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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0301**

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WATER AND POWER

June 13, 2014

The Honorable Jeh Johnson  
Secretary  
U.S. Department of Homeland Security  
Nebraska Avenue Center, NW  
Washington, DC 20528

The Honorable Gil Kerlikowski  
Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Mr. Thomas Winkowski  
Acting Principal Deputy Assistant Secretary  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street SW  
Washington, DC 20536

Secretary Johnson, Commissioner Kerlikowski, and Mr. Winkowski:

I am very concerned that the Department of Homeland Security (DHS), through Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), have been engaging in potentially criminal activities which have drawn ire and suspicion from the public and Congress alike. Particularly, I am referencing the DHS' policies and practices concerning the transfer of these illegal immigrants to other states and the circumstances surrounding those policies.

Before addressing this disturbing misconduct, I want to address the manner in which your team briefed Congress. As you may know, DHS officials, accompanied by CBP and ICE officials, held a briefing on these issues for staff members of the Arizona Congressional Delegation on June 4. A member of my staff was present and asked some very pointed questions on my behalf. Though I appreciate DHS' efforts to explain these questionable policies and practices, many of my questions were not answered. Further, some of the answers we received led to more questions.

Before getting to those questions, I would like to note that I am not only generally displeased with the Department about these transfer policies and practices, but also for the manner in which the briefing was held and the subsequent interactions between congressional staff and the Department. DHS offered this briefing in order to answer our questions on a staff-to-staff level, only to later tell my staff that the questions would need to come directly from me.

Further, I certainly do not appreciate the Department bringing unnecessary armed, uniformed CBP officers to the June 4 staff briefing in what seemed to some staff present as an attempt to intimidate those in attendance —perhaps to the point at which they might be less inclined to ask tough questions of the Department. The officer I speak of apparently offered no contributions to the briefing or subsequent discussions other than icy stares.

As I mentioned, staff were told at the briefing to follow up with DHS regarding the unanswered questions and any new questions, which my staff immediately did. However, they were then told by the Department that in order to get a *timely* response to these questions, I should personally write an official letter to you all so that the questions may be handled in a quick and efficient manner.

Pursuant to both DHS' initial request and my associated desire to have answers quickly, my staff worked odd hours to get DHS those questions. And now I am being asked by the Department to double-down on my staff's efforts. It should not take a letter such as this to get these answers—my staff member was acting in an official capacity on my behalf. Such requirements from the Department could easily be interpreted as a stall tactic. If the outrage stemming from DHS failing to inform Congress or state and local law enforcement of the execution of these questionable policies was not enough, these additional steps imposed upon my staff and me only fuel the charge that the Administration, and DHS in this case, wishes to keep everyone in the dark about its attempts to perform end-runs around the law.

I would also like to note that Congress has consistently increased appropriations for agents and other resources at the Southern Border. My colleagues and I have consistently demanded that these resources be used to prevent people from breaking the law and illegally entering the United States—as they are intended by law. Instead, they are used to facilitate these individuals' journey to their final destination.

I wholeheartedly agree with the Administration that the current situation at our borders is a crisis. But this crisis is self-imposed. The primary crisis is your failure to secure the border. Further, senior officials in this Administration continually obstruct our brave men and women protecting our borders, assumedly for political and ideological reasons. It is no secret that many on the front lines within CBP and ICE have expressed concern, and even outrage, that they are prohibited from executing their mission of protecting their homeland. The perception that our law enforcement at our Southern Border is weak can be directly correlated with this massive surge of illegal border crossings. And because ICE seems to be working to transfer so many of these individuals to their final destinations here in the United States, there is no fear of reprisal for breaking our laws. To the contrary, there seems to be an incentive to do so.

My colleagues and I are alarmed both with the issue of the major influx of unaccompanied children (UAC) crossing our Southern Border, as well as with how the Administration is handling UAC, adults, and family units alike once they are present in the United States. Particularly, I find very troubling the court ruling in *U.S. v. Mirtha Nava-Martinez* (Cr. No. B-13-441-1 (U.S.D.C. Tex)), where in the court ruled that your department was engaging in a criminal conspiracy with drug cartels and human traffickers. As reported by the judge, the court was “quite concerned with the apparent policy of the Department of Homeland Security of completing the criminal mission of individuals who are violating the border security of the United States” by transferring UAC to their final destination points. The court further concluded that DHS “successfully complet[es] the mission of the criminal conspiracy” in how it was handling the UAC.

