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March 4, 2010

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

Dear Secretary Napolitano:

In recent weeks, we have been confronted with two pieces of homeland security intelligence that deserve our utmost attention and demonstrate why now, more than ever, we must not abandon the existing 100 percent mandate for port scanning. A report by the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism indicated that al Qaeda is as determined as ever to attack the United States with a weapon of mass destruction. And Director of National Intelligence Blair testified before the Senate Armed Services Committee that an attempted terrorist attack on the United States within the next six months is a “certainty.”

These most recent reminders of the threats we face – and the immediacy of those threats – are also reminders about the need to make good on plans to ensure that all inbound cargo is safe. Security experts have repeatedly asserted that our seaports are viewed by terrorists as a prime point of entry for weapons or weapon materials, and we cannot get by with less than adequate security measures.

As a lead author of the provision in our 9/11 Commission legislation that mandated 100 percent scanning of inbound cargo by July 1, 2012, I am concerned with the Department of Homeland Security’s (DHS’s) apparent resignation on this matter.

A Government Accountability Office report from December 2009 states that Customs and Border Patrol “has made limited progress in scanning containers at the initial ports participating in the [Secure Freight Initiative] program”; that it “has not developed a plan to scan 100 percent of U.S.-bound container cargo by 2012”; it “has not conducted a feasibility analysis of expanding 100 percent scanning, as required by the SAFE Port Act”; and that “the lack of a decision on a clear path forward” has prevented the agency from accurately assessing the overall costs.

In your testimony before the Senate Committee on Commerce, Science and Technology from the same time, you mentioned some very real and significant challenges to the 100 percent scanning mandate, as well as some positive steps that have been taken to target specific cargo based on analytical programs. However, I did not come away with the impression that DHS is actively working to find a way to meet the mandate or to increase cargo security beyond what is currently

in place. The current system you described, which selects specific cargo deemed to be high-risk and relies on voluntary cooperation from industry and foreign customs administrations, may be an improvement over the pre-2001 cargo security system, but it is hard to believe that it is anywhere near comprehensive or reliable enough to provide adequate security. GAO reported that less than five percent of U.S.-bound cargo is scanned at the world's largest ports and that DHS has not done the analysis necessary to comprehensively determine the overall costs and benefits of doing more.

The defense of our nation demands that we do more than this. We have to be right 100 percent of the time, while a terrorist only has to be right once to achieve his or her goal.

Congress created this mandate for a purpose – it is not a suggestion or an aspiration, but a law. The Department of Homeland Security under the Bush administration repeatedly ignored this law, and I urge this administration to change course and work to find a way to get us on the path to 100 percent scanning. We cannot just continue to respond to the last threat; we must think ahead in order to try to prevent the next one.

As an author of this law, I ask for a detailed update on what DHS is doing to analyze the path forward to 100 percent scanning; for periodic detailed updates on the agency's progress; and, if you will need to delay implementation of this law as has been indicated, I ask for a meeting to discuss exactly what can be done in the interim to make our cargo security stronger than it is currently. Thank you, and I look forward to your timely response.

Sincerely,


ROBERT MENENDEZ
United States Senator