

**Homeland Security Advisory Council  
Public Session  
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**PARTICIPANTS:**

<b>Judge William Webster</b>	<b>Becca Sharp</b>
<b>Chief Bill Bratton</b>	<b>Ambassador James Jones</b>
<b>James Carafano</b>	<b>Larry Cockell</b>
<b>Ruth David</b>	<b>Mohamed Elibiary</b>
<b>Ellen Gordon</b>	<b>Carie Lemack</b>
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<b>Gov. Matt Mead</b>	<b>Bonnie Michelman</b>
<b>Jeff Moss</b>	<b>Gov. Martin O’Malley</b>
<b>Mayor Annise Parker</b>	<b>Lydia Thomas</b>
<b>Chuck Wexler</b>	<b>John “Skip” Williams</b>
<b>John Sandweg</b>	<b>Seth Grossman</b>

**Judge Webster:** Thank you, Becca. Good morning. I’d like to welcome everyone to the public session of Secretary Napolitano’s Homeland Security Advisory Council. We’re first going to hear from Dr. Lydia Thomas, the co-chair of the Sustainability and Efficiency Task Force, on the Task Force’s recommendations. We’ll then deliberate and vote on the recommendations. Chief Bratton, HSAC’s vice-chair, do you have anything to add?

**Chief Bratton:** I would like to welcome the members of the public who are on with us this morning as it should be a very interesting session and discussion that we will have this morning. Looking forward to it.

**Judge Webster:** Thank you, Chief. We will now hear from our long-time HSAC member Dr. Lydia Thomas on the 2012 recommendations from the Sustainability and Efficiency Task Force. The Secretary tasked the Task Force to assist the department with an assessment of the current sustainability and efficiency programs and to make recommendations on how to enhance its effectiveness. Dr. Thomas, the floor is yours.

**Dr. Lydia Thomas:** Thank you very much Judge Webster, and good morning to members of the HSAC and those of you listening-in today. This Task Force was a reconstitution of the HSAC's Sustainability and Efficiency Task Force, and we were very appreciative that the Secretary allowed us to take the second bite at the apple as well as giving us an opportunity to see firsthand what had transpired since the previous task force report.

You will be able to surmise from the length of this report and its recommendations versus the length of the previous report, which I think were somewhere over 50 recommendations, that indeed a lot has changed and a lot of hard work has been performed by the Department in implementing the Task Force's recommendations.

To abbreviate the secretary's tasking, the Secretary asked us: What's happened since the last time? What's changed? How much progress has been made? Does it seem to comply with her policy statement on sustainability?

The Secretary particularly emphasized two items in that the sustainability data acquisition program, which is a major part of the agency's data warehouse exercise, and she wanted us to look at the agency's vehicle fleet management program.

Regarding the process of determining the recommendations, we had an opportunity to meet in person twice, and utilized experts from both within the agency as well as outside of the agency.

We are very appreciative of the people who came to DHS to speak with us and provide their input on some of the tasks that were before us. And we certainly do appreciate all of the input and support from the DHS Office of Management.

When we looked at the tasking, the Task Force decided that the best way to conduct the work would be to try and break it up to smaller pieces, given the fact that we had lots of experts at with diverse backgrounds.

The data acquisition subcommittee was led by my co-chair, Gail Vittori. We looked at monetization, which was led by Heather Henriksen. The vehicle fleet management sub-group was led by John Viera and John Hunt.

The Task Force met numerous times by telephone and even used a new DHS video conferencing capability, which really facilitated our work.

Our first tasking was to look at and compare, the strategic sustainability performance plan or the SSPP, from 2010 against the plan for 2011.

Number one, if you take time to look at Appendix A, you will see that the Department has made tremendous progress implementing the 50-plus recommendations that the Task Force made the last time and if they haven't been completed, there is an update of where they are in the process and when it will be completed.

Next, we looked at was the 2011 plan and the progress that had been made. We could tell from the 2011 plan that the Secretary's policy memo had clearly had a great impact across the agency. One of the things that had been her hallmark since coming to the Department was to make "one DHS."

The Department has managed to pull together very nicely we believe its sustainability and efficiency program, and you could see that in the 2011 SSPP. And just as we were completing our study, the 2012 SSPP came about and it is even better than the last.

But as always, with any agency that is as massive as this is and with sustainability and efficiency touching so many aspects of the agency, there are still numerous challenges remaining.

Turning next to the data acquisition piece, the first recommendation was that the department should complete its development of the data warehouse. We believe is a core opportunity for the agency to really move toward its "One DHS" objective. This requires a unified data acquisition storage and management system, which should indeed reside in the data warehouse. The stumbling block that we found is that, as with all very large projects and particularly very large IT projects, it's a little behind schedule.

The second thing that we looked at was in regard to the utilization or full use of all of the data from around the agency because some of the activities have a classified or a security component to them. We looked around at a number of other federal agencies as well as individuals in the private sector who had similar concerns about data use, data handling, and visibility. One of the similar agencies that we discussed was the Department of Navy within the Department of Defense, which also has security concerns.

The Secretary of the Navy, recognizing these concerns, but also recognizing that he needs to be able to identify this kind of information for

the Department of the Navy, sent his troops and said, “I understand the problem. Go fix it.” And we believe the Secretary of Homeland Security can also do that, that she can put together a group who will work through that problem and figure out a way for the Department to be able to conduct a similar activity as the one that has been performed in the Department of Defense.

When the Department was first required to submit information to the OMB with regard to with compliance with the executive order that I just mentioned, it was just beginning to get its arms around all of the data elements that are required.

For instance, how many cars or vehicles do you have? Well, it’s clear now that when that first set of information was presented to OMB, it was not complete. Although the Department was trying to get the best information they could, but it missed quite a few vehicles in the count. That first year going into OMB is now considered by OMB to be the baseline. That leaves the Department stuck. Instead of improving in some of these areas where there was not accurate information, they now appear to be making matters worse, which is indeed not the case, but it certainly does look that way.

So how do we keep everyone in the agency - how do you keep the morale up when every year no matter what you do, you are not getting great OMB ratings? The Task Force recommended that the Department show the progress it has made through an internal scorecard. As soon as all of the data are actually verified and sent over to OMB, the agency should be able to keep its own set of metrics.

The Task Force believes that it is very, very important in the interim while we’re doing all of these things that the Secretary will be able to say, “Yes, we have reduced greenhouse gas emissions by X-amount. We have improved our water conservation measures by X-amount.”

Regarding the monetization section, there was also the issue of establishing metrics. One of our initial recommendations was to develop a unified structure. In other words, when the Coast Guard reports vehicle use and vehicle mileage into what will be the new data warehouse, we want it to be uniform and as be the same as CBP is also reporting.

Currently, all of the components have processes and mechanisms at this point to take a look at some of these elements, yet there is no consistency. The Task Force believes that having a set of standards across the agencies will help DHS meet the goals of the executive order.

One of those in particular is the Energy Savings Performance Contract. The agency currently has about \$48 million in those types of contracts. Compare this to DOD, which has done a little over \$700 million in a similar timeframe.

We think that DHS can do more, because these are in essence private sector funded types of activities. They were approved by Congress in 1986, I believe. The contracting aspect of them is fairly onerous, since you are establishing a private sector public sector contract. It's not necessarily clear that DHS has yet put enough acquisition power behind this particular type of funding opportunity, and we are recommending that the agency take advantage of what is currently going on at the U.S. Coast Guard (USCG).

The Coast Guard has established a center of excellence to put together these ESPCs, and maybe they can become a contracting entity for the entire agency. The Department should have USCG be trainers for other DHS components.

The final monetization recommendation dealt with the ability to meter. We were pleased to learn that currently 52 percent of DHS' buildings are metered. Of the 52 percent, 21 percent have advanced meters.

The Task Force recommended that DHS get 100% of its appropriate buildings metered, to monitor both electricity and water usage.

Another recommendation was to establish a components working group that would share best practices with its working partners including DOD, DOE, and EPA.

The final sub-group was on fleet management. Over 70% of the department's greenhouse gas emissions can be attributed to the vehicle fleet. We also found that 75 - 70% of those vehicles are classified as law enforcement vehicles, and as a result are exempt from compliance with the executive order.

The Task Force looked to the New York City Police Department, and their progress on idle reduction technology. This technology has not only led to a reduction in emissions but also a reduction in illness since they had a greater number of hybrid vehicles in their fleet. This is one example that could reduce the cost to the agency and a burden on the healthcare system.

The Task Force also recommended that be one individual who has the last word, on what will be purchased and the ability to look at all of the compliance requirements, and that position reside in DHS's mobile assets director. The Task Force also recommended that all waiver be approved by the Secretary's office.

The Task Force also recommended the Department to acquire a fleet management information system. Obviously the agency can pick the package that it proposes as a software package, which would allow DHS to identify and analyze all of the motor vehicles' data. The Task Force also found that in addition to having that type of a system in the interim the data could be still collected. At a minimum , fuel use by vehicle type should be very prominent in the activities that are conducted.

Mr. Chairman, I that's all of the recommendations that we had this time. I think that it was really heartening to see how much progress this Department has made.

I would conclude by saying to the critics who question whether the Department of Homeland Security should be worried about sustainability, that when you can reduce energy/ fuel consumption, when you can reduce the amount of electricity or power consumption by the various aspects of the agency you are indeed contributing to our national security as well as our homeland security by reducing our dependence on foreign supply of oil.

Any questions from my colleagues?

**Judge Webster**

Thank you very much, Dr. Thomas. It's obvious you put a lot of hard thinking and work on that. Yes, Governor?

**Governor Mead:**

Yes, thank you. Doctor, thank you and your task force for the work on this. I guess it's a word of caution and a word of opportunity in the area of the vehicle fleet.

As I was looking at this yesterday I wondered about just the cost benefit analysis that would go into electric or hybrid vehicles. And the reason I say that is as you look at the country generally and you talk about electrical vehicles you have to say what supplies electricity?

Roughly in this country, it's about 50% coal, 20% natural gas then you go to nuclear and renewables are way down the list. So in looking at that, you see that is the cost of these vehicles, for example, electrical vehicles are

fairly expensive. We see some of the companies discounting them substantially now.

And then what about, on those electrical vehicles, what is the end product in terms of batteries and the disposal of batteries? And in terms of also if 70% of these vehicles are in fact law enforcement vehicles, and I understand that's a question you have whether in fact they are not just the reliability because that goes to sustainability.

If you have law enforcement vehicles that are electric and have a range of 35 miles, you could see that a bad story about law enforcement was supposed to be here and ran out of juice.

Also in terms of reliability, in terms of our electrical grid, when there's a spike in weather or there's a natural disaster and you have transmission going down, how does that play into it? So that's a word of caution for me is are we getting what we want in terms of reliability and actually a reduction in emissions if that is the goal?

A word of opportunity is this. When I came on as Governor, Governor Hickenlooper, Governor Herbert from Utah, there were 13 states that got together and looked at natural gas vehicles. And the reason we did that is, number one, we have a large supply of natural gas. Two, it's a reduction in emissions. Three, it leads to this issue of energy independence, energy security.

And so with these 13 states, we went to our collective states and to fleet from towns and counties and said if you were going to buy natural gas vehicles how many would you potentially buy? And we have this number and then we've put that together. And then Governor Hickenlooper went back to auto manufacturers and said listen, here's a very big number; will you start producing these vehicles?

I wonder in terms of the Secretary - and I appreciate her wanting to provide an example of leadership in this - if there's a bigger or a broader opportunity here with, you know, everything from your local to your county, your state. We're not talking about 57,000 vehicles, but many, many, many vehicles.

And there's disagreement even amongst energy companies whether natural gas vehicles are a good opportunity for a different transportation fuel or not. But I just think in examining this and where you want to go if it's reducing carbon emissions or it's energy security and reliability if there's

an opportunity to look at all of that along with the states and the local governments.

**Dr. Lydia Thomas:** Thank you very much for that observation, Governor. And we did have those similar kinds of discussions on alternative fuels. I think that when you try and reduce the conversations to briefing charts versus a full-up report that's really where the color can be added of all of the discussion that you run into a similar problem - the problem that you just identified. And we should not have eliminated but not indicated that all forms of powering vehicles should have been included including the natural gas because it did come up as a part of the discussion.

This is why there is a need to develop a real master plan, an energy management plan, that includes all of the types of vehicles and determine how the fleet should be constructed.

Does the Department really need more SUVs? Could the Department use natural gas or even hybrid vehicles or even electric vehicles when you're talking about an administrative function as opposed to a chase function? Certainly we don't want anybody to run out of steam when they're on their way to an emergency or some other form of law enforcement activity.

That's the idea here. We don't believe that there is an energy use master plan that would address the entire fleet and how it could be constructed. And in that, you would certainly look at all of the forms of energy and the idea of working with state agencies.

The Task Force inquired to the automobile manufacturers, this agency nor the federal government doesn't have the horsepower to get the manufacturers to all of a sudden reduce the price of the vehicles because it's simply not enough. But combined across the federal government as well as with state and local agencies that also have similar requirements, we do believe that we could get the manufacturers to respond.

The entire infrastructure for electric is not there yet. And it certainly is also not there in the size that we would need it if we were to go to natural gas. We are all very proud when we see the buses going down the street and it says powered by natural gas.

This is going to be a process over time; none of this can be done overnight, which is why there are only 10 recommendations this time because these are far more forward-looking as opposed to all of the low hanging fruit that we identified initially all of which has been taken care of.

**Governor Mead:**

Well, Doctor, I think you've asked the right questions. And it's a broad area, I understand that. I think that it's just an opportunity for all of us to look nationwide. And it is a chicken/egg thing, nobody wants to build the cars until you have the infrastructure; nobody wants to build the infrastructure. And that's part of the catalyst for the 13 governors to say listen we may have whatever that number was of vehicles to try to move off that.

**Dr. Lydia Thomas:** Just as an example, too, of the cooperation between DHS and some of the state and local agencies most of the state and local agencies also have their own fueling locations even for traditional fuel. But the one for the federal agency may be many miles away.

There have been some opportunities with some of the other agencies that we consulted with where they have made agreements with a state that the federal units in that area are allowed to use their fueling station so it also cuts down on the fuel use in the final analysis because they don't have to travel so far to refuel.

There are many, many things that can be done and that's why we think sitting back, looking at the whole thing and putting the master plan together and partnerships are certainly one aspect of that just as they are with the electricity use.