It seems that DHS and the Administration at-large are blind as to how backwards and harmful these practices and policies are to illegal immigrants and to U.S. citizens alike. This Administration seems to be dangling a carrot which represents a chance at administrative amnesty. But in the process, UAC are being raped, kidnapped, or killed in Mexico on the way from Central America. Is that the price they must pay for a chance at amnesty by executive fiat?

The policies and practices executed by DHS are not only unlawful, but their results are harmful to the very immigrants that the Administration wishes to show mercy and compassion. These actions jeopardize our national security and embolden the cartels.

Most or all of these aforementioned problems would be alleviated by simply enforcing the laws on the books with fairness, efficiency, and equal application. As my staff mentioned at the briefing, the perception by my colleagues and me, and the public at-large, is that ICE—Immigration and Customs Enforcement—is no longer in the *enforcement* business or deportation business, but is in the *transportation* of illegal immigrant business. So I hope the Department understands my outrage and that of so many Americans over these issues.

Regarding my questions attached to this letter, I expect that because my staff asked the Department some of these questions on the day of the briefing—and at my direct instruction, followed up by email less than 24 hours later to reiterate those unanswered questions and more—that the Department has already begun preparing answers. And being that I am fulfilling the Department's request by submitting these questions in writing today, I expect these answers to be delivered to my office no later than June 19, 2014.

Further, because my primary question about the statutory authority by which DHS is executing these policies was asked at the meeting, was immediately deflected by DHS, and was subsequently re-emphasized to the Department within hours of the June 4 briefing as my most important concern, I expect the answer to that first question (posed once again as the first question in this series) to be delivered as soon as physically possible. I would also appreciate any relevant background information DHS is able to provide for contextual purposes to that question and any or all of the others.

Again, I appreciate the Department's efforts to explain its actions. I only wish it had done so before Congress and officials in the State of Arizona learned of these actions in the news, as we so often do. It is long past time for this Administration to work *with* the duly elected representatives in Congress, rather than *against* them. That not being the case, I demand answers to these questions in a timely manner.

In closing, I am in strong agreement with Arizona Governor Jan Brewer and demand that this atrocious transfer policy be terminated immediately. Furthermore, the Department should take the necessary steps to secure our border and should take bold measures to discourage this influx of illegal aliens from continuing.

Should you have any questions or concerns, please do not hesitate to contact me. As always, I ask that this request be handled in strict accordance with existing rules, regulations, and ethical guidelines. Thank you for your consideration. I look forward to your response.

Sincerely,



Paul A. Gosar  
Member of Congress  
Arizona's Fourth District

cc:

Arizona Congressional Delegation  
Governor Jan Brewer  
House Oversight and Government Reform Committee  
House Judiciary Committee  
House Homeland Security Committee

**Congressman Paul A. Gosar**

*Attached questions for the Department of Homeland Security,  
to be answered by any and all relevant sub-agencies and personnel*

