

U.S. Department of Homeland Security

June 13, 2003

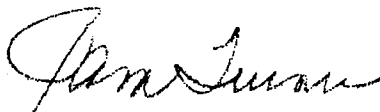
The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman:

Thank you for your letter of April 1, 2003, co-signed by Ranking Member Conyers, which posed several questions to the Department of Justice on the USA PATRIOT Act implementation and related matters. The Department of Justice forwarded questions numbered 18, 19, 22, 23, 24, 31, 32, and 36, relating to the authority or operation of the Immigration and Naturalization Service, to the Department of Homeland Security for response. With this letter, we are pleased to transmit responses to these questions. An identical response will be sent to Ranking Member Conyers.

We appreciate the opportunity to provide the Committee with the information on the Department's efforts in the war on terrorism. If we may be of further assistance on this, or any other matter, please do not hesitate to contact this office.

Sincerely,



Pamela J. Turner
Assistant Secretary for Legislative Affairs

Enclosures

Washington, D. C. 20528

Question 18: *Section 402 authorizes appropriations to triple the number of INS Border Patrol Agents and Inspectors in each state along the Northern Border, and also authorizes appropriations to provide necessary personnel and facilities to support such personnel.*

A: *How many additional Inspectors has the INS hired at the Ports of Entry along the Northern Border?*

Answer: On March 1, 2003, immigration inspectors from the Immigration and Naturalization Service (INS), agricultural inspectors from the Animal and Plant Health Inspection Service (APHIS), customs inspectors from the U.S. Customs Service, and the entire Border Patrol merged to form the Bureau of Customs and Border Protection – BCBP – within the Border and Transportation Security (BTS) Directorate of the Department of Homeland Security. Your question refers specifically to immigration inspectors. Since September 11, 2001, legacy INS, and now the Bureau of Customs and Border Protection (CBP) has hired 397 Immigration Inspectors at Northern Border ports of entry.

B: *How many of those hires are working as Inspectors along the Northern Border at this time?*

Answer: At this time, 280 of the 397 Immigration Inspectors have completed training and have begun service along the Northern Border. The remaining 117 are currently in training and will report to duty upon completion of training.

C: *By how many Inspectors has the total staffing at the ports along the Northern Border increased since September 11, 2001?*

Answer: The following table reflects the net changes in staffing that have occurred at Northern Border Ports of Entry for the legacy U.S. Customs Service, legacy U.S. Immigration and Naturalization Service, and the legacy Agricultural Quarantine Inspections Service since September 11, 2001.

	<u>FY 2002</u>	<u>FY 2003 YTD</u>
Customs	378	180
Immigration	102	270
Agriculture	19	-1
Total Increase	499	449

Question 19: *What technology improvements have been completed and what additional technology improvements are planned for FY 2003 expenditures to improve Northern Border security?*

Answer: As part of the Northern Border Hardening Project, CBP completed a total of 96 completed technology improvements. These were carried out in five Customs Area Security Centers (CASCs), four of which are on the Northern Border -- Champlain, New York; Houlton, Maine; Highgate Springs, Vermont; Blaine, Washington; and one at the Southern Border at the Arizona Customs Management Center. The improvements, which consist of security lighting, barriers/gates/bollards or denial systems, and remote video systems, have been installed at 31 ports of entry (POEs) at the Northern Border.

Planned FY2003 deployments for the Northern Border Hardening Project will involve four CASCs. Three Northern Border locations are in Alcan, Alaska; Sweetgrass, Montana; and Pembina, North Dakota. This will include 24 POEs on the Northern Border.

CBP has also deployed Non-Intrusive Inspection (NII) technology, specifically, Vehicle and Cargo Inspection System (VACIS) equipment, at 15 Northern Border ports of entry. Another 24 VACIS equipment deployments and 2 Gamma Ray detection systems are also planned for the Northern Border.

