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Toward More Effective Immigration Policies: Selected Organizational Issues

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Summary

As Congress weighs comprehensive immigration reform legislation that would likely include additional border and interior enforcement, a significant expansion of guest workers, and perhaps include increased levels of permanent immigration, some question whether the Department of Homeland Security (DHS) can handle the increased immigration workload. There are concerns that the immigration responsibilities in the DHS are not functioning effectively, and DHS Secretary Michael Chertoff recently announced a “Second Stage Review” (2SR) that includes strengthening border security and interior enforcement and reforming immigration processes as major agenda items. Currently, three agencies in DHS have important immigration functions: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).

The immigration functions are dispersed across three agencies within DHS. The Assistant Secretary of ICE, the Commissioner of CBP, and the Director of USCIS all serve with the same rank directly under the DHS Secretary. Of these, only the Director of USCIS has responsibilities that are exclusively immigration. While the DHS Secretary is the lead cabinet officer on immigration issues, he shares substantial immigration policymaking roles with the Attorney General and the Secretary of State.

Some now argue the disaggregation of the government’s immigration responsibilities across several agencies has weakened immigration as a policy priority and has made it much more difficult for the executive branch to develop a comprehensive immigration reform and border security strategy. Others maintain that the current organizational structure sharpens the focus on the key, yet disparate, immigration functions and is optimal from a homeland security perspective.

In seven of the eight workload measures analyzed over the past decade in this report, the immigration workload has declined in recent years. Only removals of aliens has surpassed levels prior to the restructuring of immigration responsibilities. While several key workload trends — notably, border apprehensions and immigration adjudications — are inching upward, the workload trends in asylum, inspections, naturalization, criminal prosecutions, and work site enforcement have declined or remained flat.

Thus far, independent assessments of the functioning of immigration in DHS have centered on problems rather than successes. Indeed, the U.S. Government Accountability Office (GAO) has concluded that many of the management problems that existed before the restructuring of the federal immigration functions still remain. An underlying question is whether a sufficient length of time has elapsed to assess DHS’s efficacy in managing immigration policy. This report does not track legislation and will not be regularly updated.

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Toward More Effective Immigration Policies: Selected Organizational Issues

Introduction

As Congress weighs comprehensive immigration reform legislation that would likely include strengthened enforcement measures, a significant expansion of guest workers, and perhaps include increased levels of permanent immigration, some question whether the Department of Homeland Security (DHS) can handle the increased immigration workload.¹ In response to growing concerns that the immigration responsibilities and other important duties of DHS were not functioning effectively, DHS Secretary Michael Chertoff announced the Second Stage Review (2SR) to base work on priorities driven by risk. “Strengthen[ing] border security and interior enforcement and reform[ing] immigration processes” is on the six-point agenda driving Secretary Chertoff’s plans to improve DHS management.² Currently, three agencies in DHS have important immigration functions: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).

In 2004, the U.S. Government Accountability Office (GAO) reported that many of the management problems that plagued the former Immigration and Naturalization Service (INS) have carried over to the three DHS immigration agencies.³ Late in 2004, the Heritage Foundation released a report that reached the following conclusion: “...in consolidating responsibility for border, immigration, and transportation security, DHS actually increased the number of involved agencies to eight and created additional problems that now need solving.”⁴

There are at least three elements to consider when assessing DHS effectiveness in immigration policy: (1) the immigration laws and regulations, (2) the management and administration of the agencies charged with implementation of the immigration laws and regulations, and (3) the funding resources and staffing to carry out these laws and regulations. As **Figure 1** illustrates, these three elements drive the

¹ For example, see Mark Krikorian, “Not So Realistic: Why Some Immigration Reformers Don’t Have the Answer,” *National Review*, Sept. 12, 2005.

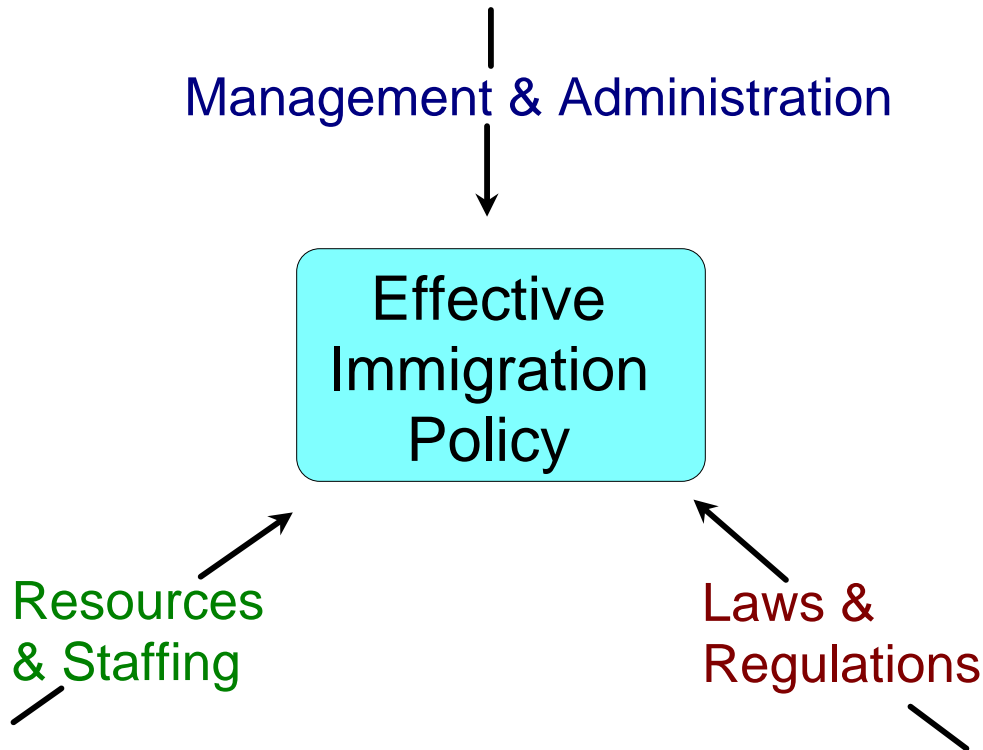
² DHS Office of the Press Secretary, *Homeland Security Secretary Michael Chertoff Announces Six-Point Agenda for Department of Homeland Security*, July 13, 2005.

³ U.S. Government Accountability Office, *Management Challenges Remain in Transforming Immigration Programs* GAO-05-81, Oct. 2004.

⁴ Heritage Foundation, *DHS 2.0: Rethinking the Homeland Security Department*, by James Jay Carafano, Ph.D., and David Heyman, Dec. 2004.

effectiveness of immigration policy. Over the years, Congress has considered all three elements to address perceived, as well as reported, problems in immigration policy.⁵

Figure 1. A Perspective on the Elements of An Effective Immigration Policy



This report focuses on the management and administration element. It analyzes the division of immigration responsibilities in DHS and sets the stage for the current debate over how these functions are organized. The report opens with a brief history of the federal responsibility for immigration and the legislative debate that led to the transfer of most immigration functions to DHS. It follows with an organizational chart depicting current immigration functions in DHS. The major immigration duties of the various DHS agencies are summarized and Secretary Chertoff’s “Second Stage Review” is explained. An analysis of available immigration workload data offers some perspectives on the work of the three agencies over time. The report concludes with a summary of key concerns, overarching views, and emerging policy questions.

⁵ For analysis of immigration funding trends, see CRS Report RL32863, *Homeland Security Department: FY2006*, and CRS Report RL32302, *Appropriations for FY2005: Department of Homeland Security*, both coordinated by Jennifer E. Lake and Blas Nuñez-Neto. For analysis of recent major legislative activity, see CRS Report RL3312, *Immigration Legislation and Issues in the 109th Congress*, coordinated by Andorra Bruno; CRS Report RL33181, *Immigration Related Border Security Legislation in the 109th Congress*, by Blas Nuñez-Neto; and CRS Report RL32616, *9/11 Commission: Legislative Action Concerning U.S. Immigration Law and Policy in the 108th Congress*, by Michael John Garcia and Ruth Ellen Wasem.

Background

Shifting Federal Responsibility for Immigration

Congress's role over naturalization and immigration derives from Article 1 of the U.S. Constitution. In 1882, Congress enacted a law providing for an examination of all aliens who arrive in the United States; in 1891, Congress established the Bureau of Immigration. In 1903, Congress transferred the various existing immigration functions from the Department of Treasury to the then-Department of Commerce and Labor. By 1905, this agency was known as the Bureau of Immigration and Naturalization.

When the Department of Labor (DOL) was established in 1913, the immigration and naturalization functions were transferred and split into the Bureau of Immigration and the Bureau of Naturalization, both in the new DOL. The two bureaus again merged into the U.S. Immigration and Naturalization Service (INS) in 1933. These immigration and naturalization functions remained in DOL until 1940, when most were moved to the Department of Justice (DOJ), largely for national security reasons.⁶ In 1952, Congress consolidated and codified the body of immigration and citizenship laws and policies into the Immigration and Nationality Act (INA).⁷

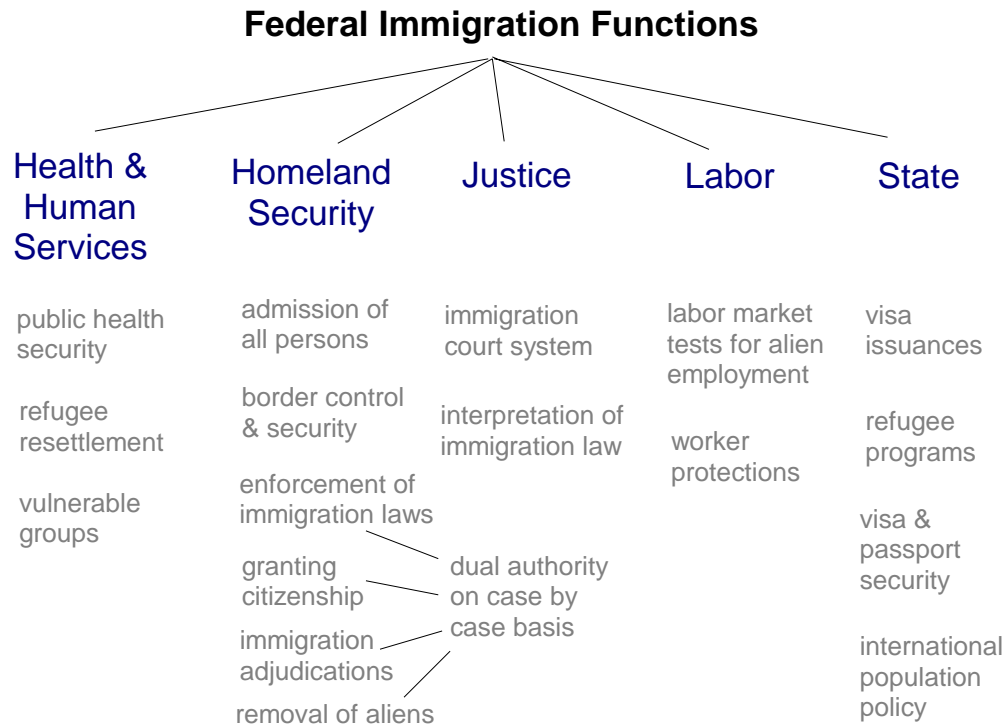
The last legislative reorganization of federal immigration functions was in 2002. Currently, five federal departments have important immigration responsibilities, with the Department of Homeland Security (DHS) as the lead. **Figure 2** presents the dispersal of immigration duties across these five departments following the enactment of the Homeland Security Act of 2002 (P.L. 107-296). Although the departments of Justice and State do not have a wide range of immigration duties, those that they do have are quite important and extensive.⁸

⁶ U.S. Congress, Senate Committee on the Judiciary, Committee Print, *History of the Immigration and Naturalization Service*, 96th Congress, Dec. 1980.

⁷ 8 U.S.C. 1101 et seq.

