

Transcript of House Appropriations Subcommittee on Homeland Security Hearing on the Proposed Fiscal 2012 Appropriations for Immigration and Customs Enforcement

Hearing Held on March 11, 2011

ADERHOLT:

(OFF-MIKE) is called to order. This morning we would like to welcome John Morton who is a Director of the U.S. Immigration and Customs Enforcement, better known as ICE. As we consider the president's FY '12 budget request, this is the nation's second largest Federal investigative agency.

Director Morton, we thank you for being here this morning and we look forward to hearing your testimony before the subcommittee.

Let me take just a moment and express this subcommittee's condolence for the loss of Special Agent Zapata. Our thoughts and our prayers go out to his family and to his friends, his colleagues and all those who knew him. His death is a strong reminder of the risk law enforcement officers face in the line of duty each and every day. I want to thank the men and women of ICE for their service in recognition that it comes with great personal sacrifice.

Now turning to today's hearing we want to answer three main questions.

Number one, how does the FY '12 request stabilize ICE budget in terms of eliminating waste and improving efficiencies. How does the budget match resources with operational needs and three how does ICE demonstrate real results in terms of the best possible security at the lowest possible cost.

ICE has come a long way in its notably short history. Eight years ago field offices were rationing vehicles use due to shortfalls in equipment and other accounts. ICE' s mission expanded and contracted multiple times as the office of air, marine, the Federal Air Marshall Service and the Federal Protection Service were transferred in and then out of ICE.

As a new agency ICE has had to distinguish itself among other law enforcement agencies to carve out its mission space. To see the progress ICE has made one only has to look at the news over the past few weeks. On March the 1st ICE led 173 Federal, state and local law enforcement partners in 168 U.S. cities in Project Southern Tempest, resulting in 678 gang related arrests, 447 were charged with criminal offenses, 231 were administrative arrests, and 322 had violent criminal histories and 421 were foreign nationals.

On February 24th, an ICE-led investigation in Virginia resulted in indictments against 22 individuals involved in one of the largest documented fraud rings in the United States' history. In two years the criminal organization sold 15,000 fraudulent drivers license, Social Security card and other IDs, the proceeds of which were wired to Mexican drug cartels and that was more than \$1 million.

Also on February 24th, a joint ICE-FBI investigation led to the arrest of a 20-year-old Saudi student in Texas who was amassing chemicals for a WMD attack. These cases demonstrate the breadth of ICE's authority and why the agency must use all available tools, including administrative arrest on immigration violations to disrupt illegal and dangerous activity.

Congress has consistently provided robust resources to meet ICE's mission needs and support its personnel. Today we are challenged not only to meet our national security needs, but to do so in a way that it is responsible and disciplined with respect to our nation's mounting debt.

Director Morton, in a time of fiscal hardships American people are demanding responsible budgets that demonstrate accountability for every dollar that is spent. And that means this subcommittee will do its part to prevent waste or misuse of funds. In light of these priorities, national security and fiscal responsibility the House passed H. R. 1.

It provides an increase to ICE operations above the current levels of \$57.8 million. H. R. 1 fully ICE agents and the minimum 33,400 detention beds that Congress expects ICE to maintain this fiscal year. This subcommittee has always put a priority on operations and the needs of front-line personnel and H. R. 1 continues to uphold that commitment.

Turning to the FY '12 request I'm pleased that your budget pledges to fully fund agents and the authorized minimum detention beds. However as ICE continues to mature we need to see that resources are responsibly applied to meet operational needs and deliver real results for security.

The FY '12 priorities raise longer terms issues about beds and space utilization. The focus on criminal and alien removal means longer average stays and expansion of secure communities will put pressure on detention space. We need to understand the right resource level within this fiscally constrained environment to adequately support custody operations.

The FY '12 request also includes reductions that cause some concerns. I will be asking about the nearly \$100 million in undefined professional services and the administrative savings across operational accounts as well as the \$114.6 million cut from the information technology that reduces modernization efforts by 85 percent. The so-called savings and reductions will likely reverse some of the progress ICE has made as an organization as well as impact operations.

Director Morton, the American public demands straightforward answers on immigration and customs enforcement efforts, truth in budgeting, discipline and transparency with respect to operational needs are essential in this fiscal climate and this subcommittee will demand no less.

I do appreciate you appearing before the subcommittee, I appreciate your candor in helping us to understand ICE's budget request for FY '12. At this time I would like to recognize Mr. Price who is the distinguished ranking member of this subcommittee for his opening remarks.

Mr. Price?

PRICE:

Thank you, Mr. Chairman.

Today I'm happy to join you in welcoming back Assistant Secretary John Morton from the U.S. Immigration and Customs Enforcement or ICE to discuss his agency's \$5.51 billion request for Fiscal 2012.

This is a basically a current services budget with a 1.4 increase, a 1.4 percent increase from 2010, generally permitting the agency to operate at the same level from 2010 through 2012.

Mr. Assistant Secretary, as with the rest of DHS you've been asked to tighten your belt this year with regard to a number of your agency's programs. Since you've taken the leadership at ICE I've enjoyed our good working relationship and I've been pleased that we share the goal of focusing ICE's investigative and removal resources on the individuals who pose the greatest danger to our communities; gang members, drug traffickers, weapons smugglers and other serious criminals.

It was four years ago when this subcommittee first brought attention to the large population of criminally convicted aliens who were being ignored by the previous administration in favor of low level offenders. We enacted statutory language in ICE appropriations requiring ICE to devote out a large portion of its enforcement budget to criminals.

The results have been significant. ICE removals of criminal aliens rose by 12 percent in 2008, by 24 percent in 2009 and by 37 percent in 2010. Part of ICE's response to our directive was to establish the Secure Communities Program. I've been impressed with the results of their active build-out of Secure Communities and support your request to increase the program's funding in 2012.

The shift in removals for mostly non-criminals before your time to mostly criminals now has, in large part, been a result of this effort. Nonetheless, your implementation of the program can always improve, including the sharpness of your focus on the criminal population and your interaction with local authorities. I look forward to exploring that with you today.

For years we've also pushed ICE to expand its alternatives to detention program which allows ICE to keep track of low risk individuals in the immigration court removal process. It's more humane and it's more cost effective than penal detention for individuals who pose no danger to society.

So I'm pleased to see an increase in alternatives to detention, however modest, which would allow thousands more individuals to be enrolled in this program. And while this does not have 2012 monetary implications, I'm pleased that ICE has implemented the detainee locator system, making it easier for people to locate someone detained or released from ICE custody.

While these are areas I applaud I have a number of concerns, first, despite some recent remarkable seizures of bulk cash, narcotics, and weapons that ICE should be proud of, the power of the Mexican cartels is not significantly degraded. I'm concerned that the budget does not request any new funds to dismantle drug trafficking and human smuggling operations along the southwest border. I'll reserve further comments and questions on this issue until the hearing we have next week, specifically devoted to the southwest border enforcement.

The budget also greatly reduces ICE automation programs by 85 percent and eliminates funding for many critical activities such as the electronic health records and financial systems modernization. The 2012 budgets eliminates all funding for construction activities and rescinds previously appropriated construction funds, leaving only a small amount of funds for emergency maintenance needs. If this means that we're deferring construction now only to accrue greater cost down the road, this course would be penny-wise and pound foolish.

Finally, the budget has no funding to expand the visa security units overseas even though ICE is only operating in 40 percent of the countries we've defined as high risk. As we learned from the Christmas Day bombing about 15 months ago it's better to deny a visa overseas based on derogatory information than to have to stop an attack while it's occurring.

So, Mr. Secretary, we will need to discuss this further, both to understand the pace at which ICE is expanding this program and what is delaying the establishment of the visa security units in more countries.

Mr. Morton, we value the work ICE does, day in and day out. Many of your personnel operate in very dangerous areas as seen most recently when ICE agent Zapata lost his life and another agent was seriously wounded at the hands of the drug cartels in Mexico. It's a tough job and I'm glad we have a tough prosecutor like yourself at the agency's helm.

We look forward to continue to work with you to help your agency fulfill its mission, beginning with this review of your proposed budget, thank you.

