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**BEFORE THE**

**AD HOC SUBCOMMITTEE ON DISASTER RECOVERY  
AND INTERGOVERNMENTAL AFFAIRS**

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

**U.S. SENATE**

**June 9, 2011**



Good morning Chairman Pryor, Ranking Member Paul, and distinguished members of the subcommittee. I am Charles K. Edwards, Acting Inspector General of the Department of Homeland Security (DHS). Thank you for inviting me to testify today about our collaboration with U.S. Customs and Border Protection (CBP) to thwart attempts to corrupt the CBP workforce, attempts that strike at the foundation of securing our Nation's borders.

First, let me express my appreciation to Senator Pryor for focusing attention on this important aspect of border security. In March 2009, DHS commenced the Southwest Border Initiative to focus on border security in that region. As part of this initiative, DHS has deployed historic levels of personnel to the Southwest border. For example, the Border Patrol has increased to more than 20,700 agents, double its size in 2004. With enactment of the Emergency Border Security Supplemental Appropriations Act in August 2010, CBP will be adding 1,000 new Border Patrol agents and 250 new CBP officers at ports of entry over the next six months. With such rapid expansion, CBP must be alert to opportunities for those intent on harming this country to infiltrate or corrupt the ranks of the hard working men and women of CBP, who dedicate themselves every day to securing this country's borders.

### **Scope of Border Corruption Issue**

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 groups in our law enforcement experience. They use torture and brutality to control their members and intimidate or eliminate those who may be witnesses or informants to their activities.

As the United States enhances border security with successful technologies and increased staffing to disrupt smuggling routes and networks, drug trafficking organizations have become not only more violent and dangerous, but more clever as well. In addition to the somewhat novel approaches to smuggling by using catapults, submarines, and ultralight planes, the drug trafficking organizations have also turned to recruiting and corrupting DHS employees. According to government reports, gangs such as Los Zetas are becoming involved increasingly in systematic corruption to further alien and drug smuggling, including smuggling of aliens from designated special interest countries likely to export terrorism. The obvious targets of corruption are Border Patrol agents and CBP officers; less obvious are those employees who can provide access to sensitive law enforcement and intelligence information, allowing the cartels to track investigative activity or vet their members against law enforcement databases.

As demonstrated by investigations led by the Office of Inspector General (OIG), border corruption may take the form of cash bribes, sexual favors, and other gratuities in return for allowing contraband or undocumented aliens through primary inspection lanes or even protecting and escorting border crossings; leaking sensitive law enforcement information to persons under investigation and selling law enforcement intelligence to smugglers; and providing needed documents such as immigration papers. Border

corruption impacts national security. Corrupt officials most often are paid not to inspect, as opposed to allowing certain prohibited items, such as narcotics, to pass into the U.S. A corrupt DHS employee may accept a bribe for allowing what appear to be simply 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 or bomb making material.

As you, Chairman Pryor, noted just two months ago at a hearing on tactics to penetrate the border, the drug cartels and alien smugglers will stop at nothing. Nor will terrorists. Smuggling of drugs and people into the U.S. has returned tens of billions of dollars to the smugglers. As efforts to secure the border meet with increasing success demonstrated by decreases in apprehensions of those crossing the border illegally and increases in seizures of cash, drugs, and weapons, the smugglers have been forced to become more creative and clever in their illicit activities. They have turned to tempting DHS employees to assist in smuggling efforts for private gain. While those who turn away from their sworn duties are few, even one corrupt agent or officer who allows harmful goods or people to enter the country puts the Nation at risk.

OIG has made investigation of employee corruption a top priority, as we work to help secure the integrity of our immigration system, borders, ports of entry, and transportation systems. However, our investigations are complicated by the brutality the cartels use to control their organizations and coerce witnesses; and the sophistication and advanced technologies available to organizations with unlimited money. Drug trafficking organizations use their monetary resources to purchase and deploy sophisticated and military grade equipment and weapons to carry out their crimes, avoid detection, and evade law enforcement.

