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NEW "DUAL MISSIONS" OF THE IMMIGRATION ENFORCEMENT AGENCIES

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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NEW "DUAL MISSIONS" OF THE IMMIGRATION ENFORCEMENT AGENCIES

THURSDAY, MAY 5, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:35 p.m., in Room 2141, Rayburn House Office Building, the Honorable John Hostettler (Chair of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order.

The first two Subcommittee hearings of the year examined in detail how the immigration enforcement agencies have inadequate resources and too few personnel to carry out their mission. The witnesses mentioned the lack of uniforms, badges, detention space, and the inevitable low morale of frontline agents who are overwhelmed by the sheer volume of incoming illegal aliens. If this were not enough, these "immigration enforcement" agencies also face internal confusion resulting from dual or multiple missions in which immigration has all too often taken a back seat. Sadly, contrary to Congress' expectations, immigration enforcement has not been the primary focus of either of these agencies, and that is the subject of today's hearing.

The Homeland Security Act, enacted in November 2002, split the former Immigration and Naturalization Service, or INS, into separate immigration service and enforcement agencies, both within the Department of Homeland Security. This split had been pursued by Chairman Sensenbrenner based on testimony and evidence that the dual missions of INS had resulted in poor performance.

There was a constant tug-of-war between providing good service to law-abiding aliens and enforcing the law against law-breakers. The plain language of the Homeland Security Act, Title D, creates a "Bureau of Border Security," and specifically transfers all immigration enforcement functions of INS into it. Yet when it came down to actually creating the two: new agencies, the Administration veered off course. Although the service functions of INS were transferred to USCIS, the enforcement side of INS was split in two, what is now Immigration and Customs Enforcement, or ICE, to handle interior enforcement, and Customs and Border Protection (CBP) to guard our borders.

ICE was given all Customs agents, investigators, intelligence and analysis-from the Treasury Department, as well as the Federal Protective Service to guard Federal buildings, and the Federal Air

Marshals to protect our airplanes, and finally the INS investigators.

CBP was given all Treasury Customs inspectors at the ports-of-entry, Agriculture Inspector from the Department Of Agriculture, and INS inspectors.

At no time during the reorganization planning was it anticipated by the Committee that an immigration enforcement agency would share its role with other enforcement functions,such as enforcement of our customs laws. This simply results in the creation of dual or multiple missions that the act sought to avoid in the first place.

Failure to adhere to the statutory framework established by HSA has produced immigration enforcement incoherence that undermines the immigration enforcement mission central to DHS, and undermines the security of our Nation's borders and citizens.

It is not certain on what basis it was determined that customs and agriculture enforcement should become part of the immigration enforcement agency, except to require Federal agents at the border to have more expertise and more functions.

It is also unknown on what basis the Federal Air Marshals should become part of this agency, especially since it has been revealed that the policy is not to apprehend out-of-immigration status aliens when discovered on flights. If the mission of the Department of Homeland Security is to protect the homeland, it cannot effect its mission by compromising or neglecting immigration enforcement for customs enforcement.

The 9/11 terrorists all came to the United States without weapons or contraband—Added customs enforcement would not have stopped 9/11 from happening. What might have foiled al Qaeda's plan was additional immigration focus, vetting and enforcement. And so what is needed is recognition that, one, immigration is a very important national security issue that cannot take a back seat to customs or agriculture. Two, immigration is a very complex issue, and immigration enforcement agencies need experts in immigration enforcement. And three, the leadership of our immigration agencies should be shielded from political pressures to act in a way which could compromise the Nation's security.

While I am grateful for the service and good work of the heads of our immigration agencies—some of whom are leaving presently for other experiences in Government—I would urge the Administration in the future to place the leadership of the immigration agencies in the hands of those experienced in immigration matters.

Mr. HOSTETTLER. At this point, I will turn to other Members of the Subcommittee for opening statements.

Mr. King, no statement at this time?

At this time I would like to turn to members of our panel and introduce them.

Michael Cutler began working for the former Immigration and Naturalization Service in 1971 as an immigration inspector assigned to JFK National Airport in New York. Throughout his career, he has been an immigration inspector, an immigration adjudicator, and became a special agent in 1975. He has been invited to testify before Congress and the 9/11 Commission on many occasions by both the Majority and Minority because of his broad expe-

rience in immigration enforcement over several decades. He is also a frequent commentator on immigration matters in such programs as Lou Dobbs, Fox News, numerous radio programs and regularly appears on Radio WIBA in Madison, Wisconsin, on Up Front with Vicki McKenna. Michael Cutler graduated from Brooklyn College of the City University of New York in 1971 with a B.A. In communications arts and science.

Our second witness will be Mr. T.J. Bonner, head of the National Border Patrol Council, which represents more than 10,000 frontline Border Patrol employees. Mr. Bonner, a 27-year veteran Border Patrol agent, is in a unique position to tell us today about the current state of our immigration enforcement agencies, the effect that policies have on morale, and Border Patrol's ability to accomplish the immigration enforcement mission, and employees' assessment of whether they have been given proper mission direction and priorities.

Ms. Janice Kephart was counsel to the immigration team of the National Commission on Terrorist Attacks upon the United States, or the 9/11 Commission. Prior to that she served as counsel to Senate Subcommittee on Technology, Terrorism and Government Information, chaired by Senator John Kyl. Ms. Kephart has been the author of numerous articles on immigration and terrorism, and of a book entitled, The Enterprise of Terror: The Structure of al-Qaeda and Radical Islamic Groups in the United States. She also has been a guest on major media shows such as Lou Dobbs.

Richard M. Stana is Director of Homeland Security and Justice Issues at the Government Accountability Office. During his 29-year career with GAO, he has directed reviews on a wide variety of complex military and civilian management issues. Mr. Stana earned a master's degree in business administration with a concentration in financial management from Kent State University. He is also a graduate of Cornell University's Johnson School of Management Program on Strategic Decision Making, and Harvard University's JFK School of Government Program on Leadership and Performance.

If the witnesses would please rise to take the oath, and raise your right hand.

[Witnesses sworn.]

Mr. HOSTETTLER. Let the record reflect that all witnesses answered in the affirmative.

Without objection, all of your written testimony will be made a part of the record. If you could summarize that within 5 minutes. We have a series of lights, no bells, no whistles, but lights to inform you of the time that you have left in your testimony.

Once again, thank you for being here today.

Mr. Cutler, you are recognized.

TESTIMONY OF MICHAEL CUTLER, FORMER INS SENIOR SPECIAL AGENT

Mr. CUTLER. Thank you, Mr. Chairman.

Chairman Hostettler, Ranking Member Jackson Lee, distinguished Members of Congress, members of the panel, ladies and gentlemen, I welcome this opportunity to provide testimony today

on the critical issue of the dual missions of the immigration enforcement agencies.

While my prepared testimony will focus on ICE, it's my understanding that the inspections program of CBP is similarly hobbled in its ability to enforce the immigration laws.

For decades our Nation has had the reputation of being the can-do Nation; if we could dream it, we could accomplish it. Our Nation's entry into both world wars ended with victory. When President John F. Kennedy challenged our scientists and engineers to land men on the moon and return them safely to the Earth, in less than a decade we again rose to the challenge.

Today our Nation is challenged by many problems, and the one issue that impacts so many of these other issues, the enforcement and the administration of the immigration laws, eludes our purported efforts at solving it.

For decades the immigration crisis—and it is, indeed, a crisis—has grown more significant, and its repercussions have increased exponentially. We are waging a war on terror and a war on drugs. The immigration component of this battle, of which not only the lives of our citizens, but the survival of our Nation itself is on the line, appears to be insoluble. I am here today to tell you that we can control our Nation's borders, and we can effectively administer and enforce the immigration laws from within the interior of the United States.

In order to gain control of our borders and our immigration programs, we need to see it as a system; we also need to understand that the interior enforcement program is critical to gaining control over our Nation's borders.

Nearly half of the illegal aliens do not enter the country by running the border, but rather by being admitted through a port-of-entry and then subsequently violating their terms of admission. Special agents are desperately needed to not only seek to arrest illegal aliens, but to conduct field investigations to uncover immigration fraud to restore integrity to the benefits program which has been historically plagued with high fraud rates. This is especially troubling as we wage a war on terror. The 9/11 staff report on terrorist travel made it clear that this dysfunction of bureaucracy aided the terrorists who wrought so much damage upon our Nation.

The fact is that many of the managers of ICE appear more focused on traditional Customs-oriented investigations than they are on enforcing the Immigration and Nationality Act to safeguard our Nation from terrorists and criminals who have become adept at hiding in plain sight by making use of gaping loopholes and deficiencies in the immigration bureaucracy that go undetected by the law enforcement agency that is supposed to enforce these laws.

Since the merger of legacy INS and legacy Customs into ICE, the new ICE special agents are no longer even being given Spanish language training, even though it's been estimated that some 80 percent of the illegal alien population is, in fact, Spanish-speaking. It is impossible to investigate individuals you are unable to communicate with, yet this critical language training program has been eliminated from the curriculum of new ICE agents. I have to believe that this represents more than a simple oversight on the part

of the leaders at the Academy; it underscores an absolute lack of desire to enforce the critical immigration laws.

If anything, our agents should be getting additional language training as we seek to uncover aliens operating within our Nation's borders who are a threat to our well-being. Strategic languages such as Arabic, Farsi and Urdu should be added to the curriculum, along with Chinese, Korean and other such languages; yet at present the curriculum not only fails to mandate any foreign language training, it doesn't even offer any foreign language training.

Identity documents are the lynchpins that hold the immigration program together, yet incredibly, while other law enforcement agencies provide in-service document training to their personnel to help them recognize altered or counterfeited identity documents, ICE does not. Immigration law training is not as effective as it needs to be.

Besides the extreme lack of resources that have been the focus at previous hearings, we need to make certain that the people in charge of enforcing the immigration laws have a true understanding of the laws and have a clear sense of mission that many key managers appear to lack. At present, nearly every field office of ICE is headed by a Special Agent-in-Charge who came from the U.S. Customs Service and not from the former INS. The immigration laws are highly complex and require that the executives who are charged with leading the enforcement effort have a thorough understanding of the laws that they are responsible for enforcing. They should have real-world experience at investigating and aiding in the prosecution of criminal organizations that produce fraudulent documents, promote fraud schemes to circumvent the immigration laws, engage in large-scale human trafficking or the smuggling of criminal or terrorist aliens into the United States. They should also have real-world experience and understanding of the ways in which proper enforcement of the immigration laws can synergistically act as a force multiplier when ICE agents team up with law enforcement officers from other law enforcement agencies.

The effective enforcement of immigration laws can also help to cultivate informants to facilitate not only investigations into immigration law violations, but into other areas of concern, including narcotics investigations, gang investigations and terrorism investigations.

The current lack of leadership that is experienced in immigration law enforcement, the lack of effective training and the previously examined lack of resources have been disastrous for the enforcement of the immigration laws, thereby imperiling our Nation and our people.

It is vital that there be real accountability and real leadership where immigration is concerned. While Customs and Immigration were both border enforcement agencies, the border is where their similarities begin and end. I would, therefore, strongly recommend that the law enforcement officers charged with enforcing the immigration laws have a dedicated chain of command with a budget and training program that focuses on immigration. Certainly they can and should work cooperatively with the former Customs enforcement agents, but they need a separate identity in order to make certain that the current "Customization" of immigration law en-

forcement stops immediately for the security of our Nation. The enforcement of our immigration statutes needs to be the priority, and not an afterthought.

I look forward to your questions.

Mr. HOSTETTLER. Thank you, Mr. Cutler.

[The prepared statement of Mr. Cutler follows:]

PREPARED STATEMENT OF MICHAEL W. CUTLER

Chairman Hostettler, Ranking member Jackson Lee, distinguished members of Congress, members of the panel, ladies and gentlemen. I welcome this opportunity to provide testimony today on the critical issue of the dual missions of the immigration enforcement agencies. While my prepared testimony will focus on ICE, It is my understanding that the inspections program of CBP is similarly hobbled in its ability to enforce the immigration laws.

For decades our nation had the reputation of being the "can do" nation. If we could dream it, we could accomplish it. Our nation's entry into both World Wars ended with victory. When President John F. Kennedy challenged our scientists and engineers to land men on the moon and return them safely to the earth within less than a decade, we again rose to the challenge. Today, our nation is challenged by many problems. The one issue that impacts so many of these other issues, the enforcement and administration of the immigration laws, eludes our purported efforts at solving it. For decades, the immigration crisis, and it is, indeed, a crisis; has grown more significant and its repercussions have increased exponentially. We are waging a war on terror and a war on drugs. The immigration component of this battle, in which the lives of not only our citizens, but the survival of our nation itself is on the line, appears to be insoluble. I am here today to tell you that we can control our nation's borders and we can effectively administer and enforce the immigration laws from within the interior of the United States.

In order to gain control of our borders and our immigration program, we need to see it as a system. We also need to understand that the interior enforcement program is critical to gaining control of our nation's borders. Nearly half of the illegal aliens did not enter the country by running the border, but rather by being admitted through a port of entry and then subsequently violating the terms of their admission. They stay longer than the period of time for which they were admitted, they seek unauthorized employment or they commit felonies. Special agents are desperately needed to not only seek to arrest illegal aliens, but to conduct field investigations to uncover immigration fraud to restore integrity to the benefits program which has been historically plagued with high fraud rates. This is especially troubling as we wage a war on terror. The 911 Staff Report on Terrorist Travel made it clear that this dysfunctional bureaucracy aided the terrorists who wrought so much destruction upon our nation. The fact is that many of the managers of ICE appear more focused on traditional Customs-oriented investigations than they are on enforcing the Immigration and Nationality Act to safeguard our nation from terrorists and criminals who have become adept at hiding in plain sight by making use of gaping loop-holes and deficiencies in the immigration bureaucracy that go undetected by the law enforcement agency that is supposed to enforce these laws.

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The current lack of leadership that is experienced in immigration law enforcement, the lack of effective training and the previously examined, lack of resources have been disastrous for the enforcement of the immigration laws, thereby imperiling our nation and our people.

It is vital that there be real accountability and real leadership where immigration is concerned. While Customs and Immigration were both border enforcement agencies, the border is where their similarities begin and end. I would therefore strongly recommend that the law enforcement officers who are charged with enforcing the immigration laws have a dedicated chain of command with a budget and training program that focuses on immigration. Certainly they can and should work cooperatively with the former Customs enforcement agents, but they need a separate identity in order to make certain that the current "Customization of immigration law enforcement" stops immediately for the security of our nation. The enforcement of the immigration statutes needs to be the priority and not an after-thought.

I look forward to your questions.

Mr. HOSTETTLER. Agent Bonner.

TESTIMONY OF T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL

Mr. BONNER. Thank you, Chairman Hostettler and other distinguished Members of the Subcommittee.

On behalf of the 10,000 frontline Border Patrol employees that I represent, I would like to present some of the concerns that we have about the dual enforcement mission of the Border Patrol and the other immigration agencies.

Long before the passage of the Homeland Security Act, or even the debate over that, this Subcommittee and other Members of Congress were talking about the problems in the former Immigration and Naturalization Service and the dual mission that it had, a mission of service and enforcement. And, in fact, about 6 years ago I testified in front of this Subcommittee supporting a bill that would have separated enforcement from service within what was then the Immigration and Naturalization Service.

The Homeland Security Act achieved that goal. It split enforcement from service, and, as you noted, Mr. Chairman, it called for the creation of a bureau of border security. Unfortunately the Administration took it one step further and split the enforcement bureaucracy into two different bureaus, the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement. This, in our view, was a serious mistake. It created the One Face at the Border Initiative where we expected employees to

be experts in two or even three disciplines, immigration and customs in all cases, and in some cases agriculture.

If there were truth in advertising in some of these Government initiatives, this one should have been called One Hand Tied Behind Our Back, because it minimized our effectiveness by at least 50 percent, and this affects the Border Patrol just as much as it does the other agencies. While on its face it may seem that the Border Patrol is the least affected, we are very dependent on ICE for our detention needs.

The mess that we have down in south Texas right now, where I was speaking to one of our agents down there, is at any given time in south Texas 80 percent of our resources are tied up in processing people from countries other than Mexico. While we have 20 percent of our resources out on the line, 80 percent of them are in the office processing people just to give them a piece of paper that allows them to go wherever they want in the United States, with a promise to show up within about 6 months. And, of course, over 90 percent of these people never do show up. This is simply unacceptable.

The other part that we rely upon ICE for are interior enforcement and work site enforcement. We are not authorized—although we are authorized by law to deal with these issues, we are not authorized by policy to deal with these issues. This results in millions of people coming to the United States looking for and getting jobs. If we are serious about controlling illegal immigration, we need to crack down on the root cause of people coming to this country, and that root cause is employment. We have to turn off the employment magnet. H.R. 98 would do that, and I would urge this Committee to look carefully at that legislation or ideas similar to it so that we can discourage people from coming into this country in search of employment. We need to get the word out to illegal aliens that it does them no good to come in. Whether they come in illegally, or come in legally and overstay their welcome, it will do them no good because no one will offer them a job because they are afraid of the consequences, the employers are afraid of the consequences. We need to take that step if we want to control illegal immigration.

Mr. Cutler brought out the fact that the former Immigration and Naturalization Service enforcement entities have been "customized." That's a word that you hear when you talk to any Border Patrol agent, or any former INS person. You have Customs managers who are trying to fit round pegs into square holes and make everything work in the old Customs way. This is not sound public policy. As Ralph Waldo Emerson sagely noted in 1841, "A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines." In essence, what they are trying to do is make everything the same when, in fact, there are major differences between immigration and customs enforcement.

And my recommendation is that we fix this problem. This can be undone the same way that it was done, through the administrative reorganization authority granted within the Homeland Security Act. What needs to happen is a separate organization that would handle all of the immigration enforcement, and within that you would have the Border Patrol, immigration inspections, detention and removal, immigration investigations, and a separate organiza-

tions for customs. This would allow these officers to specialize. There was an old advertising slogan, I believe, from Kentucky Fried Chicken: We do one thing right. And if you allow these agents to specialize, they can do it right, they want to do it right, but they need the tools to do it right, they need the resources to do it right, they need the policies that enable them to do it right, and they need the laws that are enforceable to go out and to do it right.

I would welcome your questions, and thank you for your time.

Mr. HOSTETTLER. Thank you, Mr. Bonner.

[The prepared statement of Mr. Bonner follows:]

Prepared Statement of T.J. Bonner

STATEMENT OF THE

NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY AND CLAIMS

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON THE NEW "DUAL MISSIONS"
OF THE IMMIGRATION ENFORCEMENT AGENCIES

PRESENTED BY

T.J. BONNER
NATIONAL PRESIDENT

MAY 5, 2005

The National Border Patrol Council thanks the Subcommittee for the opportunity to present the views and concerns of the 10,000 front-line Border Patrol employees that it represents regarding the expanded mission of the agencies responsible for enforcing immigration laws.

Even before the creation of the Department of Homeland Security, there was widespread concern about the dual enforcement and service missions of the Immigration and Naturalization Service (I&NS) that often competed for the same scarce resources. In fact, a number of legislative solutions were proposed to address that problem, and this Subcommittee held several hearings regarding the matter. The National Border Patrol Council shared those concerns and supported efforts to divide the agency into two separate components that could each focus on a single mission.

The Homeland Security Act of 2002 was also designed to achieve that goal. It abolished the Immigration and Naturalization Service and transferred its functions into the new Department of Homeland Security. The legislation called for the creation of two bureaus to absorb those functions: the Bureau of Border Security to handle all of the enforcement functions and the Bureau of Citizenship and Immigration Services to handle all of the service functions. For reasons that had more to do with political expediency than operational efficiency, the Administration used its reorganization authority under the Homeland Security Act to further split the enforcement functions into two new bureaus: the Bureau of Customs and Border Protection (CBP) to enforce laws at the border and the Bureau of Immigration and Customs Enforcement (ICE) to enforce laws in the interior of the country. Rather than fostering the cooperation and coordination that are so essential to the accomplishment of the Department's homeland security mission, this artificial distinction has created needless barriers to that effort.

Instead of a well-defined mission, these two enforcement bureaus now share responsibility for enforcing both immigration and customs laws, and the employees at the ports of entry are also responsible for enforcing agriculture laws. Predictably, this results in a diffused focus that dilutes the specialized expertise that is so vital to the accomplishment of the agencies' missions. All three of these areas of law are extremely complex, and it is unrealistic to expect one employee to master them all. Yet that is exactly what the "One Face at the Border" initiative requires. Although this concept sounds plausible in theory, it is

unworkable in practice. At its core, it is a one-dimensional simplistic response to a multi-dimensional complex challenge: thwarting highly sophisticated and well-organized criminal enterprises intent on smuggling people and contraband into the United States. There can be no margin of error when dealing with terrorists and weapons of mass destruction. The complex task of weeding out these threats to our homeland security requires specialized excellence, not generalized mediocrity.

While it may appear at first glance that the Border Patrol is immune from many of these problems, upon closer examination it becomes apparent that this is not the case at all. Even though its mission remains largely focused on the enforcement of immigration laws, the Border Patrol is negatively affected by the diffuse focus of the other agencies due to their symbiotic relationship. For example, the Border Patrol is largely dependent upon ICE to detain and remove the illegal aliens that it apprehends. When ICE cannot meet those responsibilities for any reason, it negatively affects the ability of the Border Patrol to carry out its mission. The current "catch and release" debacle that has resulted in an alarming surge in the number of illegal aliens from countries other than Mexico is dramatic proof of this. Likewise, the Border Patrol is largely dependent upon ICE to conduct investigations of smuggling rings and perform worksite and interior enforcement operations. When ICE cannot fulfill those responsibilities, it encourages large numbers of illegal aliens to enter the country. The current annual migration of millions of illegal aliens into the United States is due in no small measure to the fact that they know there is little chance they will be pursued once they get beyond the immediate border. A successful immigration enforcement strategy must address all aspects of the problem. Of course, the single most important step that can be taken is the enactment of legislation such as H.R. 98, the Illegal Immigration Enforcement and Social Security Protection Act of 2005, that would eliminate the employment magnet that draws most illegal aliens to our country.

The fact that former Customs personnel now dominate the hierarchy of both of the new enforcement bureaus adds to the problem, creating an imbalanced emphasis on enforcing customs laws. While the enforcement of these laws is undoubtedly critical to the accomplishment of the Department's

mission, the enforcement of immigration laws is no less so. Although the reluctance to incorporate the mistakes of the beleaguered I&NS into the new Department was completely understandable, "throwing the baby out with the bath water" was equally inadvisable. At the time of the transition, the I&NS employed a substantial number of highly-experienced employees who possessed a wealth of knowledge about the enforcement of immigration laws. Unfortunately, this number is rapidly dwindling, as many disillusioned employees are transferring out of the agency or retiring as soon as they become eligible.

Since the management infrastructure of the former Customs Service took over CBP, it has attempted to standardize every aspect of its management and operations to conform to the Customs way of doing business without regard to whether it makes sense or not. This practice of trying to fit round pegs into square holes is so widespread that it is routinely referred to by employees as the "customization" of the agency. As Ralph Waldo Emerson sagely noted in 1841: "A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines."

Although the aforementioned problems pose daunting challenges to the accomplishment of the Department's vital mission, they are by no means insurmountable. In fact, they could be corrected without any modification to the Homeland Security Act. The Administration could easily undo the damage created by the bifurcation of the enforcement bureaus through the exercise of the same reorganization authority that it initially utilized.

The most important modification that needs to be made is realigning the Department's organizational enforcement structure to conform to the laws that are enforced rather than the current artificial geographic distinctions between the border and the interior. In other words, one agency should focus solely on the enforcement of immigration laws, another on the enforcement of customs laws, and another on the enforcement of agriculture laws. These agencies should retain different occupational groups that perform distinct functions. For example, the immigration enforcement agency should have a border patrol component, an inspections component, a detention and removal component, and a

criminal investigations component. All of these components should closely coordinate their activities and be overseen by a single high-level administrator who is also responsible for coordinating enforcement activities with his or her counterpart at the customs and agriculture enforcement agencies.

Although this is similar in some respects to the organizational structure that existed before the creation of the Department of Homeland Security, there are several key differences: All of these agencies would be within the same bureau, and would therefore be overseen by the same administrator, ensuring accountability and coordination. Moreover, it would not be a return to the old I&NS structure, as the enforcement bureau would remain separate from the service bureau.

Merely changing the organizational structure of the Department's enforcement bureaus will not solve all of the current problems. A cultural shift at the highest levels of the organization must also accompany these structural modifications if meaningful changes are expected. If the Department wants to attract and retain the best and the brightest employees, it must treat and pay them fairly, and give them a voice in the workplace decisions that affect them. The new personnel system that is about to be implemented does none of these things, and will thus deter good people from applying or working for the Department. Without an adequate number of motivated and experienced employees, it will be impossible to accomplish the Department's mission.

In summary, the National Border Patrol Council strongly recommends modifications to the current organizational structure that encourage specialization by eliminating dual enforcement responsibilities and foster cooperation and coordination by demolishing the artificial barriers that hamper these efforts. This must be accompanied by meaningful changes in the way employees are treated and rewarded. These reforms are essential to enable the Department to effectively accomplish its vital anti-terrorism and other law enforcement missions.

Mr. HOSTETTLER. And as an aside, I want to thank you for agreeing to come and testify for this Subcommittee on such short notice. Just to inform the panel and the record, we had a witness that had to back out at the last minute because of certain personal concerns, and you, Agent Bonner, were willing to step forward. Thank you for doing that.

Mr. BONNER. I am happy to do so.

Mr. HOSTETTLER. Ms. Kephart.

TESTIMONY OF JANICE KEPHART, FORMER SEPTEMBER 11 COMMISSION STAFF COUNSEL

Ms. KEPHART. Thank you, Chairman Hostettler, and Ranking Member Jackson Lee and Mr. King, for holding this hearing and giving me the opportunity today to discuss with you DHS border enforcement functions in light of my 9/11 Commission work on terrorist travel.

We are all here today because September 11th taught us that all elements of our complicated border apparatus must be brought to bear if we truly seek to stop foreign terrorists from entering and staying in the U.S.

From my vantage point of spending 15 months devoted to figuring out how the 9/11 terrorists conducted their travel operation into the U.S. so easily, it is clear to me that we must put old thinking aside when it comes to immigration issues if our ultimate goal is truly effective border security. We must seek a long-term plan that incorporates all we know about terrorist travel. We must start from the fact that foreign terrorists carefully plan their attempts to enter and stay in the U.S. based on a relatively sophisticated understanding of our border security.

Terrorists will use any infiltration tactic if it will work, from hiding in a ship's hull, or car trunk, to fraudulently seeking legitimate U.S. visas or passports. These terrorists do not just represent al Qaeda; Hamas, and Hezbollah and lesser-known terrorist organization operatives also engage in all varieties of immigration fraud.

Once in the United States, terrorists seek legal status. They resist removal through sham marriages, claims of political asylum, and applications for naturalization. In one case a terrorist even managed to stay in the U.S. when his spouse won the visa lottery. They seek U.S. and State-issued identifications to establish themselves in communities and travel more easily. And wherever a vulnerability exists, from visa issuances to admission standards at our ports-of-entry, to our physical borders, to our immigration benefits adjudication system, a terrorist will take advantage of it.

Terrorists move throughout our border system in a continuum, taking advantage of every legal and illegal means possible. However, our current border system is less reflective of that continuum now than it was prior to 9/11. Prior to 9/11, the seven elements of our immigration system were split amongst three departments and three agencies. Today those same elements are split amongst three departments and six agencies. To add to the confusion, immigration enforcement and Customs were merged together and then split in a manner that made little sense in practical application. And while it made some sense to merge custom and immigration functions at

ports-of-entry, that merger does not necessarily transfer to the interior.

Why did all this happen? After 9/11, lawmakers and the Administration hurried with the solution, applying pre-9/11 solutions, where economic security was a priority, to a post-9/11 world, where national security is the priority. We also failed to deal with the underlying problems that have traditionally plagued our immigration system, and those failures still exist today. They include, first, a lack of commitment to enforcing immigration law. Not only do the complexities and gray areas of immigration law make it difficult to enforce, but also enforcing the law is nearly impossible where strong special interests with diametrically opposed viewpoints prevent forward momentum. We must rise above special interests and provide Americans with the security that they deserve.

Second, critical intelligence on terrorist travel indicators still is not being declassified and distributed to our frontline officers 3½ years after 9/11. One specific indicator present on five passports used by three 9/11 hijackers remains unknown today to immigration personnel. To make matters worse, very few in the ranks of immigration have security clearances necessary to acquire critical classified information now being collected on terrorist travel.

Third, and perhaps most importantly, we lack an overarching policy where rules, guidelines and resources are allocated in a manner that encourages legal immigration to this country and discourages illegal immigration. We have also failed to give our border system the clout it deserves and desperately needs to be effective. Expertise in policymaking, with access to tough decisionmakers has also been lacking.

In today's world, every element of the border system must be viewed primarily for its enforcement function and application of the rule of law. Only then will we begin to infuse the integrity into the system to deter terrorists in illegal entry and encourage legal entry.

In conclusion, we all know that terrorists are creative, and they are adaptable, yet we have the ability to counter them by being adaptable in our thinking ourselves and provide our frontline officers with a job that they are all eager to do and capable of doing. My written testimony lays out a series of recommendations which I believe can help us go further in taking border security out of rhetoric and into reality.

Thank you.

Mr. HOSTETTLER. Thank you, Ms. Kephart.

[The prepared statement of Ms. Kephart follows:]

PREPARED STATEMENT OF JANICE L. KEPHART

INTRODUCTION

Good afternoon and thank you for the opportunity to discuss *terrorist travel* and *immigration enforcement* with you today. My testimony is based on my work as a counsel on the 9/11 Commission "border security team," as an author of the 9/11 staff report, *9/11 and Terrorist Travel,* and a 380 page report on the current state of terrorist activity in the United States I conducted as a consultant. At the Commission, I was responsible for the investigation and analysis of the INS and current DHS border functions as pertaining to counterterrorism, including the 9/11 hijackers' entry and acquisition of identifications in the United States. My current work includes a study of terrorist travel tactics in the United States, specifically focusing on the abuse of our immigration system by 118 indicted and convicted terrorists.

Please note that the views I present here today are my own, and do not necessarily reflect those of the 9/11 Commission. I want to thank both Chairman Hostettler and Ranking Member Jackson Lee for holding this important hearing. I also wish to applaud Congress for passing the National Intelligence Reform Act of 2004. That Act contained many valuable terrorist travel provisions born of the 9/11 Commission's recommendations. I look forward to seeing the national terrorist travel strategy and the implementation of the new passport rules for all visitors come to fruition as required by the Act. It is the hope of many of us who are working on this important topic that this Subcommittee and Congress as a whole will continue to exercise their oversight authority on the important issue of terrorist travel and overall border security, ensuring that our Government continues to implement the lessons learned as a result of the tragic events of September 11, 2001.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to this country to be one of our greatest strengths as a nation. However, I also believe that we owe it to all Americans to maintain the integrity of our borders. To do so, we must scrutinize effectively those who seek to come here. September 11 has taught us that secure borders are a matter of national security.

We will not have secure borders until we enforce the laws already in place; until we properly train, equip and support our first line of defense; and until we are prepared to share more information with frontline personnel. Nor will we have full immigration reform until we understand the extent of our vulnerabilities and devise a long term plan to fix the border system, so that policy priorities can be set and executed with political credibility; clarify and streamline our complex immigration laws where necessary; and allocate and account for funds and other resources appropriately; and restructure our border system to reflect the importance and mission of our immigration apparatus.

Today I plan to discuss with you whether the current structure of our border security system accomplishes its most important responsibility: to provide security for U.S. citizens and legal residents of the United States from foreign visitors who seek to do us harm. To understand why structure matters, we must first gain an understanding of how foreign terrorists are exploiting the vulnerabilities in our border system, why these vulnerabilities exist, and then why the structure of the border system matters. Based upon these findings and analysis, recommendations follow.

U.S. BORDER SYSTEM VULNERABILITIES

Despite good initiatives by the administration, such as the deployment of U.S. VISIT to international airports, weaknesses in the U.S. border system still exist. Terrorists will continue to successfully enter the United States because we still lack adequate technologies; integrated information systems that house biometric travel histories of visitors and immigrants; and specialized training in terrorist travel tactics. As noted in *9/11 and Terrorist Travel,* front line immigration officers are not adequately trained to detect fraudulent travel stamps in passports, terrorist indicators in passports, or behavioral cues. Indeed, as a staff member for the 9/11 Commission I had access to more information about the techniques that terrorists use to gain unlawful entry in the United States than frontline officers.

Without repeating the content and findings of *9/11 and Terrorist Travel,* terrorists will use any infiltration tactic if it works, from hiding in a ship's hull or car trunk, to seeking legitimate visas, to entering into a sham marriage that will gain them access to either a visa waiver, or, better yet, a U.S. passport. These terrorists do not just represent Al Qaeda; Hamas and Hizballah and lesser-known terrorist organization operatives also engage in all varieties of immigration fraud.

Once in the United States, they seek legal status and resist removal through sham marriages, claims of political asylum, and applications for naturalization. They seek U.S. and state issued identifications to establish themselves in the community and travel more easily. They take advantage of amnesty and temporary worker programs, and in one case even managed to stay in the United States when a spouse won the visa lottery.

Terrorists move through our border system in a continuum. However, our current border system is even less reflective of that continuum than it was prior to 9/11.

To understand where we are today and why, we need to look back at our border system prior to 9/11 and the creation of DHS. We must understand why our border system failed prior to 9/11, and why it is still struggling today. We must first take a look at the variety of operational border missions that will likely always make up the U.S. immigration system.

THE U.S. IMMIGRATION SYSTEM PRIOR TO THE CREATION OF DHS

Even prior to 9/11, our immigration system was failing to provide the basic requirement of good government-value. The result was a constant chorus that our immigration system was "broken" and "laughable". Value was measured in the level of security we perceived the immigration system to provide. However, security was defined as one of economic, not national, security. The debate raged over the economic value of illegal workers to our system while it was widely recognized the Citizenship USA program put in place to facilitate legal immigration was an embarrassing failure. There was also increasing concern that illegal populations worsened drug and crime problems. The inability of the government as a whole to address these issues resulted in a freezing of resources to address the problem. A mere 2,000 interior enforcement agents had the impossible job of dealing with an estimated 6 million illegal aliens. Our immigration system was failing to provide even economic security.

No role in counterterrorism prior to 9/11. I know from personal experience as a counsel to the Senate Judiciary Committee in the late 1990s that before 9/11 INS employees considered their agency to have no role in counterterrorism. When posed the question, I was simply told, "That's the FBI's job." I responded: "Well then who is to keep terrorists from entering the country?" I was given no answer.

Only after public hearings on foreign terrorist activity in the United States on the five year anniversary of the first World Trade Center bombing and insisting that the INS take part in those hearings, did the INS set up a National Security Unit. That unit never had more than a half dozen full time employees. They worked in a virtual information vacuum, seeking information from the FBI and field where they could. The INS' intelligence unit was considered of so little value that the INS Commissioner had decided years prior that daily briefings were a waste of time. This failure was just one manifestation of a woefully inadequate border system.

Overly complex immigration laws. Another way in which our immigration system was failing to provide value was that immigration rules were immensely complex, hard to understand, and even harder to apply. Inspectors at ports of entry, border patrol agents, immigration agents, immigration benefits adjudicators, and immigration attorneys and judges were all stymied by rules that were fuzzy and time-consuming to implement. Why? For decades, immigration rules were constantly built upon the latest crisis. Wholesale review of the efficiency, fairness, and functionality of these laws never took place. Concern over reprisal often led to more lax enforcement—both for those inspecting visitors coming into the country and in our immigration courts. All of this contributed to poor morale and a burgeoning immigration problem: those seeking to come here and stay knew there were plenty of legal and illegal loopholes to facilitate remaining in the United States indefinitely. Those working in immigration were demoralized. The problem worsened.

Lack of effective policies. We also failed to be holistic and proactive in our immigration policies. Where policies existed, they were divergent: at the ports of entry and in immigration benefits, it was all about customer service. However, interior enforcement was about rounding up illegal aliens, sanctioning employers not playing by the rules, and issuing removal orders to criminal aliens. The conflict between enforcement and customer service once more resulted in a constant push me—pull you policy-making. No real forward momentum was created. There was another problem as well: a lack of efficiency in supervision at ports of entry, where duplicative hierarchies existed for both customs and immigration inspectors. Many sought a combined force.

Poor use of funding. The immigration system also failed to provide value in its use of appropriated funds. Congress became so frustrated with ad hoc technologies and no real movement towards completion of new immigration benefits technologies that in the late 1990s Congress chastised the INS in its conference reports, denying needed resources until the INS could show accountability for monies previously provided. During this time, the student tracking and entry-exit systems were started and, for different reasons, never came to fruition. Any money that was appropriated went disproportionately to the Border Patrol, but the problems of illegal immigration seemed to ebb and flow depending upon where resources were physically allocated on the border. Meanwhile, the State Department's Consular Affairs was suffering near annual cutbacks. Immigration agent resources remained level despite a growing illegal population, and the immigration inspector workforce grew slightly, but not in proportion to the burgeoning number of foreign visitors.

Throughout the 1990s, hearings were held constantly on Capitol Hill. Topics included the porous southwest border, the slow processing of naturalization applications, and the inadequacy of immigration law enforcement. The debate raged: *maybe the structure isn't right*. For years, two sets of solutions were proposed: (1) break

up INS into its enforcement functions and benefits functions and/or (2) merge Customs and INS together.

In testimony before the 9/11 Commission in January 2003, former INS Commissioner Jim Ziglar told us in lengthy testimony about the severe challenges he faced when he was asked by newly elected President Bush to restructure the INS and reduce immigration benefits backlogs. In early August 2001, Commissioner Ziglar took office. On September 10, 2001, he had a business plan for restructuring the INS ready for review, in part based on the work of the prior INS Commissioner, Doris Meissner. In early 2002, as Commissioner Ziglar still attempted to move forward with restructuring, *especially* in light of the events of 9/11 (as he told me during interviews), he undertook to determine what it would take for the INS to actually fulfill its mandate. He provided the following testimony:

> We concluded that the INS annual budget would have to grow from $6.2 billion in FY 2002 to approximately $46 billion by FY 2010 . . . assuming Congress and the administration actually desired that the mandates be fulfilled. It was also assumed immigration laws would remain static. . . . It was concluded that in order to carry out the enforcement mandates of the Congress and administration, past and present, the INS would need approximately the following:
>
> - 27,960 Investigators/Special Agents (compared to the 2,000 employed at the time of the study), a 14-fold increase
> - 31,700 Border Patrol Agents (compared to 10,000)
> - 21,500 Immigration Inspectors (compared to 5,000)
> - 15,600 Deportation Officers (compared 650)
> - 1,440 Attorneys (compared to 770)
> - 110,000 detention beds (compared to 21,107)
> - and a vast increase in office space, support staff, vehicles, computer equipment, etc.

These numbers speak for themselves.

THE IMMIGRATION SYSTEM MOVES TO DHS

Prior to 9/11 and the creation of DHS, the seven elements of our immigration system were buried in bureaucracy at two main locations: the INS at DOJ and Consular Affairs at the State Department. The U.S. Coast Guard supported the INS at sea. After 9/11, the dismantlement of the INS became inevitable—the years of discussion about its break-up finally seemed to be grounded in something real, as if the wholesale splitting up of functions into completely separate bureaus would have increased our national security prior to 9/11. Of course it would not have, as the INS was not considered to have a role in national security prior to 9/11.

Today, we have severe fragmentation, with those seven elements split between three departments (DOJ, State, and DHS) and within DHS, in four different agencies: CBP, ICE, USCIS, and the Coast Guard. There is no policy shop under the Secretary to pull disjointed elements together. If Secretary Chertoff creates such a policy shop, that alone will significantly upgrade policy cohesion throughout DHS border functions.

The current DHS structure has combined pre 9/11 solutions to a post 9/11 world. Border functions now at DHS represent acceptance of pre 9/11 views: that enforcement and customer service missions require wholesale bifurcation, and government efficiency requires the combined forces of the INS and Customs Service.

These presumptions are inaccurate; they fail to reflect current national security realities.

Mission Elements of the U.S. Immigration System

	Prior to DHS	Since DHS
Visa issuance	Consular Affairs at DOS	Consular Affairs at DOS with policy at BTS at DHS
Inspections at 400 plus air, sea and land ports of entry	INS at DOJ, with support from Customs at Treasury	CBP under BTS at DHS
Patrol of U.S physical land borders	INS at DOJ	CBP under BTS at DHS
Patrol of U.S. maritime borders	Coast Guard at DOD	Coast Guard at DHS
Interior enforcement of immigration laws	INS at DOJ	ICE under BTS at DHS
Immigration benefits	INS at DOJ	USCIS at DHS
Immigration courts	INS at DOJ	EOIR at DOJ

First, in a post 9/11 world, all immigration functions have at their foundation national security. The top priority of the immigration system therefore must be enforcement of the law and assuring adequate but efficient security vetting of applicants throughout all facets of our immigration system. Until we accept that all elements of our immigration system have a significant role to play in the war on terror, our immigration system will not optimize the value—that of security—it must provide to Americans.

Second, while a good argument remains that ports of entry have both an immigration and customs mission, it does not necessarily translate that interior enforcement of immigration and customs laws achieves maximum effectiveness by a joining of those law enforcement functions. While there is limited and justified overlap of some immigration and customs enforcement operations, especially where aliens are committing crimes over which customs personnel would traditionally have jurisdiction (and vice versa). However, there is nothing preventing joint task forces for such operations from being equally efficient. Moreover, traditional immigration investigations against employers violating immigration law, immigration benefits fraud, SEVIS and, eventually, U.S. VISIT violators, need to remain a priority. They should find equal weight with traditional Customs investigations, and not be subsumed.

Perhaps most importantly, what seems to be lacking in our analyses of providing a border system with value is *new thinking*. We must consider that immigration activities—whether enforcing the law or providing a benefit at or within our borders—all require overarching cohesive policies, resources and interconnected information resources to make it work. However, that does not mean that we should wait to shore up our immigration system while we tackle the complex and difficult policy, budgetary and legal questions that have traditionally burdened our immigration system. We can, and should, begin redressing some of its severe deficiencies in interior enforcement now. I believe we can do so without negatively impacting long range planning of our immigration system.

STRENGTHENING IMMIGRATION ENFORCEMENT

To rebuild public confidence, our nation must create a strong and intelligent border screening system that is effective both at keeping terrorists out of the United States and in facilitating legitimate travel and immigration services. The system will never provide a perfect result. Some terrorists will get through, despite our best national effort. In that case, the public needs to know that border authorities investigate the reasons for the infiltration and make necessary changes to further strengthen the system.

In pursuit of this objective, the rule of law matters. The process of intercepting terrorists and detecting them through their violations of immigration law is properly a domain of national security and demands highly focused law enforcement efforts

by trained, dedicated professionals. Terrorists represent a lethal threat. But a border and immigration system with consistent and systematic enforcement is much harder for terrorists to penetrate. A United States whose borders and immigration system are governed by the rule of law, moreover, sends a message of justice that is itself a deterrent to terrorists.

To promote public confidence in the rule of law, it is critical to reform our immigration system. We cannot afford the vulnerability of the borders, the lack of internal regulation, the gaps in our enforcement system, and the continued corrosion of the rule of law caused by the presence of 10 million illegal aliens. The underlying condition of our immigration system is that there is a dearth of predictable and consistent enforcement.

We must insist upon people entering lawfully and abiding by the terms of their admission as a fundamental basis of our immigration system, and desist from viewing immigration violations as mere technicalities. On the other hand, demands for "catch-up" enforcement of immigration law, while appealing to some, threaten the availability of resources to develop and sustain a significant, dedicated, and targeted counterterrorism effort at the borders. Quite simply, there will not be a sound and secure border security system or an optimal deterrent policy against terrorists until we have an immigration policy and system that operates more realistically, efficiently, and according to the rule of law.

First, *reform should include simplifying the law and standardizing its application in the field.* Our 9/11 investigation showed that mistakes by inspectors at the ports of entry resulted in part from the inordinate complexity of immigration laws. While the standard of decision-making at the ports of entry, in enforcement, and in immigration benefits proceedings can be enhanced by national standard operating procedures and specialization, Congress and the President also hold responsibility for simplifying the laws.

Second, *the U.S. government should adopt a counterterrorism immigration enforcement strategy that brings all relevant federal, state and local entities to the table.* All of our law enforcement agencies have a role to play in denying terrorists the ability to enter and remain in the United States. These efforts need to be coordinated, robust and matched to the expertise of each agency. To be successful, such a strategy should include comprehensive training in the nuances of immigration law and the resources to implement the law equitably and fully. It also requires intelligence (and training) on terrorist travel methods and watchlisting that is available to our border officials in a timely manner.

Specifically, DHS should invest in the ability of state and local law enforcement to detect terrorists among immigrant communities by providing training, real-time access to federal expertise, the necessary security clearances, and other resources as needed. Currently, only two states, Alabama and Florida, have or are receiving training from federal immigration authorities on immigration enforcement relevant to their jurisdictions. I welcome the news that more states and communities are recognizing the value they can provide to this effort. They can help find terrorists and criminals in the United States when they examine travel documents in the normal course of their duties. State and local law enforcement should be encouraged to use the DHS Law Enforcement Support Center (LESC) to access databases and experts on travel documents.

Third, *DHS and the Justice Department should propose adoption of tougher anti-fraud laws in the United States,* where document and other forms of illicit travel facilitation are linked to terrorists and punishments and sentences do not fit the crimes.

Fourth, *special consideration must also be given to the consular officers and immigration inspectors, agents, and benefits adjudicators who have the opportunities to detect and intercept terrorists as discussed above.* Up to now, they have not been considered critical assets in the war against terrorism even though they are responsible for determining who enters and who remains in the United States. They need to be given an enhanced role in any counterterrorism immigration strategy. This includes *providing appropriate security clearances for certain personnel at ports of entry and elsewhere as needed.*

Fifth, *all these reforms must be adopted under an overarching policy that encourages legal immigration and discourages illegal immigration.* We are capable of maximizing security and efficiency throughout the immigration system while minimizing privacy intrusions. As we build efficient security at the perimeter of our borders by facilitating entry of those we deem legitimate and denying entry to those we do not, pressure on interior enforcement will eventually become more manageable.

CREATING A DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION

One potential way to provide the immigration system with the political backbone it deserves is to consider a long-term plan of providing the immigration system with its own structure. By creating a Department of Immigration and Border Protection, fragmentation is minimized and enforcement and benefits operations act to support each other. If we consider that we, as a country, can adopt policies and laws that encourage legal immigration and discourage illegal immigration all upon a foundation of biometrically based travel histories and secure background checks, then we divest ourselves of the notion that we have to fragment our operations into boxes that only incite unnecessary turf and resource allocation wars. CBP and ICE are remnants of old thinking. We need immigration enforcement functions to stay together where it makes sense, and that is the case where detention and removal, anti-smuggling, and overall immigration enforcement is merely an extension of border inspection and patrol functions.

The bureaucracy that houses the U.S. border system should be the Department of Immigration and Border Protection. Right now, immigration services, (CIS) immigration enforcement (CBP and ICE), and border policy (BTS) are all co-located at DHS. Visa issuance remains at the State Department. It is not the fragmentation of these agencies that is the entire problem, however. Instead, the main problem is one of accountability and access to information. There is no one who answers directly to the President solely on border issues, nor has direct access to the top tiers of intelligence.

Instead, the creation of DHS has replicated one of the problems of legacy INS: too many layers of bureaucracy between the president and those on the front lines of immigration policy-making and information gathering. This problem is documented in *9/11 and Terrorist Travel.*

Today's DHS Secretary not only has to deal with an overly complex set of border, immigration and customs enforcement, and immigration benefit issues, but wholly new arenas for the government such as information assurance and infrastructure protection. This inevitably means that the DHS Secretary (like all previous parent organizations of immigration agencies) has a multitude of responsibilities, only a handful of which are critical to border security. No one thoroughly knowledgeable or directly responsible for the border system is available to answer questions at a cabinet meeting or listen to critical intelligence briefings. Consider the following factors:

- Accountability and access to the President are keys to having the right information from the right people to make border security effective. Border security never has been effective in this country.
- U.S. immigration policies inform our foreign policy and affect the world's view of the United States. Immigration has always been central to shaping our identity as a nation. A Department of Immigration and Border Protection would reflect that importance.
- Immigration issues and laws are immensely complex, politically and legally, and require a tremendous amount of expertise to deal with them effectively.
- Well-honed border policies have become a top priority for national security.
- About 40 percent of DHS employees, or about 40,000 personnel, are in a border-related agency or directorate. That is more than the year 2000 Congressional Budget Office numbers for the Department of State (27,000); the Department of Labor (16,000); Department of Education (5,000); Department of Energy (16,000); and the Department of Housing and Urban Development (10,000).[1]

As described in *9/11 and Terrorist Travel,* ever since their inception, immigration services have been treated poorly in the hierarchy of government bureaucracies:

> Although the nation's growth depended on successive waves of immigrants, the Bureau of Immigration never seemed quite important enough to become its own department, with its own secretary reporting directly to the president of the United States. In fact the bureau was something of an administrative orphan. Over the century its name and bureaucratic home changed repeatedly, and increasing numbers of confusing statutes created conflicting jurisdictions in both immigration services and enforcement.[2]

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[1] Congressional Budget Office. "A CBO Paper: Changes in Federal Civilian Employment: An Update." May 2001.

[2] *9/11 and Terrorist Travel,* p. 90.

The endnote to that paragraph reads:

> In 1895, the Bureau of Immigration was created and placed under the Secretary of the Treasury. In 1903, the bureau moved to the newly created Department of Commerce and Labor, taking the name the Bureau of Immigration and Naturalization in 1906. When the Department of Labor was created in 1913, the bureau moved with it. In 1933, these functions were consolidated to form the Immigration and Naturalization Service under a commissioner. In 1940, the Service was transferred to the Department of Justice where it remained until March 2003. *See* "History of Immigration and Naturalization Agencies," 8 U.S.C. δ§ 1551. In addition, there are at least 150 statutes providing the legislative history of immigration.[3]

With rumors that CBP seeks to absorb ICE, interest in shifting the BTS policy shop into the office of the DHS Secretary, and infighting between CIS and ICE, and ICE and CBP, many bureaucratic issues remain to be resolved. Perhaps placing these border functions in a standalone department would allow desperately needed reforms to be put in place, including strategic planning for budgets and resources that could finally make the U.S. border system enforceable and effective.

CONCLUSION

Terrorists are creative and adaptable enemies. The 9/11 hijackers probed our defenses, found our weakest points, and ruthlessly exploited them. To counter the threat, we must be aware of new trends in terrorist travel. We must be more flexible in our efforts to counter them.

We must upgrade our border system now. Our current system sets the bar far too low for terrorists trying to enter the United States. Fortunately, our frontline officers are extremely dedicated, talented, and eager to do everything they can to protect this country. Now they need the tools and the authority to do their job. Better training, government-wide integrated databases, standardized procedures, biometrics, the latest technology, and the authority to trust their hard-earned instincts, will empower these dedicated officers to keep our country safe.

The thousands of dedicated officers responsible for visa issuance, entry, and immigration adjudications have an overwhelming task: to identify, out of the millions who seek entry into this country each year, the few who represent a danger to the United States. Keeping our borders open to well-meaning legal immigrants, who contribute to our economy and society, while keeping out and removing terrorists and others seeking to harm us, should be a top priority. The recommendations in this testimony can make our borders more secure by ensuring that policy decisions have the support from the President and key issues of enforcement are not mired in unnecessary turf and resource battles.

Mr. HOSTETTLER. Mr. Stana.

TESTIMONY OF RICHARD STANA, DIRECTOR OF HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STANA. Thank you.

Mr. Chairman, Ms. Jackson Lee, and Members of the Subcommittee, I am pleased to be here today to share our views on management challenges relating to immigration enforcement activities at ICE and CBP as this Subcommittee considers potential structural changes in these bureaus to address dual-mission issues. GAO has conducted numerous reviews of both specific programs and overall management in these bureaus, and at INS which proceeded them. I would like to make a few points that may provide the Subcommittee with insights as potential changes to the structure of ICE and CBP are considered.

First, ICE and CBP face a number of management challenges similar to the ones that existed in INS. The challenges at INS included a lack of clearly defined priorities and goals; difficulty in determining who to coordinate with, when to coordinate and how to

[3] *9/11 and Terrorist Travel,* Chapter 4, endnote 126, at pp. 238–239.

communicate; and inadequately defined roles which resulted in overlapping responsibilities, inconsistent program implementation, and ineffective uses of resources. In 1999 and 2001, I testified on these management issues before this Subcommittee when consideration was being given to restructuring INS as a way of addressing these challenges. My 2001 testimony in particular concluded that while restructuring may help address some of these issues, the new organization would still need to address the management issues head on. I concluded that unless this was done, enforcing our immigration laws, providing services to eligible aliens and effectively participating in government-wide efforts to combat terrorism would be problematic regardless of how the immigration function was organized. In March 2003, the enforcement functions of the INS were transferred to the new DHS and placed in ICE and CBP. In 2004, we reported that many of the same management challenges we found in INS still existed in the new bureaus, but mostly in ICE.

My second point is in evaluating solutions to ICE and CBP challenges, including potential structural changes, policymakers should ask several key questions. The first question is whether ICE and CBP have an effective management framework in place. This includes considering whether the mission is clearly defined and articulated, the strategic planning process is comprehensive and focused on the mission, the organization structure supports the mission and strategy, performance measures are suitable for gauging progress, and leadership and accountability mechanisms are in place. Our work showed that ICE and CBP have made some progress, but much confusion still exists about roles, mission, responsibilities, performance measures and accountability. Reorganizing the bureaus now before the mission and strategic plans are fully developed and operational could further disrupt the mission and operation of these bureaus. More needs to be done to ensure that each element of the framework is put in place. If it isn't done in proper sequence, mission, then planning, then structure, this could result in a case of ready, shoot, aim.

The second question is whether the processes and systems are in place to support the framework and to resolve problems as they arise. As I alluded to in my 2001 testimony, moving boxes around an organizational chart alone cannot be expected to resolve problems without policy, guidance, communication and information sharing. These are management problems, not necessarily structure problems, and the solutions lie mainly in work processes that are clearly understood and followed, communication channels and organizational crosswalks that link related activities, and information systems that accurately report on program status and results. Again, some progress is being made, but many problems persist, and they continue to affect mission performance.

The third question is what effect are the transformation and integration activities at DHS having on ICE and CBP? It is important to recognize that the management challenges in these two bureaus exist in the larger context of the creation and evolution of DHS, which is the largest reorganization of the Federal Government in over 50 years. Despite real and hard-earned progress, DHS still has significant challenges to overcome in all of the management areas, including providing focus for management efforts, in-

cluding strategic planning, and managing its human capital. Resolving these challenges at the top levels might help address similar challenges in ICE and CBP, or it might not. Given that it can take 5 to 7 years until change initiatives are fully implemented and cultures are substantially transformed, it is an open question whether this is the right time for a major restructuring of ICE and CBP.

In closing, the proposals to merge certain ICE and CBP functions to resolve dual-mission issues are well-intentioned and are gaining some momentum, but I would like to inject a word of caution here. Let's look before we leap. Exactly what problem are we trying to fix? Reorganizing an agency or function to better align it with its mission and strategic plan is desirable and should be done. However, reorganizing mainly to address underlying weaknesses in supporting processes and systems, such as a lack of coordination and cooperation among units, or a lack of guidance relating to operational activities, might not be productive. As we have seen, mainly reorganizing these immigration and Customs functions at DHS without fixing the underlying processes and systems has not resolved the long-standing management challenges we saw in INS. At the same time, ICE and CBP may not be able to resolve some of these challenges on their own if they are affected by a higher level of DHS-wide management problems.

Mr. Chairman, this concludes my statement. And I would be pleased to respond to any questions that you or other Members of the Subcommittee may have.

Mr. HOSTETTLER. Thank you, Mr. Stana.

[The prepared statement of Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA

United States Government Accountability Office

GAO

Testimony Before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

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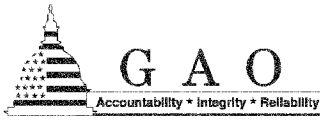
DEPARTMENT OF HOMELAND SECURITY

Addressing Management Challenges That Face Immigration Enforcement Agencies

Statement of Richard M. Stana, Director,
Homeland Security and Justice Issues



GAO-05-664T

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Highlights

Highlights of GAO-05-561T, a testimony before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

The Department of Homeland Security (DHS) assumed responsibility for the immigration programs of the former Immigration and Naturalization Service (INS) in 2003. The three DHS bureaus with primary responsibility for immigration functions are U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (CIS). This testimony focuses on CBP and ICE, which took over the immigration enforcement function. CBP is responsible for functions related to inspections and border patrol, and ICE is responsible for functions related to investigations, intelligence, detention, and removal.

The Subcommittee on Immigration, Border Security, and Claims, House Committee on the Judiciary, held a hearing to discuss management challenges and potential structural changes. Some research organizations have suggested structural changes to address management challenges, including a merger of CBP and ICE.

This testimony addresses the following questions: (1) Have ICE and CBP encountered similar management challenges to those encountered at INS? (2) What factors might be considered in addressing some of the management challenges that exist at ICE and CBP?

www.gao.gov/cgi-bin/getrpt?GAO-05-561T

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard Stana at (202) 512-8777 or stanar@gao.gov.

May 5, 2005

DEPARTMENT OF HOMELAND SECURITY

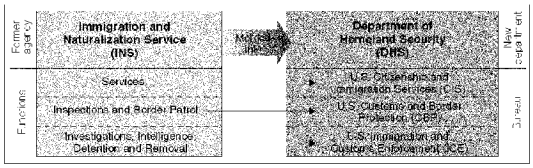
Addressing Management Challenges That Face Immigration Enforcement Agencies

What GAO Found

A number of similar management challenges that had been experienced by INS have continued in the new organizations now responsible for immigration enforcement functions. In 2001, GAO testified that, while restructuring may help address certain management challenges, INS faced significant challenges in assembling the basic systems and processes that any organization needs to accomplish its mission. These include clearly delineated roles and responsibilities, policies and procedures that effectively balance competing priorities, effective internal and external communications and coordination, and automation systems that provide accurate and timely information. In March 2003, the functions of the INS were transferred to the new DHS and placed in the newly-created ICE and CBP. In 2004, we reported that many similar management challenges we found at INS were still in existence in the new bureaus.

In evaluating solutions to ICE and CBP management challenges, including potential structural changes, several factors might be considered. The first factor is whether ICE and CBP currently have good management frameworks in place. Such a management framework, among other items, would include a clear mission, a strategic planning process, good organizational alignment, performance measures, and leadership and accountability mechanisms. The second factor is whether ICE and CBP have developed systems and processes to support the management frameworks they may have in place. The third factor is that the management challenges in these two bureaus exist in the larger context of the creation and evolution of DHS. The transformation and integration activities at DHS can take 5-7 years to accomplish, and some management challenges might be resolved in this process.

Reorganization of INS into DHS



Source: GAO analysis of DHS data.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to share our views on management challenges relating to the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), whose functions were formerly under the Immigration and Naturalization Service (INS) and the Customs Service, as this committee considers potential structural changes to enhance the enforcement of immigration laws. We have conducted numerous reviews of both specific programs and overall management in these components, and at the legacy agencies that preceded them. In my testimony today, I will discuss the following topics:

- Have ICE and CBP encountered similar management challenges to those encountered at INS?
- What factors might be considered in addressing some of the management challenges that exist at ICE and CBP?

The purpose of my comments is to provide the Subcommittee with oversight information as potential changes to the structure of ICE and CBP are considered. My comments are based on our wide-ranging, completed work, and our institutional knowledge of homeland security and various government organizational and management issues. We conducted our work in accordance with generally accepted government auditing standards.

Summary

A number of management challenges similar to those found at INS have continued in the new organizations now responsible for immigration enforcement functions. These INS management challenges included a lack of clearly defined priorities and goals; difficulty determining whom to coordinate with, when to coordinate, and how to communicate; and inadequately defined roles resulting in overlapping responsibilities, inconsistent program implementation, and ineffective use of resources. In 1999 and 2001, we testified on these management challenges before this subcommittee. Our 2001 testimony concluded that, while restructuring may help address certain management challenges, the new organization would still face significant challenges in assembling the basic systems and processes that any organization needs to accomplish its mission. These systems and processes include clearly delineated roles and responsibilities, policies and procedures that effectively balance

competing priorities, effective internal and external communications and coordination, and automation systems that provide accurate and timely information. We noted that unless these elements were established, enforcing our immigration laws, providing services to eligible aliens, and effectively participating in the government wide efforts to combat terrorism would be problematic regardless of how the immigration function was organized. In March 2003, the enforcement functions of the INS were transferred to the new DHS and placed in the newly-created ICE and CBP. In 2004, we reported that many similar management challenges we found at INS were in existence in the new bureaus.

In evaluating solutions to ICE and CBP management challenges, including potential structural changes, several factors may be considered. The first factor is whether ICE and CBP currently have a good management framework in place. Such a management framework, among other items, would include a clearly defined and articulated mission, a comprehensive strategic planning process for achieving the mission, an organizational alignment that supports the mission and strategy, performance measures to gauge their progress, and leadership and accountability mechanisms. The second factor is whether ICE and CBP have developed systems and processes to support such a management framework which assists management in resolving management challenges. For example, we have noted problems with ICE's disseminating guidance related to operational activities. The third factor involves recognizing that the management challenges in these two bureaus exist in the broader context of the creation and evolution of DHS—the largest reorganization of the federal government in over 50 years. The experience of successful transformations and change management initiatives in large public and private organizations suggests that it can take 5-7 years until such initiatives are fully implemented and cultures are transformed in a substantial manner. Further, some management challenges at ICE and CBP might be affected by department-wide management initiatives. We designated DHS's transformation as a high-risk area in 2003.

Background

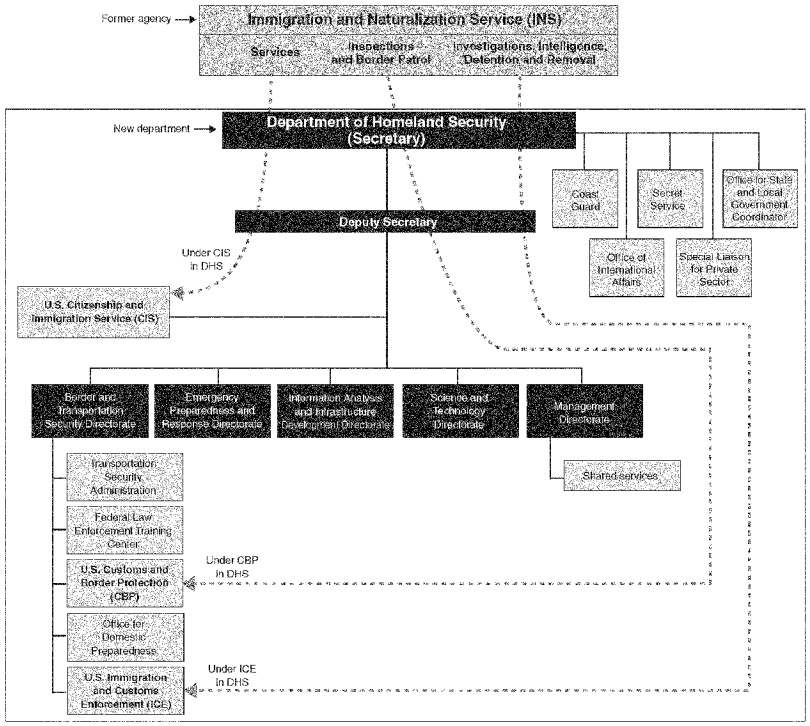
Immigration enforcement includes, among other things, patrolling 8,000 miles of international boundaries to prevent illegal entry into the United States; inspecting over 500 million travelers each year to determine their admissibility; apprehending, detaining, and removing criminal and illegal aliens; disrupting and dismantling organized smuggling of humans and contraband as well as human trafficking; investigating and prosecuting those who engage in benefit and document fraud; blocking and removing employers' access to undocumented workers; and enforcing compliance with programs to monitor visitors.

Immigration functions also include providing services or benefits to facilitate entry, residence, employment, and naturalization of legal immigrants; processing millions of applications each year; making the right adjudicative decision in approving or denying the applications; and rendering decisions in a timely manner.

When INS was abolished in 2003 by the Homeland Security Act of 2002,[1] its enforcement functions were transferred to two bureaus within the DHS. First, INS's interior enforcement programs—investigations, intelligence, and detention and removal—were placed in ICE. Within ICE, investigators and intelligence analysts from former INS and the U.S. Customs Service were merged into the investigations and intelligence offices, while staff from former INS's detention and removal program were placed in the detention and removal office. Second, inspectors from former INS, Customs, and Agriculture and Plant Health Inspection Service, as well as former INS's Border Patrol agents were incorporated into CBP. Both CBP and ICE report to the Undersecretary for Border and Transportation Security, who in turn reports to the Deputy Secretary of the DHS. For service functions, INS's Immigration Services Division, responsible for processing applications for immigration benefits, was placed in Citizenship and Immigration Services (CIS), which reports directly to the Deputy Secretary of DHS. Figure 1 shows the transition of INS functions into DHS.

[1] P.L. 107-296, Sec. 471(a).

Figure 1. Transfer of Immigration Functions from INS into DHS



Source: GAO analysis of President's fiscal year budget, P.L. 107-296.

Transition efforts for CBP posed fewer challenges than for ICE. Specifically, CBP brought together INS and Customs inspections programs

that, prior to the transition, largely worked side by side in many land ports of entry around the country and that shared similar missions. In contrast, ICE is a patchwork of agencies and programs that includes INS's investigations and intelligence programs, Customs' investigations and intelligence programs, the Federal Protective Service, and the Federal Air Marshals. In combining the investigations programs, ICE has been tasked with merging former INS investigators who specialized in immigration enforcement (e.g., criminal aliens) with former Customs investigators who specialized in customs enforcement (e.g., drug smuggling).

The integration of INS and Customs investigators into a single investigative program has involved the blending of two vastly different workforces, each with its own culture, policies, procedures, and mission priorities. Both programs were in agencies with dual missions that prior to the merger had differences in investigative priorities. For example, INS primarily looked for illegal aliens and Customs primarily looked for illegal drugs. In addition, INS investigators typically pursued administrative violations, while Customs investigators typically pursued criminal violations.

Whether further structural changes are warranted is one of the topics that this hearing is to address. Some observers have proposed merging ICE and CBP. For example, the Heritage Foundation and the Center for Strategic and International Studies (CSIS), in a report on DHS management, suggested a possible merger of ICE and CBP to address some of these management problems. A Senior Research Fellow at The Heritage Foundation stated in a March 2005 congressional testimony, "DHS needs to be organized not to accommodate the present, but to build toward the ideal organization of the future. Therefore, the department needs to articulate how it envisions conducting its missions five to ten years from now and let this vision drive the organizational design, particularly the structure of border security operations."[2] Another witness stated, "Whether the decision is ultimately made to merge ICE and CBP or not,

[2]Statement of Dr. James Jay Carafano, Senior Research Fellow, The Heritage Foundation, Before the Subcommittee on Management, Integration, and Oversight, House Committee on Homeland Security (Washington, D.C.: Mar. 9, 2005).

the real issues will remain unless the underlying mission, vision, and planning occur in a unified manner."[3]

Similar Management Challenges Continue

Over the years, we have issued numerous reports that identified management challenges INS experienced in its efforts to achieve both effective immigration law enforcement and service delivery. For example, in 1997 we reported that INS lacked clearly defined priorities and goals and that its organizational structure was fragmented both programmatically and geographically. Additionally, after reorganization in 1994, field managers still had difficulty determining whom to coordinate with, when to coordinate, and how to communicate with one another because they were unclear about headquarters offices' responsibilities and authority. We also reported that INS had not adequately defined the roles of its two key enforcement programs—Border Patrol and investigations—which resulted in overlapping responsibilities, inconsistent program implementation, and ineffective use of resources. INS's poor communication led to weaknesses in policies and procedures. In later reports, we showed that broader management challenges affected INS's efforts to implement programs to control the border, deter alien smuggling, reduce immigration benefit fraud, reduce unauthorized alien employment, remove criminal aliens, and manage the immigration benefit application workload and reduce the backlog.[4]

In 1999 and 2001, we testified on these management challenges before this subcommittee. Our 2001 testimony was delivered at the time when

[3]Statement of David Venturella, Former Acting Director of the Office of Detention and Removal Operations, Department of Homeland Security, Before the Subcommittee on Management, Integration, and Oversight, House Committee on Homeland Security (Washington, D.C.: Mar. 9, 2005).

[4]GAO, *Immigration Enforcement: Challenges to Implementing the INS Interior Enforcement Strategy*, GAO-02-861T (Washington, D.C.: June 19, 2002); GAO, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems*, GAO-02-66 (Washington, D.C.: Jan. 31, 2002); GAO, *INS's Southwest Border Strategy: Resource and Impact Issues Remain after Seven Years*, GAO-01-842 (Washington, D.C.: Aug. 2, 2001); GAO, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488 (Washington, D.C.: May 4, 2001).GAO, *Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem*, GAO/GGD-00-103 (Washington, D.C.: May 1, 2000); *and Criminal Aliens: INS's Efforts to Identify and Remove Imprisoned Aliens Continue to Need Improvement*, GAO/T-GGD-99-47 (Washington, D.C.: Feb., 25, 1999); and GAO, *Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Need to be Improved*, GAO/T-GGD-97-154 (Washington, D.C.: July 15, 1997).

Congress, the Administration, and others had offered various options for restructuring the INS to deal with its management challenges. We testified that while restructuring may help address certain management challenges, we saw an organization (INS) that faced significant challenges in assembling the basic building blocks that any organization needs: clearly delineated roles and responsibilities, policies and procedures that effectively balance competing priorities, effective internal and external communications and coordination, and automation systems that provide accurate and timely information. We noted that unless these elements were established, enforcing our immigration laws, providing services to eligible aliens, and effectively participating in the government-wide efforts to combat terrorism would be problematic regardless of how INS was organized.

In 2004, we reported DHS experienced management challenges similar to those we had found at INS. For example, some officials noted that in some areas related to investigative techniques and other operations, unresolved issues regarding the roles and responsibilities of CBP and ICE give rise to disagreements and confusion, with the potential for serious consequences. As in 1999 and 2001, we reported in 2004 that selected operations had reportedly been hampered by the absence of communication and coordination between CBP and ICE. Further, we reported in 2004 that CBP and ICE lacked formal guidance for addressing some overlapping responsibilities.

Factors to Consider for Resolving Management Challenges

As this Subcommittee, DHS officials, and other stakeholders consider potential structural changes to ICE and CBP, we have identified three factors to consider for resolving management challenges including (1) a management framework for ICE and CBP, (2) systems and processes to support this framework, and (3) the context of the larger DHS transformation. These factors are important to help identify the most suitable and appropriate course of action to address management challenges.

Management Framework for ICE and CBP

Based on our work on the creation and development of DHS, and additional work on transformation and mergers, we have identified a number of key success factors. Those factors that I would like to focus on today include clarity of mission, strategic planning, organizational

alignment, performance measures, and leadership focus and accountability.[5]

- *Clarity of Mission:* We have previously reported on the importance of establishing a coherent mission that defines an organization's culture and serves as a vehicle for employees to unite and rally around. As such, a comprehensive agency mission statement is the first GPRA-required element of a successful strategic plan.[6] In successful transformation efforts, developing, communicating, and constantly reinforcing the mission gives employees a sense of what the organization intends to accomplish, as well as helps employees figure out how their positions fit in with the new organization and what they need to do differently to help the new organization achieve success. However, as noted above, while CBP was created from programs that generally shared similar missions, ICE blended agencies with distinct mission priorities and cultures, and thus faces a greater challenge in creating a unified bureau.

- *Strategic Planning:* Closely related to establishing a clear mission is strategic planning—a continuous, dynamic, and inclusive process that provides the foundation for the fundamental results that an organization seeks to achieve. The starting point for this process is the strategic plan that describes an organization's mission, outcome-oriented strategic goals, strategies to achieve these goals, and key factors beyond the agency's control that could impact the goals' achievement, among other things. As with the mission, strategic goals for a transforming organization must be clear to employees, customers,

[5]These success factors were derived from work we reported in GAO, *Homeland Security: Management Challenges Facing Federal Leadership*, GAO-03-260 (Washington, D.C.: Dec. 20, 2002) and GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003). Additional key practices for successful mergers and organizational transformations not discussed in this statement include focusing on a key set of principles and priorities at the outset of the transformation, setting implementation goals and a timeline to build momentum and show progress, dedicating an implementation team to manage the transformation process, establishing a communication strategy to create shared expectations and report related progress, and involving employees to obtain their ideas and gain their ownership for the transformation.

[6]The Government Performance and Results Act of 1993 (GPRA) provides a strategic planning and management framework intended to improve federal agencies' performance and hold them accountable for achieving results. Our work on management structure and strategic planning is based largely on GPRA.

and stakeholders to ensure they see a direct personal connection to the transformation.

- *Organizational Alignment:* To ensure that form follows function, an organizational alignment that supports the mission and strategic goals is another component of the management framework. Leading organizations recognize that sound planning is not enough to ensure their success. An organization's activities, core processes, and resources must be aligned to support its mission and help it achieve its goals. Such organizations start by assessing the extent to which their programs and activities are structured to accomplish their mission and desired outcomes.

- *Performance Measures:* Effective implementation of this framework requires agencies to clearly establish results-oriented performance goals in strategic and annual performance plans for which they will be held accountable, measure progress towards those goals, determine the strategies and resources to effectively accomplish the goals, use performance information to make the programmatic decisions necessary to improve performance, and formally communicate results in performance reports.

- *Leadership Focus and Accountability:* To be successful, transformation efforts must have leaders, managers, and employees who have the individual competencies to integrate and create synergy among the multiple organizations involved in the transformation effort. Leaders need to be held accountable for ensuring results, recognizing when management attention is required and taking corrective action. High-performing organizations create this clear linkage between individual performance and organizational success and thus transform their cultures to be more results-oriented, customer-focused, and collaborative in nature. As we have reported, a Chief Operating Officer (COO)/Chief Management Officer (CMO) may effectively provide the continuing, focused attention essential to successfully completing these multi-year transformations in agencies like DHS.[7] At DHS, we have reported that the COO/CMO concept would provide the department with a single organizational focus for the key management

[7]On September 9, 2002, GAO convened a roundtable of government leaders and management experts to discuss the COO concept and how it might apply within selected federal departments and agencies. See GAO, *Highlights of a GAO Roundtable: The Chief Operating Officer Concept: A Potential Strategy to Address Federal Governance Challenges*, GAO-03-192SP (Washington, D.C.: Oct. 4, 2002).

functions involved in the business transformation of the department, as well as for other organizational transformation initiatives.[8]

Systems and Processes Needed to Support Management Framework

The second factor to consider for resolving management challenges is whether CBP and ICE have the systems and processes needed to support the management framework. While the management framework provides an overarching structure for an organization, systems and processes provide the means to implement the daily activities of running an organization. Some of the specific systems and processes in CBP and ICE that have raised concerns include:

- Dissemination of guidance relating to operational activities,
- Communication and coordination,
- Information technology systems, and

Dissemination of Guidance Relating to Operational Activities

The lack of program guidance has adversely impacted ICE's ability to efficiently and effectively perform its mission. In May 2004, we reported that ICE had not provided its deportation officers with guidance on how to prioritize their caseload of aliens who required supervision after release from detention. Consequently, ICE was unable to determine whether and to what extent such aliens had met the conditions of their release. We recommended that ICE develop and disseminate guidance to enable deportation officers to prioritize ICE's caseload of aliens on orders of supervision so that ICE could focus its limited resources on supervising aliens who may be a threat to the community or who are not likely to comply with the conditions of their release.