ADDERHOLT:

Thank you, Mr. Price, and again Director Morton we welcome you today and we turn it over now for your testimony for FY '12 budget request.

MORTON:

Well, thank you very much, Chairman Aderholt, Ranking Member Price, members of the committee. I obviously appear before you today to talk about the president's proposed budget for Fiscal Year 2012.

Let me start by recognizing and thanking you for the kind words about our Special Agent. As everyone here knows, two of them were stopped on a highway in San Luis Potosi in Mexico while driving between Monterrey and Mexico City, two cars of armed men forced them off the road and fired into their vehicle, killing Jaime Zapata and wounding Victor Avila. Our thoughts and prayers remain with Mr. Zapata's family and with Victor, who I'm happy to report is making a remarkably speedy recovery notwithstanding having been shot twice.

While the investigation is ongoing, I note that Mexican law enforcement officials have arrested several individuals that they feel were involved in the shooting. This is welcome news and I can tell you we will continue to work very, very closely with the Mexicans to see that justice in this particular case is swift and firm.

Let me also note my condolences for the families who lost loved ones in Japan as a result of the earthquake and tsunami. We have searched the records both in Japan and in Hawaii and all of our people are safe and accounted for, thankfully.

Turning to the budget, let me note first how much I appreciate the bipartisan and consistent support we've had from the subcommittee. Our enforcement efforts have steadily grown over the past few years, notwithstanding the fact that we're a relatively young agency and this would not -- simply would not have been possible without the important appropriations we have received from the Congress.

As the chairman noted, we have become the second largest criminal investigative agency in the entire Federal government. We are the principal investigative arm of the Department of Homeland Security, and I look forward to working with the committee to solidify these gains and I commit myself and my staff to a relationship marked by professionalism and candor.

The president has proposed an appropriated budget of \$5.5 billion, which is roughly an increase of slightly over 1.3 percent or \$155 million over our enacted 2010 budget. The emphasis of the budget is very simple.

First we seek to maintain full enforcement operations. Second, we seek to fully fund our detention programs at the levels previously directed by Congress. And third, we seek to continue the expansion of Secure Communities so that we reach over 3,000 jurisdictions by the end of the fiscal year which will roughly be 96 percent of all the eligible jurisdictions in the United States.

The main enhancements are \$157 million for increased detention funding and \$64 million for the expansion to Secure Communities. We're also seeking modest enhancements for data center consolidation and 2,500 more alternatives to detention positions.

Recognizing top-line fiscal constraints, our budget does recommend delaying facility consolidation plans, does significantly reduce the scope of many of our automation initiatives. It limits construction project and expenses to address only emergency health and safety requirements, and it identifies additional efficiencies of \$100 million in management and administration costs.

I know these are of concern to the committee and I look forward to discussing them with you. They're just hard but necessary calls as we seek to maintain enforcement operations and results while observing some fiscal restraint.

So what our enforcement priority is going to be for the coming fiscal year? The same as now -- aggressive investigation of national security thefts and organized cross-border crime and smart effective immigration enforcement. Let me just deal with each very quickly. Starting with criminal investigations.

We have become a very, very large investigative agency. We have 7,000 special agents posted in every single state of the union and 47 foreign countries, including Mexico, where we will be increasing our staff to 40, making it, by far, the largest overseas office we have in the world.

And through our agents, we investigate a wide variety of crimes. I think most people in the public have no idea how broad ICE's reach is. Everything from the illegal smuggling of drugs and guns, money laundering, cash smuggling, human smuggling and trafficking, child pornography, child sex tourism, child labor, illegal exports of sensitive weaponry and technology, counterfeiting and piracy, and, of course, immigration visa and document frauds.

We are going to stay focused on those things. With regard to immigration and enforcement, we have over 6,000 thousand officers and 900 attorneys dedicated to the removal process. You will see a continued use of these resources to maintain our key priorities and keep focus on strong overall enforcement.

To that end, I would note that we've removed more people in the last two years in any similar period in our history. We also prosecuted more people for illegal re-entry. We put more people on the border. We audited more companies than we ever have before. And I note that just last month, we reached an important milestone of our 20,000th gang member or associate arrest.

We stay focused on the removal of criminal offenders and national security threats. Mr. Price is entirely correct. The agency through this committee was -- had its attention sharpened and focused on criminal offenders. It was the right thing to do and we're going to continue to do that through the Secure Communities Program.

We're going to continue to focus on the removal of border violators. Our support of CBP and the Border Patrol in particular on the border is strong and increasing. And we're going to focus on people who game the system. If you come back here after being previously deported, you are a fugitive in the face of a final order or you obtained your status by fraud, we're going to focus on you.

And finally, we will continue our strong emphasis on work site enforcement, focused on employer compliance.

With that, let me thank you again for your support and welcome any questions that you may have. I'll do the best to answer them with transparency and candor. And if I don't know something or need a detail to get back to you, I'll tell you so. Thank you.

ADERHOLT:

Thank you, Director.

And let me just -- before we start the question, let me just say we -- there is a chance that we could have votes this morning during the hearing. So what we will do, we'll move as quickly as possible through the first round and then hope to get through a second one after that.

So while the F.Y. '12 request for the -- while the F.Y. '12 requests for the agents and bedspace needs, we still lack truth in budgeting. We need a responsible request from the administration for operations with clear results and impacts.

I know you have concerns about the reductions proposed, the approximately \$100 million in undefined savings, cuts in information technology of \$114 million and other reductions. Can you tell us, the subcommittee, today how you

plan to identify these savings and given the reductions, how you will continue to provide your agents and officers with the tools they need to do the job?

ADERHOLT:

Mr. Chairman, we're going to do it primarily through two ways. Our professional services contracts and our administrative activities, travels, supplies, conferences, with -- and roughly about the same amount of money for each, \$45 million for the professional services and \$54 million for the administrative activities.

We're going to go down program by program. We have a number of contracts where private contractors provide us administrative support. If we can do that more cost effectively with federal employees either existing or new, we'll do that. If there are some of these contracts that ultimately in the grand scheme of things are not critical, we will eliminate them.

And then with regard to the administrative activities, we are just going to do some good old-fashioned belt tightening on travel, copying and conferences, printing and the like. We've already done a fair amount of that this year. We've drastically reduced the number of conferences that we hold. We're looking at video teleconferencing instead of in-person meetings.

I don't want to suggest that this is easy; it's not. I appreciate the fact that these are very difficult budget times. These are hard calls. I know the committee has concerns about them. I'm more than willing to continue to work through them as the budget process unfolds. And we're just -- all I can say is we're going to do the very best we can to identify the savings so that we can maintain an emphasis on operations and detention budgeting.

ADERHOLT:

One thing that the subcommittee -- what we would like to see is a detailed list of proposed reductions compared against what ICE currently spends on these activities to help us better understand what -- where these savings would come from.

MORTON:

I think we can actually provide that for you, Mr. Chairman. And why don't I commit to doing so here, actually, by program, the amount by program within the agency. We'll give you a full list of what we're looking in each program to save and how we plan on saving it.

ADERHOLT:

Thank you. Congress has provided every request that ICE has made for detention bedspace. It is a significant investment accounting for nearly \$1.4 billion or a quarter of ICE's total budget.

And as we discussed last week, ICE will meet the minimum authorized level of 33,400 beds in F.Y. '11, if provided the additional funds in H.R.1. F.Y. '12 priorities raised longer term issues about bedspace utilization. The continued force on criminal alien removal means longer stays and expansion of secure communities will also put pressure on detention space.

Let me say that we cannot go back to the days of catch and release. The gains that have been made in terms of border control and integrative immigration system would be completely lost if we did.

That brings me to your F.Y. '12 request for bedspace. Dollars are scarce in Washington these days. Budgets are being cut. But I'm proud to say that this budget request does not cut funds for illegal immigrant detention space. As chairman of this subcommittee, I pledge to you that we will fund every dollar needed to house and detain illegal immigrants in order to keep them off the streets.

However, we can't do a penny more. It is incumbent on you, Director Morton, to ensure that these dollars are used wisely and that we get the most out of each and every dollar. I would ask you -- what steps are being made to ensure that we are indeed getting the best possible security and the best possible -- at the best possible cost? How are we going to get the most out of every bedspace dollar while also meeting the mission's needs?