### **Roles and Responsibilities within DHS for Employee Border Corruption**

Through the Inspector General Act of 1978 (IG Act), Congress established statutory Inspectors General, in part, in response to questions about integrity and accountability and failures of government oversight. The IG Act charged Inspectors General, among other tasks, with preventing and detecting fraud and abuse in agency programs and activities; conducting investigations; and recommending policies to promote efficiency, economy, and effectiveness. The position of Inspector General was strengthened by provisions in the IG Act creating independence from the officials responsible for programs and activities overseen, providing powers of investigation and subpoena, and mandating reporting not just to the agency head but to Congress.

Inspectors General play a critical role in assuring transparent, honest, effective, and accountable government. The organizational independence of OIG investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust in not only the work of the OIG, but also in the DHS workforce as a whole. The American public must have a fundamental trust that government employees are held accountable for their crimes or serious misconduct by an independent fact finder.

The Homeland Security Act of 2002, as amended, modified the IG Act to establish the DHS OIG as an independent organizational element within DHS tasked with, among other things, coordinating, conducting, and supervising investigations relating to DHS programs and operations. These acts vest the OIG with the authority and responsibility within DHS for investigating allegations of criminal misconduct of DHS employees.

Specifically, the IG Act provides:

§ 2--OIGs are established to create “independent and objective units” to conduct and supervise investigations relating to agency programs and operations;

§ 4(a)(1)—it is the duty and responsibility of the Inspector General “to provide policy direction for and to conduct, supervise, and coordinate” investigations relating to the programs and operations of the department;

§ 4(a)(3)--it is the duty and responsibility of the Inspector General “to conduct, supervise, or coordinate” activities carried out by the department to prevent and detect fraud and abuse in its programs and operations;

§ 4(a)(4)--it is the duty and responsibility of the Inspector General “to conduct, supervise, or coordinate relationships between [the department] and such other Federal agencies” with respect to all matters relating to “the prevention and detection of fraud and abuse in” agency programs and operations or “the identification and prosecution of participants in such fraud or abuse;” and

§ 6(a)(2)—the Inspector General is authorized to “make such investigations and reports relating to the administration of the programs and operations [of the Department] as are, in the judgment of the Inspector General, necessary or desirable.”

The DHS Management Directive (MD) 0810.1, *The Office of Inspector General*, implements the authorities of the IG Act within DHS. MD 0810.1 plainly establishes OIG’s right of 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. The MD requires that all allegations of criminal misconduct by DHS employees and certain other allegations received by the components be referred to the OIG immediately upon receipt of the allegations.

The MD mirrors language at page 12 of House Report 108-169 related to the DHS appropriations bill for Fiscal Year 2004:

It is the Committee’s intent that the IG serve as the primary entity within the Department for investigating, as to employees, contractors, and grantees, all criminal allegations of waste, fraud, abuse and mismanagement; allegations of misconduct against all political appointees, personnel at the level of GS-15 and above; and any allegations that indicate systemic problems in the Department or otherwise affect public health or safety. The IG’s statutory independence, and its

dual reporting responsibilities to the Department and to the Congress, make it ideally situated to address such matters. All employees must have immediate, direct, and unfettered access to the IG to report allegations without fear of retribution.

