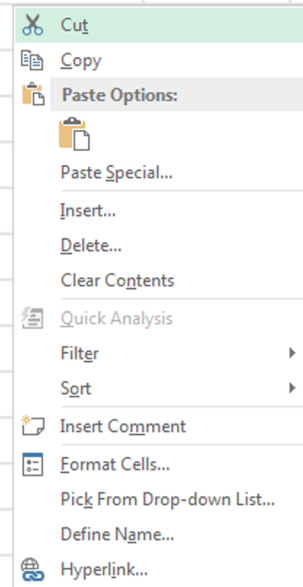


# OVERRULED

White House Overrides Department of Homeland Security  
Budget Request on Border Security Priorities



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### EXECUTIVE SUMMARY

The White House Office of Management and Budget (OMB) plays a critical role in the process of developing the President's budget proposal each year. The Democratic staff of the Senate Committee on Homeland Security and Governmental Affairs recently obtained a non-public document communicating OMB guidance from the President to the Department of Homeland Security regarding its upcoming budget proposal for Fiscal Year 2019.

At the request of Ranking Member Claire McCaskill, this staff report summarizes information contained within this document related to securing our nation's borders. Key findings include:

- OMB rejected the Department's specific funding requests in certain circumstances for additional border security technology and equipment and, instead, instructed the Department to dramatically increase funding for a wall along the U.S.-Mexico border.
- OMB instructed the Department to decrease its original funding request for border security technology and equipment initiatives by approximately \$175 million.
- OMB reduced the Department budget request for Remote Video Surveillance Systems (RVSS) in the Border Patrol's Rio Grande Valley sector in Texas. Despite its assertion that "surveillance in the Sector is a continued priority," OMB instructed DHS to request only \$43.7 million for this technology – a \$44.6 million reduction to the Department's original request, constituting a cut of over 50%. OMB acknowledged that reductions to RVSS technology are necessary "to offset the costs of Presidential priorities not funded in the DHS request."
- OMB instructed DHS to seek \$1.6 billion from Congress "to continue construction of the border wall in the Rio Grande Valley Sector" of Texas. The document indicates that OMB's instruction to ask for \$1.6 billion is "\$700 million more than the agency request," representing a 78% increase over the Department's original funding request for a physical barrier along the southwest border.

## FISCAL YEAR 2019 BUDGET AND POLICY GUIDANCE DOCUMENT

Congress is vested with the power to raise revenue and borrow money under Article I of the U.S. Constitution.<sup>1</sup> Pursuant to 31 U.S.C. § 1105, the President submits a proposed budget of the U.S. government for the following fiscal year no later than the first Monday in February. In a document titled *The Budget of the United States Government*, the President includes budget summaries, information on the activities and functions of the government, and other related financial information.<sup>2</sup>

The White House Office of Management and Budget (OMB) plays an important role in the process of developing the President's budget. OMB Circular No. A-11 provides extensive information on the preparation and submission of budget requests and justification materials to Congress.<sup>3</sup> Federal agencies develop their budgets for the following fiscal year and submit the documentation to OMB, typically in the fall. OMB examiners then review a department's proposed budget and ensure it aligns with the President's priorities. The President's decisions on an agency's proposed budget are communicated to the agency through a process referred to as "passback." OMB communicates guidance responding to an agency's proposed budget request and notifies an agency that particular budgetary line items will or will not receive the amounts requested by the department. At times, OMB provides less money than requested; in other instances it provides more.<sup>4</sup> A department then has a short time period in which it may appeal OMB's decisions.<sup>5</sup>

In late November 2017, a whistleblower disclosed a critical budget document related to the Department of Homeland Security (DHS) to the Democratic staff of the Senate Homeland Security and Governmental Affairs Committee. This document is titled the *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* and is dated November 28, 2017.<sup>6</sup> It communicates OMB guidance from the President to the Department regarding its budget proposal. As the document states: "The following document provides fiscal year 2019 discretionary budget and policy guidance for the Department of Homeland Security (DHS). ... The agency-specific discussions found below highlight those programs where budgetary levels reflect explicit changes in Administration policy."<sup>7</sup> It is important to note that the totals reflected in this document may not represent the President's final budget. Any decisions communicated in this document are appealable and "[a]ppeals to the 2019 guidance, if any, are due by noon on Friday, December 1, 2017 and must be submitted in writing and approved by the Secretary."<sup>8</sup>

Unlike the final President's budget proposals, passback materials are typically not released to Congress or the public. The document disclosed to the Democratic staff of the Committee by the whistleblower is marked "PRE-DECISIONAL – NOT FOR PUBLIC RELEASE."<sup>9</sup> Despite the secrecy with which the passback is held, this document contains information valuable to the decision-making interests of Congress and the public. This document provides an advance indication of the President's likely guidance on FY 2019 funding levels for DHS discretionary resources.<sup>10</sup> Additionally, it provides information on the needs of DHS as developed by the agency itself, independent of White House involvement. Typically, once the President has issued his budget, all departments are expected to publicly support his proposal as appropriate policy.

<sup>1</sup> U.S. Constitution, Article I § 9.

<sup>2</sup> 31 U.S.C. § 1105.

<sup>3</sup> OMB Circular No. A-11.

<sup>4</sup> Shelley Lynne Tomkin, *Inside OMB: Politics and Process in the President's Budget Office* (New York: M.E. Sharpe, 1998).

<sup>5</sup> *Id.*

<sup>6</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>7</sup> *Id.* Note that this passback document relates to the FY 2019 budget that will be issued in February 2018, and does not reflect the President's FY 2018 Budget Proposal that Congress has yet to approve.

<sup>8</sup> *Id.* The Democratic staff of the Committee has not received any materials reflecting DHS appeals.

<sup>9</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>10</sup> *Id.*

## OMB DIRECTED DHS TO MAKE BUDGET CUTS TO BORDER SECURITY TECHNOLOGY AND EQUIPMENT TO FUND CONSTRUCTION OF A WALL ALONG THE SOUTHERN BORDER.

The *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* document indicates that OMB rejected the Department's specific funding requests in certain circumstances for additional border security technology and equipment and, instead, instructed the Department to dramatically increase funding for a wall along the U.S.-Mexico border. OMB guidance provided Customs and Border Protection (CBP) with total net discretionary budget authority of \$14.2 billion for FY 2019.<sup>11</sup> In order to continue progress on Presidential priorities related to border security and immigration enforcement, OMB indicated that "additional savings" could be identified by making reductions to border security technology and equipment initiatives, among other critical operations.<sup>12</sup>

OMB instructed the Department to decrease its original funding request for border security technology and equipment initiatives by approximately \$175 million. OMB ordered DHS to reduce the costs for a variety of programs, including Remote Video Surveillance Systems, Tethered Aerostat Radar System acquisition, and Coastal Interceptor Vessels, among others. In addition to the elimination or reduction of Departmental funding requests for border security technology and equipment, the OMB guidance also instructed DHS to reduce its request for CBP facilities maintenance by \$43.2 million.<sup>13</sup>

OMB ordered the Department to seek reduced amounts in border security technology and equipment to offset increased costs to construct a wall along the southern border. OMB instructed DHS to seek \$1.6 billion from Congress "to continue construction of the border wall in the Rio Grande Valley Sector" of Texas.<sup>14</sup> The document indicates that OMB's instruction to ask for \$1.6 billion is "\$700 million more than the agency request" representing a 78% increase over the Department's original funding request for physical barriers along the southwest border.<sup>15</sup> The OMB document indicates that the discrepancy between the DHS request and OMB guidance is a result of "Presidential priorities" – and makes no reference to operational requirements.<sup>16</sup>

The OMB guidance raises significant concerns based on information and testimony received by this Committee. In April 2017, then-DHS Secretary John Kelly testified before this Committee that "It is unlikely that we will build a wall or physical barrier from sea to shining sea."<sup>17</sup> He also stated: "We are not going to build a wall where it does not make sense."<sup>18</sup> On November 8, 2017, DHS Secretary Kirstjen M. Nielsen, then the nominee for the position, testified before this Committee that she agreed with his assessment.<sup>19</sup> She also testified on the important role of technology in securing our nation's borders, stating:

*"I look forward, should I be confirmed, to working with the folks at CBP, understanding their operational needs on the border. As you know and we talked about, it is a combination of both personnel and technology. We also have to remember that technology can always serve also as a force multiplier if implemented and executed correctly."<sup>20</sup>*

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Senate Committee on Homeland Security and Governmental Affairs, Testimony of Secretary John F. Kelly, USMC (Ret.), *Hearing on Improving Border Security and Public Safety* (Apr. 5, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> Senate Committee on Homeland Security and Governmental Affairs, Testimony of Kirstjen M. Nielsen, *Nomination Hearing for Kirstjen M. Nielsen to be Secretary, United States Department of Homeland Security* (Nov. 8, 2017).

<sup>20</sup> *Id.*

## Remote Video Surveillance Systems

OMB ordered a reduction in the Department's original budget request for Remote Video Surveillance Systems (RVSS) in the Border Patrol's Rio Grande Valley sector. RVSS consist of multiple daylight and infrared cameras mounted on poles, towers, or buildings.<sup>21</sup> According to past budget documents, "The technology will provide persistent wide-area surveillance for the visual detection, identification, classification, and tracking of items of interest."<sup>22</sup> Former Secretary Kelly has testified on the importance of mobile surveillance, stating, ""[A] physical barrier in and of itself will not do the job. It has to be really a layered defense. If you were to build a wall from the Pacific to the Gulf of Mexico, you would still have to back that wall up with patrolling by human beings, by sensors, by observation devices."<sup>23</sup>

In this passback document, OMB instructed DHS to request \$43.7 million for RVSS technology – a \$44.6 million reduction to the Department's original request.<sup>24</sup> This constitutes a reduction of 50.5%. OMB sought this reduction despite its assertion that "surveillance in the Sector is a continued priority."<sup>25</sup> OMB acknowledged that reductions to RVSS technology are necessary "to offset the costs of Presidential priorities not funded in the DHS request."<sup>26</sup>

Despite this significant reduction, OMB recognized the importance of RVSS in providing situational awareness of the southwest border, stating:

No later than January 19, 2018, CBP is also requested to provide an out-year funding and acquisition plan for completing the remaining required RVSS procurements in the RGV Sector, which should include an updated plan for surging available ground surveillance technology into the RGV Sector as a stop-gap measure until RVSS systems are in place.<sup>27</sup>

## Tethered Aerostat Radar System (TARS)

OMB rejected the Department's request for an additional \$2.2 million for Tethered Aerostat Radar System (TARS) acquisition planning and purchase of a spare hull.<sup>28</sup> According to past budget documents, TARS consists of moored balloons – or blimps – that provide "radar detection and monitoring of low-flying aircraft and maritime/ground traffic along the U.S.-Mexico border, Florida Straits, and southwestern approaches to Puerto Rico."<sup>29</sup> The importance of this technology has been explained in detail in past budget documents. In prior years, the Administration has stated:

While TARS represents only 2 percent of the number of sensors feeding the [CBP Air and Marine Operations Centers], on average, the TARS system sources over half of the number of aircraft deemed 'suspicious' and referred for further investigation or interdiction. The TARS contribution along the Southwest Border is particularly significant, accounting for 80-90 percent of all suspect aircraft determinations. Without the presence of TARS, a majority of these suspect aircraft would

<sup>21</sup> Government Accountability Office, *Southwest Border Security: Border Patrol is Deploying Surveillance Technologies but Needs to Improve Data Quality and Assess Effectiveness* (GAO-18-119) (Nov. 2017).

<sup>22</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

<sup>23</sup> Senate Committee on Homeland Security and Governmental Affairs, Testimony of General John F. Kelly, USMC (Ret.), Hearing on Nomination of General John F. Kelly, USMC (Ret.) to be Secretary, Department of Homeland Security (Jan. 10, 2017).

<sup>24</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* OMB has provided funding to maintain current systems.

<sup>29</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

not have been detected in a timely manner to enable an effective CBP response, or may have not been detected at all.<sup>30</sup>

### Coastal Interceptor Vessels

The OMB guidance delayed the Department's requested purchase of 15 Coastal Interceptor Vessels totaling \$14.8 million.<sup>31</sup> Coastal Interceptor Vessels are boats used by CBP Air and Marine Operations agents in coastal waters "to combat maritime smuggling and defend the waterways along our nation's borders from acts of terrorism."<sup>32</sup> DHS had sought the purchase of these new vessels to replace the aging Midnight Express Interceptor Vessels.<sup>33</sup>

The delay raises concerns about the Administration's prioritization of maritime border security. According to the Governmental Accountability Office (GAO), transnational criminal organizations have increasingly used pangas (a type of fishing boat), recreational watercraft, and self-propelled semi-submersible and fully submersible vessels to conduct drug and human smuggling operations due to increased security of overland smuggling routes.<sup>34</sup> According to Coast Guard statistics, cocaine seizures, for instance, increased by 17% from FY 2015 to FY 2016 in the maritime Drug Transit Zone.<sup>35</sup> Using Coast Guard data, GAO found that migrant smuggling aboard pangas and recreational watercraft more than doubled from FY 2011 to FY 2016 along the U.S. mainland's maritime border.<sup>36</sup>

### P-3 Aircraft Technology

OMB declined to include the Department's \$7.9 million request for a P-3 aircraft technology refresh.<sup>37</sup> According to past budget documents, P-3s are "high-endurance, all-weather, tactical turbo-prop aircraft, which are utilized primarily for long-range aerial patrols and surveillance along the U.S. border and in drug Transit Zones in Central and South America."<sup>38</sup>

### Multi-Role Enforcement Aircraft (MEA)

OMB instructed DHS to reduce its request for Multi-Role Enforcement Aircraft (MEA) by \$28.4 million.<sup>39</sup> This funding level will allow CBP to purchase one instead of two MEAs.<sup>40</sup> According to past budget documents, "The MEA is a multi-purpose, fixed wing, multi-engine aircraft used for maritime and land detection and surveillance missions and logistical transportation of cargo and people."<sup>41</sup> Additionally, CBP stated in past: "The MEA is the optimal sensor-equipped aircraft for surveillance operations in regions such as the Southern Border, Northern Border, and maritime

<sup>30</sup> *Id.*

<sup>31</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>32</sup> Customs and Border Protection: *CBP's Air and Marine Operations Unveils New Coastal Interceptor Vessel* (Sept. 15, 2016).

<sup>33</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>34</sup> Government Accountability Office, *Border Security: Additional Actions Could Strengthen DHS Efforts to Address Subterranean, Aerial, and Maritime Smuggling* (GAO-17-474) (May 2017).

<sup>35</sup> Coast Guard, Briefing with Senate Homeland Security and Governmental Affairs Committee Staff (May 8, 2017).

<sup>36</sup> Government Accountability Office, *Border Security: Additional Actions Could Strengthen DHS Efforts to Address Subterranean, Aerial, and Maritime Smuggling* (GAO-17-474) (May 2017).