Also, in October 2004, we reported that ICE headquarters and field offices had a lack of uniform policies and procedures for some ICE operations that had caused confusion and hindered the creation of a new integrated culture. ICE headquarters officials told us that they were prioritizing the establishment of uniform policies and that until a new ICE policy is established, field offices are required to use the policies of the former agencies.

[8]GAO, *The Chief Operating Officer Concept and its Potential Use as a Strategy to Improve Management at the Department of Homeland Security*, GAO-04-876R (Washington, D.C.: June 28, 2004).

Communication and Coordination

Shortfalls in communications about administrative support services were also a source of frustration in DHS. In October 2004, we reported that DHS was in the process of developing and implementing systems and processes called "shared services." In December 2003, DHS instituted a shared service system in which certain mission support services—such as human resources—are provided by one bureau to the other bureaus. However, there were weaknesses in how the shared services program was communicated to employees. Officials in CBP, CIS, and ICE expressed confusion about shared services when we interviewed them 3 to 4 months after the system was instituted. Many field officials said they did not know what constituted shared services, what processes they should have been using for receiving assistance from a shared service provider, or how many of their staff administrative positions would be reassigned to positions in other offices as shared service providers.

Further, CBP, CIS, and ICE officials also expressed frustration with problems they have encountered coordinating their administrative systems managed within the agency and not a part of shared services, including travel, budget, and payroll. Some ICE field officials also expressed concern about their ability to manage their budgets and payroll problems, because of the systems used for these functions.

Information Technology Systems

Information technology systems and information sharing in general are also an area of concern. For example, ICE did not have information that provides assurance that its custody reviews are timely and its custody determinations are consistent with the Supreme Court decision and implementing regulations regarding long term alien detention.[11] One reason ICE had difficulty providing assurance is that it lacked complete, accurate, and readily available information to provide to deportation officers when post order custody reviews are due for eligible aliens. In addition, ICE did not have the capability to record information on how many post order custody reviews had been made pursuant to regulations and what decisions resulted from those reviews. Therefore, ICE managers could not gauge overall compliance with the regulations for aliens who have been

[11]Until 2001, aliens who were issued final orders of removal from the United States could be held in detention facilities indefinitely if U.S. immigration authorities determined that the aliens were a threat to the community or a flight risk. However, U.S. Supreme Court decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), many aliens with final orders of removal, including aliens determined to be a threat to the community or flight risk, could generally no longer be detained beyond a period of 6 months if there was no significant likelihood of their removal in the reasonably foreseeable future.

ordered to be removed from the United States. Although ICE was in the process of updating its case management system, ICE officials said that they did not know when the system will have the capability to capture information about the timeliness and results of post order custody reviews. In 2005, we designated information sharing mechanisms for homeland security as a high-risk issue, based on root causes behind vulnerabilities, as well as actions needed on the part of the agency involved.[10]

Broader DHS Transformation and Management Integration Efforts May Affect ICE and CBP Management Challenges

In addition to considering developing a management framework and corresponding systems and processes, it is important to consider these changes in the larger context of the transformation of DHS. We designated DHS's transformation as a high-risk area in 2003, based on three factors. First, DHS faced enormous challenges in implementing an effective transformation process, developing partnerships, and building management capacity because it had to transform 22 agencies into one department. Second, DHS faced a broad array of operational and management challenges that it inherited from its component legacy agencies. Finally, DHS's failure to effectively address its management challenges and program risks could have serious consequences for our national security. Overall, DHS has made some progress, but significant management challenges remain to transform DHS into a more efficient organization while maintaining and improving its effectiveness in securing the homeland.[11]

The experience of successful transformations and change management initiatives in large public and private organizations suggests that it can take 5-7 years until such initiatives are fully implemented and cultures are transformed in a substantial manner. Further, some management challenges at ICE and CBP might be affected by department-wide management initiatives. The management challenges of the DHS transformation create additional challenges for its components, including ICE and CBP, such as:

- *Providing focus for management efforts:* Although DHS has been operating about 2 years, it has had two Secretaries, three Deputy Secretaries, and additional turnover at the Undersecretary and

[10]GAO, *High-Risk Series: An Update,* GAO-05-207 (Washington, D.C.: Jan. 2005).

[11]GAO, *Homeland Security: Overview of Department of Homeland Security Management Challenges,* GAO-05-573T (Washington, D.C.: Apr. 20, 2005).

Assistant Secretary levels. The recent turnover in DHS's top leadership raises questions about the department's ability to provide the consistent and sustained senior leadership necessary to achieve integration over the long term.[12]

- *Monitoring transformation and integration:* DHS's integration of varied management processes, systems, and people—in areas such as information technology, financial management, procurement, and human capital—as well as administrative services is important to provide support for the total integration of the department. Total integration of the department, including its operations and programs, is critical to ultimately meeting its mission of protecting the homeland. Overall, we found that while DHS has made some progress in its management integration efforts, it has the opportunity to better leverage this progress by implementing a comprehensive and sustained approach to its overall integration efforts.[13]

- *Improving strategic planning:* DHS released its first strategic plan in 2004 that details its mission and strategic goals. DHS's strategic plan addresses five of the six GPRA-required elements—a mission statement, long-term goals, strategies to achieve the goals, external key factors, and program evaluations—but does not describe the relationship between annual and long-term goals.[14]

- *Managing human capital:* DHS has been given significant authority to design a new human capital system free from many of the government's existing civil service requirements, and has issued final regulations for this new system. Although we reported the department's efforts generally reflected important elements of effective transformations and included many principles that are consistent with proven approaches to strategic human capital management, DHS has

[12]See GAO-05-573T

[13]GAO, *Department of Homeland Security: A Comprehensive and Sustained Approach Needed to Achieve Management Integration*, GAO-05-139 (Washington, D.C.: Mar. 16, 2005).

[14]GAO, *Results-Oriented Government: Improvements to DHS's Planning Process Would Enhance Usefulness and Accountability*, GAO-05-300 (Washington, D.C.: Mar. 31, 2005).

considerable work ahead to define the details of the implementation of the system.[15]

- *Strengthening financial management infrastructure:* DHS faces significant financial management challenges. Specifically, it must address numerous internal control weaknesses, meet the mandates of the DHS Financial Accountability Act,[16] and integrate and m financial management systems, which individually have pro collectively are not compatible with one another. In July 20(reported that DHS continues to work to reduce the number of financia management service providers and to acquire and deploy an integrated financial enterprise solution.[17]

- *Establishing an information technology framework:* DHS has recognized the need for a strategic management framework that addresses key information technology disciplines, and has made a significant effort to make improvements in each of these disciplines. However, much remains to be accomplished before it will have fully established a department-wide information technology management framework. To fully develop and institutionalize the management framework, DHS will need to strengthen strategic planning, develop the enterprise architecture, improve management of systems development and acquisition, and strengthen security.[18]

[15]GAO, *Human Capital: Preliminary Observations on Final Department of Homeland Security Human Capital Regulations*, GAO-05-320T (Washington, D.C.: Feb. 10, 2005). For more information on DHS's human capital issues, see GAO, *Human Capital: Preliminary Observations on Proposed DHS Human Capital Regulations*, GAO-04-479T (Washington, D.C.: Feb. 25, 2003); *Posthearing Questions Related to Proposed Department of Homeland Security (DHS) Human Capital* Regulations, GAO-04-570R (Washington, D.C.: Mar. 22, 2004); *Additional Posthearing Questions Related to Proposed Department of Homeland Security (DHS) Human Capital Regulations*, GAO-04-617R (Washington, D.C.: Apr. 30, 2004); *Human Capital: DHS Faces Challenges in Implementing Its New Personnel System*, GAO-04-790 (Washington, D.C.: June 18, 2004); and *Human Capital: DHS Personnel System Design Effort Provides for Collaboration and Employee Participation*, GAO-03-1099 (Washington, D.C.: Sept. 30, 2003).

[16]Pub. L. No. 108-330 (Oct. 16, 2004).

[17]GAO, *Financial Management: Department of Homeland Security Faces Significant Financial Management Challenges*, GAO-04-774 (Washington: D.C.: July 19, 2004).

[18]GAO, *Department of Homeland Security: Formidable Information and Technology Management Challenge Requires Institutional Approach*, GAO-05-702 (Washington, D.C.: Aug. 27, 2004).

- *Managing acquisitions:* DHS faces the challenge of structuring its acquisition organization so that its various procurement organizations are held accountable for complying with procurement policies and regulations and ensuring that taxpayer dollars are well-spent.[19]

- *Coordinating research and development:* DHS has not yet completed a strategic plan to identify priorities, goals, objectives, and policies for the research and development of homeland security technologies, and additional challenges remain in its coordination with other federal agencies.[20]

Despite real and hard-earned progress, DHS still has significant challenges to overcome in all of its management areas. Resolving these challenges at the top levels could help address similar management challenges in DHS's component organizations including ICE and CBP.

Concluding Observations

In closing, it is important to understand the expectations and limitations of various proposals to address management challenges at ICE and CBP that we and others have identified. With respect to potential restructuring, reorganizing an agency or function to better align it with the mission and strategic planning process is desirable, whereas reorganizing mainly to address underlying weaknesses in supporting systems and processes, such as a lack of coordination and cooperation among units or a lack of guidance relating to operational activities, might not be productive. As we have seen to date, reorganizing immigration and customs functions, without fixing existing problems with underlying systems and processes, has not resolved long-standing management issues. In addition, ICE and CBP may not be able to resolve some of these challenges alone if they are affected by DHS department-wide management initiatives and developments. To assist the Congress in its oversight and in ensuring accountability in homeland security programs, we will continue to monitor and evaluate ICE and CBP programs as they meet, and hopefully overcome, their management challenges.

[19] See GAO-05-179

[20] GAO, *Homeland Security: DHS Needs a Strategy to Use DOE's Laboratories for Research on Nuclear, Biological, and Chemical Detection and Response Technologies*, GAO-04-658 (Washington, D.C.: May 21, 2004).

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other members of the Subcommittee may have at this time.

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Mr. HOSTETTLER. At this point the two of us may engage in a rather lengthy set of questions.

First of all, Mr. Stana, your final point begs the question, when you talk about management versus structure and ask us to go slowly with regard to restructuring these organizations—which is not exactly something we are talking about this time, merely investigating the problems that we have as a result of these two structures—but when you say management versus structure, and you talk about management, is that a diplomatic way of talking about policy with regard to policy and the aggressive nature or lack of aggressive nature in enforcing our immigration laws? Because it seems like if your mission was to enforce the immigration laws, then your management policy would be such that you would structure an organization to meet that mission. And I guess it's a question of is it the chicken or the egg. So is it an issue of policy and our desire or lack of desire to enforce the immigration laws?

Mr. STANA. I would put it this way: I think it is more of a matter of what is the mission of ICE and CBP. Being in DHS, whose mission is to enhance national security and to fight terrorism, they are taking their cues from the broader organization. So when we talk about ICE not doing some things now in the interior enforcement of immigration policies, it's understandable. The ICE mission is now national security and antiterrorism. So what's happening is, at ICE and CBP, they are fulfilling that mission by, for example, in work site enforcement, by targeting their efforts to trophy targets, whether they be nuclear power plants, airplane tarmacs and so on. They are not going to the food processing plants like they used to because the mission of DHS is national security and antiterrorism. If we wanted a fundamental shift to bring the mission back to what it was in INS, and that is to enforce immigration law and to provide benefits to eligible aliens, then that would require a fundamental shift of structure. But that is not what the DHS mission is right now. That is number one.

Number two, when I talk about management challenges, I guess a shorthand way of looking at it is problem areas, problem areas that are not directly linked to how the organization is structured. Whether or not, for example, the Air Marine Unit that was in ICE was transferred over to CBP to line up the mission and the structure to better accomplish that mission.

It's an open question whether putting ICE and CBP together—or the interior enforcement people together with the Border Patrol is going to fix the bed space problem, because ICE can't even get bed space. That is a whole different issue. What we are talking about with management is the organizational crosswalks so that when ICE calls Border Patrol and says, I need bed space, is there someone who answers the phone who understands what their role is in helping out in the total mission of the agency? Is it clearly communicated who is supposed to do what, what their particular mission is down in the working levels? Is it understood that when you pick up a report that's generated by a financial system or a human capital system that says, I spent this many hours on this function, that it is accurate and reliable and can be used to spot problem areas? Those are management functions and management challenges.

Mr. HOSTETTLER. But if our desire is to foil illegal immigration, for example, doesn't that establish a management model? And I am asking that rhetorically because I want to go to Ms. Kephart and say, in your experience with the 9/11 Commission—is the Customs function, would that have helped us to foil what happened on 9/11? Putting Customs into the mix with immigration, would that have helped us?

Ms. KEPHART. Well, I have, perhaps, a slightly interesting answer to that question.

First of all, one of the reasons you see Customs only in one page of this staff report called 9/11 and Terrorist Travel is because there was so little information that I was able to uncover from the Customs agency about their contact with the hijackers that I had very little to say.

That being said, let me comment on that. All the hijackers came in. They needed to have Customs declarations, and let me make a comment about that. We only were able to get a handful of those Customs declarations because Customs only kept them for 6 months, and they are only on paper; otherwise they are destroyed. I believe that is still the case today. It is not an electronic information system the way the INS entry records are, however poor that system with the immigration service was.

Second of all, only a few of them filled out those Customs declarations, so once more we had very little information to go on because immigration inspectors weren't required to check the Customs records coming through because that is a Customs function. But remember, at airports of entry, prior to 9/11, you had passengers from airplanes being checked 100 percent by INS, and 5 percent were being checked by Customs Service. So nobody was really looking at those Customs declarations, so I couldn't really draw any conclusions from those.

The one thing I will say in thinking about the Customs function is that if you all will recall, Mohammed al-Qahtani from August 4, 2001, was the so-called 20th—one of the 20 terrorists that tried to get in in Orlando, Florida. The inspector who stopped him was featured at our hearing on the 9/11 Commission, et cetera. When I interviewed that inspector in depth, one of the things that I asked him about was, he did everything you could possibly do to determine that the behavior of this person was not right and that he should not be let in, but the one thing he did not do was check the man's luggage. Now we know that because that was a customs function, he really wasn't permitted to do that. But goodness knows, if on August 4, 2001, he had checked his luggage and we knew that Mohammad Atta was waiting upstairs for him, and there was contact information in that luggage—perhaps—perhaps that information would have been passed on. We don't know, but at that time, immigration service would not have passed that information to the FBI, but who knows what was in that luggage? And we will never know because he voluntarily removed himself that day at the great request of that inspector.

So I can say that Customs would not have stopped it, but their reporting was so poor. The one other comment I will make is there were 6 secondary inspections of the hijackers. Two of those were Customs. The reporting on those inspections was so poor that I was

unable to really draw any conclusions. So that is about what I can say about Customs. I don't think it would have stopped it. In the end, they are passengers, they are people, they were not cargo, so that is the bottom line for 9/11.

Mr. HOSTETTLER. Thank you.

The Chair now recognizes the gentlelady from Texas for purposes of an opening statement and for questions.

Ms. JACKSON LEE. Mr. Chairman, I will yield to Mr. King and take my questions following him. Thank you, sir.

Mr. HOSTETTLER. The Chair recognizes the gentleman from Iowa, Mr. King.

Mr. KING. I thank the gentleman, and the gentlelady from Texas as well. And I appreciate the testimony of the witnesses here today, those on short notice and those on longer notice.

Curiosity arises. First, Ms. Kephart, the situation that we have today with ICE on duty at airports, access now to the entry documents as well as the luggage, do you consider that resolved?

Ms. KEPHART. Ooh. I hope it's resolved. I haven't been out to an airport recently to see how things are working. When I was on the Commission, there was much resistance at the few airports I was able to go to for Customs agents to actually work and do immigration-related work.

To the extent that they are still doing their old Customs work, I think that they are. To the extent that they are actually checking luggage to a greater extent, I don't know that they are. I didn't check on that, so I can't relate.

Mr. KING. And Mr. Stana, you referenced in your testimony that the mission for ICE is national security and not immigration enforcement. And can you reference a policy statement that establishes that?

Mr. STANA. I wouldn't say it is either/or. What I would say would be immigration in the context of national security. I would just reference that to the DHS strategic plans and then the ICE—well, ICE doesn't have a strategic plan in final form yet, but in their interim plans and CBP plans, they mention the nexus to national security. It doesn't preclude immigration efforts.

Mr. KING. And is there any directive on the part of Congress that you know of that DHS would be reacting to in order to promote that kind of a policy, or do you believe that is an internal conclusion?

Mr. STANA. I think what they are doing is taking the mission that was given to them statutorily and interpreting it in that way. I would point out, though, that of all the agencies that are mentioned in the homeland security legislation in 2002, only one was abolished, and that was INS, for whatever reason. And I know some of us have been in hearings for years and years and years, it goes back past the Jordan Commission—talking about how to deal with INS, and apparently one solution was just to dissolve it.

Mr. KING. And certainly that is the case. But back to this point again. If I'm going to track this down to find out where the divergence in the philosophy that I have versus the one that's being implemented, I probably can't go to a statute and identify that.

Mr. STANA. Well, what you would find is the Department of Homeland Security has a mission, to protect the Nation from ter-

rorism and so on. And as any agency would do, they would further define that in a mission statement and in a strategic plan. And in the mission statements and strategic plans, the national security and antiterror missions are emphasized throughout. It doesn't preclude them from working on immigration programs and immigration enforcement certainly, it's just that they try to do that in the context of national security and antiterrorism.

Mr. KING. One would draw from this that the mindset is more toward national security than toward immigration enforcement?

Mr. STANA. Well, where the two interests intersect, I don't know if there would be a competing priority, but I think the top priority of the agency is going to be homeland security, national security and antiterrorism.

Mr. KING. Thank you, Mr. Stana.

And, Mr. Cutler, in your background on these issues, could you talk a little bit about—and you would have, I would think, relationships with a lot of active agents out today. Could you talk about the legacy agents, and let us know—have a lot of them—have they left enforcement and found other endeavors, and do you have any idea what is left from those legacy agents?

Mr. CUTLER. Well, the problem you're addressing is a critical one, it's institutional memory, and there is very little left in the way of institutional memory.

Forgive me, I wanted just to clear one point that—when I was listening to that prior question.

Mr. KING. Please do.

Mr. CUTLER. We can't look at immigration enforcement and say, well, we're just going to go after illegal aliens, or we're just going to go after terrorists. Sleepers, which, as you know, Robert Mueller, the head of the FBI, talked to the Senate Intelligence Committee at a hearing back in February, talked about his concerns about sleeper agents. Sleeper agents aren't people that just simply come into the country and dig a hole in the ground like a cicada and hide there for a year or two waiting for a phone call; they are people that hide in plain sight.

If it's employment that draws the bulk of the illegal aliens across the border; it's immigration fraud that enables them to stay here and hide in plain sight. And if we don't address that issue, and if we are told that there's still no real mission statement 3½ years into what's been billed as a war on terror, it gives me cause for pause.

And if you go to the ICE website, the Homeland Security website, what is amazing to me—because I just checked it yesterday, because you would think that the home page of any organization would be where you set forth your number one, number two, number three priority. Well, there wasn't a single thing on that Website that related back to the enforcement of immigration law other than an I–9 and the fact that they've gone to electronic I–9s. Now, if this is supposed to be homeland security, I have yet another reason not to go to sleep this evening.

And I think you're trying to do the right thing, I think you all are, but so many of your colleagues—I have to tell you as a New Yorker, as someone who has been working closely with the 9/11 Families For a Secure America, it leaves me shaking my head. New

York has 40,000 cops and enough jail space that if they find somebody breaking the law, they find a place to lodge them. We have 2,000 special agents to cover the entire United States of America; we sit here quibbling over 143 new agents or 500 new agents. We have no jail space. We have a catch and release program, but we want more technology on the border. The technology is great, but if the Border Patrol responds to the alert, and they have a warm body in custody they can't hold on to, why do we bother in the first place?

You know, as an agent I've had the occasion where I've chased somebody five or six blocks, dodged garbage cans that the guy was hurling at me as he was trying to get away from me, tackled him, rolled around on the ground, tore up my clothes, got bruised and the whole 9 yards, and the guy lied for a half hour about who he was, and then in the end my boss said, Mike, I'm sorry to tell you this, but there is no room at the inn. So that guy went home that day; not home to his home country, but home to his apartment in Queens.

Now, we sit here talking about mission statements, we sit here talking about fighting a war on terror. You know, if you go into neighborhoods that have large numbers of illegal aliens, there is an infrastructure that springs up to support those folks. It's mail drops, it's money wire services, it's document vendors. We've shortened the investigations of terrorists—I have arrested terrorists in my career, and they make use of these facilities. These are the facilities that people who are trying to hide in plain sight make use of. These are the facilities that are used by dish washers, drug traffickers and terrorists.

And if we look at this and say, well, we're going to ignore the enforcement of the immigration laws unless we have a bona fide terrorist, that we come back to the madness that we saw 3 weeks or 4 weeks, or whatever it was, after 9/11 when a van with 8 Pakistani nationals was pulled over by the Triborough Bridge and Tunnel Authority police officers in New York. These guys had fake ID, and yet immigration didn't want to respond because the FBI came out and said, well, their names don't show up on a watch list. What names? They had false identification.

If you don't go after illegal aliens, people who come here proffering false identity documents, and if we don't train the agents, as I alluded to in my testimony, so they can detect fraudulent identity documents, then, goodness gracious, how do we plan to protect America? Because the terrorists who attacked us on 9/11, Congressman, didn't come here on 9/10, they were here for months, and they were hiding in plain sight. And if we allow a situation where we fail to address immigration enforcement in general terms—you know, the only analogy I can make, and I'll be brief because I know I'm past my time, but if you have a problem with mildew in your bathroom, it's okay to wipe the walls down, but the better thing to do is to get to that leaky pipe that's creating that environment that's conducive to the growth of mildew.

If you want to get to illegal aliens who are involved with crime and who are involved with terrorism, then you need to get to the ability that they have to hide in plain sight, and that means you need a vibrant, effective, robust interior enforcement mission, plus

good Border Patrol people on the border helping us from all aspects. You can't stop a boat from sinking if you just go after two of the holes in the boat and allow the other five to keep leaking.

We've got to see this as a system, and we need mission statements. And we're 3½ years into a war on terror, and I don't go to sleep feeling any safer from the immigration perspective whatsoever, to be perfectly honest with you.

I know I went off the question a bit, but I feel these are points that are really vital to make. And the people that still work there—last thing, I have to say it before I forget this. I spoke to an inspector who said to me right now they are only getting about a quarter of the number of referrals to secondary for fraudulent documents, because the way they're evaluated, no one cares what they do with these folks. The only way you can get fired at the airport is to let somebody in who's on the watch list; then you're probably going to lose your job. So if someone comes in with an altered passport or a phony passport and succeeds in getting over, so to speak, they're in, and all they want is to be here. They want a 5-minute head start on the other side of the door so they can then blend into our society, and with no special agents backing up the inspectors at the airports, we've got a precarious situation.

So now with this multipurpose agent, multipurpose inspector out there, they're not going after the fraud the way they used to, they're not going after interior enforcement, how is that protecting the homeland?

Mr. KING. Mr. Cutler, I'm glad I asked you that question. And I would yield back——

Mr. CUTLER. I'm sorry.

Mr. HOSTETTLER. The Chair now recognizes the gentlelady from Texas.

Ms. JACKSON LEE. I thank the Chairman very much.

Mr. Stana, I think you've been on this issue for some time now. And I would ask in my remarks—Mr. Chairman, first of all, I'm going to ask unanimous consent to submit my statement in its entirety into the record, and I will comment very briefly from my statement, and then pose some questions.

Ms. JACKSON LEE. But I did want to acknowledge that Mr. Stana has been on this issue.

It's interesting, when you think of yourself as a new Member of Congress, when you authored a report in 1997, and I was already here. So obviously it's in my own mind.

But 1997 was far ahead of 2001 in terms of the new focus on terrorism. And I think, Mr. Chairman, what I'm going to suggest, it might be unique if this Subcommittee and this Congress, chaired by the distinguished gentleman from Indiana and, more humbly, the lady from Texas, would be able to finally give some guidance, some legislative guidance, some collective guidance to this question of dealing with the management problems. In 1997, Mr. Stana, GAO, offered the light that INS itself was confused or management problems were severe, I don't want to mischaracterize the report, way before the establishment of the Department of Homeland Security. So in essence, the Department of Homeland Security was burdened further by the lack of the fix for the INS at that time.

I think the question would be how we approach it, but I do believe a thorough study—and I am going to ask you questions where that report is, is it dusted off, is it the same report from 1997, are you in the midst of a new report—to share with the Chairman and myself that we might be able to—because, Mr. Chairman, frankly, dumping a new order, if you will, so that dumping the entities back together, I think our witnesses, Mr. Bonner, who lives this every day and represents thousands of hard-working Border Patrol agents and others who are working every day to do their job, and Mr. Cutler, injured on the job, knows firsthand the difficulty of doing the job.

And I will raise some questions with the other witnesses. But the management problem is so non-partisan, apolitical, that frankly, I believe that would be one of the more starry moments of this Subcommittee if we could work on this question, even though our jurisdiction of course—there is Homeland Security, but I would venture to say—I serve on the Subcommittee on Management on the Homeland Security Committee and I would venture to say we might welcome that kind of collaborative effort to deal with that.

Let me just recount, since I am on my statement, that in 2003 the DHS split up the U.S. Customs Service and border security and reconfigured them into two bureaus, the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement. The basic responsibility of CBP is to prevent illegal persons and goods from crossing the border. ICE is responsible for tracking down these persons and goods if they get past CBP. But the reorganization has resulted in some coordination problems; for instance, the training for daily border security operations is not working well. Supervisors from one legacy agency at a port-of-entry have not received the training to answer technical questions of inspectors from another legacy agency. Inspectors often are told just to do things the way they used to do them. I think we had a representative here a couple of weeks ago that said that even with supplies or equipment-there were no badges-and there are a number of other issues.

Today on the floor of the House, we made some attempt to give you some relief, Mr. Bonner. You know, I want 2,000 individuals ready for you and 800 for ICE. And we were able to give you 500 and that is not what I thought we should be focusing on, but I think the main issue is that GAO reported that INS lacked clearly-defined priorities and goals and that its organizational structure was fragmented, both programmatically and geographically.

Many of you know—and I will put the entire statement into the record, but I think it is important to note, let me finally say on the statement—additionally, field managers had difficulty determining whom to coordinate with, when to coordinate, how to communicate with one another because they were unclear about headquarters officers' responsibilities and authority.

Mr. Cutler, I want to acknowledge as well the very important point in your statement about the idea to expand the Case Act to include fraudulent document operations, because fraud is a major problem, but I also want personnel to be staffed. And since I have just introduced the Save America comprehensive immigration reform bill, I would like to be able to include that language in that.

I am not posing a question for you just yet, but I want to thank you for your services, Mr. Bonner, and Ms. Kephart for her work on the 9/11 Commission.

Let me go to Mr. Stana because I will say as I have always said, the backdrop of my offer to the Chair to work on this management, that means we have to put our heads together with our staff and either work with—look at what you have developed over the time. But I always say, Mr. Chairman, as you know, that immigration does not equate to terrorism and I continue to say that. It is even more emphasized since these problems arose in terms of management issues before 9/11.

Maybe if we had begun to look holistically at immigration and enforcement, we would have had maybe some opportunity at prevention. I am not second guessing. The 9/11 tragedy stands on its own. But I think we have the responsibility to be able to separate the two and understand that immigration enforcement doesn't always equal to catching terrorists, but it is something important to do, and that the enforcement issues, I think, would be strengthened by an immigration policy that all of our law enforcement can frankly understand.

My bill, of course, that I have just introduced tries to order those who are here undocumented and tries to ferret out those individuals that are criminals and doing criminal acts, doing any number of things, but it does the good stuff that we do in immigration, reuniting families and otherwise.

Mr. Stana, help us out, if you would, and I want to ask Mr. Bonner and Mr. Cutler a question, but tell us from the '97 report where we are today. Have we acted on what GAO has suggested that we need to do?

Mr. STANA. Well, you're raising some very good points. As you know over the years, we have reported on all kinds of problems at the former INS and now with ICE and CBP, and I don't want my remarks to be considered as an endorsement of the status quo, because the status quo has its problems. When INS was dissolved, as you know and you just pointed out again, without dealing with the management problems that underlay a lot of the other issues, it just made it all the more difficult for ICE and CBP to get on top of these things. It has been about 3 years since ICE and CBP have been around and frankly they have made some progress.

I wouldn't give them a grade, but there is so much more that has to be done. These problems are persisting. Agents in the field don't know exactly what they are supposed to do with whom. There was an issue not all that long ago where CBP was preventing controlled deliveries across the border, drug cases that ICE was setting up because CBP thought it was their duty to stop drugs from getting into the country. The ICE agents wanted to see where the drug buys were going and to what organization in order to take down the bigger fish. ICE and CBP weren't coordinating.

Ms. JACKSON LEE. Say this again, because this is not a negative comment on people who are on doing their job. At the border illegal entities were coming across or attempting to come across and ICE had an operation inside?

Mr. STANA. ICE wanted CBP to let those shipments go through because ICE wanted to follow the shipments to the larger organiza-

tion in the country, and take down the organization rather than one individual. The Border Patrol felt it was their duty to stop the drugs at the border, and so it was just a case where the two weren't aligned.

When I speak about management challenges, it sounds wonky, but here is a live example. I sympathize with what Mr. Cutler was saying. The fact is that interior enforcement was never fully funded. I think everybody knew that. If you put the organizations back together, there would be resource fights again. And you recall in the old days with work site enforcement, I think maybe INS put a couple hundred agents on that per year to go after the millions of illegal aliens unauthorized to work who somehow found employment.

So simply putting the organization back together again and dealing with some of the higher level issues is not going to solve the kinds of problems that we are discussing today. You have to get down into the weeds and understand how people are doing the work, where their problems are, put the right number of resources to it, come to a national commitment to deal with these programs and go forward.

Ms. JACKSON LEE. Let me get Mr. Cutler and Mr. Bonner quickly. Mr. Bonner, management problems. I understand from your testimony you are talking about—I think you are talking about leaving them as they are, but correct me if I am wrong, but tell me what your focus is, but more importantly this whole question of management and coordination. And Mr. Cutler, could you follow? Mr. Bonner, thank you for your service.

Mr. BONNER. Thank you. Actually I'm suggesting that you blow up CBP and ICE and start over and have a separate entity for immigration, call it what you will, pick a name, Immigration Enforcement Agency, I don't care, as long as all the immigration people are in that same chain of command so you don't have——

Ms. JACKSON LEE. So you don't have external and internal?

Mr. BONNER. Your enforcement people, whether it's in Peoria or in San Diego or in Maine, they're all on the same page under the same chain of command and they have the same mission and the resources can be allocated within there to make sure you don't have these disconnects like we have in south Texas where thousands of people every month are let go into the country because they happen to be from countries other than Mexico and there is no funding to hang on to these people.

I think that it's more than just a management problem. It is a structure problem. We can't rely on having King Solomon to head up this agency and to manage something that really can't be managed, but that he can somehow get it to work because of his extraordinary wisdom. We have to rely on a good structure in order to make it happen and we don't have that structure.

Ms. JACKSON LEE. Mr. Cutler, are you going to give me a brief answer?

Mr. CUTLER. I used to call the ideal situation the Bureau of Immigration Enforcement because the inspectors at the border along with the Border Patrol, interior enforcement working as Janice Kephart, said, is a continuum, understanding there is no clear line where the interior ends and the border begins and vice versa. But

we need to make management accountable for attrition rates. Even before this happened, we had a horrific problem in many offices and nobody at headquarters said, from what I understand there is $200,000 to recruit and train each new agent and it is a major expense not only in money but time and effort to bring people up to speed and then they left. So management felt they weren't being made accountable because this was the hot potato that nobody on the political side wanted to address.

That's why I'm gratified to be here because we have to address this issue. Making it—closing our eyes won't make it go away and I'm glad that you folks are taking it on head on, and I appreciate what you're doing with the fraud program that you are putting forward.

Ms. JACKSON LEE. Would you echo or support my offer to my Chairman that this Committee might be able to shine the light of day giving some guidance as to how this can be fixed?

Mr. CUTLER. I think it's fixable. I appreciate that you folks want to work together to see that done. The bottom line, I tell people when I come here I testify as an American and not as a Republican or Democrat, and that's why I have been called by both sides.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. HOSTETTLER. We will move to a second round of questions. And Mr. Stana, I think you have, to a certain extent, hit the nail on the head with what we are discussing today when you gave the account of what happened at the border with regard to Customs. If you have an entity such as CBP, Customs and Border Protection and another entity, Immigration and Customs Enforcement, you have a customs function at two various locations and the agents are multi-tasking. Why would—if you had an entity that is purely concerned with immigration law enforcement, such as border protection and interior enforcement in one entity, then they would be concerned at the border with enforcing the immigration laws with no consideration whatsoever or concern at the border with regard to customs enforcement. And so there would not have been any—because you would have had an immigration entity and you would have had a customs entity and there would have been no misunderstanding about what they were supposed to be doing at the border vis-a-vis the interior of the country. It seems to me they worked perfectly. It just so happens that because they have different missions within Customs and they are separated from each other as a result of the Administration's plan, that that is what caused the problem. The structural problem gave birth to the management problem, that if we in fact had an immigration enforcement entity, once again not concerned with customs, and a customs entity that could coordinate everything from overseas to the border to the interior of the United States, that we wouldn't have had that problem whatsoever.

Mr. STANA. Let me clarify, the individual who was trying to stop the drugs at the border was a Border Patrol agent who came from legacy INS and immigration. This particular example wouldn't be the best case of that. It might be useful to talk about——

Mr. HOSTETTLER. Border Patrol or ICE? They both have customs.

Mr. STANA. Oh, no. In the mid to late 1990's, I remember being on night operations outside of El Paso and the Border Patrol there

was routinely picking up people with packages of drugs. It's not that that is just a Customs function. It was also an immigration/Border Patrol function to interdict drugs in that manner.

Mr. HOSTETTLER. But because they were violating immigration laws, correct?

Mr. STANA. They were crossing the borders and violating immigration laws but also happened to be carrying a package.

Mr. HOSTETTLER. I will grant you that when you are enforcing immigration law and there is a weapon of mass destruction you won't turn your head to that, or drugs or whatever, but that was ancillary to the enforcement of the immigration laws. And I don't—I can't see how it can be suggested that with dual missions, that an agent is going to say okay, today do I enforce the customs law with regard to this particular sting operation, I'm not sure.

And I'll turn to Mr. Bonner and Mr. Cutler. Am I thinking too simply about this situation where if we call on individuals to enforce the immigration law that there will not be this confusion as to what hat the agent should be wearing or the inspector or agent should be wearing with regard to what law to enforce and what mission to fulfill? Am I right or am I wrong on that?

Mr. BONNER. Beyond that, Mr. Chairman, what happens when you have a single entity where the Border Patrol used to have its own investigative branch called the anti-smuggling unit. We would work hand and glove with those agents, and when they had a controlled load that they did not want us to intercept at the border or at one of our traffic checkpoints they would clearly communicate that to us and say "let this one go. You are going to see this type of car coming through, just wave it on through," and we would do that and they would be able to follow through. But that level of cooperation and coordination just does not exist any more because ICE and CBP are in different chains of command. So when you go and say, "we need some help here," they say "what's in it for me?" And you have nothing to offer them.

Mr. CUTLER. Mr. Chairman, a couple of weeks ago I testified before the Homeland Security Committee about the issue of separate CBP and separate ICE, and what I said then is what I'll say today. We have created a bureaucratic boundary between the two agencies that are supposed to reinforce our Nation's border. They need to work under one roof with coordination so there is no foul-up where one hand doesn't know what the other hand is doing.

And I want to make reference to something. I have asked that your folks prepare a map. It's back up with additional fatalities that we didn't list the last time. That's the map of all the people who perished on 9/11, including the people killed at the Pentagon and in Pennsylvania. My request to you as I had mentioned last time, I would greatly appreciate it. I believe the folks that have been working with it, the 9/11 Families for a Secure America, would appreciate having it put on permanent display as a memorial to the people who were killed and as a reminder to our elected representatives that it was the entire Nation that was attacked on that day.

The other visual that I wanted you to have is a stack of books and it not nearly a complete law library. These are all the books or part of the books that constitute the laws being enforced by Cus-

toms as well as Immigration, and we can add to that court decisions. And if we did all of that, you would need a bookcase. There are far too many laws with far too much complexity and far too much writing on the proper adjudication, Administration and enforcement of those laws to allow one person to try to become the expert on all of this.

Representative Jackson Lee alluded to the fact that I was injured in the line of duty. I wound up needing knee surgery. Today it is not enough you go to a surgeon, you go to an orthopedic surgeon. And it's not enough you go to an orthopedic surgeon, you go to an orthopedic surgeon who is experienced in knee surgery. If it works in the medical field, I think we need to see it the same way in law enforcement.

We need to know that the people who take the lead in doing immigration law enforcement are people who are oriented to doing a thorough, effective job where they can stay up to speed on everything from documents, if we get the training that they desperately, desperately need; that they understand the impact of what they're doing. They can work in conjunction with other people.

I was part of the Drug Task Force for about a decade. We worked closely with the FBI, DEA and ATF. It was a team effort. We all went out on the same surveillances. But as soon as we did our dynamic entry, as soon as the door came down and we did the arrests, DEA was concerned with seizing the narcotics, I was concerned with seizing documents and so forth.

We need to work that way today. We have to have specialists. This isn't the one-size-fits-all that's going to work. We need people that really and truly are kept up to speed on immigration law. You know as Chairman of the Subcommittee, this law evolves on a continuous basis. The only way to have people who are well versed and understand the implications of what they're doing is to have people dedicated to immigration enforcement, and I can't emphasize that enough. It would be a tremendous asset for the entire law enforcement community if it was done that way.

Mr. HOSTETTLER. The Chair recognizes the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. Sitting here listening to this testimony, I began to cast my mind across this country and think what it must have been like when we enforced our immigration laws, when there wasn't a safe harbor neighborhood and an enclave for an immigrant to go to and how difficult it might have been to plan to go to a nation where you didn't have somebody open the door for you at the border, at the enclave all the way through the pipeline. And maybe we have 8 million, 10 million, 12 million. I, in fact, believe there are more than 12 million illegals in this country today. We are talking about OTMs as part of this equation and trying to focus more on OTMs than Ms. We are talking about how ICE has a conflicting mission and the price of that has been the "I" so that we can focus our resources from immigration enforcement to customs enforcement; how it is a split duty on our borders as well with our Border Patrol.

I look at this thing from this broad perspective and it would be this, that—and I'm going to direct my first question to Mr. Bonner, but if we could somehow wave this magic wand, and I don't mean

back up to where we were before, but if we could enforce effectively our immigration laws successfully at our borders and domestically, internally, if we could somehow get to this point where we could approach 100 percent effectiveness in our enforcing immigration, how much easier then might it be to address the customs issue and the terrorist issue? And in fact, I would make it more specific and that would be of the terrorists that we know in this country and we have some history with. If we had been successful in enforcing our immigration laws would any of those terrorists be in our country today and, if so, under what circumstances? Mr. Bonner first.

Mr. BONNER. I believe that if we were able to effectively deter people from coming into the country, those who are coming for economic reasons, otherwise law abiding, which isn't to say that breaking our immigration laws is some peccadillo, it is a violation, but leaving that aside, taking those people out of the equation would allow Border Patrol, immigration inspectors, and criminal investigators to focus on the criminals and the terrorists, who are a very small percentage and would make it very easy to identify those people coming across the border, my guess is they would stop trying, by and large, coming in illegally because they would stick out like a sore thumb. And they would try to blend into the ports-of-entry where with increased resources I believe that we could be very successful in keeping those people out of the country. And as we go along, we are taking steps, the Congress is taking steps to crack down on document fraud so that it is harder to get a visa to come into the country. And we need to continue those efforts, but I believe working synergistically between all of these elements, we actually could not only control illegal immigration, but we could make this country much, much safer.

Just look at it now. With millions of people coming across the border illegally every year, even if it is a one in a million shot, you have to figure three or four terrorists come in every year just from the sheer numbers of people coming in, and that is a scary thought because it only took 19 people to carry out the attacks of 9/11.

Mr. KING. I have made the statement in the past that I believe the effect of our policy results in a catch and release program of maybe as many as six times or even more times before we adjudicate for deportation. Those are resources of officers that are doing what I call in my business the equivalent of digging a hole and filling it back up again with the level of productivity that we get out of that. So maybe we are using one-sixth of our enforcement officers or one-seventh of our enforcement officers, their time, their money, taxpayers' money and the resources.

How much more effective could we be if we could adjudicate and had the ability to process it first time as opposed to the sixth or seventh time that we pick them up?

Mr. BONNER. That is part of the solution. I think the single most important thing we can do is to turn off the jobs magnet because that is why most of the people are coming in here in the first place, and the employers are the only ones who have anything to lose in this whole equation. A person who is making $4 a day, even if you had the bed space and money to incarcerate them, you would be doing them a favor because they are not getting three square meals

a day now and in some cases they don't have a warm place to sleep at night and you would be providing that for them.

I think a much more effective use of the resources is to go after the employers. Make it simple for them to figure out who has a right to work in this country, and if they choose to ignore that law take out a big club and hit them hard with it.

Mr. KING. What do you think about the effect of eliminating the Federal deductibility for wages and benefits paid to illegals if we have a safe harbor for the instant check program on the I–9 information and sent the IRS in to do an audit and be able to collect the taxes that would be due on that Schedule C line item as well as the interest and the penalty?

Mr. BONNER. I think that is an interesting concept. I think H.R. 98, I think that is the real solution of saying look, it is illegal. We have given you a way to figure out if this person is in this country legally or not and send out enforcement officers to enforce that law and put those companies out of business, $50,000 fine per illegal alien per violation. That is a strong message and needs to be sent to the employers and you would get compliance much the same way as we have compliance with the Tax Code now. People are honest on their taxes because they fear the negative consequences of cheating on their taxes. A few high profile cases every year causes the rest of the country to fall into line, and that is how you could enforce employer sanctions.

Mr. KING. Could I ask unanimous consent to allow Mr. Cutler to answer that question?

Mr. HOSTETTLER. Without objection.

Mr. CUTLER. I agree with what you want to do with the tax law. I think it's a great idea. Again, and I hate to keep harping on it, that is why fraud is so critical because the Gordian knot that would enable an alien to circumvent all of this is to get a green card based on a fraudulent marriage, for argument's sake. Then he could work and the employer doesn't have a problem and he is here and hiding in plain sight. That is why we need to see all of these issues addressed properly.

I never heard anyone talk much about immigration benefit fraud. The GAO in 2002, February, 2002 issued a report that said it was rampant and pervasive, and that is how the bad guys get to hide in plain sight. There are simple solutions to some of these problems. I don't know if you realize this, but when an alien naturalizes he or she can take any name on the day of naturalization that he wants.

If we didn't know that, for example, Osama bin Laden was a terrorist, he could naturalize and say, you know, John Smith is a great American name. I want to be known as John Smith. From that day forward he becomes John Smith and his U.S. passport will only have the name John Smith on it. If he is wanted in Germany for mass murder or France for mass murder, he walks in with a U.S. passport that says he is John Smith, he will be able to slip right through.

We need to look at that and say if we naturalize somebody we need to put all of the names that that person was known by on their passport. If an alien applies for a benefit from Immigration, they should fill out a questionnaire just like they do when they be-

come a resident. Have you ever been arrested or have you ever committed a crime, have you ever trafficked in drugs, have you ever contributed money to a terrorist organization? If they say yes, they are deportable. If they say no and it can be proved they have lied, you can prosecute them.

This doesn't cost anything. We need to get smart in what we are doing. Not only a matter of money, but a matter of strategy. Strategy will take leadership and take people at the top who understand how the law can be used effectively and then we can really help to make America a much safer country.

Mr. HOSTETTLER. The Chair recognizes the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you. Mr. Bonner, we posed a line of questioning to Mr. Stana who focused, without giving a grade to the DHS and without critiquing staff and your offices that work hard every day, this whole idea of management problems. If we were to begin to focus hearing after hearing, it doesn't answer the concern. And I still have in the backdrop of this problem, the lack of management definitions, if you will, the overlapping responsibilities, inconsistent program implementation, and I don't know whether it is ineffective use of resources, but I think you noted not enough funding to allow a number of functions to occur, detention, number of beds. By the way, I'm not sure if you are aware of the legislation on the floor that added 1,000 beds. I can't tell you what the distribution is, but 1,000 beds are supposed to be added shortly to detention facilities around the Nation. What do you say about focusing on trying to get the definitions defined, get management's responsibilities defined, get management's training, if you will, more efficient and more effective to begin, then for it to trickle down to those who are actually implementing those tasks?

Mr. BONNER. I think the biggest part of the problem is you get managers at the highest levels who are just going to go along with whatever the Administration requests. So if the Administration says, "we know that the law says 2,000 Border Patrol agents for the upcoming year but this is going to be our request and you are going to defend that," and they do defend it. We need to have managers who will stand up and say, "If you want the job done this is what it's going to take. It's going to take 10,000 this year, not 200. And if you want to just pretend that we can make do with 200, fine, but I'm not your person." That is the type of leadership we need in this department, and we don't see it in the Department of Homeland Security, which is not unique within the Federal Government. It's very much the norm that these managers say "okay, this is how it's going to be."

One of the most frustrating things for the rank and file is when Members of Congress go down to tour the border and managers will put extra officers on duty and have the best vehicles out there. I say show it to them the way it is so they can see what a shamble the infrastructure is and how few people are out there at any given time so they can say, "my gosh, what is going on here? We need reenforcements down here," not, "everything looks pretty good. Everything is covered and you have the latest equipment." What they have done is they amassed everything in that one area where Members of Congress were going to be.

That really does not benefit the American public. The American public deserves to be protected. They deserve the very best protection that we can afford and that requires the honest, unvarnished truth being told to those who are making these decisions in the halls of Congress.

Ms. JACKSON LEE. I hope that when I visited they didn't put too many overlapping good equipment in front of my eyes. And you are absolutely right. And I assume you're right, because we wouldn't have minutemen at the borders in Arizona getting ready to move to California and New Mexico and Texas.

Mr. BONNER. It's what the rank and file call a "dog and pony" show and you saw a dog and pony show.

Ms. JACKSON LEE. You highlighted the problem with the chain of command, and at the same time the chain of command has to be sufficiently trained separate and apart from whether they adopt the Administration's position. Maybe that is where Congress comes in to realize that where the rubber hits the road, you have to go for the 2,000 or 10,000.

I'm trying to focus in on the management training or trying to give at least some definition. Let me use some action item that occurred. I understand that there was a watch list of about 200 or 300 Muslims that someone devised that are utilized at the border and it's supposed to help make us secure. I mean is that some decision that came because the boots on the ground said this was a good thing to do? Did it come from management? Can you utilize that? Is it an effective system? These are management decisions that the question is whether or not it translates. Is that an effective use of your time? Maybe your time should be drawn elsewhere as opposed to a list that just sits there that may not be accurate.

And as you answer that question, let me pose a question to Mr. Cutler, Mr. Chairman, and ask him—I am going to ask Mr. Bonner to answer that, but I'm going to ask him to hit it on the nail. Would a restructuring of ICE and the Border Patrol put in a separate enforcement agency work from that perspective? The watch list that was devised, I think you utilize a number of Muslim men on the list. Where did that decision come from? And I pointed out as an example of how is management working to give you your assignments and do we need to go where Mr. Stana is focusing? Can we get some order and defined responsibilities and defined tasks that will be a guiding mark for you?

Mr. BONNER. Well, the watch list is fairly useless because it is just a name, and unless the terrorist is going to give you their true name or be carrying a passport, which neither one of those is true, they are just going to make up a name and you look at the list and say, "well, this name is not on it." It is a waste of time. There has to be a better way, some type of biometric. And I realize that most of these terrorists do not have criminal records, but there must be some way.

As Mr. Cutler said, if we can put a man on the moon, we can devise technologies to help us out and give us a little bit of an edge against the bad guys.

Ms. JACKSON LEE. That helps you get the bad guys versus the names on the list that are just ordinary Joes that get their names on the list or have the same name that tie up your time and of

course offend, embarrass or put in a terrible position those who have nothing to do with terrorism. So you are not given the tools necessary, a management decision to have the list but not the tools.

Mr. Cutler.

Mr. CUTLER. Well, I know you asked me about management. This is why I would like to see biometrics linked to driver's licenses so people don't have multiple driver's licenses and multiple names. I've often said that when a good guy gets up in the morning, he goes through his stuff to see what he wants to wear. When a bad guy goes through his stuff, he figures out who he wants to be. Very often they can get past no-fly lists and everything else.

It is a real problem of identifying people, and it is an issue that I raised when I did my first congressional hearing back in 1997.

As far as the question you asked me about putting everyone under one roof, I think it would be much more effective. I think you will have a clearer focus. You have clear accountability. It wouldn't be as diffused as it is. I would certainly come down on the side of one law enforcement agency that focuses on immigration. They should work closely with Customs. They should work closely with DEA.

I have done this as a member of the task force. I had a desk at the FBI for a year and-a-half and had a desk at DEA for about 7 or 8 years. It was easy to work with each other. We brought to bear our particular authorities and our resources and our orientation and expertise. I would look at somebody from an immigration perspective that DEA was looking at from a drug perspective. This helped us out during a terrorist investigation. We found a vehicle, actually DEA did. They were doing a drug case called Polar Cap. They found a car with bomb detonators in it. When I went to interview these folks, the Immigration angle never occurred to DEA. And I turned to the head of DEA in New York and said, "Bob, these people are lying about the fact that they're house painters and construction workers." He said why? I said did you shake that man's hand. It's a smooth hand. He has manicured fingernails. My dad was a construction worker. He would crush your hand with his. Bob knew a lot more about drugs than I can ever learn. But as an Immigration agent, my first thought was this guy has manicured fingernails and no muscles in his hands. This guy was running the drug organization.

So the point of it is we bring expertise to the table and Immigration needs to retain its expertise. It needs desperately to retain its institutional memory and we have to make the people in that business accountable and not diffuse their responsibilities so they can say gee, someone else came up with this. No, if you make a decision, you need to be held accountable.

Ms. JACKSON LEE. Would you lodge that unified entity inside the Department of Homeland Security?

Mr. CUTLER. That is a rough call. As long as it was an entity that was clearly definable as the Immigration Enforcement Bureau, it wouldn't matter if it was under the Department of Justice or Homeland Security, that's fine. I want to see an entity that is dedicated to the enforcement and administration of the immigration laws so we know that there is accountability, continuity.

Training is an ongoing process. Since they moved these folks out of the INS, as I mentioned during my testimony, they are not getting language training. How do you investigate people that you can't communicate with? Right now, if you want to make an Immigration agent go away, the magic words aren't "abracadabra," it is "No hablo Inglés."

Eighty percent of the illegal alien population speaks Spanish. How can they conduct an investigation when all the guy has to do is say "No hablo Inglés?" I will tell you my own experience is that people will say to you and then you look at the guy and "No hablo Inglés? Español, señor?" and the guy did speak English after all. If you have the idea by saying that you can make that guy go away, I guess you are going to have people who don't even speak Spanish saying, "No hablo Inglés." It is not a good situation. It's a matter of training, accountability, and we need a strategy.

I'm alarmed that 3½ years after 9/11, there still is no clear strategy or idea of mission to protect the United States. Imagine, if we fought World War II this way there would be a different flag flying over the Capitol today. It worries me, and I think it should worry all of us. We needed to hit the ground running and we are not moving at all. We are stuck in wet cement, and that is not a good situation.

Ms. JACKSON LEE. I will conclude simply by saying this, a couple of weeks ago we were having a hearing in Homeland Security and I made the point—I continue to make the point of whether or not we have created too large an entity in the Department of Homeland Security with 180,000 employees, not in any way to disregard the hard service, dedication and commitment of these employees, from TSA to any number of entities, but there lies—I think partly beyond the 1997 report with INS, but there lies part of the difficulty in having clear lines of responsibility, knowing what you are supposed to be doing, having an integrated system, and I think there are some alarms being set off today, some red flags that have been set off hearing after hearing after hearing, and there is going to be a moment where we have to turn inward and address these questions because some would say, without overly creating a great deal of hysteria, that we are on borrowed time, and I think it's crucial we get our house in order and these gentlemen and lady have allowed us to do so.

Are you leaving in or taking out Customs?

Mr. CUTLER. I would have Customs separate and apart from that immigration chain. They can work together as a task force. Maybe it would be useful to share their legal authority, but you want core people that do immigration, that are experts in immigration, that this is their day-to-day job, and Customs could do their own thing. You know, I want you to know, the biggest threat we have are people coming into the country more than things coming into the country. For a terrorist to bring a weapon into the United States, it is a real concern and we should be screening the containers. But it is kind of like bringing sand to a beach. If we look at the prior attacks, we have never seen an attack committed on our soil that involved a device brought into our country from overseas. God forbid, it could happen tomorrow. I'm not saying that it's foolproof that won't.

But the interesting thing for me was that Richard Reid had a shoe bomb. Now we go on board the airplanes and we wear loafers because we know we have to take our shoes off, but no one looked at the fact and nobody has done anything about the fact that he was eligible to enter under the visa waiver program.

We have to look at the areas of vulnerability, assess the areas of vulnerability and lead the target. We can't keep playing catchup with the bad guys. I gave you some suggestions about the use of passports and showing all the identities on passports. We need to be at least as creative as they are.

Please remember one thing, we have to be right 100 percent of the time, they only have to get it right once to do a hell of a job on us, and that is why this is so critical.

Mr. HOSTETTLER. The Chair recognizes the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Mr. Chairman, thank you very much for holding this hearing. I find this topic of great interest. I appreciate the gentlewoman from Texas' questions and sorry I missed the testimony of the panel because I was elsewhere earlier, but it's a matter of grave concern to me and I want to add an additional complicating factor to this.

I'm the Chairman of the House Committee on Agriculture and this is not a dual mission that has been put under the one face at the border program. It is a—I don't know what you call it—a triple mission because you have also taken over the responsibility for the Plant and Health Inspection Service. This is a role that has been supervised by the Department of Agriculture for a great many years. It is a serious problem for our country.

I agree with Mr. Cutler that somebody coming in and doing damages are our highest level of concern, but we do billions and billions of dollars a year worth of damage in this country not from, usually, intentionally bringing things into the country but the unintentional admission into the country of various pests, animal, plants, various diseases, fungicides. That requires an extraordinary level of expertise to spot. And we are just not talking about looking at agricultural products coming into the country, but talking about all kinds of other containers that an insect or hoof and mouth disease may have gotten into.

And the Department over many, many years built up a very, very strong force of expertise with veterinarians and people with advanced degrees in biological sciences and so on. These people can play a very important role in keeping out a deliberate attempt to bring some kind of a bioterrorism type of attack. But most of the work they have always done, an overwhelming portion, is making sure things don't accidentally enter the country and cause huge amounts of damage.

We know all types of invasive types of species we have in the country as a result of our not being able to do this very effectively. My concern is it has gotten a whole lot worse, because no longer do you have this separate identity, this cadre of people with a pride in what they are doing and utilizing their specific background, but now we are asking people who have responsibilities for immigration work, or who have responsibilities for other types of Customs work to also have some at least rudimentary knowledge of what to

be looking for when some handicraft comes into the country and it might be a banned species or might contain something that is a problem.

I'm concerned we are losing that expertise by combining these functions. The plan was to have more people with expertise at more ports around the country, and maybe that indeed is the case. But what I'm hearing is that we're losing that expertise and people no longer feel that they have that independence and the desire to have that expertise inspecting it.

And I would like you to comment on this area and whether you know enough about it to make an observation, what you have seen at the border with regard to this responsibility.

Mr. STANA. Can I start? I think it's a cause for concern. I think the way that concern is being addressed right now is that as long as the legacy individual has that expertise, whether it's Immigration, or whether it's Customs or whether it's food and agriculture enforcement, those people are being used in the primary and secondary areas of airports and land ports to take advantage of that expertise. So as long as those people are there and maintain the expertise from their old agencies, it's not as much of a problem. The worry is as those people retire or get shifted to other duties, they lose their edge.

Mr. GOODLATTE. Is there an ongoing effort being made to hire people of this caliber to replace them with these backgrounds in sciences and biological sciences and so on?

Mr. STANA. I'm not sure of that. I'm sure that at the ports, what the port director has tried to do is to take advantage of what expertise is available. For example, in secondary for immigration issues, they will put people from legacy INS because they know the law well enough. Similarly in secondary where they may pull a car over at a land port and tear it apart looking for contraband, it tends to be legacy Customs people and that's because they know the business. The concern is how much longer are those people who know that business going to be around and are the training courses at FLETC suitable to get people up to speed in the variety of areas that they have to make our one face at the border work.

Other members of the panel and I would echo that and point out that learning immigration law, let alone customs law and the knowledge of thousands of plants and food stuffs, and understanding the nuances and the different turns that each would take—to understand those three areas, for one individual, it would be a formidable task.

Mr. GOODLATTE. Thank you. Ms. Kephart.

Ms. KEPHART. I think this plays into Ranking Member Jackson Lee's question about is the DHS too large, because I think we are losing questions like this because DHS is so big and there are so many questions. The merger—I want to clarify something I said earlier about the merger of Customs and Immigration and Agriculture at the ports-of-entry. I think for supervisory purposes there needs to be efficiency there and there needs to be cross training for management purposes. However, it's always been my feeling that the expertise that is required for Agriculture and Customs and Immigration is so detailed, there is so much to know in such a short amount of time for such short inspections that you must absolutely

maintain that expertise. And while I was on the Commission, the last inklings I was hearing from CBP and from FLETC that there was complete homogenation taking place at CBP in terms of that training, and that to me was a great concern.

Mr. GOODLATTE. I share that concern. Mr. Bonner.

Mr. BONNER. I think you touched upon a real area of concern. These agriculture inspectors used to require degrees and immigration inspectors would receive 16 weeks of training. Customs inspectors, I believe it was about 14 weeks of training. They have condensed all of that down to 11 weeks of training. And you are simply not going to hit on anything but the real high points. So what happens is these newly trained inspectors are keying in on indicators of nervousness. Well, if you don't know that you are bringing something into the country that is harmful, such as the wrong type of fruit, you are not going to be nervous at all.

I can recall pulling up to the California State agriculture inspection one time and they asked me, "are you bringing in any fruits or vegetables?" and I said "no." "What's that under the seat next to you?" And it was an orange and I said "oops, I didn't think of it." I wasn't nervous because it was an orange to me and did not equate. But that's the type of thing that you are dealing with. You need those specialized degrees in order to know what you're doing when you are dealing with agriculture, and that has gone by the wayside, which is a very big concern.

Mr. CUTLER. I think you have hit on a real critical issue adding agriculture to the mix. Again, we are spending less time training these people trying to give them greater knowledge and it's not working. I think this is a prescription for disaster. I'm fearful of where this is going to lead us ultimately.

Mr. GOODLATTE. Thank you, Mr. Chairman, and thank you for letting me run over time.

Mr. HOSTETTLER. I recognize the gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you very much, Mr. Chairman. I'm sorry I was not here for the prepared testimony, but I will look that over.

I don't know where to start. I want to make sure this is not the concern that any legacy agency would have when we try to bring them together. If I believed that we had done a super job before we brought DHS together, I would be far more convinced by what I hear here today, but I don't know anyone who says we did a bang-up job beforehand. And is it really the problem that we have this consolidation and are asking people to do too much? Or is it that we don't have enough people, period, or don't have enough commitment, period? I mean, I'm happy to look at everything. For us to go off chasing the idea that the real problem is that we have—look, while I respect what they have to do, this is not rocket science. You can train people in various capacities if you put the effort in, if you get the qualified people and if we really put the money behind it. And my concern is that we may think that is the problem as we try to consolidate these various operations, when the problem is we haven't put enough money and manpower behind it—that we just haven't made a large enough commitment.

So, Mr. Bonner, are you suggesting to me that really if we went back to the old days when we were separated out and put more bodies there then that would have a significant impact?

Mr. BONNER. I think it would have a significant impact if you allowed these agents to specialize in one field, such as immigration. I think it's a mistake to expect so much of people and you're probably right. You could probably intercept 98 percent of what's coming across if you train people very well, but 98 percent is not good enough when you are dealing with terrorism because, as Mr. Cutler pointed out, they only have to be right once in order to inflict incredible damage and we have to be right 100 percent of the time to screen the people out of this country who should not be getting into this country.

Mr. LUNGREN. We also want to screen out things that we don't want in this country as well.

Mr. BONNER. Absolutely, and expecting one person to be an expert in all of these fields is asking too much. What you are going to end up with are jacks of all trades, but masters of none.

Mr. LUNGREN. Is it more important that we enforce employer sanctions or that we be concerned with dividing up these responsibilities?

Mr. BONNER. I don't think you are going to look at it as either/or, I think you have to do both. I think employer sanctions is a very key part of enforcing the immigration laws.

Mr. LUNGREN. What would have a greater impact?

Mr. BONNER. I think the greater impact would be if you could honestly enforce employer sanctions. If you could remove 98 percent of the people from the equation who are coming across our borders illegally, I think that would have a huge impact, but I think the other is also important.

Mr. LUNGREN. And I have always been concerned that we haven't focused on that part, that 98 percent or whatever the percent of people coming here seeking jobs. The magnet is jobs. How do you affect that? You go to where the jobs are, which is employer sanctions. I'm convinced we are never going to have an employer sanction program that people will support unless we have a workable guest worker program. That is just my thought, and I think we need to focus on that. We make the job that much more difficult for people at the border to the extent that we have not controlled the tremendous magnet that attracts people here, which is jobs. And to the extent that we don't do that, we just make the haystack bigger. If you are looking for the needle in the haystack, we have created larger haystacks and a greater number of haystacks, which makes the job difficult if not impossible.

Mr. BONNER. No argument from me on that point.

Mr. LUNGREN. I heard some people suggest that we have made DHS too big. Do you really think that's the problem?

Mr. BONNER. I don't know that it's the size of the agency as much as it is the mission and how we have broken it up; the structure that allows people to go out and do the job that they were hired to do.

Mr. LUNGREN. Let me ask another way. It was my observation 10 years ago here and while I was Attorney General of the State

of California that the INS, while it was in the Justice Department, never was looked upon as the gifted child.

Mr. BONNER. Being with the INS for the better part of my adult life, I concur with that. We were the red headed stepchild.

Mr. LUNGREN. So I am not willing at this point to say that it's because it's over there at DHS and they are too large, that that's what the problem is. Unless we focus on the mission of immigration, unless we focus on the mission of protecting our borders, unless we make that a priority, it doesn't matter where it sits, the job is not going to get done.

Mr. HOSTETTLER. I thank the gentlemen. At this time, the questions from the panel have concluded. I want to thank the witnesses for your appearance here, your contribution to the record as we deal with this and many other very important issues.

All Members are reminded that they have 5 legislative days to add to the record and that if there are any questions for Members, additional questions for members of the panel, that we would ask members of the panel to return a response within 3 weeks.

Ms. JACKSON LEE. Would the gentleman yield? I thank the Chairman very much. As the DHS has a multiple number of jurisdictions and responsibilities, so does Congress, and the Homeland Security Committee has the greater jurisdiction on the question of management and change. However, I'm going to speak with our Chairman at least to possibly draft a letter, since I sit on both Committees, to be able to put this hearing in focus because I think what we were able to learn today is very helpful, and the more voices that can be raised about the concerns expressed by Mr. Stana, Mr. Bonner, Mr. Cutler and to a certain extent Ms. Kephart and her work on the 9/11 Commission, the more closely we will get in solving the problem in securing America, but more importantly understanding immigration and its functions or at least the need to distinguish the responsibilities of enforcing immigration laws from, of course, the responsibility of making sure that we collectively fight the war on terror.

So, Mr. Chairman, I hope that we will have an opportunity to at least put this hearing in focus and to share it so that this problem can be involved.

Mr. HOSTETTLER. Look forward to working with the gentlelady, and with regard to those priorities, I can tell you that it is the desire of this Subcommittee that we prioritize the enforcement of our immigration laws. And I understand that Homeland Security Committee has a lot of priorities and that may be a different issue for you and on that Committee and the Chairman of that Committee, but I look forward to working with you on this because I think we have learned today that a whole host of issues are contributing to the fact that we are not adequately enforcing our immigration laws. That goes without saying in my 2¼ years of my being Chairman of this Subcommittee, but there seems to be a host of issues conspiring for that to happen, and to the extent that this Subcommittee can be helpful in ironing out those differences and reiterating the priority of immigration enforcement, I look forward to working with the gentlelady.

The work before this Subcommittee having been completed, we are adjourned.

[Whereupon, at 4:35 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF EUGENE R. DAVIS, RETIRED DEPUTY CHIEF PATROL AGENT, U.S. IMMIGRATION AND NATURALIZATION SERVICE, U.S. BORDER PATROL AGENT, BLAINE SECTOR, BLAINE, WASHINGTON

REGARDING "THE NEW DUAL MISSIONS OF THE IMMIGRATION ENFORCMENT AGENCIES"

Mr. Chairman and members of the subcommittee my name is Eugene R. Davis. I am retired Deputy Chief Border Patrol Agent. I retired in January of 2000 after having spent 29 years with legacy INS. I spent 23 years on my career along the northern border in Northwest Washington State. During those years Agents operating in the Blaine Sector under my jurisdiction were successful in arresting two known terrorists that entered the United States from Canada. Abu Mezer was arrested on multiple times in 1996 and 1997 and Ahmed Ressam was arrested in 1999. In April of 1999 I testified before your subcommittee and as part of that testimony I warned members of the terrorist threat that existed in Canada.

In 1996 I was one of local management officials that helped pioneer the concept of the Integrated Border Enforcement Teams (IBET). This innovative program established international cooperation between agencies along both sides of our international border with Canada. After the attacks of 9/11 multiple IBET teams were established along the entire U.S./Canada border based on the Blaine model.

Since my retirement in 2000 I have remained very active in the area of border security and training. I am self employed as a private contractor. Over the last several years I have taught numerous courses to law enforcement personnel from both sides of the local border. The main emphasis of this training has had the goal of encouraging interagency and international cooperation.

In addition to teaching local courses I have also traveled and taught courses on border security in foreign countries. My travels have taken me to West Africa and Central America. Most recently I spent a month in the fall of 2004 in Pakistan working with Pakistani Military Officers close to the Afghanistan Border. During this training mission I helped set up a training program to train new recruits in the Pakistan Frontier Corp.

I feel that these experiences have given me a unique perspective. I have used this perspective as I have taught courses in Anti-terrorism to local senior border inspectors with DHS since my return from Pakistan.

I am submitting this statement before your important committee to express grave concerns that I have about the present enforcement structure within the Department of Homeland Security.

During the last decade that I worked for Legacy INS I became a strong advocate that the enforcement elements with the agency should be combined and split off of the service elements. I felt that there was a direct conflict of one agency trying to administer benefits and enforcement at the same time. I expressed this believe in written and spoken testimony before the U.S. Senate Select Committee on Investigations in November of 2001.

It was my hope that when the Department of Homeland Security was organized that the enforcement divisions of INS which included the Border Patrol, Investigations, and Detention and Deportation would be combined. I felt that would form the nucleus from which a more effective enforcement platform could be established. Within this structure the Country would have benefited from the years of experience that each of these components would have brought to the mix.

Congress chose not to pursue this course. Instead they completely dismantled the legacy INS enforcement structure and placed them into two separate entities. The Border Patrol was placed into the Bureau of Customs and Border Protection. Inves-

tigations and the Detention and Deportation section were made part of the Bureau of Immigration and Customs enforcement.

This change has not only created havoc between the two agencies but competition as well. Removing the investigations element from the border patrol has the same effect that going to a major police department and taking away their detective force would have.

You now have two major agencies within an agency operating close to the border that are enforcing immigration laws. It is almost impossible to determine who is in charge and who is responsible. When outside law enforcement agencies have a question they often get the run around.

I believe that along the border there is less cooperation taking place and more confusion now between agencies than there was prior to 9/11.

Interior enforcement has also been adversely effected by this organization. The former Customs Service was already overwhelmed with enforcement missions prior to the re-organization. Adding Immigration enforcement to their responsibility is tasking them with an impossible mission.

Interior Immigration enforcement prior to the re-organization was an impossible task for the old INS because of lack of resources and effective laws. It is my understanding that many of the present supervisors and upper management people under BICE are legacy Customs officers. They do not have the years of experience that it takes to understand the complexities of Immigration law. Many of them view immigration enforcement as a thankless and impossible mission.

I would suggest in the strongest language that I can muster that this present organizational structure be re-examined. I would recommend that the Legacy INS enforcement components be brought back together under DHS. I believe if they are given the proper manpower, technology, most importantly new laws with strong enforcement provisions that they can accomplish their mission.

Thank you for allowing me to submit this written statement to your important committee.

PREPARED STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

When the Bush Administration established the Department of Homeland Security (DHS) in 2003, it split up the U.S. Customs Service and the Bureau of Border Security and reconfigured them into two bureaus, the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (ICE). The basic responsibility of CBP is to prevent illegal persons and goods from crossing the border. ICE is responsible for tracking down these persons and goods if they get past CBP.

This reorganization has resulted in some coordination problems. For instance, the training for daily border security operations is not working well. Supervisors from one legacy agency at a port-of-entry have not received the training to answer technical questions of inspectors from another legacy agency. Inspectors often are told just to do things the way they used to do them.

Much of the information sharing that is occurring at the border is due to existing personal relationships among employees, not to formal systems for exchanging information. For example, legacy Customs employees still cannot access immigration databases. This means a legacy Customs inspector cannot work at an immigration secondary inspection point, which reduces the overall flexibility of the workforce the Department is striving for.

Sometimes, to facilitate an investigation, ICE investigators want contraband to be allowed to pass through the border. This is known as, "a controlled delivery." While this is a legitimate investigatory method, it is contrary to CBP's mission, which is to prevent contraband from passing through the border. Consequently, ICE's use of controlled deliveries has created difficulties with CBP. ICE and CBP have formed a working group to develop a protocol for controlled deliveries that will resolve this conflict.

Alien smuggling investigations have suffered too. In INS, alien smuggling cases traditionally arose from inspectors, border patrol agents, or adjudicators noticing patterns or trends. The dissolution of INS has cut the connections between the agents who investigate alien smuggling and the front line personnel. Also, fewer Customs investigations have been generated by leads from inspectors.

To a great extent, however, CBP and ICE are suffering from the same management problems that INS had before DHS was created and the immigration enforcement functions were separated. In 1997, GAO reported that INS lacked clearly defined priorities and goals and that its organizational structure was fragmented both programmatically and geographically. Additionally, field managers had difficulty determining whom to coordinate with, when to coordinate, and how to communicate with one another because they were unclear about headquarters offices' responsibilities and authority. GAO also reported that INS had not adequately defined the roles of its two key enforcement programs, Border Patrol and investigations, which resulted in overlapping responsibilities, inconsistent program implementation, and ineffective use of resources. INS's poor communications led to weaknesses in policies and procedures.

In 2004, GAO reported that CBP and ICE have many of the same management challenges that INS had. For example, in some areas related to investigative techniques and other operations, unresolved issues regarding roles and responsibilities give rise to disagreements and confusion. While initial steps have been taken to integrate the former immigration and customs investigators, such as establishing cross-training and pay parity, additional important steps remained to be completed to fully integrate investigators.

INS was a dysfunctional agency. When its enforcement responsibilities were taken over by DHS, they were divided between two new bureaus. The purpose of today's hearing is to decide whether the enforcement functions should be consolidated again. If the problem were just structural in nature, consolidation might make sense; but the problem is not just structural in nature. The bureaus still have serious management difficulties that need to be addressed. Our witness, Rich Stana, from GAO, will elaborate on the nature of these problems.

Thank you.

PREPARED STATEMENT OF CONGRESSMAN ELTON GALLEGLY

Thank you for holding this hearing, Mr. Chairman.

The dual mission of Immigration and Customs Enforcement is troubling to me. It is troubling to me because I spent years, next to many who still sit on this subcommittee today, aggravated by the dual mission of the former INS. At the former INS, the "service" mission of the organization continually conflicted with the "enforcement" mission.

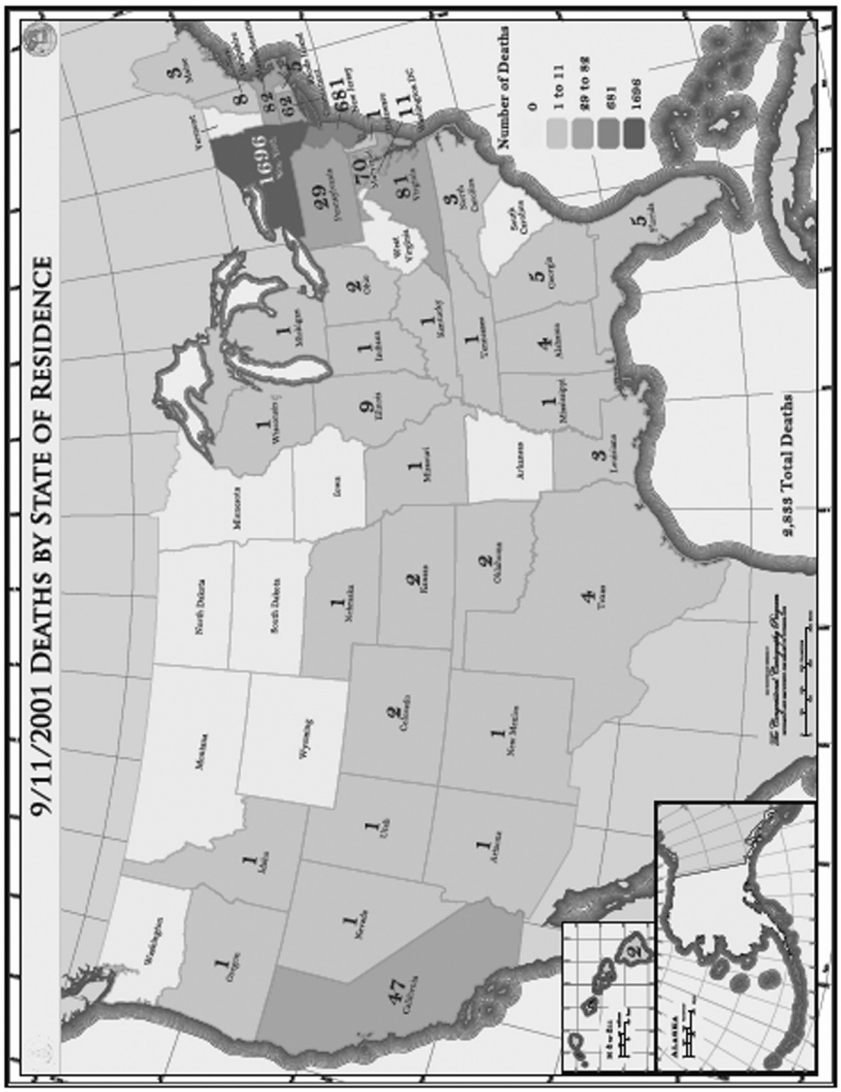
Now, again, we find the immigration enforcement authority in the same pickle. Lumped into a dual mission organization with customs enforcement, interior enforcement is still lacking. If management is any indication, priority has been given to the customs functions.

Increasingly large numbers of illegal immigrants are entering the country. By some estimates, they number more than a million a year. Why are they coming here? Many come for jobs. If there is no meaningful enforcement in the interior, the illegal immigration problem in this country will never get better, and may continue to get worse.

I am interested to hear from the witnesses about the dual missions of Immigration and Customs Enforcement and about how these missions impede the effective enforcement of the law.

I yield back my time.

MAP OF "9/11/2001 DEATHS BY STATE OF RESIDENCE," SUBMITTED BY MR. MICHAEL CUTLER



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