**Governor Mead:** Thank you, Doctor. Thanks, Judge. Is there an estimate for time to implement when you were talking about smart meters versus I guess advanced smart meters? Is this something that they can do in a month, in a year, in 10 years?

**Dr. Lydia Thomas:** Well they've done very well in the last few years because they're now up to 50% at least of metering. Let me give you an example of some of the problems. In the Washington Metropolitan area, there's a water bill for the federal agencies that goes to WSSC as far as I know, which means that how can any building tell whether it's improving or not.

And when you look at the number of facilities that are either DHS-owned facilities or DHS-leased facilities, most of them from GSA, it will take some time simply because it's such a massive undertaking.

We did not estimate on the amount of time to accomplish this task because obviously there are a lot of variables. You have to be able to make those

kinds of arrangements for leased buildings as well, some of which are very difficult to do.

For the buildings that you own it still costs money to acquire all of the meters even though the meters themselves aren't that expensive you've got to put them on, you know, thousands of facilities.

**Governor Mead:** And you can't put this back on the energy company or the water companies because obviously they're collecting the data so they can bill you.

**Dr. Lydia Thomas:** We hope they're collecting it accurately but clearly the best way to make that determination is to have your own metering capabilities.

**Governor Mead:** Right. So you might reveal other billing issues by just doing this?

**Dr. Lydia Thomas:** Yes.

**Judge Webster:** Governor O'Malley.

**Governor O'Malley:** Judge, I just wanted to share that as Governor Mead suggested most states and most cities are pretty far down the road in tackling all these same issues. And so there are a lot of good models out there from the fleet management, to the metering, to the simple sort of software and dashboards in some instances that kind of leapfrog some of the old technology and allow you to do this with the Internet.

And so there's a lot of good practices out there that states and cities have been doing. And it might be fertile ground for finding best practices.

**Dr. Lydia Thomas:** You are absolutely right, Governor O'Malley. You know, many of the people that we talked to outside of the federal government were saying: "You mean, you guys don't do that?" And that's one of the reasons that we thought putting together at least a group of components as well as people from their sister agencies and certainly reaching out to the states would really allow them to move the ball a lot further.

**Governor O'Malley:** The states would be incorporated into the best practices?

**Dr. Lydia Thomas:** Correct.

**Governor O'Malley:** Great.

**Judge Webster:** Any more questions?

**Judge Webster:** All right well then at this time I think it's appropriate to ask the members of the Council, the (HSAC), whether or not to approve the Sustainability and Efficiency Taskforce and transmit it to Secretary Napolitano. May I have a motion?

**HSAC Member:** We have approval.

**HSAC Member:** Second.

**Judge Webster:** Moved and seconded. All members in favor of adopting the report please say, "aye."

**Governor Mead:** Judge, I'm sorry to be out of order. Can I ask a question about this?

**Judge Webster:** Yes.

**Governor Mead:** What are we - what are we voting on just all these recommendations in general or...

**Judge Webster:** Voting on sending the report with our approval to the Secretary with recommendations. We're not achieving anything except to endorse the report and going to the Secretary for whatever action she chooses to take.

**Governor Mead:** I guess my question is-I would want to be part of that which she could take or leave. But I - that's not part of the report so...

**Judge Webster:** We certainly can do that. Would you care to reduce it to writing or let someone else pick it up from there? I don't think we have a recording.

**Governor Mead:** I will work with Becca to do that, Judge.

**Judge Webster:** You'll work with Becca?

**Dr. Lydia Thomas:** Thank you. Thank you for the additions.

**Judge Webster:** Appreciate that and particularly the part about the model so that's good. All right then. May I ask again those in favor of approving the report please say, "aye."

**HSAC members:** Aye.

**Judge Webster:** Opposed?

(Silence)

All right by voice vote I'd say it's unanimously adopted. Thank you very much, Lydia, for a lot of work that went into this.

**Judge Webster:**

Now we'll move on to the next item on the agenda. We're going to be briefed by the Secretary's counselor, John Sandweg on the recently-deferred action on childhood arrivals by the United States Citizenship and Immigration Services. And we're happy to have Mr. Seth Grossman, the Chief of Staff to the Office of General Counsel, who is with him as well.

**John Sandweg:**

Thank you, Judge. And thank you all for being here this morning. I have a few minutes of quick background then I'm happy to take questions. I think it's helpful to begin with the Secretary's vision for immigration enforcement.

When the Secretary came into office she inherited a much larger apparatus. In '06, '07 and '08 the federal immigration enforcement apparatus was increased dramatically. They saw an uptick in the number of detention beds and the number of federal agents conducting immigration enforcement.

There had not been, however, a real focus on the policy side for who these agents were going to prioritize for a removal. As such, there were a number of enforcement operations like worksite raids that didn't really focus on whether an individual posed a public safety threat or there was an immediate nexus to border security but rather whether the individual was simply in the country unlawfully.