⁸ See **Appendix A** for a discussion of the other federal departments' immigration roles.

Figure 2. Major Immigration Responsibilities by Federal Department



Source: Congressional Research Service.

A History of Organizational Critiques

In the 1970s and 1980s, organizational critiques of INS arose as the agency was unable to stymie illegal immigration and was faced with growing backlogs of adjudications. During this period, the GAO published several reports that found problems in the administration of adjudications, the enforcement of immigration laws, and the management of case records overall.⁹ The Select Commission on Immigration and Refugee Policy (SCIRP), which Congress established in 1978, offered a comprehensive package of recommendations in 1981 that included options aimed at strengthening and streamlining INS. SCIRP referred to INS as “beleaguered” and specifically recommended that INS be elevated as an agency within DOJ, with the Commissioner upgraded to a Director reporting directly to the Attorney General.¹⁰

The Immigration Reform and Control Act of 1986 (IRCA) strengthened and broadened immigration enforcement (e.g., authorized legal sanctions against

⁹ U.S. General Accounting Office, *Need for Improvement of Management Activities of the Immigration and Naturalization Service*, 1973; *Immigration — Need to Reassess U.S. Immigration Policy*, 1976; *Prospects Dim for Effectively Enforcing U.S. Immigration Laws*, 1980; *ADP Acquisitions: Immigration and Naturalization Service Should Terminate Its Contract and Re-compete*, 1986.

¹⁰ Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest*, 1981, p. iii.

employers who hire unauthorized aliens) and legalized the status of several million unauthorized aliens living in the United States. Although this major overhaul of immigration law featured many of the recommendations of SCIRP, it did not address the organizational issues raised by SCIRP. Indeed, some observers have subsequently concluded that IRCA exacerbated the management problems of INS by overloading it with competing mandates, which included the legalization of 2.7 million unauthorized aliens, additional border controls, and the expansion of work site enforcement and employer sanctions.¹¹

When the Commission for the Study of International Migration and Cooperative Economic Development (IRCA Commission), which Congress established in IRCA, issued its final report in 1990, it called for the creation of an Agency for Migration Affairs that reported directly to the President. The IRCA Commission recommended placing all immigration, naturalization, and refugee functions from the INS (except the law enforcement functions of the Border Patrol and interior enforcement agents) and from the Department of State into this independent agency. The IRCA Commission argued that consolidating and elevating these functions would address the problems brought on by inadequate prioritization and fragmentation across departments.¹²

By the close of the 20th century, there was widespread concern with INS management that primarily centered on the competing priorities of adjudicating immigration benefits (service) and enforcing violations of immigration law (enforcement). In September 1997, the U.S. Commission on Immigration Reform became yet another congressionally mandated study group to point out the administrative and management problems that plagued the implementation of immigration policy. It described INS as an agency suffering from conflicting priorities and mission overload, whose enforcement and service missions were incompatible. The U.S. Commission on Immigration Reform opted not to echo the past commissions' proposals to elevate the federal immigration system; rather, it recommended that the federal immigration system be fundamentally reorganized by, among other things, dismantling INS.¹³

GAO focused on specific problems with INS, most notably for having antiquated databases, failing to integrate its systems, and continuing the use of paper for tracking most of its data functions. The GAO reports were critical of the INS's field and regional offices due to an absence of communication among the various

¹¹ The Rand Corporation and The Urban Institute Joint Program for Research on Immigration Policy, *Impact of the Immigration Reform and Control Act on the Immigration and Naturalization Service*, by Jeffrey Juffras, 1991.

¹² Commission for the Study of International Migration and Cooperative Economic Development, *Unauthorized Migration: An Economic Development Response*, 1990, pp. 27-32.

¹³ U.S. Commission on Immigration Reform, Report to Congress, *Becoming an American: Immigration and Immigrant Policy*, Washington, DC: Government Printing Office, 1997. The Commission was established as a result of a mandate by the Immigration Act of 1990 (P.L. 101-649). For highlights of the Commission's reorganization proposal, see **Appendix B**, an excerpt from *Becoming an American: Immigration and Immigrant Policy*.

offices.¹⁴ The DOJ Office of Inspector General also questioned the reliability of INS's information systems and the accuracy of the information.¹⁵

The last two Commissioners of INS, Doris Meisner (1993-2000) and James Ziglar (2001-2003) each proposed to restructure INS administratively into distinct enforcement and service branches.¹⁶ Ziglar's restructuring was in progress as Congress weighed legislative action, which was further fueled by the September 11, 2001, terrorist attacks. Prior to these attacks, several pieces of legislation were before the 107th Congress that would have abolished INS and would have either created two separate bureaus within DOJ to carry out INS's current services and enforcement functions, created an integrated immigration agency within DOJ, or dispersed INS's service functions among a number of different agencies and created a new enforcement agency within DOJ.¹⁷

Debate Over Immigration in the Homeland Security Act (HSA)¹⁸

When the 107th Congress weighed the broader question of homeland security and the creation of the DHS, the issue of where to locate the various immigration and citizenship functions then performed by the Department of Justice's INS and the Department of State's (DOS) Bureau of Consular Affairs became a major concern. The debate in the 107th Congress centered on several options:

- place all of INS in a newly created DHS under a Border Security and Transportation Division (Bush Administration);
- place INS's enforcement functions in DHS under the Border Security and Transportation Division, but leave INS's service function in DOJ under a newly created Bureau of Citizenship and Immigration Services (House-passed H.R. 5005);

¹⁴ For a series of GAO reports on INS management issues, see U.S. General Accounting Office, *INS: Overview of Recurring Management Challenges*, GAO Report 02-168T; Oct. 17, 2001; *Overview of Management and Program Challenges*, GAO Report T-GGD-99-148, July 29, 1999; *INS: Management Problems and Program Issues*, GAO Report T-GGD-95-11, Oct. 5, 1994; and *Information Management: INS Lacks Ready Access to Essential Data*, GAO Report IMTEC-90-75, Sept. 27, 1990.

¹⁵ U.S. Congress, House Subcommittee on Immigration and Claims, *INS Enforcement and Service Performance Issues*, 107th Cong., 1st sess., Oct. 17, 2001 Washington, DC: Government Printing Office, 2001.

¹⁶ U.S. Immigration and Naturalization Service, *A Framework for Change: The Immigration and Naturalization Service*, Apr. 1998. For further analysis, see CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*, by William Krouse, and CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals in the 107th Congress*, by Lisa M. Seghetti (hereafter cited as CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals*).

¹⁷ CRS Report RL31388, *Immigration and Naturalization Service: Restructuring Proposals*.

¹⁸ P.L. 107-296.

- place all of INS in DHS in its own Directorate of Immigration Affairs, which would have two separate bureaus for the enforcement and service functions, with border inspections as a stand-alone and dual-function entity within the Directorate of Immigration Affairs (Senate substitute); or,
- place INS's enforcement functions in the DHS Bureau of Border Security and INS's service functions in the DHS Bureau of Citizenship and Immigration Services (House-passed H.R. 5710).¹⁹

In addition to the transfer of INS, there was considerable debate over whether the issuances of visas should remain with the DOS. When the President's proposal to establish DHS (H.R. 5005) was debated, his initial plan to give the DHS Secretary exclusive authority through the Secretary of State to issue or refuse to issue visas was a thorny point. The House Select Committee on Homeland Security approved compromise language on visa issuances in H.R. 5005 that retained DOS's administrative role in issuing visas but added specific language to address many of the policy and national security concerns raised during hearings. An amendment to move the consular affairs visa function to DHS failed when the House passed H.R. 5005. The Homeland Security Act (HSA) of 2002 (P.L. 107-296) retained the compromise language stating that DHS issues regulations regarding visa issuances and assigns staff to consular posts abroad to advise, review, and conduct investigations, and that DOS's Consular Affairs continues to issue visas.²⁰

HSA's Administrative Structure for Immigration

Title IV of HSA, as in House-passed H.R. 5710, placed the immigration inspections, investigations, detention, removal, and the border patrol functions into a Bureau of Border Security, and kept the U.S. Customs Service intact. Congress placed both the Bureau of Border Security and the U.S. Customs Service in the Directorate of Border and Transportation Security, along with the Transportation Security Administration.

Under HSA, the newly created U.S. Citizenship and Immigration Services (USCIS) agency reported directly to the Secretary of Homeland Security, similar to the U.S. Coast Guard. The major activities that dominate the work of the USCIS are the adjudication of immigration petitions (including nonimmigrant change of status petitions, relative petitions, employment-based petitions, work authorizations, and travel documents); the adjudication of naturalization petitions; and the consideration of refugee and asylum claims and related humanitarian and international concerns.

The Attorney General retained considerable authority over the interpretation of immigration law and policy under HSA. Most significantly, the Executive Office of Immigration Review (EOIR), which administers and interprets federal immigration

¹⁹ CRS Report RL31560, *Homeland Security Proposals: Issues Regarding Transfer of Immigration Agencies and Functions*, by Lisa M. Seghetti and Ruth Ellen Wasem.

²⁰ CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, and CRS Report RL32256, *Visa Policy: Roles of the Departments of State and Homeland Security*, both by Ruth Ellen Wasem.

laws and regulations through the immigration court proceedings, appellate reviews, and administrative hearings of individual cases, remained in DOJ.²¹

Two specific sections in the HSA became noteworthy. Foremost, §1502 gave the President the authority for the first year after enactment of the HSA to reorganize the newly created department. Additionally §471, which abolished INS, states that the authority provided by §1502 “may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.”

Administrative Structure: 2003-2005

Administrative Reorganization

As it established the Department of Homeland Security in 2003, the Bush Administration split up the U.S. Customs Service and the Bureau of Border Security and reconfigured them into two bureaus: one that pertains to border activities, known as Customs and Border Protection (CBP), and one that pertains to interior enforcement, known as Immigration and Customs Enforcement (ICE).²² At that time, DHS stated that ICE would comprise INS interior enforcement functions, including the detention and removal program, the intelligence program, and the investigations program along with the former U.S. Custom Service interior enforcement activities. The Administration went on to state that CBP would contain the resources and missions relating to borders and ports of entry of the former U.S. Customs Service and the former INS, including the border patrol and the immigration inspections responsibilities, as well as the agricultural inspections function of the Agricultural Quarantine Inspection program.²³

The subsequent decision by CBP officials to further integrate the inspection duties so that there is “one face at the border” meant that CBP inspectors are essentially interchangeable and responsible for all primary inspections. CBP inspectors are now charged with enforcing a host of laws. The INA requires the inspection of all aliens who seek entry into the United States, and every person is

²¹ For a fuller discussion, see **Appendix A**: Other Federal Departments with Immigration-Related Responsibilities.

²² See CRS Report RS21450, *Homeland Security: Scope of the Secretary’s Reorganization Authority*, and CRS Report RL31997, *Authority to Enforce the Immigration and Nationality Act (INA) in the Wake of the Homeland Security Act: Legal Issues*, both by Stephen R. Viña.

²³ U.S. Department of Homeland Security, *Reorganization Plan Modification for the Department of Homeland Security* (submitted pursuant to the Homeland Security Act of 2002), Jan. 30, 2003; available as House Document No. 108-32; and, CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, by William Krouse and Jennifer Lake.

inspected to determine citizenship status and admissibility. All goods being imported into the United States are subject to a customs inspection, but an actual physical inspection of all goods is not required. There also are laws that subject animals and plants to border inspections. A range of legal, administrative, and policy issues have emerged with unified border inspections.²⁴

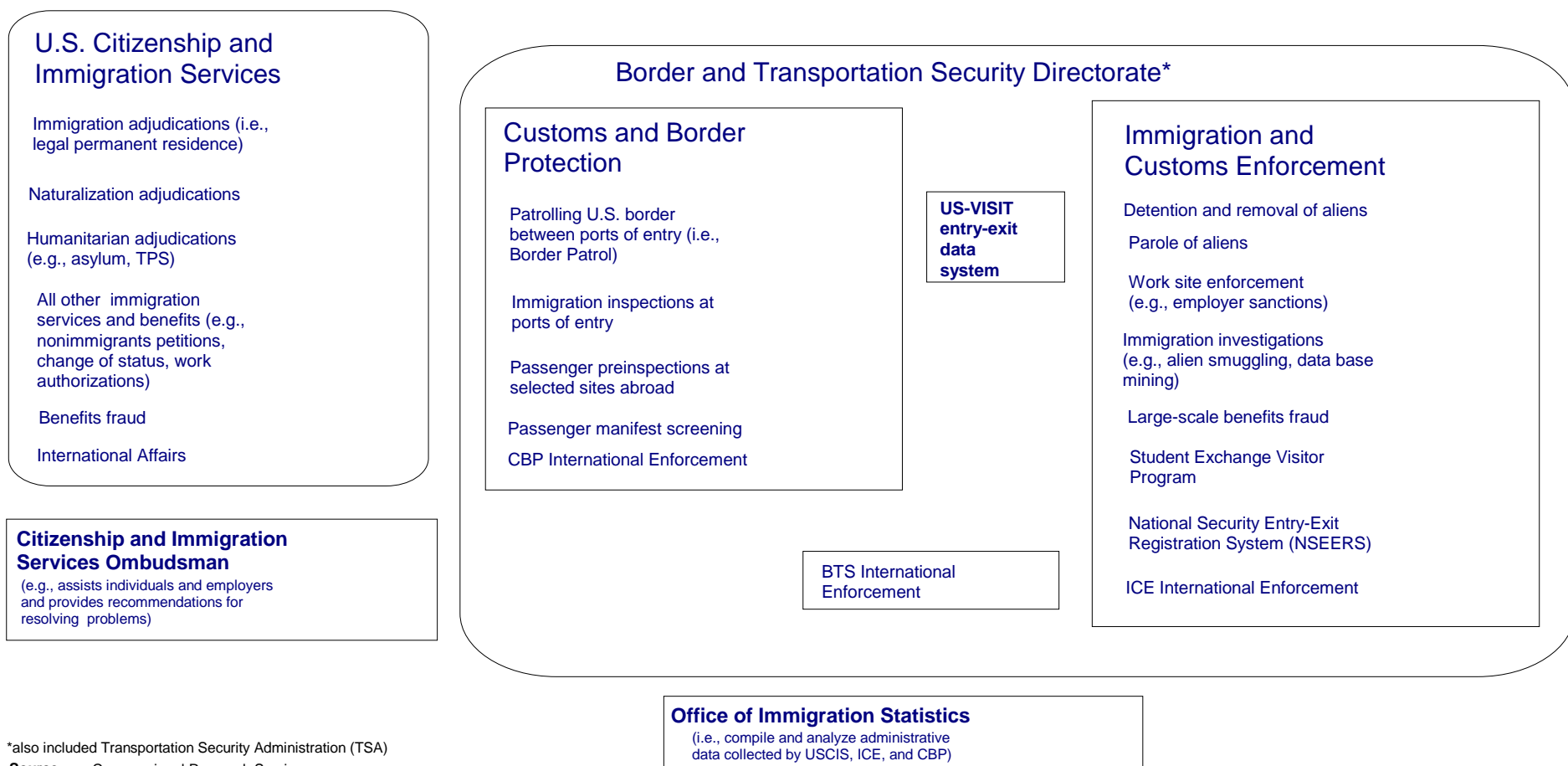
The memorandum of understanding (MOU) that implements §428 of HSA on visa policy and delineates the working relationship between DOS and DHS's three immigration-related bureaus was signed September 28, 2003. Some have expressed the view that DOS retains too much control over visa issuances under the MOU, maintaining that the HSA intended DHS to be the lead department and DOS to merely administer the visa process. Proponents of DOS playing the principal role in visa issuances assert that only consular officers in the field have the country-specific knowledge to make decisions about whether an alien is admissible and that staffing 250 diplomatic and consular posts around the world would stretch DHS beyond its capacity.²⁵

As a result of HSA, the international immigration components now have greater responsibilities than did those of the INS Office of International Affairs (OIA). Former DHS Secretary Thomas Ridge established an Office of International Enforcement in the Border and Transportation Security Directorate (BTS) to oversee DHS's activities under the MOU with DOS. **Figure 3** summarizes the placement of immigration activities in DHS from 2003 through 2005.

²⁴ CRS Report RL32399, *Border Security: Inspections Practices, Policies, and Issues*, coordinated by Ruth Ellen Wasem with Jennifer Lake, James Monke, Lisa Seghetti, and Stephen Viña. (Hereafter CRS Report RL32399, *Border Security: Inspections Practices, Policies, and Issues*.)

²⁵ CRS Report RL32256, *Visa Policy: Roles of the Departments of State and Homeland Security*, by Ruth Ellen Wasem.

Figure 3. Major Immigration Functions in the Department of Homeland Security, 2003-2005



*also included Transportation Security Administration (TSA)

Source : Congressional Research Service.

Enforcement Functions

The immigration activities generally classed under the enforcement function include the following: providing border security and management, enforcing immigration law within the interior of the United States, detaining and removing aliens found in violation of the INA and related laws, and providing immigration-related intelligence. Conducting inspections on persons at U.S. ports of entry, once considered an activity comparable to immigration benefit processing, is now considered a dual enforcement and benefit processing function.²⁶ Below is a summary of the immigration enforcement activities of DHS.

CBP Border Patrol. The border patrol activity includes enforcing U.S. immigration law, as well as some aspects of the criminal law (e.g., drug interdiction) along the border and between ports of entry. The border patrol coordinates its border security and management activities with other federal agencies, such as the Drug Enforcement Administration and the U.S. Coast Guard.²⁷

CBP Immigration Inspections. CBP inspectors examine and verify U.S. citizens and foreign nationals who seek admission to the United States at ports of entry. Immigration inspectors determine if an individual qualifies for admission and, if so, under what status. They also inspect passports, visas, and other immigration documents for possible fraud. They rely on databases, such as the US-VISIT system discussed below, to confirm whether aliens are eligible for entry. In addition to inspecting individuals seeking entry into the United States, immigration inspectors, like their border patrol counterparts, are the first line of contact for all aliens seeking entry into the country, including asylum seekers who may not have proper documents. They play the major role in facilitating the processing of people into the United States. As a result, many view CBP inspectors as retaining the dual functions of enforcement and service.²⁸

Pre-Inspections. To keep inadmissible aliens from departing for the United States, the law requires the implementation of a pre-inspection program at selected locations overseas. At these foreign airports, U.S. immigration officers from CBP inspect all passengers before their final departure to the United States. The law also directs DHS to expand the Immigration Security Initiative, which places CBP

²⁶ In part a response to the 1993 World Trade Center bombing, Congress strengthened the antiterrorism provisions in the INA and enacted provisions that shifted immigration inspectors from the “services” role to the “enforcement” role. Previously, immigration inspectors who identified an alien lacking proper documents would refer them to other INS officers who handled the enforcement of the INA and immigration judges in the Executive Office for Immigration Review. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (P.L. 104-208) and the Antiterrorism and Effective Death Penalty Act (P.L. 104-132).

²⁷ See CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Blas Nuñez-Neto.

²⁸ See CRS Report RL32399, *Border Security: Inspections Practices, Policies, and Issues*.

inspectors at foreign airports to prevent people identified as national security threats from entering the country.²⁹

Electronic Inspections. Passenger manifests are transmitted to immigration officials through the Advance Passenger Information System (APIS).³⁰ The electronic submission of passenger manifests prior to arrival allows immigration officials to conduct inspections on travelers in advance. There are also a series of programs collectively referred to as the Passenger Accelerated Service System (PortPASS) initiated by the former INS that were transferred to the CBP. PortPASS enrollees are precleared for inspection purposes (i.e., they do not need to interact with immigration or customs inspectors at the border), and thus the programs ease commuter traffic at land ports of entry by providing dedicated commuter lanes to facilitate the speedy passage of low-risk frequent travelers.

ICE Immigration Investigations. Immigration interior enforcement activity includes investigating aliens who violate the INA and other related laws. These activities focus primarily on the range of immigration-related probes that are national security priorities. Additionally, the main categories of nonterrorism-related crimes they investigate are suspected criminal acts; suspected fraudulent activities (i.e., possessing or manufacturing fraudulent immigration documents); and suspected smuggling and trafficking of aliens. ICE investigators are considered law enforcement agents.

ICE Work Site Enforcement. Often considered a subset of investigations, a key activity is the investigation of suspected violations of immigration law pertaining to aliens working illegally in the United States. This function most frequently involves aliens who work without proper employment authorization as well as employers who knowingly hire illegal aliens (commonly called employer sanctions). According to ICE, the agency prioritizes “work site enforcement efforts by focusing on investigations related to critical infrastructure, national security and employers who engage in egregious criminal violations.”³¹

ICE Detention and Removal. The responsibilities of the Detention and Removal Office (DRO) include overseeing the custody of aliens who are detained by DHS and facilitating their release or deportation. The INA requires DHS to detain several classes of aliens, including those who are inadmissible or deportable because of criminal, terrorist, or national security grounds; those who arrived in the United States without proper documents and requested asylum (pending a preliminary

²⁹ The Intelligence Reform and Terrorist Prevention Act of 2004 directs DHS to expand the pre-inspection program at foreign airports to at least 15 and up to 25 airports and to submit a report on the progress of the expansion by June 30, 2006. The new law requires that at least 50 airports participate in the Immigration Security Initiative by Dec. 31, 2006.

³⁰ APIS was created in 1988, cooperatively with the former U.S. Customs Service, the former INS, and the airline industry.

³¹ “ICE Agents Arrest 66 Illegal Aliens Who Were Building a New Federal Court Facility in Orlando: Arrests Part of ICE’s Continued Mission to Closing Existing Critical Infrastructure Vulnerabilities,” DHS News Release, dated Apr. 27, 2005, at [<http://www.ice.gov/graphics/news/newsreleases/articles/20050427orlando.htm>].

determination of their asylum claims); and those who have final orders of deportation.³² Typically, ICE investigators identify the aliens subject to removal on grounds specified in INA and turn these aliens over to DRO. Similarly, but not identical to detention criteria, the removal grounds include criminal offenses, terrorist activities and security-related concerns, falsification of documents, unlawful voting, immigration fraud and violations of immigration status, and becoming a public charge within five years of entry.³³

ICE Alien Tracking. ICE maintains several databases that track aliens in the United States, and two merit special mention. One is the National Security Entry-Exit Registration System (NSEERS), which subjects certain foreign nationals to special registration requirements. It covers nonimmigrants who are citizens or nationals of Iran, Iraq, Libya, Sudan, and Syria, as well as other nonimmigrants determined to pose an elevated national security risk. Under current NSEERS regulations, covered nonimmigrants are fingerprinted, photographed, and registered at the port of entry. Following this initial registration, DHS decides on a case-by-case basis which registrants must appear at an ICE office for one or more additional registration interviews to determine whether they are in compliance with the conditions of their nonimmigrant visa status and admission.³⁴ The other database is the Student and Exchange Visitor Information System (SEVIS). Foreign students who wish to study in the United States must first apply to a school certified by ICE's Student and Exchange Visitor Program. Once the student is admitted, the school enters the student's name and identifying information into the SEVIS system, which tracks his or her status through graduation or termination of status.³⁵

US-VISIT. The US-VISIT system uses biometric identification (i.e., finger scans and digital photographs) to check identity and track presence in the United States. Biometric data on many nonimmigrants are entered into the US-VISIT system, which in turn draws on an existing system called the Automated Biometric Fingerprint Identification System (IDENT) as well as other data systems, such as the U.S. Department of State's Consolidated Consular Database.³⁶ On January 5, 2004,

³² §212, §235 and §237 of INA.

³³ §237 of INA. For background and analysis, see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin.

³⁴ For further discussion and analysis see CRS Report RL31570, *Immigration: Alien Registration*, by Andorra Bruno.

³⁵ For further discussion and analysis, see CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*, by Alison Siskin.

³⁶ The US-VISIT program was established to respond to statutory provisions that require DHS to create an integrated, automated entry and exit data system that (1) uses available data to produce reports on alien arrivals and departures, (2) deploys equipment at all ports of entry to allow for the verification of aliens' identities and the authentication of their travel documents through the comparison of biometric identifiers, and (3) records alien arrival and departure information from biometrically authenticated documents. See CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)*, (continued...)

US-VISIT was implemented at 115 airports and 14 seaports, and exit pilot programs were established at one airport and one seaport for the collection of biometric information of aliens leaving the United States.³⁷ “Exit pilot programs” are now in place at 15 air and sea ports. The Intelligence Reform and Terrorist Prevention Act of 2004 calls for a more accelerated implementation of a comprehensive entry and exit data system. DHS announced the third increment of US-VISIT on September 14, 2005, stating that entry procedures would be implemented at all land border ports of entry by December 31, 2005 (for a total of 154 land ports of entry).

Adjudications, Benefits, and Services

There are three major activities that dominate the functions of USCIS: the adjudication of immigration petitions, the adjudication of naturalization petitions, and the consideration of refugee and asylum claims and related humanitarian and international concerns. USCIS also processes a range of immigration-related benefits and services, such as employment authorizations and change-of-status petitions. In addition, DOS Consular Affairs is an integral partner with USCIS in many components of the service function, most notably the visa issuance responsibility.³⁸

USCIS Immigration Adjudications and Services. USCIS adjudicators determine the eligibility of the immediate relatives and other family members of U.S. citizens, the spouses and children of legal permanent residents (LPRs), employees that U.S. businesses have demonstrated that they need, and other foreign nationals who meet specified criteria. They also determine whether an alien can adjust to LPR status.³⁹

USCIS Naturalization Adjudications. USCIS is responsible for naturalization, a process in which LPRs may become U.S. citizens if they meet the requirements of the law. Adjudicators must determine whether aliens have continuously resided in the United States for a specified period of time, have good moral character, have the ability to read, write, speak, and understand English, and have passed an examination on U.S. government and history. All persons filing naturalization petitions must be fingerprinted, as background checks are required of applicants.

USCIS Humanitarian Functions. This activity, located in the USCIS Office of International Affairs, adjudicates refugee applications, processes parolees, and conducts background and record checks related to some immigrant petitions

³⁶ (...continued)

by Lisa Seghetti and Stephen Viña.

³⁷ 69 *Federal Register* 482 (Jan. 5, 2004).

³⁸ For a fuller discussion, see **Appendix A: Other Federal Departments with Immigration-Related Responsibilities.**

³⁹ See CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem (hereafter cited as CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*).

abroad.⁴⁰ The largest component of this program is the asylum officer corps, whose members interview and screen asylum applicants. Although a small portion of the USCIS workload, it can be a high-profile activity.

Aliens may apply for asylum with USCIS after arrival into the country or may seek asylum before an EOIR immigration judge during removal proceedings. Decisions on refugee cases are made by USCIS overseas. USCIS also processes other humanitarian cases, most notably aliens who have been given Temporary Protected Status (TPS).⁴¹ At this time, however, ICE officials set the policy on who receives humanitarian parole.

Other USCIS Immigration-Related Matters. USCIS also makes determinations on a range of immigration-related benefits and services. The agency decides whether a foreign national in the United States on a temporary visa (i.e., a nonimmigrant) is eligible to change to another nonimmigrant visa. USCIS processes work authorizations to aliens who meet certain conditions and provides other immigration benefits to aliens under the discretionary authority of the Attorney General (e.g., aliens granted cancellation of removal by EOIR).

USCIS Fraud Detection and Admissibility. Adjudication of these various immigration and naturalization petitions, however, is not a routine matter of processing paperwork. USCIS must confirm not only that the aliens are eligible for the particular immigration status they are seeking, but also whether they should be rejected because of other requirements of the law.⁴² USCIS established the Office of Fraud Detection and National Security to work with the appropriate law enforcement entities to handle national security and criminal “hits” on aliens and to identify systemic fraud in the application process. Many of these duties were formerly performed by the INS enforcement arm that is now part of ICE.

Other Immigration Activities in DHS

Immigration and Citizenship Ombudsman. HSA established the Ombudsman for the U.S. Citizenship and Immigration Services reporting directly to the Deputy Secretary.⁴³ The duties of the Ombudsman are to assist individuals and employers in resolving problems with the USCIS, to identify areas in which individuals and employers have problems in dealing with the USCIS, and to propose changes in the administrative practices of the USCIS to mitigate problems. In

⁴⁰ For more on refugee and asylum policy, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno, and CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

⁴¹ See CRS Report RS20844, *Temporary Protected Status: Current Immigration Policy and Issues*, by Ruth Ellen Wasem and Karma Ester.

⁴² For more information, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

⁴³ Under the November 11, 2001, INS Restructuring Plan, a Customer Relations Office had been created in the Service Bureau and an Ombudsman Office was created in the Enforcement Bureau.

addition, the Ombudsman submits annual reports to Congress that, among other things, identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of USCIS.

Office of Immigration Statistics. HSA transferred the responsibility to compile and analyze immigration data collected by USCIS, ICE, and CBP to the DHS Assistant Secretary for Management and established an Office of Immigration Statistics (OIS). The stated functions of OIS are to develop, analyze, and disseminate statistical information needed to assess the effects of immigration in the United States.

Second Stage Review (2SR)

When Secretary Chertoff took office last year, he requested a 90-day intensive review of DHS operations. The results of this study, which he announced in July 2005, became known as the Second Stage Review (2SR). The 2SR produced a reorganization of the department as well as new policy initiatives.⁴⁴

Several of the policy initiatives that Secretary Chertoff offered are targeted to immigration concerns. Among other things, Chertoff emphasized

- a new approach to securing our borders through additional personnel, new technologies, infrastructure investments, and interior enforcement — coupled with efforts to reduce the demand for illegal border migration by channeling migrants seeking work into regulated legal channels; and
- restructuring the current immigration process to enhance security and improve customer service.⁴⁵

In reorganizing DHS, the Secretary proposed the abolishment of the Directorate of BTS but retained the three distinct immigration agencies (CBP, ICE and USCIS), despite calls from some to merge ICE and CBP.

All of the policy coordination functions initially performed by the Directorate of BTS are now to be assumed by a new Directorate of Policy, which coordinates policies, regulations, and other initiatives on a DHS-wide basis.⁴⁶ Broad support for the establishment of a department-wide policy function had been coalescing for months. In January 2005, the chair of the Senate Committee on Homeland Security

⁴⁴ HSA § 872 gives the Secretary the authority to reorganize functions and organizational units within DHS, within specified limits. For a full discussion of the unique reorganization authority that the DHS Secretary has, and of Chertoff's Second Stage Review, see CRS Report RL33042, *Department of Homeland Security Reorganization: The 2SR Initiative*, by Harold C. Relyea and Henry B. Hogue.

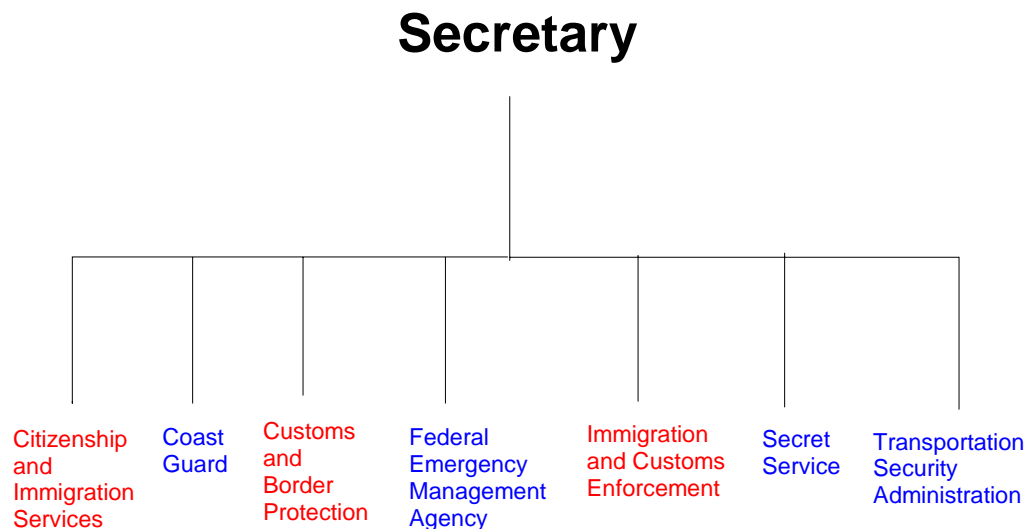
⁴⁵ DHS Office of the Press Secretary, *Homeland Security Secretary Michael Chertoff Announces Six-Point Agenda for Department of Homeland Security*, July 13, 2005.

⁴⁶ *Ibid.*

and Governmental Affairs, Senator Susan Collins, concluded that “there seemed to be unanimity on the need for an Under Secretary for Policy.”⁴⁷ Presumably, this Directorate of Policy will be responsible for establishing crosscutting immigration policy as well as departmental policy on disaster management and relief; coastal, port and transportation security; and related homeland security matters.

As Secretary Chertoff explained, “seven primary operational components will have a direct line to the Secretary” as a result of 2SR. Now CBP, ICE and USCIS are on an organizational par with the U.S. Coast Guard, the Federal Emergency Management Agency (FEMA), the Secret Service, and the Transportation Security Administration.⁴⁸ As **Figure 4** depicts, the heads of all seven units report directly to the DHS Secretary. It is not yet clear where the new Directorate of Policy will intersect with these seven primary operational components. The 2SR organizational structure became effective in October 2005.⁴⁹

Figure 4. Second Stage Review: Partial Organizational Chart of DHS



Source: Congressional Research Service.

⁴⁷ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Department of Homeland Security: The Road Ahead*, hearing, 109th Cong., 1st sess., Jan. 26, 2005, p. 43.

⁴⁸ An electronic version of Secretary Chertoff’s proposed organizational chart is available at [<http://www.dhs.gov/interweb/assetlibrary/DHSOrgChart.htm>].

⁴⁹ U.S. Department of Homeland Security, “Secretary Michael Chertoff, U.S. Department of Homeland Security Second Stage Review Remarks,” July 13, 2005.

Selected Trends in Immigration Workload

Immigration policy is often assessed in terms of numbers of people — whether it be the number of people who become legal permanent residents, the number of people forcibly removed, or the number of people arrested for hiring illegal aliens. For many years, the INS collected data measuring its workload, known as the Performance Analysis System (PAS). The DHS Office of Immigration Statistics publishes eight summary measures of these data in monthly statistical reports and in the *Fiscal Year End Statistical Report*.⁵⁰ This section of the report is based on the PAS data currently available, in most instances FY1997-FY2005.

The PAS data offer limited measures of immigration workload, some of which may reflect the allocation of staff and resources and others of which may more simply capture the “demand” for certain immigration benefits. For example, the number of naturalization petitions filed in a given year are largely influenced by demographic, social, and political factors that are external to DHS. Border patrol apprehensions, on the other hand, are shaped by DHS resources and staffing as well as the social, political, and economic factors that drive actual incidence of aliens crossing illegally into the United States. Generally, the workload in adjudication of benefits and services results from external factors, and the workload in enforcement results from a combination of resources, staffing, and external factors.

The following analysis of the PAS data — even though *performance* is part of the name — does not fully capture DHS performance in carrying out its immigration duties. These data do, however, provide useful snapshots of immigration workload.

