

**TESTIMONY OF**

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**BEFORE**

**SENATE HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS COMMITTEE**

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

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Chairman Pryor and distinguished members of the Subcommittee, I am Alan Bersin, Commissioner of U.S. Customs and Border Protection (CBP). It is a privilege and an honor to appear before you today to discuss CBP's efforts to combat corruption and maintain the integrity of our workforce. I have no higher priority than ensuring the integrity of the CBP workforce, as reflected by my Commissioner's Statement of Policy and Intent on Integrity, a copy of which has been lodged with the Committee. In order to ensure that the propositions reflected in this document are implemented across the agency, I have established an Integrated Policy Coordination Cell on Integrity led by retired Marine Major General Michael Lehnert who has honored us by joining CBP as my senior advisor.

### **Background**

As America's frontline border agency, CBP is responsible for securing America's borders against threats, while facilitating legal travel and trade. To do this, CBP has deployed a multi-layered, risk-based approach to enhance the security of our borders while facilitating the flow of lawful people and goods entering the United States. This layered approach reduces our reliance on any single point or program that has the potential to be compromised. It also extends our zone of security outward, ensuring that our physical border is not the first or last line of defense, but is instead one of many. Ensuring the continued integrity of the CBP workforce is essential to our efforts.

CBP is the largest law enforcement agency in the country. We deploy nearly 60,000 law enforcement officers and mission support personnel along the U.S. borders, at ports of entry and overseas on a continuous basis in support of our critical border security mission. Not only do our officers and agents serve under difficult circumstances and in a dangerous environments, they do so in an environment vulnerable to corruption, particularly along the southwest border.

After the creation of the Department of Homeland Security (DHS), CBP experienced a growth that was unprecedented in the history of U.S. law enforcement. Between FY 2004 and FY 2010, the U.S. Border Patrol more than doubled in size to a force today of more than 20,700 agents. During that time, CBP hired extraordinary men and women, almost all of whom continue to

serve our country with great distinction and integrity every day. During the same period of time, CBP greatly expanded and integrated the Office of Field Operations from the workforces of CBP's legacy agencies and grew the capabilities of the Office of Air and Marine to its current level.

This represents an unprecedented growth of human resources, technology, and infrastructure. On the whole, CBP found that its workforce was younger, less experienced, and in need of seasoned supervisors. In the vast majority of cases, we brought exceptional new agents and officers on board, but in some cases, I fully acknowledge that the agency has suffered from the corruption of employees that have disgraced the service and betrayed the trust of the American public and their fellow officers, agents and mission support personnel.

Simultaneous to the agency growth, Mexico took the historic step of taking on organized crime in that country. President Calderon's decision to confront the transnational criminal organizations that previously operated with impunity and trafficked drugs and aliens from Mexico, combined with CBP's increased hiring of agents and officers, amplified the incentives and opportunities for corruption of the CBP workforce through bribery, infiltration or other means. The accelerated hiring pace under which we operated between 2006 and 2008 – and, frankly, mistakes from which we are learning – exposed critical organizational and individual vulnerabilities within CBP. Each CBP officer and/or agent who commits an act of corruption betrays the trust of the American people. CBP takes any allegations of corruption very seriously and is addressing the issue of corruption through a comprehensive strategy that integrates prevention, detection and investigation capabilities to deter and, when necessary, rectify incidents of corruption and misconduct in the CBP workforce.

Since October 1, 2004, 127 CBP employees have been arrested or indicted for acts of corruption including drug smuggling, alien smuggling, money laundering, and conspiracy. Of the 127 arrests, 95 are considered mission compromising acts of corruption. This means that the employee's illegal activities were for personal gain and violated, or facilitated the violation of, the laws CBP personnel are charged with enforcing. An example of the impact a single corrupt employee can make through a mission compromising act of corruption can be seen in the

instance of former CBP Technician Martha Garnica who was indicted federally in 2009. In 2010 Garnica was sentenced to 20 years in federal prison, ordered to pay a \$5,000 fine, and serve four years of supervised release after pleading guilty to conspiring to import over 100 kilograms of marijuana into the United States, conspiring to smuggle undocumented aliens, three counts of bribery of a public official, and one count of importation of a controlled substance.

Apart from the 95 cases identified above, the remaining 32 arrests are considered non-mission compromising acts of corruption in which the employee's illegal activities involved the misuse or abuse of the knowledge, access, or authority granted by virtue of their official position in a manner that did not facilitate the violation of laws that the agency is charged with enforcing at the border. These cases fall into one of five broad categories: Theft; Fraud; Misuse of a Government Computer/Database; False Statements; and Drug-Related Offenses.

