people passionate about their duties and dedicated public servants, who saw the world in a different way.

I think we have made huge strides toward that goal.

In January of 2011, the Senator knows, we entered into an unprecedented agreement within DHS with ICE, with Homeland Security investigations, which for the first time, CBPIA agents are detailed into ICE offices and are working to supplement the resources of ICE, ICE's office of professional responsibility, to work down the investigative case load, and we have seen tremendous progress in the first 5 months of that collaboration.

When you put law enforcement professionals together in the field, to work on a case, the work gets done without the kind of friction that often attaches to turf battles that occasionally surface in Washington.

What we have seen already in the ICE CBP collaboration is that the number of cases being worked have been decreased from 160 to 127. And we have seen the clearing up of cases because of the additional resources.

We recognize, in that agreement, that memorandum of understand with ICE, that ICE lead case agent has supervisor responsibility. We have engaged in, thus far, I think, very successful negotiations with OIG. Our staff members have brought us to the positive brink, so to speak, of entering into a similar agreement in which CBP acknowledges the responsibilities under the management director of OIG. And we will be, I believe, welcomed into the OIG investigative effort as a full law enforcement member.

That can only be to the good of the American people and to challenging the -- and taking on the threat of corruption.

So I think we are close. And I think we can overcome the remaining issues.

Those issues, frankly, are not so much about the relationship between the CBP and OIG, but rather the way in which OIG could be welcomed back within. Recognizing its responsibilities under the Inspector General Act and its responsibilities under the DHS management directive, could be welcomed back into the Border Corruption Task Forces that exist in 22 sites in the United States, that have been organized by the Federal Bureau of Investigation, the Department of Justice and are critical element in a whole of government approach to taking on border corruption.

Those issues need to be worked through. That happens to be a Tripartite negotiation. And I am confident that over time, we can address it. And expect that we can overcome the issues.

But that is where the issues are.

Those are where the remaining issues are in terms of closing off a chapter that all of us want to put behind us, in terms of tension between CBPIA and DHS OIG.

PAUL:

Mr. Edwards, he said he sent a draft agreement over last night.

EDWARDS:

Yes.

PAUL:

Is your intention that the draft agreement would cover all of the outstanding issues?

EDWARDS:

Yes.

PAUL:

Or are there still issues beyond that?

EDWARDS:

Right. Well, first I must commend Secretary Janet Napolitano for her leadership in bringing us together.

She has given pretty good advice to us, to get this thing resolved.

I have taken into account our independence, the statutory authority that we have. At the same time, we don't have the resources necessary to -- because it is -- we have to have one DHS. It has to be one face. And I recognize that and we are being -- my staff has been actively working with Alan's staff and we have, overall, an agreement, but there is still a sticking point because we feel that if you are working along with us, and you are having visibility to 98 percent of the cases, and then you are at -- along with VCTF, you are still there, then it is a duplicative effort.

The reason we pulled out from the VCTF last year was because it goes against the whole OIG statutory authority. Everybody is equal partners. But the statutory requirement says that we supervise lead investigations.

And FBI was the only lead.

So we went back and we have been, for the last several months, we have been working with -- we have a similar situation in San Diego that for several months, we worked together with the U.S. attorney there, and as a joint leadership between FBI and OIG, it was the talks, a couple of months went ahead and U.S. attorney agreed with us, but all the parties do not agree to that. So the U.S. attorney has withdrawn from the VCTF and it has taken our cases directly.

But having said that, there are several instances throughout the country, even though we haven't signed an MOU with the FBI on the VCTF, we are still working with them.

So we are hopeful that we can resolve this and have CBPIA to work under us and bring down the case load.

PRYOR:

From my standpoint, it -- this is just too important to get into a turf battle on. And it is kind of like what both of you all have said, I mean, what you are talking about here is the security of our country and to make sure that we don't have the corruption that may be rampant in other countries, but it is rare here. And I just hope that you all will continue to work together to get this resolved.

I have no idea, of course, what is in your proposed agreement, but, Mr. Bersin, certainly, I know you just got it last night, so it is not fair to ask you about it today. But I hope that you all will look at it and continue to work to some understanding and get some agreement as quickly as possible.

BERSIN:

I am confident that we will continue to do that. As the inspector general indicated, Secretary Napolitano has indicated very compellingly to both of us and to our offices that she expects a resolution.

And as I said, I think, for the most part, we have a resolution that is between our offices. What we need to do now is to see if we can't take that spirit and create a whole-of-government approach.

I do not think that it makes sense to see us in competition with the Department of Justice, but rather to knit the Department of Justice and the Department of Homeland Security into a satisfactory arrangement that maximizes our joint approach to the threat of border security and the challenges to that security posed by corruption.

PRYOR:

Thank you.

Both of you all are committed to working together and getting this done and closed and, like you said, this chapter behind us. I think that goes a long way.

And I, like you, I appreciate Secretary Napolitano and her leadership on this. She and I talked about this and I know that she is concerned. She knows that I am concerned. So, if you all can get this done as quickly as possible I think it will do nothing but be a good thing for the country.

Let me ask just a few more questions.

Mr. Bersin, let me start with you. On the current status, today, of the new hires receiving polygraphs. My understanding is you are not yet at 100 percent on the new hires? What percentage are you and when will you get to 100 percent?

BERSIN:

We are, in fiscal year 2011, have polygraphed 22 percent of the applicants. And what we have done, we currently are implementing a business plan that would move us from 35 polygraphers inside CBP to 52, so that we can meet the January 2013 requirement set forth in the Anti-Border Corruption Act.

We have solicited the help from other federal agencies, in terms of providing a polygraph -- polygraphers to us and I am pleased to report to you that, as expected, the federal law enforcement community has reacted by providing 20 additional polygraphers, so that we can ramp up, consistent with the business plan we have outlined.

PRYOR:

Would that just be temporarily to help you with the backlog? Or would you retain those permanently?

BERSIN:

Those 20 would be temporary and would help us deal with the -- until we build up our in-house capacity.

PRYOR:

Right.

BERSIN:

Mr. Chairman.

PRYOR:

And is there a concern about your backlog actually increasing at the beginning of 2011, 2012 and 2013?

BERSIN:

What the -- the challenge that we have is we have a fairly stable attrition rate. So we can project, with some degree of certainty, how many border patrol agents and how many CBP officers we are going to need to replace by reason of attrition.

Where the challenge is coming this year, but it's a challenge we welcome, because it provides more border resources to accomplish the mission, is that the southwest supplemental bill, as you know, of \$600 million, provided that, we hire an additional 1,000 border patrol agents and 250 CBPOs.

The fiscal year 2012 budget provides an additional 350 CBP officers.

So, all of this gets added onto the attrition number that we replace each year, but that business plan that we have developed on polygraphers and on getting our period reinvestigations done, as well as the new background investigations, accounts for that bulge.

PRYOR:

Once you get your backlog down to where it needs to be, do you see this as the backlog going away permanently? Or do you think it is will rise again in the out-years?

BERSIN:

Mr. Senator, remember, CBP doubled in size between 2004, 2010. So what we are seeing in the issue of backlog really arises from this kind of jump in the size of the work force, so that next -- by the end of this year, we expect to see 5,000 more periodic reinvestigations required because every 5 years, we are required to do these investigations.

So we will have to live through a period where, because of that steep slope in growth, we'll see that same steep slope -- that same steep growth in the 5 years when the periodic reinvestigations are due, absent whatever attrition has taken place.

What we need to develop within our agency is over the course of time, we are going to need to even that out and we are going to need to make some adjustments by having some periodic reinvestigations done in 3 years, some in 4 years, some in 5 years, until we can actually get a much more even flow into internal affairs.

PRYOR:

Yes, that makes sense.

Well, listen, I have other questions. What I think I will do is submit those for the record. I appreciate both of you all being here today. The fact that you are doing a better job and both of you are saying it is a better job and working together and coordinating and not having these internal struggles as you have. And I know we are not completely done yet, but I hope sometime soon, we will get that written agreement done and everybody will be on the same page and so I want to thank you all for being here today.

Like I said, we will have some additional questions for the record and what we will do is we will keep the record open for 7 days? Fourteen days. We will keep the record open for 14 days and as members of the subcommittee may submit those, we will get them to the -- the committee staff will get those to you and we just appreciate you getting those returned to us.

Thank you for being here, very much, and I want to, again, thank Senator Paul for his time here and I look forward to working with him on this subcommittee. Thank you very much.

BERSIN:

Thank you.