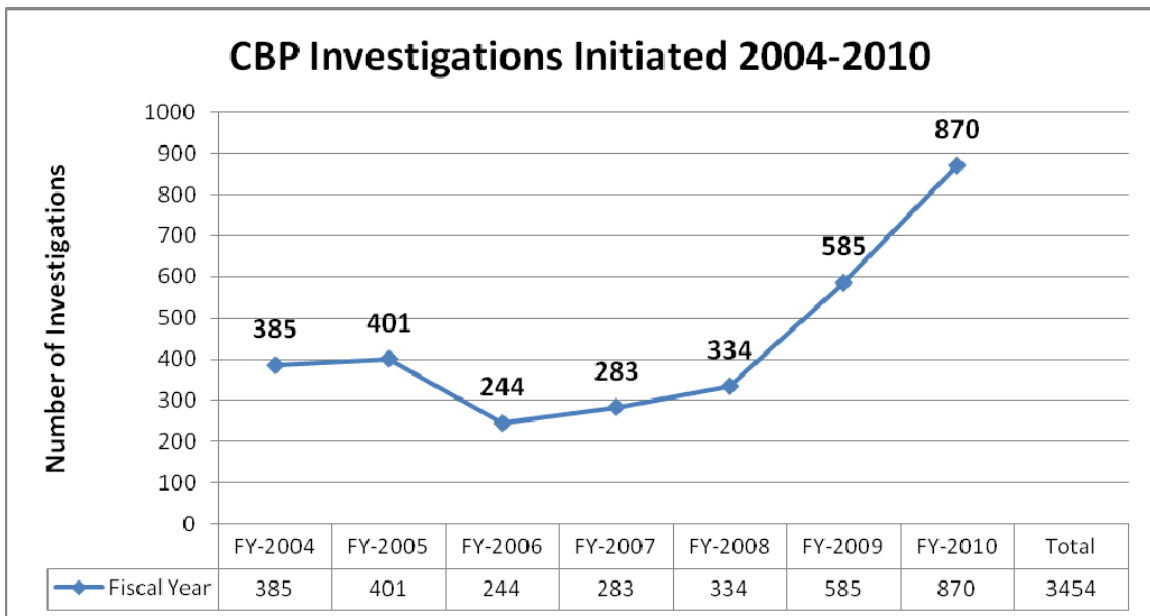
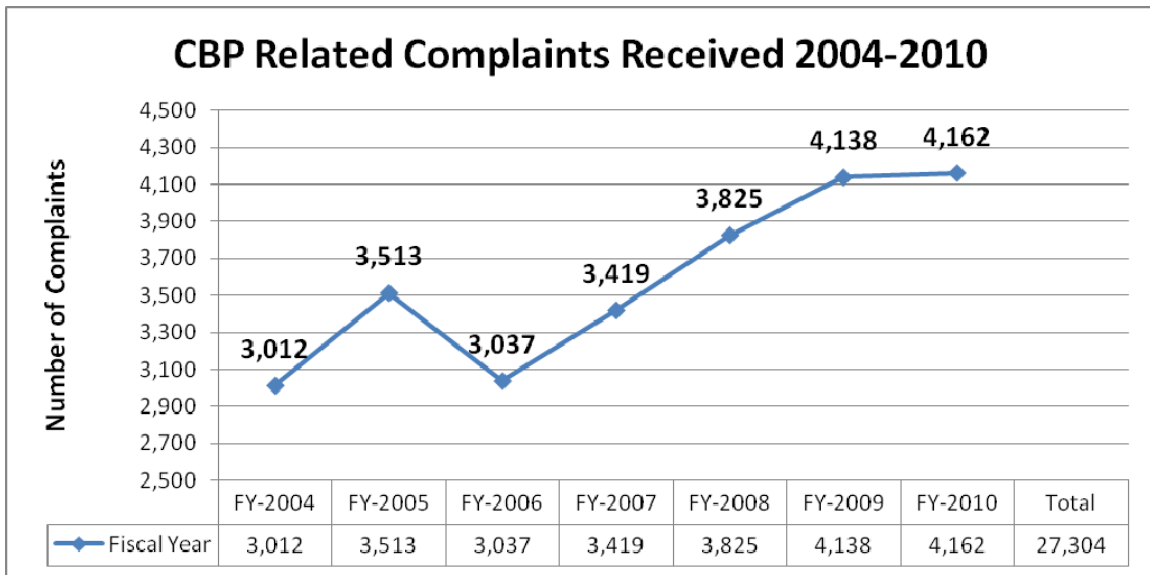
The Department's numerous internal affairs offices can play a useful role to the IG. By handling less serious investigative matters of an administrative nature, these internal affairs offices can enable the IG to leverage its resources, provided these offices cooperate fully with the IG and regularly report their activities to the IG.

It is the OIG Office of Investigations' policy to open all allegations of corruption of DHS employees or compromise of systems related to the security of our borders and transportation networks. OIG has a total of 213 full time, permanent criminal investigators (GS-1811s) deployed at 33 offices around the country, with a concentration of resources in the Southwest. According to the U. S. Office of Personnel Management's Qualification Standards, positions classified as GS-1811 supervise, lead, or perform work involving planning, conducting, or managing investigations related to alleged or suspected criminal violations of Federal laws. The work involves recognizing, developing, and presenting evidence; conducting investigations that meet legal and procedural requirements; and providing advice and assistance to the U.S. Attorney's Offices during investigations and prosecutions.

