

Congress of the United States
Washington, DC 20515

February 27, 2013

Via Electronic Transmission

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

The March 1 sequestration deadline means each federal agency and Department that is not-exempted shall reduce its budget so as not to violate the required spending caps established under the Budget Control Act of 2011. On January 31, 2013, you wrote to Chairwoman Mikulski of the Senate Appropriations Committee outlining how sequestration would impact the Department of Homeland Security (Department).

We are concerned about reports that the Department is already taking action to implement sequestration by releasing criminal aliens from detention facilities and seriously putting the safety of the public at risk. Some reports suggest that as many as 10,000 detainees across the country will be released in the near future in order for ICE to reduce its average daily detention population from 34,000 - a Congressionally mandated requirement- to 25,000. According to information obtained by Congress, ICE is "mass releasing" aliens convicted of fraud, theft, or drunk driving offenses, as these aliens are not considered to be subject to mandatory detention. According to other reports, illegal aliens who are documented gang members and those who have been arrested for but not convicted of a serious crime are also being released. Additionally, it is reported that fugitives and aliens with final removal orders are also being released. According to information we have obtained, many of these aliens are being released on simple recognizance.

In a letter to Chairwoman Mikulski dated January 31, 2013, you vaguely detailed the impact sequestration would have on the Department, stating that it would not be able to maintain current staffing levels or immigration detention and removal operations. Specifically, you stated that, "[e]ven in this current fiscal climate, we do not have the luxury of making significant reductions to our capabilities without placing our Nation at risk."

On Monday, in a public statement, you said, "I don't think we can maintain the same level of security at all places around the country with sequester as without sequester." On Tuesday, at the Brookings Institution, you claimed that sequestration "will have to affect our core critical mission areas."

Your Department was given detailed planning guidelines by the Office of Management and Budget (OMB) to implement sequestration in such a way to “reduce risks and minimize impacts on the agency’s core mission in service of the American people.” On January 14, 2013, OMB Deputy Director for Management Jeffrey Zients issued a memorandum for the heads of all Departments and Agencies (hereinafter OMB Memo) regarding planning for uncertainty in FY 2013.¹ That memorandum laid out a series of guiding principles for preparing plans for sequestration. Specifically, the memorandum recommends: (1) using flexibility to reduce operational risks and impacts on the agency’s core mission, (2) identifying and addressing operational challenges that could have a negative impact on the agency’s mission or impact life, safety, or health concerns, (3) identifying the appropriate means to reduce workforce costs, (4) reviewing grants and contracts to determine where cost savings may be achieved, (5) utilizing flexibility such as reprogramming and transfer authority, and (6) maintaining adherence to the requirements in the Worker Adjustment and Retraining Notification (WARN) Act.² The OMB Memo also instructed all agencies to work with OMB prior to taking any budget action in advance of sequestration and required each agency to “submit draft contingency plans for operating under sequestration for review.”³

While the administration is clearly embarking on a campaign to scare the public and Congress about the realities of budget reductions, it is clear that you have not planned adequately for the March 1 sequestration. Despite the rhetoric, it is alarming that you have already taken steps and made decisions that go against the Department’s core mission, and at best, appear to be poorly reasoned and contrary to the OMB memo. The Department has decided to release criminal aliens into the population even though detention beds are below their average daily requirement of 34,000. Releasing criminal aliens and failing to utilize the detention beds that Congress has mandated is an abrogation of the Department’s Mission to ensure the safety and security of Americans.

While the Department released illegal alien detainees into the population on the basis of cost cutting, we find this decision particularly troubling because the Department has carried or will carry forward billions of dollars in fiscal years 2012 and 2013. Last year, the Department announced an unobligated balance of over \$8 billion. The Office of Management and Budget projected that at the end of fiscal year 2013, the Department would have more than \$9 billion in unobligated funds.

Simply blaming budget reductions as a means to turn a blind eye toward the national security of the American people is a dangerous plan and one that calls into question the Department’s preparations for sequestration. To better understand how the Department will better confront sequestration and reduce operational challenges that could affect the life, safety or health of the American people, we ask that you provide responses to the following questions:

¹ Memorandum from Jeffrey D. Zients, Deputy Director for Management, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Jan. 14, 2013) (on file with the Senate Judiciary Committee).

² *Id.* at 2.

³ *Id.* at 3.

- (1) When did this policy take effect on releasing illegal and criminal aliens due to the sequestration and how many illegal and criminal aliens have been released under the policy? How many illegal immigrants do you expect to release under this policy?
- (2) What agency officials were involved in making that decision to release criminal aliens and what type of cost analysis was used to justify the release?
- (3) What categories of aliens are being released? Are suspected gang members, aliens convicted of fraud, theft or drunk driving offenses being released? Are fugitives and aliens with final removal orders also being released?
- (4) How many of these aliens are released on recognizance, ankle bracelets, or with other reporting requirements?
- (5) Provide a copy of all draft contingency plans for operating under sequestration developed pursuant to the January 14, 2013, OMB Memo and/or those submitted to OMB for review.
- (6) Your letter to Chairwoman Mikulski indicates that the Department would not be able to maintain current staffing levels of Border Patrol Agents and the Customs and Border Protection Officers as mandated by Congress. Specifically, what activities will be diminished by these agents? Aside from personnel cuts, what programs and activities of the Customs and Border Protection will be impacted and how?
- (7) Your letter to Chairwoman Mikulski indicates that the Department would not be able to sustain current detention and removal operations or maintain the 34,000 detention beds mandated by Congress? Specifically, what enforcement operations will be scaled back or ceased? How many of the 34,000 detention beds will not be used? Of those currently detained, how will you determine who is released?
- (8) Missing from your letter was a detailed analysis of whether the Department has continued a hiring freeze since the passage of the Budget Control Act of 2011. I ask that you provide a detailed list of the number of individuals hired by the Department since the passage of the Budget Control Act. Further, provide a breakdown of the number of individuals hired since January 1, 2013.
- (9) What impact, if any, will sequestration have on conference spending by the Department? Will there be a blanket prohibition on conferences in lieu of furloughs? If not, why not?
- (10) What impact, if any, will sequester have on executive travel? Given the OMB Memo recommendation to "use any available flexibility to reduce operational risks and minimize impacts on the agency's core mission," will the Department eliminate or significantly curtail non-mission travel by the Department? If not why not? Provide any cost analysis of savings sought through a reduction in travel in light of sequester.
- (11) What impact, if any, will sequestration have on the use of Department vehicles by employees for commuting to and from work given the pending budget shortfalls?
- (12) Will the Department move to recover any of the \$17 billion in unspent funds and reallocate them to mission-critical activities? If not, why not? How will the billions in unobligated balances be treated?
- (13) Please provide a detailed explanation of cuts that will reduce wasteful, duplicative and ineffective programs.

Given the end of the week deadline for sequestration, we ask that you provide this information as soon as possible, but no later than March 7. In the event your response requires transmitting classified information, please contact House Judiciary Committee Counsel [REDACTED] at 202-225-3926 or Senator Grassley's staff [REDACTED] at 202-224-3744 to make the proper arrangements to ensure security of documents.

Sincerely,



Bob Goodlatte
Chairman
House Committee on the Judiciary



Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary