
Business Meeting

Tuesday, November 29, 2011

U.S. Senate Committee on Foreign Relations

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**U.S. Senate
Committee on Foreign Relations
Washington, D.C.**

1 The committee met, pursuant to notice, at 2:22 p.m. in Room S-116, The Capitol,
2 Hon. John F. Kerry, chairman of the committee, presiding.

3 **PRESENT.** Senators Kerry [presiding], Boxer, Menendez, Cardin, Casey, Shaheen,
4 Coons, Durbin, Udall, Lugar, Corker, Risch, Rubio, DeMint, Isakson, and Lee.

5 **THE CHAIRMAN.** The committee will come to order.

6 I am going to start the process in order to try to expedite things as we get the full
7 quorum to be able to vote. There are two legislative items. There are several
8 nominations and two Foreign Service office promotion lists on the agenda.

9 Let me just begin quickly with the legislative items. Senate resolution 227,
10 introduced by Senators Webb, Inhofe, and Lugar, calls for the protection of the Mekong
11 River Basin. I have asked, I think, to be added as an original cosponsor of this. It is
12 very important. I think it is a terrific amendment, and we will be considering it with an
13 amendment in the nature of a substitute, and I encourage everybody here to be
14 supportive of it.

15 I do not know how many of you have had a chance to ever visit Vietnam, but I
16 spent a certain amount of time on those rivers -- that river. It comes all the way from

1 China down through Laos, Cambodia, and into Vietnam. It is an extraordinary river,
2 one of the great rivers of the world, and it is a life source for everything in that region.
3 The whole Mekong Delta depends on it, as well as the fisheries, all that way up through
4 into China. It is at great risk right now, like many rivers in the world. So I think it is
5 great that we are sort of encouraging protection of it. I think that is an important
6 legacy.

7 There is Senate resolution 316, which I introduced with Senators Rubio,
8 Lieberman, and McCain. It expresses a sense of the Senate regarding Tunisia's peaceful
9 Jasmine Revolution. And I think everybody would agree they have set a remarkable
10 example of a successful transition to democracy, and we want to just recognize their
11 achievements and their determination to continue towards self-governance.

12 Anybody want to say anything about either of these resolutions because if not,
13 we could move to a rapid vote on them. If there is no further debate -- I am not aware
14 of any requests for a roll call, so I propose we take them by voice vote en bloc. So all
15 those in favor of the block of the two amendments say aye.

16 [Chorus of ayes.]

17 **THE CHAIRMAN.** Opposed, nay?

18 [No response.]

19 **THE CHAIRMAN.** The ayes have it and they are approved.

1 Now to the rest of the agenda. We have two Foreign Service lists. We have
2 several nominations: Mike McFaul to be Ambassador to Russia; Roberta Jacobson to be
3 Assistant Secretary of State for Western Hemisphere Affairs; Mari Carmen Aponte to be
4 Ambassador to El Salvador; Adam Namm to be Ambassador to Ecuador; Elizabeth
5 Cousens to be the America to the U.N. Economic and Social Council and also Alternate
6 Representative to the U.N. General Assembly.

7 I personally support each of these nominations. I would hope the committee
8 will. Let me just say a couple of quick words about Mike McFaul and Robert Jacobson.

9 Over the past 20 years, Mr. McFaul has established himself as really one of the
10 most eloquent American advocates for promotion of democracy and human rights
11 worldwide. He has earned the respect of Americans, I think, of all political persuasions
12 who understand that promoting the development of democracy abroad is not just a
13 question of values, but it is also a question of national interest.

14 His appointment was welcomed by advocates for human rights here and abroad
15 who know that as our Ambassador to Moscow, he is not going to drop issues of
16 principle when it might seem uncomfortable or inconvenient to raise them. And I think
17 we know we need that kind of representative in Moscow.

18 His work in and out of public service has demonstrated that American officials
19 can uphold our values while also advancing our interests in an increasingly challenging
20 world. And in the midst of an election, Russian leaders have obviously recently made

1 some controversial statements regarding those kinds of rights that none of us would
2 choose to ignore. On the other hand, we also should not respond hastily or inadvisably.

3 I think Mr. McFaul is an excellent choice and strongly commend him to the
4 committee.

5 As to Ms. Jacobson, the Western Hemisphere, as we all know, is a very key area,
6 region for the United States, but somehow recent administrations, including this one --
7 it is sort of hard to put the full focus on it that it deserves. I think some people and
8 members of this committee feel that consistently.

9 If confirmed, Roberta Jacobson can help, I think, reverse that. She would be the
10 first woman to serve as Assistant Secretary of the Western Hemisphere. She is a very
11 well-regarded civil servant, career civil servant, with great experience in the State
12 Department. She served as the Principal Deputy Assistant Secretary for Western
13 Hemisphere Affairs, the Chief Deputy of Mission in our embassy in Peru, multiple
14 region-specific posts that have prepared here, I think, for this task of being Assistant
15 Secretary.

16 Does anybody else wish to make any comments regarding these two nominees?
17 Senator Shaheen?

18 **SENATOR SHAHEEN.** Yes, thank you, Mr. Chairman.

19 I had the opportunity to chair the McFaul hearing, and I was very impressed
20 with his commitment to human rights, with the work that he has done with Russian

1 human rights leaders, and I believe that he will continue that commitment as
2 Ambassador.

3 I was particularly impressed -- and Senator Cardin, I cannot remember if you
4 were there for this, but with his response on the Magnitsky case. He talked about
5 meeting with Magnitsky's wife and I think brought some real attention to that issue
6 which has been a terrible travesty in Russia. So I certainly hope that we will support
7 him.

8 And I have a statement that I would like to have submitted for the record.

9 **THE CHAIRMAN.** Without objection, the full statement will be placed in the record.

[The prepared statement of Senator Shaheen follows:]

10 **On the nomination of Dr. Michael McFaul** to be Ambassador to the Russia
11 Federation:

12 I stand in strong support of the nomination of Dr. Michael McFaul to be the next U.S.
13 Ambassador to the Russian Federation.

14 As the Chair of the Subcommittee on European Affairs, I had the opportunity to
15 preside over Dr. McFaul's nomination hearing, where he demonstrated a strong and deep
16 understanding of the complexities of the U.S.-Russian bilateral relationship.

17 As a student of Russian history, Dr. McFaul's background will prepare him well for
18 the difficult challenges before him in Moscow. Since 2009, he has served as the President's
19 top White House advisor on Russian policy and the Senior Director for Russia and Eurasian
20 Affairs at the National Security Council.

21 It has been nearly three years since the Administration charted a new path forward
22 with Russia -- one based on cooperation over confrontation. There should be little doubt that
23 this "reset policy" has produced some significant concrete progress for the U.S., our allies,
24 and the world.

25 The New START Treaty is perhaps the most high-profile success. Because of New
26 START, the U.S. and Russia will have the fewest deployed warheads aimed at each other

1 since the 1950s. In addition, on-sight inspections and data exchanges instituted under New
2 START are providing the U.S. with a transparent, detailed picture of Russian strategic forces.

3 We have seen cooperation with Russia on Afghanistan, including the successful
4 implementation of the Northern Distribution Network. We have seen further cooperation on
5 a fourth round of sanctions against Iran in the UN Security Council, and we have been very
6 encouraged by Russia's high-profile decision to cancel the delivery of an advanced missile
7 system to Iran. Throughout this effort, we have maintained strong and unyielding support for
8 our allies in Central and Eastern Europe.

9 Despite some of the progress of the "reset," the real test of the policy is still in front
10 of us. I believe Dr. McFaul knows this well; he provided us with a sober assessment of future
11 challenges and opportunities during his nomination hearing.

12 Dr. McFaul will be a strong advocate for human rights and the rule of law in Russia.
13 As many of you know, his background is on democracy promotion, and he has met regularly
14 with Russian opposition figures and civil society advocates in Washington and Russia. He
15 has been a strong voice in the Obama Administration arguing for high level attention on
16 Russia's deteriorating human rights record. In fact, he has the support of two prominent
17 conservative democracy experts – David Kramer of Freedom House and Robert Kagan of the
18 Brookings Institution. I would like to include their October 11 *Washington Post* op-ed
19 supporting his nomination in the official record.

20 Dr. McFaul answered some extremely difficult questions for us on the job before him
21 in Moscow. He committed to making democracy and human rights a priority – both in public
22 and in private with Russian government officials. He committed to working with and
23 listening to the democracy activists on the ground in Russia. On missile defense, he
24 emphasized that the Administration intends to move forward with or without Russian
25 cooperation, and he committed to do what is necessary to protect ourselves and our allies. He
26 reaffirmed Georgia's territorial integrity, emphasized support for Georgia's Euro-Atlantic
27 aspirations, and committed to supporting Georgia's defense modernization. In addition, I
28 understand he has answered over 50 questions for the record following the conclusion of the
29 nomination hearing.

30 The U.S. - Russia relationship is marked at times by mutual interests and at others by
31 diametrically opposed values. We will need our strongest, most capable civil servants in
32 Moscow to balance these difficult responsibilities and represent American interests. I believe
33 Dr. Michael McFaul is up to this challenge.

1 I encourage my colleagues on this committee to support Dr. McFaul's nomination,
2 and I hope the full Senate will quickly confirm him and send him to Moscow.

3 **THE CHAIRMAN.** Senator Lugar?

4 **SENATOR LUGAR.** I would like to support strongly Mike McFaul. I remember well
5 his remarkable record at Stanford University in which a number of Members of
6 Congress and delegations that were invited by former Secretary of State George Shultz
7 and others came out and his knowledge about Russia then was really profound. And I
8 have been impressed with the work that he has done here in Washington. I believe it is
9 a very timely and important nomination.

10 **THE CHAIRMAN.** Is there any further comment?

11 Senator Rubio?

12 **SENATOR RUBIO.** Is it on all the nominations?

13 **THE CHAIRMAN.** No. Just these two.

14 **SENATOR RUBIO.** No, not at this time.

15 **THE CHAIRMAN.** I am aware you have some issues later.

16 Anybody else?

17 [No response.]

18 **THE CHAIRMAN.** Then I move we vote en bloc on these two nominees, if there is no
19 further debate. All those in favor, say aye.

20 [Chorus of ayes.]

1 **THE CHAIRMAN.** Opposed, nay?

2 [No response.]

3 **THE CHAIRMAN.** The ayes have it and the two nominees are approved.

4 **SENATOR CORKER.** I would like to be recorded no on McFaul. I think you all
5 understand the issues there.

6 **THE CHAIRMAN.** I appreciate that. Senator Corker will be appropriately recorded
7 as a no on the McFaul nomination.

8 **SENATOR RUBIO.** Mr. Chairman?

9 **THE CHAIRMAN.** Senator Rubio?

10 **SENATOR RUBIO.** Can I be recorded as a no on Jacobson?

11 **THE CHAIRMAN.** Yes. Senator Rubio will be recorded as no on Jacobson.

12 With that, we come to the nomination of Ms. Aponte. As everybody knows,
13 Mari Aponte was nominated first to be Ambassador in 1998, but she withdrew her
14 nomination after there were some questions raised regarding a personal relationship.

15 Ms. Aponte was then nominated to be Ambassador to El Salvador during the
16 111th Congress, and as has been the practice for as long as I can remember on the
17 committee, the White House permitted myself and Senator Lugar to each designate one
18 Senator to review the FBI background file relating to Ms. Aponte's nomination. We
19 designated Senator Menendez and Senator Barrasso to do so.

1 Senator DeMint made a request to also review that file, and per the practice,
2 which is a White House practice, incidentally -- it is an administration practice of
3 whichever administration has been in -- of letting only one member on each side review
4 the file. The White House declined at that time to accede to Senator DeMint's request.

5 So the nomination stalled, and the President chose then to give Ms. Aponte a
6 recess appointment and she was subsequently re-nominated now to the post in this
7 Congress.

