Order Code RL31388

Immigration and Naturalization Service: Restructuring Proposals in the 107th Congress

Updated May 1, 2002

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Summary

The events of September 11 brought the Immigration and Naturalization Service (INS) to the forefront of the nation's attention. Although all 19 hijackers entered the country legally, three overstayed their visas. And, on March 11, 2002, INS sent student visa notifications for two of the (now deceased) 19 hijackers to the aviation school they attended, provoking an intensification of long-standing criticism of INS for weak management controls, among other things. An underlying theme of criticism concerns what many believe are overlapping and unclear chains of command with respect to INS's service and enforcement functions. There appears to be a consensus among the Administration, Congress, and commentators that the immigration system, primarily INS, is in need of restructuring. There also appears to be a consensus among interested parties that INS's two main functions — service and enforcement — need to be separated. There has not been a consensus, however, with regard to how the restructuring should take place.

Current proposals to restructure INS center on separating the service and enforcement functions either by keeping INS intact and creating two separate bureaus to carry out the functions, or by dismantling INS and reassigning the functions to DOJ and other agencies. While separating the two main functions would create a clear chain of command and increase accountability, several questions are raised. Are these functions operationally separable or interdependent? Will both functions receive equal attention and resources? How will separating the main functions address the fragmentation of immigrant-related functions across INS and other federal agencies? How will the separate entities expeditiously share information?

There has also been some discussion of merging the agencies responsible for border patrol and inspections under one agency. Homeland Security Director Tom Ridge has proposed merging at least three agencies that are responsible for providing border security into a "super agency." Several pieces of legislation have been introduced that would consolidate several agencies that have border security-related functions into a newly created agency. All of these proposals would address concerns of overlap in functions, and related duplication of efforts; lack of communication and coordination of efforts; and the rivalry that reportedly exists between INS and agencies with similar responsibilities. The proposals, however, do not address concerns about the need for greater information sharing between the immigrant service and immigration enforcement functions.

On April 25, 2002, the House passed, amended, the *Barbara Jordan Immigration Reform and Accountability Act of 2002* (H.R. 3231). A draft bill (the *Immigration Reform, Accountability, Security, and Enforcement Act of 2002*) is circulating in the Senate and is expected to be introduced in the near future. Although both bills would dismantle INS and create two separate bureaus for immigrant services and enforcement within DOJ, the bills differ with respect to who would be in charge of both bureaus, where the INS inspections function would be located, and related issues.

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Latest Legislative Developments

On April 25, 2002, the House passed, amended, the Barbara Jordan Immigration Reform and Accountability Act of 2002 (H.R. 3231). A draft bill (the Immigration Reform, Accountability, Security, and Enforcement Act of 2002) is circulating in the Senate and is expected to be introduced in the near future. The Administration's November 14, 2001 INS restructuring plan preceded the bills. Also, on April 17, 2002, Attorney General John Ashcroft announced his current efforts to reorganize INS, including the implementation of a direct chain of command for INS's border patrol and detention facilities. The Attorney General also announced the launch of a search for a Chief Financial Officer and a Chief Information Officer, the establishment of an Office of Juvenile Affairs, and the establishment of a "Field Advisory Board" to act as a liaison between INS's headquarters and the field offices.

Introduction

The events of September 11 brought the Immigration and Naturalization Service (INS) to the forefront of the nation's attention. Although all 19 hijackers entered the country legally, three overstayed their visas. And, on March 11, 2002, INS sent student visa notifications for two of the (now deceased) 19 hijackers to the aviation school they attended, provoking an intensification of long-standing criticism of INS for not fully enforcing the immigration law, having a backlog of immigrant visa and naturalization applications, having poor management practices, lacking accountability, and providing poor customer service, among other things. Under its current organizational structure, INS has struggled with carrying out its many tasks. The underlying theme of most of the criticism hinges on what many believe are overlapping and unclear chains of command with respect to INS's service and enforcement functions.[1] There appears to be a consensus among the Administration, Congress, and commentators that the immigration system, primarily INS, is in need of restructuring. There also appears to be a consensus among interested parties that INS's two main functions — service and enforcement — need to be separated. There has not been a consensus, however, with regard to how the restructuring should take place.

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[1] INS's service functions include the processing of immigrant visa and naturalization applications. Its enforcement functions include enforcing U.S. immigration laws along the borders and within the interior.

This report examines immigration functions within INS and across other federal agencies. The report also provides background information on past and current proposals to reorganize INS as well as proposals to consolidate border security functions, and it analyzes current proposals. The appendices detail the history of the immigration agency, proposals to reorganize the agency, and actual reorganizations.

INS has been internally restructured many times since its inception in 1891.[2] In addition to internally initiated measures, numerous proposals have been advanced by administrations, Congress, and commissions to reorganize INS since the early 1900s.[3] These proposals generally gave expression to concerns about the efficiency and effectiveness of INS in performing its responsibilities; perceived inefficiencies resulting from overlap and fragmentation of functions performed by various agencies; and border-related activities related to drug trafficking. Previous proposals sought to accomplish one or more of the following:[4]

- Transfer the responsibility for issuing visas from the Department of State (DOS) to INS;
- Combine the INS immigration inspection and border patrol functions with Customs Service inspection in a single agency, either within the Customs Service (in the Department of Treasury) or in a newly created agency;
- Combine all immigration functions in a single, independent agency.

The current proposals to restructure INS include: separating the service and enforcement functions, but keeping INS intact; dismantling INS and creating two new agencies within the Department of Justice (DOJ) that would report to a newly created position of an Associate Attorney General for immigration affairs; dismantling INS and creating a new immigration agency within DOJ; and creating an enforcement bureau within DOJ to carry out INS's enforcement functions, but transferring the issuance of visa functions to DOS, and the immigrant labor-related functions to the Department of Labor (DOL).

There has also been some discussion of merging the border patrol and inspections functions of INS and other primary agencies responsible for these functions under one agency.[5] Homeland Security Director Tom Ridge has proposed merging INS's border patrol and inspection functions, U.S. Customs Service

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[2] Immigration functions were first centralized under the Bureau of Immigration in the Department of Treasury.

[3] See **Appendix A** for a chronology of proposals to reorganize INS.

[4] U.S. Congress. Senate. Committee on the Judiciary. *History of the Immigration and Naturalization Service*. Committee Print, 96th Cong., 2d sess.

[5] The primary agencies that have border security-related responsibilities are INS, U.S. Treasury's Custom's Service, and the Department of Transportation's Coast Guard. INS has border patrol responsibilities along the U.S. border. INS and the Customs Service both have inspections responsibilities; INS inspects people as they present themselves for entry into the country and the Customs Service inspects goods. The Coast Guard protects the country's coast lines and ports. It also enforces U.S. laws in the water and high seas, including interdicting illegal immigrants.

inspection functions, and the Coast Guard under one "super agency." A more recent proposal by Ridge includes merging only INS and the U.S. Customs Service under one agency.[6] Legislation has been introduced that would merge INS's border patrol and inspection functions, U.S. Customs Service inspection functions, and the Coast Guard under one independent agency.[7]

Background

The Attorney General is responsible for administering and enforcing the Immigration and Nationality Act of 1952, as amended (INA; 8 U.S.C. 1101 et. Seq.), and all other laws pertaining to the immigration and naturalization of aliens. INS is the main agency responsible for administering and enforcing immigration laws. INS's responsibilities are split into two generally broad functions: (1) the processing of services and adjudication of benefits provided by immigration law, and (2) the enforcement of restrictions and limitations in immigration law.

INS's dual mission of providing immigration benefits (what is commonly referred to as its service mission) and enforcing immigration law is at the center of reorganization discussions. Some commentators contend that INS's dual mission is inherently conflictual in that the two roles have created two different cultures that often compete for the same resources. Additionally, commentators contend that increasing demands placed on INS (i.e., congressional mandates and administrative directives) have created mission overload, making it very difficult for INS to effectively carry out its functions.

While INS is responsible for several database systems designed to carry out its service and enforcement functions,[8] several studies conducted by the Government Accounting Office (GAO) have criticized INS for having antiquated databases and failing to integrate its systems.[9] The reports are critical of INS's field and regional offices due to an absence of communication between the various offices. The reports are also critical of INS's continued use of paper for tracking most of its data functions. Other reviews conducted by DOJ's Office of Inspector General (OIG) have questioned the reliability of INS's information systems and the accuracy of the

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[6] McLaughlin, Abraham. Bush Plans Super-Agency to Improve US-Border Control. *The Christian Science Monitor*, March 25, 2002. p. 2.

[7] See for example H.R. 1158, H.R. 1534, and H.R. 3600.

[8] For a discussion on some INS database systems see: CRS Report RL31019, *Terrorism: Automated Lookout Systems and Border Security Options and Issues*, by William J. Krouse and Raphael F. Perl.

[9] See for example a series of GAO reports on INS management issues: U.S. General Accounting Office. *INS: Overview of Recurring Management Challenges*, GAO report 02-168T; *October 17, 2001: Overview of Management and Program Challenges*, GAO Report T-GGD-99-148, July 29, 1999; *INS: Management Problems and Program Issues*, GAO Report T-GGD-95-11, October 5, 1994; and *Information Management: INS Lacks Ready Access to Essential Data*, GAO Report IMTEC-90-75, September 27, 1990.

information.[10] According to DOJ's Inspector General, Glenn A. Fine, "two OIG audits of the INS's automation initiatives found lengthy delays in completing many automation programs, unnecessary cost increases, and a significant risk that finished projects would fail to meet the agency's needs."[11]

Other issues surrounding the debate include reported lack of coordination and cooperation among the various divisions within INS, and emphasis placed on enforcement functions rather than service functions. With regard to separating the service and enforcement functions, proponents contend that under the current organizational structure, the two functions are blurred with no clear chain of command. Historically, INS enforcement functions have received more resources than INS service functions.[12] INS's officials, as well as some members of Congress and some commentators, believe that if the two functions were separated, each function would receive equal attention and resources.

Immigration Functions

Although several federal agencies have important immigration responsibilities,[13] current proposals to restructure the immigration system focuses on INS and not on immigration-related responsibilities of other agencies (with the exception of some bills that address border security functions, discussed below). Some past proposals have considered a complete overhaul of the immigration system; for example, in 1990, the Asencio Commission called for a new Agency for Migration that would be responsible for all refugee and migration issues.[14] Subsequent commissions and reports echoed similar calls for consolidating border patrol and inspection functions, as well as consolidating visa functions of INS and DOS.[15]

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[10] U.S. Congress. House. Subcommittee on Immigration and Claims. *INS Enforcement and Service Performance Issues*. 107th Cong., 1st Sess., October 17, 2001 Washington, Govt. Print. Off., 2001.

[11] Ibid.

[12] See CRS Report RS20908, *Immigration and Naturalization Service's FY2002 Budget*, by William J. Krouse.

[13] These agencies include DOJ, DOS, Department of Treasury, Department of Agriculture, Department of Health and Human Services, Department of Labor, and Department of Education.

[14] The Asencio Commission. *Report of the Commission for the Study of International Migration and Cooperative Economic Development*. Washington, Govt. Print. Off., 1990. The Asencio Commission was established as a result of a congressional mandate, the Immigration Reform and Control Act of 1986.

[15] The 1937 Byrd Committee Report, the 1940 Bureau of the Budget Report, the 1948 Customs' Management Improvement Study, the 1949 Commission on the Organization of the Executive Branch of the Government (the Hoover Commission), the 1950 Senate Committee on the Judiciary Report No. 1515, and the 1957 Commission on Government Security (the Wright Commission). U.S. Congress. Senate. Committee on the Judiciary. *History of the Immigration and Naturalization Service*. Committee print, 96th Cong., 2d

(continued...)

In its 1997 final report to Congress, the U.S. Commission on Immigration Reform (headed by former Congresswoman Barbara Jordan)[16] noted that "fragmentation of responsibility leads to conflicting messages from the various agencies [and] unnecessary delays in adjudication ...." Moreover, when more than one agency is involved in similar functions, redundancies in actual implementation and inconsistent results could occur. Additionally, such duplication could lead to waste of resources (i.e., personnel, funds, equipment, etc.).

Some agencies perform broad immigrant-related functions, but they have distinct responsibilities. For example:

- DOL, INS, and DOS make determinations on skill-based immigrant and limited duration admissions applications.
- INS and DOL provide some form of worksite enforcement and conduct investigations pertaining to employer compliance with immigration-related labor standards and violations of the employment eligibility verification requirement.
- INS and DOS adjudicate immigrant visas and conduct background checks on visa applicants.
- INS and U.S. Customs both perform inspections at ports of entries.

The following table is a description of selected agencies' immigration functions.

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[15] (...continued)
Sess. Washington, Govt. Print. Off., 1980. p.81; U.S. Commission on Immigration Reform. *1997 Report to Congress, Becoming an American: Immigration and Immigrant Policy*. Washington, Govt. Print. Off., 1997.

[16] The Commission was established as a result of a mandate by the Immigration Act of 1990 (P.L. 101-649). It was charged with examining the implementation and impact of U.S. immigration policy.

Table 1. Selected Immigration Functions by Departments

Agency/immigration function	INS DOJ	DOS	U.S. Treasury	DOL	DHHS[a]
Issuance of Non-immigrant Visas	✗	✗			
Naturalization Adjudication	✗				
Legal Permanent Residents Adjudications	✗	✗			
Asylum Processing	✗				
Refugee Admissions and Resettlement		✗			✗
Other adjudications	✗	✗			
Immigration Inspections	✗		✗		
Border Patrol	✗				
Investigation	✗				
Apprehension/Removal	✗				
Detention	✗				
Employment Verification	✗			✗	
Medical Inspections					✗

Source: Table prepared by the Congressional Research Service.
[a] Department of Health and Human Services.

DOJ Immigration Functions[17]

Section 103 of the INA gives primary responsibility for the administration and enforcement of immigration law to the Attorney General. There are several agencies and offices within DOJ that have responsibility for some immigration functions: *INS*, the *Executive Office for Immigration Review (EOIR)*, and the Civil Division of DOJ.

INS, a separate agency within DOJ, is responsible for administering immigrant services, such as the adjudication of naturalization petitions, review of asylum

[17] Some of the information in this section was obtained from CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*, by William J. Krouse.

claims, and the issuing of immigrant visas for aliens who seek to adjust their immigrant status. INS also patrols the borders, inspects all persons arriving at U.S. ports of entry, and investigates violations of immigration law. INS also performs worksite enforcement along with DOL.

EOIR is also an independent agency within DOJ and was established by regulation in 1983. EOIR has jurisdiction over the immigration court system, the Board of Immigration Appeals (BIA), and the Office of the Chief Administrative Hearing Officer (OCAHO). Immigration judges preside over removal hearings and their decisions are appealable before the BIA. BIA is the highest administrative body for interpreting and applying immigration laws. OCAHO was created to hear administrative cases related to employment discrimination, document fraud, and employer sanctions.

In addition to EOIR, DOJ has other components that have some immigration functions, such as the Office of Litigation, and the Office of Special Counsel for Immigration-Related Unfair Employment Practices. Both of these offices are located within the Civil Division of DOJ.

DOS Immigration Functions

Section 104 of the INA gives responsibility for administering and enforcing immigration law to the Secretary of State. DOS has several bureaus and offices that have immigration-related functions: the Bureau of Consular Affairs, the Bureau of Democracy, Refugee and Migration Affairs, and the Office of the Legal Adviser.

The *Bureau of Consular Affairs* is responsible for the adjudication of visas overseas for foreign nationals wishing to come temporarily to the United States. It also manages the issuance of passports to citizens. The *Bureau of Population, Refugee and Migration* has responsibility for migration issues and oversees refugee admissions. The *Office of Legal Adviser* serves as the counsel for the State Department on migration issues.

DOL Immigration Functions

Several agencies within DOL have responsibility for some immigration functions. The *Employment and Training Administration* processes the applications that are filed by employers seeking to hire foreign workers. It also has responsibility for making sure U.S. workers are not adversely affected by the hiring of foreign workers. The function is carried out in its *Division of Foreign Labor Certification*.

The Employment Standards Administration is responsible for enforcing immigration-related labor issues. Within the Employment Standards Administration is the *Wage and Hour Division*, which has responsibility for investigating possible violations of regulations, contract requirements or attestations under the H-2A, H-1C,

H-1B, D-visa and F-visa programs.[18] It is also responsible for reviewing employment eligibility verification requirements under INA.

Three bureaus and offices, *International Labor Affairs Bureau*, the *Office of the Assistant Secretary for Policy*, and the *Office of the Solicitor*, direct DOL's immigration policy and research, and provide legal support for all of DOL's immigration programs and functions.

U.S. Customs Service Immigration Functions

The U.S. Customs Service is under the jurisdiction of the U.S. Treasury Department. The Customs Service's primary function is inspecting and clearing goods entering the United States. Customs Service and INS inspectors are cross-designated to enforce both agencies' areas of law. (Custom's officers are cross-designated to inspect persons seeking entry into the country, and INS inspectors are cross-designated to inspect goods during primary inspection.) When a question of an alien's admissibility arises, the Customs inspector refers the alien to INS for secondary inspection and a final determination of admissibility.[19]

Other Federal Agencies' Immigrant-Related Functions

The *Public Health Service* of the *Department of Health and Human Services* (DHHS) determines health-related grounds for inadmissibility and provides health inspections for certain aliens who present themselves at a port of entry. Also, the *Office of Refugee Resettlement* within DHHS provides assistance to refugees.

Other federal agencies that perform immigration-related functions include the Department of Agriculture and the Department of Education. The Department of Agriculture performs inspections on food (i.e., fruit), and the Department of Education administers educational assistance programs for immigrant children.

Past INS Reorganizations[20]

In 1891 immigration functions were centralized under the Bureau of Immigration in the Department of Treasury. In 1913, Congress mandated that the then Bureau of Immigration and Naturalization be divided into two Bureaus,

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[18] The following non-immigrant visas are categorized as follows: H-2A, agriculture guest workers; H-1C, nurses; H1B, professional speciality workers; D-visa, vessel or aircraft crewman; and F-visa, student visa for an educational institution.

[19] For information on the U.S. Customs Service see: CRS Report RL31230, *U.S. Customs Service Authorization, FY2002 Budget, and Related Border Management Issues*, by William J. Krouse.

[20] See **Appendices A and B** for a chronology of proposals to restructure INS and INS reorganizations.

immigration and naturalization.[21] During the time period from 1903 to 1940, the immigration agency was delegated additional responsibilities and was transferred to a variety of different Departments. Each move reflected a perceived change in the agency's focus as expressed in underlying immigration law. As Congress gave the agency additional responsibilities, it responded by making internal adjustments.[22] No reorganization legislation has been enacted since 1913.

INS Restructuring Proposals in the 105th Congress[23]

Congress turned its attention to restructuring INS in the 105th Congress when the report that accompanied the FY1998 Commerce, Justice, State, the Judiciary and the Related Agencies Appropriations Act directed the Attorney General to review recommendations made by the U.S. Commission on Immigration Reform (Commission) and submit a plan to Congress to restructure INS and the federal immigration system (P.L. 105-119; H.Rept. 105-207). In addition to specific language in the House report directing the Attorney General to submit a plan to restructure INS, several bills were introduced that would have separated INS's service and enforcement functions.[24]

After submitting several reports to Congress, in 1997 the Commission submitted its final report with recommendations that INS's immigration functions be transferred to other federal agencies. The Commission recommended that the processing of legal immigration and naturalization claims be transferred to DOS, while the enforcement functions remain at DOJ as an elevated enforcement bureau, with the exception of worksite enforcement, which would be transferred to the DOL. The Commission recommended the transfer of INS detention functions to the U.S. Marshall's Service or the Bureau of Prisons. It also recommended the creation of an independent appeals board to handle all administrative appeals of immigration-related determinations made by DOS, DOJ and DOL.

In 1998, the Administration submitted to Congress its proposal to restructure INS. The report, *A Framework for Change: The Immigration and Naturalization Service*, established a plan to separate the service and enforcement functions, and increase managerial accountability, among other things. While acknowledging some of the Commission's recommendations,[25] the Administration's plan failed to address

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[21] 37 Statute 737.

[22] For example, from 1909 to 1917, numerous internal changes were made including the creation of 23 districts responsible for general immigration services and enforcement in 1910. In 1921, the Bureau organized into three general areas: general administration, quasi-judicial agencies, and the field service. See **Appendix B** for a chronology of past INS reorganizations.

[23] Information in this section was obtained from CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*, by William J. Krouse.

[24] See, for example, H.R. 2588 and H.R. 4264.

[25] The Administration acknowledged that the Commission on Immigration Reform correctly identified many longstanding issues within INS such as insufficient accountability between

(continued...)

them, according to some critics, notably the dispersal of functions to other agencies. The plan was never fully implemented.

INS Restructuring Proposals in the 106th Congress[26]

There were several legislative proposals to restructure INS in the 106th Congress. Two pieces of legislation would have expanded and elevated the immigration service (S. 1563 and H.R. 2680), while two other bills (H.R. 2528 and H.R. 3918) would have dismantled INS, creating two new bureaus (service and enforcement) within DOJ.

The Administration's November 14, 2001 INS Restructuring Plan

On November 14, 2001, Attorney General John Ashcroft and INS Commissioner James W. Ziglar unveiled a plan to restructure INS. Because the Congress has delegated broad authority to the Attorney General to administer immigration laws, the Administration maintains it can implement this reorganization plan without legislation. The plan would maintain the INS Commissioner's position to oversee all of INS functions. One of its main features is splitting the service and enforcement functions into two separate bureaus. Each bureau would have its own chain of command and executive commissioner who would head the bureau.

The plan would maintain some of the offices and positions under the current organizational structure, and create several new offices and positions within each bureau, including a customer relations office in the newly created Bureau of Immigration Services and an ombudsman office in the newly created Bureau of Immigration Enforcement; and an Office of Quality Assurance. The plan also creates a Director of Service Center Operations; an Office of Asylum and Refugees within the service bureau; a Director for the International Division; a Director for detention and removal; a Chief of the Border Patrol and Interior Enforcement; Area Port Directors; and Special Agents in Charge within the enforcement bureau.

In addition to the two bureaus, the plan creates three new positions that would report directly to the commissioner (a Chief Information Officer, a Chief Financial Officer, and a Chief Administrative Officer). It also includes the creation of a new Office for Juvenile Affairs whose director would report directly to the commissioner.[27]

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[25] (...continued)
field offices 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.

[26] Information in this section was obtained from CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*, by William J. Krouse.

[27] The proposed newly created Office of Juvenile Affairs would oversee INS-related matters
(continued...)

On April 17, 2002, Attorney General John Ashcroft announced action on his first steps to reorganize INS.[28] The Attorney General stated that INS's border patrol and detention facilities would have a "... more direct chain of command ..."[29] Instead of reporting to Sector Chiefs, who report to Regional Directors, the Chief Patrol Agents of the 21 border patrol sectors will report directly to the Chief of Border Patrol, located at INS headquarters. The positions of Sector Chiefs and Regional Directors are eliminated under the new organizational structure.

The directors in charge of INS's eight Service Processing Centers[30] will also report directly to INS headquarters, instead of to the District and Regional Directors whose positions will be eliminated under the new restructuring plan.

The Attorney General also announced the launching of a search for a Chief Financial Officer and a Chief Information Officer position to be located directly under the INS Commissioner. Also, an Office of Juvenile Affairs is being established.

The Attorney General is also establishing a "Field Advisory Board" to act as a liaison between INS's headquarters and the field offices during the restructuring period. The Field Advisory Board was not included in the Administration's November 14, 2001 INS restructuring plan.

Restructuring Legislation in the 107th Congress

Several pieces of legislation have been introduced that would abolish INS and do one of the following: (1) create separate bureaus within DOJ to carry out INS's current immigration services and enforcement functions that would report to a newly created Associate Attorney General; (2) create a new integrated immigration agency within DOJ; and (3) disperse INS's service functions among a number of different agencies and create a new enforcement agency within DOJ.

The Barbara Jordan Immigration Reform and Accountability Act of 2002 (H.R. 3231)

The "Barbara Jordan Immigration Reform and Accountability Act of 2002" (H.R. 3231) would abolish INS and create an Office of Associate Attorney General for Immigrant Affairs within the DOJ. Under the newly created Office, two new bureaus would be established, Bureau of Citizenship and Immigration Services and Bureau of Immigration Enforcement. Each bureau would be headed by a director

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[27] (...continued)
pertaining to unaccompanied minors.

[28] U.S. Department of Justice. News Release. *INS Announces First Major Structural Changes in Restructuring*. Washington, April 17, 2002.

[29] Ibid.

[30] The INS Processing Centers are detention facilities.

who would report to the Associate Attorney General for Immigration Affairs. Within each Bureau would be the following newly created offices and positions: (1) Office of Policy and Strategy, (2) Legal Advisor, (3) Chief Budget Officer, and (4) Office of Congressional Intergovernmental and Public Affairs. The *Bureau of Citizenship and Immigration Services* would also have a newly created Office of Citizenship.

Under the act, the newly created *Immigration Services Bureau* would process immigration, refugee, asylum, and naturalization-related applications. The Office of Special Counsel for Immigration Related Unfair Employment Practices and the immigration functions of the Office of Immigration Litigation from DOJ's Civil Rights Division would be transferred to the Bureau.

The newly created *Immigration Enforcement Bureau* would be responsible for all border patrol, inspections, detention, removal, investigation, and intelligence functions. The act would also transfer the enforcement functions of the Office of Special Investigations from DOJ's Criminal Division and the enforcement functions of the Office of Immigration Litigation from DOJ's Civil Division to the newly created bureau.

H.R. 3231 would also create several new positions and offices within the Office of Associate Attorney General for Immigrant Affairs: (1) Policy Advisor; (2) General Counsel; (3) Chief Financial Officer; (4) Director of Shared Services; (5) Office of the Ombudsman; (6) Office of Professional Responsibility and Quality Review; and (7) Office of Children's Affairs.

The act would also create an Office of Immigration Statistics within the Bureau of Justice Statistics. The Office would be responsible for maintaining all immigration-related statistics of the agency and the Executive Office for Immigration Review (EOIR), among other things. This activity is currently under INS's Office of Policy and Planning.

The act would require the Attorney General to develop an internet-based system that would allow customers to access online information pertaining to the status of their immigration applications. It would also require the integration of databases used by both the service and enforcement bureaus with the databases used by EOIR. The act would also authorize the Associate Attorney General to terminate employment of any employee who willfully deceives the agency or Congress.

The act would transfer certain functions, personnel, and resources to the newly created agency, authorize appropriations for the newly created agency, and establish a separate account for adjudication services' fees collected. The act would authorize appropriations for the Bureau of Citizenship and Immigration Services and for the Immigration Enforcement Bureau. The act would also establish a separate account for restructuring activities.

On April 25, 2002, the House passed the act with amendments. The "manager's amendment," among other things, would require the directors of both bureaus to develop and implement a plan that would rotate managers and supervisors among different functions of the respective bureau; permit the Attorney General to provide "voluntary separation incentive payments" for certain INS employees to help carry

out the restructuring plan; and permit the Attorney General to conduct a demonstration project for 5 years for the purpose of changing policies and procedures pertaining to methods for disciplining certain employees that would result in improved personnel management. Other amendments would require the Attorney General to develop and submit a plan to Congress that would ensure adequate legal representation for unaccompanied minors; require the Comptroller General to submit a report to Congress on whether the fees collected by the newly created Bureau of Citizenship and Immigration Services are sufficient to carry out the bureau's functions; require the newly created Office of Immigration Statistics to collect statistics by regions on the number of applications and petitions filed by aliens and denied, including the reason for such denials; and authorize the director of the Bureau of Citizenship and Immigration Services to implement pilot initiatives that would eliminate the immigration application backlogs and prevent them from recurring.

The March 29, 2002 Draft Immigration Reform, Accountability, Security, and Enforcement Act of 2002

This legislation is currently being circulated in draft form. It has been proposed by Senator Kennedy (Chairman of the Subcommittee on Immigration, Senate Judiciary Committee) and Senator Brownback. The March 29, 2002 draft of the "Immigration Reform, Accountability, Security, and Enforcement Act of 2002" would abolish INS and create a new Immigration Affairs Agency within DOJ. In its most recent draft, dated March 29, 2002, the legislation would create the following new positions: (1) Chief Financial Officer, (2) Deputy Chief Financial Officer, and (3) General Counsel. Two new bureaus would be created under the act: the Bureau of Immigration Service and Adjudication and the Bureau of Enforcement. Both bureaus would be headed by a Deputy Director who would report to the Director of Immigration Affairs. Within each bureau would be the following newly created offices and positions: (1) Chief Budget Officer, (2) Office of Quality Assurance, (3) Office of Professional Responsibility, and (4) Office of the Ombudsman. The draft bill would place the INS inspections function directly under the Director of Immigration Affairs.

Under the act, the newly created *Bureau of Immigration Service and Adjudication* would process immigration, refugee, asylum, and naturalization-related applications. The bureau would also make determinations pertaining to custody and parole with regard to asylum seekers. It also would transfer all adjudication functions performed at service centers to the newly created bureau. The newly created *Bureau of Enforcement* would be responsible for border patrol, detention, removal, intelligence, and investigation functions.

The act would also create an Office of Immigration Statistics within the Bureau of Justice Statistics. The office would be responsible for maintaining all immigration-related statistics of the agency and the EOIR, among other things.[31]

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[31] This activity is currently under INS's Office of Policy and Planning.

The Immigration Restructuring and Accountability Act of 2001 (H.R. 1562)

The "Immigration Restructuring and Accountability Act of 2001" (H.R. 1562) would replace INS with a newly created Office of the Associate Attorney General for Immigration Affairs within DOJ. The Associate Attorney General for Immigration Affairs would be in charge of two newly created bureaus: the Bureau of Immigration Services, and the Bureau of Immigration Enforcement.

The following offices and positions would be under the Associate Attorney General for Immigration Affairs: (1) Counsel, (2) Chief Financial Officer, (3) Office of Shared Services, and (4) Office of Immigration Quality Assurance, Professional Responsibility, and Customer Service.

The act would create a position of the Director and an Office of Children's Affairs in each bureau. It would charge the Bureau of Immigration Services with those functions currently under immigration services in INS; and the Bureau of Immigration Enforcement would be charged with those functions currently under immigration enforcement in INS, with the exception of INS inspections. The act is silent regarding INS inspections.

The act would require the Attorney General and the Secretary of Labor to develop an internet-based system that would allow customers to access online information pertaining to the status of applications. The act would also transfer certain functions, personnel, and resources to the newly created Office. The bill was referred to several House committees in April 2001, and no further action has been taken.

The Immigration and Naturalization Service Reorganization Act of 2002 (H.R. 4108)

The "Immigration and Naturalization Service Reorganization Act of 2002" (H.R. 4108) would abolish INS and the position of INS Commissioner and create a Bureau for Immigration Enforcement within DOJ. The act would create a position of Director to head the newly created bureau. The bureau would perform those functions currently under immigration enforcement at INS, and it would permit the detention program to be delegated to the Federal Detention Trustee. The act would also create a position of General Counsel for the bureau.

The act would transfer other functions to different agencies. The immigration services function currently under INS's jurisdiction would be transferred to DOS. Employment-related immigration functions currently under INS's jurisdiction would be transferred to DOL. The act would provide for the appropriate transfer of personnel and resources to the respective agencies.

The bill was introduced and referred to the House Judiciary Committee on April 9, 2002, and no further action has been taken.

Analysis of Selected Options to Restructure INS

All of the proposals to restructure INS have one aspect in common: they would separate INS's two primary functions of providing immigrant services and enforcing the immigration law. Some critics contend, however, that there are problems with this approach. Separating the services and enforcement functions, according to some critics, does not address those immigration activities that have dual functions. In their service function, INS inspectors are often the first line of contact for all aliens seeking entry into the country, including asylum seekers who may not have proper documents. In their enforcement function, INS inspectors are on the front line for enforcing immigration law and securing the nation's borders. While these two core functions are clearly delineated at the policy making level, some critics believe that splitting the two functions could exacerbate problems with the front line implementation of the competing service and enforcement policies. For example, the INS inspector must make an immediate determination that an undocumented alien, or someone who has questionable documents, should be excluded or detained for further processing by an immigration court. INS inspectors, moreover, are also expected to facilitate tourism and commerce while enforcing the law.

Another example of a front line function having both service and enforcement components involves the processing of immigrant and naturalization petitions by adjudicators. The adjudicators must be able to do thorough background checks, detect fraudulent or inadmissible claims, and enforce the law when such a claim is present.

Another concern about separating the service and enforcement functions pertains to the functions' budgets. Although the proposals would create separate budgets and give each function's mission equal attention, historically the INS enforcement function has received more resources than its service function. INS's service function is primarily a fee-driven operation, and over the years critics charged that there have been few direct appropriations to supplement undercharged or lost fees,[32] as well as overhead and administrative costs.

Option I: Keep INS Intact, While Separating the Service and Enforcement Functions

Some proposals would keep INS intact and create two separate bureaus for the service and enforcement functions.[33] Because the Attorney General has broad authority to administer immigration laws, the Administration maintains it can implement this reorganization plan without legislation.

Proposals that would keep INS intact create separate chains of command and, in theory, enhance managerial accountability. Both bureaus would report to the same

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[32] INS charges a fee to process the various types of immigrant applications (i.e., visa and naturalization applications).

[33] As mentioned earlier, this is the approach taken by Attorney General Ashcroft in his recent restructuring initiative.

centralized head, the INS Commissioner. Roles would be more clearly defined as the functions would be separated, which would provide less opportunity for personnel to perform both functions.[34] And, some critics assert that keeping INS intact but separating its functions, could provide for a better coordination and sharing of efforts between the bureaus. The ease of obtaining information from the opposite bureau would be strengthened under this type of organizational structure. Opponents argue, however, that it is not clear how such a proposal would improve some of INS's longstanding systemic issues such as weak management controls and antiquated database systems as well as the fragmentation of some functions across INS and other agencies.

Option II: Dismantle INS and Create Two Separate Bureaus Within DOJ

Another popular proposal to restructure INS includes dismantling INS and creating two new bureaus within DOJ to carry out INS's functions of providing immigrant services and enforcing the immigration law. All of the proposals to dismantle INS and create two separate bureaus would have a person in charge of each bureau. They differ, however, as to who would be responsible for overseeing the heads of the two bureaus and their functioning.

Proposals to dismantle INS, and, in essence, create new bureaus would provide lawmakers and officials a "clean slate." Some assert, however, that this approach could compound the deficiencies in INS's management controls and weak information systems. In light of the events of September 11, the need for both functions to share information with one another is paramount in order for U.S. immigration policy to be effective. Opponents argue that dismantling INS and establishing new entities within DOJ could exacerbate the already existing problem of information sharing between the two functions. All of the proposals, supporters contend, address this issue by creating an office of shared support under a newly created position of Associate Attorney General or under the Director's jurisdiction.

Option III: Dismantle INS and Disperse Its Functions to Other Agencies

A final approach that has been advanced in the 107th Congress would dismantle INS and disperse its immigration service functions to other federal agencies that have related functions (while creating a new agency within DOJ to carry out INS's enforcement functions). Transferring INS's service functions to those agencies that already perform related functions would address concerns regarding perceived fragmentation of efforts. Also, by removing INS's service functions from DOJ, primarily a law enforcement agency, some commentators believe that these functions would receive more attention.

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[34] Under the current organizational structure, the functions are blurred, creating an atmosphere that reportedly invites personnel to engage in performing both functions. Issues such as personnel not having proper training in the other function and being spread too thin are of concern to some critics.

On the other hand, opponents contend that such an approach would transfer these functions to agencies that do not view immigration issues as fundamental to their missions. Moreover, INS's two functions are interdependent, in particular regarding their databases, and separating the two functions and placing them in separate agencies with separate heads, critics contend, may further complicate their ability to share information with one another.

Border Consolidation Proposals

The idea of consolidating agencies' border security functions is not a new concept. Proposals to consolidate border security-related functions were advanced as early as 1930.[35]

Several proposals have been advanced in the 107th Congress to consolidate the agencies that have border security-related functions. The Director of Homeland Security, Tom Ridge, has proposed several plans to consolidate INS's border patrol and inspections functions, the U.S. Customs Service inspections function, and the Coast Guard into one "super agency." A more recent proposal by Ridge includes consolidating INS and the U.S. Customs Service under a newly created agency.

Several pieces of legislation have been introduced in the 107th Congress that would merge these functions into a newly created agency.

The Department of National Homeland Security Act of 2001 (S. 1534)

The "Department of National Homeland Security Act of 2001" (S. 1534) would establish a Department of National Homeland Security, headed by a cabinet-level Secretary of National Homeland Security. The act would transfer the following agencies that have border security-related functions to the newly created Department:[36] (1) the U.S. Customs Service, (2) the INS's border patrol, and (3) the Coast Guard. The act would maintain the aforementioned agencies as distinct entities within the newly created Department.

The bill would create a position of Director for the Department who would be in charge of coordinating homeland security activities, including border security, among other provisions.

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[35] For historical information on proposals to reorganize federal agencies that have border management responsibilities see: CRS report 97-974, *Reorganization Proposals for U.S. Border Management Agencies*, by Frederick M. Kaiser.

[36] Several other agencies' functions are also transferred to this newly created Department, including Federal Emergency Management Agency, Critical Infrastructure Assurance Office, the Institute of Information Infrastructure Protection (of the Commerce Department), and the National Infrastructure Protection Center and the National Domestic Preparedness Office (of the Federal Bureau of Investigation).

The bill was referred to the Senate Committee on Government Affairs on October 11, 2001, and no further action has been taken.

The National Homeland Security Agency Act (H.R. 1158)

The "National Homeland Security Agency Act" (H.R. 1158) would establish a National Homeland Security Agency, headed by a Director who would be appointed by the President and confirmed by the Senate. The Director would be in charge of coordinating homeland security activities, including border security.

Similar to S. 1534, the act would transfer the following agencies that have border security-related functions to the newly created Agency:[37] (1) the U.S. Customs Service, (2) the INS's border patrol, and (3) the U.S. Coast Guard. The act would maintain the aforementioned agencies as distinct entities within the newly created Department.

The House held joint hearings[38] on April 24, 2001 and no further action has been taken on the bill.

National Border Security Agency Act (H.R. 3600)

The "National Security Agency Act" (H.R. 3600) would establish a National Border Security Agency, headed by a Director who would be appointed by the President and confirmed by the Senate. The Director would be in charge of coordinating and integrating border security-related activities. The Director would also act as the "focal point" with respect to enforcing U.S. immigration laws.

Similar to S. 1534 and H.R. 1158, the act would transfer INS's enforcement and border management functions, the U.S. Customs Service, and the U.S. Coast Guard to a newly created Agency. The act would maintain the aforementioned agencies as distinct entities within the newly created Agency.

The bill was referred to several committees in December 2001, and no further action has been taken on it.

Analysis of Border Consolidation Proposals

All of the proposals to consolidate the border management functions of federal agencies that have such responsibilities concentrate principally on merging three entities: INS border patrol and inspections functions, U.S. Customs Service inspections function, and the U.S. Coast Guard. The proposals would create a new "super agency," possibly under the Director of Homeland Security or under DOJ's jurisdiction.

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[37] Ibid.

[38] The joint hearings were held with the House Subcommittee on Economic Development, Public Buildings and Emergency Management and the Subcommittee on National Security, Veterans Affairs, and International Relations.

These proposals seek to address concerns of duplicative functions currently being performed by several different agencies.[39] Duplication of efforts raises concerns such as waste of resources (i.e., funds, personnel, and equipment) that would also be addressed by consolidating the responsible agencies. Also, merging these agencies addresses concerns about rivalry that may exist between them and their lack of coordination and communication with one another. By merging these agencies, there would be one person in charge, rather than several persons with different missions, objectives, and interpretation of the law.

According to some opponents, the proposals do not address concerns of the need for information sharing between the immigrant service and immigration enforcement functions. Also, they argue, the proposals do not address how differing missions would be balanced. Examples of the latter concern would be facilitating trade versus maintaining national security and protecting the health and safety of U.S. citizens versus facilitating tourism and cultural exchange.

[39] INS inspections and U.S. Customs inspections both perform inspections at ports of entry. Although both have different functions (INS inspects people who present themselves for entry into the country and the U.S. Customs Service inspects goods), some observers have argued that there is a potential for overlap.

Appendix A

Chronology of Selected INS Reorganization Proposals[40]

The following chronology highlights selected proposals set forth by administrative or congressional studies, as well as administration-advanced proposals to reorganize INS.

- 1930 — President Hoover proposed to unify the border patrol functions of the INS, the U.S. Customs Service, and the Coast Guard and place them under the Coast Guard in the Department of Treasury (President Hoover made the same proposal in 1932). Also, the House Interstate and Foreign Commerce Committee proposed consolidating the border patrol and inspections functions of INS and the Customs Service inspections function under the Treasury Department.
- 1931 — The Wickersham Commission Report recommended separating the service and enforcement functions.
- 1932 — The Bureau of Efficiency recommended consolidating the Immigration Bureau's border patrol functions with the Coast Guard in the Department of Treasury.
- 1937 — The Byrd Committee Report recommended consolidating the inspections and border patrol functions of INS and the Customs Service.
- 1940 — The Bureau of the Budget recommended consolidating the inspections and border patrol functions of INS and the Customs Service.
- 1948 — Customs' Management Improvement Study suggested the creation of a federal border enforcement agency.
- 1949 — The Commission on the Organization of the Executive Branch of the Government (the Hoover Commission) recommended the creation of a new independent agency to perform immigration functions.
- 1950 — The Senate Committee on the Judiciary Report No. 1515 recommended consolidating the functions of INS and Customs Service only where such consolidations would not impair enforcement or immigration laws.
- 1953 — The President's Commission on Immigration and Naturalization (the Perlman Commission) recommended the creation of a new independent agency to perform immigration functions.

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[40] Information in the chronology was obtained, in part, from the following sources: U.S. Congress. Senate. Committee on the Judiciary. *History of the Immigration and Naturalization Service*. Committee print, 96th Cong., 2d Sess.; and The Carnegie Endowment for International Peace. *Reorganizing the Immigration Function: Toward a New Framework for Accountability*, by Demetrios Papademetriou, Alexander Aleinikoft, and Deborah W. Meyers. Washington 1998.

- 1957 — The Commission on Government Security (the Wright Commission) recommended the transfer of the Visa Division of DOS to DOJ.
- 1966 — the Government Accounting Office recommended consolidating the inspections functions of INS and the Customs Service to achieve a "one-stop inspections process. Similar recommendations were made in 1962 by a *Customs' Citizens Task Force Report* and in a 1968 *Bureau of the Budget Interagency Report*.
- 1973 — Nixon's Reorganization Plan No. 2 recommended transferring the inspection functions of INS to the Customs Service in the Department of Treasury.
- 1974 — An Office of Management and Budget Report (House Government Operations Committee Report on Border Law Enforcement and Problems of Customs-INS Coordination) recommended a single-agency management strategy for the border.
- 1977 — The Office of Drug Abuse Policy report recommended a single agency, to include INS and the Customs Service, to perform port-of-entry inspections and border patrol.
- 1978 — The President's Reorganization Project recommended transferring the visa functions of DOS to DOJ, and also recommended consolidating INS inspections and border patrol functions with the Customs Service in a border management agency in the Treasury Department.
- 1981— The Report of the Select Commission on Immigration and Refugee Policy recommended separating the service and enforcement functions, while keeping INS intact.
- 1983 — The Grace Commission Task Forces on the Department of Treasury and Justice recommended consolidating INS border patrol and inspections with Customs Service inspections.
- 1990 — The Report of the Commission for the Study of International Migration and Cooperative Economic Development recommended centralizing the immigration and refugee-related functions by creating a new immigration agency.
- 1997 — Report of the U.S. Commission on Immigration Reform recommended dismantling INS and creating a new independent bureau for INS's enforcement function, placing INS's service function under the Department of State, and its immigrant labor-related functions under the Department of Labor.

Appendix B

Chronology of Implemented INS Reorganizations[41]

The following chronology highlights significant agency reorganizations. The reorganization mandated by legislation is italicized.

- 1891 — The Bureau of Immigration was established in the Department of Treasury to ensure federal control over immigration. Its original function was to provide for the exclusion of certain categories of aliens.
- 1903 — The Bureau of Immigration was transferred from the Department of Treasury to the newly created Department of Commerce and Labor. During this period, regulating foreign labor was seen as an important immigration function.
- 1906 — Naturalization functions were added to the Bureau to form the Bureau of Immigration and Naturalization.
- *1913 — Congress passed an Act that abolished the Department of Commerce and Labor and created two separate Departments: the Department of Commerce and the Department of Labor (DOL).*[42] *The Act also provided for the transfer of the Bureau of Immigration and Naturalization to the newly created Department of Labor, and it divided the Bureau into two sections: the Bureau of Immigration and the Bureau of Naturalization, headed by two commissioners.*
- 1924 — As a result of increased illegal border crossings, Congress recognized the need for enforcement measures to stem illegal entries in the 1924 Immigration Act (4. Stat. 153), and a subsequent appropriations act (43 Stat. 240) led to the creation of an expanded border patrol.[43] Prior to the formal creation of a border patrol, the Bureau had maintained a small force of mounted guards on the U.S.-Mexico border. The new border patrol extended to the U.S.-Canada border.
- 1933 — The Bureau of Immigration and the Bureau of Naturalization were combined to form the Immigration and Naturalization Service (INS).
- 1940 — INS was transferred from DOL to the Department of Justice (DOJ). During this war time period, national security was a primary concern, prompting an emphasis on providing more effective control over aliens. Many organizational changes occurred as a result of the

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[41] Information in the chronology was obtained from the following source: U.S. Congress. Senate. Committee on the Judiciary. *History of the Immigration and Naturalization Service*. Committee Print, 96th Cong., 2d Sess.

[42] 37 Stat. 737.

[43] Congress recognized the need to enforce the immigration laws with regards to preventing illegal aliens from entering the country in the 1924 Immigration Act; and in the appropriations act, Congress created the border patrol.

transfer to the DOJ, including growth in personnel, and the establishment of additional divisions.

- 1952 — There was an administrative reorganization of the central office that was prompted by the passage of the Immigration and Naturalization Act of 1952.
- 1955 — There was a service-wide reorganization that included the creation of regional offices to oversee field activities, realignment and reduction of field offices, and the establishment of a field inspection and security division. The 1955 reorganization also included a reduction in personnel.
- 1979 — There was an administrative reorganization of the central office.
- 1991 — There was an administrative reorganization of the central office.
- 1994 — There was an administrative reorganization that included the creation of four Executive Associate Commissioners for programs, policy and planning, management, and field operations.