MORTON:

Mr. Chairman, you have identified a very important management issue for us that we spent a lot of time on in the last two years. The truth of the matter is we spend a lot of money on detaining people. It's an expensive prospect and we operate an extraordinarily large system.

This budget -- one of the things we're trying to do in this budget is to fully meet what Congress has required us to do in the past and have not met for a full fiscal year to date. One of the -- part of the problem was our original estimates that we provided to the committee many years ago were not accurate. And that was the agency's fault. It cost us far more money to actually detain people than we were estimating at that time.

So one of the first things that I did when I came in to office was say that we needed to have, to use your phrase, truth in budgeting. And we figured out what does it really cost. And so that has meant that we've identified a significant gap year after year in trying to meet our mandate of 33.4, and for the first time, in this budget, we tell you upfront this is what it costs.

Now, that said, we are always looking to save money, and there are a couple of ways we have been doing it and we can do it in the future. One, in past years the agency entered into some contracts that, let me say, I don't think we're the most sharply negotiated and we have been steadily trying to get out of those contracts as they come up for renewal, to get something that is of better value for the taxpayer.

And in many instances, we can find and use detention facilities that are not only an improvement over the facility we're using but we can do it at less cost. So that's an important part. And we're going to continue to do that as all of our various contracts turn over.

The other thing that we can do is to be as efficient as we can in cycling people through the beds. The more we can reduce the length of stay in our beds, it's in effect an increase in the number of beds that we have available to us. So we can increase our bedspace by either going out and getting more or we can be more efficient with the bedspace that we have.

And we're focused on that, trying to use the full authorities that we have under the statute to move people quickly where an administrative process is permissible, working on getting better travel documents. We have had a sustained problem with a number of foreign countries who are what we call recalcitrant countries. They don't take their citizens back in a timely manner. And that means that we have to detain people longer.

We're working hard with the State Department to really start to push some of these countries who had been dragging their feet on giving us travel documents, because it's a requirement under -- it's an international obligation for people to take their citizens back. And we shouldn't have to fuss around for two or three months to get a travel document. And that really affects the amount of time that we spend in detention.

And then we have a small but hard core number of people that we cannot remove, that are so violent and so dangerous that we can't release them, and that's just, we're between a rock and a hard place on that. But that's a relatively small number.

But I completely agree with your sentiments. It's a work in progress. We're going to stay at it. And wherever we can identify inefficiencies so the taxpayer doesn't have to spend one more dollar but we can increase our enforcement operations, we'll do it.

ADERHOLT:

Thank you.

Mr. Price?

PRICE:

Thank you, Mr. Chairman. Mr. Secretary, I'd like to return to the question of identifying and removing criminal aliens. We've recalled how over the past four years this subcommittee has pressed for that as an emphasis for ICE. And part of the response has been as you well know, the Secure Communities Program, which we fully supported.

Since 2008, your resources have consistently grown for ICE to make progress in finding aliens in penal custody, removing them at the completion of their criminal sentence. I'm pleased you're requesting these funds for growth, an additional \$64 million. The program got off to something of a slow start but you appear to be on track now for nationwide deployment by 2013.

So there's much to tell. But I do have some concerns and I'd like to focus on this briefly today. And I'm sure you're well aware of the recent case of a suspected gang member who had been previously deported, was recently arrested then in Loudoun County, Virginia, but he wasn't flagged through the Secure Communities Program. He was allowed back into the community, only to commit a heinous crime in neighboring Fairfax County.

Secure Communities should have flagged him as someone who had been deported and he should have remained jailed. However, fingerprints of many deportees that were obtained before 2005 were not taken electronically as I understand and, therefore, not in the database.

What's it going to take to fix this deficiency?

MORTON:

You're exactly right in that particular case. And the challenge for us is that the recent fingerprints are all digital, but going back, we have finger prints but they're not digitized.

So what we have to do is steadily and aggressively go back and digitize all of the older print cards that have the fingerprints and get those into Secure Communities; otherwise you risk missing the identification.

The other thing we have to do is work with our state and local partners to make sure they understand, and we support, clearly, those instances in which there's what is called a no match so that even where the fingerprints aren't a perfect match, if there's evidence of foreign birth or an unclear status, that they call us and we do a manual search to figure out what's going on. That didn't happen in this case and as a result, the person fell through the cracks and as you noted, went out and committed a serious crime.

That case also highlights why Secure -- it is important that Secure Communities identify all offenders. We need to have an emphasis on identifying and removing the serious offenders. But many people as in this instance come in to the criminal justice system for a lower level offense and ultimately commit a more serious offense. And we need to make sure that we're identifying all of the offenders and then using our resources appropriately, and as the committee has required, a thoughtful, (ranked) way.

PRICE:

Well, the -- what can you tell us about the face of this digitization program? And is that -- is that affected by the low- balling in this budget of your automation funding?

MORTON:

I don't know the answer to that and so let me find out the answer and get back to the committee with how many of the old records we go through each year and whether our present budget is sufficient to allow that or it hurts it in anyway. And I'll let you know that.

PRICE:

Now, let me turn to another issue regarding Secure Communities. Advocates of targeted immigration enforcement have raised concerns as you well know in some cases that the goal of Secure Communities, that is identifying and removing serious criminals, has not always resulted in the prioritization of serious criminals.

ICE's own data show that 27 percent of the individuals removed after being identified through Secure Communities in fiscal of 2010 had never been convicted of a crime. And in certain individual jurisdictions, the majority of people apprehended under the program had no criminal record.

So what -- what -- what can you tell us about your efforts to more effectively target enforcement where it really needs to be targeted, on those dangerous people? What kind of management and oversight are in place to ensure that this program -- that program outcomes are in line with the program's stated objectives?

MORTON:

All right, let me address those in turn. First of all, we do prioritize by seriousness of offense and we, just last year, we classified the Secure Communities levels. So level 1 are aggravated felonies as defined by the Congress, level 2 are all other felonies, level 3 are misdemeanors.

The challenge for us is that -- we do identify and prioritize serious offenders. The question becomes, what do we do with lesser offenders who are identified, and our position is, obviously, federal law requires us to remove individuals provided that resources permit it. So Secure Communities has allowed us to identify and remove more serious offenders than we ever have before in the history of the country. And that is going to continue as Secure Communities rolls out to more and more places.

It has also identified a large number of lesser offenders and that is because the single largest class of individuals convicted in the United States is obviously misdemeanors. That is the biggest pool that you would expect to be identified by a fingerprint program.

So we do very much prioritize our efforts, but we also don't look away on other people who are referred to us. That is true with non- criminals. That is why we do in fact remove non-criminals through the Secure Communities

Program, but it's important to remember most of these -- first of all, you don't get into Secure Communities unless you're arrested for a criminal offense.

And many of these people had a prior immigration history. For example, they've been previously deported, they had an outstanding deportation order, multiple criminal arrests. And so, we will receive and process for removal those individuals. We don't detain everybody, but we will focus on removal.

With regard to your...

PRICE:

I have to interrupt you. My time is about to expire here and I want to make sure that we address that question of local variation. It's troubling when -- with the numbers we see and in terms of these various categories vary a whole lot from community to community.

What are you -- are you really making an adequate effort, you think, to make sure that this program is executed in accordance with guidelines in local jurisdictions?

MORTON:

You're absolutely right that that is something that we need to pay very serious attention to as we now move beyond the initial implementation, where we're 80 or 90 jurisdictions to where by the end of this fiscal year, we're going to be in 1,500 jurisdictions, half of jurisdictions in the United States.

And we are very cognizant of the possibilities of local variation whether benign or more sinister and we feel that we have a responsibility to proactively look for variances in -- that don't make sense.

So what we are doing is we're going to run every quarter, statistical analyses of all of the people who are identified and removed. We are going to work with civil rights and civil liberties. As a matter of fact, we are, right now, to develop a program where we look at the results, if we need to go drill down to a case by case approach, we are going to do that. We're going to work with the Civil Rights Division in the Department of Justice so that we can be assured that as we go out and roll this program out nationwide that necessary oversight is in place.

I will -- and so we're -- we're working on that. I will -- I'd be happy to lay out the specifics for you and your staff if you would like.

ADERHOLT:

Thank you. Mr. Frelinghuysen?

FRELINGHUYSEN:

Thank you, Mr. Chairman. Director, I know your Scotch roots.

MORTON:

Thank you.

FRELINGHUYSEN:

I have some, shall we say, Mexico-centric questions and let me preface the questions by saying Mexico is a great ally. Last time I checked, I think it's our -- our largest trading partner. I'd like you to sort of tell the committee, you said that we now have our largest overseas office there.

There are some -- and there is certainly parts of Mexico which seem to be in a -- in a fairly chaotic state which with drug cartels sort of dominating the landscape. I'd like to hear from you how you interact with your counterparts in Mexico. I'm -- I'm not unfamiliar with the Operation Phalanx, but given all the things that we hear about, you know, drug mules, a gun-running and human trafficking, how do you interact with your -- with your Mexican counterparts?

MORTON:

So...

FRELINGHUYSEN:

And -- and talk -- since this is the Appropriations Committee, you obviously are concentrating more resources into Mexico. That must be done at perhaps at the expense of other things you're doing.

MORTON:

It is without question a challenging environment from a law enforcement perspective, and there is a strong correlation between the organized crime cases we investigate along the southwest border and what's going on in Mexico. And in practice, most of our investigations along the southwest border have a Mexican component to them. So...

FRELINGHUYSEN:

Let me just say for the record, too, we obviously have a number of U.S. citizens who are very proud of their Mexican heritage and, obviously, reputation and for hard work. And so we -- I'm sure everybody watches what happens with state of alarm.

MORTON:

So we have agents, special agents assigned to Mexico and what they are there to do is to coordinate with Mexican law enforcement, in particular, the Federal Police, the Federal Attorney General's Office and the customs officials to pursue criminal investigations that help Mexican authorities with criminal investigations in Mexico and then to assist us with some on our side and, increasingly, to explore doing joint investigations. We also work a lot on capacity building and -- and training. It is a work in progress.

There -- the one thing that has changed dramatically is our ability to talk frankly with our Mexican counterparts. Even our conversations five years ago were -- were very, very different. And you've seen a level of candor in Mexico on corruption issues, on the need to build up their capacities and experience. So we're trying very hard to do that.

And I don't want to suggest that the light is at the end of the tunnel. It is -- it puts a tough row to hoe. But we are making significant progress in particularly going after a number of the cartel leaders. We have helped Mexico to bring their first human trafficking cases ever and ICE did that with them. We showed them how to do that provided some investigative support.

We're going to start working with the Mexicans to identify the international smuggling organizations that bring people not just from Mexico, but from many other places through Mexico to the United States. The more we can do to apprehend and intercept and disrupt in Mexico means far fewer people for the border patrol to actually try to catch at the border.

So we're working hard on that. We are doubling down in Mexico. We're going to from 20 people to 40 people, as I mentioned. It will be by far our largest office. And working very closely with DEA, we're just going to keep going after it (inaudible).

FRELINGHUYSEN:

So (inaudible) that you share resource with the DEA, FBI, other, Department of Justice so that it's not just your -- it's -- it's a combined effort of a lot of different agencies.

MORTON:

Very much so. I mean, the DEA has a significant presence. ICE is the next largest, FBI is - there, CBP is there. The one thing about ICE is our jurisdiction is so broad that we end up partnering with just about all of the law enforcement agencies down there. So we're doing drug work, we're doing money work and we're doing JTTF work...

FRELINGHUYSEN:

And -- and lastly, since my time is almost up. It probably is up. There's a vetting issue, can you sort of talk about that?

MORTON:

Yes.

FRELINGHUYSEN:

We can't assume that's always -- our counterparts, your counterparts are who they are, or some people.

MORTON:

That's right.

FRELINGHUYSEN:

There's some investigations?

MORTON:

That's right. And so, we typically operate and we do in Mexico through what I called vetted units. And so we work and we work with Mexican officials to establish trusted units of Mexican law enforcement authorities that we work with. We do the same in Colombia and Ecuador, and many of the other Central American countries.

We have eight vetted units and we're going to try to add four more, Panama -- they're very successful.

FRELINGHUYSEN:

Thank you, Mr. Chairman.

ADERHOLT:

Thanks, Mr. Frelinghuysen.

Mr. Olver?

OLVER:

Thanks -- thank you, Mr. Chairman.

Director Morton, this is the first time I've had the opportunity to serve on this committee. So -- and my questions will probably be very rudimentary, but also some impressions. I've been a bit -- a bit surprised by the sense of body counts as very important in the comments that have been made by members of the subcommittee and -- and by you and returning in your testimony.

On the detention beds, this budget is fully funding the -- for -- in 2012 is for 33,400 beds?

MORTON:

Per day on an average per day.

OLVER:

How many are funded in 2011? How much of an increase is after 2012?

MORTON:

The way it work is that the committee for the last of few years has directed the agency to maintain a minimum level of 33, 400 beds, for a whole host of reasons, which good people can -- can agree and disagree on. The agency has been unable to actually meet that detention...

OLVER:

33,000? What is it in this year? What is it that your asking?

MORTON:

This year, we're for the first time meeting three of the first two quarters the detention mandate. Last year, we only maintained an average of little over 30,000 to give you an example.

OLVER:

And last year, it was 30,000.

MORTON:

That's right.

OLVER:

Are you -- so there's no increase then.

MORTON:

That's right.

OLVER:

In the proposed budget.

MORTON:

We're just trying to meet our obligation.

OLVER:

Well, that answers something, I was thinking to myself if we -- are these by -- these are -- are these owned or are these contracted and if there -- if -- are they one-year or long-term contracts or what?

MORTON:

It's a mix. We have over 250 different facilities that we use. They fall on to three categories. There are government-owned facilities, a very small number. There are contract facilities run by private contractors, and then there are facilities that are run by state and local authorities, and we rent space in those.

The challenge for us is our population is very diverse. So we have to detain everywhere -- everybody from women, non-criminals to very, very serious violent offenders like a penal institution. So we need a wide variety of facilities and, obviously, we have a national reach. We've got to be able to detain people throughout the United States.

We're trying to reduce the number, but we've taken it from over 300 to 250. But we still run a very large system.

OLVER:

Well, what I was -- you've already told me that you're not funding any more, but you were below, even though this was your sort of mandated capacities earlier. I was going to -- think that you're opening more, filling any more -- are included, then, the next year, the question is likely to be, "Well, why didn't you fill them all." Maybe that's a question that - it ought to be funded for that full number earlier, maybe that you've already suffered from that kind of a problem.

Well, let me go on to a slightly different thing then. And your -- your testimony points out that the two major core operational programs are enforcement and removal operations. And removal strikes me as a wonderful euphemism for deportation, which you have no problem using, and in all your testimony you use deportation.

It seems like deportation is the word. I mean, you know, other euphemisms might be termination or re-termination or something like that, I don't know. What -- or extermination, you know. The -- the two programs, I note that they - the two core programs, enforcement and removal operations and the Homeland Security investigations, I was puzzled.

Homeland Security investigations, in its body count, arrests 55,000 individuals, including 34,000 criminal arrests and then 20,000 administrative arrests -- 21,000 administrative requests. Now, are both of these core functions using these detention facilities or is it only the removal operations that are using the detention facilities?

MORTON:

They both use them. Our detention power is limited to the administrative arrest. So the -- all of the ERO arrests that are administrative...

OLVER:

Your detention power is limited.

MORTON:

Limited. We only have civil detention power. We do not have penal power. So unlike the Bureau of Prisons, we don't incarcerate people. We detain them.

OLVER:

So the criminal arrests then housed in the Bureau of Prisons?

MORTON:

Bureau of Prisons or with the Marshal Service. That's right.

OLVER:

And -- and -- and so what about the administrative arrests? Are those civil?

MORTON:

They're all civil.

OLVER:

Would they be involved in the detentions?

MORTON:

And -- and so we would -- we do all of the civil detentions. So we run a civil -- a uniquely civil detention system. Now, we house a lot of people with criminal records in them, but the reason they're in the detention that is because we are trying to remove them from the United States, which is a civil, not a criminal process.

