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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

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September 19, 2008

CLERK AND STAFF DIRECTOR
ROB NABORS
TELEPHONE:
(202) 225-2771

The Honorable Michael Chertoff
Secretary
Department of Homeland Security
Washington, D.C. 20528

Dear Mr. Secretary:

This letter is regarding the September 9, 2008, request from Under Secretary Elaine Duke to reprogram, transfer, redirect and reallocate a total of \$378,000,000 to offset unanticipated cost increases for deploying tactical infrastructure (fencing) on the Southwest border.

The proposal is to reprogram \$77,100,000 from Operations and Maintenance and Program Management activities of the Border Security, Fencing, Infrastructure and Technology (BSFIT) account into the Development and Deployment activity; to transfer \$59,587,000 from the CBP Salaries and Expenses account, \$2,200,000 from the National Protection and Programs Directorate, and \$800,000 from Infrastructure Protection and Information Security to the BSFIT Development and Deployment activity; to redirect \$214,700,000 in fiscal year 2008 BSFIT Development and Deployment funding away from planned technology investments, such as surveillance systems, communications, and the common operating picture, to fencing and tactical infrastructure; and to increase tactical infrastructure investment in fiscal year 2009 by \$23,710,000.

The magnitude of the cost growth underlying this request -- 87% for pedestrian fence construction and 40% for vehicle barriers -- is surprising, especially since CBP stockpiled steel and other materials in advance. It is also surprising that this cost increase seems to have had no impact on the Department's assessment of the costs and benefits of tactical infrastructure, compared to other means of attaining effective border control. It is also alarming that the request would shift technology improvements on the border into 2009 or 2010, although we understand qualification testing of those systems is underway and the Department planned to move ahead soon thereafter with initial deployment.

Delays in constructing the 670 miles of fencing determined necessary by the Department are, in part, the result of increased costs, but are also a consequence of predictable environmental, flood control, and litigation considerations. The Department now states that 670 miles of border fence and barriers will be under contract, rather than completed, by year end.

In addition to my concerns about BSFIT cost increases and the adverse impact on other priorities, such as testing and deploying technology solutions, I have misgivings about the proposed offsets. The \$35,000,000 reduction for the Border Patrol is contrary to the bipartisan priority this Committee has placed on increasing our manned presence on the border. While CBP says it will achieve its 2008 hiring targets for agents, I am discouraged to learn that most of these "savings" are due to CBP failure to fill almost 900 support positions required by the Border Patrol. I direct CBP to intensify its efforts to fill these positions, and expect an accounting of those efforts in the regular hiring briefings provided to the Committee.

I am alarmed that the Department has proposed to use as an offset \$20,000,000 in fiscal year 2007 funding specifically directed for the Northern border technology project. This initiative was specifically funded and directed by this Committee and Congress two years ago, in recognition that the Northern border represents a massive vulnerability. Given the delay in implementing that project – and the fact that virtually all the \$2.7 billion appropriated to BSFIT have gone to Southwest border efforts – the proposal to reprogram those funds is ill-advised.

However, this Committee will not stand in the way of the Department's efforts to construct fencing by the end of the year solely because of funding shortfalls, even though I have serious doubt about its ability to accomplish its stated goals.

First, I deny the proposed use of \$20,000,000 million for the Northern border project, but support the Department's alternative proposal to use funding that is likely to lapse if not reprogrammed, including \$8,000,000 from the Immigration and Customs Enforcement Salaries and Expenses Office of the Principle Legal Advisor; \$4,000,000 from U.S. Citizenship and Immigration Services (CIS) funds for the FBI name check backlog reduction effort; and \$3,000,000 from Analysis and Operations.

Second, in order to protect the Department from having its funds tied up in long term contracts for physical fence construction in the event that delays persist well into fiscal year 2009, I strongly urge you to consider applying the reprogrammed funds for fencing or barriers only to contracts and task orders of a limited duration, with expiration dates not later than February 2009. CBP has told the Committee it plans to obligate funding for most remaining tactical infrastructure projects and complete them before January 31, 2009. If construction is significantly delayed by litigation or other unforeseen problems, a shorter contract period would help CBP more quickly recover and reapply these funds to high priority technology solutions, rather than let them sit unused in long-term contracts.

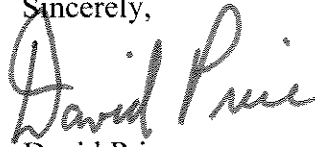
Finally, I expect you to direct CBP and the Border Patrol to revisit border areas that remain in dispute with local communities, landowners and local government officials, and seek to improve the hands-on consultation process and assessment of how a border security system can best be designed to meet national, local and regional priorities. I understand that the Border Patrol has

been engaged in discussions with the Texas Border Coalition to directly review the environmental and other concerns about fencing plans on the border by literally “walking the line” in Cameron, Hidalgo, El Paso, and Starr Counties. Such collaboration would help ensure that border infrastructure is designed in a way to be more secure and cost effective, and I expect you to undertake it.

I am also copying the Inspector General on this letter and requesting that he immediately begin to audit contracts and task orders associated with site acquisition and construction related to pedestrian fencing and vehicle barriers to ensure that the government’s fiduciary responsibilities are carried out.

I have consulted the Ranking Member of the Subcommittee, Harold Rogers, on the Department’s proposal, and he concurs with this recommendation.

Sincerely,

A handwritten signature in black ink that reads "David Price". The signature is written in a cursive, slightly slanted style.

David Price

Chairman

Subcommittee on Homeland Security

cc: Inspector General Skinner