

# CRS Report for Congress

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## **Immigration Related Border Security Legislation in the 109<sup>th</sup> Congress**

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## Summary

Border security is considered a central aspect of the United States' overall homeland security. Securing the border involves controlling the official ports of entry (POE) through which legitimate travelers and commerce enter the country, as well as monitoring and patrolling the nation's land and maritime borders to detect and interdict the entry of illegal persons and contraband. The Department of Homeland Security's Bureau of Customs and Border Protection (CBP) is the lead federal agency charged with securing our nation's borders at and between POE.

In the 109<sup>th</sup> Congress, there are a large number of bills currently pending that would address some of the immigration issues associated with border security by focusing on the movement of people into the country, both at POE and illegally across the U.S. international land border. This report will focus on the main legislative issues facing the 109<sup>th</sup> Congress relating to the movement of people across the border. It will not address interior enforcement issues or cargo security issues.

At POE, CBP officers screen travelers attempting to enter the country by air, land, or sea to ensure that unwanted or dangerous people do not enter the country. The main issues facing Congress at POE include expanding the biometric entry exit system currently being used to screen entrants; whether the resources currently fielded by the agency (including personnel, technology, and infrastructure) are adequate to the task at hand; and whether the "one face at the border" initiative, which combined the customs and immigration inspections functions, has been successful.

Between POE, United States Border Patrol (USBP) agents attempt to detect and prevent the illegal entry of terrorists, weapons of mass destruction, unauthorized aliens, and contraband. A number of issues between POE that would be addressed by legislation are currently pending in the 109<sup>th</sup> Congress, including whether DHS has a viable border security strategy; whether the USBP has the adequate resources to achieve operational control of the border; the expansion of fencing along the border with Mexico; allowing the military to patrol or surveil the border; allowing the states or civilians to patrol the border; expanding the expedited removal program or requiring mandatory detention of aliens apprehended between POE; and removing Air and Marine Operations from CBP and making it a separate office within DHS.

The following bills are included in this report: H.R. 98, H.R. 193, H.R. 255, H.R. 418, H.R. 688, H.R. 780, H.R. 1196, H.R. 1320, H.R. 1502, H.R. 1805, H.R. 1817, H.R. 1912, H.R. 1986, H.R. 2092, H.R. 2330, H.R. 3622, H.R. 3693, H.R. 3704, H.R. 3938, H.R. 4009, H.R. 4083, H.R. 4099, H.R. 4238, H.R. 4240, H.R. 4283, H.R. 4312, H.R. 4313, H.R. 4412, H.R. 4437, S. 12, S. 1033, S. 1374, S. 1438, S. 1823, S. 1875, S. 1916, S. 2049, and S. 2061.

This report will be updated periodically as events warrant.

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# Immigration Related Border Security Legislation in the 109<sup>th</sup> Congress

## Current Legislative Developments

On May 11, 2005, the Emergency Supplemental Appropriation Act (P.L. 109-13) was enacted with a provision relating to the construction of border fencing. This provision originated in H.R. 418, the REAL ID Act, which was appended to H.R. 1268. H.R. 418 was also passed as a standalone measure in the House on February 10, 2005, and was referred to the Senate on February 17, 2005. On December 6, 2005, H.R. 4312, the Border Security and Terrorism Prevention Act of 2005, was reported out of the Homeland Security Committee. On December 16, 2005, H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, was passed by the House; the bill was referred to the Senate on December 17, 2005.

## Introduction

Before September 11, 2001, border security fell piecemeal under the mandate of many diverse federal departments, including but not limited to the Department of Justice (the Immigration and Naturalization Service); the Department of the Treasury (the Customs Service); the Department of Agriculture (the Animal and Plant Health Inspection Service); and the Department of Transportation (the Coast Guard). In the aftermath of the terrorist attacks of September 11, 2001, policymakers have focused a great deal of attention on securing America's international borders. The Homeland Security Act of 2002 (P.L. 107-296) consolidated most federal agencies operating along the U.S. borders within the newly formed Department of Homeland Security (DHS), which was charged with securing the nation against a potential terrorist attack.<sup>1</sup> Most of these agencies were located in the Directorate of Border and Transportation Security<sup>2</sup> (BTS), which was charged with securing the borders; territorial waters; terminals; waterways; and air, land, and sea transportation systems of the United States; and managing the nation's ports of entries. The FY2006 DHS Appropriations Act (P.L. 109-90) eliminated BTS and required the two of its component agencies, Customs and Border Protection (CBP) and Immigration and

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<sup>1</sup> For a more detailed information on DHS, see CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, by Jennifer Lake.

<sup>2</sup> For brief overview of the agencies involved in border security, please refer to CRS Report RS21899, *Border Security: Key Agencies and Their Missions*, by Blas Nuñez-Neto.

Customs Enforcement (ICE), to report directly to the Secretary's office.<sup>3</sup> The U.S. Coast Guard was established as, and remains, a standalone division within DHS.

The concept of border security is an intricate part of overall homeland security. Border security involves securing the many means by which people and things can enter the country. Operationally, this means controlling the official ports of entry (POE) through which legitimate travelers and commerce enter the country, and patrolling the nation's land and maritime borders to safeguard against and interdict illegal entries. Within DHS, CBP is the agency charged with securing the nation's international border at and between POE.

At POE, CBP Officers screen the goods and travelers that are attempting to enter the country to ensure that unwanted or dangerous people and things do not enter the country. Between POE, Border Patrol Agents attempt to detect and prevent the illegal entry of terrorists, weapons of mass destruction, unauthorized aliens, and contraband. Although the movement of goods into the country is clearly an important aspect of the overall security of the U.S. borders, this report will focus on the movement of people into the country<sup>4</sup> because that has been the main issue addressed by most of the border security legislation currently being considered in the 109<sup>th</sup> Congress. Cargo security issues are planned to be discussed in a forthcoming report.

This report is organized to reflect the main border security issues relating to the movement of people into the country, as indicated by the legislation currently pending in the 109<sup>th</sup> Congress. As such, it focuses on legislation with provisions affecting the movement of people into the country between POE, and at POE. **Appendix A** includes a table that tracks the status of the bills that are discussed in this report. **Appendix B** includes a table that groups the bills discussed by issue area.

## Border Security Between Ports of Entry<sup>5</sup>

The United States Border Patrol (USBP) within CBP is charged with securing the U.S. international land border between POE, detecting and preventing the entry of terrorists, weapons of mass destruction, and illegal aliens into the country, and interdicting drug smugglers and other criminals along the border. As such, the USBP patrols over 8,000 miles of the U.S. international borders, including the roughly 2,000 mile Southern and 4,000 mile Northern borders. In its efforts to secure the

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<sup>3</sup> The other components of BTS are the Federal Protective Services, the Federal Law Enforcement Training Center, and the Transportation Security Agency.

<sup>4</sup> For an expanded look at immigration related legislation, including interior enforcement, please refer to CRS Report RL33125, *Immigration Legislation and Issues in the 109th Congress*, by Andorra Bruno, Ruth Wasem, Alison Siskin, Blas Nuñez-Neto, and Stephen Viña.

<sup>5</sup> For an extended discussion of the U.S. Border Patrol and border security between POE, please refer to CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Blas Nuñez-Neto.

border, the USBP deploys a wide range of resources, including technologies such as unmanned aerial vehicles (UAVs), sensors, and cameras; infrastructure, including fences, vehicle barriers, and checkpoints; on-road and off-road vehicles, boats, fixed wing aircraft, and helicopters. There has been much debate in the 109<sup>th</sup> Congress concerning whether DHS has sufficient resources to adequately fulfill its border security mission. Many of the issues identified between POE relate to resource requirements and allocation strategies.

## **Border Security Strategy**

Some bills include provisions that would require the Secretary of DHS to submit a comprehensive plan for securing the United States' borders. H.R. 4312 and H.R. 4437 both include a provision that would require the Secretary to submit a National Strategy for Border Security within one year of enactment. The Strategy would include, among other things, a surveillance plan for monitoring the border; an assessment of the threat posed by terrorists who might attempt to infiltrate the U.S. along the border; a risk assessment of all POE and all borders regarding the prevention of unlawful entry and of contraband smuggling, including weapons of mass destruction; an assessment of the best mix of technology, equipment, personnel, and training needed to address security vulnerabilities; an assessment of the staffing, resource, technology, and detention needs for border security functions; and a timeline for implementation of the plan.

## **Border Fencing and Other Barriers**

In the early 1990s, the USBP incorporated the construction of physical barriers directly on the border into their National Strategic Plan as part of the "Prevention Through Deterrence" strategy,<sup>6</sup> which called for reducing unauthorized migration by placing agents and resources directly on the border abutting population centers. In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996<sup>7</sup> which, among other things, expanded an existing fence in San Diego by authorizing the Immigration and Naturalization Service (INS) to construct a triple-layered fence along the same 14 miles of the US-Mexico border near San Diego. Construction of the last 4.5 miles of the triple fence stalled, however, due to environmental concerns raised by the California Coastal Commission.<sup>8</sup>

A number of bills introduced in the 109<sup>th</sup> Congress include provisions relating to the construction of border fencing and other barriers. The REAL ID Act of 2005 (H.R. 418) was incorporated into the Emergency Supplemental Appropriations Act

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<sup>6</sup> For an expanded discussion of the USBP, please refer to CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Blas Nuñez-Neto.

<sup>7</sup> See P.L. 104-208, Div. C. IIRIRA was passed as part of the Omnibus Consolidated Appropriations Act of 1997.

<sup>8</sup> For an expanded discussion of the USBP's border fence, please refer to CRS Report RS22026, *Border Security: Fences Along the U.S. International Border*, by Blas Nuñez-Neto and Stephen Viña.

(H.R. 1268), which eventually became P.L. 109-13, enacting a provision expanding the Secretary's authority to waive legal requirements in order to ensure expeditious construction of authorized barriers and roads. The Secretary recently announced that he will use this new authority to complete construction of the San Diego fence. H.R. 4083 would amend the INA to direct the Secretary to construct a fence along the entire southwest border and would authorize \$2 billion for this purpose. S. 1916 includes a provision requiring the Secretary to study the feasibility and cost of constructing a triple fence along the southwest border. S. 2049 would direct the Secretary to construct whatever fencing and other infrastructure is necessary to achieve operational control of the border. H.R. 4313 and S. 2061 would direct the Secretary to construct a two layered reinforced fence along the southern international land border, starting with high alien traffic and smuggling areas. H.R. 4313 would also direct the Secretary to create a border zone within 100 yards of the land border and would require other agencies to transfer any land in their jurisdiction that falls inside the border zone to DHS without reimbursement. H.R. 4313 would also direct the Secretary to undertake a review and value assessment of all property in the border zone owned by private parties and state and local governments, and to begin acquiring this property as soon as practicable.

H.R. 4437, as amended, would direct DHS to construct two layered reinforced fencing and additional physical barriers, roads, lighting, cameras and sensors along roughly 730 miles<sup>9</sup> of the southern border, including: 20 miles around Tecate, CA; from Calexico, CA to Douglas, AZ; from Columbus, NM to El Paso, TX; from Del Rio, TX to Eagle Pass, TX; and from Laredo, TX to Brownsville, TX. The bill would designate the roughly 370 mile portion of the fence between Calexico, CA and Douglas, AZ a priority area and would direct DHS to ensure that "an interlocking surveillance camera system" is installed along this area by May 30, 2006, and that the fence is completed by May 30, 2007. The bill would also designate a 30 mile stretch around Laredo, TX as a priority area and would direct DHS to complete this fencing by December 31, 2006.