OLVER:

So, what happens to the criminal arrests? Those -- those are not in your budget. Those are in the federal prisons?

MORTON:

The arresting piece, but the budget, now that is the -- either the Marshal Service for the pretrial detention or the Bureau of Prisons for incarceration.

OLVER:

Is my time up?

ADERHOLT:

Yes, it is.

OLVER:

I've only started, Mr. Chairman.

ADERHOLT:

Mr. Carter?

OLVER:

Because I don't know very much.

CARTER:

Thank you, Mr. Chairman. The two agents that were killed that made the paper, one killed and one seriously injured at -- in San Luis Potosi. First, I would note that San Luis Potosi is not a border town. San Luis Potosi is probably closer to Mexico City than it is to the border. They're both unarmed. By order of the Mexican government, I'm very familiar with how harsh the Mexicans are on bringing guns into their country and I understand that's their policy.

And -- but it concerns me, you just told us you've added substantially more unarmed agents into the Mexican City office working with the -- with the folks down there. And I can understand Mexico's governments are -- and their gun policies because they date back to the revolution. But -- but the reality is you're putting people in a serious harms way unarmed.

I come from a country where they are trained to do the appropriate response when attacked, and San Luis Potosi is out of a war zone -- and I'm going to call the border a war zone -- out of a war zone substantially and yet the war is continuing south and no telling where it's going to stop. And we all know that. We can see it moving in that direction and we're just praying to God in Texas that it doesn't move north.

So, is that a good -- shouldn't you make maybe a risk assessment that would make you and be able to argue that they should be armed and try to negotiate arms for them? Are other agents of the federal government like the FBI and DEA going into Mexico unarmed? Are they unarmed? People when they're down there, those -- so that's my question.

And then, finally, a story that was told to me by my friend Mr. Culberson, who normally sits right next to me, was that there was an ambush in -- and this may be a border patrol, it may not be an ICE operation -- an ambush in Arizona where they issued shotguns with beanbags in them to the ambushing authority, and of course the ambush was effective. The officer raised up with his beanbag gun and fired a round and all of a sudden all hell broke loose and the guys shot back with real guns and the result was two men been killed.

Now that seems really strange policy to me and I would like you to address that policy.

MORTON:

Let me start with the last question. That was a CBP case, not an ICE case. That's border patrol agent Terry, who was killed. The -- I don't know all of the details of that particular case, but I do know that the border patrol's policy on the use of force is the same as ours and they were carrying guns and were authorized to use their firearms if they felt their lives are in danger, they -- they don't -- they can skip the beanbags. But I would -- on -- to give a deeper answer, I would refer you to the -- to the border patrol on that one.

One the other one -- let me say this, on the question of security and the doubling of our agents. We have been doing a very in-depth security assessment. We're very cognizant of the fact that we're sending people into a place that's dangerous and we're taking a number of security steps. What I would ask Mr. Carter is maybe if I could come and talk to you outside of the hearing room on -- on some of what we're doing and thinking.

CARTER:

I'd be glad -- be glad to. If I still got time, the question about the Virginia case, how many -- do you have any concept of how many re-entries at -- by violent criminals that you're experiencing after they're deported and with - resulting in things like the Virginia case, we're a long way from the border here, we're a lot closer where I live.

MORTON:

I don't -- let me see if we can get some hard numbers for you. I'll tell you it's a real problem. Re-entry is a big problem, not just with people that we deport with no criminal records, but obviously criminal offenders that we deport that come back. And given the rate of recidivism in this country, which is about 60 to 70 percent, you can do the math and -- and we're talking about more crimes in communities.

We prosecuted over 7,000 people last year for re-entry, which is the largest number we've ever done, and the vast majority of those are criminals. All I can say on it is it -- it's a big problem. We're -- I share your concern on it. We do everything we can to identify them and it's why, again, in some instances, we will learn of somebody who doesn't have a criminal record. But if they're here after having previously being deported, the law is very clear on that, that you reinstate the removal order, you don't get another hearing if you are removed and -- and that's our obligation and we're going to -- we're going to do that.

CARTER:

Thank you very much.

ADERHOLT:

Mr. Dent?

DENT:

Thank you, Mr. Chairman, and good morning, Director Morton.

A couple of things, in your written -- in your written testimony you said that ICE has increased the average daily detention population by 40 percent while increasing annual criminal arrest by 1,200. You know, I applaud you and your officers for their diligence.

Our main concern at the issue of -- about this issue of sanctuary cities, last year during a hearing with the Committee on Homeland Security in which I had served at the time, I had -- I had a dialogue with an ICE official on this topic. Mr. James Dinkins acknowledged that the lack of cooperation by sanctuary cities can be challenging for federal agencies and -- and does not come -- and does come at a cost, when ICE experience difficulties building a criminal case against an alien.

Sir, is it fair to say that there are a variety of metropolitan areas across the United States that can be labeled sanctuary cities?

MORTON:

First of all, on sanctuary cities, obviously, I don't support the idea. I will say that there's a wide variety of cities that are known to have or -- or said to have sanctuary policies. They can -- there's a wide range and there are some that have official laws or ordinances on the books that restrict communication with ICE or cooperation with ICE and others, it's more in the area of policy.

It can be challenging for us and in -- in some jurisdictions. I will say that as we have increasingly focused on our criminal investigative efforts and game work, we've generally been able to work through it.

But it is something we deal with.

DENT:

Well, I guess I get particularly disturbed by this because on the one hand, the Justice Department is, you know, suing the State of Arizona for assisting with the enforcement of federal immigration law.

On the other hand, we have communities out there that are -- are discouraging or persuading local law enforcement from cooperating. And that would have to be a real challenge to your men and women who are trying to enforce the law. You need their help, you know.

MORTON:

We very much look to state and local coordination and cooperation as a critical part of what we do. We don't demand or require of any state and local law enforcement agency that they actually enforce federal immigration law. If they want to work with us, that is welcome. And that we try to do that wherever we can.

DENT:

We have an...

MORTON:

What we don't want is to -- to have the actual interference of the (inaudible).

DENT:

We have (inaudible) program where you'll train people.

MORTON:

Yes, sir.

DENT:

So, this -- I just think this is -- it's very disturbing to me that as you're trying to do your job, your men and women, you're not getting the collaboration and cooperation you need to in some communities.

On the issue of removal, the last time I checked, there were about eight countries that -- that are causing us some problems of deportation. I think we have valid deportation orders against, the last I've checked, over 150,000 people.

But those -- their home countries will not repatriate their citizens. I think those countries are China, India, Vietnam, Iran, Somalia, Jamaica, Eritrea, and I'm probably forgetting one.

Have we made any progress with these countries in terms of repatriating their citizens who have to due through due process when it's time for them to go home?

MORTON:

We've made some progress. I don't think I would call it complete progress. So, we have reduced the delays in some of those instances. But they're still far too long from my perspective.

What I can tell you on that is we've really working hard with the State Department. We've sent demarches to some of those countries. We -- I'm going to be starting to get in the car and going and visit the Ambassadors from those countries here in the United States. And we're just going to keep ratcheting the pressure.

It's a real challenge. It has been afflicting the system for a decade.

DENT:

The only thing that's going to get their attention is you hold up visas from those countries. That will -- that will help settle it. That's where I think you have to apply the pressure point. I wrote legislation on that subject.

Also the federal prison population, what percentage of our federal prison population today is criminal aliens? It was a very high percentage, again, the last time I checked.

MORTON:

I don't know the exact percentage. But there are about -- we estimate there's about two million criminal offenders in the United States who are removable either because the federal law..

DENT:

Is that federal and state? Is that federal and state?

MORTON:

That's the entire population. Yes, sir. I think I could try to break it out for you by federal and state. But that's the entire.

DENT:

But I have seen numbers as high as 20 percent in some cases of our state and federal prison population being criminal aliens. I'm not saying they are all here illegally, but --

MORTON:

Right.

DENT:

But where do they rank in the pecking order in terms of removal? I suspect they're near the top.

MORTON:

Very high, very high. And it depends on your -- it depends on the state. And it depends on the jurisdiction, the percentage in a given, you know, California for example, the -- the percentage will be much higher than if you're saying, you know, North Dakota.

