

# AILA Issue Paper

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## DEPARTMENT OF HOMELAND SECURITY

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# AILA Issue Paper

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## IMMIGRATION AND THE DEPARTMENT OF HOMELAND SECURITY

**THE ISSUE:** President Bush on November 25, 2002 signed into law The Homeland Security Act of 2002 (HSA) (PL 107-296) which created the Department of Homeland Security (DHS). The DHS gained Cabinet-level status on January 24, 2003, merging 22 agencies involving 170,000 employees. Because the former Immigration and Naturalization Service (INS), along with numerous other agencies, merged into DHS on March 1, 2003, the DHS now administers the nation's immigration functions. The reorganization, however, did not impact the Executive Office for Immigration Review (EOIR) which oversees the immigration courts. The EOIR remains housed in the Department of Justice (DOJ). (Please see AILA's issue paper entitled "The Importance of Independence and Accountability in our Immigration Courts" for a discussion of issues related to the EOIR.)

AILA long has called for the reorganization of our immigration functions based on three principles: coordinating the separated service and enforcement functions; placing at the helm one leader with the authority to develop and administer policy for all immigration functions; and adequately funding our immigration functions. Unfortunately, the DHS's structure neither coordinates services and enforcement nor has one person in charge of these functions. In addition, immigration services continue to be underfunded, absent sufficient direct federal appropriations.

**BACKGROUND:** The HSA radically restructured our nation's immigration functions as follows:

1. Directorate of Border and Transportation Security (BTS): The Undersecretary for Border and Transportation Security is responsible for preventing the entry of terrorists into the U.S., securing the borders, carrying out the immigration enforcement functions of the former INS, establishing national immigration enforcement policies and priorities, and establishing and administering rules governing the granting of visas or other forms of permission, including parole. Asa Hutchinson is the current BTS Undersecretary. While the law established the Bureau of Border Security under BTS to perform these functions, the Administration reconfigured the structure and divided mission responsibilities into two enforcement bureaus:
  - The United States Immigration and Customs Enforcement (ICE): ICE is in charge of interior enforcement and is made up of about 14,000 employees from the INS, U.S. Customs Service, and the Federal Protective Service. Former INS Acting Commissioner Michael Garcia leads ICE as Assistant Secretary. ICE's web address is: <http://www.ice.immigration.gov>.
  - The United States Customs and Border Protection (CBP): CBP is made up of about 30,000 employees, including inspectors from legacy INS, U.S. Customs, Agricultural Quarantine Inspections, and Border Patrol. CBP is charged with focusing on the movement of people and goods across borders, and ensuring consistent inspection procedures and coordinated border enforcement. Former U.S. Customs Commissioner Robert Bonner is the CBP Commissioner. The link to the CBP is: <http://cbp.gov>
2. United States Citizenship and Immigration Services (CIS): USCIS has jurisdiction over the immigration services functions and is headed by a Director, Eduardo Aguirre, who reports to the Deputy Secretary for Homeland Security. The Director is responsible for adjudication of all applications and petitions previously adjudicated by the INS, including asylum and refugee applications. The USCIS has about 15,000 employees. The link to USCIS is <http://uscis.gov>

3. Visa Issuance: The HSA vests the Secretary of Homeland Security with exclusive authority to administer all laws, and issue regulations relating to the functions of consular officers in the granting or refusal of visas, and develop programs of homeland security training for consular officers. The Act also mandates that information on visa denials be entered into an electronic data system.

The DHS and the Department of State (DOS) entered into a Memorandum of Understanding (MOU) clarifying the roles and responsibilities of both agencies. Under this agreement, DOS retains day-to-day control over managing the visa process and foreign policy. The DHS is responsible for establishing and reviewing visa policy, ensuring that homeland security requirements are fully reflected in the visa process, and rendering final decisions over policy areas that include: classification, admissibility and documentation, place of visa application, personal appearance, visa validity periods and multiple entry visas, the Visa Waiver Program, notices of visa denials, and processing of persons from state sponsors of terrorism.

4. Children's Affairs: The Act transferred the care and custody of unaccompanied alien children from INS to the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services.
5. Office of Civil Rights: The Act created the position of Officer for Civil Rights and Civil Liberties which has been filled by Dan Sutherland. This office reviews and assesses abuses, including racial and ethnic profiling, by DHS employees and officials, and issues an annual report on abuses reported to the office and any actions taken in response.
6. Ombudsman: The HSA established an ombudsman (and local ombudsman offices) to identify severe problem areas in the delivery of immigration services, report these problems, and propose changes. Prakash Khatri has been named the Ombudsman.
7. FOIA: The HSA provided broad Freedom of Information Act (FOIA) exemptions for information related to the security of critical infrastructure or protected systems, including computer systems and information. Improper disclosure of this information by a federal employee could trigger criminal liability. If this provision is interpreted broadly, the FOIA exemption could have a dramatic chilling affect on both the ability to request information contained in the immigration databases as well as the dissemination of policy memos and other official information from the immigration-related bureaus.

**AILA'S POSITION:** The DHS must balance national security goals with laws and policies that welcome newcomers and recognize the strong and vital connections between the U.S. and the rest of the world. While AILA has strongly criticized the INS for its past performance, it was both unfair and inaccurate to blame the INS alone. Congress and the Administration need to learn from the past to help ensure that DHS succeeds by adequately funding the agency and taking care not to conflicting, underfunded and complicated mandates. AILA has raised the following concerns with Congress and the DHS:

- Concurrent Jurisdiction: In a February 28, 2003 rulemaking purporting to transfer immigration authorities to the DHS, the Attorney General asserted the DOJ's concurrent authority to promulgate substantive rules in numerous areas. The implications of this assertion of concurrent jurisdiction are enormous, with the potential for either complete gridlock or for the DOJ and DHS to issue conflicting regulations in a whole range of areas. Such dual rulemaking authority could precipitate Cabinet-level institutional power struggles and paralyze the government's ability to administer our immigration laws fairly and consistently.

The most complete solution to this problem would be to reconstitute EOIR as an independent adjudicative body with no substantive rulemaking authority. Unleashing EOIR from its DOJ moorings would eliminate concerns about conflicting interagency authority. In addition to neutralizing concurrent jurisdiction concerns, this restructuring would further other important goals. It would provide immigration adjudicators with the independence necessary to conduct fair and impartial hearings. This change thereby would significantly enhance the perceived legitimacy of immigration decisions, a major concern under the present system.

Alternatively, DOJ must be limited to making procedural rules related to the operation of EOIR and compelled to abandon its asserted authority to make any substantive immigration rules.

- Coordination: While the two enforcement bureaus (ICE and CBP) are clearly separated from USCIS, successful adjudication and enforcement initiatives depend on their close coordination. Such coordination is not formalized anywhere in the new law, is not reflected in DHS' current practices, and does not appear to be a priority. This lack of coordination within the DHS needs to be addressed through oversight and practice, as does the lack of necessary coordination between the DHS and other federal agencies including the Departments of Justice and State, the FBI and the CIA.
- Culture of "No" and Consequences of Delays: Widespread reports of unfair, arbitrary and inconsistent adjudications have reinforced the perception that adjudicators' "fail safe" position is "no," notwithstanding the merits of the petition or application. Reinforcing this view is the increased numbers of unnecessary requests for additional information that contribute to the dramatic slowdown in the processing of petitions and applications. USCIS needs to efficiently and fairly adjudicate petitions and applications. In addition, many organizations and individuals are reporting severe delays in processing that have led to negative impacts for American business and family members.
- Adequate Funding: Enforcement and services are two sides of the same coin and merit equal attention, support and funding. Especially in light of the historical underfunding of immigration functions, CIS needs adequate funding to successfully do its job. AILA long has supported direct congressional appropriations to supplement the user fees that almost totally fund the USCIS today. Such direct congressional appropriations are necessary in order to ensure that the USCIS adequately delivers services and admits into our country the appropriate people while barring those who mean to do us harm. While proposing inadequate funding in the FY 05 budget proposal, the Administration also increased fees as of April 30, 2004. At a time when the quality of service is at an historic low, increases of this magnitude are difficult to justify. Furthermore, the fee increases will not even decrease the growing processing backlogs that have reached crisis proportions. Meanwhile, the agency wastes resources revisiting issues already resolved and harassing honest petitioners with requests for paperwork unrelated to their immigration eligibility. Making matters worse, the public's only available avenue to resolve government errors and problems is a contractor-run 800 number that has proven useless to deal with these issues.
- Ports of Entry: Enforcement and adjudications come together at our ports of entry, with the CBP taking over operations at these ports. Our national and economic security depends on the efficient flow of people and goods through these ports. Unfortunately, the Homeland Security Act was largely silent on how our immigration functions should operate there. It is critical that those responsible for inspections at our entry points be fully trained in the policies and practices of the CIS. Unfortunately, current reports suggest that CBP is giving inadequate attention to immigration and is initiating policies that do not reflect the intricacy of the subject and its importance to our country. To take one example, the "One Face at the Border" program does not ensure that an immigration specialist will be available at secondary inspections. The proposed expansion of US VISIT at our land ports-of-entry also is troubling due to the lack of clarity about the function of this program, inadequate funding and training of staff, impossible

deadlines, unresolved issues regarding technology, and other concerns. (Please see AILA's issue paper "America's Borders: Balancing our Security and Economic Needs" for more information on our ports-of-entry.)

- Local Immigration Offices: Local offices are the backbone of our immigration functions and must be staffed by knowledgeable people capable of making crucial, often life and death, decisions. These offices must be accessible to the communities they serve and must operate within a clear chain of command. These offices must be adequately funded because expertise, accountability and accessibility alone cannot solve the pervasive financial crisis and resulting backlogs.
- Visa Policy: With the Department of Homeland Security's authority to establish and administer rules governing the granting of visas, it is vitally important that visas be granted to the people who come to build America and denied to those who mean to do us harm. We must balance our national security and economic security needs by recognizing that the U.S. is tied to the rest of the world economically, socially, and politically. However, severe delays at the consulates continue to hamper the visa issuance process, with serious consequences for businesses, families, schools and others in the United States. The gridlock that has paralyzed the visa issuance process in the past two year must be resolved – the agencies charged with clearing security checks must be motivated to give these operations the priority that they deserve.
- Refugees: To ensure that refugee and asylum adjudicators are properly trained, that there is a clear line of accountability from headquarters to the field on refugee protection matters, and that the flexibility to respond to refugee emergencies is maximized, the dedicated corps for Asylum and Refugee claims should be preserved within the Citizenship and Immigration Services structure, as should the policy-making mechanisms that support the corps' activities. Of great concern is the small number of refugees that have gained admission into the U.S. during the past two fiscal years. Although 70,000 slots were available for refugee admissions each fiscal year, only about 28,000 refugees were admitted to the U.S. during each year.
- Civil Rights Protections: While the law establishing the new department recognizes the need for internal oversight by creating a civil rights officer and a privacy officer, provisions in the bill do not go far enough to empower these officials to effectively protect civil rights and liberties. Such authority is vitally needed, given the scope and authority of the new agency.
- Ombudsman: The ombudsman should be empowered to: assist individuals and employers in resolving problems with USCIS, ICE and CBP; identify areas in which individuals and employers have problems in dealing with USCIS, ICE, and CBP; and propose changes in the administrative practices of USCIS, ICE and CBP to mitigate identified problems. The statute, however, restricts the Ombudsman to USCIS. Additionally, the Ombudsman should submit annual reports to Congress on problems and improvements within USCIS, ICE and CBP, and should be provided with sufficient funding to successfully fulfill the obligations of this position. Finally, the Ombudsman's office must be adequately funded to enable the opening of local offices, as contemplated by the HAS. At present, no such offices are planned because of the absence of funding.
- Congressional Oversight: The DHS's creation has generated questions about congressional oversight of our immigration functions. The Senate Judiciary Committee (chaired by Senator Orrin Hatch (R-UT) with Senator Leahy (D-VT) as Ranking Member) will maintain jurisdiction over all immigration laws. Senator Susan Collins (R-ME), chair of the Senate Governmental Affairs Committee, has indicated that her committee will play a close role in the oversight of the Department of Homeland Security, but that

Judiciary will continue its traditional role. Senator Saxby Chambliss (R-GA) chairs the Senate Immigration Subcommittee and Senator Edward Kennedy (D-MA) continues as Ranking Member.

The House created a Select Committee on Homeland Security (chaired by Representative Christopher Cox (R-CA), with Ranking Member Jim Turner (D-TX)). While the Select Committee was created as a temporary committee with discussions ongoing about making it permanent, it has been charged with coordinating the work of many House committees, and the jurisdiction of the House Judiciary Committee, chaired by Representative James Sensenbrenner (R-WI) and Representative John Conyers (D-MI) as Ranking Member, remains somewhat unclear. The House Subcommittee on Immigration, Border Security and Claims (formerly the Immigration and Claims Subcommittee) is chaired by Representative John Hostettler (R-IN), with Representative Sheila Jackson Lee (D-TX) continuing as Ranking Member.

Both the House and Senate have Homeland Security Appropriations Subcommittees. The House Subcommittee is chaired by Representative Hal Rodgers (R-KY), with Representative Martin Sabo (D-MN) as the Ranking Member. The Senate Homeland Security Appropriations Subcommittee is chaired by Senator Thad Cochran (R-MS), with Senator Robert Byrd (D-WV) serving as the Ranking Member.

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# AILA Issue Paper

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## AMERICA'S BORDERS: FROM OUR CONSULATES TO OUR PORTS OF ENTRY BALANCING OUR SECURITY AND ECONOMIC NEEDS

**THE ISSUE:** The Department of Homeland Security (DHS) took over operations at our nation's ports of entry and along our borders on March 1, 2003. The DHS must institute policies that enhance our security and facilitate the flow of legitimate cross-border travel and trade necessary for our nation's economic survival. The Homeland Security Act of 2002 (P.L. 107-296), which created the DHS, codifies this challenge. One of the department's seven primary missions is to "[e]nsure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland." Given this mandate, the DHS must develop the means to use technology and databases, the inspections process, and special programs at our borders to balance efficient legitimate travel and trade with our enhanced security needs.

**BACKGROUND:** The United States has over 300 ports of entry through which authorized travelers and commercial goods enter the country. In 2002, over 448 million people and over \$114 trillion in imports entered the U.S. through these ports. If the inspection of each of these entrants took a few seconds longer than it currently does, the ports (particularly land ports) would come to a grinding halt. The DHS thus has the challenge of streamlining current border procedures and evaluating future initiatives so that the border crossing processes are both more secure and efficient. Otherwise, security measures that do not take into account travel and trade could cripple our nation's economic viability and could lead to conditions that do not make us safer.

**Getting to the Border**—Visa holders currently are subject to security checks at multiple venues and times before they are permitted to enter the U.S. At consular offices abroad, foreign nationals are run through security checks using the Consular Lookout and Support System (CLASS). A DOS rule that went into effect on August 1, 2003 changed DOS policy for granting waivers for nonimmigrant visa applicant interviews so that most visa applicants would be subject to face-to-face interviews with a consular officer. The consular post also may send the foreign national's information to Washington, D.C. for security clearances by the Department of State (DOS) and other relevant agencies such as the Federal Bureau of Investigation (FBI). Because visas are not issued until the DOS gets an affirmative response from these agencies, long delays for visa issuances are now commonplace.

Certain U.S. consulates have begun enrolling nonimmigrant and immigrant visa applicants into the US-VISIT system when processing the new biometric visa. Individuals enrolled at the consulates will still be "visited" upon their entry to the U.S.: they will have their entry recorded via a biometric identity review. Only certain consular posts are issuing biometric visas. However, the State Department is required to start issuing these visas at all 211 consular posts by October 26, 2004.

Unless current law is changed by October 26, 2004, consulates also will have to start issuing visas for travelers from those visa waiver countries that are not issuing tamper-proof machine-readable passports (MRPs) with biometric identifiers. The Secretaries of State and Homeland Security have requested that Congress extend this deadline by two years. However, it remains unclear whether Congress will comply with their request. Indeed, Congressman James Sensenbrenner (R-WI) has introduced bipartisan legislation (H.R. 4417) that would extend the deadline by only one year.

**Arrival at the Ports of Entry**—After a visa is issued, most foreign nationals proceed directly to U.S. ports of entry. Some points of embarkation also are equipped with pre-inspection stations. These facilities require international cooperation.

Foreign nationals must go through primary inspection once they arrive at our ports of entry. Most nonimmigrants arriving via airports also are subject to US-VISIT (which is described in more detail in the following section). During primary inspection, inspectors examine passports and visa documents and run security checks using the Interagency Border Inspection System (IBIS), which interfaces with the DOS's CLASS database, as well as with FBI and Drug Enforcement Agency (DEA) databases. Based on this primary check, some foreign nationals are allowed to proceed into the U.S., while others are sent to secondary inspection for closer scrutiny. The secondary inspection process involves additional interviews, additional document screening, and more security checks through a battery of databases. A partial list of the databases utilized at this stage include: the National Automated Immigration Lookout System (NAIIS), which contains lookout information and access to several databases in order to give the inspector biographical and case data on foreign nationals who have been found inadmissible to the U.S.; the Central Index System (CIS); the Non-Immigrant Information System (NIIS); the Computer Linked Application Management System (CLAIMS); the National Crime Information Center (NCIC); and the Automated Biometric Identification System (IDENT).

Some land ports of entry have special technology-based programs that allow low-risk travelers to use special lanes. These technologies are used in a limited capacity and include the NEXUS and FAST programs along the Northern Border, and SENTRI along the Southern Border. Although each program differs slightly, they all are based on the same principle: pre-screen and identify low-risk travelers so that they may cross the border without having to go through the traditional inspections process. For example, the NEXUS programs allow applicants to be pre-screened and approved for entry into the U.S. Travelers are given a card containing their personal data and are allowed to cross the border using special dedicated commuter lanes. These lanes are equipped with technology that accesses the information on the card, and presents it to the inspector at the port of entry. This pre-clearance method has been efficient for those enrolled in the program. However, becoming enrolled in the program is a challenge due to the time it takes to process an application and the fact that applications can be denied for very minor customs violations. Due to the stringent nature of the application process, one out of every thirty applications is denied, and no mechanism exists to appeal a denial.

**US-VISIT**—The DHS has started implementing the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT), an entry-exit system designed to register foreign nationals each time they cross the border. This program is designed to collect information, confirm identity, measure security risks and assess the legitimacy of travel. Ultimately, the information captured through US-VISIT would be available at the ports of entry and throughout the entire immigration enforcement system. The system would also track changes in a foreign national's immigration status and make updates and adjustments accordingly. However, many issues, which are noted below, remain to be addressed.