There estimates are that there are about 11-12 million illegal immigrants in the United States. The Secretary's position is that it is our job to enforce the immigration laws, which means identifying and removing some of those 11-12 million; as all of the 11-12 million are not created equal.

Some of them are convicted felons. Some of them are people who are preying on our communities. Some of them are connected to transnational cartels and drug organizations.

Some of them are just kids who were brought here by their parents when they were two-years old and have lived here in the United States most of their entire lives, gone to college here and really know no other home but the United States.

So the question is how do you then take 7000 agents and 34,000 detention beds and focus it. And what we have gone about doing was establishing clear priorities that focus first on public safety and national security, border security, and then the integrity of the immigration system.

National security is very easy. There are not a significant number, but there are a number we remove who do pose a threat to national security. It is a very small number.

The biggest swath though is the public safety category. So how do you actually effectuate that apparatus? Well clearly the most efficient way is to focus in the criminal justice systems. Now that's not been without controversy. I think it is a misguided controversy. But we have made a sustained effort to focus on the jails.

Not charging state and local officers with arresting individuals for violating our immigration laws but asking state and local officers to continue what they do, which is enforce their state and local criminal laws. And when they book someone to the jail they should be able to run their fingerprints through our partnership with the FBI. If the individual is in the country unlawfully and has also committed a crime that individual is a priority for removal for DHS.

To-date, it's been working well. The the percentages of individuals who are convicted criminals that we've removed have gone up dramatically over the last three years.

We went from about 30% in 2008 to 55% in 2011. We expect a higher percentage in 2012 and assume a record number of convicted felons be removed from the Unites States.

At the same time the overall number has not risen. So the number has been relatively constant and that's a resource number based on the number of agents and beds, it's just the composition has changed.

As we have continued to exercise focus, it becomes a question of how do you shorten and make the haystack small. We encounter a lot more individuals who are in the county unlawfully then the system can handle.

While we could arrest the lot we do arrest a lot more individuals than ever removed. The bottom-line is that immigration courts and their systems have a finite number of resources.

The old policy was to just put in as many as you can. This created huge backlog in the immigration courts which dragged out the length of time it took to actually deport them.

In order to avoid these backlogs, we had to increase the across control discretion. And that is where you saw the memos that came out in 2011 that basically told our agents to focus on the criminals.

But as we have implemented that it's clear that additional steps to narrow that haystack needed to be taken.

The Secretary asked for a variety of options. She was presented with some and then she built out a much larger option which was we would go ahead and open up what is called Deferred Action to individuals who met certain criteria regardless of whether we've encountered them or not.

Let some of the 11 million come forward from, for lack of a better word, "out of the shadows" and we would evaluate their case on an individualized basis. If they met these criteria they would get what was called Deferred Action, a former prosecutable discretion.

It is essentially a promise from the federal government that we will not deport you for at least a set period of time-in this case two years.

Per assume to long-standing regulations if you're granted deferred action you're also entitled to get a work card which is basically authorization from the federal government to lawfully work in the United States with a fraud/tamper-proof card.

On June 15th announced the announced this new policy, when the President made the announcement in the Rose Garden.

The Secretary only gave the Department 60 days to craft the implementation. DHS estimates this policy would affect 1.7 million people.

To build an infrastructure that would smoothly manage 1.7 million potential requests within a 60 day period was an incredible undertaking. Moreover there are certain kinds of additional rules. The system kind of pays for itself. We cannot use taxpayer's dollars. As a matter of policy, the Secretary wanted people who are requesting Deferred Action to pay for it themselves.

We had to work within various legal constraints to make sure that within our existing authority we charge the fee that was sufficient to pay for the additional staff that will be needed to adjudicate this process.

In any event within 60-days we did come out with a variety of forms that I could bore you with and pass around but that are available online. Essentially, the way it works is an individual fills out a form and must attach documentation to prove they meet the criteria.

Let me briefly just kind of summarize the criteria. The policy is available to the individuals who were under the age of 31 as of the day the Secretary's announcement (June 15, 2012).

You would have to enter the United States before you turned 16. So if you entered in your 17th birthday, it does not apply to you.

You have to continuously reside in the United States for a period of five years although brief and minor absences and returns for humanitarian purposes are acceptable.

You had to have entered the United States prior to, but also present in the United States on the day of the announcement. If you're outside the United States on the day of the announcement we don't want to create a magnet effect for new people to come in, you know, encourage new people to cross the border unlawfully.

You have to be either in school or have completed at least a GED. So there are certainly going to be folks that didn't get their GED or didn't get a high school diploma, who are not in school that would need to get back in school if they want to be eligible. And finally you cannot have been convicted of a felony or significant misdemeanor offense.

How does the process work? Individuals fill out the form which asks a variety of relevant questions, including showing that you meet the criteria. You can't just submit your information on the form, you need to attach documentation. It needs to be independently verifiable documentation. We are very sensitive to fraud.

