CONFERENCE REPORT ON H.R. 2360, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2006 -- (House of Representatives - September 29, 2005)

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Mr. *ROGERS* of Kentucky submitted the following conference report and statement on the bill (H.R. 2360) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes:

Conference Report (H. Rept. 109-241)

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JOINT EXPLANATORY STATEMENT

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2360), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effects of the action agreed upon by the managers and recommended in the accompanying conference report.

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TITLE I--DEPARTMENTAL MANAGEMENT AND OPERATIONS

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IMMIGRATION ENFORCEMENT

Both the House and Senate reports highlighted the alarming statistics regarding our Nation's broken immigration system. In the context of threats facing our Nation, the disturbing growth in our illegal alien population shows immigration enforcement and border control are not succeeding. The conferees agree with the Sense of the Senate proviso expressed in section 519 of the Senate bill, which recognizes the reality of terrorists taking advantage of inadequate security along our border with Mexico, and the need for the Government of Mexico to improve border and security policies on its side of the border. The conferees include bill language directing the Secretary to develop a comprehensive immigration enforcement strategy that results in reducing the number of undocumented aliens in the United States by ten percent per year and direct that the strategy be in accordance with House Report 109-79. The funding is not contingent on

the submission of this strategy to Congress as proposed by the House. Further, the conferees direct the report on the internal transport of illegal aliens requested in House Report 109-79 from the Under Secretary of Border and Transportation Security be included in the comprehensive immigration enforcement strategy report.

The conferees direct the Secretary to assume responsibility for the joint report between DHS and the U.S. Department of Justice on reducing absconders required by Senate Report 109-83, and submit the report not later than February 10, 2006.

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Office of Immigration Statistics

Funding for the Office of Immigration Statistics is provided within the Office of the Secretary and Executive Management, as requested in the Secretary's organizational restructuring plan submitted on July 13, 2005.

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TITLE II--SECURITY, ENFORCEMENT, AND INVESTIGATIONS

Office of the Under Secretary for Border and Transportation Security

SALARIES AND EXPENSES

The conferees agree to provide no funding for this appropriation, as proposed in the Secretary's organizational restructuring plan submitted on July 13, 2005, which abolished the Office of the Under Secretary for Border and Transportation Security (BTS), instead of $8,617,000 as proposed by the House and $9,617,000 as proposed by the Senate. Funding for the functions currently performed by this office is included under other appropriations in this Act and is identified accordingly.

United States Visitor and Immigrant Status Indicator Technology

The conferees agree to provide $340,000,000 as proposed by the Senate instead of $390,000,000 as proposed by the House. Of these funds, $86,000,000 is available for program management and operations, and $159,658,000 is subject to the requirements of a detailed expenditure plan.

In the statement of managers accompanying the conference report on Public Law 108-334, the Department was directed to submit a report by January 14, 2005, on the status of efforts between the Departments of Homeland Security and Justice to achieve real-time interoperability between the Integrated Automated Fingerprint Identification System and

the Automated Biometric Identification System. The Committees on Appropriations did not receive the report until August 22, 2005. The conferees direct the cost and schedule estimate referred to in the report be completed no later than November 20, 2005, so the results can be incorporated into the fiscal year 2006 United States Visitor and Immigrant Status Indicator Technology (US-VISIT) expenditure plan and the fiscal year 2007 President's Budget.

The conferees are encouraged by the Department's announcement of its plans to migrate the US-VISIT program to a ten-fingerprint system--a major step toward full interoperability. The Department is directed to work with the Department of State and report expeditiously on what resources it will need and what actions it will take to achieve this goal.

Finally, the conferees direct that US-VISIT adhere to the most stringent standards in developing and testing its system plans prior to their being deployed or made operational.

Customs and Border Protection

SALARIES AND EXPENSES

The conferees agree to provide $4,826,323,000 for Customs and Border Protection (CBP), instead of $4,885,544,000 as proposed by the House and $4,922,600,000 as proposed by the Senate. This includes: $1,796,464,000 for border security between ports of entry, including 1,000 additional Border Patrol Agents and $79,496,000 to annualize the cost of 500 Border Patrol Agents funded in Public Law 109-13; $63,024,000 for inspection and detection technology investments, including $1,018,000 to continue the in-bond container security study; $4,000,000 for the Immigration Advisory Program; $500,000 to continue steel tariff training; $54,268,000 for the Customs-Trade Partnership Against Terrorism; $7,000,000 for the FAST program; $14,000,000 for the SENTRI and NEXUS programs; $9,134,000 for the Advanced Training Center; not less than $163,560,000 for the salaries and expenses for the Office of Air and Marine Operations, including $5,000,000 for additional staff, equipment and operations, $5,500,000 for a new Montana Northern Border airwing, and $17,000,000 to cover salaries and expenses associated with the integration of former Border Patrol pilots. Funding was decreased by $12,725,000 from the President's request to reflect that enforcement of forced child labor laws is now a responsibility of Immigration and Customs Enforcement, and by $49,651,000 to reflect all funding for procurement, operations and maintenance of aircraft and marine vessels is included in the Air and Marine Interdiction, Operations, Maintenance, and Procurement appropriation. The conferees make $10,000,000 unavailable for obligation until a detailed five year plan for air and marine operations is submitted to the Committees on Appropriations. No funding is provided in this account for radiation portal monitors. The conferees do not include a rescission of $14,400,000 as proposed by the Senate.

The following table specifies funding by budget activity:

Headquarters Management and Administration:		
Border Security Inspections and Trade Facilitation	$655,000,000	
	Border Security and Control Between Ports of Entry	590,000,000
	Subtotal, Headquarters Management and Administration	1,245,000,000
	Border Security Inspections and Trade Facilitation:	
	Inspections, Trade and Travel Facilitation at Ports of Entry	1,262,269,000
	Harbor Maintenance Fee Collection (Trust Fund)	3,000,000
	Container Security Initiative	138,790,000
	Other International Programs	8,629,000
	Customs-Trade Partnership Against Terrorism/Free and Secure Trade (FAST)/SENTRI/NEXUS	75,268,000
	Inspection and Detection Technology Investments	63,024,000
	Automated Targeting Systems	28,253,000 [Page: H8597]
	National Targeting Center	16,697,000
	Other Technology Investments, Including Information Technology	1,018,000
	Training	24,351,000
	Subtotal, Border Security Inspections and Trade Facilitation	1,621,299,000
	Border Security and Control Between Ports of Entry:	
	Border Security and Control	1,742,977,000

	America's Shield Initiative	31,284,000
	Training	22,203,000
	Subtotal, Border Security and Control Between Ports of Entry	1,796,464,000
	Air and Marine Operations, Salaries and Expenses	163,560,000
	Total, Salaries and Expenses	$4,826,323,000

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EXPEDITED REMOVAL

The conferees are aware the Department has announced a plan to expand its expedited removal program, following success in reducing the overall cost of detention housing for other than Mexican nationals in the Laredo and Tucson sectors, in reducing the number of aliens released on their own recognizance, and in increasing deterrence. The conferees direct the Department to report not later than February 10, 2006, on Border Patrol costs associated with the expanded expedited removal program.

BORDER CROSSING CARDS

The conferees endorse Senate report language requesting a report on Border Crossing Cards and card scanners.

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UNMANNED AERIAL VEHICLES

The conferees agree to provide $10,180,000 for unmanned aerial vehicles, as requested by the President and proposed by both the House and Senate, which may be deployed between ports of entry on the Southwest Border.

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NORTHERN BORDER AIRWINGS

The conferees believe remaining gaps in air patrol coverage of the Northern Border should be closed as quickly as possible and include $2,000,000 for the initial site assessment, facilities evaluation, lease preparation and other activities associated with the fifth Northern Border airwing in Grand Forks, North Dakota. The conferees direct the

Department to include in its fiscal year 2007 budget request the resources necessary to establish the airwing.

CONSTRUCTION

The conferees agree to provide $270,000,000 instead of $93,418,000 as proposed by the House and $311,381,000 as proposed by the Senate. This includes: $81,963,000 for facilities to accommodate 1,000 additional Border Patrol Agents; $35,000,000 for the San Diego fence construction project; $35,000,000 for tactical infrastructure projects in the Tucson sector; and $26,000,000 for the Advanced Training Center. The conferees direct CBP to provide a spending plan and a revised master plan to the Committees on Appropriations that reflects this funding.

