

CRS Report for Congress

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Immigration and Naturalization Service Reorganization and Related Legislative Proposals

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Summary

The Immigration and Naturalization Service (INS), with a current annual budget of \$5.0 billion, is the primary agency charged with enforcing the nation's immigration law. Regulating immigration can be viewed as having two basic components: stemming illegal immigration (enforcement) and facilitating legal immigration (service). The Bush Administration supports separating service from enforcement. While no legislation to restructure INS has been introduced in the 107th Congress at this date, it is likely that proposals will be introduced in the future, since restructuring may necessitate amending existing statutory authorities. For now, Members of Congress, who support restructuring INS, are waiting to review the Bush Administration's plan before introducing legislation themselves.

Previously, the Clinton Administration had initiated steps to restructure INS internally by separating the agency's enforcement and service functions, but sought to maintain the statutory authority for both functions under a single executive who would integrate immigration policy, standards, and operations. While there is no statutory requirement that the Administration gain Congress's formal approval of any agency reorganization, Congress could choose to mandate legislatively that INS be dismantled or reorganized differently. Indeed, on March 22, 2000, the House Judiciary's Immigration and Claims Subcommittee approved legislation to dismantle INS. Without the support of key Members of Congress, the Clinton Administration did not move forcefully to complete its INS restructuring plan. This report will be updated to reflect legislative action. (For further analysis, see CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service.*)

Introduction

While there have been many proposals to reorganize the federal immigration system in the past, the most recent proposals were prompted in part by a series of recommendations made by the U.S. Commission on Immigration Reform. The

commission recommended that the federal immigration system be fundamentally restructured by, among other things, dismantling INS. The commission described INS as an agency suffering from conflicting priorities and mission overload, whose service and enforcement missions were incompatible.¹

The Clinton Administration categorically rejected the idea that INS should be dismantled, and moved forward to restructure INS internally by separating immigration services and enforcement functions. By establishing clear chains of command, clear roles and responsibilities, appropriate coordinating mechanisms, and flexible resource management, the Clinton Administration asserted that it could achieve four goals: greater accountability, enhanced customer service, seamless enforcement, and a coherent immigration system.

Many questioned what prevented INS from achieving these goals previously, for INS has experienced tremendous growth in its budget and staff: from \$1.5 billion and 18,000 funded positions in FY1993, to \$5.0 billion and nearly 34,000 funded positions in FY2001. Nonetheless, INS continues to come under fire for not meeting its obligations under the law. Large pending caseloads plague INS. Border control and security remains an ongoing issue for Congress. And, the agency struggles to deport criminal aliens in an expeditious manner.

The General Accounting Office (GAO) and others also enumerated many longstanding problems within INS. In July 1997, GAO issued a report on INS management,² in which it found that INS had made some progress, but many longstanding issues had yet to be adequately addressed. According to GAO, INS had established a strategic plan and a priorities-based management process, but other changes had exacerbated unclear lines of accountability and poor intra-agency communications and coordination. In addition, GAO reported findings of the National Academy of Public Administration (NAPA)³ related to weaknesses in INS's budget planning, formulation, and execution process. Neither GAO nor NAPA, however, recommended restructuring the agency to more clearly separate INS's enforcement and service functions as a solution to the agency's problems. Rather, GAO and NAPA recommended clarifying existing lines of accountability and communication and improving the agency's financial accounting, budget, and resource allocation processes.

Legislative Proposals to Restructure INS in the 105th Congress

Restructuring INS emerged as a legislative issue when FY1998 Commerce-Justice-State (CJS) appropriations report language directed the Attorney General to review recommendations made by the U.S. Commission on Immigration Reform and submit a plan to Congress to restructure INS specifically and the federal immigration system generally

¹ The creation of the Commission on Immigration Reform was mandated by the Immigration Act of 1990 (P.L. 101-649; 104 Stat. 5001) to examine legal immigration policy.

² U.S. General Accounting Office. *INS Management: Follow-up on Selected Problems*. GGD-97-132, Washington, July 1997.

³ National Academy of Public Administration. *Budgeting for Performance: Strategy, Flexibility, and Accountability to Meet a Demanding Mission*. Washington, January 1997.

(P.L. 105-119; H.Rept. 105-207). In its final report to Congress, the commission recommended that the processing of legal immigration and naturalization claims be transferred to the Department of State. With the exception of worksite enforcement and detention, INS enforcement programs would remain at the Department of Justice as an elevated enforcement bureau. INS's responsibility for worksite enforcement would be transferred to the Department of Labor. The commission suggested turning over most of INS's detention operations to the U.S. Marshals Service or the Bureau of Prisons (BOP). The commission also recommended that an independent appeals board be set up to handle all administrative appeals of immigration-related determinations made by the Departments of State, Justice, and Labor.