### *Theft*

The majority of CBP employees arrested for theft-related corruption activity have stolen government money or property. For example, a Border Patrol agent (BPA) had been dispatched to an abandoned vehicle that contained \$4,000 as part of an integrity test executed by CBP Office of Internal Affairs. He returned to the station, reported to his immediate supervisor that he had recovered \$2,300, and subsequently prepared a report documenting that amount.

### *Fraud*

CBP employees have been arrested for several types of fraud including wire fraud, workman's compensation fraud, Housing and Urban Development (HUD) fraud, and bank fraud. For example, a Customs and Border Protection Officer (CBPO), through the display of his official passport and government credentials, received \$220,000 from a Korean national as an investment in a computer school he fraudulently claimed to be establishing in the Philippines.

### *Misuse of a Computer/Database*

CBP employees unlawfully abused their access to protected government systems and databases to gain information for personal use. For example, a CBPO was arrested and charged with three counts of unauthorized access to a government computer. The CBPO abused his position to gain access to two government databases to perform queries on a private citizen he was suing in small claims court. He also induced his law enforcement colleagues to access their government systems over 100 times under the guise of official business.

### *False Statements*

CBP employees have been arrested for knowingly making false statements both on- and off-duty. For example, a CBP Agriculture Specialist (CBP-A) was arrested for making a false statement about her brother's residence status. The CBP-A inappropriately interfered with the CBP inspection of her brother and insisted he had only been out of the country for five months when in fact he had been living abroad for five years.

### *Drug-Related Offenses*

A BPA was arrested and charged with one count of felony distribution of marijuana and six counts of using a communication facility to commit a felony. The BPA misused his government-issued equipment by organizing and executing four illegal drug transactions including the sale of marijuana out of his government-issued vehicle.

I cannot overemphasize that the overwhelming majority of CBP officers and agents demonstrate the highest levels of integrity every day. But the reality is that CBP employees have been and will continue to be targeted by criminal organizations or may otherwise seek to exploit their position of public trust for illicit gain and I am here today to discuss this vulnerability, and the steps that we are taking with your assistance to mitigate the threat it embodies.

The risk of employee corruption is a challenge that we have acknowledged and are confronting directly; it is a challenge that we work tirelessly to meet.

**Anti-Border Corruption Act of 2010**

More so than ever before, CBP is a standards-based and professional law enforcement organization. Our high standards are reflected in the quality of the people we hire, as well as in how we train and evaluate our employees. Central to our standards is an absolute commitment to integrity. Without integrity we cannot accomplish the mission which the nation has entrusted to us. Our commitment begins at the time of application for employment with CBP and continues throughout the careers of our officers, agents, and mission support personnel. It defines our relationship with one another and the nation we serve.

For this reason, no act of corruption within our agency can or will be tolerated. CBP's leaders, including myself, are committed to creating and maintaining an organization in which all employees have the strength of character and support to reject all opportunities for corruption, in whatever form they may take and to reveal them when discovered. I have personally and repeatedly emphasized to CBP leadership and the men and women of our workforce that there is no place for the "code of silence" in a professional law enforcement organization. There is no place for it in CBP.

These propositions form the basis of CBP policy with regard to integrity and are in complete alignment with the mandates of Public Law 111-376, the *Anti-Border Corruption Act of 2010*. Thanks to your leadership, Mr. Chairman, this law requires that by January 2013, all CBP law enforcement applicants must receive a polygraph examination before being hired. The Act further requires that CBP initiate all periodic personnel reinvestigations that were overdue for initiation and that Congress receive bi-annual reports on CBP's progress toward meeting these requirements for a period of two years. These requirements – background and periodic investigations as well as polygraph examinations – are consistent with, and form the basis of, a comprehensive workforce integrity plan. I am committed to utilizing these tools to their fullest extent.

CBP's comprehensive integrity strategy includes improved initial screening of applicants, pre-employment polygraph examinations of law enforcement candidates and an exhaustive background investigation that commences upon the initial selection of a prospective employee. Each tool is capable of identifying vulnerabilities that the other cannot, and in combination allow for a thorough vetting of the men and women seeking employment with, or employed by, CBP. Periodic reinvestigations of an employee's background are conducted every five years throughout an onboard employee's career and may identify emerging integrity and conduct concerns that have the potential to impact execution of the CBP mission.