H.R. 4312 and H.R. 4437 would require DHS to reimburse property owners for the costs incurred repairing private infrastructure along the border damaged by aliens entering the country illegally. The bill would authorize appropriations of \$50,000 a year for this program.

## **Military or Civilian Assistance for the Border Patrol**

A variety of bills have been introduced that would supplement DHS resources by involving the military or civilians in patrolling the U.S. border. These bills vary widely in scope, from some that would involve the states in the enforcement of immigration law to others that would only authorize civilians to act as observers and notify the USBP concerning any illegal activity they observed.

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<sup>9</sup> This is a conservative estimate generated by calculating the length of a straight line between each of the locations outlined in the provision. Given the fact that the border is not a straight line, the actual length of the fencing that would be required by this provision is certain to be longer.

**U.S. Military at the Border.** The National Defense Authorization Act for Fiscal Year 2006 (H.R. 1815), as passed by the House, includes a provision (§1035) to authorize the U.S. military to be deployed to the border to assist DHS in preventing the entry of terrorists, drug smugglers, and unauthorized aliens at and between official ports of entry. U.S. military personnel would be deployed to the border only at the request of the Secretary of Homeland Security and only after completing a training course on border law enforcement. Military personnel would have to be accompanied by DHS law enforcement personnel once deployed, and would not be authorized to conduct searches, seizures, or other similar law enforcement activities, or to make arrests. H.R. 1815 would not supersede the Posse Comitatus Act, which prohibits the use of the U.S. military to perform civilian governmental tasks unless explicitly authorized to do so.<sup>10</sup> This provision was also introduced as a standalone bill, H.R. 1986. H.R. 3938 contains similar language that would allow the Department of Defense (DOD) to assign members of the armed forces to be deployed to the border to assist DHS in preventing the entry of terrorists, drug traffickers, and illegal aliens both at and between POE. The bill would allow the military to inspect cargo, vehicles, and aircraft. H.R. 688 would amend the Posse Comitatus Act to allow the military to undertake law enforcement activities at or near the border. S. 2049 would allow the National Guard to be deployed to the border for support purposes, including assisting in construction along the border and monitoring the border, but would specifically exclude law enforcement activities. H.R. 4240 would amend the Posse Comitatus Act to allow the Army and Air Force to execute laws “at or near the border of the United States” in order to prevent unauthorized aliens and terrorists from entering the country illegally.

Several bills would direct DHS to collaborate with DOD in surveilling the land borders. H.R. 4312 and H.R. 4437 would require DHS and DOD to develop and submit a joint strategic plan for increasing the availability and use of military equipment to assist with the surveillance of the border. H.R. 4313 and S. 2061 would also direct the Secretary to develop and implement a plan to use DOD’s surveillance assets along the southern border to assist DHS and to submit a report to Congress regarding this plan no later than six months after enactment.

**Civilian Patrols.** Several bills in the 109<sup>th</sup> Congress would create civilian border patrolling organizations. In the Senate, S. 1823 would establish a pilot Volunteer Border Marshal Program. This program would use volunteer state peace officers who would be assigned to the Border Patrol and charged with assisting in “identifying and controlling illegal immigration and human and drug trafficking.” In the House, H.R. 3704 would create a Border Patrol Auxiliary that would be deployed to the border and charged with notifying the Border Patrol about unauthorized aliens attempting to cross into the United States. These auxiliaries would be vested with the same powers as Border Patrol agents. DHS would be charged with recompensing members of the Auxiliary for their travel, subsistence, and vehicle operation expenses. H.R. 3622 would authorize state governments to

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<sup>10</sup> For a detailed explanation of the Posse Comitatus Act (18 U.S.C. 1385), please see CRS Report RS20590, *The Posse Comitatus Act and Related Matters*, by Jennifer Elsea; and CRS Report RS21012, *Terrorism: Some Legal Restrictions on Military Assistance to Domestic Authorities Following a Terrorist Attack*, by Charles Doyle and Jennifer Elsea.

create a militia called the Border Protection Corps (BPC) in order to prevent the illegal entry of individuals and to take individuals who have entered illegally into custody. DHS would be responsible for recompensing the states for all the expenses incurred in the establishment and operation of their BPCs. H.R. 4099 would establish a Citizen Corps within the USA Freedom Corps and charge the new organization with coordinating homeland security volunteer activities. The bill would also create the Border Corps as an organization within the Citizen Corps that would be administered by CBP. Members of the Border Corps would be unpaid volunteers and would be charged with assisting the USBP in carrying out its mission, with a primary focus on helping with surveillance, communication, transportation, and administrative support. The bill would also authorize annual appropriations of \$50 million for the Citizen Corps and \$20 million for the Border Corps for FY2007-FY2012. S. 2049 would establish a Deputy Border Patrol Agent Program that would be made up of retired law enforcement officers. The bill would direct the Secretary to utilize these deputies to provide whatever border security functions DHS deems are appropriate. S. 2049 would authorize appropriations of \$10 million from FY2007 to FY2011 for this program.

## Border Resources

**Manpower.** A number of bills include provisions directing the Secretary to hire 2,000 additional USBP agents each year from FY2007 to FY2010, as authorized by the Intelligence Reform and Terrorist Prevention Act (IRTPA) of 2004, P.L.108-458. These bills include S. 1438; S. 1916; H.R. 3938; H.R. 4099; H.R. 4312; and H.R. 4437. H.R. 4313 and S. 2061 would add 1,000 to the number of agents authorized in IRTPA each FY from FY2007 through FY2011. H.R. 1817 would authorize funding for 2,000 additional agents in FY2006. H.R. 4044 would increase the USBP by 2,500 agents in FY2006; 2,750 agents in FY2007; 3,000 agents in FY2008; 3,250 agents in FY2009; and 3,500 agents in FY2010. H.R. 4044 contains provisions that would increase the maximum amounts of student loan repayment programs for USBP agents; direct the Secretary to “exercise to the fullest extent allowable” his authority to pay recruitment and relocation bonuses to USBP agents; reestablish the Anti-Smuggling Unit within the USBP and staff the unit with at least 500 criminal investigators recruited from the USBP; and increase the pay for journeyman USBP officers to the General Schedule (GS) 13 level. H.R. 4312, H.R. 4437, and H.R. 4283 would require the Comptroller General of the United States to undertake a review of the USBP’s training practices to ascertain their cost effectiveness. H.R. 4312 and H.R. 4437 would also require a review of what the effects of utilizing non-federal training programs to train USBP agents would be.

**Surveillance.** A number of bills include provisions directing the Secretary to procure different kinds of surveillance technologies that may be necessary to enhance DHS’ ability to monitor the border. H.R. 4312 and H.R. 4437 include a provision that would direct the Secretary of DHS to provide for the systematic surveillance of the international land border through more efficient use of its personnel and of technologies such as unmanned aerial vehicles (UAV), sensors, satellites, radars, and cameras. Both bills would also require the DHS Inspector General to review and report on all the contracts greater than \$20 million awarded under the Secure Border

Initiative.<sup>11</sup> S. 1438, S. 1916, and H.R. 3938 would also call for the procurement of UAVs, cameras, poles, sensors, and other technologies necessary to achieve operational control of the borders of the United States and would also authorize \$500 million each year from FY2006 to FY2010 for this purpose. H.R. 1320 would require DHS to submit a comprehensive plan to ensure continuous monitoring of every mile of the U.S.-Mexico border and would require DHS to implement this plan one year after the plan's submission, and would authorize \$200 million in FY2005 and FY2006 for this purpose. S. 1033 and H.R. 2330 would require the Secretary to develop and implement a program to fully integrate aerial surveillance technologies, including UAVs. S. 2049 would authorize the Secretary to procure whatever assets are required to achieve operational control of the border.

**Infrastructure.** H.R. 4312 and H.R. 4437 would direct the Secretary to make the physical infrastructure enhancements needed to prevent unlawful entry and achieve operational control of the border. H.R. 3938 and S. 1438 would direct DHS to construct all-weather roads and acquire vehicle barriers, and would authorize appropriations of \$500 million each fiscal year from 2006 to 2010. H.R. 4313 includes similar language but would authorize the funding each fiscal year from 2007 to 2011. S. 1916 would direct the Secretary to construct all weather roads and acquire vehicle barriers; S. 2049 would direct the Secretary to construct whatever roads and vehicle barriers are necessary to achieve operational control of the border.

**Other Resources.** H.R. 4312 and H.R. 4437 would direct DHS to develop and implement a plan to ensure clear two-way communications for the USBP. H.R. 4312 and H.R. 4437 would require DHS to consult with the Attorney General in an effort to enhance the connectivity of DHS's Automated Biometrics Identification System (IDENT) and the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System (IAFIS) fingerprint databases.<sup>12</sup> H.R. 1320 would require DHS to integrate the IDENT and IAFIS databases. H.R. 4044 would provide a number of different types of resources to the USBP, including no less than 100 helicopters, 250 powerboats, and enough vehicles to ensure that there is one vehicle per three USBP agents. The bill would also provide portable computers with access to law enforcement databases for each vehicle, and encrypted two-way radios, GPS receivers, body armor, and night-vision equipment to every USBP agent. H.R. 4437, as amended, would require USBP uniforms to be made in the United States.

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<sup>11</sup> According to DHS, the Secure Border Initiative is a comprehensive multi-year plan to secure America's borders and reduce illegal migration through the deployment of additional USBP agents, surveillance technology, and infrastructure along the border. For more information, refer to the DHS Border Security Fact Sheet available at [[http://www.dhs.gov/dhspublic/interapp/press\\_release/press\\_release\\_0794.xml](http://www.dhs.gov/dhspublic/interapp/press_release/press_release_0794.xml)].

<sup>12</sup> The IDENT biometric database is used by DHS to identify those aliens who are serial border crossers and to identify criminal aliens. IAFIS is the FBI's master biometric database of criminal fingerprints. Congress has repeatedly directed that both databases be integrated. For more information about this issue, refer to CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Blas Nuñez-Neto.

## Expedited Removal

Non-Mexican and non-Canadian aliens apprehended by USBP agents cannot be returned to Mexico or Canada. Instead, they must be returned to their nation of origin, a process that typically takes several months and involves hearings before immigration judges. Expedited removal is a DHS policy that streamlines the removal process by allowing aliens to be removed without appearing before an immigration judge, under certain conditions.<sup>13</sup> Some bills in the 109<sup>th</sup> Congress would make changes to the current expedited removal procedures.

**Expansion of the Program.** H.R. 4312, H.R. 4437, and H.R. 4240 would insert language into the Immigration and Nationality Act requiring the Secretary to apply expedited removal to all aliens apprehended within 100 miles of the border and within 14 days of their entry. S. 1916 and S. 2049 would expand expedited removal to all USBP sectors along the southwest border “as soon as operationally possible.” S. 1916 would also prohibit the expeditious removal of an alien until the Director of Field Operations certified in writing that the alien’s removal does not pose a security risk to the United States. S. 1916 and S. 2049 would authorize an appropriation of \$20 million each year from FY2007 through FY2011. H.R. 3938 and S. 1438 would also expand expedited removal to all border patrol sectors and would authorize appropriations of \$10 million for this purpose each year from FY2006 to FY2010.

**Mandatory Detention.** DHS currently releases many apprehended non-Mexican aliens with notices to appear before an immigration judge for a deportation hearing. This is done mainly due to a lack of detention bedspace, and has been called by some critics a catch and release policy.<sup>14</sup> H.R. 4312, H.R. 4437, and H.R. 4238 would require that all aliens apprehended at POE or along the border be detained until they are removed or admitted into the country.

