

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



Homeland Security

November 24, 2010

The Honorable Mark L. Pryor
United States Senate
Washington, DC 20510

Dear Senator Pryor:

Thank you for your letter regarding our efforts to detect and eliminate corruption within the Department of Homeland Security (DHS) workforce, specifically within U.S. Customs and Border Protection (CBP).

Maintaining the integrity of CBP's workforce is a top priority for the Department. We share your strong belief that rigorous initial investigations and regular, periodic reinvestigations are essential tools to combat corruption. Over the past year, we have made significant progress, reducing the backlog of periodic reinvestigations over threefold, from 13,029 on April 30, 2010, to 3,881 as of November 16, 2010—and CBP Internal Affairs plans on initiating investigations for the remaining backlog by the end of this year. CBP is also expanding the use of polygraph testing and, consistent with the *Anti-Border Corruption Act of 2010*, is working towards ensuring polygraph testing of all law enforcement applicants prior to employment with CBP.

Thank you again for your letter. Enclosed please find answers to your specific questions. I look forward to continuing to work with you on this and other homeland security issues. Should you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano", with a long horizontal flourish extending to the right.

Janet Napolitano

Enclosure

Responses to Questions Posed in Senator Pryor's September 15, 2010 Letter

- 1) *How many of the current CBP officials investigated since 2006, and currently under investigation, passed polygraphs?*

CBP's Office of Internal Affairs (CBP-IA) records indicate that 20 CBP officials participated in and successfully completed a polygraph examination on or after October 1, 2005, and were subsequently the subject of an investigation of an allegation of misconduct. CBP-IA has reviewed these 20 cases and determined that only one involved an allegation of mission-compromising corruption—that is, corruption in which an officer or agent used his or her position to allow contraband or people to enter the United States unlawfully. A full investigation of this case is currently underway.

- 2) *How many CBP officials investigated since 2006, and currently under investigation, have received a periodic reinvestigation?*

Since October 1, 2005, CBP-IA records indicate that approximately 8,200 CBP officials were the subject of investigations of an allegation of misconduct. Of that number, approximately 3,600 had previously successfully completed either a single-scope background investigation or a periodic reinvestigation.

- 3) *In his testimony before the Subcommittee on state, local, and private sector preparedness, Thomas Frost, Assistant Inspector General for Investigations, stated that in FY 2009, the DHS Inspector General's Office opened up 576 investigations of CBP officials. Can you tell us the status of those investigations? How many of those cases have been resolved? How many of those cases have been referred to the Justice Department? In how many of those cases has some type of disciplinary action, including removal, demotion, or some other corrective action taken place?*

The DHS Office of Inspector General (OIG) opened 585 CBP employee investigations in fiscal year (FY) 2009, of which 216 remain open (subsequent to Mr. Frost's testimony, nine subjects of OIG investigations were subsequently reclassified to CBP from other DHS Components).

Thus far, FY 2009 investigations of CBP employees have resulted in 57 referrals for prosecution, which in turn resulted in 20 arrests. Nine of these arrests were related to corruption. To date, FY 2009 CBP employee cases have resulted in nine employee resignations, five terminations, one suspension, and one official reprimand.

- 4) *Since 2006, what percentage of probationary CBP hires were terminated or failed to be extended past the probationary period? How many or what percentage of these were due to threat of infiltration/corruption? What were the reasons, ranked by frequency, that these agents/officers were terminated/not extended?*

Since October 1, 2005, 1,513 probationary/trial CBP employees had appointments terminated during the probationary or trial period. Six employees who were either arrested or indicted

for corruption-related activity while serving their probationary/trial period for alleged involvement in drug smuggling, bribery, alien smuggling, aiding and abetting, and narcotics distribution were terminated during their probationary/trial period.

Pursuant to Office of Personnel Management regulations, if an employee is serving on an appointment that does not afford appeal rights (such as the Federal Career Intern Program (FCIP)), no agency reasons for the action may be recorded on an Standard Form (SF)-50, the document that records personnel actions and is placed in an employee's Official Personnel Folder. Therefore, the permanent records of employees appointed under the FCIP authority who were terminated during the first year of their appointment reflect only a termination, but no official reason for that action. While CBP does often possess Internal Affairs or Human Resource records regarding the circumstances leading to termination, answering the question you posed would require a manual review of all 1,513 files to determine which include such information. As an alternative, please consider having your staff contact CBP's Office of Congressional Affairs Assistant Commissioner, Michael Yeager, at (202) 344-1760 to discuss ways in which CBP may provide other responsive data to address your concern.

5) *What actions are being taken at the Secretary's level to ensure that anti-corruption efforts at both Customs and Border Patrol Internal Affairs (CBP-IA) and the DHS Inspector General's Office are coordinated where necessary, and free of duplication or unnecessary overlap?*

Current DHS management directives require CBP-IA to promptly advise the OIG regarding allegations of CBP employee misconduct. CBP has taken several steps to ensure that these requirements are met. In 2004, CBP and U.S. Immigration and Customs Enforcement (ICE) created the Joint Intake Center (JIC). The JIC was designed to serve as the central clearinghouse for receiving, documenting, and processing all allegations of misconduct involving ICE and CBP employees and to ensure that OIG receives appropriate and timely notification. Presently, the OIG has full, contemporaneous access to all allegations of CBP employee misconduct through the Joint Integrity Case Management System (JICMS).

Further, CBP leadership has taken action to ensure timely notification of allegations of employee misconduct to all appropriate offices and officials. Specifically, in October 2009 and again in July 2010, at the direction of the Deputy Commissioner, CBP-IA issued guidance to all CBP-IA Special Agents in Charge requiring that detailed information regarding any allegation of wrongdoing on the part of a CBP employee be entered into JICMS on the same day or the day after receiving the information.

Over the past year, CBP-IA has surveyed the field regarding compliance with the above requirements. Of the allegations received by the JIC between October 2009 and July 2010, CBP-IA is aware of only four instances in which there was a delay in notifying the OIG and these instances have been brought to the attention of CBP-IA leadership. From July 2010 to date, CBP-IA is aware of no cases in which this guidance has not been followed.