1. *First and foremost*, what statutory authority, Presidential executive order, or memo from the Office of the Secretary is used as a basis for these transfers and the processes involved?
  - a. Further, what appropriations are used to facilitate these actions (meaning, from which specific accounts within DHS)?
2. Might it be possible that the Department, through CBP and ICE, is breaking federal laws regarding “alien smuggling” by acting in this way and transferring these individuals within the United States?
  - a. Please see Section 1324 of Title 8, U.S.C. and explain to me how this statute does not apply to the Department.
  - b. If the Department believes it is justified, please provide such justification.
  - c. If the Department believes it is not justified after review of the U.S. Code, does it plan to cease these practices posthaste?
3. Please provide an explanation as to the evolution of this policy/process, including:
  - a. Any earlier versions of the policy/process;
  - b. When the policy/process was instituted in its current form;
  - c. How and when the policy/process was distributed to personnel as instruction, in addition to providing the exact document outlining such instructions, in unredacted form;
  - d. Any updates to the policy/process since the June 4 staff briefing; and
  - e. Any and all potential updates to the policy/process that DHS is currently considering.
4. When asked by staff at the June 4 briefing how much money was being spent to transport these illegal immigrants to other areas, ICE answered that it cost about \$53,000 per flight, if it was a full flight. ICE then went on to describe how its hands are tied because they do not have enough detention beds, or enough money to contract with other facilities to detain these individuals.
  - a. Does the Department not see the hypocrisy of this explanation?
  - b. Might the Department rather wish to work with the Administration and Congress to outline this serious issue of a lack of infrastructure, provide a workable budget justification, and request that Congress appropriate the funds needed to raise the necessary infrastructure rather than spend \$53,000 per flight to help get these individuals to their final destination?
5. At the briefing, ICE explained that in the less than 2 weeks prior to June 4 that these policies/practices had been in place to transfer these individuals to Arizona, it had made 7 flights from Texas to various parts of Arizona.
  - a. How many flights have occurred since then and/or to-date?
6. What exact instructions are given to these detained individuals after they are processed and before they are released on what the Department has deemed a “parole” status?
  - a. I am aware of the 15-day reporting requirement, but what exactly is said to them or given to them?
  - b. Is any paperwork signed?
  - c. Please provide a copy of any and all related documents.
7. As a percentage, what is the success rate to-date in terms of these individuals self-reporting to the regional ICE facility (as instructed by ICE prior to release) near their final destination for additional processing and adjudication?
8. Do these transfers take place from Texas to states other than Arizona for any detainees which are not UAC or are not part of a family unit? I have heard reports about New York and Maryland in particular.
9. Please describe in detail the ways in which the Yuma Sector has been incorporated thus far.
  - a. Further, please describe the plans the Department is hoping to implement to further involve Yuma Sector in this process.

10. In what specific ways does DHS plan to involve DOD in this process?
  - a. What about other departments of the government?
11. Please describe in detail the ways in which the detainees' consulates facilitate any part of this process once the detainees are state-side.
12. Reports also indicate that DHS believes Arizona has seen a decline in illegal border crossings.
  - a. While many Members of Congress dispute that assessment based on the fact that DHS has no real metrics for accounting for crossings and periodically changes standards and definitions of "detained", "deported", and "turnaround," let us assume for the purposes of these questions that DHS' statements are true.
  - b. If true, why aren't Yuma Sector and Tucson Sector sending personnel assets to Texas for border and interior enforcement?
13. What law enforcement policies are in place to address illegal activity performed by these individuals after they are state-side?
  - a. When my staff posed this question at the June 4 briefing, the answer seemed to be that there was no policy whatsoever in place.
14. Why did the Department decline to inform Congress and/or state and local officials about these transfers?
  - a. Is it true that ICE was coordinating, at least sporadically, with the Greyhound Company to arrange for the drop-off of these detainees?
  - b. Could no one at any level call anyone in Congress or at the state or local level to inform them of these transfers?
15. Does DHS/ICE have any intentions of repaying the public and private services afforded to these individuals based on this reckless policy/practice of dropping off hundreds of illegal immigrants at bus stations all over the State of Arizona?
  - a. It is my understanding that at the June 4 briefing when my staff posed this question, the Department replied that no reimbursements had been made, and that there was no such plan in place to do so.
  - b. Has a plan been formulated since the June 4 briefing when this question was posed?
  - c. Was a remedy to this injustice to local communities ever even considered by anyone at the Department?
16. Please reaffirm in writing the statements from the June 4 briefing which indicated DHS/ICE/CBP made no transfers of these individuals without giving them proper amounts food, water, hygiene items, clothing, or shelter.
  - a. Please elaborate on everything the Department gives these individuals before dropping them at their next transfer stations.
17. Please provide figures outlining the total amount of money spent by the Department on these transfers (to any state) to-date.
  - a. The Department may also provide this figure without consideration of salaries.
18. Please provide the figures totaling the number of individuals ICE processed in each calendar year since 2004.
19. Please provide the figures totaling the number of contract and non-contract beds ICE had available in each calendar year since 2004.
20. Please provide the average cost, on a state-by-state basis, of a detention bed fee for one night from each calendar year since 2004.