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SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

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Good afternoon Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to join you today to discuss the coordination between two Department of Homeland Security (DHS) components critical to the security of our nation's borders - Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) - and the recommendations that we made to the Department to enhance their effectiveness. The information that I will discuss today is the result of our report, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement* (OIG-06-04).

Our Report

This report resulted from a hearing in January 2005, before the Senate Committee on Homeland Security and Governmental Affairs, to discuss improving the Department of Homeland Security's (DHS) effectiveness. During that hearing, the Chairman asked our office to assess the merits of merging CBP and ICE.

In response, we undertook a review to examine the history of the two organizations, the roles and responsibilities assigned to them, and the degree to which they have met their inter-related goals. We interviewed more than 600 individuals from public, private, and non-profit sectors. To obtain a balanced viewpoint, we traveled to 10 cities across the country to talk to employees at 63 CBP and ICE facilities. We met with senior Border and Transportation Security directorate (BTS), ICE, and CBP leaders in Washington, DC, and program managers, field staff, and representatives from agencies that dealt with them, such as United States Attorneys offices. We reviewed budget plans, performance statistics, operating procedures, and other information pertaining to BTS, CBP, and ICE.

Rather than focusing only on the question of whether the two organizations should be merged, we sought to learn as much as possible about the operational interrelationships of ICE and CBP. There is much in our report relevant to this Subcommittee's concerns and today's hearing. It included 14 recommendations directed at better integrating the operations of the respective organizations. We delivered our report to the Department in November 2005. And while much of the focus has been on the Department's decision not to consolidate the two organizations following the Secretary's Second State Review (2SR), in our opinion the real focus of management and those overseeing these programs should be on resolving the underlying issues hampering the effectiveness of both CBP and ICE.

Coordination

ICE is the primary investigative organization within DHS. It has responsibility for investigating violations of immigration and customs laws and regulations. In addition, it has the responsibility for detaining and removing aliens that have violated immigration or criminal laws. CBP is responsible for maintaining security at the nation's borders. CBP inspectors screen arriving aliens and cargoes at the ports of entry (POE). Within CBP, the Border Patrol has responsibility for interdicting aliens and contraband illegally attempting to enter the Unites States between the ports of entry.

Our report identified that significant coordination issues existed between the two organizations regarding: (1) apprehension and detention and removal operations; (2) investigative operations; and (3) intelligence activities. Many interviewed felt that shortfalls in operational coordination and information sharing fostered an environment of uncertainty and mistrust between CBP and ICE personnel. Once collegial relationships between the different enforcement functions within the Immigration and Naturalization Service (INS) and the United States Customs Service (USCS) had subsequently deteriorated. To address the specific interests of the Subcommittee, however, I will limit my discussion today to issues we identified in coordinating investigations and intelligence activities.

Coordination of Investigative Operations

The division of enforcement functions between CBP and ICE hampered the coordination of interdiction and investigation efforts. Now that they are in separate organizations, ICE investigators do not accept as many case referrals from CBP inspectors and Border Patrol agents, according to many CBP employees. Many of those interviewed attributed ICE's declining acceptance rate of CBP referrals to the separate chains of command. In the past, when investigators did not respond to a referral, inspectors and Border Patrol agents could appeal up their common chain of command to direct an investigative response. Now, appealing up the separate chains of command is not as effective.

Likewise, according to many staff, CBP relies less on ICE to investigate the violations it uncovers. Many ICE investigators reported that CBP increasingly refers cases to other investigative agencies. In INS and the USCS, investigators had the right of first refusal for cases detected by inspectors. Due to the decline in ICE's acceptance rate, interagency competition, growing mistrust, and a decline in feedback on case progress, CBP referred more cases to the Federal Bureau of Investigation, Drug Enforcement Administration, and local law enforcement authorities for investigation without first notifying ICE.

Often in the past, investigators and inspectors developed referrals jointly. A subject would enter a POE and offer information to an inspector. The inspector would immediately contact an investigator often stationed at the POE, to follow-up. Now many of these referrals reportedly never get to an ICE investigator. Referrals often are sent to other law enforcement agencies including the Border Patrol.

A decline in the number of CBP referrals and the acceptance of them by ICE may have contributed to a decline in overall ICE investigative outputs in certain case categories. In FY 2003, more than six in ten drug smuggling investigations opened by ICE were opened in response to a CBP referral. When the number of investigations opened in response to a CBP referral fell in subsequent years, so did ICE's narcotics arrests, indictments, convictions, and seizures. Between FY 2003 and FY 2005, as the number of CBP referrals of this type declined, the number of arrests decreased by 24 percent, convictions by 51 percent, and seizures by 23 percent. While there may be many factors influencing this decline, this data combined with the volume of testimonial evidence suggests that

degradation of border enforcement operations occurred, in part, due to the ineffective coordination between CBP and ICE.

In addition, CBP developed its own investigative capabilities to use in lieu of ICE investigators. In October 2004, CBP announced a pilot program to increase the number of CBP enforcement officers – a former INS group that investigated some immigration cases, but was restricted to the POEs. CBP's pilot program broadened the scope of these CBP enforcement officers' authority to include criminal violations of the federal customs and drug statutes and expand their jurisdiction outside the POEs.

CBP reconstituted the Border Patrol's smuggling investigative capability, allowing Border Patrol agents to investigate some alien smuggling cases. A memorandum of understanding (MOU) that established procedures for coordinating investigations between Border Patrol agents and ICE investigators, gives ICE investigators primary responsibility for most smuggling investigations but allows Border Patrol agents to investigate some alien smuggling cases.

Despite the implementation of the MOU, significant problems have occurred in coordinating Border Patrol and ICE investigations. We identified several cases in which poor coordination between the Border Patrol and ICE resulted in compromised investigations. For example, during a joint ICE-Border Patrol investigation of a suspected alien smuggling ring, Border Patrol agents disregarded the ICE special agents' instructions regarding the requirement to obtain a search warrant. The Border Patrol agents collected the evidence without a search warrant and, as a result, criminal charges were dismissed. In another case, the surveillance of a residence believed to be associated with an alien smuggling ring was compromised when, without first coordinating with the ICE investigators, Border Patrol agents went to the residence and examined the trash on the street in front of the residence. Subsequently, the smugglers vacated the residence and the investigation had to be terminated. Finally, even though an MOU exists between the two organizations, Border Patrol and ICE have opened duplicate investigations on the same case, sometimes resulting in compromises. In one such case, ICE was investigating a nation-wide narcotics smuggling ring and had a residence under surveillance hoping to eventually dismantle the entire criminal enterprise associated with the smuggling ring. Unknown to the ICE investigators, Border Patrol agents initiated their own investigation of the same residence. Border Patrol agents raided the residence and seized the narcotics they found at the location. As a result, the smugglers discontinued using the residence, and ICE was unable to dismantle the entire criminal operation.

Diminished investigative coordination also may have reduced the number of controlled deliveries executed by the two organizations. A controlled delivery is a law enforcement operation in which a known contraband shipment is allowed to continue across the border to its final destination while under law enforcement surveillance and control. Controlled deliveries are pre-planned events that require approval by ICE investigations, CBP inspectors, and the Border Patrol. CBP allows the load of illegal contraband to cross the border into the United States; ICE investigators follow the load with the intent of

identifying additional members of the criminal enterprise. The success of these operations depends on close coordination between ICE and CBP. Failure to coordinate and cooperate during these types of operations can result in unnecessary danger to the ICE investigators, CBP inspectors, Border Patrol agents, and the general public. It can also mean lost opportunities to identify and arrest additional members of the targeted smuggling enterprise.

According to ICE statistics, the number of controlled deliveries involving narcotics declined significantly in recent years. The number of controlled deliveries we projected ICE would execute in FY 2005, based on controlled delivery figures through March 31, 2005, was 51 percent lower than the number of controlled deliveries conducted in FY 2002. While a number of elements may have contributed to this decline, field staff told us that part of the answer may lie in the lack of effective coordination between ICE and CBP.