Also within the CBP, the Border Patrol has significantly increased technology deployment on the Northern Border. Improvements are being made in radio technology to better facilitate communication and increase interoperability between federal, state and local law enforcement agencies. Agent support equipment, such as night vision goggles, mobile infrared scopes and handheld night vision pocket scopes have been deployed to enhance the field agent's enforcement mission. To assist in surveillance of the border, the Border Patrol is also deploying the Integrated Surveillance Intelligence System (ISIS). ISIS camera sites include video and infrared camera capability, and can transmit images over long distances to a central monitoring station. To date, 69 ISIS structures (such as camera towers and signal repeater sites) have been installed on the Northern Border, with another 26 planned by the end of FY 03. For aerial surveillance, currently all 8 northern border sectors are assigned air assets to conduct air patrols. A total of 11 helicopters and 7 airplanes are deployed along the northern border.

Question 22: *On September 20, 2001, the INS issued an interim rule amending the period of time that an alien may be detained while the agency assesses whether to issue a Notice to Appear (NTA), placing the alien in immigration proceedings. Prior to amendment, the INS was required to issue an NTA within 24 hours of the alien's arrest. As amended, the INS has 48 hours after an alien is arrested to decide whether to issue an NTA, "except in the event of an emergency or other extraordinary circumstance in which case a determination will be made within an additional reasonable period of time."*

A: *What is the authority for the INS to detain an alien for longer than 48 hours without filing charges?*

Answer: 8 C.F.R. § 287.3(d) authorizes ICE to detain an alien pending a decision to charge longer than 48 hours in the event of an emergency or other extraordinary circumstance, in which case, the determination regarding custody or release of the alien and the issuance of a Notice to Appear will be made within a reasonable period of time. Neither the Constitution nor the Immigration and Nationality Act itself imposes any specific time limit, and the prior 24-hour rule was solely a regulatory standard that was changed in light of experience. As the INS explained at the time the rule was amended in 2001, the government may require additional time in order to establish an alien's true identity; to check domestic, foreign, or international databases and records systems for relevant information regarding the alien; to coordinate with appropriate law enforcement agencies in the United States and abroad; or to arrange for additional personnel or resources in response to an emergency or other extraordinary circumstance. 66 Fed. Reg. 48344 (Sept. 20, 2001).

B: *How many aliens have been detained for more than 48 hours without being charged under the authority in this regulation?*

Answer: At present, ICE is evaluating the feasibility of tracking this metric at a macro level, as opposed to in individual cases.

C: *What is the longest period that an alien has been detained without being charged under the authority in this regulation?*

Answer: See response to (B), above.

D: *Have any challenges to this regulation been brought in judicial proceedings? If so, please identify the case(s) and the status of each proceeding.*

Answer: ICE has no knowledge of any challenges to this regulation. The Office of Immigration Litigation, Department of Justice, knows of no cases directly challenging 8 C.F.R. 287.3(d).

Question 23: *Since September 11, 2001, the government has required that certain non-citizens from certain Middle Eastern countries register with the INS (or its successor agency).*

A: *How many terrorists or suspected terrorists have been investigated and/or detained as a result of the requirement that non-citizens register with the federal government?*

Answer: As of April 18, implementation of the National Security Entry Exit Registration System (NSEERS) has resulted in the identification of 11 aliens linked to terrorism, the arrest of more than 100 criminal aliens, and the issuance of more than 8,600 notices to appear for removal proceedings.

B: *What is the government's policy regarding whether non-citizens are able to have counsel present during the registration process, specifically during the interview?*

Answer: As a matter of policy, both BCIS and ICE offices are making every effort to accommodate all requests of aliens to be accompanied by counsel during appropriate phases of processing relating to NSEERS. During the registration process and specifically the interview, aliens may be represented by counsel. If Immigration and Customs Enforcement (ICE) agents determine a charging document, or notice to appear (NTA) must be issued, attorneys are not permitted to accompany aliens during the NTA issuance process.

