

Congress of the United States
Washington, DC 20515

August 3, 2010

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

Dear Secretary Napolitano:

We are writing to express our ongoing concerns regarding the Department of Homeland Security's (DHS) lack of progress in implementing the 100 percent maritime cargo scanning statutory requirement, as mandated by the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53). On the third anniversary of enactment of the law, ensuring that DHS moves towards fulfillment of this legislative mandate continues to be a top priority for us.

The previous Administration wasted precious time, campaigning against the 100% screening mandate rather than working to achieve this important enhanced level of security. It was our hope that under your leadership, DHS would begin to make significant progress in implementing the law. To our dismay, however, your statements before Congress, as well as those made more recently by U.S. Customs and Border Protection Commissioner Alan Bersin, indicate that DHS is not attempting to meet the 2012 statutory deadline. Rather, it is our understanding that DHS is seeking to extend the deadline by two years for all ports worldwide without developing a plan to implement the scanning requirement by a date certain pursuant to the statute.

As you know, P.L. 110-53 contemplated that it might not be possible to scan all cargo at all ports within this timeline, and provided for extensions of the 2012 deadline if the Secretary of Homeland Security certified to Congress, for a port or group of ports, that at least two of the following six specific conditions exist pursuant to Sec. 1701 (B)(4)(A) through (F):

- (A) Systems to scan containers in accordance with paragraph (1) are not available for purchase and installation.
- (B) Systems to scan containers in accordance with paragraph (1) do not have a sufficiently low false alarm rate for use in the supply chain.

- (C) Systems to scan containers in accordance with paragraph (1) cannot be purchased, deployed, or operated at ports overseas, including, if applicable, because a port does not have the physical characteristics to install such a system.
- (D) Systems to scan containers in accordance with paragraph (1) cannot be integrated, as necessary, with existing systems.
- (E) Use of systems that are available to scan containers in accordance with paragraph (1) will significantly impact trade capacity and the flow of cargo.
- (F) Systems to scan containers in accordance with paragraph (1) do not adequately provide an automated notification of questionable or high-risk cargo as a trigger for further inspection by appropriately trained personnel.

The statutory flexibility outlined above was to accommodate any delays in meeting the 2012 statutory deadline at specific ports due to specific challenges. Congress did not intend for the Department to seek an indefinite extension for all ports in the absence of any meaningful efforts to implement the law. While we understand that implementation challenges exist, we are troubled by the Department's apparent intent to grant all ports a two-year delay for implementation, without presenting a concomitant plan of action to ensure that the mandate is fully or partially achieved at any port in the world by 2012.

For the past three years, we have waited for DHS to take concrete steps to implement this provision, or alternatively to propose legislation to amend the law. Neither has happened. Therefore, we remain concerned about the significant homeland security risk to our Nation as a result of the Department's continued inability to articulate a path forward in this important area.

In an effort to bring about progress on this important mandate, we request that DHS provide the following information in writing by no later than August 17, 2010:

- A detailed list of the challenges that exist at each foreign port that transports U.S.-bound cargo containers. This list should include a corresponding justification, as well as the data and analysis used as the basis for such justification, for ports at which DHS intends to seek a deadline extension, as provided in P.L. 110-53.

Also, no later than September 30, 2010, the end of the fiscal year, please provide in writing an implementation plan that includes:

- 1) Specific information regarding how the Department plans to implement the 100 percent scanning requirement in a manner consistent with P.L. 110-53, including detailed

implementation schedules with milestones and benchmarks on how much maritime cargo is expected to be scanned in each year;

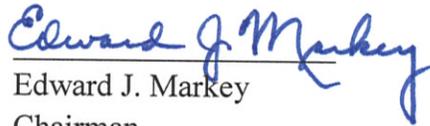
- 2) The projected funding and full-time employees needed to implement the 100 percent scanning requirement; and
- 3) Specific information on how the Department can utilize the staffing, infrastructure and resources associated with the Container Security Initiative (CSI) and the Megaports Initiative to develop a phased approach toward achieving 100% scanning at these ports, which would cover a vast majority of all U.S.-bound cargo.

Thank you for your attention to this request. Please contact Rosaline Cohen, Chief Counsel for the Committee on Homeland Security, if you have any questions. Again, we remain committed to the implementation of the 100 percent scanning requirement and look forward to working with you to advance a path forward that will enhance cargo security on behalf of our Nation.

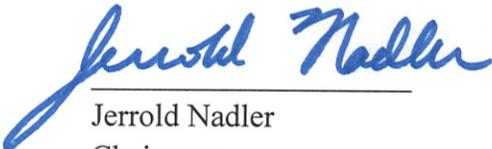
Sincerely,



Bennie G. Thompson
Chairman
Committee on Homeland Security



Edward J. Markey
Chairman
Subcommittee on Energy and Environment
Committee on Energy and Commerce



Jerrold Nadler
Chairman
Subcommittee on Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary