



Memorandum

June 28, 2006

TO: House Committee on International Relations, Subcommittee on International Terrorism and Nonproliferation
Attention: Edward Burrier

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SUBJECT: Border Security Backgrounder

This memorandum was prepared in response to your request for a general background of border security along the southwest border with Mexico in preparation for a series of field hearings the Subcommittee will be holding. You specifically requested that we provide background on some of the key issues, including: the prospect of terrorists crossing the border, with attention to "other than Mexican" (OTM) aliens from special interest countries; what some have termed the "catch and release" policy and the lack of detention space along the border; smuggling of individuals and contraband across the border; the erection of fencing along the border; the role of state and local law enforcement in enforcing immigration law; and the current resources available for the border patrol. You also requested that we provide some suggested questions for members to ask at the hearings. For questions on the movement of contraband across the border, please contact Jennifer Lake at 7-0620 or jlake@crs.loc.gov. For questions about detention and removal and human smuggling, please contact Alison Siskin at 7-0260 or asiskin@crs.loc.gov. For any other questions, please contact Blas Nuñez-Neto at 7-0622 or bnunezneto@crs.loc.gov. Sections of this memorandum form part of CRS reports that are in progress; while this memorandum is confidential and will not be disseminated those sections may appear in future CRS reports.

Overview of Border Patrol Procedures and Resources

The United States Border Patrol (USBP) is headquartered in Washington, DC, and has 20 district or sector offices throughout the country. Over the past two decades, border enforcement has increasingly become a priority, with the border enforcement budget increasing sevenfold from 1980 to 1995 and then more than tripling from 1995 to 2003.¹ Appropriations for the USBP have grown steadily, from \$1.06 billion in FY2000 to \$1.74 billion in FY2006—an increase of 64%. Accompanying the budget increase, USBP manpower has more than doubled over the past decade. At the end of FY2005, the USBP had 11,268 agents on board.² The USBP also utilizes advanced technology to augment its agents' ability to patrol the border. The technologies used include, but are not limited to, sensors, light towers, mobile night vision scopes, remote video surveillance (RVS) systems, directional listening devices, unmanned aerial vehicles (UAVs), and various database systems. These so-called force multipliers allow the USBP to deploy fewer agents in a specific area while maintaining the ability to detect and counter intrusions. They are increasingly becoming a part of the USBP's day to day operations. Despite the growing use of technology to augment agent manpower in detecting intrusions, USBP agents must still make the apprehensions.

When a USBP agent apprehends an alien attempting to enter the country illegally, the alien is processed in the field, which includes filling out the alien's name, date of birth, place of birth, and country of citizenship and reading them their administrative rights on Form I-826. Form I-826 gives the arrested alien the choice of requesting a hearing before an immigration judge seeking asylum because they have a credible fear of being harmed if they are returned to their home country, or admitting to being in the United States illegally and requesting a voluntary departure. Aliens are to initial their choice and sign the bottom of the form. After that they are transported to the nearest USBP station for processing.³ During this processing, the alien's ten fingerprints are digitally recorded and their relevant information is entered into the Automated Biometric Fingerprint Identification System (IDENT). IDENT combines a photograph, two flat fingerprints, and biographical data into two databases which can be used to track repeat entrants and better identify criminal aliens. In the past few years, IDENT has been modified to allow for a ten fingerprint search of the Federal Bureau of Investigation's (FBI) Integrated Automated Fingerprint Identification System (IAFIS). According to DHS, linked IDENT/IAFIS workstations have been deployed to every USBP station.⁴ IAFIS is an automated 10 rolled fingerprint matching system linked to a database that holds over 40 million records, including wanted persons, stolen vehicles, deported felons, gang members, and terrorists. The biographical information received is placed in the

¹ Reyes, Johnson, and Van Swearingen: "Holding the Line? The Effect of the Recent Border Build-up on Unauthorized Immigration," Public Policy Institute of California, 2002, pp. v-vii.

² Data from CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Blas Nuñez-Neto.

³ From CBP Congressional Affairs, Aug. 3, 2004.

⁴ Statement of USBP Chief David Aguilar in the U.S. Congress, House Appropriations Committee, Subcommittee on Homeland Security, Customs and Border Protection Operations, July 12, 2005.

Enforcement Case Tracking System (ENFORCE) database, an immigration case management system.⁵

Once the alien's biometric information has been entered into IDENT and has been checked against IAFIS, the alien's immigration status, and sometimes citizenship, can be verified through criminal histories or immigration histories found in the databases if they have a record on file. If the alien is Mexican or Canadian, they can be voluntarily returned across the respective border if they have not committed a felony, been previously removed or deported from the United States, or have any outstanding warrants in the IAFIS system. Along the Southwest border, processing Mexican nationals who can be voluntarily returned takes roughly 10-15 minutes. After they are processed, the aliens are briefly held at the USBP station while they await the buses or vans that are used to return them to a nearby Mexican port of entry.⁶

If the alien that has been apprehended is not a Mexican or Canadian national, however, the process of returning them to their nation of origin is more complicated. When a USBP agent apprehends an OTM, the agent must determine what the alien's country of origin is. If the OTM is *not* from a "special interest country"⁷ and does not have any outstanding warrants or criminal history in the initial biometric IDENT/IAFIS check, they are designated for removal. If the OTM *is* from a "special interest country," then the agent in charge must check with the Terrorist Screening Center at the FBI, the Joint Terrorism Task Force, and CBP's National Targeting Center in order to ensure that the OTM does not pose a threat.⁸ Once the agent is satisfied that all available avenues have been checked to verify whether the OTM poses a threat to American security the alien is placed into the formal removal process. In order to deal more effectively with the large volume of persons seeking illegal entry and to address apparent shortcomings in the normal removal process, the DHS announced in August of 2004 that USBP agents would be allowed to exercise "expedited removal" (ER) authority at locations between ports of entry (POE).⁹ ER will be discussed in more detail subsequently.

⁵ U.S. Department of Justice, Office of the Inspector General, *The Rafael Resendez-Ramirez Case: A Review of the INS's Actions and the Operation of Its IDENT Automated Fingerprint Identification System*, USDOJ/OIG Special Report, Mar. 2000, Appendix B.

⁶ Testimony of U.S. Border Patrol Chief David Aguilar, in the U.S. Congress, Senate Committee on the Judiciary, Joint Hearing of the Terrorism, Technology, and Homeland Security Subcommittee and the Immigration, Border Security, and Citizenship Subcommittee, *The Southern Border in Crisis: Resources and Strategies to Improve National Security*, June 7, 2005. (Hereafter referred to as: testimony of USBP Chief Aguilar, June 7, 2005, and conversation with CBP Congressional Affairs on Aug. 3, 2005.)

⁷ The terms "special interest country" and "country of interest" have been used interchangeably in Congressional testimony by DHS officials and refer to nations known to harbor terrorists or foment terrorism.

⁸ For more information on the TSC, refer to CRS Report RL32366, *Terrorist Identification, Screening, and Tracking Under Homeland Security Presidential Directive 6*, by William J. Krouse.

⁹ 69 *Federal Register* 48877, 48878.

Once an OTM is placed into the formal removal process, the USBP contacts the Detention and Removal Office (DRO) at Immigration and Customs Enforcement (ICE) in order to ascertain whether DRO has detention bedspace available for that OTM. At this point, the OTM will either be transferred to DRO for detention if bedspace is available, or the USBP, with DRO's sanction, will release the OTM with a notice to appear in court before a judge on a certain date.¹⁰ This has led some critics to charge that the current OTM procedures amount to a "catch and release" program.¹¹ **Appendix I** shows a graphical depiction of the USBP apprehension process.

USBP Apprehensions¹²

Overall Apprehensions. Since 1997, the USBP has averaged 1.28 million apprehensions each year. Apprehensions increased steadily through the late 1990s, reaching a peak of 1.65 million in 2000. From 2000 to 2003 apprehensions declined steadily, reaching a low of 905,065 in 2003. In FY 2004, apprehensions increased by 26 percent to 1.15 million; apprehensions remained relatively stable in FY2005, increasing slightly to 1.19 million. Some argue that the increase in apprehensions over the last two years was due to the President's proposed amnesty plan for illegal immigrant workers, which may have given would-be immigrants an incentive to enter the country illegally.¹³ DHS maintains that the increase was due to the increase in agents assigned to line-watch duty along the Arizona border as a result of the Arizona Border Control initiative.¹⁴

OTM Apprehensions. The number of OTM apprehensions remained relatively stable from 1997 to 2002, averaging almost 37,000 a year over the six-year time period. Over the last three years, OTM apprehensions have more than quadrupled, increasing by 343% to 165,175 in FY2005. This trend contrasts with the apprehensions of Mexican aliens, which have remained relatively stable over the same period. CBP reports that through June 26 in FY2006 (or roughly 3/4 of the fiscal year), the USBP has apprehended 81,181 OTMs. While this appears to be a reduction from the number of OTMs apprehended in FY2005, it nevertheless remains considerably higher than the number of OTMs apprehended in the late 1990s. There are a wide variety of possible reasons for the increase in OTM apprehensions over the past three years. For example, the OTM increase may be due to the ramping up of enforcement measures at POE. As the U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)¹⁵ system has been implemented at our nation's airports and

¹⁰ From a conversation with CBP Congressional Affairs, Aug. 2, 2005.

¹¹ Pauline Arrilaga, "'Catch and release' policy lets immigrants roam the United States freely," *The Associated Press*, July 15, 2005.

¹² Apprehensions data provided by CBP.

¹³ Dinan, Stephen; "Bush 'amnesty' blamed for rise in illegals," *The Washington Times*, April 16, 2004.

¹⁴ Department of Homeland Security, "Fact Sheet: Arizona Border Control Initiative," available at [<http://www.dhs.gov/dhspublic/display?content=4029>].

¹⁵ For a more detailed discussion of the US-VISIT program, please refer to CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)*, by Lisa Seghetti.

some land POE, it is possible that an increased number of non-Mexican aliens have decided that their best option for entering the country is the land border between POE rather than through the regular immigration process at POE. Another possible cause for the increase could be the growing number of gangs specializing in smuggling human beings across the Mexican border into the United States. A third possible reason for the influx of non-Mexican migrants may be the growing international awareness that a “loophole” may exist in the immigration system, whereby the lack of detention bedspace (discussed below) leads to many OTMs being released on their own recognizance into the interior of the United States. According to a Border Patrol spokesman from the Del Rio Sector, “word is out that we are unable to detain the other than Mexican crossers, and they are exploiting a bottleneck in the system.”¹⁶ Lastly, it may be that the number of OTMs attempting to enter the country illegally has increased as non-immigrant visa issuances have declined post-9/11. Individuals who may previously have entered legally as tourists and overstayed their visas may now be entering illegally as they are denied visas. For example, the vast majority of OTMs being apprehended at the border originate from four countries: Honduras, El Salvador, Brazil, and Guatemala. In FY2005, these four countries accounted for 88% of OTM apprehensions. Non-immigrant visa issuances to these four countries have declined significantly from their pre 9/11 levels (Brazilian nationals, for example, received roughly 500,000 visas in 1997 but only 100,000 in 2002).

Special Interest OTM Apprehensions. DHS is to pay special attention to OTMs apprehended by the USBP who originate from 35 nations designated as “special interest” countries. According to USBP Chief David Aguilar, special interest countries have been “designated by our intelligence community as countries that could export individuals that could bring harm to our country in the way of terrorism.”¹⁷ OTMs from special interest countries are to be processed more carefully by the USBP. In addition to the normal background checks that are conducted, the USBP is to notify the FBI, the Joint Terrorism Task Force, and the National Targeting Center in order to consult with counter-terrorism specialists concerning the OTM in question.¹⁸ Apprehensions of OTMs from special interest countries were relatively stable from FY1997 through FY2001. During this period, apprehensions varied from a high of 736 in FY1999 to a low of 676 in FY2000. Special interest OTM apprehensions then increased to a high of 849 in FY2002. After numbering 807 in FY2003, special interest OTM apprehensions fell in FY2004 to 626 and increased slightly in FY2005 to 648.

Thus, much like overall OTM apprehensions, special interest apprehensions remained relatively stable from FY1997 to FY2001. However, while overall OTM apprehensions have increased by 343% from FY2002 to FY2005, special interest OTM apprehensions have

¹⁶ As quoted by Tim Gaynor, “Non-Mexican Immigrants Swamp Texas Border City,” *Reuters News*, May 30, 2005.

¹⁷ Testimony of USBP Chief David Aguilar, U.S. Congress, Senate Judiciary Committee, Subcommittee on Immigration, Border Security, and Citizenship, “Joint Hearing with the Terrorism, Technology and Homeland Security Subcommittee on Border Security Technology,” 109th Cong., 1st sess., Apr. 28, 2005.

¹⁸ For information on alien registration, see RL31570, *Immigration: Alien Registration*, by Andorra Bruno.

declined by 24% over the same period. In other words, during this period in which the USBP has been apprehending rapidly-increasing numbers of non-Mexican aliens, the number of aliens being apprehended from special interest countries has actually been decreasing. This would suggest that, while the threat of terrorist infiltration along the southwest border may be ever-present, the actual numbers of people from countries known to harbor terrorism trying to enter the United States has been declining somewhat. Nevertheless, the data indicate that each year hundreds of aliens from countries known to harbor terrorists or promote terrorism are apprehended attempting to enter the country illegally between POE.

Threat of Terrorist Infiltration. Although OTM apprehensions have increased significantly over the past three years, apprehensions of OTMs from special interest countries known to harbor terrorists or promote terrorism have declined over the same period. However, the sheer increase in non-Mexican aliens coming across the border makes it more difficult for United States Border Patrol (USBP) agents to readily identify and process each OTM, thereby increasing the chances that a potential terrorist could slip through the system. Moreover, there are no reliable data concerning how many OTMs evade apprehensions and successfully enter the country illegally across the border. While there is no documented evidence that terrorists have attempted to cross or been apprehended crossing the land border between POE, testimony by DHS acting Secretary Admiral James Loy suggested that Al-Qaeda is considering infiltrating the Southwest border due to a belief that "illegal entry is more advantageous than legal entry for operational security reasons."¹⁹ Additionally, there have been various reports that terrorist organizations, including Al Qaeda, have been operating, recruiting members, and may be training terrorists in South American countries, including Argentina, Brazil, and Paraguay.²⁰ A potential issue for Congress is whether the increase in OTM apprehensions poses a threat to national security despite indications that special interest OTM apprehensions have been decreasing. Another potential issue for Congress is the indication that, despite the downward trend in special interest OTM apprehensions, hundreds of people from countries known to harbor terrorists or promote terrorism are caught trying to enter the United States illegally along the land border.

Terrorist Infiltration Questions. Possible questions for panelists include:

- Does the fact that over a million people are apprehended attempting to enter the United States illegally between ports of entry pose a significant threat to national security? What is the best way to address this issue, in your opinion?
- Does DHS currently have any credible information about terrorist plans to infiltrate the southwest border? Have any terrorists or persons known to be

¹⁹ Testimony of DHS acting Secretary Admiral James Loy, in U.S. Congress, Senate Select Committee on Intelligence, *National Security Threats to the United States*, 109th Cong. 1st Sess., February 16, 2005.

²⁰ For examples, see "ARGENTINA: Muslim missionaries spark terrorism alert in Argentina," *Latin America Weekly*, Sept. 6, 2005; "Terror cells investigated in triborder region -- Paraguayan daily," *BBC Monitoring Latin America*, July 21, 2005; and Ileana Ros-Lehtinen, "Terrorism a growing problem; Latin America," *Miami Herald*, July 11, 2005.

associated with terrorists ever been apprehended along the southwest border?

- Many people characterize the Mexican Nationals apprehended at the border as economic immigrants. Is DHS aware of any active al-Qaeda cells in Mexico?
- Is DHS aware of any active al-Qaeda cells in other Central or South American nations? Does the increase in OTMs apprehended at the border increase the risk of terrorist infiltration?

Detention²¹

Overview of Detention. The Immigration and Nationality Act (INA) gives the Attorney General the authority to detain any alien in the United States while awaiting a determination of whether the alien should be removed from the United States.²² As a result of the Homeland Security Act, the daily responsibility for detaining aliens is exercised by the DRO within ICE. The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA)²³ amended the INA, effectively specifying levels of detention priority and classes of aliens subjected to mandatory detention. Mandatory detention is required for certain criminal and terrorist aliens who are removable, pending a final decision on whether the alien is to be removed. Mandatory detention is also required for those subject to expedited removal.²⁴ Nationally, approximately 75% of aliens are mandatory detainees.²⁵ Aliens not subjected to mandatory detention can be paroled,²⁶ released on bond,²⁷ or continue to be detained.

In October 1998, the former Immigration and Naturalization Service (INS) issued a memorandum establishing detention guidelines consistent with the changes made by

²¹ Prepared by Alison Siskin, Specialist in Immigration Legislation, Domestic Social Policy Division.

²² INA §236(a). For detailed information on detention see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues* by Alison Siskin.

²³ Subtitle C of the Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, signed into law Sept. 30, 1996.

²⁴ Aliens subject to expedited removal must be detained until they are removed and may only be released due to medical emergency or if necessary for law enforcement purposes. If the arriving alien expresses a fear of persecution or an intent to apply for asylum, the alien is placed in detention until a “credible fear” interview can be held. If the alien is found to have a credible fear, he may be paroled into the United States. If the credible fear is unsubstantiated, the alien is detained until the alien is removed from the United States.

²⁵ Personal communication with Ricardo Velazquez, Congressional Relations, Bureau of Immigration and Customs Enforcement, Aug. 24, 2005.

²⁶ “Parole” is a term in immigration law which means that the alien has been granted temporary permission to enter and be present in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or if eligible, to be admitted in a lawful status.

²⁷ To be released on bond, the alien must prove that he is not a threat to people or property, and will appear at all future immigration proceedings.

IIRIRA.²⁸ According to the guidelines, detainees are assigned to one of four detention categories: (1) required (mandatory); (2) high priority; (3) medium priority; and (4) lower priority.²⁹ Aliens in required detention must be detained³⁰ while aliens in the other categories may be detained depending on detention space and the facts of the case. Higher priority aliens should be detained before aliens of lower priority.³¹

The Border Patrol, OTMs, and Detention. When the USBP encounters an OTM, they contact ICE's DRO to inquire about the availability of bed space. If bed space is available or if the alien falls into one of the mandatory detention categories (e.g., criminal alien, terrorist suspect), DRO will take custody of the alien, placing the alien in detention.³² If there is no available bed space and the alien is not a mandatory detainee, the USBP will issue the alien a "notice-to-appear"³³ and release the alien on their own recognizance. The USBP can not release aliens on bond, as to be released on bond means that an alien has been placed in detention. Moreover, the availability of bed space tends to differ by geographic region.

Aliens placed in expedited removal are subject to mandatory detention, but many of those subject to expedited removal do not have criminal records, multiple re-entries, or other characteristics which would make them subject to mandatory detention absent of expedited removal. If there is no bed space available, aliens encountered by the USBP who are subject to expedited removal, and who do not have another reason to be mandatorily detained, will be released on their own recognizance.³⁴ Along the Texas border, 80% of the OTMs apprehended in FY2005 were released on their own recognizance.

Detention and Removal Questions. Possible questions for panelists include:

- DHS has repeatedly announced that expedited removal has been expanded to include the entire southwest border. Mandatory detention is legally

²⁸ Memorandum from Michael Pearson, INS Executive Associate Commissioner, Office of Field Operations, to Regional Directors, *Detention Guidelines Effective October 9, 1998*.

²⁹ High priority are aliens removable on security related or criminal grounds who are not subject to required detention, and aliens who are a danger to the community or a flight risk. Medium priority detainees are inadmissible, non-criminal arriving aliens not in expedited removal and not subject to mandatory detention. Low priority detainees are other removable aliens not subject to required detention, and aliens who have committed fraud while applying for immigration benefits with DHS.

³⁰ There are some very limited exceptions to mandatory detention.

³¹ Michael A. Pearson, *INS Detention Guidelines*, Oct. 7, 1998. Reprinted in *Bender's Immigration Bulletin*, vol. 3, no. 21, Nov. 1, 1998, p. 1111. (Hereafter cited as Pearson, *INS Detention Guidelines*.)

³² Mexican nationals who have a criminal record in the United States, who have previously been removed, or who have multiple attempts to enter the United States illegally are also detained.

³³ This document gives the alien a court date to appear for removal proceedings before an immigration judge.

³⁴ Personal communication with Ricardo Velazquez, Congressional Relations, Bureau of Immigration and Customs Enforcement, Aug. 24, 2005.

required as part of the expedited removal process. Does DHS currently have enough detention bedspace to detain all OTMs subject to expedited removal? If not, what percentage of OTMs continue to be released on their own recognizance? How many additional beds will be needed to detain every OTM apprehended by the Border Patrol?

- How are decisions about where to acquire new detention bedspace made? What factors are considered when deciding the number of detention beds to acquire along the Southern border?
- Are there any “alternatives to detention” programs that are specifically tailored to the population apprehended along the Southwest border? If so, what are the programs and how successful have the programs been?

Border Incursions

There have been a number of widely reported incidents in the past years concerning incursions into the United States by persons from Mexico. According to published reports, “Armed Mexican government personnel made unauthorized incursions into the United States five times in the last three months of 2005, including one incident last month in Southern California...The crossings involved police officers or soldiers in military vehicles and were among 231 such incidents recorded by the U.S. Border Patrol in the last 10 years.”³⁵ DHS Secretary Michael Chertoff recently called reports of the severity of border incursions overblown, noting that “the issue of incursions or Mexican military or police crossing the border...has been tracked for 10 years...The number has not increased.” Chertoff also noted that “Sometimes it may be people who are dressed in what appear to be military uniforms but are just criminals. Sometimes we have those kinds of incursions. To create the image that somehow there is a deliberate effort by the Mexican military to cross the border would be really to traffic in scare tactics. I don't think we have a serious problem with official incursions.”³⁶

Border Incursion Questions. Possible questions for panelists include:

- What are the guidelines within DHS for responding to these incursions generally, and to law enforcement and military incursions particularly? What DHS entity is currently directly responding to the incursions? Are any other DHS entities involved? Is the Bureau of Customs and Border Protection (CBP), and in particular, the Border Patrol, equipped to handle these types of activities along the border?
- What are the current procedures for contacting the Department of State and or the Department of Defense concerning border incursions? What are the current procedures for deciding whether military assistance would be necessary? Would this decision be made in the field, at the sector level, or in Washington?

³⁵ Richard Marosi, Robert J. Lopez and Rich Connell, “Reports Cite Incursions on U.S. Border,” *Los Angeles Times*, January 26, 2006.

³⁶ Todd Gillman, “Chertoff confirms Mexican troop incursions into U.S. Homeland chief says hundreds of crossings aren't cause for concern,” *Dallas Morning News*, January 19, 2006.

- What procedures are in place to ensure effective communication and cooperation between DHS officials, local law enforcement agencies, and, to the extent applicable, the military? Who would coordinate any operations against the reported quasi-military incursions along the border?

Border Fencing

The USBP incorporated the construction of physical barriers directly on the border into their National Strategic Plan in the early 1990s as part of its “Prevention Through Deterrence” strategy,³⁷ which called for reducing unauthorized migration by placing agents and resources directly on the border along population centers. The USBP first constructed border fencing in the San Diego sector, which extends inland from the Pacific Ocean along the international land border with Mexico, and covers approximately 7,000 square miles of territory. Located north of Tijuana and Tecate, Mexican cities with a combined population of 2 million people, the sector features no natural barriers to entry by unauthorized migrants and smugglers.³⁸ Using the broad powers granted to the Attorney General (AG) to control and guard the U.S. border,³⁹ in 1990 the USBP began erecting a physical barrier to deter illegal entries and drug smuggling in the San Diego sector. The ensuing “primary” fence was completed in 1993 and covered the first 14 miles of the border, starting from the Pacific Ocean, and was constructed of 10-foot-high welded steel.⁴⁰ This fence (and the subsequent three-tiered fence, see discussion below) was constructed with the assistance of the Department of Defense’s (DOD’s) Army Corps of Engineers. Since 1990, Congress has included language in DOD appropriations bills allowing the DOD to assist federal agencies in counter-drug activities, including the construction of fencing and roads to reduce the flow of narcotics into the country.⁴¹ In 2001, this power was re-authorized through FY2006.⁴² Additional funding is also provided within the USBP construction account.

According to CBP, the primary fence, in combination with various USBP enforcement initiatives along San Diego border region (i.e., Operation Gatekeeper), proved to be quite successful but fiscally and environmentally costly.⁴³ For example, as undocumented aliens

³⁷ For an expanded discussion of the USBP, please refer to CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Blas Nuñez-Neto.

³⁸ U.S. Department of Justice, Office of the Inspector General, *Operation Gatekeeper: An Investigation Into Allegations of Fraud and Misconduct*, July 1998.

³⁹ Immigration and Nationality Act, 8 U.S.C. §1103 (a)(5).

⁴⁰ U.S. Government Accountability Office, *Border Control — Revised Strategy is Showing Some Positive Results*, GAO/GGD-95-30, Jan. 31, 1995.

⁴¹ See P.L. 101-510, Div. A, Title X, §1004; P.L. 102-190, Div A, Title X, Part G, §1088; P.L. 102-484, Div A, Title X, Subtitle E, §1041(a)-(d)(1); P.L. 103-160, Div A, Title XI, Subtitle C, §1121(a), (b); P.L. 103-337, Div A, Title X, Subtitle B, §1011(a).

⁴² P.L. 107-107, Title X, Subtit. C, §1021 (amending §1004 of the National Defense Authorization Act of Fiscal Year 1991, P.L. 101-510, codified at 10 U.S.C. §374 nt.).

⁴³ See California Coastal Commission, *W 13a Staff Report and Recommendation on Consistency* (continued...)

and smugglers breached the primary fence and attempted to evade detection, USBP agents were often forced to pursue the suspects through environmentally sensitive areas. It soon became apparent to immigration officials and lawmakers that the USBP needed, among other things, a “rigid” enforcement system that could integrate infrastructure (i.e., a multi-tiered fence and roads), manpower, and new technologies to further control the border region. The concept of a three-tiered fence system was first recommended by a 1993 Sandia Laboratories study commissioned by the Immigration and Naturalization Service (INS). The study concluded that aliens attempting to enter the United States from Mexico had shown remarkable resiliency in bypassing or destroying obstacles in their path, and postulated that “[a] three-fence barrier system with vehicle patrol roads between the fences and lights will provide the necessary discouragement.”⁴⁴ Congress responded to these enforcement needs, in part, with the passage of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996.⁴⁵ This comprehensive law, among other things, expanded the existing fence by authorizing the INS to construct a triple-layered fence along the same 14 miles of the US-Mexico border near San Diego.

Border Fencing Questions. Possible questions for panelists include:

- Are there strategic differences between erecting fencing along urban areas and rural areas? What are the best or most effective areas for border fencing?
- Border fencing has traditionally been constructed by the National Guard under the supervision of the Corps of Engineers. The FY2007 DHS Congressional Budget Justification asserts that some of this construction will be contracted out in the future. What are the advantages and disadvantages of using the National Guard and the Corps of Engineers to construct fencing as opposed to contracting it out? What is the cost difference between contracting out this construction and having the National Guard build the fencing?
- What are the costs of constructing and maintaining triple layer border fencing, on a per mile basis?

State and Local Law Enforcement Issues

Congress defined our nation's immigration laws in the Immigration and Nationality Act (INA) (8 U.S.C. §§1101 et seq.), which contains both criminal and civil enforcement measures. Historically, the authority for state and local law enforcement officials to enforce immigration law has been construed to be limited to the criminal provisions of the INA; by

⁴³ (...continued)

Determination, CD-063-03, Oct. 2003, at 14-16 (stating that construction of the primary fence significantly assisted the USBP’s efforts in deterring smuggling attempts via drive-throughs using automobiles and motorcycles). (Hereafter CCC Staff Report.)

⁴⁴ Peter Andreas, “The Escalation of U.S. Immigration Control in the Post-NAFTA Era,” *Political Science Quarterly*, vol. 113, no. 4, winter 1998-1999, p. 595.

⁴⁵ See P.L. 104-208, Div. C. IIRIRA was passed as part of the Omnibus Consolidated Appropriations Act of 1997.

contrast, the enforcement of the civil provisions, which includes apprehension and removal of deportable aliens, has strictly been viewed as a federal responsibility, with states playing an supporting role.⁴⁶

One of the broadest grants of authority for state and local immigration enforcement activity stems from §133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which amended INA §287 (8 U.S.C. §1357(g)). This provision authorizes the AG (now the Secretary of Homeland Security) to:

enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

Section 1357(g) allows for significant flexibility. It permits state and local entities to tailor an agreement with the AG to meet local needs, contemplates the authorization of multiple officers, and does not require the designated officers to stop performing their local duties.⁴⁷ In performing a function under §1357(g), the written agreement must articulate the specific powers and duties that may be, or are required to be, performed by the state officer, the duration of the authority, and the position of the agent of the AG who is required to supervise and direct the individual.⁴⁸ To date Alabama, Arizona, Florida and the Los Angeles County Sheriff's Department have entered into such an agreement. For FY2006, Congress appropriated \$5 million for states and localities who enter into such agreements with DHS.

Questions for State and Local Law Enforcement. Possible questions for panelists include:

- What do you believe should be the role of state and local law enforcement officers in enforcing immigration law? Is there a risk that illegal aliens will refuse to cooperate with the police if they are witnesses to or victims of crimes due to a fear of being deported?
- Do states and local governments have the resources to undertake immigration enforcement responsibilities? What steps could the federal government take to ameliorate the drain on state and local resources?

⁴⁶ Several Administrations have spoken on the scope of state and local involvement in immigration law enforcement. The current Administration concluded that states have inherent power, subject to federal preemption, to make arrests for violation of federal law. For more information on these issues, see CRS Report RL32270, *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, by Lisa Seghetti and Stephen Viña.

⁴⁷ Jay T. Jorgensen, Comment, *The Practical Power of State and Local Governments to Enforce Federal Immigration Laws*, 1997 B.Y.U. L. Rev. 899, 925 (1997).

⁴⁸ INA §287(g)(5).

Alien Smuggling⁴⁹

Many contend that alien smuggling of persons into the United States constitutes a significant risk to national security and public safety.⁵⁰ Since smugglers facilitate the illegal entry of persons into the United States, terrorists may use smuggling routes and organizations to enter undetected. It is estimated that the international alien smuggling and sex trafficking trade generates \$9.5 billion for criminal organizations worldwide, and the profits are used to finance additional criminal enterprises, such as the trafficking of drugs, weapons, or other contraband.⁵¹ In addition, there is anecdotal evidence of a rise in the number of women and children being smuggled into the United States, as opposed to the historical trend of working-age males.⁵² It is unknown how many people are smuggled into the United States each year.

Most alien smuggling occurs in the Southwestern United States, along the U.S.—Mexico border. Mexico is a staging area for aliens from Mexico and other parts of the world to attempt to illegally enter the United States.⁵³ As the Border Patrol makes it more difficult for smugglers to cross at one point along the border, the smugglers move their operations elsewhere. The success of Operation Gatekeeper in San Diego, and Operation Hold the Line in El Paso, have been cited as one of the causes for the increase in smuggling in the Arizona corridor. In addition, smuggling organizations are attracted to the Arizona corridor because: 1) the border terrain is challenging for law enforcement; 2) the area is major transportation hub with a highly developed highway system and an international airport; 3) the corridor has an extensive staging area comprised of homes, hotels and apartments; and the area has a robust financial services infrastructure.⁵⁴

Often smuggling can lead to collateral crimes including kidnaping, homicide, assault, rape, robbery, auto theft, high speed flight, vehicle accidents, identity theft, and the manufacturing and distribution of fraudulent documents. For example, smugglers may hold

⁴⁹ Prepared by Alison Siskin, Specialist in Immigration Legislation, Domestic Social Policy Division.

⁵⁰ Testimony of John P. Torres, Deputy Assistant Director, Smuggling and Public Safety, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims, *Pushing the Border Out on Alien Smuggling: New Tools and Intelligence Initiatives*, hearings, 108th Cong., 2nd sess., May 18, 2004. (Hereafter cited as Torres, *Pushing the Border Out on Alien Smuggling*.)

⁵¹ Ibid. Torres.

⁵² Personal Conversation with El Paso Inspectors, BLM.

⁵³ Testimony of Michael W. Cutler, Fellow, Center for Immigration Studies, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims, *Pushing the Border Out on Alien Smuggling: New Tools and Intelligence Initiatives*, hearings, 108th Cong., 2nd sess., May 18, 2004. (Hereafter cited as Cutler, *Pushing the Border Out on Alien Smuggling*.)

⁵⁴ Personal Communication with Patricia A. Schmidt, Action Associate Special Agent in Charge, Phoenix, Arizona office of the Bureau of Immigration and Customs Enforcement, Aug. 2, 2004.

an alien hostage to extort a ransom from the alien's family.⁵⁵ In addition, smugglers often establish "safe houses" (also called "drop houses") where aliens are kept until they can be moved into the interior of the United States. The often squalid conditions of these "safe houses" endanger the lives of the aliens and creates health and safety issues for people living in the community.⁵⁶ Also, others note an increase in motor vehicle casualties due to the unsafe condition of vehicles used by smugglers. (Often smugglers rig the vehicles to hide as many aliens as possible, often making the vehicle unsafe to operate.)⁵⁷ Some border deaths are tied to smuggling, as some smugglers mislead their charges about how far it is to the United States, and how much water is needed to make the journey.⁵⁸

For many years, the former INS and now ICE have worked to identify and dismantle large-scale trans-national smuggling organizations and have done so in collaboration with other law enforcement agencies, both foreign and domestic. Major investigations are conducted with the cooperation and assistance of other federal, state, and local law enforcement agencies, as well as the appropriate bureaus of foreign governments.⁵⁹ ICE reports that it coordinates the anti-smuggling efforts of all divisions in DHS, including its investigations offices, overseas offices, inspections at POE, and Border Patrol units between POE.⁶⁰ According to congressional testimony, ICE is developing a foreign and domestic strategy which includes implementation of critical incident response teams, and using the money laundering statutes and the identification and seizure of assets and criminal proceeds to strip away the assets and profit incentive of smuggling organizations.⁶¹ ICE places a significant emphasis on targeting alien smuggling organizations which present threats to national security, recognizing that terrorists are likely to align themselves with alien smuggling networks to obtain undetected entry into the United States.⁶²

⁵⁵ Statement of Representative Linda T. Sánchez, in U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims, *Pushing the Border Out on Alien Smuggling: New Tools and Intelligence Initiatives*, hearings, 108th Cong., 2nd sess., May 18, 2004.

⁵⁶ Cutler, *Pushing the Border Out on Alien Smuggling*.

⁵⁷ Personal Communication with Kevin Burns, CFO University Medical Center, Aug. 3, 2004.

⁵⁸ Personal Communication with Sister Elizabeth, Humane Borders, Aug. 3, 2004.

⁵⁹ U.S. Immigration and Customs Enforcement website:
[http://www.bice.immigration.gov/graphics/enforce/invest/invest_hs.htm].

⁶⁰ U.S. Immigration and Customs Enforcement website:
[http://www.bice.immigration.gov/graphics/enforce/invest/invest_hs.htm].

⁶¹ Testimony of Deputy Assistant Director, Smuggling and Public Safety, Bureau of Immigration and Customs Enforcement John P. Torres, in U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Border Security, and Claims, *Alien Smuggling: New Tools and Intelligence Initiatives*, hearings, 108th Cong., 2nd sess., May 18, 2004. (Hereafter referred to as Torres, *Alien Smuggling: New Tools*.)

⁶² Testimony of Interim Associate Special Agent in Charge, Bureau of Immigration and Customs Enforcement Thomas Homan, in U.S. Congress, House Judiciary Committee, Subcommittee on Immigration, Border Security, and Claims, *The Deadly Consequences of Illegal Alien Smuggling* hearings, 108th Cong., 1st sess., June 24, 2003. (Hereafter referred to as Homan, *Deadly* (continued...)

In the aftermath of the terrorist attacks on September 11, 2001, efforts were focused on smuggling organizations alleged to smuggle aliens with ties to terrorist groups. There are factors which have created an environment in which terrorist and smuggling enterprises may combine their criminal efforts to pose a significant threat to national security. These factors include: the increase in sophistication of criminal organizations; the ability of these organizations to exploit public corruption; and the lax immigration controls in transit countries. In addition, smuggling pipelines which are used by unauthorized aliens and criminals seeking to enter the United States could also be used by terrorists to gain entrance into the United States.⁶³ ICE is developing a strategy that will address smuggling and human trafficking by addressing these issues in source and transit countries.⁶⁴ DHS' global Anti-Smuggling/Human Trafficking Strategy concentrates efforts on intelligence-driven investigations against major violators, specifically targeting organizations with ties to countries that support terrorist organizations such as *al Qaeda*.⁶⁵

To counter some of the crime related to alien smuggling, DHS created Operation ICE Storm, a multi-agency initiative led by ICE's Office of Investigations which aims to dismantle the finances of violent smuggling organizations responsible for transporting unauthorized (illegal) aliens into the United States along the Southwest border.⁶⁶ Specifically, ICE Storm seeks to eliminate violent crime in Phoenix, Arizona caused by organizations who smuggle unauthorized migrants across the United States-Mexico border. Reportedly, 50 agents from ICE have been assigned to Phoenix as part of ICE Storm.⁶⁷ During the first quarter of ICE Storm the Phoenix Police Department reported 30 fewer homicides than the previous quarter.⁶⁸ As of March 3, 2004, ICE Storm has resulted in more than 1,526 criminal and administrative arrests. In addition, as of May 18, 2004 ICE Storm had resulted in the prosecution of more than 190 defendants for human smuggling, kidnaping, money-laundering, and weapons and drug violations, the seizure over 100 weapons and over \$5.2 million.⁶⁹

⁶² (...continued)
Consequences.)

⁶³ Torres, Alien Smuggling: New Tools.

⁶⁴ Homan, Deadly Consequences.

⁶⁵ Testimony of Interim Assistant Director of Investigations, Bureau of Immigration and Customs Enforcement Charles H. Demore in U.S Congress, Senate Judiciary Committee, Subcommittee on Crime, Corrections, and Victims' Rights, *Alien Smuggling/Human Trafficking: Sending a Meaningful Message of Deterrence*, hearings, 108th Cong., 1st sess., July 25, 2003. (Hereafter referred to as Demore, Alien Smuggling/Human Trafficking.)

⁶⁶ [<http://www.ice.gov/graphics/enforce/ops/ICESStorm.htm>]

⁶⁷ Gabriela Rico, "Feds to Unleash ICE Storm on Migrant Smugglers," *The Tucson Citizen*, Nov. 11, 2003, p.1A.

⁶⁸ Personal Communication with Patricia A. Schmidt, Action Associate Special Agent in Charge, Phoenix, Arizona office of the Bureau of Immigration and Customs Enforcement, Aug. 2, 2004.

⁶⁹ Torres, Pushing the Border Out on Alien Smuggling.

Alien Smuggling Questions. Possible questions for panelists include:

- Reportedly, there have been coordination issues between ICE and CBP in regards to alien smuggling investigations. Can you discuss the steps that have been taken to enhance cooperation and coordination between ICE and CBP in the prevention of alien smuggling?
- Another issue raised in a recent GAO report has been the lack of a case management system which would aid ICE and CBP in identifying possible alien smuggling organizations. Has DHS proposed or implemented any changes to their reporting system to enhance anti-smuggling investigations?
- Does DHS have any indications that terrorists or terrorist organizations have been in contact with organized smuggling organizations? Do you believe that this kind of nexus between terrorists and smugglers is possible, or likely? What can be done to prevent this?

Smuggling of Goods at Ports of Entry⁷⁰

CBP is responsible for security at and between ports-of-entry along the U.S. border. Since 9/11, CBP's primary mission is to prevent the entry of terrorists and the instruments of terrorism. CBP's on-going responsibilities include inspecting people and goods to determine if they are authorized to enter the United States; interdicting terrorists and instruments of terrorism; intercepting illegal narcotics, firearms, and other types of contraband; interdicting unauthorized travelers and immigrants; and enforcing more than 400 laws and regulations at the border on behalf of more than 60 government agencies.

On a typical day at the nation's POE CBP processes: more than 1 million passengers and pedestrians; 235 thousand international air passengers; nearly 70 thousand truck, rail, and sea containers; nearly 80 thousand shipments of goods approved for entry; and 333 thousand inbound privately owned vehicles.⁷¹ Each of these instances represent an opportunity for items to be smuggled into the country, as well as an opportunity for CBP to intercept the contraband. On a typical day at POE CBP seizes: 2,187 pounds of narcotics in 65 seizures; \$77 thousand in undeclared or illicit currency; \$329 million worth of fraudulent commercial merchandise; and 1,145 prohibited meat, plant materials or animal products, including 147 agricultural pests. Given the tremendous volume of traffic at POE, CBP continually faces the challenge of facilitating legitimate trade and travel while applying an appropriate level of scrutiny to goods and people entering the U.S.

In order to maximize the use of its resources, CBP uses several different strategies to assist them in inspecting conveyances and their cargo, including: using advance cargo information to target high-risk shipments and containers; deploying technology at POE to screen cargo; developing trusted shipper programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT) and Free and Secure Trade (FAST); 'pushing out the border' by screening cargo in foreign countries before it arrives in the U.S.; and random inspections.

⁷⁰ Prepared by Jennifer E. Lake, Analyst in Domestic Security, Domestic Social Policy Division.

⁷¹ Customs and Border Protection, "A Day in the Life of U.S. Customs and Border Protection," accessed June 22, 2006 at [www.cbp.gov/xp/toolbox/about/accomplish/day.xml].

Each of these components are tailored for the particular modes of conveyance at different ports of entry. At the land border there are different types of traffic: commercial traffic; private vehicles; and pedestrians. The significant difference between the commercial traffic and the private traffic is that commercial traffic generally arrives at the port on a scheduled day and within a scheduled time-frame, while CBP receives no advance notice regarding private traffic approaching the POE.

Congress passed the Trade Act of 2002 (P.L. 107-210) which required the legacy Customs Service (now CBP) to collect cargo manifest data in advance of commercial shipments arriving at the border so that Customs could review the data and identify those shipments which needed to be subjected to additional scrutiny. Commercial shipments destined for U.S. POE along the land border are required to submit advance cargo manifests one-hour in advance of arrival at the POE (or half an hour in advance if the shipment is a FAST shipment). CBP then uses its Automated Targeting System (ATS) to evaluate the submitted information and identify high-risk shipments that will be subject to additional inspection. However, it is important to note that shipments and conveyances can be selected for additional or 'secondary' inspection for a variety of reasons including: random selections; special enforcement operations or blitzes; and the intuition and experience of the CBP Officer conducting the primary inspection. The secondary inspection could involve: a more detailed document check; passing the container through a radiation portal monitor; taking an x-ray or gamma ray image of the contents of the container; and/or the physical unloading and examination of the cargo itself. At land border POE, some of these secondary inspection actions are actually conducted in the primary inspection area (as the conveyance approaches the primary inspection booth). For example, those POE with radiation portal monitors deployed in the approach lanes are able to screen conveyances for radiation before they even reach the booth; and at some POE, canine teams are deployed to inspect conveyances as they wait in line to approach the booth.

CBP has deployed a number of non-intrusive inspection (NII) technologies at ports of entry to assist customs inspectors with the inspection of cargos. Large scale NII technologies include a number of x-ray and gamma ray systems. The Vehicle and Cargo Inspection Systems (VACIS), which uses gamma rays to produce an image of the contents of a container for review by the CBP inspector, can be deployed in a mobile or stationary capacity depending upon the needs of the port. CBP is also continuing to deploy nuclear and radiological detection equipment including personal radiation detectors, radiation portal monitors (RPMs), and radiation isotope identifiers to POE. As of December 2005, CBP had deployed 670, or 22%, of the 3,034 RPM's that are planned for deployment at POE. CBP had completed deployments: at international mail and express courier facilities (57 RPMs); and for the first phase of northern border sites (217 RPMs). Additionally, as of December 2005, CBP had deployed 143 of 495 RPMs at seaports, and 244 of 360 RPMs at the southern land border.⁷²

⁷² GAO, *DHS has Made Progress in Deploying Radiation Detection Equipment at U.S. Ports-of-Entry, but Concerns Remain*, GAO-06-389, March 22, 2006, p. 12.

Recently, various concerns have been raised regarding the deployment of the radiation detection equipment. GAO reported in March of 2006,⁷³ that although DHS has made progress in deploying radiation detection equipment at US POE, the program goals are unrealistic (deployment has fallen behind schedule), and the program's cost estimate is uncertain. Delays have been caused by a variety of factors, including DHS's review process which has delayed the provision of acquisition and deployment information to Congress, and difficult negotiations with seaport operators concerning placement of the portal monitors and the screening of railcars. According to GAO, uncertainty regarding the cost and improved effectiveness of advanced technology portals are contributing to the difficulties in obtaining an accurate cost estimate of the radiation detection deployment program.

In addition, GAO found (during an investigation in which GAO smuggled radioactive material through POE on the northern and southern border)⁷⁴ that although DHS has improved the use of the detection equipment, CBP officers do not have access to data that would allow them to verify Nuclear Regulatory Commission (NRC) licenses (which are generally required for radiological materials transported into the U.S., though the licenses need not accompany the shipment), and that CBP secondary inspection procedures do not *require* CBP officers to open containers and inspect them to resolve an alarm (though GAO found that this does occur at some POE). GAO recommended that DHS streamline internal review procedures so that the Department can:

- provide Congress with spending data in a more timely fashion;
- update the RPM deployment schedule;
- analyze the benefits and costs of advanced portal technology and then revise the cost estimate;
- develop methods to effectively screen rail containers;
- revise agency container inspection procedures; and
- develop a way for CBP officers to verify NRC licenses.

Questions on the Smuggling of Goods at Ports of Entry. Possible questions for panelists include:

- What progress has CBP made in addressing the issues raised and recommendations (summarized above) proposed by GAO in its report (GAO-06-389) on radiation detection equipment?
- GAO stated in its report, GAO-06-389, that CBP did not *require* the opening and inspection of containers in order to resolve alarms raised by RPM screening. What are CBP's procedures regarding such alarms? Is CBP considering developing guidance to inspectors that would require the CBP to open these containers? Why or why not?
- What specific actions have DHS (and other agencies) taken to address the security issues highlighted by GAO's investigation in which they were able

⁷³ GAO, *DHS has Made Progress in Deploying Radiation Detection Equipment at U.S. Ports-of-Entry, but Concerns Remain*, GAO-06-389, March 22, 2006.

⁷⁴ See, GAO *Border Security: Investigators Successfully Transported Radioactive Sources Across Our Nation's Borders at Selected Locations*, GAO-06-545R, March 28, 2006.

to successfully smuggle radioactive material across the northern and southern borders through POE?

Enforcing Immigration Law at Ports of Entry

Having a visa or other form of travel document does not guarantee admission into the United States. The INA requires the inspection of all aliens who seek entry into the United States at POE;⁷⁵ and in some cases allows for preinspection when departing a foreign country on route to the United States.⁷⁶ The purpose of the inspection is to determine the admissibility of a traveler to the United States. Section 287 of the INA enumerates the following authorities for immigration officers, including immigration inspectors:

- to question, under oath any person seeking to enter the United States in order to determine admissibility and,
- to search, without warrant, the person and belongings of any applicant seeking admission.

In addition to conducting inspections, immigration inspectors enforce various criminal and administrative statutes, apprehend violators, and adjudicate a variety of applications for various immigration benefits.

Primary inspection, the first level of inspection, consists of a brief interview with an immigration inspector, a cursory check of the traveler's documents and a query of the Interagency Border Inspection System (IBIS).⁷⁷ Primary inspections are quick (usually lasting no longer than a minute); however, if the inspector is suspicious that the traveler may be inadmissible under the INA or in violation of other U.S. laws, the traveler is referred to a secondary inspection.⁷⁸ At 115 airports and 14 seaports, many nonimmigrants are entered into the new U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)

⁷⁵ INA §235(3).

⁷⁶ Section 123 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208) amended §235 of the INA by requiring the Attorney General to establish preinspection stations in at least five foreign airports that are identified as being one of ten foreign airports that serve as the last point of departure for the greatest number of inadmissible aliens. There are currently 15 foreign airports that participate in the preinspection program.

⁷⁷ IBIS is a broad system that interfaces with the FBI's National Crime Information Center (NCIC), the Treasury Department's Enforcement and Communications System (TECS II), the former INS's National Automated Immigration Lookout System (NAILS) and Non-immigrant Information System (NIIS) and the Department of State's (DOS) Consular Consolidated Database (CCD), Consular Lookout And Support System (CLASS) and TIPOFF terrorist databases. Because of the numerous systems and databases that interface with IBIS, the system is able to obtain such information as whether an alien is admissible, an alien's criminal information, and whether an alien is wanted by law enforcement.

⁷⁸ The grounds for inadmissibility are spelled out in §212(a) of INA. These grounds are: health-related grounds (e.g., contagious diseases); criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entrants and immigration law violations; ineligible for citizenship; and aliens previously removed.

system that uses biometric identification (finger scans) to check identity and track presence in the United States during primary inspection. According to CBP, US-VISIT has been deployed to all POE. However, at the 154 land POE where the system has been deployed it is only used during secondary inspection. The exit component of the system is currently being piloted at 12 airports and 2 seaports.⁷⁹

The 9/11 Commission recommended that all border screening systems, including frequent traveler programs, should be consolidated into the US-VISIT system, and that all travelers entering the United States be subject to biometric identity verification (not just those requiring visas or from visa-waiver countries). The 9/11 Commission noted that even when individuals from visa-waiver countries were added to the US-VISIT system, only 12% of the noncitizens crossing the U.S. border were required to register with US-VISIT.⁸⁰ As it stands today, most of these systems continue to operate separately, and the large majority of people entering the United States (Mexican nationals with laser visas and Canadian nationals) are exempt from being entered into the US-VISIT system. While Mexican nationals entering the country with laser visas (also known as border crossing cards) have undergone background checks and are required by law to have their identities verified through the Biometric Verification System (BVS),⁸¹ observers contend that the equipment necessary to read and scan the documents is not present at every POE. The POEs where the equipment is being piloted are reportedly in the secondary inspections area and do not operate 100% of the time. Moreover, the BVS is not integrated with other critical data systems and databases.

During secondary inspections, travelers are questioned extensively and travel documents are further examined. Several immigration databases are queried as well, including lookout databases. The majority of travelers, however, are not subject to a secondary inspection. In addition to an inspector denying entry, an alien can withdraw his application for admission in some cases.⁸² According to Congressional testimony, in FY2005 CBP inspectors apprehended over 84,000 aliens attempting to cross the border with fraudulent documents or claims of citizenship. On an average day in FY2005, CBP inspectors intercepted more than 200 fraudulent documents, arrested over 60 people at POE, and refused entry to hundreds more.⁸³

⁷⁹ Department of Homeland Security, "US-VISIT: Current Ports of Entry," available at [http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0685.xml].

⁸⁰ The 9/11 Commission Report, *Final Report of the National Commission on Terrorist Attacks Upon the United States*, U.S. Government Printing Office, July 2004, p. 388.

⁸¹ 8 C.F.R. §212.1(c).

⁸² 302(a) of IIRIRA amended §235 of the INA to allow the Attorney General to use his discretion in permitting an alien to "withdraw his application for admission and depart immediately from the United States."

⁸³ Testimony of DHS Traveler Security and Facilitation Director Robert M. Jacksta, in U.S. Congress, Senate Committee on Commerce, Science and Transportation, Subcommittee on Trade, Tourism and Economic Development, 109th Cong. 1st Sess., June 22, 2006.

Questions on Immigration Inspections at Ports of Entry. Possible questions for panelists include:

- Is US-VISIT being used during primary inspection at all POE? If not, what is the timeline for implementing this?
- What is the status of the exit component of the US-VISIT system? What are the obstacles to full deployment of the exit component? When does DHS expect to deploy it to all POE?
- The Western Hemisphere Travel Initiative (WHTI) will implement documentary requirements for U.S. citizens traveling to and from Mexico by January 1, 2008. A little more than six months before the initial WHTI deadline, DHS has yet to publish a final rule regarding the WHTI program or to issue technological standards for the recently announced PASS card. This delay has concerned many in the travel industry. Will the current deadlines for WHTI implementation be feasible given this apparent lack of progress?
- What is the status of the Biometric Verification System? How many POE has it been deployed to? Are there any plans or timetables for introducing BVS at primary inspection?

H.R. 4437 and S. 2611

Border Security. H.R. 4437, as passed by the House, and S.2611, as passed by the Senate, contain a number of border-security related provisions that are similar to each other. Both bills would require the Secretary of DHS to submit a National Strategy for Border Security outlining a comprehensive strategy for securing the border, including a surveillance plan and a time line for implementation. Both would add personnel, technology, and infrastructure resources both at and between POE and would direct DHS to work with the Department of Defense (DOD) to formulate a plan for increasing the availability and use of military equipment to assist with the surveillance of the border. Both bills would require DHS to expand the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program⁸⁴ to collect ten fingerprints from aliens currently required to register with the program as they enter the country, would require DHS to submit a time line for deploying and enabling the exit component of US-VISIT at land POE. Both bills would require DHS to enhance the connectivity of their biometric fingerprint database with the Federal Bureau of Investigation's database, and to develop and implement a plan to ensure clear two-way communications for its agents working along the border. As amended on the House floor, H.R. 4437 would direct DHS to construct border fencing along five different stretches of the southern border that total roughly 730 miles. S. 2611, as amended, would direct DHS to replace current border fencing in the USBP's Tucson and Yuma sectors and to construct additional border fencing totaling 370 miles and additional vehicle barriers totaling 700 miles. The bills also would require the DHS Inspector General (IG) to review all contracts

⁸⁴ For additional information on the US-VISIT program, see CRS Report RL32234, *U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program*, by Lisa Seghetti and Stephen Viña.

relating to the Department's Secure Border Initiative⁸⁵ (SBI) worth more than \$20 million dollars. Additionally, both bills would insert language into the Immigration and Nationality Act requiring the Secretary to apply expedited removal to all aliens apprehended within 100 miles of the border and within 14 days of their entry.

While the border security provisions in S. 2611 and H.R. 4437 are largely similar, there are some substantive differences between the two bills. The following paragraphs outline some, but not all, of the major differences between the House-passed and Senate-passed bills.

House-passed H.R. 4437 would direct DHS to improve coordination and communication among its component agencies by creating task forces and other mechanisms to enhance information and intelligence sharing, and would require DHS to design and carry out a border security exercise involving officials from federal, state, local, tribal, and international governments as well as representatives from the private sector within one year of the bills' enactment. It would allow homeland security grant funding to be used for reimbursing state and local governments for costs associated with detecting and responding to the unlawful entry of aliens.⁸⁶ H.R. 4437 would also remove Air and Marine Operations (AMO) from DHS's Customs and Border Protection (CBP) and establish a stand-alone AMO Office within DHS.