The growth of the OIG workforce necessary to investigate allegations of criminal misconduct by DHS employees has not kept pace with the growth of the DHS employee population, now over 225,000 strong. Component employee populations have grown significantly from Fiscal Year 2006 through Fiscal Year 2009; for example, the CBP workforce has grown 34 % during that time. During this same period, the DHS OIG has grown only 6%.

In Fiscal Year 2010, the OIG Office of Investigations added 10 additional positions to address allegations of criminal wrongdoing across the entire DHS workforce. In addition to the 1,250 Border Patrol agents and CBP officers mentioned above in the introduction, the Emergency Border Security Supplemental Appropriation Act included \$10 million for CBP integrity and background investigation programs. The Federal Bureau of Investigation (FBI) received an additional \$24 million through the Emergency Border Security Supplemental. DHS OIG did not receive additional resources in the Emergency Supplemental.

The OIG Office of Investigations has seen a 38% increase in complaints against CBP employees since Fiscal Year 2004. As a result of the increase in complaints, and without an increase in staffing, the Office of Investigations also has initiated more investigations annually. For example, the OIG initiated 585 CBP related investigations in Fiscal Year 2009 and initiated 870 in Fiscal Year 2010, a 48% increase. The charts below reflect investigative statistics related to CBP allegations starting with Fiscal Year 2004 through May 2011.



The scope of the complaints received and investigations initiated against CBP employees are divided into four broad categories: Corruption; Civil Rights/Civil Liberties; Suspicious Activities; and Other.

- ***Corruption***—Abuse of public power for private gain. DHS employees or contractors who are alleged to have used their official positions for personal gain, financial or otherwise.

Such allegations include: Bribery, Smuggling, Public Corruption, Immigration Fraud, Trafficking in Illegal Drugs, Introduction of Contraband, Theft, and Unauthorized Disclosure of Sensitive Law Enforcement Information.

- ***Civil Rights/Civil Liberties*–Deprivation of personal liberty guaranteed by the Constitution, and by certain legislation such as the Voting Rights Act.** DHS employees or contractors, while acting under color of their authority, who are alleged to have deprived an individual of any constitutional right or liberty.

Such allegations include: Abuse of Authority, Use of Force, Assault, Physical or Sexual Abuse, Custodial Death, Denial of Due Process, Denial of Medical Services, Denial of Religious Freedoms, Profiling, and Hate Crimes.

- ***Suspicious Activities*–Any basis, absent definitive proof, for suspecting a person of criminal activity.** DHS employee or contractor alleged to have engaged in on duty or off duty conduct that could be considered an indicator of possible involvement in criminal or corrupt behavior. For example, suspicious financial activity, unexplained affluence, criminal associations, improper law enforcement database queries, etc.

Such allegations include: Unauthorized Access to a DHS Computer or Network, Personal Relationships, Unauthorized Release of Information, Immigration Failure, or False Statements.

- ***Other*–Allegations in which any individual, not limited to a DHS employee or contractor, has committed a violation of law or regulation with a nexus to DHS programs or operations that does meet the criteria of the above categories.**

Such allegations include: Program Fraud, Procurement Fraud, Off-duty Misconduct, Theft of Government Property, Time and Attendance Fraud, Mismanagement of Government Resources, Misuse of Government Credit Card, Harassment, or False Personation of a DHS Employee.

Many allegations of corruption received by DHS OIG are lodged against unknown or unnamed CBP employees. Historically, nearly 38% of the corruption allegations received by the OIG involve unknown or unidentified employee subjects. In order to address these investigative leads and identify these unknown subjects, the OIG Office of Investigations recently has established a Forensic Threat Analysis Unit. The unit integrates and analyzes incoming allegations and leads with information from ongoing and historical corruption cases, DHS databases, and other law enforcement and government databases, as well as open source data to document patterns of behavior, methods of operation, and other trends to aid in ferreting out corruption within DHS. OIG also collaborates with the DHS Office of Security, the Office of Intelligence and

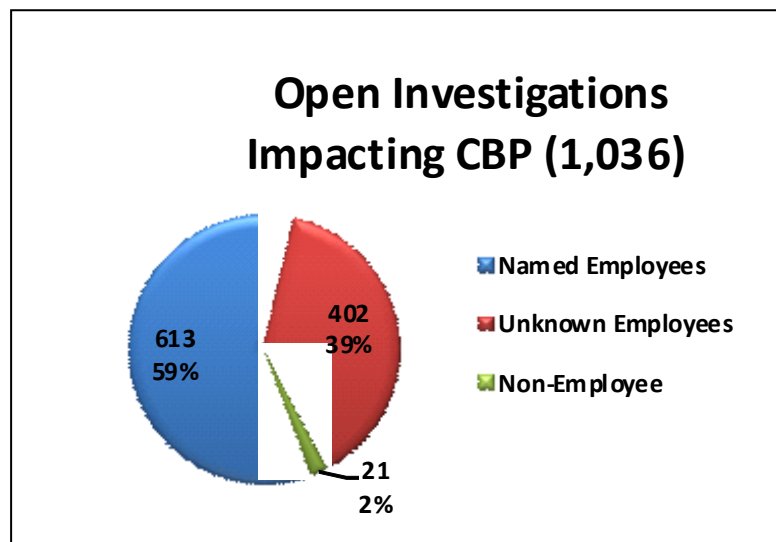
Analysis, and the intelligence units in various DHS components to ensure that information is shared and critical DHS assets are protected.

Corruption related allegations are a priority of the Office of Investigations and we open 100% of all allegations of corruption that we receive. The majority of both complaints received and investigations initiated by the OIG, however, are for allegations of other than corruption related activity. For example, of the 613 active investigations of allegations against named CBP employees, 56% are allegations of other than corrupt activity. Our open investigative portfolio includes 267 investigations (44%) on named CBP employees accused or suspected of corruption.

Resolutions of many complex corruption investigations involving law enforcement personnel who have decided to engage in unlawful acts are both challenging and time consuming. DHS OIG attempts to expedite corruption investigations as much as possible, but some of the more complex investigations do take time to obtain the necessary evidence of corrupt activity and identify any additional employee involvement. Over 70% of our open criminal investigations have been open for less than 24 months.

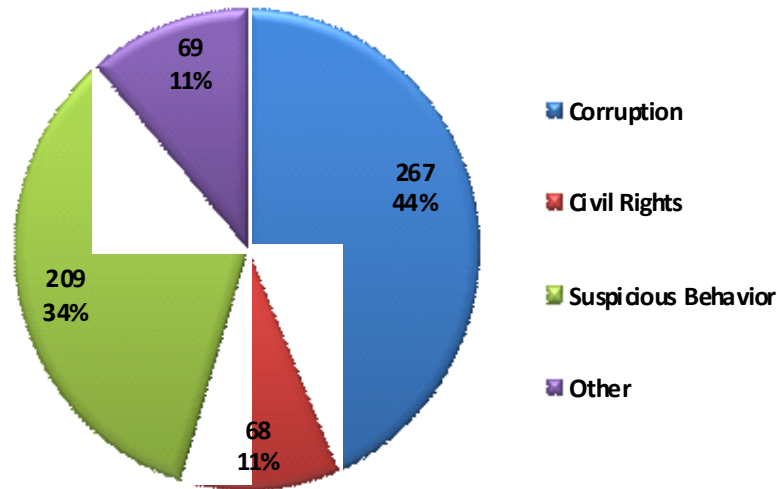
Since Fiscal Year 2004, DHS OIG has effected over 489 arrests of individuals, both employees and non-employees associated with our CBP related investigations. Of those total arrests, 160 have been CBP employees. The remaining arrests were of individuals who have either conspired with an employee or were otherwise associated with the criminal activity DHS OIG investigated.

The charts below show investigative statistics related to open investigations of allegations involving CBP as of May 2011.





## Open Named CBP Employee Investigations by Category (613)



The Inspector General Act and the Homeland Security Act establish a clear line of authority for investigating allegations of criminal misconduct by DHS employees. The statutes vest investigative authority in the DHS OIG, with the Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) having authority to investigate those allegations involving employees of ICE and CBP referred to it by OIG. The CBP Office of Internal Affairs (IA) investigates noncriminal allegations against CBP employees referred to it by ICE OPR and is staffed with GS-1801s, representing the general inspection, investigation, enforcement, and compliance series.

In July 2008, CBP asked the Secretary of Homeland Security for permission to convert IA's GS-1801s to the GS-1811 criminal investigator series. In January 2009, Secretary Chertoff denied the request because border-related investigative functions have been vested in ICE and the Secretary was concerned about potential overlap in ICE and CBP missions. The Secretary noted that "it is axiomatic that border-related corruption will be tied to potential violations of core ICE smuggling and trafficking statutes."

CBP IA has a crucial complementary role to OIG's criminal investigative function and the investigative function of ICE OPR. CBP IA focuses on preventive measures to ensure the integrity of the CBP workforce through pre-employment screening of applicants, including polygraph examinations; background investigations of employees; and integrity and security briefings 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.

Congress recognized the importance of these complementary activities in enacting the Anti-Border Corruption Act of 2010. This Act requires CBP IA, by the end of calendar year 2012, to subject all applicants for employment in law enforcement positions to polygraph examinations prior to hiring. The Act also requires CBP to timely initiate periodic background reinvestigations of CBP personnel. The legislative history points out that CBP finds 60% of applicants subjected to a polygraph exam ineligible for employment because of prior drug use or criminal histories.

As part of CBP's efforts in implementing the Anti-Border Corruption Act, Commissioner Bersin has established an Integrated Policy Coordinating Cell (IPCC) to focus on integrity issues. DHS OIG has participated in several meetings of the IPCC, as has ICE OPR and the FBI. These meetings have provided updates on CBP's efforts to acquire polygraph examiners to comply with the 100% pre-employment standard established by the Act as well as various integrity training and awareness initiatives within CBP.

As discussed above, Congress has identified the OIG as the focal point for criminal investigations of employee misconduct. Within DHS, MD 0810.1 requires referral of all criminal allegations against DHS employees to OIG and prohibits any investigation, absent exigent circumstances, unless the OIG declines the case. DHS OIG operates a hotline for complaints which may be accessed through telephone, facsimile, electronic mail, or paper correspondence. In March 2004, ICE and CBP established the Joint Intake Center (JIC) responsible for receiving, documenting, and appropriately routing allegations of misconduct involving ICE and CBP employees. The JIC is staffed jointly by ICE OPR and CBP IA. DHS OIG has an agent co-located at the JIC to review allegations and promptly notify ICE OPR of our decision to accept or decline investigation of the matter. Both the OIG hotline and the JIC provide DHS OIG and CBP executive management with insight into the nature and volume of allegations made against CBP employees as well as the results of investigations.

In addition to working closely with internal affairs elements within DHS, we also work with ICE's Homeland Security Investigations (HSI) directorate. HSI investigates activities arising from the illegal movement of goods and people into, within, and out of the U.S. HSI investigates human smuggling and smuggling of narcotics, weapons, and other contraband that typically form the predicate, or underlying, offense for most border corruption cases. Consequently, we work very closely with HSI and ICE OPR on many CBP employee corruption cases.

Beginning in January 2011, CBP IA detailed agents to work under ICE OPR to augment investigations of CBP employees. Under this arrangement, ICE OPR leverages the additional agents contributed by CBP and gains additional insight into CBP systems and processes. CBP agents participate in ICE OPR investigations of CBP employees and CBP management uses the information gained by its agents to take appropriate action against employees under investigation.

DHS OIG and CBP are negotiating a cooperative working arrangement that would allow CBP IA agents to participate in OIG investigations of CBP employees. Cooperative efforts between OIG and CBP IA will provide additional visibility to CBP's executive management of OIG investigations into allegations of criminal conduct by CBP employees. OIG gains additional assets to continue our policy of opening all allegations of employee corruption or compromise of systems related to border security. These additional assets are especially necessary as the CBP workforce continues to expand significantly, while OIG growth remains relatively flat.

The OIG continues to work allegations of criminal misconduct and corruption within DHS. For example, a Border Patrol Agent at the Sonoita, Arizona, Border Patrol Station, was observed acting suspiciously as he asked others about the technology used to interdict smugglers. The agent had only entered on duty at Sonoita in March 2009 shortly after graduating from the Border Patrol Academy. OIG opened an investigation in Tucson, Arizona, and developed evidence that the agent had sold to a purported drug trafficker sensor maps, trail maps, landmarks, and terminology used by the Border Patrol to combat smuggling. Evidence showed that on at least four separate occasions, the agent accepted bribes totaling over \$5,000. The agent was arrested in October 2009. On August 12, 2010, he pled guilty in federal court to one count of bribery. On May 3, 2011, he was sentenced to 20 months incarceration, 36 months supervised release, and was ordered to pay restitution in the amount of \$5,500.

### **External Partners**

Since its beginning in 2003, DHS OIG has worked cooperatively with other 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 law enforcement at the federal, state, and local levels. DHS OIG has agents participating in local Border Corruption Task Forces (BCTFs) and Public 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 places law enforcement agents' safety at risk and is duplicative. We recognize the importance of strong cooperative relationships and work diligently to maintain and enhance these relationships, while at the same time ensuring our independence in a way that inspires the public's trust in the outcome of our investigations.

In March 2010, DHS OIG assigned a Deputy Assistant Inspector General for Investigations (DAIGI) to act as a liaison to the National BCTF in an effort to achieve full participation in all of the BCTF's investigations of DHS employees. In addition, this DAIGI was tasked with negotiating a memorandum of understanding (MOU) that would reflect the OIG's statutory responsibilities with respect to (1) investigating allegations of criminal misconduct against DHS employees and (2) providing oversight of the internal affairs offices within DHS, while ensuring the representation of departmental interests in the course of BCTF investigations. The effort to reach a formal agreement is ongoing. DHS recognizes that the first necessary step to achieving a workable agreement with the

FBI is clarifying roles and responsibilities among DHS OIG and the various internal affairs elements. The Secretary's personal leadership is moving us forward in this regard.

With respect to information sharing, the OIG and FBI have a mutual responsibility under the *Attorney General's Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority* to promptly notify one another upon initiation of any criminal investigation, a responsibility the OIG meets in a timely way. Within DHS, all allegations of criminal misconduct by employees must be referred to OIG. The MOU, as drafted by the FBI, requires DHS participating agencies to provide the same information directly to the FBI. This duplication in reporting is not an efficient use of DHS or FBI resources, and opens the door for parallel investigations placing agent safety at risk. Furthermore, the MOU fails to recognize the OIG's statutory authority as the focal point for all criminal investigations of employee misconduct within DHS.

In May 2010, the FBI in San Diego presented the OIG with an MOU that contained provisions for shared management responsibility between DHS OIG and internal affairs offices of other DHS components, which failed to take into account the OIG's statutory responsibility for supervising, leading, and coordinating criminal investigations of DHS employees and interfering with our oversight responsibility with respect to component internal affairs offices. Many aspects of the MOU also interfered with the OIG's ability to investigate cases independently of the DHS component members of the BCTFs. These provisions placed significant restrictions on the OIG's independence, and were therefore unacceptable. Over the past year, we worked locally and at FBI Headquarters to resolve differences and craft language to which all parties could agree but no agreement has been reached.

Within the past few weeks we have worked diligently with the U.S. Attorney for the Southern District of California to reach a compromise that would allow all parties to participate meaningfully in the work of the San Diego BCTF. As parties continue to negotiate, the U.S. Attorney's office has withdrawn from the 2010 version of the MOU and the OIG has resumed working directly with the U.S. Attorney's Office on several significant border corruption cases.

## **Conclusion**

We appreciate the Subcommittee's attention and interest in the work of the OIG to investigate corrupt employees within the DHS workforce. We will continue to pursue collaboration and cooperation with our law enforcement partners within DHS and at the federal, state, and local levels to ensure that employee corruption does not jeopardize our national security.

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