The commission's recommendations were wide-ranging and on such a scale that their implementation would be complicated and, most likely, incremental. The commission maintained that, by separating INS's enforcement and service functions, management and budget efficiencies could be achieved. The commission's recommendations followed on the heels of a number of INS-related controversies, like Citizenship-USA, which lent momentum to proposals to restructure INS.

The Clinton Administration's *Framework for Change*

In FY1998, the Clinton Administration hired a private firm, Booz-Allen & Hamilton, to examine the agency's enforcement and service missions, and establish a plan to increase managerial accountability. The Booz-Allen report served as the basis for INS's report to Congress entitled *Framework for Change*, which was submitted to the House and Senate appropriations committees on April 1, 1998. In this report, the Administration acknowledged that the Commission on Immigration Reform had correctly identified many longstanding problems within INS, such as insufficient accountability between field and headquarters, competing priorities within field offices, lack of consistency in application of the law, a need for greater professionalism, overlapping organizational relationships, and significant management weaknesses.⁴ Representative Harold Rogers, then chairman of the CJS appropriations subcommittee, expressed his strong dissatisfaction with this report: in his view, it did not adequately address the commission's recommendations.

On July 17, 1998, Representative Rogers introduced H.R. 4264, a bill that was very similar to a proposal introduced earlier by Representative Reyes (H.R. 2588). H.R. 4264 would have separated INS enforcement programs (Border Patrol, inspections, investigations, detention and deportation, and intelligence) and all attributable support assets, and created a Bureau of Enforcement and Border Affairs as a stand-alone agency in the Department of Justice. The House Judiciary Immigration Subcommittee approved H.R. 4264, as amended, on July 30, 1998. The bill was scheduled for full committee markup, but this never occurred as the full committee turned its attention to impeachment of the President.

Attempts to insert restructuring language in the FY1999 Omnibus Appropriations Act prompted the Clinton Administration to renew its efforts to restructure INS internally. On October 7, 1998, INS management established a Restructuring Office and contracted with

⁴ U.S. Immigration and Naturalization Service. *A Framework for Change: The Immigration and Naturalization Service*. Washington, April 1998.

PricewaterhouseCoopers to develop a blueprint to restructure the agency based on *A Framework for Change*, the Booz-Allen report described above. The Clinton Administration's preliminary plan called for separating the agency's service and enforcement operations and establishing two distinct lines of command within the agency for those operations. At headquarters, the Commissioner's Office would have been supported by an Office of Chief Financial Officer and an Office for Strategy, and there would have been three offices headed by Associate Commissioners for 1) enforcement, 2) immigrant services, and 3) shared support. In the field, the current structure of regions and district offices would have been eliminated and replaced with two structures, one for enforcement, the other for immigrant services. The Office of Shared Support would have overseen the agency's administrative and information/records management functions.

Legislative Proposals to Restructure INS in the 106th Congress

There were three legislative proposals to restructure INS in the 106th Congress. With slight variations, all three proposals would have restructured INS to more clearly separate the agency's service and enforcement functions. While two would have expanded and elevated the immigration service (S. 1563 and H.R. 2680), another bill that was approved in subcommittee markup (H.R. 3918) would have dismantled INS.

The *Immigration Reorganization and Improvement Act of 1999 (H.R. 3918)* would have dismantled INS and established a bureau of immigration services and a bureau of immigration enforcement within the Department of Justice. It was approved by the House Judiciary's Immigration and Claims Subcommittee on March 22, 2000. This bill was identical to H.R. 2528, as introduced by Representative Harold Rogers in July 1999, which was approved by the House Immigration Subcommittee in September 1999. The then subcommittee chair, Representative Lamar Smith, asserted that the introduction of H.R. 3918 was necessary, because the subcommittee amended version of H.R. 2528 represented a compromise negotiated with the Attorney General from which the Administration pulled its support, stalling full committee markup.

Besides creating separate service and enforcement bureaus, the amended version of H.R. 2528 would have also established an Office of the Associate Attorney General for Immigration Affairs in DOJ. This office would have coordinated the operations of not only the two bureaus, but of the Executive Office for Immigration Review as well.⁵ Unlike S. 1563, described below, the statutory responsibility for carrying out immigration service and enforcement functions would have devolved from the INS Commissioner to bureau directors, rather than be transferred to the Associate Attorney General.

In contrast, H.R. 3918 would have dismantled INS, establishing two new bureaus in DOJ, without establishing an Associate Attorney General's office to coordinate and oversee immigration service and enforcement operations. The Bureau of Immigration Services would have been responsible for processing and adjudicating family- and employment-based immigrant petitions, nonimmigrant visa changes of status and extensions of stay, naturalization applications, refugee and asylum applications, and service

⁵ The Executive Office for Immigration Review (EOIR) is the agency in DOJ that oversees administrative hearings on individual immigration cases, immigration court proceedings, and appellate reviews.

center operations. The Bureau of Immigration Enforcement would have been responsible for the activities and operations currently carried out by the Border Patrol, inspections, investigations, detention and deportation, and intelligence programs.

