

WebMemo



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Key Questions for Janet Napolitano, Nominee for Secretary of Homeland Security

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The United States Senate will soon render its advice and consent to the nomination of Governor Janet Napolitano (D–AZ) as the new secretary of the United States Department of Homeland Security (DHS).

As a border state governor, Napolitano has experience dealing with border security and led Arizona's efforts to tackle the immigration problem and enforce our immigration laws. Media reports suggest that she will bring this law enforcement mindset to the DHS. But reports thus far also suggest that the incoming Obama Administration has been less focused than Napolitano on border security and immigration issues, and it seems other issues such as FEMA, cybersecurity, and intelligence gathering will be at the forefront of the Administration's policy agenda.

In giving its advice and consent, Senators should explore Napolitano's views on issues across the homeland security spectrum. The public is relatively unfamiliar with Napolitano's viewpoints. Specifically, the Senate should ensure that Napolitano recognizes the importance of federalism and understands that homeland security is an enterprise—not a Beltway-centric operation—and that state and local governments, the private sector, and everyday citizens play an integral role in keeping our homeland safe and responding effectively to disasters. Consequently, the Senate should consider these preliminary questions:

Question #1: Immigration Reform

Since the failure of the comprehensive immigration reform bill in 2007, the Bush Administration

has worked to improve the immigration system. *Please describe the best legislative response to our nation's current immigration problems and describe the actions your agency will take to implement responsible immigration policies. Please include in your remarks your views on amnesty, workplace enforcement, and the need to enforce our nation's immigration laws.*

Answer: Immigration reform will not be solved in a single comprehensive congressional bill but requires an incremental strategy that takes into consideration all aspects of immigration.¹ And the federal government should not grant amnesty to illegal immigrants presently in the United States.² Amnesty will only increase the incentives for future immigrants to cross illegally.³ A responsible immigration strategy would include initiatives aimed at more aggressive workplace enforcement as well as measures dedicated to enforcement of our nation's current immigration laws, securing the border with proper infrastructure and personnel, promoting economic development in Latin America, reforming the United States Citizenship and Immigration Services (USCIS), and reforming the legal options available to foreigners.⁴ Furthermore, tackling the immigration problem should not just be done on a federal level. There are an estimated 11 million

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undocumented aliens in the United States.⁵ Given these numbers, the federal government will need the involvement of states and localities in order to counter the immigration problem.⁶

Question #2: Securing the Border

Please describe your view as to the current state of our nation's borders and describe the most important next steps by which our nation can secure the border in a timely, cost efficient, and effective manner.

Answer: The mission of securing our border is incomplete and the incoming Administration must work diligently to complete the task.⁷ Not only has our nation's unsecured southern border created an illegal immigration problem, but powerful, brutal, criminal cartels have seized *de facto* control of parts of Mexico directly across the border—and violence from these groups has spilled over into America.⁸ In order to combat these problems, the U.S. must look at the border as a system rather than simply throwing resources and technologies at the problem and hoping that one of them will be successful.⁹ Such a

haphazard approach to the border simply wastes resources without obtaining real security gains.¹⁰ Fencing and other infrastructure should not be built on political concerns or legislative fiat but from sound DHS analysis that calls for its construction.¹¹ And our nation should not abandon efforts to fully implement SBInet simply because the initial phases were bumpy—the technologies included in SBInet have significant promise. Consequently, DHS should look to realign efforts, instituting sound metrics so that contractors and government officials alike are well-informed as to project progress and goals.¹² Most importantly, securing our border will require a mix of resources beyond the federal government. State and local governments as well as private citizens have a stake in making sure their communities are protected, and Washington should support and encourage their participation in border security activities.¹³

Question #3: The Visa Waiver Program

Please describe your views regarding the Visa Waiver Program's role in America's overall public diplomacy

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2. Matthew Spalding, "Undeniably Amnesty: The Cornerstone of the Senate's Immigration Proposal," Heritage Foundation *WebMemo* No. 1521, June 25, 2007, at <http://www.heritage.org/Research/Immigration/wm1521.cfm>.
3. Edwin Meese III, "An Amnesty by Any Other Name...", *The New York Times*, May 25, 2006, at <http://www.heritage.org/Press/Commentary/ed052406a.cfm>.
4. James Sherk and Diem Nguyen, "Next Steps for Immigration and Border Security Reform: Restructuring the Work Visa," Heritage Foundation *Background* No. 2190, September 30, 2008, at <http://www.heritage.org/Research/Immigration/bg2190.cfm>; James Jay Carafano, Ph.D., "Better, Faster, Cheaper Border Security Requires Better Immigration Services," Heritage Foundation *Background* No. 2011, February 28, 2007, at <http://www.heritage.org/Research/Immigration/bg2011.cfm>; Robert E. Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection," Heritage Foundation *Background* No. 2192, October 7, 2008, at <http://www.heritage.org/Research/Immigration/bg2192.cfm>.
5. James Jay Carafano, Ph.D. and Laura Keith, "The Solution for Immigration Enforcement at the State and Local Level," Heritage Foundation *WebMemo* No. 1096, May 25, 2006, at <http://www.heritage.org/Research/NationalSecurity/wm1096.cfm>.
6. *Ibid.*
7. Jena Baker McNeill and James Jay Carafano, Ph.D., "Fixing Border Security and Immigration: A Memo to President-elect Obama," Heritage Foundation *Special Report* No. 33, December 16, 2008, at <http://www.heritage.org/Research/Immigration/sr33.cfm>.
8. Ray Walser, "Mexico, Drug Cartels, and the Merida Initiative: A Fight We Cannot Afford to Lose," Heritage Foundation *Background* No. 2163, July 23, 2008, at <http://www.heritage.org/Research/LatinAmerica/bg2163.cfm>.
9. James Jay Carafano, Ph.D., "Safeguarding America's Sovereignty: A 'System of Systems' Approach to Border Security," Heritage Foundation *Background* No. 1898, November 28, 2005, at <http://www.heritage.org/Research/HomelandSecurity/bg1898.cfm>.
10. *Ibid.*
11. McNeill and Carafano, "Fixing Border Security and Immigration."
12. *Ibid.*

strategy, including ongoing efforts to strengthen the VWP. Describe any challenges you see to its continuance in the next Administration.

Answer: The Visa Waiver Program (VWP) is a vital public diplomacy tool. Membership in the program communicates to countries that the United States trusts them.¹⁴ And the VWP allows America to sustain relationships with our historical allies while forging new relationships with countries whose interests align with our security priorities.¹⁵ In this new Administration, it is vital that the U.S. continues to expand membership well beyond Western Europe, working to add key allies in Central and Eastern Europe, and from across the globe, such as our NATO partner Poland and forthcoming NATO partner Croatia.¹⁶ But a glaring challenge to the future of the VWP is the current biometric exit mandate.¹⁷ As of June 30, 2009; DHS can no longer add new countries into the VWP until it has executed a biometric means of tracking travelers as they exit the United States.¹⁸ This mandate is unfeasible given the millions of individuals who pass through land border exits each year.¹⁹ It is vital that DHS and the Congress work together to find a solution that will not halt the expansion of VWP. Congress should not allow the VWP to be denigrated on

the basis of unsubstantiated security risks—allowing convenient travel for foreign travelers into the U.S. does not inherently represent a threat to security. The reality is that the overstay rate from the VWP is incredibly low.²⁰ Furthermore, security measures such as the Electronic System for Travel Authorization and other VWP membership requirements ensure that we know more about foreign travelers prior to their entry to the U.S.²¹ Coupled with a feasible exit requirement, these security measures will ensure the future success of the VWP and the security of Americans.²²

Question #4: FEMA and DHS

Please describe your views as to the current state of the Federal Emergency Management Agency (FEMA), including whether FEMA should be taken out of DHS, whether FEMA issues too many disaster declarations each year, and whether Congress needs to create a national catastrophic hurricane fund.