Senate-passed S. 2611 would make the construction, and the financing, of tunnels crossing the U.S. international border a crime subject to a fine and up to 20 years of imprisonment. The bill would establish criminal penalties for attempting to evade inspection at POE or for disregarding orders given by CBP officers, Border Patrol agents, or Immigration and Customs Enforcement (ICE) investigators. S. 2611 would create a Border Relief Grant Program that would authorize DHS to award grants to state and local law enforcement agencies for assistance in addressing border-related criminal activity. S. 2611 would push back the date of implementation for DHS' Western Hemisphere Travel Initiative⁸⁷ to no earlier than June 1, 2009. S. 2611 also includes three separate provisions directing DHS to acquire and deploy various kinds of surveillance assets in order to establish a "virtual fence" along the southwest border. The bill would also authorize state governors to deploy their National Guard to the southwest border in a support capacity for training purposes.

⁸⁵ The Secure Border Initiative is a three pillared plan for securing the border that, according to DHS, "will focus on controlling the border, building a robust interior enforcement program, and establishing a Temporary Worker Program." SBI includes all the DHS resources that are deployed at the border, including personnel, technology, and infrastructure such as vehicle barriers or fencing. United States Department of Homeland Security, *FY2007 Congressional Budget Justifications*, p. CBP-S&E-6.

⁸⁶ For a discussion of the role of state and local law enforcement in the enforcement of immigration law, see the next main section of the report.

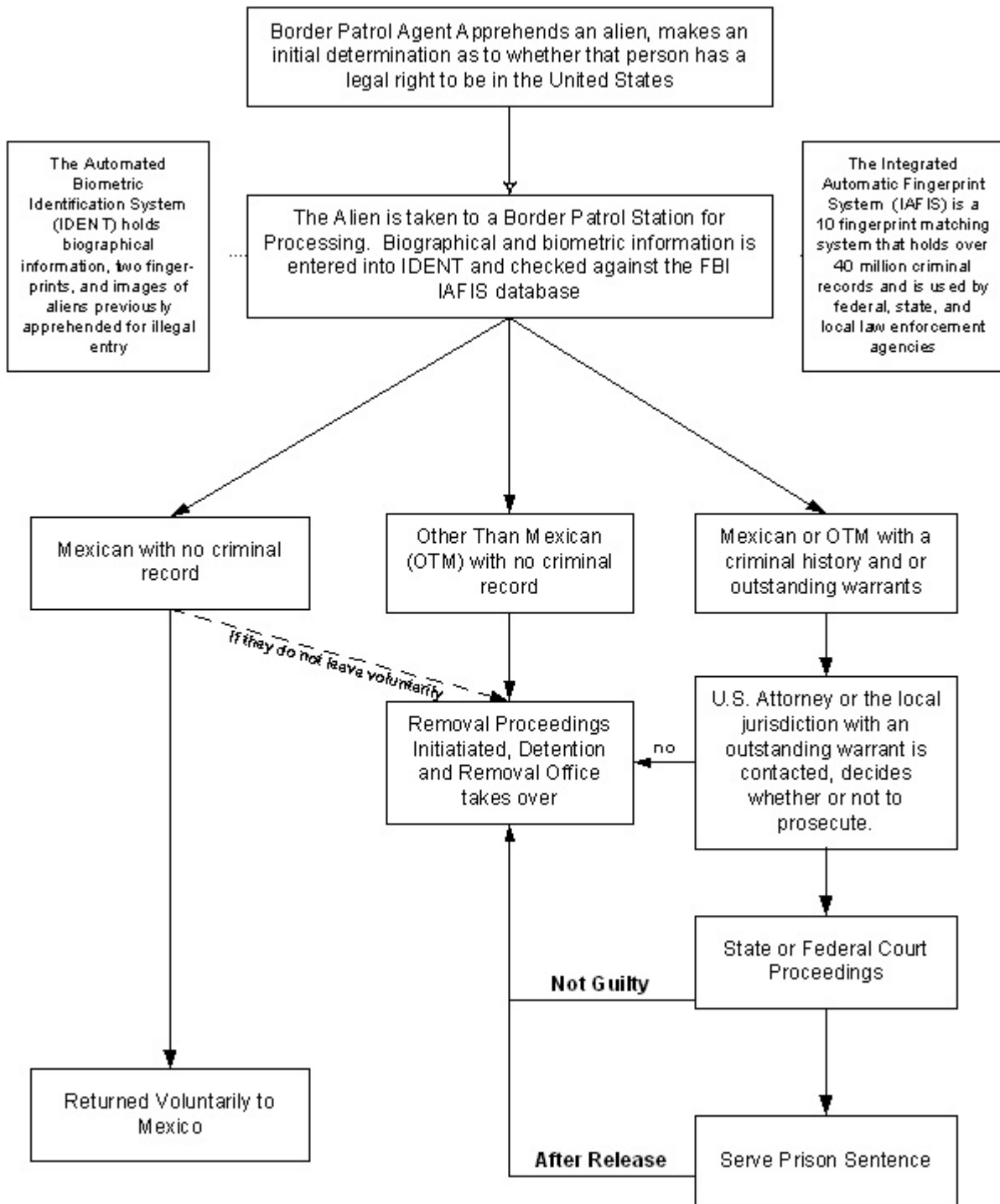
⁸⁷ The Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 (P.L. 108-458 §7209) changed the documentary requirements for citizens of Western Hemisphere countries. IRTPA required all individuals for whom documentation requirements had previously been waived under §212(d)(4)(B) of INA, including American and Canadian citizens, to provide proof of citizenship in order to be admitted into the United States at POE by January 1, 2007.

Human Smuggling. H.R. 4437, as passed by the House, and S. 2611, as passed by the Senate, would rewrite INA §274. Although the bills are similar, they are not identical in language or in scope. Both bills would broaden the types of acts that are considered alien smuggling. For example, they would make it a smuggling offense to transport a person outside the United States knowing or in reckless disregard of the fact that the person is in unlawful transit from one country to another, or on the high-seas, and is seeking to illegally enter the United States. S. 2611 would also provide new exemptions from criminal liability for persons or organizations providing assistance to unauthorized aliens on humanitarian grounds. House-passed H.R. 4437, in contrast, contains no such exemptions, and would also remove the current exemption contained in P.L. 109-97 for religious organizations that encourage certain unauthorized aliens to work for the organizations as volunteer ministers or missionaries.

In addition, H.R. 4437 and S. 2611 would establish mandatory minimum sentences for those convicted of alien smuggling, and would enhance penalties for persons carrying firearms during smuggling offenses. Furthermore, as recommended in a recent Government Accountability Office (GAO) report on alien smuggling, both bills would amend the law to allow for the seizure and forfeiture of any property used to commit or facilitate alien smuggling.

Detention. H.R. 4437 and S. 2611 would codify and modify the regulations governing the review of post-removal order detention cases for aliens who were lawfully admitted. In addition, H.R. 4437 and S.2611 would require that as of October 1, 2006, all aliens attempting to illegally enter the United States who do not withdraw their applications for admission and depart immediately or who are not granted parole, be subject to mandatory detention until the alien is either removed or granted admission. H.R. 4437 also would authorize and establish the selection criteria for the Secretary of DHS to contract with private entities to provide transportation to detention facilities and other locations for aliens apprehended along the border by CBP, and would require mandatory detention for aliens of street gangs. S. 2611 would also direct DHS to acquire or construct 20 additional detention facilities for aliens with a combined capacity of at least 10,000 aliens at any time. S.2611 would direct DHS to consider utilizing military installations approved for closure for this purpose. A detention-related provision added as a Senate floor amendment to S. 2611 would give the Border Patrol exclusive administrative and operational control over all assets utilized in carrying out its mission, which would include detention space.

Appendix I: Border Patrol Apprehensions Process



Appendix II: Bibliography of Selected CRS Products

CRS Report RL33106, *Border Security and the Southwest Border: Background, Legislation, and Issues*, Lisa Seghetti, Coordinator, available at: [<http://www.congress.gov/erp/rl/pdf/RL33106.pdf>].

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