And -- but I -- we have that information. If you're interested (inaudible) by state, we'll -- we'll be happy to give it to you.

DENT:

My time has expired. Thank you.

ADERHOLT:

Thank you, Mr. Dent.

Miss Roybal-Allad.

ROYBAL-ALLAD:

Thank you, Mr. Chairman. And I apologize for being late. But I have another hearing going on at the same time.

Mister Morton, two recent reports by the DHS office of the Inspector General have -- have actually validated concerns raised by myself and the Congressional Hispanic Caucus and immigrant advocates about the 287G program.

The IG report found that the program lacks transparency, effective management controls, and proper oversight. The first report in March of 2010 was highly critical of the program and offered 33 recommendations to improve it.

The October report provided an additional 16 recommendations and indicated that 28 of the original 33 still have not been implemented.

What -- what is preventing the agency from implementing the 28 original recommendations that remain and the 16 subsequent recommendations? And also, if you could answer as part of your question, given the seriousness of the IG finding, shouldn't you refrain from signing new agreements until these recommendations are implemented and the safeguards put in place especially, you know, the proper oversight?

MORTON:

You're right, the Inspector General issued two reports that were critical of our oversight and management of our 287G agreements. Many of the "open recommendations" from the Inspector General are, actually were agreed on. And it's just of -- of -- of closing them out. It's just a few things that we need to -- to do with the Inspector General.

And so, I think if you would check with the Inspector General, we're down to about 10 truly outstanding issues that we're working through. And I don't anticipate those to remain open for long either.

We have accepted many of, in fact, all of the -- the -- the recommendations. We have created an advisory board. Civil rights and civil liberties is on our advisory board now for 287G training. We have a much stronger oversight program.

As you know the -- the Secretary directed that the program have a narrower focus for the taskforce. We've gone to a uniform memorandum of agreement with all of the 287G partners. And we've had them all signed again. All of this has been done since the Inspector General reports this as an ongoing effort to improve our training.

Our 287G agreements have -- have remained stable. And we have -- we've had about 70 the entire time. There hasn't been an increase since then.

ROYBAL-ALLAD:

OK. You know, after years of raising concerns, I -- I was very pleased that your agency is moving forward to reform our immigration detention system.

However I -- I remain concerned that you have made limited progress in implementing the alternatives to detention which is a proven supervision and monitoring program for vulnerable immigrants such as pregnant women, the elderly, and the sick.

As your budget request acknowledges, alternatives to detention is also a cost-effective -- is cost effective relative to traditional detention. What is the timeline for instituting your planned detention reforms?

And what factors have prevented ICE from implementing alternatives to detention nationwide for these vulnerable detainees who pose no threat to society?

MORTON:

So, our detention reforms are ongoing. And lots of things have been done. Many of the things that were in your bill as a matter of fact we have been able to address administratively.

We have the online detainee locator system. We have begun a full overhaul of the medical care that we provide. We're moving to a new medical record system. We have two working groups with the advocacy communities. We have detention monitors in all of our major facilities.

And you are just going to see a -- a steady march to a design that is much more reflective of the diverse population that we have.

There are some challenges that remained. Our -- our reforms are subject to negotiation with our -- the union. And the union had expressed some objections to the new standards and procedures that we want to implement.

And so, that is a matter that we need to negotiate with the union. And we're -- we're trying to do that.

And with regard to ATD, as you can see, we're -- we're requesting that the Congress allow us to increase that by another 25,000 spots. So, that -- that would bring us to 19,500 per day which is -- is quite a large number.

The real challenge for us on ATD is that it is cost effective on a daily basis. But because the executive office for immigration review does not have an expedited docket right now for ATD, they treat it as if they were a non-detained case, the cases take a long, long time. And it actually ends up being cheaper when people are in detention because they move much more quickly. We have two pilot programs. One in Baltimore and one in Miami, with the IOR.

I think if we can prove that that works and expand it, you'll see ATD really work the way I think we all intended to. We're not quite there, but we're -- we're getting there.

ROYBAL-ALLAD:

Thank you.

ADERHOLT:

This subcommittee recognizes that court dockets and availability of the judges to hear cases can slow deportation proceedings in progress. Does the administration's F.Y. '12 request provide for enough immigration law judges to hear the case, the cases ICE is bringing forward?

MORTON:

I do not know the specifics of DOIR's 2012 budget request. There are 280 -- 270 immigration judges on average. You are right that IOR resources are a critical factor on how quickly we can hear cases and remove them.

I would need to go back Mr. Chairman and see what it includes. I'm a strong supporter of additional resources for IOR people. As you just noted, it -- it's one of the most central factors in whether or not we can move cases quickly.

The non-detained docket in particular has an enormous numbers of cases on it for a very few number of judges to handle. It's been a problem for many, many decades. But I -- I can't comment on the specifics yet because I just don't know them.

ADERHOLT:

Do you know, and this is, I think this is equally as important is, do you coordinate your operations with the Department of Justice to prevent these blockage (inaudible)?

MORTON:

We -- we work very closely with IOR. They are very supportive of a number of our efforts that we've done much better in the last two years with them than we have traditionally done.

We have encouraged them to place a greater focus on the detained docket which is the one docket that it does move quite quickly. And they have agreed to work with us on that.

They do --do video teleconferencing with us. We've explored stipulated removals and having quicker dockets for cases that really aren't contested. The non-detained docket remains a challenge. It's just the sheer volume of cases in the system is enormous. And then when you couple that with people who can appeal their case all the way to the Supreme Court.

Even non-detained docket can take many years for an individual case to become final.

ADERHOLT:

So, there would be some indication. There probably could be some some more administrative law judges. But you are going to get with us some of that and get that information to..

MORTON:

Yup. Let me see how many the -- the Department of Justice is requesting.

ADERHOLT:

The administration has -- has very publicly asserted its immigration enforcement focus on criminal alien identification and removal. I strongly support this priority.

But of course many members of this committee, many Americans including myself have concerns about ignoring the administrative violations.

Now, understanding the pass two years, the administrative arrests associated with a just worksite enforcement have dropped by 80 percent. And the worksite enforcement context processing illegal aliens has uncovered fraudulent document rings and organized crime.

As -- and we cannot forget that several of the 9/11 hijackers were visa overstays which were, of course, merely administrative violations. Finally, these individuals are taking jobs and breaking the law. How does letting them go impact the morale of immigration enforcement's personnel and Americans in search of jobs in this current economy?

MORTON:

A couple of things on that Mr. Chairman. We -- we don't let people go. And we did remove over 1,200 people that we encountered in the worksite enforcement operations.

What you've seen as we did have a shift from the very large worksite enforcement operations that were focused on identifying and removing unauthorized workers at, say, large meat packing plants, to focus on our part to really find, to create a culture of compliance in the employer community and this is just a different approach. With regard to the overall work to the -- and the -- the question of whether or not we are removing non-criminals, we are.

We have, last year, removed 197,000 non-criminals. And while we have increased the percentage of criminals and on our emphasis on criminals, we continue to remove non-criminals.

We are -- and I think as the number suggested, at a quite significant rate, the committee, for the last few years -- and I completely support this -- has directed that, you know, in the context of limited resources, that we focus first and foremost on criminal offenders.

I'd like to look at this way. We're appropriated enough resources to remove about 380,000 people. And the question for all of us is who are those people going to be in a world of limited resources?

And so, we start with criminal offenders, border cases that -- that CBP brings us, and people who game the system.

ADERHOLT:

Well, I think we agree that, you know, the employers when they violate, they need to be held accountable for this. But also, the employees I think need to be held accountable as well.

And I -- we -- I think the subcommittee thinks -- believes that's very important. We'd like to see a focus on that.

Mister Price.

PRICE:

Thank you, Mr. Chairman.

Mr. Secretary, I -- I apologize for having to run back and forth between the two hearings this morning. But I -- I understand in my absence, you began to get into the subject of alternatives to detention. And I want to probe that further.

We know it's a very economical and effective alternative to holding a low risk individual in detention. Absconder rate is -- is quite low. And the per day cost are as low as \$7 a day compared to \$122 a day in detention.