Immigration, Naturalization, and Asylum

Petitions for immigration adjudications dominate the service-side workload of USCIS, which also handles the adjudication of naturalization petitions and the consideration of refugee and asylum claims. This measure of immigration benefits as depicted in **Figure 5** includes petitions for family members, foreign workers, employment authorizations, and adjustments of status. In FY2005, 5.6 million immigration applications and petitions were filed with USCIS. While the high point remains 7.3 million petitions filed for immigration benefits in FY2001, the caseload appears to be inching upward again.⁵¹

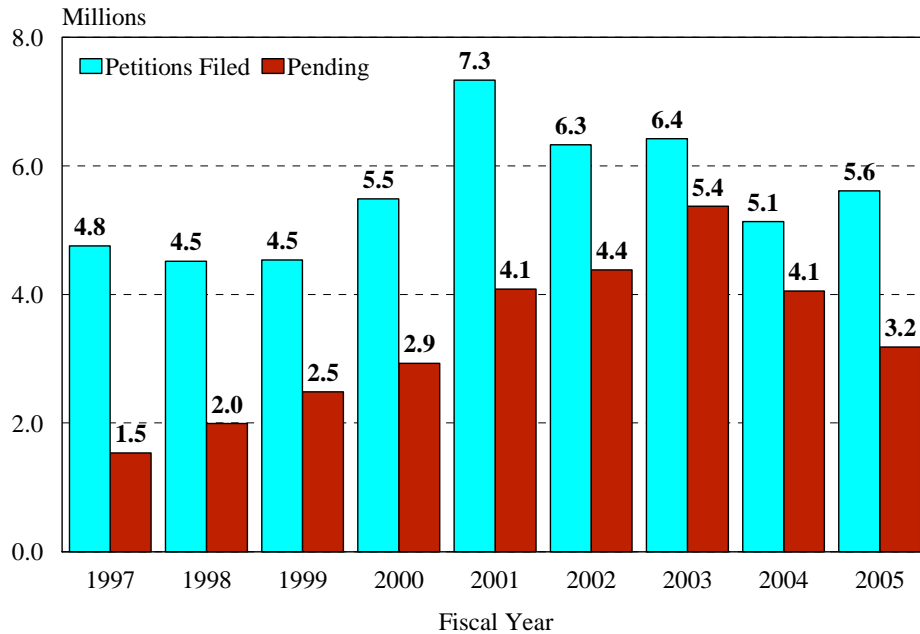
As one might expect, the pending immigration caseload (i.e., cases awaiting action) lags behind the level of petitions filed. At the close of the first year of USCIS (FY2003), the pending immigration caseload peaked at 5.4 million. As **Figure 5** illustrates, the pending caseload has been falling in the past two years. In FY2005,

⁵⁰ These reports are available at the DHS Office of Immigration Statistics website at [<http://uscis.gov/graphics/shared/statistics/index.htm>] accessed on Feb. 6, 2006.

⁵¹ For comparative purposes, the Social Security Administration received 3.4 million Old-Age and Survivors Insurance claims and 2.5 million Disability Insurance claims in FY2004. U.S. Social Security Administration, *Annual Statistical Supplement, 2005*, Feb. 2006.

there were 3.2 million cases pending, which is the lowest level since FY2000, when 2.9 million cases were pending.

Figure 5. Immigration Petitions Filed and Pending, FY1997-FY2005



Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

Note: Immigration petitions include relative and employment-based LPR petitions, employment authorizations, and adjustment of status petitions.

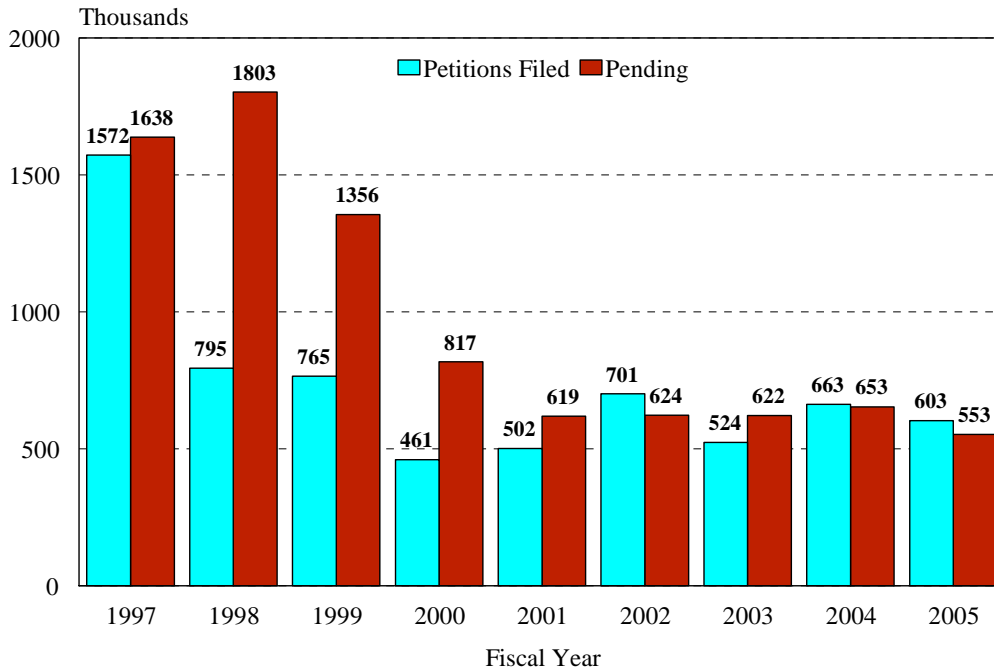
For a variety of reasons, the number of LPRs petitioning to naturalize has increased in the past year, but it has not reached nearly the highs of the mid-1990s, when more than 1 million people sought to naturalize annually, as **Figure 6** depicts. The pending caseload for naturalization hit record highs in the 1990s, but fell to under 1 million by the close of FY2000. The level of pending naturalization petitions remains over half a million, and it is not uncommon for some LPRs to wait one to two years for their petitions to be processed, depending on the caseload in the region in which the LPR lives.⁵²

As **Figure 7** illustrates, asylum petitions filed decreased in the late 1990s but rose again to 66,356 in FY2001. **Figure 7** does not depict the record high of 154,464 asylum cases filed with USCIS in FY1995. In FY2003, there were 42,114 claims for asylum filed with USCIS, and by the close of the fiscal year, there were 262,102 asylum cases pending at USCIS. The number of asylum cases filed has dropped to 32,900 in FY2005. The approval of asylum cases has varied recently from 28% to 44%.⁵³

⁵² See CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

⁵³ See CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

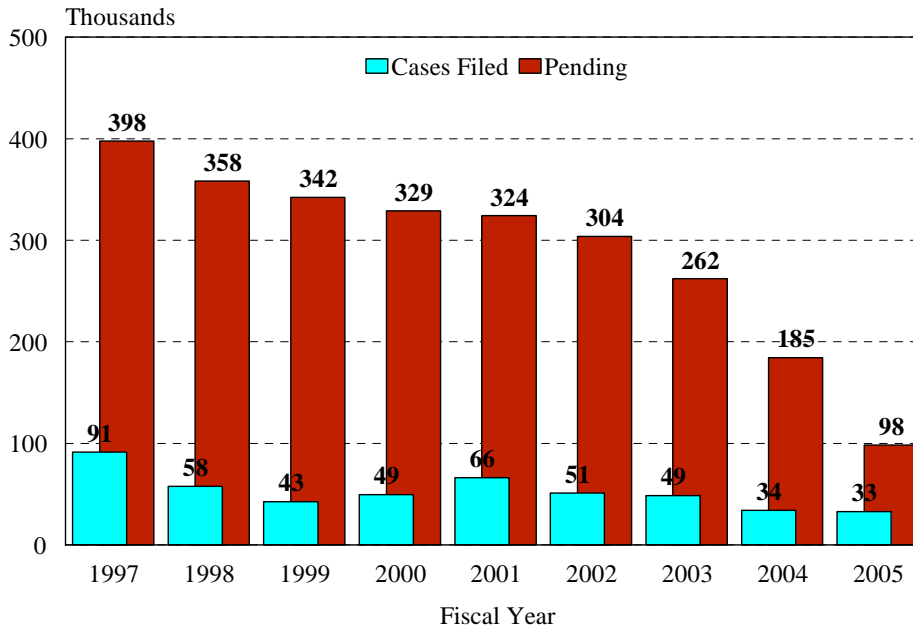
Figure 6. Naturalization Petitions Filed and Pending, FY1997-FY2005



Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

The pending USCIS asylum caseload declined after asylum processing reforms were implemented in the early- and mid-1990s. By the close of FY2005, there were 98,499 asylum cases pending at USCIS, down from a recent high of 393,699 at the close of FY1997.

Figure 7. Asylum Cases Filed and Pending, FY1997-FY2005

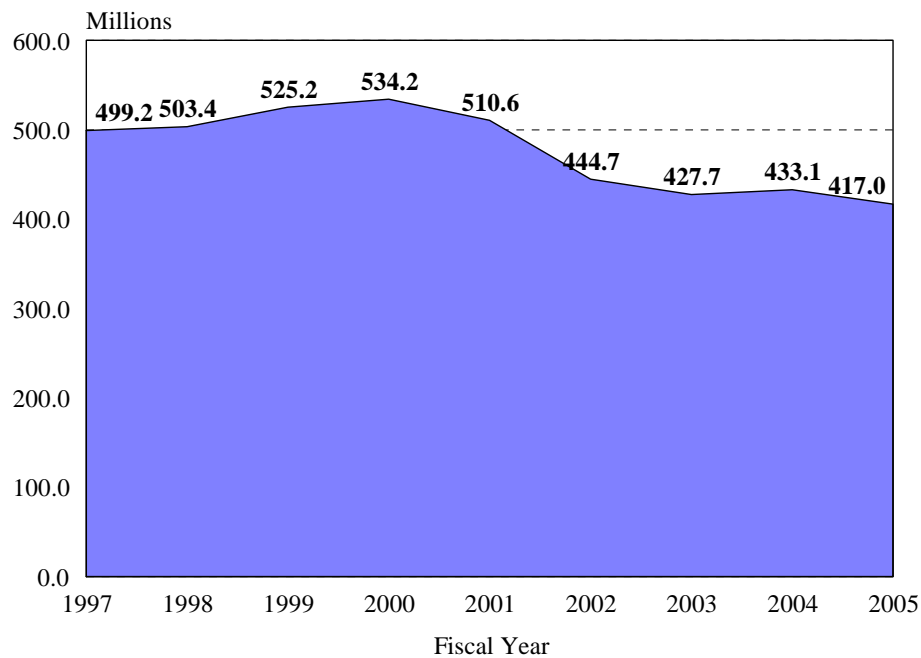


Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

Border Inspections and Apprehensions

As **Figure 8** indicates, CBP inspected 417.0 million persons in FY2005, down from a high of 534.2 million in FY2000. The majority of travelers (approximately 80%) enter the United States at a land port of entry. Over the years, the southwest border has seen the highest volume of travelers seeking entry into the United States. The aliens found inadmissible number in the hundreds of thousands, but represent less than 0.2% of all inspections annually.⁵⁴

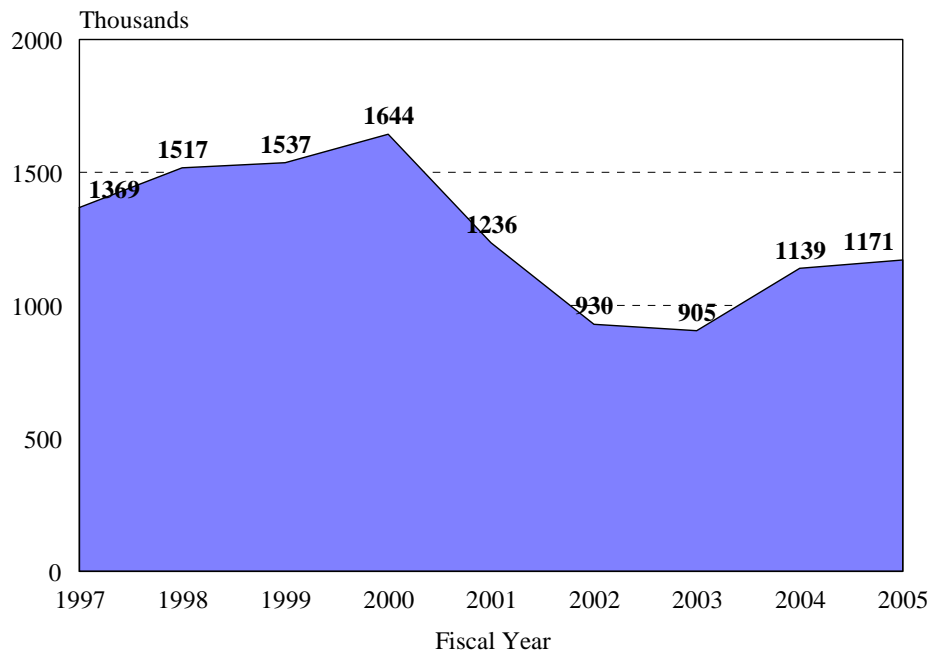
Figure 8. Immigration Inspections at Ports of Entry, FY1997-FY2005



Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

⁵⁴ See CRS Report RL32399, *Border Security: Inspections Practices, Policies, and Issues*.

Figure 9. Border Patrol Apprehensions at the Southwest Border, FY1997-FY2005



Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

The majority of border patrol agents, approximately 90%, are deployed along the southwest border.⁵⁵ Border patrol agents, in particular at the southwest border, spend a large portion of their time apprehending aliens. The number of apprehensions at the southwest border had decreased until recently, as **Figure 9** shows. The reason for the large increase in apprehensions at the southwest border during the late 1990s was due, in large part, to a series of operations that were aimed at stemming illegal migration and interdicting human and drug smugglers.⁵⁶ There was a sharp drop off in apprehensions immediately after September 11, depressing the FY2001 totals. Border patrol apprehensions are inching back up.⁵⁷

⁵⁵ U.S. Congress, Senate Committee on Appropriations, *Northern Border Security*, 107th Cong., 1st sess., Oct. 3, Dec. 5, 2001; CRS Report RL33106, *Border Security and the Southwest Border: Background, Legislation, and Issues*, by Lisa M. Seghetti, Jennifer Lake, Blas Nuñez-Neto, Alison Siskin, K. Larry Storrs, Nathan Brooks and Stephen Viña. (Hereafter cited as CRS Report RL33106, *Border Security and the Southwest Border*.)

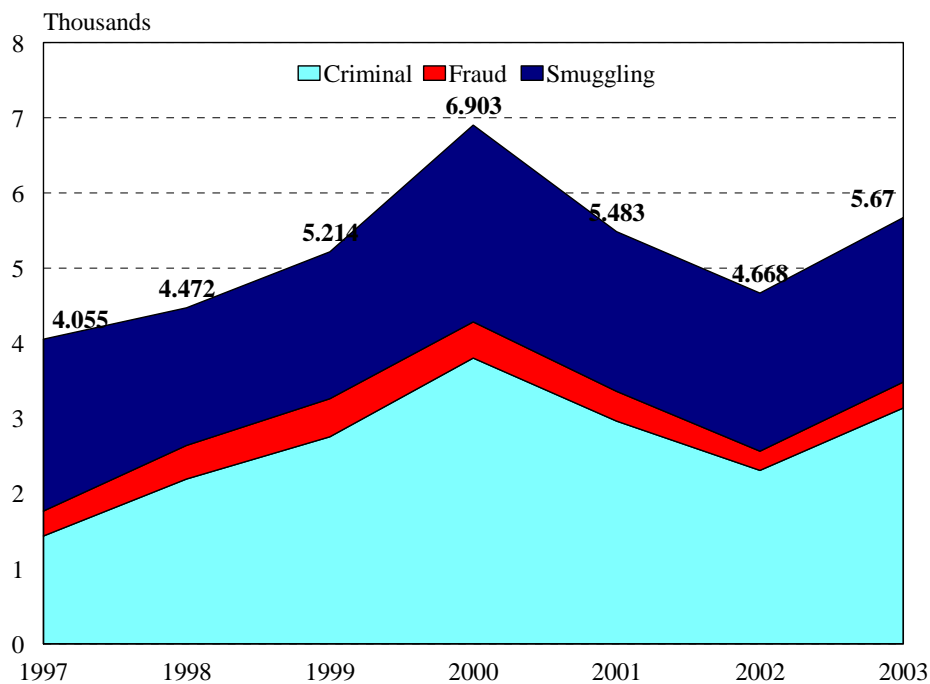
⁵⁶ For example, in 1994 Operation Gatekeeper (San Diego Border Sector), Operation Safeguard (Tucson Border Patrol Sector) and Operation Hold the Line (El Paso Border Patrol Sector) were launched. See CRS Report RL33106, *Border Security and the Southwest Border*.

⁵⁷ CRS Report RL33097, *Border Security: Apprehensions of "Other Than Mexican" Aliens*, by Blas Nuñez-Neto, Alison Siskin, and Stephen Viña.

Prosecutions, Arrests, and Removals

Prosecutions for criminal, fraud, and smuggling violations of immigration law peaked at 6,903 defendants in FY2000. In FY2003, the last year these data were available, 5,670 defendants were prosecuted (**Figure 10**).⁵⁸ According to the DHS Office of Immigration Statistics, criminal alien cases include large-scale organizations engaged in ongoing criminal activity and individual aliens convicted of crimes such as terrorism or drug trafficking. Fraud investigations involve schemes that are used to violate immigration and related laws or to shield the true status of illegal aliens in order to obtain entitlement benefits. Smuggling cases are those which target persons or entities who bring, transport, harbor, or smuggle illegal aliens into or within the United States.

Figure 10. Prosecutions for Criminal, Fraud and Smuggling Violations Under Immigration Law, FY1997-FY2003



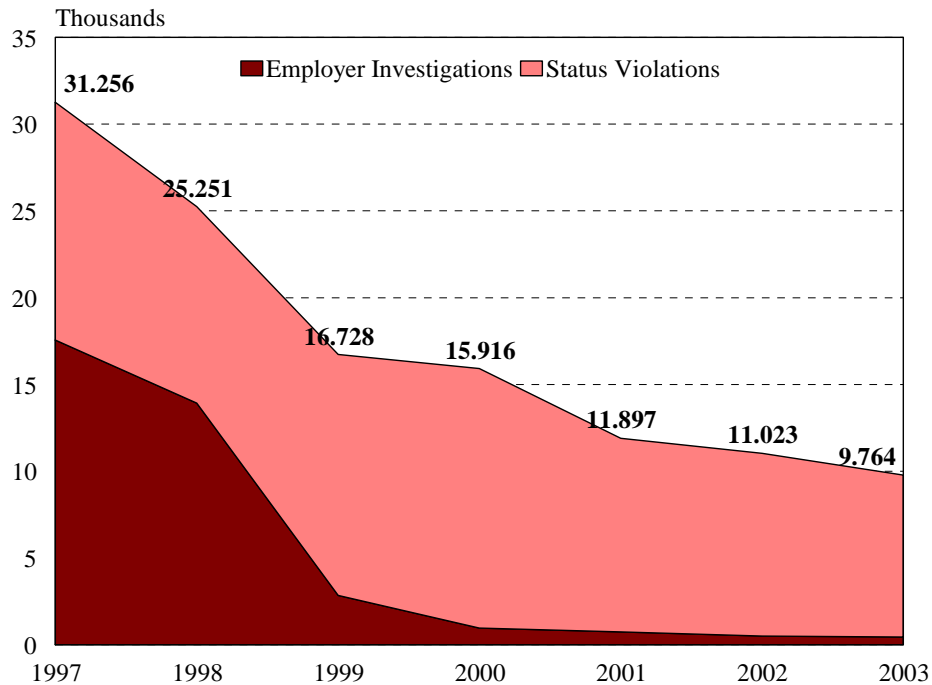
Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

The number of arrests for immigration law violations have dropped sharply, as **Figure 11** reveals. Employer investigations target employers of unauthorized aliens and include criminal investigations. In terms of employer violations of immigration law, arrests of employers decreased from 17,554 in FY1997 to 445 in FY2003 (final year data were reported). This decline is largely due to shifts in policy away from noncriminal investigations and a reallocation of resources to other immigration enforcement priorities. Arrests of aliens who entered without inspections or violated their immigration status exhibit a steadier trend, but have declined from a high of

⁵⁸ The last year CBP and ICE reported PAS data was FY2003, though some of the summary measures could be extracted from other reporting systems they now use.

14,963 arrests in FY2000 to 9,319 aliens arrested in FY2003. Frequently, such aliens are not investigative targets themselves, but are located during other investigations.

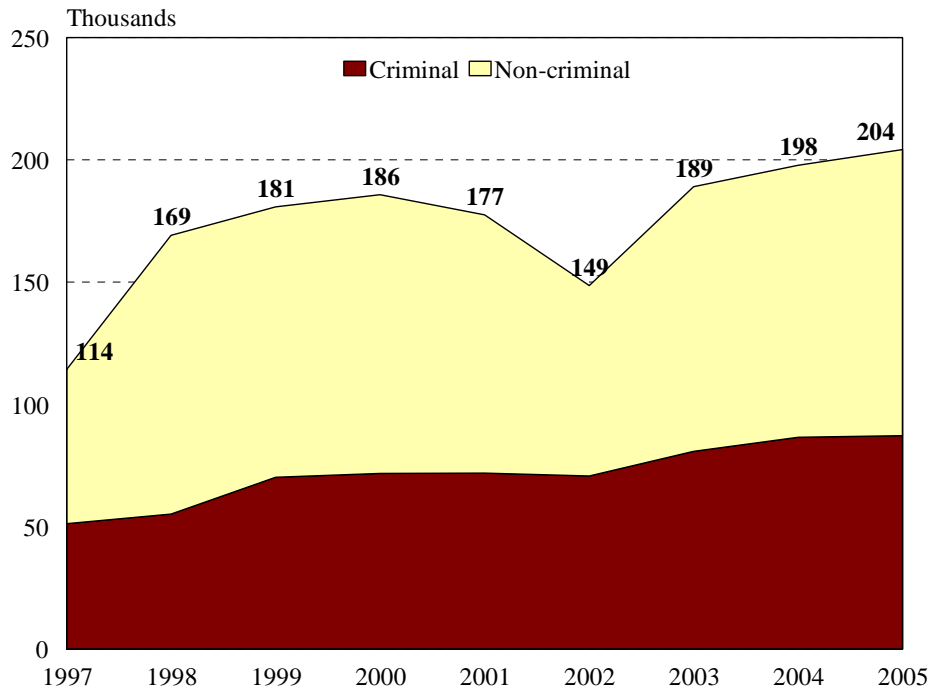
Figure 11. Arrests for Violating Immigration Law, FY1997-FY2003



Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

Criminal offenses, terrorist activities and security-related concerns, falsification of documents, unlawful voting, immigration fraud, and violations of immigration status are among the grounds for removal.⁵⁹ **Figure 12** shows an increase in alien removals from FY1997 to FY2000. In 2001, however, the number of alien removals dropped by 7,979 from FY2000. By FY2005, however, alien removals hit a high of 204,193. While the number of criminal aliens removed has steadily increased over this period, noncriminal grounds remain the predominant basis of most alien removals.

⁵⁹ §237 of INA.

Figure 12. Completed Alien Removals, FY1997-FT2005

Source: CRS analysis of workload data from DHS Office of Immigration Statistics.

In seven of the eight workload measures analyzed above, the immigration workload has declined since 2001. Only the removal of aliens has surpassed levels prior to the reorganization of the immigration functions. While several key workload trends are inching upward — notably, border apprehensions and immigration adjudications — other workload trends have declined or remained flat.

Concluding Analysis

The analysis of the PAS data hint that DHS is making some progress in managing the immigration caseload, but that the data need further study. Notably, USCIS has evidenced a reduction in pending cases; however, this trend may be as much the result of a lessening in the “demand” for certain immigration benefits as it is of improvements in managing caseload. Similarly, the drop in CBP inspections more likely reflects international travel trends that are shaped more by economic and social phenomena than by CBP policies.⁶⁰

These workload trend lines reveal only a narrow perspective on DHS handling of immigration functions. Qualitative analyses, organizational evaluations, and even

⁶⁰ Some observers have argued foreign travel to the United States may be adversely affected by DOS consular delays in processing visas that occurred when more rigorous visa issuance policies were implemented as a result of the September 11, 2001, terrorist attacks. See CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

anecdotal reports help to flesh out our understanding of this complex system. This report closes with highlights of specific concerns, a synthesis of overarching issues, and a set of policy questions under consideration.

Specific Concerns

Of the several areas of specific concern, none has been more prominent than the problem of integration between ICE and CBP. During a hearing of the House Committee on Homeland Security in March 2005, Representative Christopher Cox, then-Chairman of that committee, offered the following in his opening statement:

[Q]uestions remain about whether DHS has organized itself and is managing its immigration enforcement and border security resources in the most efficient, sensible, and effective manner. Anecdotal evidence suggests that the division of customs and immigration inspectors from their related investigative colleagues may be building administrative walls, and hampering cooperation and information sharing, between ICE and CBP in critical mission areas. Some observers also have suggested that the distinction between the ‘interior enforcement’ activities of ICE and the ‘border security’ functions of CBP are artificial constructs that contribute to needless administrative overlaps, programmatic turf battles, mission gaps, and sometimes dangerous operational conflicts.⁶¹

The media often center on anecdotal criticisms by stakeholders. One recent article reported that

[t]he official said one of the biggest problems is ICE and CBP have separate legal offices, which sometimes hand down differing legal interpretations. Disputes also have arisen when ICE wants to parole an illegal immigrant in order to pursue investigative leads, but CBP objects, the official added. Advocates of stronger immigration enforcement argue that former Customs agents at ICE do not fully understand immigration laws and are more interested in performing investigations than enforcing immigration rules.⁶²

Cable network news shows frequently feature problems along the U.S. border in regular segments.⁶³ Surveys of public opinion indicate a particular concern with illegal immigration, and a recent survey reported that 61% of respondents disapprove of the Administration’s handling of illegal immigration.⁶⁴

⁶¹ House Committee on Homeland Security, Hearing on “CBP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests?” Statement of Hon. Christopher Cox, Mar. 9, 2005.

⁶² GOVEXEC.COM, “Appointment Dampens Hopes for Merger of DHS Bureaus,” by Chris Strohm, Jan. 9, 2006.

⁶³ For examples of such programs with large viewing audiences, see CNN’s Lou Dobbs Tonight, available online at [<http://www.cnn.com/CNN/Programs/lou.dobbs.tonight/>], and FOX News’ The O’Reilly Factor, available online at [<http://www.foxnews.com/oreilly/>], both accessed on Feb. 6, 2006.

⁶⁴ NationalJournal.com, *Poll Track*, “The Fuzzy Lines Of The Borders,” by Gwen Glazer (continued...)

In addition to the concerns over the integration of ICE and CBP and their roles in abating illegal immigration, there is a reported lack of coordination between USCIS and ICE in the area of fraud and national security investigations. USCIS established the Office of Fraud Detection and National Security to work with the appropriate law enforcement entities to handle national security and criminal “hits” on aliens and to identify systemic fraud in the application process. Many of these duties were formerly performed by the INS enforcement arm that is now part of ICE. The GAO has reported that “The difficulty between USCIS and ICE investigations regarding benefit fraud is not new.... As a result, some USCIS field officials told us that ICE would not pursue single cases of benefit fraud. ICE field officials who spoke on this issue cited a lack of investigative resources as to why they could not respond in the manner USCIS wanted.”⁶⁵

Moreover, USCIS appears to have problems of its own. The DHS Inspector General found problems in the background checks for which USCIS is now responsible. Among other findings, the report concluded that USCIS’s security checks are overly reliant on the integrity of names and documents that applicants submit and that “USCIS has not developed a measurable, risk-based plan to define how USCIS will improve the scope of security checks.” It further stated that “USCIS’s management controls are not comprehensive enough to provide assurance that background checks are correctly completed.”⁶⁶

Pending caseloads and processing backlogs continue to plague USCIS. GAO concluded that it is unlikely that USCIS will completely eliminate the backlog of pending adjudications by the deadline of 2006.⁶⁷ Despite progress in cutting the backlog of pending cases from 3.8 million in January 2004 to 1.2 million in June 2005, GAO speculates that USCIS may have difficulty eliminating its backlog for two complex application types that constitute nearly three-quarters of the backlog.⁶⁸

Overarching Issues

The dispersal of immigration functions across three agencies within DHS means that no one person is responsible for immigration policy and operations in a clear

⁶⁴ (...continued)

and Erin McPike, Jan. 30, 2006; available online at [<http://nationaljournal.com/members/polltrack/2006/todays/01/0130index.htm>], accessed Feb. 6, 2006.

⁶⁵ U.S. Government Accountability Office, *Management Challenges Remain in Transforming Immigration Programs*, GAO-05-81, Oct. 2004.

⁶⁶ U.S. Department of Homeland Security, Office of Inspector General, *A Review of U.S. Citizenship and Immigration Services’ Alien Security Checks*, OIG 06-06, Nov. 2005, p. 2.

⁶⁷ The Immigration Services and Infrastructure Improvements Act of 2000 (§ 205(a) of P.L. 106-313, 8 U.S.C. § 1574(a)) defines backlog as the period of time in excess of 180 days that an immigration benefit application has been pending before the agency. USCIS defines backlog as the number of pending applications (i.e., the number of applications awaiting adjudication) in excess of the number of applications received in the most recent six months.

⁶⁸ U.S. Government Accountability Office, *Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications*, GAO-06-20, Nov. 2005.

chain of command. The Assistant Secretary of ICE, the Commissioner of CBP, and the Director of USCIS all serve on a parity under the Secretary of DHS. Of these, only the Director of USCIS has responsibilities that are exclusively immigration. While the Secretary of DHS is the lead cabinet officer on immigration issues, he shares substantial immigration policymaking roles with the Attorney General, who oversees the EOIR immigration judges and the Board of Immigration Appeals, and the Secretary of State, who oversees the Bureaus of Consular Affairs and of Population, Refugees, and Migration.

Does this disaggregation of immigration operations sharpen the focus to perform the disparate functions and prompt a sense of responsibility across a broader set of managers — increasing the stakeholders and improving administration of immigration law and policies? Or does the dispersal of immigration functions muddy the chain of command and foster competition among priorities — leading to turf battles and thwarting the development of a comprehensive immigration policy?

Thus far, independent assessments of the functioning of immigration in DHS have centered on problems rather than successes.⁶⁹ These identified problems have ranged from USCIS processing of background checks and adjudication of benefits, ICE worksite enforcement efforts and information technology systems, and cooperation between CBP and ICE on the U.S.-VISIT system. Indeed, the GAO has concluded that many of the management problems that plagued the former INS remain with the DHS organizational structure.⁷⁰

The paucity of evaluations that describe successes resulting from the current organization of immigration functions does not necessarily mean that the restructuring is failing. By their very nature, inspector general reports tend only to focus on areas that need improvement. It is possible that some of these problems may be the result of inadequacies in the immigration laws or the funding resources

⁶⁹ For examples, see U.S. Department of Homeland Security, Office of Inspector General, OIG 06-16, *U.S.-VISIT System Security Management Needs Strengthening*, Dec. 2005; U.S. Department of Homeland Security, Office of Inspector General, OIG 06-06, *A Review of U.S. Citizenship and Immigration Services' Alien Security Checks*, Nov. 2005; U.S. Department of Homeland Security, Office of Inspector General, OIG 06-04, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*, Nov. 2005; U.S. Government Accountability Office, GAO-05-805, *Information Technology: Management Improvements Needed on Immigration and Customs Enforcement's Infrastructure Modernization Program*, Sept. 2005; U.S. Government Accountability Office, GAO-06-20, *Immigration Benefits: Improvements Needed to Address Backlogs and Ensure Quality of Adjudications*, Nov. 2005; U.S. Government Accountability Office, GAO-05-813, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts*, Aug. 2005; U.S. Government Accountability Office, GAO-05-526, *Immigration Services: Better Contracting Practices Needed at Call Centers*, Jun. 2005

⁷⁰ U.S. Government Accountability Office, GAO-05-81, *Management Challenges Remain in Transforming Immigration Programs*, Oct. 2004; U.S. Government Accountability Office, GAO-05-664T, *Department of Homeland Security: Addressing Management Challenges That Face Immigration Enforcement Agencies*, May 2005.

rather than the management of the agencies. The underlying question remains whether a sufficient length of time has elapsed to assess DHS's efficacy in managing immigration policy.

Selected Policy Questions

As Congress considers whether comprehensive immigration reform is needed and whether the current configuration of immigration functions in DHS would effectively implement such reform, a series of questions about DHS management emerges. While not an exhaustive set, the selected questions below express a few of the key organizational issues.⁷¹

- Is communication and coordination among CBP, ICE, and USCIS facile and efficient?
- By what agency and at what level should legal opinions on immigration law and policy be made?
- Should USCIS have a formal enforcement arm to investigate benefit fraud and other adjudications-related violations?
- Should immigration enforcement functions in CBP and ICE be merged into one agency?
- If immigration enforcement functions are merged together, should that agency resemble the statutory framework established by HSA (Bureau of Border Security) or a super-agency of U.S. Customs and Immigration Enforcement?
- Would any substantial reorganization of immigration functions — no matter how optimal — be too disruptive to be prudent at this time?

Ultimately, these questions are addressed in the broader policy making context. Congress weighs at least three elements (i.e., the immigration laws and regulations, the funding resources and staffing, and the management and administration) as it seeks to achieve an efficacious immigration policy.

⁷¹ For a discussion of these policy questions, see U.S. Congress, House Committee on the Judiciary Subcommittee on Immigration, Border Security, and Claims, Hearing Serial No. 109-32, *New "Dual Missions" of the Immigration Enforcement Agencies*, May 5, 2005; and House Committee on Homeland Security, hearing on *CBP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests?*, Mar. 9, 2005; and Senate Judiciary Committee, Subcommittee on Immigration, Border Security, and Citizenship, hearing on *Strengthening Enforcement and Border Security: The 9/11 Commission Staff Report on Terrorist Travel*, Mar. 14, 2005.

Appendix A. Other Federal Departments with Immigration-Related Responsibilities

Department of State

Visa Issuances. The Department of State's Bureau of Consular Affairs is the agency responsible for issuing visas.⁷² DHS is responsible for formulating regulations on visa issuances and may assign staff to consular posts abroad to advise, review, and conduct investigations.⁷³ As discussed earlier, USCIS is charged with approving immigrant petitions, a prerequisite for obtaining a visa to become a legal permanent resident.⁷⁴ The documentary requirements for visas are stated in §222 of the INA, with some discretion for further specifications or exceptions by regulation, most notably the Visa Waiver Program.⁷⁵

All aliens seeking visas — prospective immigrants and nonimmigrants — must undergo admissibility reviews performed by DOS consular officers abroad.⁷⁶ These reviews are intended to ensure that they are not ineligible for visas or admission under the grounds for inadmissibility, which include criminal, national security, health, and indigence grounds as well as past violations of immigration law. As a result, all aliens arriving with visas have had background checks. For the past several years, moreover, Consular Affairs has been issuing machine-readable visas. As of October 2004, all visas issued by the United States use biometric identifiers (e.g., finger scans) in addition to the photograph that has been collected for some time.⁷⁷

The National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) argued that targeting travel is at least as powerful a weapon against terrorists as targeting their money. The 9/11 Commission recommended that the United States combine terrorist travel intelligence, operations,

⁷² For background and analysis of visa issuance policy and activities, see CRS Report RL31512, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.