Answer: FEMA has made tremendous strides under DHS leadership. Taking the lessons learned from Hurricane Katrina, FEMA was applauded for its response efforts during Hurricanes Gustav and Ike, the Midwest Floods, and the California wildfires. If FEMA were to be taken out of DHS, such a move

13. James Jay Carafano and David B. Mulhausen, "State and Local Law Enforcement's Key Role in Better, Faster, Cheaper Border Security," Heritage Foundation *Executive Memorandum* No. 1015, November 22, 2006, at <http://www.heritage.org/Research/HomelandSecurity/em1015.cfm>; Carafano *et al.*, "Better, Faster, and Cheaper Border Security," Heritage Foundation *Backgrounder* No. 1967, September 6, 2006, at <http://www.heritage.org/Research/HomelandSecurity/bg1967.cfm>.
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17. Press release, "DHS Proposes Biometric Airport and Seaport Exit Procedures," U.S. Department of Homeland Security, April 22, 2008, at http://www.dhs.gov/xnews/releases/pr_1208186058701.shtm (January 2, 2008).
18. Jena Baker McNeill and James Jay Carafano "Visa Waiver Reform Ready for Next Step," Heritage Foundation *WebMemo* No. 2108, October 21, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm2108.cfm>.
19. McNeill, Carafano, and Dean, "Strengthening the Visa Waiver Program."
20. *Ibid.*
21. Jena Baker McNeill, "Electronic Travel Authorization: Important for Safer and More Secure Overseas Travel," Heritage Foundation *WebMemo* No. 1964, June 19, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1964.cfm>.
22. McNeill, Carafano, and Dean, "Strengthening the Visa Waiver Program."

would only add more bureaucracy, making it more difficult to get assets where they are needed most in the aftermath of an emergency—the type of burdensome bureaucracy we sought to avoid after 9/11.²³

Such a move also perpetuates the over-federalization of disaster response—the idea that all disasters, regardless of severity, need to be handled at the federal level—by insinuating that FEMA needs the highest leadership levels at its immediate disposal.²⁴ Over the past two decades, Washington has tried to federalize more and more disaster response efforts: FEMA declarations and federal funds tied to those declarations have significantly increased. While a robust federal response capability is needed in light of lessons learned after 9/11 and Hurricane Katrina, those assets should be deployed only when a significant disaster threshold is crossed. FEMA will never prepare for catastrophic disasters if it continues to spend its finite time, money, resources, and personnel on every disaster that happens in America.²⁵

As to a catastrophic insurance bill, the fact is that most states in America are relatively safe from catastrophic natural disasters. The citizens living in those states should not be forced to subsidize those Americans who freely choose to live in a higher-risk state. A national hurricane catastrophe fund will distort the insurance market and encourage risky behavior. Congress must stop federalizing disasters

across America and let the markets determine the appropriate rates for homeowner's insurance.²⁶

Question #5: Homeland Security Grants

Please describe what reforms, if any, the new Administration should make to the federal homeland security grants program.

Answer: Unless Congress and DHS reverse the direction in the management of grants programs, these programs will become another entitlement for the states rather than a real national security instrument—an instrument that is sorely needed.²⁷ State and local needs vary across the board, and these needs must be identified and integrated into a national standards plan that fulfills articulated homeland security goals.²⁸ However, this plan must be a dynamic list compiled from an established baseline of risks. The goal is to create an adaptive, flexible system to fit homeland security needs at all jurisdictional levels. Congress and DHS can take several actions to meet this goal:

- Conduct a national capabilities assessment. Evaluating capabilities is the starting point for understanding U.S. strengths and weaknesses. Once DHS executes this task, it will be in a better position to justify future allocations of homeland security grants and provide the government with a sense of what still needs to be done;

23. Jena Baker McNeill, "Cabinet-Level FEMA Not Needed," Heritage Foundation *WebMemo* No. 2153, December 4, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm2153.cfm>.

24. *Ibid*; Jena Baker McNeill, "Removing FEMA from DHS Would Be a Terrible Mistake," Heritage Foundation *WebMemo* No. 2071, September 22, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm2071.cfm>.

25. James Jay Carafano and Matt A. Mayer, "FEMA and Federalism: Washington Is Moving in the Wrong Direction," Heritage Foundation *Background* No. 2032, May 08, 2007, at <http://www.heritage.org/Research/HomelandDefense/bg2032.cfm>.

26. Matt A. Mayer, "Hurricane Insurance: Forcing All to Subsidize the Few," Heritage Foundation *WebMemo* No. 1972, June 26, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1972.cfm>; David C. John, "The Homeowners Defense Act: Bad Policy and a Dangerous Precedent," Heritage Foundation *WebMemo* No. 1699, November 7, 2007, at <http://www.heritage.org/Research/Regulation/wm1699.cfm>.

