

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.