Any individual who commits fraud by lying to us on the forms is likely to be submitted for consideration of prosecution and will be removed from the United States and treated as an immigration enforcement priority.

Independently verifiable documentation is good to have. So, what are the main types of documents we'd accept? Obviously medical records where we could then go call the doctor to verify the legitimate medical record.

School transcripts are very common document we're seeing which is, you know, good because those are independently verifiable as well. Leases/landlord tenant records and employment records frankly are documents we're utilizing.

Okay so big question then is how many people are participating? Obviously with a new program there is a lot of distrust. Some folks see us as engaging in record levels of removal, so there's a question about how many people would be stepping forward to participate.

Obviously we have an incentive in making it a robust participation.

The participation has been fairly robust within the first month. About two weeks ago we had 82,361 people come forward and request a review of their case.

One Step I neglected to mention is you have to submit fingerprints for biometric background check.

We have been processing them and things have been moving smoothly. The infrastructure is working. Sixty three thousand of those people have their fingerprint appointment scheduled. Sixteen hundred of those have had background checks that were completed and the grand total of 29 people within the first month were granted Deferred Action.

Obviously that is not a huge number but our implementation and our modeling is a four to six month average process from start to finish for individuals. We did not come up with any estimates for how many will ultimately participate in this process. As I said earlier, 1.7 million individuals may be eligible for this.

We have braced ourselves for a top end rush of about 250,000 requestors in the first month. We never expected to see that many but it did allow us to kind of plan for a larger number than what came through the door.

But again, all in all this process has been moving very smoothly. We're very pleased with how it's gone and I don't know if there are any questions.

**HSAC member:** How many people do you have to hire to look at this documentation?  
That's huge.

**John Sandweg:** I don't know. I don't have it with me. The exact number is well over a couple of thousand. We were able to hire them and structure it in a way that its short term hires. Now obviously this is a program that is an act of the executive branch. It then can be terminated if and when the executive so desires. So if there's a new president they might very likely terminate this program.

We did not want to create a system where we had debt, hire people in career track we're going to be stuck on the out years. So we're able to do this through a variety of contracts and other means...to hire them on a short time basis.

I neglected to mention the fee is \$465 per each so the individual will not only submit the documentation they have to submit \$465. There is no waiver of the fee except in very extreme cases. (Less than one percent) We will waive the fee if there are serious medical issues or other things that will prevent you from working. All of the new staff will be paid for by the \$465 fee.

And there will be no cost to taxpayers through this program nor will there be costs to other people who are requesting immigration benefits.

**HSAC Member:** Are they housed at various locations?

**John Sandweg:** They are centers across the country, Vermont, California...

**Seth Grossman:** And Nebraska and Texas.

**HSAC Member:** How did you arrive at that fee?

**John Sandweg:** It's two existing fees that were already in place. So we had authority for. When you request an employment authorization card there's a \$365 fee?

**Seth Grossman:** Three hundred eighty.

**John Sandweg:** Three hundred and eighty dollar fee. And then there's an additional \$85 fee that comes with the fingerprint charge.

And so we get a lot of modeling on whether that would work and whether a new fee was required. It turned out it was not required to pay for the additional staff that we would need.

You have to understand too, that one of the things that we need to be careful about is USCIS is in charge of processing the immigration program benefit system.

They do six million applications a year that ranges from high tech workers visas to short term crab industry workers who obviously rely on the H2 program to, to people who got married to others transitioning to a lawful permanent residence status or naturalizing citizens.

They are already staffed enough to handle that six million population in an orderly manner. So we did not want to slow down any of those existing...

**HSAC Member:** Is this on an annual number?

**John Sandweg:** Yes annual basis there's about average six million a year. We didn't want to slow any of those processes down by now slopping an additional million of them.

That's why we wanted to hire new staff so that we did not only have a new cost to taxpayers.

**HSAC Member:** They get a deferral for two years, but can they can re-up and get a second deferral for two years? How many deferrals can they get?

What do they have to show to prove they're here legitimately and can they go back and forth to another country without any problems?

**John Sandweg:** If they are deferred we hand we do provide them with what's called an employment authorization document. It is a tamper-proof, fraud-proof, secure identification card that demonstrates not only are they eligible lawfully eligible to work in the United States, but they're also not subject to deportation.

Now the definition of lawful status gets a little tricky and we've seen some issues with some of the states about these folks lawful status, are they not in lawful status. We're not confirming status but we are also extending a promise to them not to remove them from the United States and we are giving them authorization to work lawfully in the United States.

With regard to how many renewals as long as the executive branch wants to keep this program in tact there are a limitless number of extensions. It is a discretionary program up to the prerogative of the Executive Branch the President and the Secretary.

It is for that reason it is the Administration's position that this does not replace the need to pass the Dream Act. The Dream Act calls for taking a very similar population and calls for a more permanent relief for them, you know, giving them a path to a green card or at least permanent status in the United States.