27. Matt A. Mayer, "Congress Should Reassess the Allocation of Homeland Security Grants," Heritage Foundation *WebMemo* No. 2011, August 6, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm2011.cfm>; Jena Baker McNeill, "Grants Should Not Be the Pork to Feed State Homeland Security Spending," Heritage Foundation *WebMemo* No. 1995, July 16, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1995.cfm>; Matt A. Mayer and James Jay Carafano, "After the 9/11 Act: Homeland Security Grants Still Moving in the Wrong Direction," Heritage Foundation *Background* No. 2059, August 3, 2007, at <http://www.heritage.org/Research/HomelandDefense/bg2059.cfm>; James Jay Carafano and Matt A. Mayer, "Spending Smarter: Prioritizing Homeland Security Grants by Using National Standards and Risk Criteria," Heritage Foundation *Background* No. 2033, May 10, 2007, at <http://www.heritage.org/Research/HomelandDefense/bg2033.cfm>.

28. McNeill, "Grants Should Not Be the Pork to Feed State Homeland Security Spending."

- Eliminate minimum and maximum grant requirements.²⁹ Placing caps on homeland security grants distorts the purpose of these grants and hinders state and local efforts to address their highest-priority needs. Congress should revisit the original language concerning homeland security grants in the USA PATRIOT Act and replace the minimum requirements with a comprehensive rubric based solely on risk and an updated Target Capabilities List. DHS should eliminate the arbitrary 55 percent maximum cap as well;
- Refocus grant programs on core objectives. Congress needs to end its addiction to proliferating grants. Both Congress and DHS need to restore the program's federalist functions. DHS needs to focus on truly national concerns in a way that lessens the appeal of wasteful pork-barrel projects, and Congress needs to give states enough latitude to access needed resources quickly and efficiently; and
- Limit the number of urban areas eligible in any given fiscal year for the Urban Areas Security Initiative grant program to 35 or fewer so that funds for the highest risk urban areas do not continue to be diluted by spreading the wealth allocations.

Question #6: The 100 Percent Cargo Scanning Mandate

Please describe your views as to whether 100 percent inspection of air and maritime cargo is viable security policy.

Answer: While Congress has instituted 100 percent inspection initiatives in both the air cargo and

maritime realms, these initiatives do little to increase national security and are not economically feasible. The Transportation Security Administration insisted to Congress that 100 percent screening of all incoming cargo on passenger planes is infeasible from a logistical standpoint—with the potential for serious repercussions on our global supply chain.³⁰ Regarding the maritime domain, in June 2008, Congress mandated a feasibility test called the Secure Freight Initiative (SFI) which concluded that such a blanket requirement (scanning 100 percent of over 11 million oceangoing containers shipped annually to the U.S.) was impractical and unwise.³¹ Likewise, a GAO report issued that same month identified nine major challenges to implementing 100 percent scanning. The report pointed out that “foreign governments could call for reciprocity of 100 percent scanning, requiring the United States to scan cargo containers, and some view this requirement as a barrier to trade.”³² In these troubled economic times, it makes no sense to add unnecessary costs to the expense of buying and selling globally. The congressional mandate would provide only minimal utility at the cost of billions of dollars in new duties, taxes, and operating costs.³³ Most importantly, as the results of research by GAO, the SFI, and other institutions clearly demonstrate, these blanket mandates add little security at a major cost to our supply chain and economic livelihood.

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29. *Ibid.*

30. Jena Baker McNeill, “100 Percent Air Cargo Screening Continues to Infect Homeland Security,” Heritage Foundation *WebMemo* No. 2025, August 15, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm2025.cfm>.

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33. Carafano, “Securing Global Supply Chains”; Jena Baker McNeill, “100 Percent Cargo Container Scanning: A Global Disaster,” Heritage Foundation *WebMemo* No. 2047, September 4, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm2047.cfm>; Carafano, “A Second Look at Container Security: Lessons from Hong Kong,” Heritage Foundation *WebMemo* No. 1788, January 30, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1788.cfm>; Carafano, “Scanning for Common Sense: Congressional Container Security Mandate Questioned,” Heritage Foundation *WebMemo* No. 1955, June 13, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1955.cfm>.

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