Cornyn presses Napolitano over immigration case dismissals
By SUSAN CARROLL

Homeland Security Secretary Janet Napolitano on Tuesday rebuffed reports that her agency misled Congress and the public last year about a wave of immigration case dismissals in Houston and other cities, chalking the controversy up to internal "miscommunication."

Pressed by Sen. John Cornyn, R-Texas, to explain discrepancies between the agency's internal records and public statements about the dismissals, Napolitano said the Houston field office "conflated two different memos" released by ICE director John Morton and "misconstrued" agency policy.

"The plain fact of the matter is that a miscommunication occurred at the regional level in one of 26 offices," Napolitano testified during the hearing Tuesday in Washington before a Senate subcommittee on immigration and border security.

But the answer did not satisfy Cornyn, whose staff reviewed more than 200 pages of internal Immigration and Customs Enforcement records on the dismissals obtained by the Houston Chronicle.

"When an agency not only misleads the public and Congress, but also attempts to block public information, merely citing an unfortunate 'miscommunication' is not a good enough explanation for the American people," Cornyn said in statement after the hearing.

The internal agency records show that the chief ICE counsel in Houston ordered attorneys on Aug. 12 to review all new and thousands of pending cases on Houston's immigration court docket and to dismiss those that fail to meet with the agency's top priorities. The secretive review resulted in hundreds of case dismissals in Houston involving mainly illegal immigrants who had lived in the U.S. for years without committing serious crimes.

The records show the Houston efforts were praised as "outstanding" by top ICE attorneys at agency headquarters in Washington D.C. and held up internally as a model until news of the dismissals was first reported in the Houston Chronicle on Aug. 25.
That day the agency quietly rescinded the memo, and told reporters who inquired about the
dismissals that they affected a very narrow group of immigrants with pending green card
applications described in a separate agency memo, dated Aug. 20.

The agency made the same claim to Congress in December in response to questions from Cornyn
and other GOP members of the Judiciary Committee, which accused the agency of selectively
enforcing the nation's immigration laws.

However, the internal records show the Houston dismissals were not confined to green card
applicants, as the agency insisted, and instead involved immigrants with a wide range of
backgrounds, including some with criminal records for mostly misdemeanor offenses.

Through Aug. 24, ICE officials in Houston had already reviewed 1,924 cases and filed motions
to dismiss 246. An internal ICE memo shows the actual number of cases in which local ICE
attorneys exercised prosecutorial discretion was actually much higher by the end of October,
however, involving about 445 cases.

Napolitano's office declined to clarify on Tuesday which two memos she said the Houston office
"conflated."

Tre Rebstock, the president of the local ICE union, called Napolitano's testimony that the
dismissals were confined to Houston "bogus."

"We've seen all the documentation, the memos and the emails," he said, describing top attorneys
in ICE headquarters as "applauding the actions of the chief counsel in Houston."

"There was no miscommunication," he said.

The agency's internal records show the head of the Houston office, Gary Goldman, notified
headquarters of his plans to conduct the docket review last August. His supervisor responded:
"Outstanding, Gary," and asked him to share details of the Houston effort on the next conference
call for chief counsels.

The agency's internal records show other ICE offices also were encouraged to exercise
prosecutorial discretion — the power to decide which cases to pursue - in an effort to better
target dangerous criminals for deportation.

Nationally, the number of immigration cases dismissed last fiscal year grew by about 40 percent,
with courts scattered across the country reporting major increases.
Napolitano said at the hearing Tuesday that immigration officials are trying to find ways to determine whether immigrants meet with the agency's top priorities before entering them into removal proceedings. She did not provide details on the effort, which a DHS official said is still in the works.

Geoffrey Hoffman, the director of the University of Houston immigration clinic, urged the public to give DHS the benefit of the doubt on the Houston dismissals, saying the agency's own public affairs staff may not have known the truth behind the dismissals.

Hoffman said the bigger issue at stake is the agency's need to prioritize cases in order to target the most serious offenders.

"On one hand the public cries out for enforcement for the most dangerous criminals, and on the other hand, they have a problem with prosecutorial discretion," he said. "You can't have it both ways. There has to be a balance."