<sup>37</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>38</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

<sup>39</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>40</sup> *Id.*

<sup>41</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

environments where over water, terrain, weather and distance pose significant obstacles to border security."<sup>42</sup>

### **UH-60 Medium Lift Helicopters**

OMB reduced the Department's request for UH-60 medium lift helicopters, commonly called Black Hawk helicopters, by \$15.4 million.<sup>43</sup> According to past budget documents, the UH-60 is a "turbo-shaft twin engine helicopter designed to carry a crew of 4 a fully equipped team of 11."<sup>44</sup> The helicopters can be equipped with Electro-Optic/Infrared (EO/IR) sensors and provide CBP Air and Marine Operations agents with the flexibility to conduct a variety of missions. This funding level will enable CBP to convert one UH-60 instead of two.<sup>45</sup>

### **Aircraft Sensor Upgrades**

OMB rejected the Department's request for \$7.8 million to upgrade aircraft sensors.<sup>46</sup> According to past budget documents, the Electro-Optic/Infrared (EO/IR) sensors, when attached to aircraft, give CBP Air and Marine Operations agents "the capability to detect persons, vehicles, vessels, and aircraft during day, night, and in adverse visibility conditions, thus enabling classification of known or suspected threats."<sup>47</sup>

### **Vehicle and Dismount Exploitation Radar (VADER)**

OMB rejected the Department's request for \$11 million to purchase and install Vehicle and Dismount Exploitation Radar (VADER) on Multi-Role Enforcement Aircraft (MEA).<sup>48</sup> According to past budget documents, the VADER technology could also be attached to CBP unmanned aircraft. The technology reportedly "has benefited border security operations from Arizona to Southeast Texas by increasing situational awareness of Transnational Criminal Organization patterns of life; analyzing gaps in CBP surveillance capabilities; and providing a new data source on illicit border movements to support intelligence assessments for planning and executive decision-making."<sup>49</sup>

### **Border Patrol Enforcement System Maintenance**

OMB instructed DHS to request \$10 million for Border Patrol Enforcement System (BPES) maintenance – an \$18.8 million reduction to the Department's original request.<sup>50</sup> According to past budget documents, BPES encompasses eight distinct information technology systems, one of which enables CBP to manage and track staffing levels, vehicle assignments, rescues, deaths, and illegal border crossings.<sup>51</sup> According to OMB guidance, \$10 million would "allow CBP to

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<sup>42</sup> *Id.*

<sup>43</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>44</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

<sup>45</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>46</sup> *Id.*

<sup>47</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

<sup>48</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>49</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

<sup>50</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>51</sup> Department of Homeland Security, Customs and Border Protection, *Budget Overview: Fiscal Year 2018 Congressional Justification* (May 2017).

better maintain its legacy BPES system until funding becomes available for systems modernization."<sup>52</sup>

### **High Risk Internal Cybersecurity Remediation**

OMB rejected the Department's request for \$25 million in additional funding for High Risk Internal Cybersecurity Remediation, stating, "CBP should identify funding for this activity using base resources."<sup>53</sup> The elimination of this request is concerning given that several critical CBP information technology systems are at risk for failure. In fact, on January 2, 2017, CBP experienced a catastrophic failure of its TECS system, which was developed in the 1980s and is used "to assist with screening and determinations regarding admissibility of arriving persons."<sup>54</sup> The DHS Office of Inspector General investigated this issue and determined that CBP's software capacity testing was inadequate, its software maintenance was deficient, its system status monitoring was ineffective, and its business continuity and disaster recovery processes were inadequate.<sup>55</sup>

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<sup>52</sup> Office of Management and Budget, *Department of Homeland Security Fiscal Year 2019 Budget and Policy Guidance* (Nov. 28, 2017).

<sup>53</sup> *Id.*

<sup>54</sup> Department of Homeland Security, Office of Inspector General, *Review of CBP Information Technology System Outage of January 2, 2017* (OIG-18-19) (Nov. 21, 2017).

<sup>55</sup> *Id.*