As originally set forth in Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208) (IIRAIRA), the entry-exit system would have applied to all non-U.S. citizens who enter or exit the United States at any port of entry. The Data Management Improvement Act of 2000 (DMIA) (P.L. 106-215) subsequently altered this system and merged the entry-exit system with a searchable centralized database, prohibited INS from introducing new entry or exit documentary requirements on any visitors to the country (such as Canadians), and staggered the entry-exit implementation deadlines into three groups:

- Airports and seaports-- December 31, 2003
- Top 50 high traffic land border ports-- December 31, 2004
- Remaining implementation for all other ports-- December 31, 2005

In 2001, Congress in the PATRIOT Act (P.L. 107-56) mandated that the entry-exit system include the use of biometric technology and tamper-resistant documents readable at all ports of entry. Later that year, with the passage of the Enhanced Border Security and Visa Entry Reform Act (P.L. 107-173), Congress finally addressed the entry-exit system as a program that balances security with the economic realities of our busy ports of entry. To strike this balance, the Act includes a provision that mandates that the program utilize technologies that facilitate the efficient flow of commerce and travel. This provision is extremely important because a system that impedes travel across the borders would shut down our borders. For example, the Ambassador Bridge in Detroit daily handles about 30,000 vehicle crossings. Experts have testified that taking 30 seconds per car, with only half of the 30,000 cars going through the inspections process, would, in effect, shut down this port of entry: cars would have to wait roughly three days just to enter the U.S.

At this time, US-VISIT only applies to nonimmigrant visa holders. However, starting September 30, 2004, visa waiver program participants will be subject to US-VISIT. Canadians entering without visas and those Mexican nationals who do not require an I-94 and enter with a laser visa will remain exempt from US-VISIT. The first phase of US-VISIT was implemented at select airports and seaports on January 5, 2004. US-VISIT entry capabilities went into effect at 115 airports and 14 seaports, and US-VISIT exit checks were established at the BWI airport in Baltimore, Maryland and the Miami seaport. In the air and seaports, visa holders entering the U.S. will be processed through the US-VISIT program during primary inspections. Upon entry, the nonimmigrant visa holder's travel documents will be scanned; a photo and index fingerprints will be taken and checked against databases such as IBIS and the watch lists. Information will be collected on immigration and citizenship status; nationality; country of residence; and the person's address while in the United States. An IDENT biometric database check will be performed after the individual is admitted to the U.S. If a nonimmigrant visa holder departs the U.S. from a port with US-VISIT exit capabilities, the individual will have to input his or her departure information, visa data and fingerprints into the US-VISIT system through an automated self-service kiosk (similar to an ATM machine).

Unless Congress acts to delay the implementation of US-VISIT deadlines, DHS will be required to expand the entry/exit program to the top 50 high traffic land border ports by December 31, 2004 and to the remaining ports of entry by December 31, 2005. Expanding US-VISIT to land ports of entry raises a multitude of issues beyond those that arise at airports, and presents a host of infrastructure, staffing, and database challenges.

In contrast to airports, land ports must deal with pedestrians, passenger vehicle occupants, and commercial vehicle occupants. DHS has indicated that enrollment in US-VISIT at land ports of entry would occur in secondary inspection, and the exit procedure likely would utilize radio frequency (RF) technology. DHS currently is investigating the use of RF technology, which would transmit biographical information to the inspections officer, in order to speed processing of automobile traffic. This technology would presumably also link to the US-VISIT databases and watch lists.

Even if such a technology is available by the end of the year, it is unclear how efficiently US-VISIT will operate at the land borders given the infrastructure constraints. According to the DMIA Task Force's Second Annual Report to Congress, 64 ports have less than 25% of the required space; 40 ports have between 25 and 50% of the required space; 13 ports have between 50 and 75% of the required space; and some existing ports lack "any land for expansion."

**NSEERS**—As part of the entry process, certain foreign nationals have to register with the National Security Entry Exit Registration System (NSEERS). This system is designed to register and keep track of arriving nonimmigrants from Iran, Iraq, Sudan, and Libya, and certain male nonimmigrants from Pakistan, Saudi Arabia, and Yemen. Nonimmigrant aliens from other countries may be required to register if they match current intelligence characteristics or database searches, have made unexplained trips (especially if the countries visited include certain middle Eastern countries or other countries such as North Korea or Cuba), or have previously overstayed their period of admission in the United States. Inspectors also have the

authority to register any nonimmigrant at their discretion. Accounts of the registration process at the border indicate that it can take several hours, and the questions asked can be very intrusive. Once the registrants enter the country, DHS may notify a particular individual to appear before immigration officials to re-register and for additional interviews. Persons subjected to Special Registration must register their departure with NSEERS and must leave the U.S. through a designated port of departure. Those who fail to comply with departure control rules under NSEERS may be subject to future inadmissibility to the United States.

**Management of U.S. Ports-of-Entry**—Under the DHS, the management of the Border Patrol, primary and secondary inspections, and immigration investigations falls under the jurisdiction of the Bureau of Customs and Border Protections (CBP). This bureau consists of 30,000 employees formerly from the Agricultural Quarantine Inspection program, INS inspection services, and the Customs Service and is headed by Commissioner Robert Bonner, former U.S. Customs Commissioner. Commissioner Bonner reports directly to the Under Secretary for Border and Transportation Security, Asa Hutchinson. However, the Bureau of Immigration and Customs Enforcement (ICE) has an important, though surprising role, at our nation's border.

Prior to March 1, 2003, the ports of entry were managed by separate chains of command and inspections personnel from both Customs and INS. CBP, on March 1, became the sole governmental presence along the border and at the ports of entry and has the mandate to fuse the old agencies' chains of command at each port of entry into one common chain and put all inspectors under a single port director. While U.S. Citizenship and Immigration Services (USCIS) is responsible for handling benefit adjudications, applications for asylum and other immigration benefits and customer service functions, USCIS will not have a presence at the border. Rather, the CBP inspectors are being cross-trained on adjudications.

CBP is continuing its border consolidation efforts with its "One Face at the Border" program. This program will establish a new position of CBP Officer to interact with all border traffic and goods. The new position is expected to go into effect in the Spring/Summer of 2004. According to CBP reports, the new CBP Officer will be responsible for primary and secondary inspections and will not have the assistance of an immigration specialist. Given the complex immigration issues arising at our nation's ports of entry, the absence of such an immigration specialist raises concerns regarding the treatment of foreign nationals at our borders. Furthermore, it is unclear why CBP refused to create an immigration specialist position when it clearly recognized that specialists were need for other substantive areas, such as agriculture.

**AILA's POSITION:** Each action the DHS takes at our borders should be examined in light of how the agency balances our enhanced security needs with the efficient flow of travel and trade. Such a balance demands sufficient appropriations along with the following:

**1. Reduce delay at the border through the use of interoperable technology and pre-screening activities that receive sufficient funding:** The DHS should examine ways to expand the use of pre-inspection stations and authorize pre-clearances for low-risk travelers. Clearing travelers before their voyage to the United States gives inspectors more time to scrutinize each applicant for entry, reduces delays at the border, and provides international travelers with a sense of certainty that they will be admitted into the U.S. AILA also supports the department's efforts to increase the interoperability of the DHS database systems and other agencies' database systems to give inspectors a more thorough review of each applicant requesting entry into the U.S. A complete and accurate database system would also include a mechanism for correcting database errors, which is currently extremely difficult to achieve. Having incorrect information only serves to hinder the inspections process and discredit the reliability of the security checks. Such initiatives will require sufficient funding to succeed. The department should make this objective a top priority.

**2. Coordinate CBP policies at the Border with CIS:** Enforcement and adjudications come together at our ports of entry. Our national security and economic security depend on the efficient movement of cross-border travel and trade at these ports. As the CBP develops its policies and procedures, it must prioritize its

coordination with USCIS. Furthermore, CBP inspectors and investigators must be knowledgeable about the policies and practices of the CIS. To ensure consistent policies, key responsibilities should reside with the CIS personnel present at each port. Failure to take these actions will result in inconsistent adjudications, which will have a deterrent effect on international travel to the U.S.

**3. Develop and adequately fund a workable entry-exit system:** As our entry-exit system, US-VISIT must enhance our security and allow the flow of people and goods to support our economy. Such a system needs to be adequately funded. The U.S. government needs to appropriate billions of dollars to purchase real estate, upgrade facilities, develop an infrastructure and technological capabilities, and hire inspectors to manage the program. This cost includes neither the millions of dollars needed to fully address current staffing shortages of inspectors at ports of entry nor the money now needed to supply all ports with basic technology such as document readers. With a preliminary estimated price tag of billions of dollars, the \$380 million appropriated in fiscal year 2003 is grossly insufficient to fund even the beginning of this system.

While having a program in place is desirable, having a functional and reliable program is necessary. US-VISIT does not appear to be adequately funded. Once it is fully operational, it could triple or quadruple the interview time that is currently in place at ports of entry, resulting in serious delays in DHS's ability to clear incoming flights. Such delays would undermine the entire effort to maintain an efficient border, and efficiency is a vital component of increased security. In addition, the separate databases from the three immigration bureaus have not been fully integrated into US-VISIT. Due to this lack of information transfer, visitors who have applied for visa extensions might be detained for overstaying their visas, when in reality, they had maintained proper visa status. Having complete and correct information will make the difference between having a workable secure system or a discredited inefficient one.

While US-VISIT is still in its infancy, database studies and reports should be completed on the feasibility of every aspect of the program. The Administration and Congress should use that information to develop a comprehensive plan that takes into account adequate funding, resources and appropriate deadlines, and determine whether the same level of security could be obtained through increased intelligence and database security checks performed outside the country.

# AILA Backgrounder

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## ACCESS TO COUNSEL

Access to counsel is a hallmark of our democracy. Unfortunately, many noncitizens are now being denied this access at our nation's ports of entry and in the interior of our country. The government's immigration policies have changed rapidly and dramatically in the post-9/11 era, triggering serious concerns about the infringement of immigrants' fundamental rights. Indeed, the Department of Justice (DOJ) Inspector General's report on immigrant detentions after 9/11 provides a scathing critique of immigration enforcement and detention practices, outlining a handful of clear constitutional violations. The migration of the government's immigration functions (except for the immigration court system) from DOJ to the Department of Homeland Security (DHS) has only exacerbated concerns about denial of access to representation.

In the post-9/11 environment, including the new administrative immigration regime, the need for a meaningful and enforceable right to legal representation has assumed new importance. Immigrants often lack the language skills and the necessary understanding of our legal processes to adequately present their cases, protect their interests, and preserve their rights. Not only can counsel help individuals assert their claims and protect their interests, counsel also plays an important role in facilitating and streamlining the admission process. Counsel's participation promotes efficiency and encourages correct decision making.

Immigration officers have the power to make decisions that can fundamentally alter a person's life. Decisions to remove or deny entry to individuals can tear families apart, deprive people of their livelihood, or return them to situations where they face persecution. The magnitude of these decisions underscores the need for and importance of ensuring access to counsel for noncitizens both at the border and in the interior.

## REPRESENTATION IN IMMIGRATION MATTERS ADJUDICATED AT PORTS OF ENTRY

**Background:** Asylum seekers, business persons, relatives of U.S. citizens and other legal U.S. residents routinely are denied access to legal counsel in immigration-related matters at our nation's ports of entry. Since 1980, the Immigration and Naturalization Service (the functions of which have now migrated to the Department of Homeland Security (DHS)) has maintained that individuals applying for entry to the U.S. have no right to counsel at the border unless taken into custody as the focus of a criminal investigation. The INS based this position on its view that the ultimate power to determine whether someone is admissible or excludable rests in the administrative hearings that take place subsequent to an inspection at the border. It is at these hearings, according to the immigration agency, that the right to legal representation attaches.

However, the expedited removal provision in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) eliminates all avenues for administrative or judicial review for many applicants for admission. (The "expedited removal" provision is a mechanism for turning away arriving aliens who the government alleges have made a material misrepresentation during the entry process or who lack the required documentation for entry.) Using this draconian procedure, an inspections officer can bar a person from entering the United States for five years or life, depending upon the particular ground(s) alleged in the case. An individual inspections officer prepares and implements the decision to order a person removed with no opportunity for further administrative or judicial review of the order.

**Issue:** The Administrative Procedure Act (APA) mandates that a person compelled to appear before a federal agency is entitled to be represented by counsel or a qualified representative. Specifically, the APA

contains sweeping language assuring a right to representation in administrative matters before agencies of the United States. The provision states:

A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. (5 U.S.C. §555(b)).

Despite the APA's assertion of a right to representation by counsel, a proviso posted to the Federal Register in 1980 maintains that this right is superfluous at primary or secondary inspections because individuals will have access to counsel in subsequent administrative proceedings. The Federal Register notice announcing this regulation states:

The right of representation does not apply to a person who is being processed through primary or secondary inspection at a port of entry....While the inspector has authority to admit an applicant for entry, he is not authorized to finally bar the alien....Subsequent administrative proceedings will determine whether or not an alien is admissible or excludable and it is at this point that the alien has the right to representation. (45 Fed Reg. 81732 (Dec. 12, 1980)).

However, the expedited removal provision in IIRAIRA precludes the opportunity for subsequent administrative hearings by providing the inspector with final authority to bar an alien from entering the United States for five years or life (depending upon the particular ground(s) alleged in the expedited removal order). The inspector prepares the order of expedited removal which is subject only to review by a supervisor, who must concur with the decision for the removal to be effective. There are no avenues of administrative or judicial review available to challenge orders of expedited removal.

Significantly, the government has not limited access to counsel in other border-related inspections. For example, there are no bars to representation in customs-related matters at the border. Attorneys and customs brokers (representatives authorized by regulation in customs-related matters) frequently provide valuable on-site assistance in clearing goods at the border, a reality that is readily acknowledged (and appreciated) by government officials. Thus, current border practices allow forty-foot freight containers to have expert representation regarding their entrance to this nation, while asylum seekers, business persons and other visitors are denied such assistance when confronted with equally complex situations.

**AILA's Position:** Access to counsel at the border can help guarantee that the government's broad powers to admit or bar noncitizens from entry are not used improperly or arbitrarily. The denial of access to counsel in situations where persons may be barred forever from the United States without appeal clearly violates the APA and contravenes fundamental due process principles. Given the expansive application of expedited removal procedures at the border and ports of entry, this denial of access to counsel is now ubiquitous and the government's rationale for this policy (representation will be permitted at "subsequent administrative hearings") is no longer supportable. The government has failed to offer any reasons for continuing to deny access to counsel. Congress should pass legislation affirming that the APA's guarantee of access to counsel applies to immigration matters at the border.

## **REPRESENTATION IN IMMIGRATION MATTERS IN THE INTERIOR SINCE 9/11**

**Background:** Actions taken by DOJ officials and DHS officials during the post-9/11 period and the call-in registration program evince an agency mindset that the right to counsel is somehow discretionary and subsidiary to other agency prerogatives. In addition, the Attorney General for the first time unilaterally expanded the expedited removal program to individuals in the interior of our country.

As reported in the June 2, 2003, DOJ Inspector General's Report, in the wake of 9/11, many foreign nationals were detained without charges for extended periods of time and were prevented from any meaningful contact with legal counsel. Denial of access amounts to denial of counsel. Furthermore, numerous reports from attorneys representing individuals subject to the NSEERS call-in registration program indicate that their clients were frequently denied access to counsel during interviews and questioning. These reports were reinforced by a spokesman for the INS, Bill Strassberger, who indicated that INS did not believe that immigrants possessed a right to counsel during the booking process, even if questioning takes place during that process. Finally, on November 13, 2002, the Attorney General issued a Notice in the Federal Register expanding application of the expedited removal procedures to any alien who arrives in the U.S. by sea, without inspection, and who has not been physically present in the U.S. for at least 2 continuous years prior to the determination of inadmissibility. Accordingly, for the first time, the government has instituted a policy that will prevent individuals already here in the U.S. from obtaining legal representation during removal proceedings.

**Issue:** The right to counsel has been recognized for individuals placed in removal proceedings after entering the U.S. Indeed, a right to counsel for immigrants in removal proceedings is protected by federal regulation, statute, and the Constitution. Section 292 of the Immigration and Nationality Act (INA) explicitly provides that a right to counsel (at no expense to the government) exists during removal proceedings before an immigration judge.

This right has been difficult to enforce in the post-9/11 era because the government largely has adopted the attitude that foreign nationals with immigration problems should be treated like terrorists. The Supreme Court has established the clear principle that constitutional due process applies to all "persons" in this country, including noncitizens. The government's efforts to impede and circumvent foreign nationals' access to legal counsel are tantamount to an assault on that principle.

**AILA's Position:** The right to legal representation for noncitizens facing removal from the interior of this country is well established. Moreover, as a practical matter, in these times of rapidly changing immigration policy, attorneys with expertise in the field are indispensable to ensure the protection of immigrants' substantive and procedural rights. Expansion of expedited removal proceedings to individuals already here in the U.S. moves us in precisely the wrong direction by circumventing the right to representation. Likewise, actions by immigration authorities that materially interfere with access to counsel diminish and devalue the right, increasing the likelihood that the right will be further degraded going forward.

Congress should move to strengthen the right to counsel by prohibiting expedited removal of noncitizens already present in the interior. Congress also should make intentional agency denials of access to counsel an actionable offense.

# AILA Backgrounder

## THE 1-800 NUMBER: A CASE OF CUSTOMER DISSERVICE

**PREVIOUS POLICY:** Until June 9, 2003, the general public and attorneys were able to contact representatives at the legacy INS/BCIS Service Centers to ask questions about the status of their cases, clarify and correct problems, and inquire about filing procedures. While this system was infamous for the length of time required to get through to an Immigration Information Officer (IIO), nevertheless, once connected with an IIO, problems and questions, including emergency case problems, were addressed with little or no difficulty. Typical problems addressed by the IIOs included an incorrect name on an approval notice, a case pending longer than the normal processing times, or failure to receive a receipt for a petition or application filed with the Service Center.

**CURRENT POLICY:** Beginning on June 9, the BCIS cut off direct phone access to the Service Centers and directed that callers (both the general public and attorneys) make inquiries through a 1-800 number system. However, as structured, the system is a failure because it does not provide a meaningful way to resolve problems. The operators on the 800 number are outside contractors unfamiliar with immigration and are given very basic “scripts” from which to field calls. They have access only to information provided on the BCIS website’s case status inquiry system. In other words, they cannot tell a caller anything more than what the caller can see on-line. Given the problems with this system, Congressional offices are reporting an upsurge of immigration-related requests from constituents.

Under the new policy, 800 number operators can transfer calls to a “Second Tier” information officer—a BCIS employee who is familiar with immigration issues—or can take information from callers in order to refer the inquiry to the appropriate Service Center. These options have not helped to address problems and do not allow immediate action on emergency cases, such as an aging-out child. Operators are restricted as to the types of cases that they can refer to the Service Centers or to Tier 2, and often direct callers to write a letter to the Service Center after informing them that there isn’t anything the operator can do. However, immigration attorneys have found that letters to Service Centers often go unanswered or, at best, languish for months before a response is received. In the event that a caller’s request falls within the designated types of problems that can be referred, the caller is then told to wait for 30 days. If no response is received within that time frame, the caller is directed to call the 800 number again. In many cases, no response is received, or the response is non-informative.

The 800 number system also cannot correct inaccurate information on an approval notice. In the past, individuals could call the Service Center to request that such errors be corrected, and a new approval notice could be issued the same day or within just a few days. (Individuals who must apply for visas at U.S. Consulates or travel abroad and return to the United States must have approval notices that are, for security reasons, 100% accurate.)

Finally, 800 number operators have given inaccurate information to callers (which could severely damage the foreign national’s immigration status) and many people have complained that operators were rude and hung up on them.

**AILA SURVEY RESULTS:** Five hundred responses were received to a survey posted on AILA’s website that sought information on callers’ experiences with the INS/BCIS 8000 number system. Problems noted included:

- Operators simply reporting what was on the BCIS website, and refusing to meaningfully discuss the problem;
- Operators giving out incorrect information and advice;
- Operators not knowledgeable about even basic immigration concepts;
- No mechanism to resolve urgent/emergency problems;
- Operators directing callers to write to the Service Center, a process long considered futile and, at best, one causing lengthy delays in processing with the result being that pressing matters are not addressed in time;
- People forced to endure unnecessary delays because the 800 number operators could not access the file at the Service Center. Callers were then made to wait to receive a written answer to the inquiry, which answer then turned out to be uninformative;
- Operators unable to resolve simple corrections on forms;
- Many complaints about operators being rude, and hanging up on callers;
- People never receive a receipt from the Service Center for the filed petition and/or application. The 800 number operators are completely unable to confirm whether the petition or application has been received by the Service Center.

# AILA Sign-on Letter

September 4, 2003

The Honorable Tom Ridge  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

The Honorable Eduardo Aguirre, Jr.  
Director  
Bureau of Citizenship and Immigration Services  
Department of Homeland Security  
425 Eye St. NW  
Washington, DC 20536

Dear Messrs. Ridge and Aguirre:

The undersigned organizations strongly urge you not to outsource the BCIS Immigration Information Officer (IIO) function. To do so would raise serious issues of sufficiency of knowledge, accountability, and efficiency. Clearly, the problem-laden immigration benefits system is badly in need of change. However, outsourcing IIOs will only worsen the situation for individual applicants and ultimately affect the public accountability of BCIS. Instead, we urge you to review the information function's internal structure and resource allocation, rather than take the seemingly easy, but ultimately harmful, step of outsourcing this key operation.

Problems with Contractors: Two examples of the current use of outside contractors bode ill for expanding this practice to the IIO function. First, service centers now use contractors to provide intake of filings. Contracting out this function has led to filings being rejected because contractors do not understand immigration rules, erroneous entry of data because the contractors do not understand the nature of what is being entered—data that then haunts the case throughout the process, and separation or removal of documents in the mail room because the contractors do not understand the nature of the documents.

Recent experience with the BCIS' National Customer Service Center (NCSC) offers another example of the negative impacts of contracting out immigration functions, and the differences that result from using an outside contractor rather than a trained BCIS employee. Until just a few months ago, BCIS-employed IIOs at the service centers handled inquiries about problems encountered with individual cases. In June, all such telephone access was cut off, with all inquirers instructed to call the NCSC's 800 number. The contrast has been profound, with resulting problems ranging from the frustrating and time-wasting to truly damaging errors. Before the June changeover, IIOs readily solved the majority of these problems. Operators who now answer the calls know nothing about the subject of the call and rarely provide assistance. These operators work from scripts, frequently cannot even identify which script they should be using, and are rarely able to provide meaningful assistance. In fact, they often provide answers that convey a clear misunderstanding of the subject matter with which they are dealing.

Knowledge: Because the vast majority of those who file applications with BCIS are unrepresented, most must find their own way through an astonishingly complex system, with their first, and often only, contact being the Information Officer who provides them with the appropriate forms and advice on how to navigate the process. These officers are trained in immigration, and are supported by others who provide information when needed. In contrast, in those instances in which

INS/BCIS has used contractors, they have received inadequate training or, perhaps more importantly, lack substantive back-up and support. While direct employees, like everyone, also can make errors, the volume and severity of the errors tend to be lower when the employee is trained and supervised by persons with knowledge in the field.

Knowledge of immigration is important: even determining what form to dispense involves understanding the person's immigration situation and what is needed to resolve the situation. This knowledge cannot be taught through lists and scripts: officers must understand the myriad of situations with which they are daily presented, and have a line of command that can help resolve the situation.

People's lives depend on accurate information from government agencies, especially when immigration is involved. Using a contractor for the very function by which this information is disseminated will affect BCIS' credibility in all reaches of this society.

Accountability: Contracted personnel do not possess this knowledge. Nor, given past practice, will they be held accountable for the quality of their work. Rather, they will be held accountable only for the number of inquiries answered each day. Currently, because service center intake contractors do not report to the service center managers, the BCIS managers are unable to direct the contractors' day-to-day work, and the contractors' managers have no immigration background. The result is that contractors are accountable to BCIS management only for production output quotas, and not for work content. Such a situation is irrational when the very essence of the job is the subject matter of the agency.

This lack of accountability has created enough problems with work that does not require immigration knowledge: opening mail and inputting initial data at the service centers, the work of the current contractors. By contrast, IIO work involves almost 100% knowledge of immigration.

Again, we have already seen this problem manifested in the 800 number. Many callers are abruptly cut short or hung up on before their problem can be addressed, undoubtedly because operators are more concerned with meeting production quotas, the area for which they are held accountable, than with providing accurate information -- an area for which it is nearly impossible to make an outside contractor accountable.

Efficiency And Cost Savings: Past use of outsourcing immigration service functions has not led to efficiencies or cost savings because service centers have had to respond to contractors' errors in inputting data by requiring their own employees to check their work and, in many instances, re-do it. Because employees with the requisite knowledge and accountability have had to perform part of the contractor's work, a significant proportion of the anticipated savings from using contractors has been lost because direct employees have had to "shadow" that work. Such shadowing often has not reflected in the studies of cost savings from outsourcing, yet reflects a significant agency cost.

Outsourcing is not the solution: Much needs to be done to improve the BCIS' customer service operation, but the use of outsourcing is plainly not the solution. As noted above, we urge you to look at the internal structure and resource allocation for the information function.

Sincerely,

National Organizations

American-Arab Anti-Discrimination Committee (ADC)  
American Friends Service Committee

American Immigration Lawyers Association  
Arab American Institute  
Asian Law Caucus  
Episcopal Migration Ministries  
Hebrew Immigrant Aid Society (HIAS)  
Immigrant Legal Resource Center  
Immigration and Refugee Services of America/U.S. Committee for Refugees  
League of United Latin American Citizens (LULAC)  
Lesbian and Gay Immigration Rights Task Force  
Lutheran Immigration and Refugee Service (LIRS)  
National Asian Pacific American Legal Consortium  
National Council of La Raza  
National Immigration Forum  
United Jewish Communities  
World Relief

### Local Organizations

Alivio Medical Center (Chicago, IL)  
Arab-American Family Support Center, Inc. (Brooklyn, NY)  
Arab Community Center for Economic & Social Services (ACCESS) (Dearborn, MI)  
Asian Pacific American Legal Center of Southern California  
Association of the Jews from the FSU (Milwaukee, WI)  
Brazilian Immigrant Center (Allston, MA)  
Center for Hispanic Policy & Advocacy, CHisPA (Providence, RI)  
Centro Presente, Inc. (Cambridge, MA)  
Centro Salvadoreno (Hempstead, NY)  
Florida Immigrant Advocacy Center, Inc. (Miami, FL)  
Hispanic Chamber of Commerce of Minnesota  
Hispanic Democrats (Mecklenburg County, NC)  
Illinois Coalition for Immigrant and Refugee Rights (Chicago, IL)  
Immigrant Rights Network of Iowa and Nebraska  
Independent Monitoring Board (Chicago, IL)  
International Institute of New Jersey (Jersey City, NJ)  
Jewish Family Services (Milwaukee, WI)  
La Esperanza, Inc. (Georgetown, DE)  
Labor Council for Latin American Advancement, Massachusetts Chapter  
Latin American Community Center (Wilmington, DE)  
Maine Rural Workers Coalition  
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)  
Massachusetts Law Reform Institute (Boston, MA)  
Milwaukee Jewish Council (Milwaukee, WI)  
Na Loio - Immigrant Rights and Public Interest Legal Center (Honolulu, HI)  
Nebraska Mexican American Commission (Lincoln, NE)  
Nevada Hispanic Services, Inc.  
New Immigrant Community Empowerment (NICE) (Jackson Heights, NY)  
Northwest Immigrant Rights Project

PROGRESO HISPANO (Alexandria, VA)  
Rhode Island Coalition for Immigrants and Refugees  
St Francis House (Boston, MA)  
Shorefront YM-YWHA of Brighton-Manhattan Beach, Inc. (Brooklyn, NY)  
Southeast Asian Mutual Assistance Associations Coalition (Philadelphia, PA)  
Southwest Iowa Latino Resource Center (Red Oak, IA)  
Voces de la Frontera: Workers Center (Milwaukee, WI)  
Washington Defender Association's Immigration Project (Seattle, WA)

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# AILA Press Release

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## AMERICAN IMMIGRATION LAWYERS ASSOCIATION

FOR IMMEDIATE RELEASE  
April 15, 2004

Contact: Julia Hendrix (202) 216-2404  
[jhendrix@aila.org](mailto:jhendrix@aila.org)

### **Increased Fees Will Not Do the Job**

Statement of the American Immigration Lawyers Association (AILA) on USCIS Fee Increase

The U.S. Citizenship and Immigration Services (USCIS) bureau of the Department of Homeland Security today issued regulations which will increase some immigration application fees by over 55 percent, becoming effective April 30, 2004. Contrary to a statement by USCIS Director Eduardo Aguirre that increased fees will enhance USCIS' service, fees will not solve the current problems that USCIS faces. While Mr. Aguirre has indicated that this fee increase will help them to meet their current processing challenges, in fact the increase will allow them to barely continue to tread water. What are needed are direct Congressional appropriations to supplement user fees, a long-standing position held by AILA. Adjudications are as much in the national interest as enforcement, and thus merit this direct and reliable source of funding. USCIS services play a vital role in our nation's national security by identifying who is allowed into the country and who uses USCIS resources. Fee-based funding does not work for American security, American families, or for American businesses.

Everyone is aware of the steady decline in USCIS' services. Mr. Aguirre has acknowledged those problems, but his solution goes in the wrong direction, flying in the face of what should have been learned in the past years of processing backlogs. These backlogs today have reached crisis proportions, delaying business transactions and separating families for months and years. In addition, the bureau continues to waste its limited resources revisiting issues already resolved and harassing honest petitioners with requests for paperwork unrelated to their immigration eligibility. USCIS' newly implemented toll-free number, the public's only available avenue to resolve government errors and problems, has been a failure in that regard, with immigrants and attorneys alike highly critical of the contractor-run program. Making matters worse, the fee increases will be used to fund a study on the effectiveness of the 1-800 number service – which we already know to be a failure – to pay for costs of court cases the Service has lost, and to fund support positions that previously were funded through direct Congressional appropriations.

AILA calls on Congress and the Administration to learn from the past. They need to step up to the plate and change how they fund adjudications by directly appropriating funds to supplement user fees. The current funding system is deeply flawed and needs to be changed. Increased immigration application fees will not do the job. Fixing an overburdened system needs serious attention and serious funding.

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Founded in 1946, AILA is a nonpartisan, nonprofit organization that provides its Members with continuing legal education, information, and professional services. AILA advocates before Congress and the Administration and provides liaison with the DHS and other government agencies. AILA is an Affiliated Organization of the American Bar Association.  
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# AILA Press Release

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## AMERICAN IMMIGRATION LAWYERS ASSOCIATION

FOR IMMEDIATE RELEASE  
February 27, 2004

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OR  
Julia Hendrix  
[jhendrix@aila.org](mailto:jhendrix@aila.org) (202) 216-2404

### **A YEAR IN REVIEW: THE DEPARTMENT OF HOMELAND SECURITY**

March 1, 2004 marks the one-year anniversary of the Department of Homeland Security's (DHS's) assumption of U.S. immigration functions. The American Immigration Lawyers Association offers this assessment:

- **Inadequate Coordination:** Because enforcement and adjudications are two sides of the same coin, AILA has strongly recommended that DHS closely coordinate these two functions that were separated when our immigration functions were reorganized within the DHS. However, close coordination continues to be an unrealized goal within the DHS and between the DHS and other federal agencies including the State Department, Department of Justice, FBI, and CIA.
- **Inadequate Funding:** Inadequate funding long has characterized adjudications. Especially in light of this historical underfunding, it is imperative that the US Citizenship and Immigration Services (USCIS) be accorded adequate resources to do its job. AILA long has supported direct congressional appropriations to supplement the user fees that almost totally fund the USCIS. Such direct congressional appropriations are necessary in order to ensure that the USCIS lets the appropriate people into the country and bars those who mean to do us harm, and adequately delivers services. However, the Administration's FY 2005 budget proposal of \$140 million (to supplement user fees) is inadequate. Increasing applicant fees is not the way to put this agency on a firm financial footing. Yet, the agency has proposed fee increases for FY 2005 that would not even touch the backlog. At a time when the quality of service is at an historic low, increases of this magnitude are difficult to justify. Adding insult to injury, the proposed fee increase would force applicants to pay for these failures.
- **Change the Culture of "No" and Eliminate Delays:** Widespread reports of unfair, arbitrary and inconsistent adjudications have reinforced the perception that adjudicators' "fall back" position is "no," notwithstanding the merits of the petition or application. Reinforcing this view are the increased numbers of unnecessary requests for additional information that contribute to the dramatic slowdown in the processing of petitions and applications. While our immigration system has long been characterized by backlogs, delays, and inadequate funding, current backlogs and delays have reached historical levels. Many organizations and individuals are reporting severe delays in processing that have negatively impacted American business and family members. USCIS needs to efficiently and fairly adjudicate petitions and applications.

- **Recognize the Importance of Immigration at our Ports of Entry:** Enforcement and adjudications come together at our ports of entry. Our national and economic security depends on the efficient flow of people and goods at these ports. Unfortunately, current reports suggests that the Custom and Border Protection Bureau (CBP) is giving inadequate attention to immigration and is initiating policies that do not reflect the intricacy of the subject and its importance to our country. To take one example, the “One Face at the Border” program does not ensure that an immigration specialist will be available at secondary inspections. The proposed expansion of US VISIT to our land ports-of-entry is also troubling due to the lack of clarity about the function of this program, inadequate funding and training of staff, impossible deadlines, unresolved issues regarding technology, and other concerns.
- **Fix the Delays at our Consulates:** With the Department of Homeland Security’s authority to establish and administer rules governing the granting of visas, it is vitally important that visas be granted to the people who come to build America and denied to those who mean to do us harm. We must balance our national security and economic security needs by recognizing that the U.S. is tied to the rest of the world economically, socially, and politically. However, severe delays at the consulates continue to hamper the visa issuance process, with serious consequences for businesses, families, schools and others in the United States. The gridlock that has paralyzed the visa issuance process in the past two years must be resolved – the agencies charged with clearing security checks must be motivated to give these operations the priority that they deserve.
- **Support and Expand the Role of the Ombudsman:** The ombudsman should be empowered to: assist individuals and employers in resolving problems with USCIS, ICE and CBP; identify areas in which individuals and employers have problems in dealing with USCIS, ICE, and CBP; and propose changes in the administrative practices of USCIS, ICE and CBP to mitigate identified problems. The statute, however, restricts the Ombudsman to USCIS. Additionally, the Ombudsman should submit annual reports to Congress on problems and improvements within USCIS, ICE and CBP, and should be provided with sufficient funding to carry out successfully the obligations of this position.
- **Grant Admission to More Refugees:** Of great concern is the small number of refugees that have gained admission into the U.S. during the past two fiscal years. Although 70,000 slots were available for refugee admissions each fiscal year, only about 28,000 refugees were admitted to the U.S. during each year.
- **Civil Rights Protections are Needed:** While the law establishing the new department recognizes the need for internal oversight by creating a civil rights officer and a privacy officer, provisions in the bill do not go far enough to empower these officials to effectively protect civil rights and liberties. Such authority is vitally needed, given the scope and authority of DHS.

While many, including AILA, have been strongly critical of the DHS’s performance in a number of areas, it is both unfair and inaccurate to point fingers at DHS alone. Congress and the Administration need to step up to the plate and take responsibility for how DHS has functioned. The Department of Homeland Security cannot succeed in its mission if it is confronted with conflicting, unfunded, underfunded and complicated mandates.

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# AILA Press Release

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## AMERICAN IMMIGRATION LAWYERS ASSOCIATION

**FOR IMMEDIATE RELEASE**

May 21, 2003

**Contact:**

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(202) 216-2403

### **U.S. VISIT: We Need to Learn from Our Mistakes**

**Washington, DC-** A May 19 announcement by Asa Hutchinson, Under Secretary of the Border and Transportation Directorate of the Department of Homeland Security (DHS), highlights new details about the United States Visitor and Immigrant Status Indicator Technology program (U.S. VISIT), the new automated entry/exit system which will be implemented at our nation's borders. The overall plan of U.S. VISIT calls for the collection of personal data, photos, fingerprints at U.S. consular offices abroad, as well as broad database and information sharing. "Having complete and correct information will make the difference between having a workable secure system or a discredited inefficient one. The American Immigration Lawyers Association (AILA) encourages DHS to make this objective a top priority," said Jeanne Butterfield, Executive Director of AILA.

However, AILA is deeply concerned about U.S. VISIT's implementation. "We need to learn from our mistakes, said Butterfield. "In the past, Congress gave the Immigration and Naturalization Service (INS) difficult mandates, inadequate funding, and insufficient time to get the job done. On its part, the INS developed programs that did not take into account the realities of the problems they were facing. Such deficiencies are evident here, given both Congressional actions and the implementation plan that DHS has developed," continued Butterfield.

What are these concerns? "AILA believes that the timeframe Congress has set for the establishment of US VISIT is overly ambitious and is likely to result in a deeply flawed system," said Butterfield. Congress has mandated three deadlines which the Department of Homeland Security (DHS) must meet: By the end of 2003, DHS must install U.S. VISIT at America's airports and seaports. By December 30, 2004, U.S. VISIT must be installed at the top 50 high traffic land border ports, and by December 31, 2005 all other ports of entry must be operational.

While having a program in place is desirable, having a functional and reliable program is necessary. "There are bound to be serious errors that could affect innocent visitors to the United States," continued Butterfield. For example, if a non-immigrant visitor to the United States needs to remain past the period of his or her visa, applies for an extension, that extension will be recorded in another database separate from the U.S. VISIT system. It is improbable that data from this separate system will be integrated into U.S. VISIT by the time it is deployed. Thus, this visitor might be detained for an overstay of a visa when in reality, he or she had maintained his or her visa status.

AILA also is concerned about how the biometric data is being collected. Taking fingerprints and photos at the port of entry will triple or quadruple the interview time that is currently in place at ports of entry, resulting in serious delays in DHS' ability to clear incoming flights. "Such delays would undermine the entire effort to maintain an efficient border, and efficiency is a vital component in increasing security. Issues concerning the accuracy of the data in the database raise some flags as well," continued Butterfield.

Finally, AILA is concerned about the low level of funding, with \$380 million being appropriated in FY 03. “Such a low level of funding,” noted Butterfield, “is grossly inadequate to even begin to create an effective entry-exit system. Our government needs to commit sufficient resources so that we are able to enhance our security while allowing for the continued flow of people that is essential to our economic well-being.”

“Congress and the Administration have taken many steps to reform our immigration function,” continued Butterfield. Immigration is now part of the Department of Homeland Security, and much attention is being paid to re-vamp our enforcement and security. AILA believes that we also need to take steps to ensure that our immigration laws make sense.

“It is common knowledge that our immigration system is out of whack with reality,” said Butterfield. “No one is satisfied with the status quo: It does not measure up to our security needs, our economic needs, or our need to reunite close family members. It’s time to reform our immigration laws to facilitate the flow of people and allow our government to focus on those who mean to do us harm, not those who are filling our labor market needs or reuniting with their families,” said Butterfield. “Immigration reform is a vital component of enhancing our national security. Such reform involves legalizing hard-working immigrants, creating legal avenues for reuniting families and bringing in workers so American business have the workers needed to grow and prosper. Such reforms make sense for our nation, our economy, and our security.”

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# Articles on DHS

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## **Adjust the Adjustments**

**Editorial**

**Washington Post**

**May 21, 2004**

YESTERDAY WE PUBLISHED on the opposite page a description of the "green-card hell" experienced by a British subject living in Washington who -- thanks to pointless immigration red tape -- was unable to leave this country to celebrate his father's 90th birthday. It's only one story, but there are many similar ones having to do with immigration to this country since the rules changed after the Sept. 11, 2001, attacks. Over the past two years, nuclear physicists, wealthy business executives and ordinary tourists have been subjected to unreasonable delays and inexplicable refusals from the immigration service. Foreign students are afraid to return home for brief visits, their colleagues no longer wish to study here at all and America's reputation as an open society has been badly damaged.

Until now, the Bush administration has seemed largely unmoved by these stories, apparently viewing the bad publicity they generate abroad as a necessary byproduct of the war on terrorism. In an interview with editors and reporters of The Post this week, however, Tom Ridge, the secretary of homeland security, agreed that the current situation is "not in the best interests of a country that has a tradition of being open and welcoming and diverse." Mr. Ridge said that whenever he goes abroad, visa policy is the first thing U.S. ambassadors want to discuss with him. That situation has, he said, led him to feel it is time to reexamine some of the adjustments to visa policy that were made after Sept. 11, including, among other things, bringing back a modified form of transit visa.

We encourage him in his efforts to "adjust the adjustments," and look forward to hearing more about them.

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## **Maintain America's Brain Gain**

**Chicago Tribune**

**May 21, 2004**

**Editorial**

If you equate immigrants with low-skill jobs, think again. Immigrants also are disproportionately represented at the highly skilled end of the job pool, particularly in the fields of science and engineering.

In those sectors, the U.S. relies on foreign talent more than any other developed country. Foreign students with temporary visas represent half of all graduate enrollment in engineering, math and computer sciences, and one-third in other scientific fields. In 2003, there were some 590,000 foreigners studying in the U.S. Many foreigners stay here upon graduation and join America's formidable technological team.

Yet the flow of talent has been drying up since the attacks of Sept. 11. According to a National Science Board report published earlier this year, between 2001 and 2003 the number of student visas dropped from about 300,000 to 230,000. The number of visas for other high-skill individuals declined from 225,000 to about 160,000.

Various factors have contributed to the decline. For one, the State Department has been rejecting a higher percentage of visa applicants--for exchange visitors the rejection rate in 2003 was 15.9 percent, up from 7.8 percent two years earlier. Delays in processing applications also have increased sharply.

A reorganization of the student visa system was long overdue. This program in particular was so sloppy the federal government couldn't tell how many foreign students were in the country at any one time, or where they were. In fact, an absent-minded immigration bureaucracy issued student visas to two of the Sept. 11 terrorists--six months after the attacks.

But according to a report by the General Accounting Office, the delays in large part are caused not by increased security, but by bureaucratic chaos. Insufficient staff, vague security guidelines and procedures and the incompatibility of computers at the State Department and the FBI have all contributed to the problem. The handling of visas has slowed to a crawl.

The U.S. has a big stake in fixing these problems. Foreign students bring in about \$12 billion a year to pay for tuition, room and board and other expenses. This is essential money for many universities.

The National Science Board points to looming problems in the U.S., such as the rapid growth in retirements in the engineering and scientific workforce over the next two decades. That will put an even greater burden on imported talent.

Developing countries, aware of the damage caused by a steady hemorrhage of talent, are stepping up efforts to keep their graduates at home and lure back those who went to study abroad. China, South Korea, Malaysia, Singapore and Taiwan are among those countries. According to the National Science Board, Taiwan has aggressively stepped up training opportunities for scientists and engineers.

Terrorist threats demand tighter scrutiny of immigrants. Globalization and increasing economic competition also require that America continue to attract the world's top scientific and engineering minds.

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## **Green-Card Blues for America's Image**

**Op-ed**

**Washington Post**

**By Tom Carver**

**May 20, 2004**

Next week my father will be 90. Born in that final Edwardian summer of 1914, he fought throughout World War II, escaped from prison camp and was wounded on the beaches of Normandy.

Five of his six children will gather in Scotland with numerous grandchildren to celebrate his birthday. I, his youngest son, will not be able to attend because the Department of Homeland Security has removed my freedom to travel.

Or to be absolutely accurate, I am free to go. But, if I do, I will not be allowed to return to my wife and children here in Washington. That's one of those choices that is not a choice at all.

Like 700,000 others, I am stuck in green-card hell.

Since Sept. 11, 2001, the average waiting time for a green card has ballooned from 18 months to nearly three years. It's understandable that the Bush administration needs to do additional background checks on applicants, but in the process it is making the lives of green-card applicants a misery. More important, it's destroying a valuable opportunity to restore America's battered reputation abroad.

People who apply for green cards do so because they support the values of the United States and want to participate more fully in U.S. society. With a green card, they can travel back to their home countries. There they talk about the freedom and opportunities they have in America. They spread the gospel of the American dream among relatives and friends.

In the war of ideas that the administration is so fond of talking about, there are few better foot soldiers than green-card holders. Yet since Sept. 11, instead of encouraging those who aspire to green cards, the Department of Homeland Security has treated applicants with greater and greater suspicion.

While you wait the three years for the bureaucratic mills to grind through your application, you need a document called an "advanced parole" to travel. Like a parole from jail, an advanced parole is a small sheaf of papers adorned with stamps and circuitous language that wouldn't have looked out of place in the pouch of an 18th-century Venetian nobleman. I was warned that if I lost mine, I would not be issued a replacement. Why not? In this computer age, no document, certainly not one as mundane as this, is irreplaceable.

A while ago, I tried to get my advanced parole renewed. When it failed to materialize in the mail, I took my place at 5 a.m. in a long line outside the local office of the U.S. Citizenship and Immigration Services (formerly known as the Immigration and Naturalization Service).

After three hours of waiting, I was finally summoned to a counter. The man behind the glass informed me that my application was being handled by the CIS office in Vermont. They could do nothing to help me in this office, he said. I asked for the phone number of the Vermont office. There is no publicly available number. I asked for the address. I would happily fly to Vermont if it meant I could see my father. "They don't allow visitors," said the man. My only resort was to send an appeal to an anonymous fax number.

The next day, my fax machine spat out the reply:

"Your request for an expedited Advanced Parole has been rejected."

And that's where I sit today.

That sort of Kafkaesque behavior is more worthy of some former Soviet satellite than a country that supposedly ranks customer service just below godliness. The CIS gets away with it because its clients are not Americans. If you are American, you never have to enter this world.

I realize that a father's 90th birthday is not the most urgent reason for travel. But why should I have to give any reason for traveling? I have done nothing wrong. Before I entered this bureaucratic labyrinth, I was free to come and go as I wished.

There will always be people willing to freeze in the pre-dawn chill outside a CIS office and be cold-shouldered by the bureaucrats inside, because however badly the Department of Homeland Security treats them, it can never be as bad as the persecution and the nightmares that they left behind.

But a lot of other applicants -- the educated and the most productive -- may well decide they've had enough. You can hardly blame them. Why should they endure such a degrading application process when there are many other countries that would welcome their talents?

To regain the respect of the world, the United States needs to demonstrate that it still possesses those qualities people have always admired: openness, freedom, tolerance. Nearly everyone in this land is the descendant of immigrants. Treating would-be immigrants of today as suspects is not going to help America win the war of ideas.

■ *The writer is a foreign correspondent based in Washington.*

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**A Visa Quagmire**  
**Editorial**  
**New York Times**  
**May 17, 2004**

Security measures enacted after the 9/11 terrorist attacks are impeding the inflow of scientific talent that helps energize American universities and industries. Heightened security reviews required before visas can be issued to foreign students, scientists and engineers have generated massive backlogs of applications and discouraged some of the best and brightest. If the red tape is not untangled soon, it could cause long-term harm to America's universities and high-tech industries.

No one disputes the goal of security checks - to block terrorists before they enter the country and obtain knowledge or technology that could foster their aims. The enhanced security checks are keeping out some terrorists, officials say. But the process is also impeding a huge number of applicants who pose no threat. Students from China and India have been among the most heavily affected, even though those countries are hardly known as terrorist breeding grounds.

Last week 25 leading scientific, engineering and educational organizations, claiming to represent 95 percent of the American research community, sent a statement to the Bush administration and Congress urging prompt action to ease the problems. The administration says it values the contributions of foreign scientists and students, and it has already taken steps to smooth out the visa glitches. But the complaining organizations are surely right that more needs to be done. They have offered six suggestions that deserve respectful consideration. If more staff members and money are required to process visa applications, let them be provided.

Any sustained loss of foreign students, scholars and scientists would damage American universities, where foreigners make up a huge portion of the graduate student body and academic work force, as well as industries that rely on short-term infusions of technical talent. It could even undermine the struggle against terrorism. Any policy that turns away foreigners who are likely to become opinion leaders in their home countries seems shortsighted at a time when we are struggling to win "hearts and minds" around the globe.

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**Demagoguery Aside, Outsourcing of Jobs Is a Real Threat to U.S.**

**Op-ed**  
**Roll Call**  
**May 17, 2004**  
**By Morton M. Kondracke, Executive Editor**

Two decades ago, the United States fell into a panic over economic competition from Japan — unnecessarily, as it turned out. Now, there's concern about "outsourcing" to China and India. But this time the fears might be justified.

"Japan Inc.," as it was called in the 1980s, did not come to dominate the world economy, partly because the nation's banking system was inefficient, partly because the Japanese proved better at copying technologies than inventing them, and partly because U.S. businesses got scared enough to put resources into boosting their productivity.

But now there's reason to fear that the United States could lose its technological leadership to India and China, two countries that are exploiting their cheaper wage rates, huge domestic markets and (to a certain extent) educated work forces to attract high-tech industries and research business from the United States.

A number of new studies warn that, while the United States still leads the world in scientific innovation, we're in danger of losing our advantage — and with it, the millions of highly skilled jobs on which U.S. prosperity depends.

The demagogic rhetoric of this presidential campaign has hyped the immediate threat to the U.S. economy from outsourcing of manufacturing jobs. However, the outsourcing of high-tech service jobs may become a real menace over the long term.

Despite the accusations — since toned down — by Sen. John Kerry (D-Mass.) that the Bush administration was encouraging “Benedict Arnold corporations” to send jobs abroad, the respected Forrester Institute estimates that only 300,000 of the 2 million jobs lost during the Bush presidency have gone offshore.

And while CNN's Lou Dobbs warns almost nightly that America is in danger of becoming a “Third World country” unless we adopt protectionist policies, economic guru Peter Drucker has estimated that more jobs are being created in the United States by foreign investors — what one might call “insourcing” — than have been lost.

Such statistics make some conservatives complacent. But a new report by the National Science Foundation is one of several that indicates American leadership may not last forever.

“The United States is in a long-distance race to retain its essential global advantage in science and engineering human resources and sustain our world leadership in science and technology,” wrote Warren W. Washington, chairman of the NSF's National Science Board. “The outlook for the future [is] uncertain.”

In January, the President's Council of Advisors on Science and Technology warned that “while not in imminent jeopardy, a continuation of current trends could result in a breakdown in the ... U.S. innovation system.”

And a just-published study by the Electronic Industries Alliance concludes that “unfortunately, the U.S.'s ability to adapt, compete and innovate alongside emerging workforces in countries such as China and India is threatened by a systematically weakened education system, a dearth of R&D funding, visa policies that discourage the brightest foreign minds and a business climate heavy with regulatory and tax burdens.”

All the studies agree that China is graduating three times the number of engineering students each year as the United States. Nearly half of all Chinese undergraduate degrees are in scientific fields, compared to 5 percent in the United States.

Meanwhile, software engineers in India make \$7,000 a year, versus \$64,000 in the United States. India and China are making aggressive efforts to attract tech-based business from the United States — and they are succeeding.

A paper presented last week by Sen. Joe Lieberman (D-Conn.) at a New America Foundation symposium notes that “in 2002, China surpassed the U.S. as the most preferred location for foreign direct investment. In 2003, a record \$53.5 billion flowed into China ... [while] FDI [in the U.S.] reached its lowest level in a decade. Investment in the U.S. plummeted from \$300 billion in 2000 to \$30 billion in 2002.”

According to Lieberman, “job offshoring is no longer restricted to basic service tasks such as data entry and processing — it has expanded to sophisticated work such as knowledge services, decision analysis, design, engineering, research and development.”

Lieberman said that “we are not just losing manufacturing jobs. We may be losing critical parts of our innovation infrastructure and with it our competitive edge in the global marketplace, endangering our prosperity and national security.”

He blamed Washington politicians for responding to the crisis “all too predictably,” with the Bush administration adopting a “laissez-faire attitude that the markets and tax cuts will solve the problem,” while “others” — his fellow Democrats — advocate protectionist trade policies.

Lieberman and the EIA’s president, former Rep. Dave McCurdy (D-Okla.), recommended a set of solutions that include more federal and private investment in R&D; a more expansive safety net including job training for displaced workers; bigger investments in science education; stiffer enforcement of trade laws; and faster approval of visas for high-tech foreign workers and students.

Their list specifically did not include tax penalties, as recommended by Kerry and other Democrats, to keep “Benedict Arnold companies” from investing offshore. Kerry lately has said that the phrase was invented by “overzealous speechwriters,” but he has used it dozens of times during the primary campaign.

Bush administration officials protest that they are not “doing nothing,” as Lieberman alleged, but rather are stepping up funding for science, education and job retraining and “engaging” China on trade violations. But Democrats — and some Republicans — contend the steps are inadequate because of overemphasis on tax cuts.

Lieberman points out that, 20 years ago, President Ronald Reagan addressed the Japan panic by appointing a commission headed by John Young, CEO of Hewlett-Packard, which produced a report that did much to spur U.S. corporate productivity — gains that, in turn, enabled the boom of the 1990s.

Lieberman plans to introduce legislation soon to create a 2004 version of the Young commission to lay out steps for dealing with the China-India challenge. America has always shown that it can handle global economic competition — but sometimes it needs a scare to do it. It’s time to be scared.

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## **Inaccurate Databanks Pose Challenge for New Visitor Tracking**

**GovExec.com**

**January 7, 2004**

**By Chris Strohm**

The Homeland Security Department is undertaking a massive effort to integrate more than two dozen criminal and terrorist databanks as part of a new immigration tracking system, but some immigration advocates fear inaccurate information will cause problems for people entering the country.

The department plans to integrate 27 different biographical databases and one biometric database this year to make the U.S. Visitor and Immigrant Status Indicator Technology (US VISIT) program work, said Robert Mocny, the program's deputy director. US VISIT [was launched](#) Monday at 115 airports and 14 ship terminals, and requires visitors with nonimmigrant visas to give biographic and travel information, two fingerprint scans and a digital photograph, before being allowed to enter the country.

Information from visitors is vetted against databases from other agencies, such as the Terrorist Threat Integration Center, which is composed of elements from the CIA, FBI, DHS and Defense Department. Mocny said DHS plans to award a contract to Lockheed Martin, Computer Sciences Corporation or Accenture by the end of May to integrate databases across government agencies so border inspectors can effectively screen visitors.

"We now have an opportunity to modify how people come into the U.S., how long they stay, how we verify whether or not they did their part and what happens to them while they're here," Mocny said. "We have not had the opportunities and the funding to back those opportunities in the years past."

However, immigration advocates fear that existing databases are riddled with inaccuracies that will cause some visitors to be unfairly targeted.

A representative from the American-Arab Anti-Discrimination Committee said during a briefing on US VISIT this week that databanks at the terrorist screening center are notorious for being inaccurate.

Judith Golub, senior director of advocacy and public affairs for the American Immigration Lawyers Association, said she is particularly concerned because FBI records do not have to comply with accuracy regulations under the 1974 Privacy Act.

Last March, the FBI announced that it was exempting databases within its National Crime Information Center, Central Records System and National Center for the Analysis of Violent Crime from accuracy requirements of the Privacy Act. The agency said the exemptions were necessary because "it is impossible to determine in advance what information is accurate, relevant, timely and complete."

Golub said visitors to the U.S. might find their information being vetted against inaccurate FBI data, causing confusion and detentions.

FBI spokesman Paul Bresson confirmed Wednesday that the exemptions are in place. He said many law enforcement agencies seek similar exemptions, and the FBI did not receive a single comment when it originally announced the exemptions. He said it is "administratively impossible" to ensure the accuracy of all records entered into FBI databases because, for example, more than 80,000 officials are authorized to use the NCIC.

However, he stressed that the FBI "strongly encourages" all users to enter accurate and timely information.

"While we do have these exemptions, by no means should anyone get the impression that we are relaxing our position on the timeliness and accuracy of records," Bresson said. "We feel that is extremely important. And, of course, the more accurate and timely information is, the more effective law enforcement can be."

Mocny acknowledged that existing databases have inaccurate information, such as misspelled names and incorrect biographical data. He said the department believes that an integrated database of biometrical information, such as fingerprint scans, will greatly reduce the number of false identifications while increasing positive identifications. For example, 21 people have been caught to date for giving false biographical information when their fingerprints were vetted through the US VISIT program, he noted.

"As we can increase the number of biometrics stored within the system, that really begins to cut down the number of false hits that we get," Mocny said.