## Air and Marine Operations/CBP Air<sup>15</sup>

The Legacy U.S. Customs Service had a group within it called the Air and Marine Interdiction Division (AMID). The creation of the DHS, and subsequent reorganization of legacy agencies within DHS, moved AMID from the U.S. Customs Service’s Office of Investigation, and made it a stand alone office in ICE, under the name Office of Air and Marine Operations (AMO). The FY2005 DHS Appropriations Act (P.L. 108-334) effectively transferred AMO back to CBP. Congress, for several years, has expressed concern over potential overlap between the various agencies within DHS with air and marine assets (AMO, the Border Patrol, and the Coast Guard). As a part of the effort to rationalize air and marine

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<sup>13</sup> For additional information on the apprehension of non-Mexican and non-Canadian aliens and on expedited removal, please refer to CRS Report RL33097, *Order Security: Apprehensions of “Other Than Mexican” Aliens*, by Blas Nuñez-Neto, Alison Siskin, and Stephen Viña, and CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Wasem.

<sup>14</sup> *Ibid.*

<sup>15</sup> This section was prepared by CRS Analyst Jennifer Lake.

assets within DHS, AMO was moved back to CBP and the Department proceeded with a consolidation of AMO and Border Patrol assets, at least on the operational level. However, issues have arisen with the potential ‘sectorization’ of AMO assets, where AMO aircraft and personnel would be placed under the operational control of the USBP sector chiefs; and with the differences of mission between the two units.

**Organization.** H.R. 4312 and H.R. 4437 would amend the Homeland Security Act (P.L. 107-296) to establish an Office of Air and Marine Operations as a separate entity within DHS that would report directly to the Secretary and be headed by a Presidentially appointed Assistant Secretary for Air and Marine Operations. The bills would also codify the missions, duties and other aspects of the new office.

**National Capital Region (NCR) Airspace.** H.R. 4312 and H.R. 4437 would require the Secretary to submit within 120 days of enactment a report describing the impact the NCR airspace security mission has on DHS’s ability to protect the borders of the U.S. The report would include details of the resources devoted to the NCR airspace mission and an assessment of impact that the diversion of these assets to the NCR airspace mission might have had or will have on the traditional border security missions of DHS.

## Miscellaneous Provisions

**Coordination with Tribal Governments.** A number of bills address the issue of coordination between DHS and the various tribal governments along the U.S. international border. H.R. 4312 and H.R. 4437 would advance a sense of Congress that DHS should strive to include within its National Strategy for Border Security recommendations on how to enhance cooperation with sovereign Indian Nations. H.R. 1320 and H.R. 4009 would establish an “Office of Tribal Security” within DHS charged with coordinating relations between the federal government and Indian tribes on homeland security issues. H.R. 3938 and S. 1438 would establish a grant program for Indian Tribes with lands adjacent to the border for law enforcement activities, health care services, environmental restoration, and the preservation of cultural resources. Both bills would also require a report from DHS concerning the level of USBP access to tribal lands, the extent to which immigration laws could be improved by enhanced access to tribal lands, and the number of grants currently provided by DHS to Indian tribes relating to border security. The report should also contain a strategy for improving access to tribal lands through cooperation with tribal authorities.

**Shadow Wolves.** Prior to the creation of DHS, the Shadow Wolves were an elite Customs Patrol investigative unit within the U.S. Customs Service charged with enforcing customs laws and interdicting smugglers within the Tohono O’odham reservation. The Shadow Wolves were created after years of negotiation between the Customs Service and the Tribe, and members of the unit must be certified Native American. The Shadow Wolves were originally placed within ICE when DHS was created, but were subsequently moved into CBP where they are administratively under the USBP. Because the USBP is not an investigative unit, this has created some issues. A number of bills would require DHS to transfer the Shadow Wolves from CBP to ICE in order to emphasize the unique unit’s investigative functions. Bills with provisions like this include H.R. 1320; H.R. 4312; and H.R. 4437.

**Using Homeland Security Grants for Border Security Activities.**

H.R. 4312 and H.R. 4437 would allow states and local governments to enter into an agreement with DHS to use grant funding from the State Homeland Security Grant Program, the Urban Area Security Initiative, and the Law Enforcement Terrorism Prevention Program, to reimburse the costs associated with detecting and responding to the unlawful entry of aliens.

**Injured Alien Data Collection.** Each year, hundreds of unauthorized aliens die attempting to enter the United States illegally. Many aliens require medical attention when they are apprehended. H.R. 4312 and H.R. 4437 would require DHS to collect quantifiable data on the number of aliens apprehended by the USBP and arriving at POE requiring medical attention, including the number of aliens referred to local hospitals or other health care facilities.

**Border Security Advisory Committee and Center of Excellence.**

H.R. 4312 and H.R. 4437 would establish a Border Security Advisory Committee, with representatives from state, local, and tribal governments located along the U.S. borders and community representatives from these states, to advise the Secretary on border security and enforcement issues. Both bills would also establish a university based Center of Excellence for Border Security to address and research the threats and vulnerabilities of the U.S. border control systems.

**Border Security Threat Assessment and Exercise.**

H.R. 4312 and H.R. 4437 would require DHS to design and carry out a border security exercise within one year of the bills' enactment. This exercise would include officials from federal, state, local, tribal, and international governments as well as representatives from the private sector, and would be used to test and evaluate the ability to anticipate, detect, and disrupt threats to the U.S. borders and the information sharing capability among these entities.

**Border Security Coordination and Management.**

H.R. 4312 and H.R. 4437 would require DHS to ensure the coordination between CBP, ICE, and Citizenship and Immigration Services, including the formation of various mechanisms and task-forces within DHS. The purpose of these entities would include sharing information, intelligence, and analysis between immigration-related agencies and better coordinating the federal efforts and the allocation of federal resources in order to manage and control the border.

## Border Security at Ports of Entry

There are currently 317 official POE into the United States,<sup>16</sup> including 216 airports that are international POEs, 143 seaports, and 115 land POEs.<sup>17</sup> CBP officers assigned to these POE may be responsible for more than one mode of transportation, even processing all three conveyance types: air, land, and sea. As individuals attempt to enter the country through POE, CBP Officers must inspect their documentation to ascertain whether they have legal authorization to enter. In order to make their decision regarding whether to admit the individual, CBP Officers must use a variety of different databases and must examine the traveler's documents. There are a number of issues relating to this process that are being considered in the legislation currently pending in the 109<sup>th</sup> Congress.

### Biometric Entry Exit Program

A number of different bills include provisions requiring DHS to implement a biometric entry/exit program. The current biometric entry/exit system is the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program, which requires selected foreign nationals attempting to enter the United States to submit two fingerprints and a photograph when arriving to the country through an airport POE. This information is used to verify their identity and administrative status. The program is in the process of being expanded to all POE, but does not currently feature an exit component.<sup>18</sup>

**US-VISIT.** Some bills call for enhancing the capabilities of the current US-VISIT program. H.R. 4437 and H.R. 4312 would direct DHS to collect 10 fingerprints from aliens currently required to register in US-VISIT as they enter the country. S. 1438, S. 1916, and S. 2049 would expand the current system by authorizing the Secretary to collect biometric data from visitors as they exit the country and to collect data from alien crew members landing in the United States. S. 1438 and S. 1916 would authorize such sums as may be necessary to implement the automated entry exit biometric program at all land POE in FY2006 and FY2007; S. 2049 would authorize such sums as may be necessary to fund this expansion each year from FY2008 to FY2010. H.R. 1320 would create an Office of US-VISIT Outreach to inform local border officials and residents about developments with the program. The bill would also require DHS to digitize the collection of arrival and departure records. S. 1033 and H.R. 2033 would require DHS to collect biometric information from visiting aliens as they enter and exit the country. H.R. 4313 would require DHS to implement an entry and exit system at land POE no later than October 1, 2006. H.R. 4437, as amended, would require DHS to submit timelines

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<sup>16</sup> For more information about inspections practices, please refer to CRS Report RL32399, *Border Security: Inspections Practices, Policies, and Issues*, by Ruth Wasem, Lisa Seghetti, Jennifer Lake, James Monke, and Stephen Viña.

<sup>17</sup> Data provided by CBP Office of Congressional Affairs, in e-mail dated Apr. 22, 2004.

<sup>18</sup> For additional information regarding the US-VISIT program, please refer to CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa Seghetti and Stephen Viña.

for deploying the US-VISIT system to all land POE and for implementing the exit component at all land POE.

## Other Technology Programs

H.R. 1320 would make permanent the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) and the NEXUS program and would create remote enrollment centers for these programs away from the borders of the United States.<sup>19</sup> The bill would also authorize appropriations for POE modifications to expand these programs, and would require an annual report from DHS concerning the implementation of these programs. H.R. 4437, as amended, would require DHS to submit a timeline for making all the immigration screening systems operated by the department interoperable. H.R. 4437, as amended, would also require DHS to institute a pilot program to evaluate the use of automated systems at no fewer than two foreign airports for pre-screening incoming travelers. Passenger information would be screened against the consolidated terrorist watchlist,<sup>20</sup> and the bill would require that the program make use of the machine-readable data elements available on passports. The bill would require the program to run for no fewer than 90 days, and would require DHS to report to Congress on the program within 30 days of its conclusion.

## POE Resources

**Manpower.** A number of bills direct the Secretary to hire no less than 250 additional CBP officers at POE in each year from FY2006 to FY2010, including S. 1916; S. 1438; H.R. 688; H.R. 3938; H.R. 4312; and H.R. 4437. H.R. 4313 would add 250 CBP officers each year from FY2007 to FY2011. S. 12 would add 200 CBP officers each year from FY2005 to FY2008. H.R. 4044, H.R. 2092, and S. 2049 would direct the Secretary to hire at least 1,000 full time CBP officers each year from FY2007 to FY2011. H.R. 2092 would also extend law enforcement retirement benefits to CBP officers and raise their maximum level of pay to the GS13 level. H.R.1320 would require DHS to double the number of CBP personnel and would authorize the Secretary to waive any Full Time Equivalent (FTE) employee limitations to accomplish this.

**Technology.** H.R. 4312 and H.R. 4437 would require DHS to deploy radiation portal monitors to all POE and would authorize such sums as may be necessary for this purpose in FY2006 and FY2007. H.R. 1320 would call for the installation of radiation portal monitors at all southern POE and would authorize \$49 million for this purpose. H.R. 4412 would require the Interagency Border Inspection

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<sup>19</sup> SENTRI and NEXUS are programs used at land ports of entry to facilitate the speedy passage of low-risk, frequent travelers. NEXUS is located at selected northern ports of entry while SENTRI is located at selected southwest ports of entry. For more information on these programs, refer to CRS Report RL32840, *Border and Transportation Security: Selected Programs and Policies*, by Lisa Seghetti, Jennifer Lake, and William Robinson.

<sup>20</sup> For more information about the terrorist watchlist, please refer to CRS Report RL32366, *Terrorist Identification, Screening, and Tracking Under Homeland Security Presidential Directive 6*, by William Krouse.

System (IBIS) to be integrated with all existing U.S. Citizenship and Immigration Services databases.<sup>21</sup>

**Infrastructure.** A number of bills include provisions that would add funding for POE infrastructure and resources. H.R.1320 would authorize \$1 billion for a Land Border Infrastructure Improvement Fund to carry out infrastructure and technology improvements at POE. H.R. 4313 would add 25 POE along the international land border at locations to be determined by the Secretary, and would authorize appropriations of \$125 million for this purpose. S. 2061 would authorize the Secretary to construct additional POE at whatever locations he deems necessary, and would also authorize the Secretary to make necessary improvements to existing POE.

## Miscellaneous Issues

**One Face at the Border.** Prior to the formation of DHS, customs and immigration inspections at POE were handled by different types of inspectors. After DHS was created, however, the Department integrated the inspection duties through the “One Face at the Border” initiative. This means that Customs and Border Protection (CBP) inspectors are essentially interchangeable and responsible for all primary inspections. H.R. 4312 and H.R. 4437 would require DHS to submit a report: describing the goals, benefits, and challenges of the initiative; providing a breakdown of the current numbers of inspectors and their pre-DHS agency; and describing the current training given to inspectors and the steps taken to ensure the maintenance of the expertise of customs, immigration, and agricultural inspectors. H.R. 4044 would create three “distinct inspectional occupations: immigrations, customs, and agriculture” within CBP that would coordinate closely with each other but that would report to separate operational chains of command. H.R. 1320 and H.R. 1817 would require DHS to submit a report to Congress on the “One Face at the Border Initiative.”

**CBP and ICE Organizational Division.** In the 109<sup>th</sup> Congress, there has been some debate concerning whether the current organizational division between CBP and ICE is justified due to the apparent lack of coordination and communication between the two agencies. H.R. 1817 would require the Secretary to submit a report outlining the rationale for and the benefits of the current organizational division of CBP and ICE.

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<sup>21</sup> IBIS is a broad system that interfaces with the FBI’s National Crime Information Center (NCIC), the Treasury Department’s Enforcement and Communications System (TECS II), the former INS’s National Automated Immigration Lookout System (NAILS) and Non-immigrant Information System (NIIS) and the Department of State’s (DOS) Consular Consolidated Database (CCD), Consular Lookout And Support System (CLASS) and TIPOFF terrorist databases. Because of the numerous systems and databases that interface with IBIS, the system is able to obtain such information as whether an alien is admissible, an alien’s criminal information, and whether an alien is wanted by law enforcement.

**Canine Units.**<sup>22</sup> H.R. 4312 and H.R. 4437 would require, subject to the availability of appropriations, an increase of at least 25% (above the number of positions funded in the previous fiscal year), of the number of canine detection teams in use at U.S. ports of entry for each of the fiscal years 2007 to 2011. H.R. 4285 would increase by not less than 25%, subject to the availability of appropriations, for each of fiscal years 2007 to 2011 the number of trained detection canines: for CBP to be deployed at and between the nation's POEs; for the Transportation Security Administration to be deployed at the nation's airports and mass transit systems; for the Coast Guard, Secret Service, Federal Protective Service, and the Federal Emergency Management Agency (FEMA). H.R. 4285 would require the Secretary to fully coordinate and maximize the use of DHS' canine training facilities and resources, consider ways to utilize the canine teams trained by other public and private entities to increase the number of teams that might be available to DHS, and to report to Congress within 120 days of enactment on how DHS plans to carry out these efforts. Finally, H.R. 4285 would require the Secretary to prioritize the use of domestically bred canines, and to consult with other Federal agencies to encourage the domestic breeding of canines, to consolidate procurement and to reduce the cost of purchasing canines. H.R. 1320 would authorize necessary appropriations to increase the number of CBP canine units by 20% above the level in place at the end of FY2004. H.R. 1320 would also require the proportionate distribution of the new units to both the northern and southern borders, and would require that the new units be used only for bomb, passenger and currency detection purposes.

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<sup>22</sup> This section was prepared by CRS Analyst Jennifer Lake.

## Appendix A. Immigration Related Border Security Legislation

| Bill Number | Sponsor       | Title  | Last Action |
|-------------|---------------|--|-------------|
| H.R. 98     | Dreier        | Illegal Immigration Enforcement and Social Security Protection Act of 2005   | IH          |
| H.R. 193    | Linda Sanchez | To amend the INA to provide for compensation to States incarcerating undocumented aliens charged with a felony or two or more misdemeanors.  | IH          |
| H.R. 255    | Jackson Lee   | Commercial Alien Smuggling Elimination Act of 2005   | IH          |
| H.R. 418    | Sensenbrenner | REAL ID Act  | RFS         |
| H.R. 688    | Barrett       | Securing America's Future through Enforcement Reform Act of 2005   | IH          |
| H.R. 780    | Ruppersberger | To amend Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 to provide for assured funding for more Border Patrol agents.  | IH          |
| H.R. 1196   | Ortiz         | To improve the security clearance process along the United States-Mexico border, to increase the number of detention beds, and for other purposes.   | IH          |
| H.R. 1268   | Lewis         | Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005  | P.L. 109-13 |
| H.R. 1320   | Reyes         | Secure Borders Act   | IH          |
| H.R. 1502   | Berman        | Civil Liberties Restoration Act of 2005  | IH          |
| H.R. 1805   | Slaughter     | To establish the position of northern border coordinator in DHS  | IH          |
| H.R. 1817   | Cox           | Department of Homeland Security Authorization Act for Fiscal Year 2006   | RFS         |
| H.R. 1912   | Graves        | Emergency Immigration Workload Reduction and Homeland Security Enhancement Act of 2005   | IH          |
| H.R. 1986   | Goode         | To amend Title 10, USC, to authorize the secretary of defense to assign members of the army, navy, air force, and marine corps, under certain circumstances and subject to certain conditions, to assist DHS in the performance of border protection functions | IH          |
| H.R. 2092   | Jackson-Lee   | Save America Comprehensive Immigration Act of 2005   | IH          |
| H.R. 2330   | Kolbe         | Secure America and Orderly Immigration Act   | IH          |
| H.R. 3622   | Culberson     | Border Protection Corps Act  | IH          |
| H.R. 3693   | Price         | Secure the Outside Perimeter (STOP) Act of 2005  | IH          |

| Bill Number | Sponsor       | Title  | Last Action |
|-------------|---------------|--|-------------|
| H.R. 3704   | Drake         | Protecting America Together Act of 2005  | IH          |
| H.R. 3938   | Hayworth      | Enforcement First Immigration Reform Act of 2005   | IH          |
| H.R. 4009   | Thompson      | Department of Homeland Security Reform Act of 2005   | IH          |
| H.R. 4083   | Goode         | Border Security Improvement Act  | IH          |
| H.R. 4099   | McCaul        | Homeland Security Volunteerism Enhancement Act of 2005   | IH          |
| H.R. 4238   | McCaul        | Border Security Enforcement and Detention Act of 2005  | IH          |
| H.R. 4240   | Hostetler     | Secure America Act of 2005   | IH          |
| H.R. 4283   | Rogers        | Review to Ensure High Quality Cost-Effective Training for Border Patrol Agents Act of 2005   | IH          |
| H.R. 4312   | King          | Border Security and Terrorism Prevention Act of 2005   | RH          |
| H.R. 4313   | Hunter        | TRUE Enforcement and Border Security Act of 2005   | IH          |
| H.R. 4412   | McHenry       | Comprehensive Immigration Data And Technology Accountability Act of 2005   | IH          |
| H.R. 4437   | Sensenbrenner | To amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes | IH          |
| S. 12       | Biden         | Targeting Terrorists More Effectively Act of 2005  | IS          |
| S. 1033     | McCain        | Secure America and Orderly Immigration Act   | IS          |
| S. 1374     | McCain        | A bill to amend the Homeland Security Act of 2002 to provide for a border preparedness pilot program on Indian land                                | IS          |
| S. 1438     | Cornyn        | Comprehensive Enforcement and Immigration Reform Act of 2005   | IS          |
| S. 1823     | Hutchison     | Illegal Immigration Enforcement and Empowerment Act  | IS          |
| S. 1875     | Bingaman      | Border Law Enforcement Relief Act of 2005  | IS          |
| S. 1916     | Hagel         | Strengthening America's Security Act of 2005   | IS          |
| S. 2049     | Domenecci     | Border Security and Modernization Act of 2005  | IS          |
| S. 2061     | Nelson        | Border Security and Interior Enforcement Improvement Act of 2005   | IS          |

**Note:** IH means introduced in House; IS means introduced in Senate; RH means reported in the House; RFS means referred to Senate Committee from House.

## Appendix B. Immigration Related Border Security Legislation, by Issue Area

| Issue Area  | Bills   |
|---|---|
| Between Ports of Entry  |   |
| — Border Security Strategy                                    | H.R. 4312, H.R. 4437  |
| — Border Fencing and Other Barriers                           | P.L. 109-13, H.R. 418, H.R. 1268, H.R. 4083, H.R. 4312, H.R. 4313, H.R. 4437, S. 1916, S. 2049, S. 2061 |
| — Military Assistance at the Border                           | H.R. 688, H.R. 1815, H.R. 1986, H.R. 3938, H.R. 4240, H.R. 4312, H.R. 4313, H.R. 4437, S. 2049, S. 2061 |
| — Civilian Patrols at the Border                              | H.R. 3622, H.R. 3704, H.R. 4099, S. 1823, S. 2049   |
| — Border Resources: Manpower                                  | H.R. 1817, H.R. 3938, H.R. 4044, H.R. 4099, H.R. 4312, H.R. 4313, H.R. 4437, S. 1438, S. 1916, S. 2061  |
| — Border Resources: Surveillance                              | H.R. 1320, H.R. 2330, H.R. 3938, H.R. 4312, H.R. 4438, S. 1033, S. 1438, S. 1916, S. 2049               |
| — Border Resources: Infrastructure                            | H.R. 3938, H.R. 4312, H.R. 4437, S. 1438, S. 1916, S. 2049  |
| — Border Resources: Other Resources                           | H.R. 3938, H.R. 4312, H.R. 4437, S. 1438, S. 1916, S. 2049  |
| — Expedited Removal Expansion                                 | H.R. 3938, H.R. 4240, H.R. 4312, H.R. 4437, S. 1438, S. 1916, S. 2049                                   |
| — Mandatory Detention   | H.R. 4238, H.R. 4312, H.R. 4437   |
| — Coordination with Tribal Governments                        | H.R. 1320, H.R. 3938, H.R. 4009, H.R. 4312, H.R. 4437, S. 1438  |
| — Shadow Wolves Transfer                                      | H.R. 1320, H.R. 4312, H.R. 4437   |
| — Using Homeland Security Grants for Border Security          | H.R. 4312, H.R. 4437  |
| — Injured Alien Data Collection                               | H.R. 4312, H.R. 4437  |
| — Border Security Advisory Committee and Center of Excellence | H.R. 4312, H.R. 4437  |
| — Border Security Threat Assessment and Exercise              | H.R. 4312, H.R. 4437  |
| — Border Security Coordination and Management                 | H.R. 4312, H.R. 4437  |
| — Air and Marine Operations Organization                      | H.R. 4312, H.R. 4437  |
| — National Capital Region Airspace                            | H.R. 4312, H.R. 4437  |

| Issue Area                               | Bills   |
|--|---|
| At Ports of Entry                        |   |
| — Biometric Entry Exit Program Expansion | H.R. 1320, H.R. 2033, H.R. 4312, H.R. 4313, H.R. 4437, S. 1033, S. 1438, S. 1916, S. 2049           |
| — Other POE databases                    | H.R. 1320   |
| — POE Resources: Manpower                | H.R. 688, H.R. 2092, H.R. 3938, H.R. 4044, H.R. 4312, H.R. 4437, S. 1438, S. 1916, S. 2049, S. 2092 |
| — POE Resources: Technology              | H.R. 1320, H.R. 4312, H.R. 4412, H.R. 4437  |
| — POE Resources: Infrastructure          | H.R. 1320, H.R. 4313, S. 2061   |
| — One Face at the Border                 | H.R. 1320, H.R. 1817, H.R. 4044, H.R. 4312, H.R. 4437   |
| — CBP/ICE Organizational Division        | H.R. 1817   |
| — Canine Units                           | H.R. 1320, H.R. 4285, H.R. 4312, H.R. 4437  |