Immigration and Customs Enforcement

SALARIES AND EXPENSES

The conferees agree to provide $3,108,499,000 for Immigration and Customs Enforcement (ICE) Salaries and Expenses, instead of $3,064,081,000 as proposed by the House and $3,052,416,000 as proposed by the Senate. This includes an additional $90,000,000 for additional bedspace capacity, including corresponding support positions; $42,000,000 for additional criminal investigator positions; $35,000,000 to annualize new positions and programs funded in Public Law 109-13; $9,000,000 for Immigration Enforcement Agents to support civil and administrative investigations; $16,000,000 for additional fugitive operations teams; $18,000,000 to expand the Institutional Removal Program; $10,000,000 to expand Alternatives to Detention, including the Intensive Supervision Appearance Program; $1,000,000 to increase the speed, accuracy and efficiency of immigration enforcement information currently being entered into the National Criminal Information Center database; $5,000,000 for the Cyber Crimes Center; $15,770,000 for enforcement of laws against forced child labor, as offset by a reduction in Customs and Border Protection, Salaries and Expenses; $5,000,000 for implementation of section 287(g) of the Immigration and Nationality Act; $10,000,000 for the worksite enforcement program; and $2,000,000 for transfer to the U.S. Department of Justice for the Legal Orientation Program. The conferees make $5,000,000 unavailable for obligation until the Committees on Appropriations receive a national detention management plan as described in the House report. The following table specifies funding by budget activity:

$123,600,000	
Headquarters Managed IT investment	133,104,000
Subtotal, Headquarters Management and Administration	256,704,000
Legal Proceedings	130,181,000

	Domestic Operations	1,195,050,000
	International Operations	101,918,000
	Subtotal, Investigations	1,296,968,000
	Intelligence	50,970,000
	Detention and Removal Operations	1,013,329,000
	Transportation and Removal	135,000,000
	Fugitive Operations	102,881,000
	Institutional Removal Program	93,969,000
	Alternatives to Detention	28,497,000
	Subtotal, Detention and Removal	1,373,676,000
	Total, Salaries and Expenses	3,108,499,000

IMMIGRATION ENFORCEMENT AGENTS

The conferees agree with the House report noting that a vast majority of immigration law violations are under enforced, and that it would be beneficial to significantly enhance the enforcement of civil immigration violations. The conferees therefore include $9,000,000 for 100 Immigration Enforcement Agents (IEAs), who will work under the supervision of ICE special agents and concentrate their efforts on civil and administrative actions, permitting ICE special agents to concentrate their efforts on criminal investigations and longer term cases. The conferees direct the Department to submit a plan for the expanded use of IEAs for these purposes not later than December 1, 2005, and a status report not later than November 1, 2006, on the operation and impact of the increase in IEA positions.

EXPEDITED REMOVAL AND DETENTION SPACE

The conferees are aware ICE expects a bedspace funding shortfall owing to lower Breached Bond funds and increased bedspace costs. The conferees provide $35,000,000 to cover fiscal year 2006 costs associated with ICE initiatives funded in Public Law 109-13, and therefore expect the Department will not divert $32,000,000 provided in that Act for bedspace to annualize personnel costs. The conferees direct the Department to submit quarterly reports on the fee estimates.

The conferees understand the Department has determined expanding the expedited removal program will require a greater proportion of funding for removal and related costs, and therefore relatively less for bedspace. The conferees direct the Department to report within 30 days from enactment of this Act on the total number of beds to be funded in fiscal year 2006, by funding source, and the fiscal year 2006 spend plan for expedited removal. Further, the Department is directed to include bedspace utilization

and funding obligations in its regular immigration enforcement reporting to the Committees on Appropriations.

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IMMIGRATION ENFORCEMENT AND DETENTION STATISTICS

The conferees concur with the immigration enforcement and detention reporting requirements identified in the House and Senate reports, and direct ICE to submit them on a quarterly basis beginning February 10, 2006.

STATE AND LOCAL SUPPORT FOR IMMIGRATION ENFORCEMENT

The conferees support the ``287(g) program'' to cross-designate State and local law enforcement officers to perform limited immigration enforcement functions, and provide $5,000,000 in support of this program, including training participants, as authorized. The conferees encourage the Department to be more proactive in encouraging State and local governments to participate in this program. The conferees fully support the 287(g) program and view it as a powerful force multiplier to better enforce immigration laws and, consequently, to better secure the homeland.

LEGAL ORIENTATION PROGRAM

The conferees include $2,000,000 for the Legal Orientation Program, to be transferred to the U.S. Department of Justice, Executive Office for Immigration Review (EOIR). The Office of Management and Budget is directed to include future funding for this program in funding requests for EOIR.