And I understand that you've begun to explain how the courts treat these cases or more likely to delay these cases. So -- so -- so those cost differences are somewhat obscured. But -- but nonetheless, that's a very striking difference.

I wonder if alternatives to detention really is being used optimally. I know you are proposing for 2,500 new participants, that's good. But there may be another issue at play here, beginning in 2010 Congress included statutory language in the Homeland Security Appropriations Act requiring ICE to maintain an average daily detention capacity of at least 32,400 beds.

Now I've never been a big proponent of this provision and in an environment of fiscal restraint, I wonder, really, more and more if we should be telling a Federal agency that they're not permitted to spend less than a certain amount. In this case we're talking about \$2 billion annually for immigration detention beds. That's 30-year budget.

Your budget assumes continuing this level of detention. So I'm wondering if in blindly adhering to keeping over 33,000 people daily in costly penal detention, whether we are missing a real opportunity to make wider use of alternatives to detention, to save some money, to engage in better enforcement practice. After all, of the 197,000 non- criminals deported by ICE in 2010 only 8.6 percent were placed in alternatives to detention. That's 17,000 people out of 197,000.

So does that figure suggest we're fully utilizing alternatives to detention among non-criminal aliens, that's what we're talking about? It just stands to reason, I think, that more than the 8.6 percent of non-criminals in custody would be eligible based on ICE's own criteria to alternatives to detention.

So I wonder how you would respond to that and also how you feel about this statutory provision. Is it really wise to maintain a statute requiring you to keep 33,400 beds in play?

MORTON:

On alternatives to detention I will tell you that I don't think the agency has met the full promise of ATD for a variety of reasons, many of them are out of control of the agency. But to start by saying I agree with you that there is a promise of ATD that has yet to be fully realized.

A couple of challenges, in the past we were using ATD, not unreasonably, to monitor some serious offenders who weren't otherwise removable and that was a reasonable but not the originally intended use of ATD in many instances and so we have shifted that to the original intent. The big challenge we face with ATD is that as you know, it is cost effective on a per day and in many instances it leads to a high rate of compliance, and again we're talking non-criminals so it doesn't help with the public safety issue but it does help with the risk of flight issue.

The challenge for us is that right now those cases go in the non- detain docket and over time the cost greatly exceeds and we are -- we have two pilots, as I mentioned earlier, in Miami and in Baltimore where EOIR is going to treat the ATD docket on an expedited basis similar to the detain docket. If we can move to that model more nationally, I think we will start to see the savings that you recognize the promise of ATD being realized in full. As you can tell from this budget, we're not waiting on that, we are asking for 2,500 more and this is, you know, 19,500 per day. This is, again, not for the year.

So we're moving in the right direction, there's no question that we can do more and make it more efficient. It holds great promise and we're going to do that.

With regard to the detention mandate, of course I never want to quibble with the wisdom of the Appropriations Committees in past years and there's been generous appropriation. But we're not in the situation with the -- obviously the committee has appropriated more money to us in the detention world than we can spend, for reasons that we mentioned before the agency didn't provide the committee with a particularly honest assessment of what it cost.

You know, our focus here this year is just trying to meet once and for all in an honest way the mandate that the committee has put on us and that's what we're trying to do.

ADERHOLT:

Mr. Carter?

CARTER:

Thank you.

Director Morton, I really appreciate your job. I got a bunch of questions but I will give this as fast as I can. On the situation of the Virginia description we had from Mr. Price where a convicted offender has been deported from our country and reenters our country and commits another offense, would you support enhanced punishment for those convicted offenders who reenter and commit another -- as a former prosecutor, write on to the law, at least at the Federal level, if they commit a Federal crime would enhance the potential punishment up on a second conviction?

MORTON:

I would certainly support both in terms, you know, repeat offenders, the sentencing guidelines, recognizing that if you are back again and committing crimes it's time for a more serious sentence. Federal law does provide for a separate offense now, Federal offense that is independent of the second crime of illegal reentry and that's why we're really trying to prosecute those aggressively with regard to the criminal offenders that we remove and come back. And the gang members is a big problem and a lot of gang members that we removed, they come back and they don't go to a life of pursuing further education and honest work but back to a life of crime. And so, we really try to focus on them.

And, you know, in my view is if you're back again and you are committing more felonies it's time for a little more serious sentence.

CARTER:

The discussion of detention supervision appearance program that you've got, from my experience, support that use of monitors and so forth. I think it's a good use of money and the appropriate people placed on those things appropriate. I would argue that it may not be appropriate for a violent offender, others I think that should be a decision that should be made by a judge or somebody that makes those decisions.

And that brings up another question. I was visiting with a Federal judge down on the border in Del Rio, about the issue of the fact that some courts are so overwhelmed and other courts actually have space to do these things, and I was trying to make a live venue, the law, as you explained to me, not a venue issue, I mean, not venue, (inaudible) talking about. This (inaudible) transfer jurisdiction, it's not a jurisdiction issue, it's a venue issue, because being in the United States is not against the law, being in the United States without papers is not against the law but crossing the border is against the law.

So unless you catch them crossing it's not a crime and once you catch them inside the country they lock you into that venue and we would have to -- that would have to become a crime in order to change venues.

Do you have any comment on that particular issue, what the chairman was talking about, the fact that we have overloaded courts in one place and other courts that could help.

MORTON:

I think you've accurately identified the problem, the way the illegal entry and crime is written, oftentimes the government has to bring the case and the place where the illegal entry occurred which, of course, is going to be over and over again, four states along the Southwest border and those states...

CARTER:

And the smart criminal defendant can say, I'll cross in Laredo, knowing that that court is so backlogged that it could be literally years and years before it ever gets reached.

MORTON:

Well, even in an instance where there's no evidence of how the person, where they came in, the government, you know, if they came in the country illegally and the government has to try to figure out where you cross the border and where to bring the case, it's a challenge.

CARTER:

I'd like to work on that. Thank you.

ADERHOLT:

Mr. Olver?

OLVER:

Thank you, Mr. Chairman, I'm still stuck on page one of your testimony.

I'm still thinking about the 34,000 criminal arrests, and it's my understanding now from what has been said by my friend earlier and then from what Mr. Dent talked with you about, is it correct that these criminal arrests must be detained in your operations until there is a conviction, I take it, and a sentencing or do they immediately go into some sort of holding pattern that is under the Department of Justice, under the Federal prisons arrangement?

MORTON:

It's very complicated, so the first thing I would say is I'd be happy to come by and help you better understand who we are and what we do and how we do it, and what the law is because the Immigration and Nationality Act is a little bit like...

(CROSSTALK)

OLVER:

I'll accept that. The end of that question was, I was wondering whether those people who go through Federal prisons end up being disproportionately the people who, some of these countries that don't want to take back their citizens, do they fall into that category?

MORTON:

So for the people that go through Federal prison for a Federal offense, first they are detained by the marshals.

OLVER:

(Inaudible) back to you for deportation...

MORTON:

They do, so when they're done...

OLVER:

So are they going back to your for deportation?

MORTON:

At the back -- you're absolutely right, and so, they come back and so then they are in...

OLVER:

But when you're trying to deport them their country of origin knows that they were criminally detained?

MORTON:

Sometimes they know and sometimes they don't, it's more a problem of just general recalcitrance to take their people back and there are a number of countries that just drag their feet with regard to taking their people back.

OLVER:

OK, well let me just go to another question, I think I still have about three minutes. I have three offices and I have case workers in each of those offices and more than a handful or probably fewer than 500 handfuls or 100 handfuls, 500 cases each year of families who have been caught up in the so-called removal process.

And it often involves a man or a woman with a U.S. citizen who is a spouse and maybe some children who are U.S. citizens in the process, maybe not, where the U.S. citizen is trying to adjust for the spouse and I get cases where it is very easy that that get arranged and then at the other end where there's an almost summary deportation and, ultimately, it often leads then to a divorce because they can't get back together again easily, particularly if there are some children involved. Could you give me some idea why it is that there is such a disparity -- this is an anecdotal finding. I would have to go back to all my cases and actually total up these situations -- that what it is that makes some of them get that adjustment easily and some become a summary deportation?