CBP is working diligently to increase its capacity to polygraph all applicants for law enforcement positions consistent with the statutory requirements. Polygraph exams, properly administered, can be a valuable tool to screen law enforcement applicants and to help ensure workforce integrity. They are valuable as well, where it is possible, for use with onboard employees on a voluntary or exculpatory basis.

Logistically, in an effort to increase efficiencies in the background and periodic reinvestigation processes, the Office of Internal Affairs (IA) is moving to a paperless environment. This effort will allow CBP to most efficiently and effectively leverage its limited financial and human resources.

I am pleased to report that CBP is on target to meet the requirements of the *Anti-Border Corruption Act*. CBP has already initiated all past-due periodic reinvestigations, and I am committed to investigating, adjudicating and completing these investigations as quickly as possible. I am also committed to implementing an action plan that will allow CBP to polygraph all applicants for law enforcement positions and to remain current on periodic reinvestigations as they come due.

## **Additional Integrity Programs and Training**

In 2006, IA was tasked with promoting the integrity and security of the CBP workforce. Since then, IA has aggressively reconstituted and reinvigorated its internal investigative capability as part of a comprehensive strategy to counter the threat of workforce corruption. The IA staff has grown from 162 on April 30, 2006, to 624 as of April 30, 2011. This includes 218 experienced Investigative Agents responsible for investigating those employees suspected of corruption and misconduct, as well as personnel responsible for the prevention and detection of these acts within prospective and onboard employees.

IA's comprehensive strategy integrates prevention, detection and investigation capabilities to deter, detect, and respond to corruption and serious misconduct in the CBP workforce. The strategy includes background investigations as explained previously, as well as security clearances; employee misconduct investigations; physical, informational, industrial, internal and operational security; and management inspections.

The integrity strategy includes the application of behavioral science and analytical research methods designed to flag indicators of potential workforce corruption. These tools support an intelligence-driven response to potential instances of corruption.

In concert with IA's efforts, the Office of Field Operations (OFO) has taken significant steps to utilize its resources to identify operational data anomalies. Under the leadership of OFO's Analytical Management Systems Control Office (AMSCO), CBP law enforcement officers and agents use CBP's automated systems to analyze crossing, referral, and results data to identify anomalies that may be indicative of integrity issues. This analysis is especially important as CBP continues to implement new systems to process travelers and cargo electronically in a more efficient and effective manner.

When AMSCO identifies an anomaly in the manner in which a CBP employee is performing his duties, the office works collaboratively with IA to mitigate any potential threat to the CBP mission. As a result of the excellent work AMSCO is doing, CBP has already identified and corrected operational vulnerabilities that created potential opportunities for employee corruption.

The efforts AMSCO has undertaken have also resulted in the development of new approaches, methodologies and tools that, once fully tested, will be deployed at the ports of entry to identify performance deficiencies and counter potential acts of corruption as well as serve as an important training and instructional tool.

OFO has also established Integrity Officers within each of its 18 Field Offices. These Officers act as liaisons to field personnel on integrity issues and are a conduit to headquarters for potential integrity concerns. Integrity Officers participate in local task forces, committees, and working groups, and collaborate with various federal law enforcement agencies to provide assistance in operational inquiries, research, and analysis to assist in the detection and deterrence of corruption and misconduct.

In September 2008, the U.S. Border Patrol created the Integrity Advisory Committee (IAC)—comprised of selected field leadership ranging from first-line Supervisory Border Patrol Agents through members of the Senior Executive Service—to proactively combat the threat of corruption within its ranks. The IAC provides a strategic analysis of vulnerabilities to corruption that can exist due to the unique nature of the Border Patrol operating environment and provides recommendations to address these vulnerabilities effectively.

Throughout an employee's career, CBP provides training that focuses on integrity, ethics, and ethical decision making as part of an anti-corruption continuum. When employees initially enter on duty they receive at least two hours of training geared toward promoting workforce integrity as part of CBP's New Employee Orientation Program. Newly hired CBP law enforcement officers receive an expanded level of mandatory integrity and ethics instruction as part of the basic training curriculum.

Recurring integrity training is also an integral part of the advanced and specialized training for CBP employees beyond their initial entry on duty. This training, combined with proper leadership, oversight, and management at all levels of the agency fosters a culture of personal accountability and integrity within CBP. It clearly communicates the standards of conduct with which all CBP employees must comply and identifies the consequences of engaging in inappropriate behavior. Most importantly, periodic in-service training equips CBP employees

with the tools they need to recognize, report, and respond to integrity challenges they will encounter both on- and off-duty.