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TITLE IV--RESEARCH, DEVELOPMENT, TRAINING, AND SERVICES

United States Citizenship and Immigration Services

The conferees agree to provide $115,000,000, instead of $120,000,000 as proposed by the House and $80,000,000 as proposed by the Senate. The conference agreement includes $80,000,000 for backlog elimination, as well as $35,000,000 to support the U.S. Citizenship and Immigration Services (CIS) information technology transformation effort and convert immigration records into digital format. Current estimates of fee collections are

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$1,774,000,000, for total resources available to CIS of $1,889,000,000. The conferees direct that, of these collections, not to exceed $5,000 shall be for official reception and

representation expenses. The conferees do not require the Department to report on facility needs for CIS.

The following table specifies funding by budget activity, and includes both direct appropriations and estimated collections:

Backlog Reduction Initiatives (Direct Appropriations):		
Contracting Services (Backlog reduction)	$70,000,000	
	Other (Backlog reduction)	10,000,000
	Digitization and Information Technology Transformation	35,000,000
	Subtotal, Backlog Reduction Initiatives	115,000,000
	Adjudication Services (fee accounts):	
	Pay and Benefits	657,000,000
	Operating Expenses:	
	District Operations	349,000,000
	Service Center Operations	250,000,000
	Asylum, Refugee and International Operations	74,000,000
	Records operations	66,000,000
	Subtotal, Adjudication Services	1,396,000,000 ERR
	Information and Customer Services (fee accounts):	
	Pay and Benefits	80,000,000
	Operating Expenses	
	National Customer Service Center	47,000,000
	Information Services	14,000,000
	Subtotal, Information and Customer Services	141,000,000
	Administration (fee accounts):	

	Pay and Benefits	44,000,000
	Operating expenses	193,000,000
	Subtotal, Administration	237,000,000
	Total, U.S. Citizenship and Immigration Services	1,889,000,000

Information Technology Modernization

The conferees include $35,000,000 to support the information technology transformation process at CIS. The conferees direct CIS to refrain from obligating any of the funds until the Committees on Appropriations have received and approved a detailed spending plan, complete with project milestones, and reflecting compliance with DHS and OMB guidelines for information technology investments.

Spanish Language Programs

The conferees are aware CIS programs such as the National Customer Service Center provide nationwide telephone assistance to customers calling from within the United States about immigration services and benefits; information is available in English and Spanish. The conferees encourage CIS to continue to support programs that provide Spanish-speaking residents with information and assistance related to naturalization and citizenship.

FEDERAL LAW ENFORCEMENT TRAINING CENTER

SALARIES AND EXPENSES

The conferees agree to provide $194,000,000 as proposed by the House and the Senate. This amount includes the funds requested in the budget and an additional $10,638,000 to meet the increased training needs of the Border Patrol and Immigration and Customs Enforcement.

The conferees are concerned with the lack of use of the Cheltenham, Maryland, training site. The conferees direct the Department to provide a report on the utilization rates of this facility and make recommendations on how it intends to improve usage no later than February 10, 2006.

The conferees do not provide authority to assess pecuniary liability against employees and students.

ACQUISITION, CONSTRUCTION, IMPROVEMENTS, AND RELATED EXPENSES

The conferees agree to provide $88,358,000 as proposed by the Senate instead of $64,743,000 as proposed by the House. The increase from the budget request includes

$44,327,000 for renovation and construction needs at the Artesia, New Mexico, training center and $3,395,000 for construction at the Glynco, Georgia, training center.

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TITLE V--GENERAL PROVISIONS

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Section 532. The conferees include a new provision regarding the survey and designation of ports of entry in the United States, as proposed by the Senate and modified by the conferees.

*[**SEC.** 532. Not later than 60 days from the date of the enactment of this Act, the Secretary of Homeland Security shall conduct a survey of all ports of entry in the United States and designate an airport as a port of entry in each State that does not have a port of entry.]*

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Section 536. The conferees include a new provision regarding H2A Visas.

*[**SEC.** 536. Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by striking ``the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f))," and inserting ``the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm,"].*

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Section 538. The conferees provide $40,000,000 for discretionary grants to States to implement the REAL ID Act of 2005 instead of $100,000,000 as proposed by the House and $40,000,000 as proposed by the Senate within the Office of State and Local Government Coordination and Preparedness. These grants, to assist with the implementation of the national standards for drivers' licenses, shall be made at the discretion of the Secretary. Bill language is included requiring the submission of an implementation plan for the responsibilities of the Department of Homeland Security under the recently enacted REAL ID Act of 2005 (Public Law 109-13). This plan should include, but not be limited to, the proposed uses of the funds, and the criteria to be used to approve the extension of deadlines. The conferees include bill language requiring that no less than $6,000,000 be made available for pilot projects to begin immediately in order

that lessons learned and best practices might be made available to all States as quickly as possible.

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