A large number of CBP employees and ICE investigators expressed concern about the growing antagonism between the two organizations. They told us that they feared that coordination would deteriorate even further as legacy employees retired or resigned, and the remnants of good working relationships held over from the former INS and USCS will lapse.

Coordination of Intelligence Activities

CBP and ICE intelligence requirements overlap to a large extent, yet coordination of intelligence activities between them was limited. Both CBP and ICE require intelligence regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, and import and export violations. Despite their shared intelligence needs, the two organizations have separate intelligence structures and products. At the headquarters level, the only significant intelligence coordination effort we could identify between the two organizations related to intelligence received from outside agencies. Meanwhile, CBP and ICE field intelligence elements severed their intelligence coordination efforts altogether.

Two and one-half years after DHS' formation, CBP and ICE intelligence analysts told us that the two organizations had never co-authored any major intelligence products. As a result, the intelligence products each generates serve their respective needs and may not present a comprehensive picture of border security. Because the intelligence collection and analysis activities of CBP and ICE are uncoordinated, we were told that it was difficult for the intelligence analysts to "connect the dots" to create a comprehensive threat assessment for border security.

Recommendations

To address the issues that we identified in our report, we made 14 recommendations to improve coordination and integration of CBP and ICE operations.

Effective coordination and integration of CBP and ICE operations must begin at the strategic level. To that end, we recommended that DHS develop a vision of how ICE and CBP are to work together and contribute to the overall DHS mission. DHS leadership must work with both organizations to define and set their respective roles and responsibilities. Also, DHS should undertake an interagency procedural review process to ensure that ICE and CBP procedures support agreed-upon roles and responsibilities and are compatible with one another at touch points. Where necessary procedures do not exist, DHS should direct development of needed notification and information exchange protocols.

Further, we recommended that an entity at the DHS Headquarters level have authority over CBP and ICE with respect to policy and operational coordination. This would begin with the development of a formal mechanism to ensure that the Under Secretary for Management and the CFO collaborate with ICE and CBP management to develop a process for CBP and ICE to increase participation in one another's budget formulation and strategic planning processes. This should include avenues for CBP and ICE to comment on and influence one another's budgets and strategic plans. These efforts should be pursued with the aim of achieving an effective balance of resources and ensuring adequate support for major operational initiatives across institutional boundaries.

CBP and ICE cannot establish and execute their priorities in a vacuum. We recommended that DHS require CBP and ICE to align their priorities with an interagency bearing, e.g., detention bed space, investigative case selection, through a consultative process.

To resolve the frustration and anxiety expressed by CBP and ICE field staffs, we recommended that DHS leadership communicate roles and responsibilities to all levels of CBP and ICE so that they are understood throughout the organizations. It is paramount that CBP and ICE employees understand their individual and institutional roles and responsibilities and the relationship of these to the roles and responsibilities to those of the other organization. DHS must address the contentiousness between CBP and ICE. Field level activities must be monitored more closely at the highest levels within DHS to ensure that border security is not compromised by organizational antagonisms. Likewise, DHS leadership needs to develop a corporate culture in which all CBP and ICE employees feel vested and recognize the interconnectedness of their mission.

After DHS has taken the steps to coordinate and integrate CBP and ICE operations at the Headquarters level and communicated its vision and polices to the field, it must ensure compliance. Therefore, we recommended that DHS develop measures to monitor CBP and ICE field performance to ensure adherence to the department's vision and guidance, and accountability to related goals. To support this accountability, DHS leadership should develop performance measures and a reporting mechanism that convey an accurate picture of current operations to senior managers. In addition to performance metrics to measure internal CBP and ICE operations, a set of joint performance metrics should be developed to gauge the extent of interaction and coordination between CBP

and ICE, as well as the level of support each organization extends the other. The resulting metrics should assist the organizations in arriving at shared expectations about their respective obligations and level of support.

We were concerned that ICE and CBP operations will require intensive monitoring, including unanticipated integration and coordination issues as they arise. To that end, we recommended that DHS establish a forum at the senior management level for coordinating among staff from the Secretary and Deputy Secretary's Office, Under Secretary for Management, CFO, Under Secretary for Policy, Director of Operations Coordination, CBP Commissioner, and ICE Assistant Secretary to discuss issues related to the ICE-CBP relationship.