C: *If counsel are not permitted at any point, what is the government's authority for denying such right to counsel?*

Answer: As noted, as a matter of policy, BCIS and ICE are working to extend the privilege of counsel to aliens throughout the NSEERS related process, regardless of where the explicit right to counsel ends. However, there are clear exceptions to an alien's right to counsel. For example, it is universally accepted by federal circuit courts that an alien does not have a right to counsel during the booking process, even in the criminal context where the full right to Fifth and Sixth amendment constitutional protection applies. See, e.g., United States v. McLaughlin, 777 F.2d 388 (8th Cir. 1985); United States v. Sims, 719 F.2d 375 (11th Cir. 1983), cert. denied, 465 U.S. 1034 (1984); United States v. Downing, 665 F.2d 404 (1st Cir. 1981); United States v. Prewitt, 553 F.2d 1082 (7th Cir.), cert. denied, 434 U.S. 840 (1977); United States ex rel. Hines v. La Vallee, 521 F.2d 1109 (2nd Cir. 1975), cert. denied, 423 U.S. 1090 (1976); United States v. Menichino, 497 F.2d 935 (5th Cir. 1974).

Question 24: *Since September 11, 2001, how many individuals have been deported from the United States? To what countries were those individuals deported? What was the racial and ethnic background of such individuals? For what reason were these individuals deported*

Answer: The country to which an alien has been removed may not be the same as country of birth or country of citizenship. Attached are removals (not just deportations) from Sept 12, 2001 through February 28, 2003. Categories for removal that are shown can also be found in the 2001 Statistical Yearbook (Table 64). We do not collect racial or ethnic data on cases in proceedings.

Question 31 and 32: *Has the DOJ through any of its agencies formulated a policy position regarding criteria for establishing the authenticity of foreign government-issued identity cards since the passage of the USA PATRIOT Act? If so, please produce a copy of that position.*

Has the DOJ through any of its agencies, including especially the INS, prepared or issued a policy with regard to security standards and acceptance of "Matricula Consulars" identity cards issued by foreign governments to persons who are residing in the United States but who may not be lawfully present in the United States? If so, has that policy been provided in writing to the Office of Management and Budget, the Secretary of State, or the Secretary of the Treasury? If such a policy has been prepared, please provide a copy to the Committee.

Answer: The DHS, including legacy INS, is actively participating in an interagency process chaired by the Department of State to formulate a United States Government policy position with respect to consular identification cards issued by foreign governments in the United States. Historically, various forms of consular identification cards have been in use for a variety of purposes by many countries, including the United States. Among other considerations, the interagency group is taking into account the expanded uses of such identification cards and the heightened security interests of our country.

Question 36: *"Operation Liberty Shield" involves stopping cars at airports, checking the identification of truckers who transport hazardous material on the highway, and monitoring Internet and financial transactions.*

A. Please identify the specific authority on which "Operation Liberty Shield" was created and implemented.

Answer: Operation LIBERTY SHIELD was a comprehensive *national* plan designed to increase protections for America's citizens and infrastructure while maintaining the free flow of goods and people across our border with minimal disruption to our economy and way of life. Operation LIBERTY SHIELD was a multi-department, multi-agency, national team effort. It included: Increased security at borders; Stronger transportation protections; Ongoing measures to disrupt threats against our nation; Greater protections for critical infrastructure and key assets; Increased public health preparedness; and Federal response resources positioned and ready. Operation LIBERTY SHIELD was conducted based on existing authorities by augmenting and focusing resources in these specific areas.

B. What level of predication is required before an agent may monitor the Internet and financial transactions?

Answer: Internet: An agent may monitor, without predication, any publicly accessible Internet site, e.g. chatrooms that are not password protected, websites, peer-to-peer applications, etc. Where there is a reasonable expectation of privacy such as in a password protected chatroom or email, an agent desiring to monitor or review said activity must demonstrate probable cause to believe that illegal activity is ongoing and must first obtain a court order. Financial Transactions: A search warrant based on

probable cause is required to monitor financial transactions. This does not include the review of historical data such as Bank Secrecy Data which requires no predication.

C: What terrorism-related investigations and/or prosecutions have resulted from Operation Liberty Shield?

Answer: More than 300 ICE Agents participated with FBI agents in several arrests and interviews across the country of Iraqi foreign nationals who had been previously identified by ICE as being out of status. ICE agents also determined if any Customs violations existed. To date, no Customs violations have been established as a result of those interviews.

To date, this phase of Liberty Shield, as it relates to ICE Special Agents, has yielded one terrorism-related investigation and criminal prosecution case that is being handled by the FBI, and we would refer you to them for further information. Immigration proceedings have begun against six aliens who have ties to foreign intelligence services.