Our focus on integrity is not limited to our non-supervisory personnel. CBP supervisory and leadership training programs such as Supervisory Leadership Training (SLT), Incumbent Supervisory Training (IST), the CBP Leadership Institute (CBP-LI), the Command Leadership Academy, and the Department's Senior Executive Service Candidate Development Program incorporate classroom instruction and a series of practical exercises that prepare CBP leaders to guide and direct the workforce in a manner that promotes personal integrity and accountability through critical thinking and integrity-based, ethical decision making.

### **Corruption Investigations**

Beyond our proactive measures to prevent corruption before it begins, CBP is prepared to address allegations of employee corruption and misconduct in a timely and effective manner to ensure the integrity of the border. CBP maintains a cadre of experienced IA agents assigned to headquarters and 22 field offices strategically located throughout the United States where the potential threat of workforce corruption is most acute. CBP coordinates its internal investigative activities with the DHS Office of Inspector General (OIG), U.S. Immigration and Customs Enforcement's Office of Professional Responsibility (ICE OPR), the Federal Bureau of Investigation (FBI), and numerous other federal, state and local law enforcement authorities. Effective collaboration and information sharing among the federal agencies that have a stake in border corruption is a critical factor in maintaining border integrity and security and effectively addressing allegations of corruption lodged against CBP employees.

CBP IA agents participate as active members of the FBI-led National Border Corruption Task Force (NBCTF) initiative. Presently, CBP IA agents are deployed in 22 Border Corruption Task Forces (BCTFs) and/or Public Corruption Task Forces (PCTFs) nationwide, including 13 task forces operating along the southwest border. These multi-jurisdictional, multi-agency task forces share information, intelligence, and investigative resources in an effort to combat border

corruption. The task force approach serves as a force multiplier on corruption investigations and allows for a higher level of return on the investment of appropriated resources.

In addition to our task force efforts, in December 2010, I convened a meeting with all IA Special Agents in Charge from across the country to develop a strategy for collaborating with ICE OPR to more effectively address allegations of criminal conduct lodged against CBP employees. I strongly believe we must work collaboratively with ICE OPR, the FBI, and the DHS OIG to address corruption in the CBP workforce.

The first step toward implementing this strategy was to execute a Memorandum of Understanding (MOU) with ICE that established clearly defined protocols for the participation of IA agents in CBP-related investigations conducted by ICE OPR. On January 1, 2011, CBP detailed 25 IA agents to ICE OPR offices throughout the United States. These IA agents are now participating in more than 150 ICE OPR-led investigations into criminal allegations of CBP employee misconduct. The participation of IA agents in these ICE-led investigations provides a level of insight and influence not previously available to me and the CBP leadership team and will greatly increase CBP's and ICE's combined ability to ensure the integrity of the border. We have commenced discussions with DHS OIG, under the leadership of Acting Inspector General Charles Edwards, to establish a similar relationship with that agency.

CBP is also working in consultation with our partners at ICE, the DHS OIG, and other federal investigative agencies to more effectively and expediently use our administrative authorities to mitigate the threat caused by CBP employees accused of corruption during the course of an investigation. This may include reassignment to administrative duties, administrative leave, indefinite suspension, suspension of law enforcement authorities, or other appropriate actions. Where a preponderance of evidence indicates that a CBP employee is engaged in corruption, I intend to take appropriate action without undue delay to permanently remove that employee from their position. This forward-leaning approach provides CBP with the flexibility to address the threat posed by allegedly corrupt employees when sufficient evidence exists to support an administrative action.

We will seek to make this practice our default approach unless, in consultation with our law enforcement partners, a decision is made that no changes may be made to the accused employee's position in order to allow a meritorious criminal investigation to proceed. In these instances, CBP will take all necessary and appropriate steps to maintain officer and public safety, and to ensure the integrity of our borders. This default approach will be implemented and deconflicted in a manner that does not compromise existing criminal investigations but provides CBP with the capability to take aggressive and consistent actions to deal with workforce corruption and misconduct.

I and the leadership of this agency must have complete and timely visibility into the corruption investigations that involve CBP employees and meaningful influence into the course these investigations take. As such, the steps that we have taken as an agency and that I have outlined here today are enhancing my capacity, and that of CBP leadership across the country, to prevent, detect, investigate, and respond to corruption and serious misconduct in the CBP workforce.

### **Conclusion**

Mr. Chairman, integrity is central to CBP's identity and effectiveness as guardian of the nation's borders. It is the keystone of our agency. I thank you and the members of the Subcommittee for the opportunity to appear today and make clear our core values and strategic approaches in this regard. I will be pleased to answer any questions that you might have.