Unfortunately we can only make a promise that is good for a period of two years. We do intend to renew it.

**HSAC Member:** It's four sixty five every time you renew?

**John Sandweg:** Yes, it would be four sixty five every time you renew unless we increase the fee which is possible. One thing we always maintain is that we can up the fee if it turns out that need additional staff.

**HSAC Member:** John, what assurances do you have? You keep saying tamper proof...and I haven't seen a document made that is tamper proof.

**John Sandweg:** It's more than just a document. They put it into our systems. So one of the things that we did was we made sure that all of our three immigration enforcement agencies were up to speed. ICE being the big one, Customs and Border Protection and then USCIS.

We made sure that their systems can talk to each other so when USCS grants the Deferred Action they will update in the system that'll be reflected in ICE and CBP.

If our officers come across an individual that presents this card they can do a check of our system to verify that.

**HSAC Member:** Will the states be able to verify that?

**Seth Grossman:** Yes. States can verify through a stay act of save, which is our program for verifying peoples' eligibility. So if someone presents their I9 and the agency has access to use the same program they'll be to also access to their file.

**John Sandweg:** And employers will be able to access it as well if they so choose to.

There are safeguards in place and again, if we come across someone who's committing fraud related to this they're going to move up to the top of the chain just as if they were convicted felon for ICE and that's going to be a priority removal.

**HSAC Member:** Can you speak to the logic of why someone would use this program? So if you identify yourselves to the government that you're here illegally but you're only safe for two years?

**John Sandweg:** And so I don't want to speculate because...

**HSAC Member:** Self selecting pool that would put themselves at risk.

**HSAC Member:** Right.

**John Sandweg:** 82,000 in the first month I think were actually very interesting in that it was a pretty robust participation.

I think that if you ask those folks in that community they would tell you that the desire for the work authorization is...

**HSAC Member:** So it's the driving force probably.

**John Sandweg:** Yes. You know, these are folks that have been here since they were four years old and only speak English. They've been living in fear for a long time, have no means of graduating from college, and have no means of getting employment and no means of getting a driver's license.

**HSAC Member:** So this allows them to do something different than what they've been doing with the work authorization so they might try different careers, jobs.

**John Sandweg:** Yes and I'm undoubtedly sure there are employers out there who have been unlawfully hiring some of these individuals...

**HSAC Member:** Okay.

**John Sandweg:** Although we weren't speculating, we recognize there are a lot of issues including a lot of fear people stepping forward. We didn't want to speculate too much about how many would participate. But I think, you know, I think 82,000 is pretty robust all things considered.

**HSAC Member:** I think the implementation makes a lot of sense and a lot of thought went into it. As I recall, maybe my memory is imperfect here, there was an initial kind of outcry that this is executive action on attempting to modify what was legislatively adopted.

Has that calmed down or is it still a problem for you?

**John Sandweg:**

I'll defer to Mr. Grossman on the legal side but I think the fervor's calmed down in large measure due to the Supreme Court's ruling in the Arizona case.

**Seth Grossman:**

In our view, when we adopted the program it vetted on a very secure legal footing. The court has recognized for decades that executive agencies have almost unlimited discretion about whether to enforce or not enforce laws against certain individuals for statutes or criminal laws they implement and then the Supreme Court has been further specific in the immigration context that case from 1996 Reno versus Arab American Discrimination Committee.

In the Arizona case, immigration contacts or discretion to take any action lies entirely within the discretion of the executive branch and the Secretary.

And so it's our view that the program is on extremely solid legal footing. Deferred Action is not something that was created for this process. It's an authority of the executive it's exercised for decades.

And so this is just one exercise of it as an exercise in the past.

**John Sandweg:**

I don't know but nothing is going to change. Our removal numbers have remained constant. What has been changing is the composition, and that's what we're hoping to achieve.

And I think one of the Secretary's lasting legacies will be bringing rationale and order to an immigration system that used to say the only question should be whether or not someone was in the country illegally.

What she said is, "No, we should make immigration enforcement a tool for public safety."

I bet if you look back on the number of convicted criminals we removed (216,000 last year) and basic recidivism rates you'd see that we've had an impact I think on public safety by focusing first on the worst offenders.

Unfortunately, the system has limited resources and the system is not such that you can just jam everybody in there and keep them moving.

I think there's a real misperception in the country as to due process in the immigration system. There is a finite number of judges finite number of detention beds.

We need to make sure that we're filling those beds to the right people. It's policies like this that help us further focus them.

**Judge Webster:** It's a very interesting issue. There are no more questions up here?

**HSAC Member:** What is the age limit again?

**John Sandweg:** Thirty one years old on the date of the Secretary's announcement so you had to be 30 years old on the date of the announcement.

There is going to be a focus at age out also for a demand the numbers a little bit individuals who are not yet 16 years of age we said that they had to wait till their 16th birthday.

**HSAC Member:** Can I ask just a detailed question?

**John Sandweg:** Sure.

**HSAC Member:** Where do people go to submit the fingerprint?

**John Sandweg:** There are application support centers throughout the country. I believe they're in every state. You actually mail this in via snail mail. Within 48 hours we will acknowledge that we received it.

Within two weeks you'll have an appointment at a physical location. I believe they're in all 50 states. And all 50 states in our contractors we utilize. When you walk in and actually submit your documents.

**HSAC Member:** So you told them where you go to submit your fingerprints?

**John Sandweg:** Yes.

**HSAC Member:** I see. And how short or long is the application?

**John Sandweg:** Six pages.

**HSAC Member:** Thank you.

**John Sandweg:** Six pages and then again, one of the things we've been hearing from the advocacy groups is the documentation is the hard part. So filling out the questions takes I think 30 to 40 minute on average.

But you got to go to your school and get it and some school districts have complained about that. We're getting a lot more requests for transcripts than we anticipated. We're backlogged here.

Getting those documents that we will accept as proof that you do in fact do meet the criteria.

**HSAC Member:** And it lays them out with documents...?

**John Sandweg:** We do have instructions that give you a good sense of it. There have been some expressions of frustration that we don't lay out a full and comprehensive list but at the end of the day this is a case by case determination.

We can't lay down with too much specificity or make it a categorical kind of benefit. We're looking at the individual and what he presents.

**HSAC Member:** John as I understand 29 people have actually gotten deferred. Is that right?

**John Sandweg:** That's as of September 14th. So bear in mind those 29 had to jump through a variety of hoops: They submitted their applications, they got their fingerprints, the (unintelligible), the background checks, and then they made it to the adjudicator who actually reviews the application and the documentation.

**HSAC Member:** 86,000 have come in and 29 have been deferred. Is it public how many have not have been rejected?

**John Sandweg:** At the time this snapshot was taken on September 14<sup>th</sup>, none had been rejected although a few had been resent for what we call a request for further evidence where we saw an anomaly that made us question potential fraud. There have been a handful of other ones that have been referred to our fraud unit to look at as well.

But that's such a small sample size that I think the next month's snap shot will be a lot more telling about any trends we're seeing.

**HSAC Member:** You've mentioned a percentage 38% to 56% or 55% that's a 38% to 55%...

**John Sandweg:** 32%. So in 2008 - 2009 ICE removed about 368,000 illegal immigrants. Of that only 32% of them have been convicted of a crime in the US court the state or local court or federal court.

In 2011 the number was 398,000 roughly. Fifty five percent of those people have been convicted...

The composition. So we went from like something like 130,000 convicted criminal removals in 2008 to 216,000 in 11.

**HSAC Member:** And have you defined what a significant misdemeanor offense is?

**John Sandweg:** We have posted a lot of information for the community and for anyone interested on our website. We have a frequently asked questions section that includes the definition of significant misdemeanor.

The one thing we did do is in order to encourage participation, we said if you apply and we reject you we're not going to refer you to ICE for deportation.

First of all, ICE wouldn't have to. We're already filling out beds with the guys from the jails we don't need these people.

But we did say we would refer you. So we gave a promise of confidentiality. We said don't be scared to come forward because we won't refer you for deportation unless you have a criminal conviction on your record and you're dumb enough to apply or to you engage in fraud in which case you lied to us in the petition.

**HSAC Member:** Sounds like you thought about a lot of problems.

**Judge Webster:** Well thank you very much for but I've got to watch our time.

**John Sandweg:** Oh sure.

**HSAC Member:** I just wanted to know, you said individuals need to apply but are there advocacy groups that are facilitating...

**John Sandweg:** Yes.

**HSAC Member:** The applications and are...

**John Sandweg:** We're really worried about fraud and we've done a lot of work on the fraud. Unfortunately one of the by-products of this is as soon as we announced this you saw on the Internet thousands of ads, some for

legitimate lawyers, and I know I'm one of the lawyers but there's a been a lot of non licensed practitioners charging immigrants \$5,000. As word of mouth trickles to these communities that are not as tapped in, they're susceptible to a lot of fraud.

So we've been doing a lot of work with the Department of Justice and a lot of training to try to catch those people.

But if you Google this process online today you'll see a lot of people making a lot of money ripping people off.

**Judge Webster:**

All right I'm going to have to bring this public session to a close.

**Judge Webster:**

I'm required to give this information to those who are on with us by the telephone. Members of the public who would like to provide comment, including the media, to the Homeland Security Advisory Council may do so in writing by post to The Homeland Security Advisory Council, US Department of Homeland Security, 1100 Hampton Park Boulevard, Mail Stop 0850, Capitol Heights, Maryland 20743 or by email at H-S-A-C@D-H-S.gov.

And these comments are appreciated and they'll be reflected in the meeting minutes and we want you to know that too. So I declare this public session of September 25, 2012 meeting of the Homeland Security Advisory Council adjourned.