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October 17, 2016

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, D.C. 20528

Dear Secretary Johnson:

I write regarding pre-employment polygraph examinations for law-enforcement applicants to the U.S. Customs and Border Protection (CBP). While I support CBP's ongoing efforts to prevent corruption, there appear to be issues surrounding the administration of polygraphs that are impacting the agency's hiring and recruitment efforts.

In 2012, CBP implemented the mandatory polygraph requirements outlined in the Anti-Border Corruption Act of 2010 and began administering a pre-employment polygraph to all new applicants for law enforcement positions at CBP. Since then, there continues to be concerns surrounding polygraph examiners using troubling interrogative techniques as well as repeated anecdotes regarding "gotcha" type questioning of applicants. In addition, the perceived threat of long-term career damage resulting from an unsuccessful polygraph interview represents a pervasive disincentive for potential applicants to even start the hiring process. Given the number of initial applicants necessary to result in even a single successful hire, such disincentives are particularly concerning.

In a June 30, 2016 hearing of the Senate Judiciary Committee, I expressed concern regarding the polygraph process and the current practices that are being employed. Your response indicated that you have asked those under you to "take a hard look" at these concerns. To help me understand better the circumstances surrounding this issue and your staff's work on it, please provide answers to the following questions:

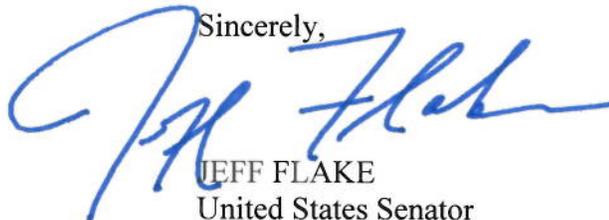
1. The problems related to the polygraph appear to be unique to CBP. Has any benchmarking or sharing of best practices been done between CBP and other law enforcement agencies that require a polygraph as a condition for employment?
2. Are you aware of instances in which CBP applicants have failed to move forward with the hiring process due to the polygraph process but found employment with other law enforcement entities?
3. What specific training and certification do examiners undergo before administering a polygraph in the CBP hiring process?

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4. Has DHS explored the option of using other lie detection technologies? If so, what are those technologies? What, if anything, precludes its use?
5. If a complaint is made against an examiner's conduct during a polygraph, is there an independent group that investigates such conduct or violations? Who has oversight over these types of investigations?
6. What specific efforts have been made to deal with the perception of risks to future employment represented by the polygraph process used in CBP hiring?
7. Is there statutory language that would be helpful in dealing with the persistent issues surrounding the perception and administration of polygraphs in the CBP hiring process while at the same time ensuring national security?

Please respond to this letter no later than November 4, 2016. Should you have any questions, please contact Helen Heiden at (202) 224-4521. As always, I ask that this matter be handled in strict accordance with all agency rules, regulations, and ethical guidelines.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Flake", is written over the typed name.

JEFF FLAKE
United States Senator