8 Beginning in September, we began a process of trying to prevent a repeat of the
9 same situation with this FBI file. And I am pleased that we arrived at an outcome that
10 did allow Senator DeMint to review the FBI file, along with Senator Rubio. So we kind
11 of broke out of the norm and created a special circumstance.

12 Ms. Aponte's nomination hearing was then held on November 8th, over a month
13 ago -- not quite a month ago. Her nomination was on the agenda for the November
14 15th business meeting, but the morning of the 15th, I received a request that her
15 nomination be held over until the next business meeting. And in traditional practice,
16 we have acceded to those requests.

17 That same day, I sent everybody a letter saying that the next business meeting
18 would be the rescheduled meeting that we are at right now.

19 Then to my surprise, over the Thanksgiving recess, I received another letter
20 asking that Ms. Aponte's nomination be deferred further, and the stated reason was to

1 permit the committee to hold a closed hearing at which it would examine whether the
2 FBI properly conducted its 1998 background investigations of Ms. Aponte.

3 Now, obviously, I understand everybody is busy, and we all have a lot to do.
4 But in fairness, I made the chair's judgment that this nomination has really been out
5 there for a long time now. In essence, you could go back to 1998 when it was out there,
6 but it has certainly been out there over these past months. And there are certain
7 practical consequences, I think, when there is this late a request to have sort of a
8 different kind of investigation regarding the FBI practices.

9 The FBI file was reviewed on November 3rd. There was no request for a closed
10 hearing on November 3rd or immediately subsequently. There was a nomination
11 hearing on November 8th, and ample opportunity for QFR's to be posed and responded
12 to. Again, there was no request during that period of time for a closed hearing. It was
13 not until November 22nd that anyone raised with me the sudden need to have an
14 investigation of the FBI's action on this case. And to my knowledge, neither that
15 request nor any of the underlying questions were raised with the administration itself.

16 So I have always -- and I do respect a Senator's right here to fully vet every
17 nomination that comes before the committee, but it seems to me at some point you have
18 to kind of make the judgment as to when the normal process moves forward. And I
19 believe personally that that time has come here. So I think we are in a position to
20 debate the substance of her nomination, which I would like to say a word about.

1 She has done a solid job in her capacity as the Ambassador now. She negotiated
2 an agreement with the Salvadoran Government to open a new, jointly funded electronic
3 monitoring center to provide an additional tool in fighting against transnational crime.
4 She has secured the deployment or worked on and secured the deployment of
5 Salvadoran troops to Afghanistan which makes El Salvador the only Latin American
6 country to have done that. And I have not heard of or seen any substantive rationale
7 for her not continuing in this post, and I think that is really what the committee ought to
8 be focused on.

9 So I urge my colleagues on the committee to support her nomination, and
10 certainly the floor is open to any other views, supportive or to the contrary.

11 Senator DeMint?

12 **SENATOR DEMINT.** Mr. Chairman, thank you for the opportunity to discuss it.

13 I did review a short summary of her file. It was extraordinary to me, given the
14 legitimate questions that come up, that that file had not been updated since her first
15 nomination in 1998. Well beyond the questions of judgment about the personal
16 relationship problems were other questions of judgment. And there was no FBI file.
17 The extended file is what I am talking about and the ability to get that and talking with
18 colleagues has been thwarted to say the least.

19 There are enough questions about this nominee that a closed hearing, which was
20 requested by five Republicans on this committee so that we could ask more detailed

1 questions, was something that should be our responsibility. It is not just a partisan
2 divide here, but there are legitimate questions about Ms. Aponte. And in the files that I
3 saw, all I came away with was more questions about her judgment over the years,
4 personal, political, as well as professionally.

5 So this is not a witch hunt. This is just a request for legitimate discussion behind
6 closed doors so that some of these issues that can be brought up. I have serious
7 questions about her, before and after her recess appointment, and I think we have seen
8 some continued questions about her judgment as Ambassador. So I strongly oppose
9 her re-nomination and would encourage you, if you want to move forward with this -- I
10 do not think it is too large a request to have a closed meeting so that we can discuss
11 some of these issues that are security issues that we cannot bring up in this hearing
12 today.

13 **THE CHAIRMAN.** Is there any other discussion or debate? Senator Boxer?

14 **SENATOR BOXER.** Yes. What I feel bad about is this FBI file business. You know, it
15 reminds me of something I grew up with when I was a kid. Well, let us look at the FBI
16 file. Look, we have all had a chance and our staffs have had a chance to look at the FBI
17 file. I just want to be clear. There is nothing in that FBI file, nothing at all, in my view
18 that would say we need to talk to the FBI.

19 What I think this is about -- and Senator DeMint, forgive me if I am wrong. I
20 think it is about this, and if I am wrong, please tell me because we respect each other's

1 view. What I think this is about is the fact that she wrote an op-ed -- the Ambassador
2 wrote an op-ed in recognition of June as Gay Pride Month, in which she said that all
3 people should be treated equally with dignity and respect regardless of your sexual
4 orientation. She wrote we can work together to end violence and discrimination based
5 on sexual orientation by increasing education and engagement on the issue.

6 There may be differences in this committee on the whole issue of equal rights,
7 but I have to say I do not think that is an inflammatory statement. As a matter of fact, it
8 stands for equality and dignity for everyone. And I just want to tell this committee a
9 little story.

10 In the late 1990's, Senator Feinstein and I led the fight for the nomination of
11 James Hormel, an openly gay individual, to be the U.S. Ambassador to Luxembourg.
12 And he had to be given a recess appointment. There was so much prejudice that we
13 saw on the part of certain Senators. And I am just shocked, if this is true, that this is
14 part of your concern or all of your concern, that we would be holding up a nominee
15 because they wrote something that says we should stand for equal rights for everyone.
16 I am very saddened by this, and I think it shows prejudice.

17 So I wonder, if the Senator wishes to -- he does not have to say it, but am I right
18 on this point? I mean, this is a talented, knowledgeable, well-qualified person. Senator
19 Kerry has laid out some of her achievements, including convincing the government

1 there to help us in war, for goodness sake. That is tough. If this is what it is about, I
2 hope this committee would stand for equality today and move this forward.

3 **SENATOR DEMINT.** Senator, I objected to her nomination long before she was
4 Ambassador or had a chance to write that editorial. I think it does suggest -- and as you
5 mentioned, there are differences in this room. And it is certainly not the role of our
6 Ambassador to impose one opinion or another on another people. And there was
7 enough objection from the Salvadoran people that we should question her judgment on
8 that. But that was not why I asked for more information.

9 Her relationship with a suspected intelligence agent for Cuba and attempts to
10 recruit her just brought enough questions to light that we should ask questions because
11 the FBI file we are looking at is well over 10 years old. It has not been updated since
12 some of these questions have arisen, and I just think we have a responsibility as a
13 committee to look into this. So it is not any one thing, but I think anyone who looked at
14 the file I did would see a pattern of poor judgment in her life that suggests that we
15 should look a little deeper than what we are getting from the records right now.

16 **THE CHAIRMAN.** Senator Durbin?

17 **SENATOR BOXER.** Before Senator Durbin, I feel I must respond because this
18 individual got two top security clearances since that old FBI report -- two top security
19 clearances. And for us to say that our Ambassador should not stand for equality for all
20 people, that disturbs me.

1 **SENATOR DURBIN.** Mr. Chairman?

2 **THE CHAIRMAN.** Senator Durbin?

3 **SENATOR DURBIN.** Mr. Chairman, I have read the editorial op-ed piece that
4 Ambassador Ponte wrote, and then I read your piece [Senator DeMint's] [A transcript of
5 Senator DeMint's Human Events op-ed can be found on page 35 of this document.] in
6 Human Events in response to it. There is an element that has been left out here that
7 should be included in the record. The notion that she was taking a position contrary to
8 the culture and mores of El Salvador is betrayed by one paragraph in her op-ed piece,
9 and I would like to read it for the record.

10 She wrote: "Last March during the Human Rights Council of the United
11 Nations, the United States and El Salvador with 83 countries signed the Declaration for
12 the Elimination of Violence Against the LGBT Community, and in May 2010, President
13 Funes signed Decree 56 which prohibits all forms of discrimination by the Government
14 of El Salvador on the grounds of sexual orientation or identity." She goes on to say," I
15 applaud the efforts of the Salvadoran Government for the rights of the LGBT
16 community both nationally and internationally."

17 Your message [Senator DeMint's] in the Human Events piece was that she was
18 speaking contrary to the feelings and culture and values of El Salvador. It is clear that
19 what she said reflected public positions already taken by that nation in the United
20 Nations, as well as by its president. So I think that argument fails.

1 I would also argue the suggestion that we just do not know enough about her
2 has been answered quite well by the Senator from California. If she has cleared two top
3 security clearances since last she was considered, obviously many, many hard questions
4 have been asked and answered. In fairness to this woman, I think she deserves an
5 opportunity for a vote.

6 **SENATOR DEMINT.** Let me respond just briefly because she may have gotten the
7 clearance, but our understanding was that it was against the advice of the professional
8 intelligence people and it was overridden by political people. It was something that I
9 asked the White House to get back with us on. I did not get a clear answer. It was one
10 of the reasons that we wanted to have a closed hearing so we could find out more
11 about, first of all, why was the file and just the background not updated for 10 years,
12 and was there really an override, a political override, over --

13 **SENATOR DURBIN.** Senator, that is a pretty serious charge.

14 **SENATOR DEMINT.** Well, it is not a charge. It is a question, Senator Durbin, and it is
15 a question that we wanted answered. And that is the only thing we are trying to do
16 here is to have a behind-closed-doors meeting, not a political showboat meeting trying
17 to do anything to the detriment of this nominee. But we do not have enough
18 information about this person, and we requested it. Five of the Republicans on this
19 committee have requested a closed hearing. I do not think that is too much to ask.

20 **THE CHAIRMAN.** Senator Rubio?

1 **SENATOR RUBIO.** Thank you, Mr. Chairman.

2 On the same nominee but on a different topic, I actually met Ms. Aponte a year I
3 was elected. She had some friends of mine, and I was impressed by her when we met.
4 After full disclosure, I said at the hearing after I was elected, we have an issue in El
5 Salvador. She was very helpful in that. In fact, I was impressed by her ability to bring
6 together a pretty unique coalition of former presidents in El Salvador to support her
7 nomination to come up here, which was a sign a diplomatic ability.

8 Nevertheless, I am going to vote not only against her but against Mr. Namm, and
9 I did earlier with Ms. Jacobson. I want to explain why.

10 I am deeply concerned about the policy of this administration in the hemisphere
11 and the region. I am concerned about what happened in Nicaragua. We have not taken
12 a strong enough stance with regard to that election that just took place or semblance of
13 an election. I am concerned about the fact that Mr. Alan Gross is an American hostage
14 in Cuba and that there has not been any sort of repercussions or sanctions as a result of
15 that which is an outrage. And finally, I am concerned about the U.S. democracy
16 funding in Cuba and the activities they are in, not strictly adhering to section 109 of the
17 Libertad Act.

18 So it is for those reasons that I reserve the right to vote against any nominee in
19 the Western Hemisphere moving forward until these issues are confronted. And I will
20 say this, if in fact over the next week or 10 days or at some point in the future, we could

1 start making some progress on these issues, I am prepared to reconsider my position
2 not just on her nomination but on all these nominations that are coming up today. It
3 may not be necessary. It looks like you have the votes, but I wanted to make sure that
4 was on the record as far as what my position is today and what it could potentially be
5 moving forward so we can make some progress on these three concerns that I have
6 outlined here today. And I wanted to make sure that was reflected in the record.

7 **THE CHAIRMAN.** Thank you, Senator Rubio. I appreciate your recognition of her
8 diplomatic skill. And while you have the right, obviously, to express your concern
9 about the direction of the policy in the region, it seems to me that not having an
10 Assistant Secretary to improve that relationship or to work on it is sort of counter-
11 productive and it plays into the very concerns expressed. But you have, as I say, every
12 right to express it, and I recognize that.

13 **SENATOR MENENDEZ.** Mr. Chairman?