MORTON:

The answer is it's going to depend on a person's background and the relationship that they are seeking to use to adjust their status, whether it's an employment-based, a family-based relationship, what --

OLVER:

I've defined all persons who are married to an American, a U.S. citizen spouse.

MORTON:

If there are immediate relatives, then, it really is you know do they have a criminal record or not -- those kinds of things. Are there going to be the adverse factors? If it's -- if your question is really about whether or not -- the actual

adjustment is handled by either the Immigration Courts or the Citizenship and Immigration Services. We don't do benefits. We're the enforcement arm.

We do grant deferred action on case-by-case basis. And it may be that some of the cases that you're referring to we deferred action on. We agreed to exercise administrative grace and others based on the circumstances we proceeded to removal.

(UNKNOWN)

Do you have to wait -- for instance, after a wedding or marriage or if there are no children involved yet. There may already be. But do you have to wait some particular period before the U.S. citizen can vouch for the spouse for a green card? That the --

MORTON:

No. If you are married, you can -- you apply for the benefit. And I will say we have a policy -- I should follow up with you and your staff -- our policy is if you're in removal proceedings and you have a pending application for which you are eligible, you will ultimately receive adjustment. We terminate proceedings in those cases. So if there are cases (inaudible) --

(UNKNOWN)

(Inaudible) a case where we had documentation for the application for the green card and they summarily deported.

MORTON:

If you have cases like that, I'd like to follow up with you on them, because that is -- our policy is if you are going to be granted a benefit and you're going to be granted a benefit and you're going to become a lawful permanent resident, we terminate proceedings.

ADERHOLT:

Ms. Roybal-Allard.

ROYBAL-ALLARD:

I just want to point out I've had similar problems. Mr. Morton, I understand that Secure Communities which is a program intended to identify and deport felons and dangerous individuals in our country illegally has been addressed earlier in a question.

But I do want to highlight one concern. And that is that the -- there are many who are concerned about the fact that the program is resulting in racial profiling and contributing to individuals not reporting crimes or helping law enforcement. I know that that's a big concern by the Los Angeles Police Department and other departments in my area.

But, I want to give one example of victims of crimes not reporting these crimes because of this. (Inaudible) that the Safe Horizon-New York which is New York City's largest provider of services to battered women has begun advising its undocumented clients not to report abuse to police for fear that they will be deported to the Secure Communities program.

Because sometimes -- there is one incident when someone -- a woman called because she was being beaten and because they needed her to help translate they took them both in and they booked them both, both the victim and the person that's committing the crime.

So, my question is, what are you doing or what can be done to address the concern, not only about racial profiling, but with regards to victims that are afraid to you know report crimes, particularly those who are victims of domestic violence?

MORTON:

So, two things and I will reiterate a few things that I said before, I totally recognize the concern on racial profiling. We are instituting a whole series of analytical steps working with the Civil Rights Division, the CRCO at DHS, inviting them to literally be part of the analysis with us so that we can root out and identify any jurisdictions that are misusing Secure Communities.

With regard to the DV issue, it's, again, a concern we're very much aware of. I will in the coming weeks be working on a policy to address exactly this issue, particularly in those states that do what is called dual arrest. They arrest everybody first without trying to identify who is the victim and who is the perpetrator. And so, they both come in to our custody and we're going to try to address that, specifically with a policy and to make sure that we are not scooping up victims inappropriately.

The challenge for us is obviously we've got to be careful not to ignore the perpetrators, because often if they are let go, very bad things happen as you know in some of these domestic violence cases with the serious violent crimes, even death.

And so, we -- we got a fine line to walk here. But we have zero interest obviously in a victim who reports a crime suddenly getting scooped up because the local police just say "Well, we'll arrest both people and figure it out later." It's a problem and then we're going to have a specific policy about it.

ROYBAL-ALLARD:

OK. I'll look forward to that. Thank you.

(UNKNOWN)

So, as you're aware, the F.Y. '12 request proposes to rescind \$25 million that have been -- that had been for biometric exit. The remaining \$25 million is proposed to reduce analysis back log of potential overstays, so more cases can be referred to ICE. Is this something that you support?

MORTON:

The biometric exit function is not at ICE; although, we depend on the references from it. I need to look -- I think it must be in the US-VISIT part of the budget that that happens.

I will tell you right now I don't think -- as I understand it the rescission would be for the future vision of having a mandatory exit control. I don't think if that were rescinded it would affect our immediate operations. We would continue to get referrals from U.S. citizens based from passenger data from the airlines as to who's not showing up for their return flight.

It obviously would have some -- it will have an effect on whether or not we have entry and exit controls in this country. It -- again, it's not my particular area of expertise. I would just say that the creation of a full exit program for every port of entry including the land borders is obviously a very challenging one and it's not easy. But let me -- I don't know enough about the specific rescission at US- VISIT to answer that properly and I don't want to steer you wrong.

(UNKNOWN)

(Inaudible).

ADERHOLT:

Hmm. Well, it will leave more money to actually do biometric exit and that's (inaudible). Let me -- quickly, we've got to go down but let me go ahead and quickly ask or call on Mr. Price.

PRICE:

Thank you, Mr. Chairman. I will be quick and you may want to elaborate this for the record. But I have signaled in my opening statement that I do want to talk with you about the Visa Security Units. They are located as you know at U.S. consulates overseas. They vet the background of people applying for U.S. visas. ICE VSUs use a broader range of databases than the State Department uses or perhaps can use to review the backgrounds of these applicants.

Currently, there are only 19 of the 46 high risk countries with VSUs. This figure increased about four after the Christmas Day bombing a year ago. But there's no additional funding in the 2012 budget for more VSUs. The 30 million requested only funds those that are already established.

You also -- I'm sure -- recall that in the past, ICE has had difficulty in establishing additional VSUs in some embassies. For example, London told ICE that DHS had already had too many in the embassy to justify our VSU there. We remember that episode with some (inaudible).

So, Secretary, at the time we have here, can you just summarize the value added about these Visa Security Units that State Department employees cannot provide? I'm not sure I understand that precisely. What is it that these units are adding that the State Department cannot provide?

MORTON:

So (inaudible) --

PRICE:

And then, given this edge, aren't you concerned that we have these units only in 40 percent of the countries that your own agency has labeled high risk?

MORTON:

Sir, I'm a big supporter of the VSU program, that there isn't additional money in this budget. It's simply for a reflection of the hard calls we had to make. And so, it shouldn't be taken as an indication of a lack of support on my part for the basic concept of -- the reason they are effective as you note, Mr. Price, we have access to certain databases that the State Department doesn't have access, that we're able to do a much fuller run. Plus a lot of these cases to really dig down, it's not just a question of running the computer. You got to get out of the office and go down to the local courthouse in these foreign countries and see if this person is really married. Does this relationship really exist? Or we send an agent out to say they're going to go and claim that they're going to go visit this particular address in the United States that doesn't seem to exist. You know send an agent out and check on that place. Take a picture.

We are able to do that in a way that obviously the consul or officers are not. They are under a lot of pressure to move for very good reason (inaudible) process along and not have unnecessary delays in getting lawful visitors to the United States. So, that's where I am -- I would love to see as future budgets allow continued expansion. I think it's a good program.

PRICE:

Thank you, sir. Thank you, Mr. Chairman.

ADERHOLT:

Thank you, Mr. Price. Director Morton, thank you for your attendance here today and for discussing the F.Y. '12 request. And we look forward to working and look forward to you getting back to some of the requests that we mentioned in the questioning this morning.

MORTON:

Thank you very much. I will just say a big thank you to your staff. I deal with lots of committees. The professionalism and sort of the straight shooting that we've had from the staff over years is great, not to say that you always agree with us and don't beat up on us sometimes, but that's part of the process.

And I also want to note that you know, when Mr. Price was the chairman he was a absolute gentleman with us; again, not that he didn't disagree sometimes with what we were doing and you know, Mr. Aderholt, you seem to be very much in the same vein. And so, I appreciate that. We will try to be as open and direct with you. Now if you have concerns please let us know earlier on rather than later. We want to try to get this right. Thank you.

ADERHOLT:

Thank you very much.