⁷³ For more on the division of duties, see CRS Report RL32256, *Visa Policy: Roles of the Departments of State and Homeland Security*, by Ruth Ellen Wasem.

⁷⁴ The memorandum of understanding (MOU) that implements the working relationship between DOS and DHS's three immigration-related bureaus was signed on Sept. 29, 2003.

⁷⁵ For a discussion of these waivers and the countries whose nationals do not need visas, see Congressional Distribution Memorandum, *Waiving the Documentary Requirements for Visas and Passports to Enter the United States*, by Ruth Ellen Wasem and Andorra Bruno, Oct. 27, 2003, and CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

⁷⁶ These grounds for inadmissibility are spelled out in §212(a) of INA. Consular officers use the Consular Consolidated Database (CCD) to screen visa applicants. For some years, consular officers have been required to check the background of all aliens in the "lookout" databases, specifically the Consular Lookout and Support System (CLASS) and TIPOFF databases. Consular officers also send suspect names to the FBI for a name check program called Visa Condor.

⁷⁷ PL. 107-56 and P.L. 107-173 require that visas and other travel documents contain a biometric identifier and are tamper-resistant.

and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility. P.L. 108-458 establishes a Visa and Passport Security Program within the Bureau of Diplomatic Security at DOS to target and disrupt individuals and organizations at home and in foreign countries that are involved in the fraudulent production, distribution, or use of visas, passports, and other documents used to gain entry to the United States.

Refugees and Migration. The Bureau of Population, Refugees, and Migration (PRM) has primary responsibility for formulating policies on population, refugees, and migration, and for administering the United States international refugee assistance and admissions programs. PRM monitors U.S. contributions to international and nongovernmental organizations that assist and protect refugees abroad. It oversees admissions of refugees to the United States for permanent resettlement in coordination with DHS and the U.S. Department of Health and Human Services.

PRM also plays an important role in setting U.S. migration policy. According to its official statements, PRM works closely with DHS, the Department of Labor, the International Organization on Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), and other relevant international organizations to advance U.S. migration policy goals. “One of the Bureau’s key strategies for advancing effective and humane migration policies is to support and participate in regional migration dialogues, such as the Regional Conference on Migration.”⁷⁸

Department of Justice

Immigration Courts. The role of the Executive Office of Immigration Review (EOIR) is to administer and interpret federal immigration laws and regulations through the immigration court proceedings, appellate reviews, and administrative hearings in individual cases.⁷⁹ There are three main components to EOIR: the Board of Immigration Appeals, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer.⁸⁰ These judges and courts decide cases of eligibility, inadmissibility, deportation or removal, asylum appeals, and requests for relief from deportation. Complaints are brought by the DHS, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, or private individuals, as prescribed by statute.⁸¹

⁷⁸ U.S. Department of State, Bureau of Population, Refugees and Migration [<http://www.state.gov/g/prm/mig/>].

⁷⁹ As part of a reorganization at DOJ, the Attorney General created EOIR by regulation in 1983 as an agency independent from the INS. The Homeland Security Act gave it permanent statutory authority and kept it in the DOJ.

⁸⁰ 8 CFR Part 3.

⁸¹ The Office of Administrative Appeals in EOIR was established by the Immigration Reform and Control Act of 1986 and amended by the Immigration and Nationality Amendments Act of 1990.

At various points over the years, legislation had been introduced to create statutory authority for EOIR within DOJ. Title XI of HSA provided statutory authority for EOIR and located it in DOJ. The placement of EOIR sparked some interest during the debate over HSA, and the decision to keep these duties in DOJ enables the Attorney General to retain a very important role in interpreting immigration law and policy.

Immigration-Related Employment Discrimination. DOJ's Office of the Special Counsel for Immigration-Related Unfair Employment Practices investigates and prosecutes charges of immigration-related employment discrimination. In 1986, Congress prohibited discrimination on the basis of legal alien status or national origin in hiring, firing, and recruitment or referral for a fee in §102 of the Immigration Reform and Control Act. The Special Counsel for Immigration-Related Unfair Employment Practices also offers grants for public education programs on the rights afforded potential victims of employment discrimination and the responsibilities of employers under the anti-discrimination provisions of the INA.

Attorney General. Since the codification of the INA in 1952, the law placed the administrative authority to interpret, implement, enforce, and adjudicate immigration law almost exclusively with the Attorney General. With the transfer of nearly all immigration functions to DHS, however, §103(a)(1) of the INA has been amended twice to clarify the respective authorities newly obtained by the Secretary of Homeland Security and retained by the Attorney General. While the law now places primary responsibility for enforcing and administering immigration law in the United States with the Secretary of Homeland Security, it still apparently allows the Attorney General to retain a significant amount of authority to enforce, administer, and interpret immigration law. Much of this authority derives from his role overseeing EOIR.⁸²

Department of Health and Human Services

Communicable Diseases. The Centers for Disease Control (CDC) in the U.S. Department of Health and Human Services (HHS) take the lead in protection against foreign nationals arriving with communicable diseases.⁸³ A medical examination is required of all aliens seeking to come as legal permanent residents (LPRs) and refugees, and *may* be required of any alien seeking a nonimmigrant visa or admission at the port of entry. An immigration inspection includes a determination of whether the alien is inadmissible due to a health-related condition. The diseases that trigger inadmissibility in the INA are acquired immune deficiency syndrome (AIDS) and those communicable diseases of public health significance as determined by the Secretary of HHS.⁸⁴

⁸² See CRS Report RL31997, *Authority to Enforce the Immigration and Nationality Act (INA) in the Wake of the Homeland Security Act: Legal Issues*, by Stephen Viña.

⁸³ Their statutory authorities can be found at 8 USC §1182; 8 USC §1222; 42 USC §264-§272; and 42 USC §252.

⁸⁴ Those diseases currently barred by regulation are cholera, diphtheria, infectious (continued...)

Refugee Resettlement and Unaccompanied Minors. The Office of Refugee Resettlement is within the Administration for Children and Families in HHS. Since its establishment by the 1980 Refugee Act, this HHS refugee resettlement program administers an initial transitional assistance program for temporarily dependent refugees and Cuban/Haitian entrants. The Trafficking Victims Protection Act of 2000 (P.L. 106-386) makes victims of a severe form of trafficking in persons eligible for federally funded or administered benefits and services to the same extent as refugees.⁸⁵ The Homeland Security Act of 2002 (P.L. 107-296) also transferred the responsibility for the care and custody of unaccompanied alien children to the HHS Office of Refugee Resettlement.⁸⁶

Department of Labor

Labor Certification. The Division of Foreign Labor Certification in the U.S. Department of Labor (DOL) is responsible for ensuring that foreign workers do not displace or adversely affect working conditions of U.S. workers. DOL handles the labor certifications for permanent employment-based immigrants, temporary agricultural workers, and temporary nonagricultural workers as well as the simpler process of labor attestations for temporary professional workers. The U.S. employer, rather than the prospective worker who is foreign, is responsible for completing the foreign labor certification process.⁸⁷ Currently, foreign labor certification is one of the “national activities” within the Employment and Training Administration.

Worker Protections. DOL’s Wage and Hour Division is responsible for administering and enforcing worker protections provided in several temporary foreign worker visa categories. The Wage and Hour Division’s primary duties include the minimum wage, overtime, and child labor provisions of the Fair Labor Standards Act; the Family and Medical Leave Act; the Migrant and Seasonal Agricultural Worker Protection Act; and the prevailing wage requirements of the Davis-Bacon Act and the Service Contract Act.

⁸⁴ (...continued)

tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-congo, South American, and others not yet isolated or named), and severe acute respiratory syndrome (SARS). Aliens are also required to have vaccinations against vaccine-preventable diseases, including mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B.

⁸⁵ It was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003 (P.L. 108-193); 8 U.S.C. 7105(b)(1).

⁸⁶ For more background, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

⁸⁷ For a discussion of labor certification and attestations, see CRS Report RS21520, *Labor Certification for Permanent Immigrant Admissions*, by Ruth Ellen Wasem; CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno; and CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*, by Ruth Ellen Wasem.

Appendix B. Excerpt from *Becoming an American: Immigration and Immigrant Policy*

The Executive Summary of the U.S. Commission on Immigration Reform's 1997 report to Congress offered the following recommendation to restructure INS:

The Commission considered a range of ways to reorganize roles and responsibilities, including proposals to establish a cabinet-level Department of Immigration Affairs. After examining the full range of options, the Commission concludes that a clear division of responsibility among existing federal agencies, with appropriate consolidation of functions, will improve management of the federal immigration system. As discussed below, the Commission recommends a restructuring of the immigration system's four principal operations as follows:

1. Immigration enforcement at the border and in the interior of the United States in a Bureau for Immigration Enforcement at the Department of Justice;
2. Adjudication of eligibility for immigration-related applications (immigrant, limited duration admission, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of an Undersecretary for Citizenship, Immigration, and Refugee Admissions;
3. Enforcement of immigration-related employment standards in the Department of Labor; and
4. Appeals of administrative decisions including hearings on removal, in an independent body, the Agency for Immigration Review.

The Commission believes this streamlining and reconfiguring of responsibilities will help ensure coherence and consistency in immigration-related law enforcement; a supportive environment for adjudication of applications for immigration, refugee, and citizenship services; rigorous enforcement of immigration-related labor standards to protect U.S. workers; and fair and impartial review of immigration decisions.⁸⁸

⁸⁸ U.S. Commission on Immigration Reform, Report to Congress, *Becoming an American: Immigration and Immigrant Policy*, Washington, DC: Government Printing Office, 1997, p. XLV.

Appendix C. Reorganization Plan Modifying the Immigration Enforcement Functions

As DHS was forming, the Administration provided the following explanation of the reorganization that created CBP and ICE:

(A) Rename the “Bureau of Border Security” the “Bureau of Immigration and Customs Enforcement.” As required by the Act, this Bureau will be headed by an Assistant Secretary who will report directly to the Undersecretary for Border and Transportation Security.

This Bureau will comprise Immigration Naturalization Service (INS) interior enforcement functions, including the detention and removal program, the intelligence program, and the investigations program. At the same time, pursuant to this modification, the interior enforcement resources and missions of the Customs Service and the Federal Protective Service will be added to this Bureau. The mission of the Bureau is:

1. To enforce the full range of immigration and customs laws within the interior of the United States; and,
2. To protect specified federal buildings.

The Assistant Secretary will:

1. Establish and oversee the administration of the policies for performing the detention and removal program, the intelligence program, and the investigation program functions as are —

(a) transferred to the Under Secretary for Border and Transportation Security by Section 441 of the Act and delegated to the Assistant Secretary by the Undersecretary for Border and Transportation Security; or

(b) otherwise vested in the Assistant Secretary by law.

2. Advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau that may affect the Bureau of Citizenship and Immigration Services established under Subtitle E of the Act, including potentially conflicting policies and operations.

(B) Rename the “Customs Service” the “Bureau of Customs and Border Protection.” This Bureau will be headed by the Commissioner of Customs and will report to the Under Secretary for Border and Transportation Security.

The Bureau will contain the resources and missions relating to borders and ports of entry of the Customs Service, the INS, including the Border Patrol and the inspections program, and the agricultural inspections function of the Agricultural Quarantine Inspection program.

The Commissioner will:

1. Establish and oversee the administration of the policies for performing the Border Patrol and inspections program functions as are —

(a) transferred to the Under Secretary for Border and Transportation Security by Section 441 of the Act and delegated to the Commissioner by the Under Secretary for Border and Transportation Security; or

(b) otherwise vested in the Assistant Secretary by law.

2. Advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau that may affect the Bureau of Citizenship and Immigration Services established under Subtitle E of the Act, including potentially conflicting policies and operations.⁸⁹

⁸⁹ U.S. Department of Homeland Security, *Reorganization Plan Modification for the Department of Homeland Security* (submitted pursuant to the Homeland Security Act of 2002), Jan. 30, 2003; available as House Document No. 108-32.