14 **THE CHAIRMAN.** Yes, Senator Menendez?

15 **SENATOR MENENDEZ.** I do not know how much time is left on the vote that is going
16 on. Mr. Chairman, I am going to take a little bit of time here.

17 Let me start off by saying that I chaired both of Ambassador Aponte's
18 nomination hearings before her recess appointment and subsequently since she has
19 been our Ambassador, and I have real problems in the way in which her nomination is

1 being treated. I actually think that what we have here is a boogeyman that is impossible
2 to defeat.

3 **THE CHAIRMAN.** Can I just interrupt you for one second?

4 Are you coming back?

5 **SENATOR CORKER.** Yes.

6 **SENATOR ISAKSON.** Mr. Chairman, I have turned in a proxy. I cannot get back.

7 **THE CHAIRMAN.** Well, we need a quorum here. I want everybody's guarantee we
8 will keep a quorum here so we can complete our business. What I would like to do is
9 recess for 2 minutes, 3 minutes max, go up and vote, and come right back.

10 [Recess.]

11 **THE CHAIRMAN.** We have 10 here. Therefore, what I would like to do, while we
12 wait for Senator Menendez to arrive, since he was next in line to speak, if nobody
13 objects, since we take advantage of the time, we have Adam Namm to be Ambassador
14 to Ecuador and Elizabeth Cousens to be Ambassador to the U.N. Economic and Social
15 Council and also Alternate Representative to the U.N. General Assembly. Is there any
16 debate regarding either of those two?

17 [No response.]

18 **THE CHAIRMAN.** If not, I know of no request --

19 **SENATOR RUBIO.** As long as I am recorded as a no on Mr. Namm.

20 **THE CHAIRMAN.** All right.

1 Also I would ask the clerk record Senator Risch as opposed to the prior two
2 nominees, McFaul and Jacobson.

3 All those in favor with respect to Adam Namm and Elizabeth Cousens en bloc,
4 say aye.

5 [Chorus of ayes.]

6 **THE CHAIRMAN.** And nays?

7 [Chorus of nays.]

8 **THE CHAIRMAN.** Senator Risch is recorded no on both. The ayes have it and they
9 are approved.

10 We also have the two Foreign Service lists to be considered. Is there any
11 comment or debate with respect to either of the lists?

12 [No response.]

13 **THE CHAIRMAN.** If there is not, I would suggest they both be voted on en bloc. All
14 those in favor, say aye.

15 [Chorus of ayes.]

16 **THE CHAIRMAN.** Opposed, nay?

17 [No response.]

18 **THE CHAIRMAN.** The ayes have it and they are approved.

19 And now we will go back to the business of before. Senator Rubio?

20 **SENATOR RUBIO.** I just wanted to be recorded as a no on Mr. Namm.

1 **THE CHAIRMAN.** So recorded.

2 With that, I recognize Senator Menendez.

3 **SENATOR MENENDEZ.** Thank you, Mr. Chairman.

4 Let me pick up where I left off with my concern about how this particular
5 nominee is being treated. I chaired her hearings both before she became the
6 Ambassador by a recess appointment and the subsequent one since she has been our
7 Ambassador. I believe that we are in a set of circumstances where we are trying to
8 defeat a boogeyman. There are some real concerns that I have about the way she is
9 being judged by others.

10 First, Senator DeMint at her hearing raised a concern, stating that one of the
11 reasons he would be voting against her was because of the op-ed piece that she wrote in
12 El Salvador. I think it sets a very unfortunate precedent that could affect other nominees
13 that come before this committee. Why do I say that? In June, Ambassador Aponte, at the
14 direction of the State Department, offered an op-ed for Salvadoran newspapers about
15 President Obama's proclamation of June as LGBT Pride Month in which she focused on
16 the issue of tolerance and education. Ambassador Aponte wrote the op-ed pursuant to a
17 cable from the State Department to all posts asking that ambassadors write similar
18 pieces or hold events at their embassies to create awareness of LGBT issues. Based upon
19 the text provided by the Department, in essence, a demarche to the Ambassador, similar

1 editorials were written across the world and events were held by other posts worldwide
2 as well.

3 Now, why is this nominee held to a different standard when she is following a
4 demarche by the State Department? Let us hold up every nominee if that is going to be
5 the case, if you have that view.

6 In my view, it is neither appropriate nor acceptable to condition a nomination
7 based on advocacy on this issue and even less so when it is undertaken in response to
8 what is essentially an order from the Department. You would have your ambassadors
9 disobey an order from the Secretary of State.

10 Also, as Senator Durbin pointed out, this 1 is not in conflict with those who have
11 been chosen to govern in El Salvador as President Funes issued an executive decree and
12 order that recognizes the rights of the LGBT community. He is the elected
13 representative of the Salvadoran people, not those of us sitting in this room. I had visits
14 from the most conservative past presidents that El Salvador has ever known, all
15 representatives of the ARENA party, and among others at her hearing, we had former
16 President Christiani. You cannot get more conservative elected officials of El Salvador
17 all saying that she should be and has done an extraordinary job.

18 My second concern is in regards the request from a number of our Republican
19 colleagues requesting a classified hearing to examine whether Ambassador Aponte's
20 1998 background investigation into her personal life was somehow deficient or unduly

1 influenced. As you pointed out, Mr. Chairman, we broke with a process history here in
2 order to grant Senator DeMint access to her file.

3 I delegated the access that was delegated to me to show there is nothing to be
4 hidden in that file. In fact, not one but two Republicans had the opportunity to see her
5 file in a good faith effort to show that any concerns about her nomination were really
6 for naught.

7 Ambassador Aponte has been thoroughly investigated by the FBI and diplomatic
8 security. She has been subject not one but to two investigations and received a top
9 secret clearance on both occasions. To suggest that one could go through two processes,
10 receive a top secret clearance, and still believe there was some type of collusion within
11 the FBI and diplomatic security whereby she was granted a top secret clearance even
12 though she did not merit it is really pretty outrageous.