In each bureau, the bill would have also established six offices: 1) chief budget officer; 2) general counsel; 3) policy and strategy; 4) congressional, intergovernmental, and public affairs; 5) community liaison; and 6) statistics. It would have also required the Attorney General to report to the House and Senate appropriations committees on the “proposed division and transfer of funds, including unexpended funds, appropriations, and fees.” Furthermore, the Attorney General would have been required to report to the committees on the feasibility of transferring INS’s detention operations to BOP.

The *INS Reform and Border Security Act of 1999 (S. 1563)* was introduced on August 5, 1999 by Senator Abraham, the then Chairman of the Senate Judiciary’s immigration subcommittee, and cosponsored by Senator Kennedy, the then ranking minority member. The Subcommittee held a hearing on this proposal on September 23, 1999. This bill would have reconstituted and elevated INS as an Immigration Affairs Agency at the Department of Justice. Like H.R. 2528, it would have created two bureaus: one for immigration services, the other for enforcement. Unlike H.R. 2528, however, the Associate Attorney General would have statutorily assumed all of the Attorney General’s immigration responsibilities. The Associate Attorney General for Immigration Affairs would have been made responsible for providing resources to both bureaus, coordinating shared resources and records management, and formulating policy and planning.

The Bureau of Immigration Service and Adjudication would have been responsible for processing visa petitions, naturalization applications, asylum/refugee applications, parole/detention of asylum applicants, and service center operations. The bill would have also established an ombudsman’s office in the service bureau. The Bureau of Enforcement and Border Affairs would have been made responsible for Border Patrol, detention, deportation, intelligence, and investigation programs. Unlike H.R. 2528, the inspections program, because of its service *and* enforcement function, would have been housed in the Associate Attorney General’s office.

The *Immigration Restructuring and Accountability Act of 1999 (H.R. 2680)* was introduced by Representative Jackson-Lee, the ranking minority member on the House Judiciary’s immigration subcommittee, on August 3, 1999. This bill would have restructured INS and, in its place, created a National Immigration Bureau at the Department of Justice. This new agency would have been headed by a Director who would have been responsible for all functions performed currently by the INS Commissioner. Within the Director’s office, there would have been established an office of community liaison to resolve issues that could not be resolved through ordinary administrative channels. Within this new bureau, there would have been four offices: 1) adjudications, 2) enforcement, 3) prehearing services, and 4) shared services.

The office of immigration adjudications would have been organized into the following divisions: 1) adjudications; 2) refugees, asylum, parole, and humanitarian affairs; and 3) community relations. Under H.R. 2680, the Inspections program would have been placed under the adjudications division. The office of immigration enforcement would have been organized into the following divisions: 1) Border Patrol; 2) removal; 3) intelligence and investigations; and 4) community relations. The office of prehearing services would have

been organized into the following divisions: 1) detention, 2) alternatives to detention, 3) prehearing services, and 4) community relations. It is notable that the creation of an office of prehearing services would have isolated the detention function and mandated that prehearing services be standardized and prioritized.

Issues for Congress

Would dismantling or restructuring the agency by separating the service and enforcement functions increase managerial and budget efficiencies? Or would it reverse progress already achieved through increased funding and reform initiatives?

On the one hand, by restructuring, lessons learned through efforts to reform the asylum and naturalization processes could be transferred to other immigration benefit adjudications. On the other hand, restructuring the agency at the field level, by dismantling the current structure of regions, districts, and sectors, could shift energies and resources from other useful initiatives (e.g., the direct mail program and records centralization) and, in the final outcome, could decrease managerial and budget efficiencies.

Would separating INS enforcement programs from service programs result in a “rump” service program that would be ineffectual and underfunded?

If separated today, the proposed immigrant services branch or bureau would be comparatively small in terms of its budget and personnel compared to the enforcement branch. Today, the Adjudications and Nationality program, INS's core service program, is funded almost entirely through examination fees. With large pending caseloads in key adjudications, INS is currently processing claims that were received several years ago with fees being collected for new claims that may not be adjudicated for several years in the future. As a result, providing adequate funding for immigration services and for the more efficient management of fee receipts is likely to be an ongoing issue.

If INS were to be restructured according to any plan, what would be accomplished in terms of addressing problems identified by the National Academy of Public Administration regarding budget planning, formulation, and execution?

INS reported that it had streamlined budget execution according to recommendations made by NAPA. According to GAO, however, INS failed to anticipate through its budget planning and formulation that the agency's discretionary spending for day-to-day operations would be significantly lower in FY1999 than in the previous year due to fully hiring all funded positions. Consequently, the agency experienced program budget shortfalls in FY1999, in spite of budget increases. If INS attempts to restructure before adequately reforming its budget process, an already cumbersome and antiquated financial management system could exacerbate inefficiencies and problems, rather than streamline business processes and increase productivity. On the other hand, if the agency were dismantled or restructured, the bureaus' smaller, individual budgets might be more manageable.