In addition, we recommended that DHS develop a headquarters-level joint CBP-ICE standing committee to manage the relationship between the two. This committee could address a revolving agenda on CBP-ICE touch points and develop interagency policies and procedures to guide CBP and ICE operations. The committee would oversee the implementation of interagency coordination efforts and MOUs. These bodies could respond to requests to deviate from plans, make adjustments, provide clarification, and resolve different interpretations of related guidance. In addition, the committee would closely monitor the development of redundant capabilities within CBP and ICE. While we do not suggest that all duplicative activity is necessarily bad, we believe that it must be controlled. The committee should document and distribute information on dispute scenarios and resolutions to help foster greater uniformity in interpreting policies and procedures and resolving related disputes.

Even under the best of circumstances, legitimate disputes will arise between CBP and ICE. To ensure swift resolution of disputes that have an immediate impact on field operations, we recommended that DHS develop dispute resolution mechanisms at the field-level. These mechanisms should be available for airing both routine and extraordinary interagency operational concerns and recommending remedial actions. When the resulting field-level mechanisms resolve a dispute, headquarters should be notified.

Finally, to improve the coordination of CBP and ICE intelligence activities, we recommended that DHS develop an operating environment that facilitates collaborative intelligence activities. Such an environment should promote ICE-CBP staff co-location when possible and where appropriate. In addition, CBP and ICE should pursue the development of joint intelligence products to reflect a more comprehensive picture of border security. Finally, CBP and ICE should jointly employ new technology systems for the exchange and analysis of intelligence information.

Conclusions

Ultimately, to resolve the coordination problems, we were prepared to recommend to the Department and the Senate Homeland Security and Governmental Affairs Committee that ICE and CBP be merged. While we were conducting our review, however, the Secretary

initiated his 2SR to examine DHS operations and structure. On July 13, 2005, after conducting his review of the operational and organizational aspects of the Department, the Secretary announced six 2SR imperatives. One of the imperatives was to strengthen border security and interior enforcement. The Secretary stated that the Department was developing a new approach to controlling the border, one that included an integrated mix of additional staff, new technology, and enhanced infrastructure investment. While the 2SR initiative did not result in a proposal to merge ICE and CBP, this decision did not diminish the usefulness of our report. The 14 recommendations in our report must still be addressed regardless of whether there was a merger or not.

Since our report, DHS has created the Secure Border Initiative (SBI), the ICE-CBP Coordination Council, and the Office of Intelligence and Analysis. These efforts are intended to address coordination issues and help integrate CBP and ICE operations. From what we know of these emerging efforts, we believe that the Department is taking the necessary steps toward addressing the coordination problems and, thus, our recommendations. However, these are still works in progress. We have not had the opportunity to assess whether the actions taken or proposed by DHS leadership actually have been or will be effective in improving coordination between CBP and ICE.

Because the issues are so important, we have pledged to Congress that we will go back and conduct a follow-up review to determine whether the issues we noted before continue to exist. We also will assess the progress of any corrective actions the department has taken. We expect to begin this effort early this summer.

In the meantime, however, we have several reviews underway that will assess operational coordination between CBP and ICE in a number of specific areas. Our review of CBP actions taken to intercept suspected terrorists at U.S. ports of entry is examining, in part, the interactions between CBP and ICE when a suspected terrorist is apprehended at a port of entry. Our survey of DHS intelligence collection and dissemination will examine the various field intelligence activities of DHS, including those of ICE and CBP, and how they interact with one another. Our review of terrorist financing activities is examining the investigative coordination between ICE and FBI. Our review of security activities on the Michigan-Canadian border is examining the cooperation and interactions between organizations, including CBP and ICE, with jurisdiction authority. Finally, our review of detention and removal of illegal aliens is examining the acquisition and management of detention bedspace provided by state, local, and contract providers. We plan to issue reports on each of these reviews over the next several months.

Thank you Mr. Chairman. That concludes my prepared remarks. I would be happy to take any questions the Subcommittee may have.