13 Now, finally, let me just say there is no one in this committee, nor I would
14 venture to say in the United States Senate, who has a longer history on advocacy for
15 freedom for the Cuban people-- no one who has sought to fight the Castro regime more
16 vigorously-- than I, even when it has brought me in conflict with some of my colleagues
17 on my side of the aisle, even when it has cost me political capital. If I believed for one
18 moment anything that I have read or any of the people I have talked to in regards to
19 Ambassador Aponte's background that the effort to proselytize a personal boyfriend by

1 the Cuban regime infected her, I would be the first to have opposed her from the very
2 beginning. And that is simply not the case. It is simply not the case.

3 She has shown herself to be more than capable in the last year. She has
4 accomplished in El Salvador what others have not been able to. I cannot say that she
5 was the focus of this, but even the dismissal of one of the ministers who we have long
6 suspected of having killed an American happened during her tenure. That is an internal
7 question for the El Salvadorans, but I am sure that we have long pressed that issue for
8 some time and it is under this Ambassador that that person was dismissed by this
9 administration.

10 So you get that. You get a treaty for drug efforts. You get soldiers sent to fight
11 abroad from a Central American country. That is an extraordinary record. This person
12 is being held for reasons that clearly in my mind are not transparent.

13 So with that, Mr. Chairman, I really hope that not only will she pass today but
14 that she will be allowed to have an up or down vote. This can all be debated on the
15 floor. And I ask unanimous consent to include, among other letters, the Hispanic
16 National Law Association and the National Council of La Raza in strong support of her
17 nomination.

18 **THE CHAIRMAN.** Without objection, both letters will be made a part of the record.

[The information referred to above is located on pages 32-34 in
"Additional Material Submitted for the Record"]

19 **THE CHAIRMAN.** Is there any further discussion or debate?

1 **SENATOR DeMINT.** Senator Kerry, if I could respond briefly?

2 **THE CHAIRMAN.** Senator DeMint?

3 **SENATOR DeMINT.** My understanding -- and this is what the White House told me -
4 - is the FBI file has not been updated since the first review in 1998, which seemed again
5 extraordinary to me given when she was re-nominated it was not updated. And there
6 were just enough questions that we wanted to ask them. So this again is a pattern. It is
7 not any one thing, and it is more questions than accusations. But it does seem
8 extraordinary in this situation that if she has been nominated to be an ambassador and
9 her file was not updated after some fairly serious questions. We did not want it to be
10 for public review. That is why we asked for a closed hearing. This is not something we
11 surprised you with last week, despite what was said earlier, because from staff-to-staff
12 communication, it has been very clear that we had some serious questions that we
13 would like answered before this vote today.

14 But again, I appreciate the opportunity to express my concerns.

15 **THE CHAIRMAN.** Well, Senator DeMint, here is what I would like to do, and I
16 would like to do this in good faith and I would like to ask your good faith in response
17 because I do not think it is fair to nominees to sort of haul them through an undue or
18 unanticipatable process, as Senator Menendez has eloquently stated, singled them out
19 and see them treated unfairly, and I know you do not want to see anybody treated that
20 way. So I will as chair, with the consent of the ranking member, if you are agreeable to

1 this -- I want to continue with the process today because I really think everything we
2 have said stands in terms of the length of time, the absence of this request at the
3 nomination or at the hearing and so forth.

4 But and in fairness to you, I will personally work with you if you will work with
5 me and see what we can do to find a way to answer your questions. Obviously, I would
6 rather not have floor time taken up with a fight. We are willing to if we need to, but I
7 do not want to if we can avoid it. So I would like to work with you to see if we can find
8 a way to answer some of your questions, the critical ones that might bear on this, and
9 we could do it in a way that does not result in any sort of a delay and a long process. So
10 if you will work with me on that to get those kinds of answers to you, I promise you
11 that I will work with the administration and with any appropriate authority to see what
12 we can do to clarify anything for you in an appropriate way. Is that fair?

13 **SENATOR DEMINT.** That is fair.

14 **THE CHAIRMAN.** With that said --

15 **SENATOR MENENDEZ.** Mr. Chairman, can I just comment on that?

16 **THE CHAIRMAN.** Senator Menendez?

17 **SENATOR MENENDEZ.** I just hope that to the extent that the chair is considering
18 holding such a classified --

19 **THE CHAIRMAN.** No, I am not considering holding a classified hearing.

1 **SENATOR MENENDEZ.** Obviously, this nomination needs a vote before the end of the
2 year, otherwise we will not have an Ambassador in El Salvador.

3 **THE CHAIRMAN.** I am specifically not talking about a classified hearing. I am
4 talking about a process to work with Senator DeMint to get him the answers to his
5 questions, if possible. I will work in good faith to try to do that without abusing the
6 process.

7 **SENATOR CARDIN.** Mr. Chairman, please let me respond very briefly to Senator
8 Rubio's point.

9 The Alan Gross issue to me is a travesty of justice. December 3rd is 2 years he
10 has been held in a Cuban prison for no reason. And I want to see action there also. But
11 I will tell you as a person who has traveled to many of our embassies around the world,
12 having an Ambassador in place is critically important for us to be able to conduct
13 foreign policy and to get our positions better articulated, and I think voting against the
14 nominees of people who are qualified where we could have people in place who could
15 make a difference in our hemisphere puts us at greater risk. So I just really wanted to
16 make that.

17 I was at the hearing with Ms. Jacobson. We questioned her on this point. Her
18 views on Alan Gross I thought were well taken. And I feel comfortable now to have
19 this person confirmed we are going to be in a better position to take action appropriate
20 to help Mr. Gross.

1 **THE CHAIRMAN.** Is there any further debate?

2 [No response.]

3 **THE CHAIRMAN.** If not, again, Senator, we will sit down and try to get at this.

4 Therefore, the name of Mari Aponte is before the committee with respect to her
5 nomination to be Ambassador to El Salvador.

6 **SENATOR MENENDEZ.** So moved.

7 **SENATOR BOXER.** Second.

8 **THE CHAIRMAN.** All those in favor --

9 **SENATOR DEMINT.** I would like a recorded vote.

10 **THE CHAIRMAN.** A recorded vote is requested. The clerk will call the roll.

11 **THE CLERK.** Mrs. Boxer?

12 **SENATOR BOXER.** Aye.

13 **THE CLERK.** Mr. Menendez?

14 **SENATOR MENENDEZ.** Aye.

15 **THE CLERK.** Mr. Cardin?

16 **SENATOR CARDIN.** Aye.

17 **THE CLERK.** Mr. Casey?

18 **THE CHAIRMAN.** Aye by proxy.

19 **THE CLERK.** Mr. Webb?

20 **THE CHAIRMAN.** Aye by proxy.

1 **THE CLERK.** Mrs. Shaheen?

2 **THE CHAIRMAN.** Aye by proxy.

3 **THE CLERK.** Mr. Coons?

4 **SENATOR COONS.** Aye.

5 **THE CLERK.** Mr. Durbin?

6 **SENATOR DURBIN.** Aye.

7 **THE CLERK.** Mr. Udall?

8 Senator Udall: Aye.

9 **THE CLERK.** Mr. Lugar?

10 **SENATOR LUGAR.** No.

11 **THE CLERK.** Mr. Corker?

12 **SENATOR CORKER.** No.

13 **THE CLERK.** Mr. Risch?

14 **SENATOR RISCH.** No.

15 **THE CLERK.** Mr. Rubio?

16 **SENATOR RUBIO.** No.

17 **THE CLERK.** Mr. Inhofe?

18 **SENATOR LUGAR.** Votes no by proxy.

19 **THE CLERK.** Mr. DeMint?

20 **SENATOR DEMINT.** No.

1 **THE CLERK.** Mr. Isakson?

2 **SENATOR LUGAR.** Votes no by proxy.

3 **THE CLERK.** Mr. Barrasso?

4 **SENATOR LUGAR.** Votes no by proxy.

5 **THE CLERK.** Mr. Lee?

6 **SENATOR LUGAR.** Votes no by proxy.

7 **THE CLERK.** Mr. Chairman?

8 **THE CHAIRMAN.** Aye.

9 **THE CLERK.** 10 ayes, 9 nays.

10 **THE CHAIRMAN.** The nomination is sent to the floor, approved by a vote of 10 to 9.

11 Senator DeMint? If I could just have Senator DeMint's attention for 1 minute.

12 Senator, I just want to say I understand exactly where we are, as you do, with respect to

13 the floor. But I do want to work with in good faith on this, and it will require genuine

14 good faith by both of us to try to find a way to satisfy that.

15 **SENATOR DEMINT.** I am very sensitive to Senator Rubio's concerns. I very much

16 appreciate the committee working with him on that and I hope together we can do

17 something.

18 **THE CHAIRMAN.** Let us try and do that. I think it would be better for everybody.

19 Is there any further business?

20 [No response.]

1 **THE CHAIRMAN.** If not, I thank everybody for taking time and standing in here.

2 Thank you.

3 We stand adjourned.

[Whereupon, at 3:10 p.m., the hearing was adjourned.]

Additional Material Submitted for the Record

SUBMITTED BY SENATOR MENENDEZ



November 4, 2011

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The Honorable John F. Kerry
Chairman
United States Senate Committee on Foreign Relations
446 Dirksen Senate Office Building
Washington, D.C. 20510-6225

Dear Chairman:

In early 2010, the National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the U.S., wrote to the members of the Senate Committee on Foreign Relations in strong support of the nomination of Mari Carmen Aponte as United States Ambassador to El Salvador. Nearly two years later, her nomination is still awaiting Senate confirmation. This is an unconscionable delay for her and the country and we urge that the Committee move her nomination forward and allow the U.S. Senate to confirm Ms. Aponte as soon as possible.

In our previous correspondence, we noted -- given Ms. Aponte's vast experience as an attorney, small businesswoman, and community leader -- that she would make an outstanding representative to one of the U.S.' most important allies in the region. We also felt that her knowledge and understanding of Central America and its issues made her an especially valuable addition to the U.S.'s diplomatic efforts. Since September of 2010, Ms. Aponte has been serving her country as Ambassador to El Salvador after being given a recess appointment by President Barack Obama. In that role, she has not only met but exceeded expectations.

As someone who has excelled in every level of her distinguished career, it is no surprise that Ms. Aponte has had such a positive impact in such a short time. She has been a strong advocate for the United States' political, economic, and security interests, initiatives, and values in the region. In addition, she has earned the trust and respect of Salvadoran leaders across the political spectrum as an "honest broker" in El Salvador's mission to strengthen its democracy after many years of turmoil.

We urge the Committee to act swiftly on Ms. Aponte's long-overdue confirmation to allow her to continue the critically important work she has already started. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Janet Murguía". The signature is fluid and cursive, with the first name "Janet" and the last name "Murguía" clearly legible.

Janet Murguía
President and CEO

Regional Offices: Chicago, Illinois • Los Angeles, California
New York, New York • Phoenix, Arizona • San Antonio, Texas

Benny Agosto, Jr.
National President



November 8, 2011

Via Electronic Mail

The Honorable Harry Reid
Majority Leader, U.S. Senate
522 Hart Senate Office Building
Washington, DC 20410-6275

The Honorable Mitch McConnell
Minority Leader, U.S. Senate
317 Russell Senate Office Building
Washington, DC 20510

Re: Confirmation of Mari Carmen Aponte as U.S. Ambassador to the Republic of El Salvador

Dear Senator Reid and Senator McConnell:

On behalf of the Hispanic National Bar Association (HNBA), I write to urge the expeditious confirmation of Ms. Mari Carmen Aponte as the U.S. Ambassador to the Republic of El Salvador. The HNBA is a non-profit, non-partisan membership organization that presents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, law students, and legal professionals in the United States and its territories.

A highly qualified and distinguished leader, Ms. Aponte was one of the first Latinas to earn the prestigious White House Fellowship and has worked in the government, private, and non-profit sectors in the course of her long and illustrious professional career. She is a nationally recognized leader, and her extensive professional experience demonstrates her legal acumen and skills as a spokesperson and diplomat. In the private sector, she represented major international companies; in the non-profit sector, she similarly represented important constituencies.

Moreover, she has already served exceptionally as Chief of Mission to El Salvador for a year. It is imperative that Ms. Aponte continue her good work as a confirmed appointee, the HNBA requests that the U.S. Senate fulfill its duty by proceeding with her speedy confirmation. We urge you to exert your leadership as Majority and Minority Leader, respectively, to ensure her prompt Senate confirmation.

Ms. Aponte has been an active member of the HNBA for the past thirty years and was the first Latina to serve as National President of the HNBA (1983-1984). She has also served the HNBA in various capacities, most recently as a member of the HNBA Commission on the Status of Latinas in the Legal Profession. In 2009, the HNBA recognized Ms. Aponte during its Annual Convention with the Lifetime Achievement Award, noting her contributions to the legal profession and Latino community at large.

HNBA | 1900 L Street NW, Suite 700 | Washington, DC | 20036 | (202) 223-4777 | www.hnba.com

Confirmation of Mari Carmen Aponte as the U.S. Ambassador to the Republic of El Salvador
November 8, 2011
Page 2

We are proud to have benefitted from Ms. Aponte's talent and leadership skills as an organization, and we look forward to all that she will achieve as she continues to serve our country in this capacity. Thank you again for your work to promptly confirm qualified and diverse nominees such as Ms. Aponte.

Should you have any questions, please feel free to contact me through our national office at (202) 223-4777 or contact me directly at (713) 222-7211.

Sincerely,



Benny Agosto, Jr.
HNBA National President

cc: Peter M. Reyes, Jr., HNBA President-Elect
Zuraya Tapia-Hadley, HNBA Executive Director

APONTE'S AGENDA

by Senator Jim DeMint

[The following transcript of Senator DeMint's op-ed piece was taken from *Human Events*, on-line from November 9, 2011:

<http://www.humanevents.com/article.php?id=47410>]

Mari Carmen Aponte proved those who doubted her nomination to become U.S. Ambassador to El Salvador right when she wrote a questionable editorial that inflamed tensions in the very country where she is supposed to be improving diplomatic relations.

Aponte has shown poor judgment over the years and due to overriding concerns about her background and qualifications for the position, has twice failed to be confirmed to an ambassadorship by the U.S. Senate.

Now that President Obama has granted her a recess appointment to the plum assignment, she's igniting controversy. Ambassadors should be able to promote American interests while, at the same time, respecting the culture of the country where they work. That's something Ms. Aponte utterly failed to do when she wrote an editorial in a Salvadoran newspaper lecturing their people on the need to accept and support the gay lifestyle.

Ms. Aponte published a piece that discussed "homophobia" in June 2011—the month the Obama Administration designated as Lesbian, Gay, Bisexual, and Transgender pride month. "Homophobia" is "often based on lack of understanding about what it truly means to be gay or transgender" the Ambassador wrote in *La Prensa Grafica*. She went on to say that everyone has a responsibility to "inform our neighbors and friends about what it means to be lesbian, gay, bisexual or transgender."

Aponte praised Secretary of State Hillary Clinton for her previous remarks that "gay rights are human rights" and also noted gay pride month is celebrated

with “parades, festivals, and educational campaigns” in the United States where the gay rights movement “celebrates its identity throughout the country.”

Her provocative editorial stirred controversy and was rebuked throughout Latin America. A wide range of religious, community and family groups from across the region wrote a response to Ms. Aponte in *El Diario de Hoy* that said: “Ms. Aponte, in clear violation of the rules of diplomacy and international law, you intend to impose to Salvadorans, disregarding our profound Christian values, rooted in natural law, a new vision of foreign and bizarre values, completely alien to our moral fiber, intending to disguise this as ‘human rights.’”

The coalition, which includes dozens of organizations from El Salvador and other countries like Mexico and Honduras, said the only thing that they agreed with Ms. Aponte about is that violence against homosexuals should be repudiated, but it should be condemned just the same as crimes against “skinny, fat, tall or short people.” And, they added, “this of course does not mean accepting the legal union between same sex individuals.”

“Not accepting the legitimacy of ‘sexual diversity’ does not mean we are violating any human rights,” the coalition stated.

The coalition has since written a letter asking the U.S. Senate to oppose her nomination and remove Aponte from her position “as soon as possible so that El Salvador may enjoy the benefits of having a better person as a government representative of your noble country.”

It is highly unlikely she could survive a Senate confirmation vote, which requires a 60-vote threshold. The White House has continually denied requests for information regarding her past ties to Cuban intelligence officials and her misguided editorial doesn’t inspire confidence, either.

The reason why Aponte was rejected by all Republicans on the Senate Foreign Relations Committee last year stems from her first sunken nomination.

In 1998, Aponte was nominated by President Bill Clinton to become Ambassador to the Dominican Republic, but her nomination was withdrawn after questions were raised about the 12 year romantic relationship she had with a man whom she lived with for eight years. He was targeted as part of an FBI counterintelligence investigation and allegedly worked for Cuba's spy agency. A high-ranking Cuban defector also claimed that Cuban intelligence tried to recruit Aponte to be a spy for the Cuban government. Rather than discuss her past relationship, Aponte withdrew her nomination and it was filled by someone else.

Since then she has served as a board member for the National Council of La Raza and the Puerto Rican Legal Defense Fund—two organizations that serve radically liberal interests.

When President Obama nominated Aponte to become the U.S. Ambassador to El Salvador many senators were again concerned about her past relationship with Cuban intelligence officials as well as her qualifications. Instead of allowing senators to access that information, Obama granted her a recess appointment in August 2010.

Ms. Aponte's decision to publish an opinion piece hostile to the culture of El Salvadorans, presents even more doubts about her fitness for the job. The Senate should reject her nomination when her recess appointment expires at the end of this Congress and force the president to appoint a new nominee who will respect the pro-family values upheld by the people of El Salvador.

Our relationship with the Salvadoran people has been one of trust and friendship for decades. We should not risk that by appointing an ambassador who shows such a blatant disregard for their culture and refuses to clear unsettled doubts about her previous relationships. It's time to bring Ms. Aponte home.