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October 30, 2008

The President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President:

I am writing to express my deep concern about, and strong opposition to, recent comments made by Secretary of Homeland Security Michael Chertoff indicating that the Department of Homeland Security will not implement the 100 percent maritime scanning and sealing requirement contained in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53). Secretary Chertoff's statement directly contradicts the explicit statutory mandate in P.L. 110-53, and I urge you to repudiate his comments and reaffirm your administration's commitment to implementation of this vital provision in the law pursuant to the mandated schedule.

According to an October 21, 2008 report in USA Today, Secretary Chertoff stated that "I'm not terribly concerned someone's going to build a nuclear bomb in England' and load it into a container headed for a U.S. port. 'But I might be more concerned about South Asia.'" Delivery into our country of a nuclear bomb in a cargo container has been identified by homeland security experts as a significant risk with devastating consequences for our nation. The latest annual report from the International Atomic Energy Agency (IAEA) to the United Nations General Assembly released earlier this week underscored the seriousness of the threat of a terrorist attack on the United States using a nuclear weapon, stating "The possibility of terrorists obtaining nuclear or other radioactive material remains a grave threat. The number of incidents reported to the Agency involving the theft or loss of nuclear or radioactive material is disturbingly high - nearly 250 in the year to June 2008 alone."

Notwithstanding Secretary Chertoff's apparent preference for a country-specific approach to maritime cargo security, Section 1701 of P.L. 110-53 does not provide for such a selective system. Rather, it establishes a uniform standard for cargo containers arriving in our ports, regardless of the cargo's origin, stating, in pertinent part: "A container that was loaded on a vessel in a foreign port shall not enter the United States (either directly or via a foreign port) unless the container was scanned by nonintrusive imaging equipment and radiation detection equipment at a foreign port before it was loaded on a vessel."

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P.L. 110-53 provides for extensions of the 2012 deadline only if the Secretary of Homeland Security certifies to Congress that at least two of six specific conditions exist pursuant to Sec. 1701 (B)(4)(A) through (F). However, Secretary Chertoff's comments suggest a determination to *end* the Department's efforts to implement the 100 percent scanning mandate in favor of an alternate risk-based approach, rather than *extend* the deadline for meeting the statutory requirement while still working to fulfill it.

While the law implementing the 9/11 Commission recommendations provides for such extensions under prescribed conditions, it does not permit Executive Branch officials to abandon implementation of the mandate. Does your administration intend to make clear its commitment to fulfilling the 100 percent scanning requirement? If not, please provide the specific statutory authority that your administration is relying upon to disregard this legislative mandate. If your administration instead plans to seek an extension to the 2012 deadline, will you direct Secretary Chertoff to make the requisite certifications to Congress pursuant to Sec. 1701?

Secretary Chertoff's troubling declaration follows the issuance of a signing statement on August 3, 2007 that raised questions at the time about the administration's commitment to vigorously implementing the cargo inspection provisions of P.L. 110-53. Specifically, the signing statement declared your intention to "work with Congress to ensure the workability of the cargo screening provisions in a way that increases our vigilance on homeland security while ensuring the continuance of vital commerce." In light of Secretary Chertoff's comments, I am concerned that your administration has decided to place commercial interests above homeland security needs, ignoring the clear legal requirements of the maritime cargo provision in P.L. 110-53.

I request that you clarify whether Secretary Chertoff's remarks represent your administration's position in this important area, and that you provide answers to the aforementioned questions. The intent of Congress on this issue was clear, and I look forward to your response.

Sincerely,



Edward Markey