



January 9, 2012

Beyond the Border Coordinator  
United States Department of Homeland Security  
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**Re: U.S.–Canada Action Plan for Perimeter Security and Economic Competitiveness  
Docket No. DHS-2011-0115**

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Dear Beyond the Border Coordinator:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the draft plan entitled “United States – Canada Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness.”<sup>1</sup> The United States Department of Homeland Security (DHS) requests comments on this plan through a Federal Register notice.<sup>2</sup>

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Since 1946, our mission has included the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of the U.S. immigration laws. We appreciate the opportunity to comment on the draft Beyond the Border Action Plan and believe that our members’ collective expertise provides experience that makes us particularly well qualified to offer views on this matter.

AILA applauds the efforts of DHS to create a plan to better facilitate business travel and the economic competitiveness of the United States while maintaining security. AILA also appreciates the opportunity to comment on issues in the Action Plan that require further clarification. Our comments are as follows:

1. **Establish a Common Approach to Perimeter Screening to Promote Security and Border Efficiency:**<sup>3</sup> The Action Plan proposes that Canada and the United States will

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<sup>1</sup> *Beyond the Border Action Plan*, <http://www.dhs.gov/xlibrary/assets/wh/us-canada-btb-action-plan.pdf>; AILA Doc. No. 11120870, <http://www.aila.org/content/fileviewer.aspx?docid=37873&linkid=241009>

<sup>2</sup> 76 Fed. Reg. 76,981 (Dec. 9, 2011); *DHS Comment Request Concerning the “Beyond the Border Action Plan,”* AILA Doc. No. 11120963, <http://www.aila.org/content/default.aspx?docid=37885>

<sup>3</sup> *Beyond the Border Action Plan* at pgs 7-8, 10, <http://www.dhs.gov/xlibrary/assets/wh/us-canada-btb-action-plan.pdf>; AILA Doc. No. 11120870, <http://www.aila.org/content/fileviewer.aspx?docid=37873&linkid=241009>

“[s]hare entry data at the land border such that the entry information from one country could constitute the exit information from another through an integrated entry and exit system.”<sup>4</sup> Although we support DHS’s efforts to achieve efficiency, we are also concerned about the integrity and the lack of public access to these travel records. Travelers entering the United States from Canada frequently do not receive a passport stamp or other evidence of admission, and such travelers will not be aware of the information and annotations being reported by Canadian authorities to DHS. If DHS accepts Canada’s exit records as U.S. entry records, the traveler should be promptly informed of the content of the record and how to seek redress or correct erroneous records. While AILA appreciates that DHS will implement this shared entry/exit information system in phases, the Action Plan does not discuss how DHS will ensure the accuracy of such records and how travelers will address mistakes in the records created by the new system.<sup>5</sup> AILA recommends that DHS and its Canadian counterparts implement a system to give all travelers at U.S.-Canada land borders a document evidencing the date of admission, the classification of admission, and the expiration date of their authorized stay. In the alternative, AILA recommends that travelers be given increased access to travel records upon request, without requiring a lengthy Freedom of Information Act (FOIA) request. These suggestions would increase the individual traveler’s access to their own personal information, increase an individual traveler’s ability to seek timely redress if travel information is recorded incorrectly, and would alleviate backlogs in related FOIA requests to DHS components.

2. **Developing Additional Initiatives for Expediting Legitimate Travelers and Cargo:**<sup>6</sup> AILA supports DHS’s initiative to expedite the admission of business and other travelers to the United States and the proposal to include “after-lease service as per designated contractual agreements” as being covered by the business visitor classification. We note the following additional comments on this section of the Plan:

- **Training:**<sup>7</sup> DHS proposes to facilitate the conduct of cross border business by conducting “enhanced administrative guidance training” of CBP officers and providing “enhanced operational manuals to achieve optional operational consistency at all ports of entry on business traveler issues.”<sup>8</sup> AILA strongly supports DHS’s plans for further substantive training and guidance to U.S. Customs and Border Protection (CBP) officers on immigration law and procedures. Such substantive training and guidance should help increase the consistency and quality of adjudication on applications and petitions made by employers, business visitors, and other applicants for admission. Currently, AILA members report inconsistencies and apparent misunderstandings in business visitor, TN, and L-1 admissions and adjudications conducted by CBP at U.S. ports of entry. Accordingly, we believe that increased training on immigration adjudication issues is necessary. In addition to training all officers on

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<sup>4</sup> *Id.* at pg 8

<sup>5</sup> *Id.* at pg 10

<sup>6</sup> *Id.* at pgs 14-15

<sup>7</sup> *Id.* at pg 15

<sup>8</sup> *Id.*

immigration issues and adjudications, we encourage DHS to assign a well-trained officer who has undergone additional training and has significant field experience with immigration adjudications to serve as a NAFTA subject matter expert at each U.S. port of entry (or at all ports with a high volume of NAFTA adjudications). Further training and enhanced materials for all such officers, as well as a NAFTA subject matter expert to support immigration adjudications, might best equip CBP to handle complex cases, promote accurate decisions, and help achieve DHS's goal of optimal operational consistency.

- **Improved Communications with Ports:** To achieve the goal of admitting legitimate travelers and making consistent, accurate decisions, there also must be improved communications between CBP and travelers, U.S. companies petitioning to sponsor foreign nationals for work, and their counsel. Currently, there are no set procedures for counsel to speak in advance with CBP officers who handle NAFTA adjudications at the port and no assurance that counsel may speak with the officers after issues or problems arise with NAFTA applications. To achieve its goals, AILA recommends that the Action Plan set forth a system and procedures for communications between CBP and petitioning U.S. companies, applicants for admission, and counsel. As mentioned, establishing a NAFTA subject matter expert at each port who may handle such communications will help DHS promote more consistent, accurate decisions on adjudications and admissions.
- **Advance Submission of NAFTA Cases:**<sup>9</sup> The Action Plan proposes a system in which employment and other petitions may be submitted in advance to the ports of entry for adjudication. AILA understands that this proposal is focused on the NAFTA categories of L and TN. Advanced submission may increase DHS's capacity to address and resolve complex issues in individual cases, and AILA supports DHS in making this option available. Further training and designation of a NAFTA subject matter expert will also assist DHS's capacity to address complex cases. At the same time, it is important to the stated goal of "facilitating the conduct of cross-border business" that DHS maintain as an option the current system of same day adjudications.<sup>10</sup> To achieve economic competitiveness, same-day adjudications must continue to be an option to keep pace with business needs.
- **Further AILA Input:** Under the Action Plan, DHS will initiate consultations with stakeholders by March 31, 2012. We look forward to the opportunity to participate in such meetings, as nationwide practitioners of U.S. immigration law familiar with the common issues and problems experienced by travelers and U.S. companies sponsoring foreign workers. We also look forward to receiving information on the dates of such meetings and how to participate. In addition, we encourage DHS to make available for comment any proposed revisions to the *Inspector's Field Manual* or training materials on U.S. immigration law,

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

including NAFTA admissions and adjudications, before such materials are finalized.

Thank you for considering these comments. We look forward to the stakeholder meetings and to seeing the next draft of the Beyond the Border Action Plan.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION