

AMERICA'S BORDERS: BALANCING OUR SECURITY AND ECONOMIC NEEDS

THE ISSUE: Our nation needs to institute policies that both 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 Department of Homeland Security (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 needs to focus on developing the necessary infrastructure, technology, databases, inspections process, and special programs at our borders.

The United States currently has over 300 ports of entry through which authorized travelers and commercial goods annually enter the country. In fiscal year 2004, over 428 million people 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. 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.

AILA's POSITION: Each action the DHS takes at our borders should be evaluated by how well the agency balances our enhanced security needs with the efficient flow of travel and trade. Such a balance demands adequately trained staff, appropriate infrastructure, and sufficient appropriations. In achieving that balance, the following objectives are critically important:

1. Reduce delays at the border through the use of interoperable technology and pre-screening activities that receive sufficient funding.
2. Enhance accuracy and interoperability of databases and take steps to address problems with technology.
3. Coordinate U.S. Customs and Border Protection policies at the border with U.S. Citizenship and Immigration Services.
4. Continue to develop and adequately fund the US-VISIT entry-exit system.
5. Repeal mandatory detention and expedited removal at the border.

CURRENT LEGISLATION:

US-VISIT—The DHS started implementing the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT) in 2003. US-VISIT is an entry-exit system designed to register foreign nationals each time they cross the border by collecting information, confirming identity, measuring security risks, and assessing the legitimacy of travel. Ultimately, the information captured through US-VISIT would be available at both the ports of entry and throughout the entire immigration enforcement system. Ideally, the system also would record changes and developments in a foreign national's immigration status. However, in order to use US-VISIT as a means to enhance the immigration system, DHS must work to make its databases interoperable and improve their accuracy and reliability.

In 2001, Congress mandated in the PATRIOT Act (P.L. 107-56) 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 use technologies that facilitate the efficient flow of commerce and travel. Today, US-VISIT biometric entry procedures are in place at 115 airports, 15 seaports and in the secondary inspection areas of 154 land ports of entry. US-VISIT exit procedures are operating at 12 airports and two seaports.

The current Senate immigration reform bill (S. 2611) calls for DHS, in conjunction with appropriate federal agencies, to submit to Congress a schedule within six months of the bill's enactment for:

- Equipping all U.S. land ports of entry with US-VISIT technology, including exit procedures
- Developing and deploying the exit component at all U.S. land ports of entry
- Making interoperable all immigration screening systems operated by DHS

Expedited Removal—In 1996, the enactment of IIRAIRA established a new procedure, dubbed “expedited removal,” to streamline the detention and removal of noncitizens seeking admission to the United States who lack appropriate documentation or make a misrepresentation. This procedure allows a front-line inspector to order the detention and removal of an applicant without according the individual access to counsel or an opportunity for a hearing or review. Under 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) of inadmissibility alleged in the case.

While the expedited removal process raises serious due process concerns for all noncitizens seeking admission to the U.S., it raises particular concerns for individuals seeking asylum. Although the law specifically directs immigration inspectors to refer asylum seekers to asylum officers for a credible fear interview, a recent study by the U.S. Commission on International Religious Freedom illustrates how flaws in the expedited removal system and inconsistent practices between ports undermine protections for asylum seekers. Some of the problems at the border identified by USCIRF include: inspectors urging asylum seekers to withdraw their applications for admission to the U.S.; overbroad discretion of inspections officers denying asylum seekers credible fear interviews; and inspectors pushing back asylum seekers at primary inspection and not sending them to secondary inspection.

Sadly, both the House (H.R. 4437) and Senate (S. 2611) immigration reform bills, set to be reconciled in conference later this year, contain provisions calling for expansion of the expedited removal program. Specifically, both bills expand expedited removal to all U.S. borders, including to anyone caught within 100 miles of the border who cannot prove that he or she has been in the U.S. for more than 14 days.

Fencing on the Border—Both H.R. 4437 and S. 2611 also call for fencing to be built on the U.S.-Mexico border. The Senate bill mandates and appropriates funding for 370 miles of fencing and 500 miles of vehicle barriers along the border. The House bill, in turn, contains provisions for 700 miles of fencing, at a cost of \$2.2 billion. Furthermore, the House bill calls for a feasibility study on the building of a wall along the U.S.-Canada border.

Mandatory Detention—The House and Senate bills each call for mandatory detention of certain noncitizens attempting to enter the U.S. illegally. The House bill calls for mandatory detention for all noncitizens except Cubans, while the Senate bill contains mandatory detention provisions extending to all noncitizens except Cubans, Mexicans, and some asylum seekers.

While AILA supports the many positive provisions in S. 2611, AILA opposes the provisions in both the House and Senate bills calling for mandatory detention for certain noncitizens, expansion of expedited removal, and the building of fences on the U.S.-Mexico border. For more information on the House immigration reform bill, please review AILA’s section-by-section summary posted on InfoNet at document #06010965: <http://www.aila.org/content/default.aspx?docid=18258>. For information on the Senate immigration reform bill, please see AILA’s summary of the bill, posted on InfoNet at document #06060966: <http://www.aila.org/content/default.aspx?docid=19642>. A full section-by-section summary of the bill will be posted to InfoNet soon.