



STATEMENT OF

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COMMITTEE ON HOMELAND SECURITY

U.S. HOUSE OF REPRESENTATIVES

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Good afternoon Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to join you today to discuss our review of the merits of merging two Department of Homeland Security (DHS) bureaus, Immigration and Customs Enforcement (ICE) and the Bureau for Customs and Border Protection (CBP) and eliminating the directorate to which they report, Border and Transportation Security (BTS).

Impetus for Our Report

In January 2005, the Senate Committee on Homeland Security and Governmental Affairs conducted a hearing to discuss means for improving DHS's effectiveness. Prominent among the topics discussed were recommendations proposed in a December 2004 report by the Heritage Foundation and the Center for Strategic and International Studies, entitled *DHS 2.0: Rethinking the Department of Homeland Security*. During the hearing the Committee Chairman asked our office to assess the merits of the report's recommendation to eliminate BTS and merge CBP and ICE.

In response, we undertook this review, which examined the history of the organizations, the roles and responsibilities assigned to them, and the degree to which they have met their inter-related goals. We interviewed more than 600 individuals from public, private, and non-profit sectors. To obtain a balance of viewpoints, we traveled to 10 cities across the country to talk to employees in 63 CBP and ICE facilities. We met with senior BTS, ICE, and CBP leaders in Washington, DC, program managers, field staff, employees on the line, and stakeholders. We reviewed budget plans, performance statistics, operating procedures, and a large volume of other information pertaining to BTS, CBP, and ICE.

As CBP and ICE were reformations of the former Immigration and Naturalization Service (INS) and the U.S. Customs Service (Customs), we examined whether the problems in operation and integration that we encountered arose from the implementation of the new organizational structure, or whether they were pre-existing conditions carried over from the former agencies. We also considered other factors that may have contributed, such as ICE's funding stream and accounting system difficulties. After weeding out those issues, we concluded that the current organizational arrangement contributed to concerns in at least three major areas: coordination of apprehension and detention and removal efforts, coordination between interdiction and investigative efforts, and coordination of intelligence activities.

Creation of ICE and CBP

Before DHS was created, the Department of Justice's INS was responsible for enforcing the immigration laws, and the Department of the Treasury's U.S. Customs Service had authority for enforcing the customs statutes. The INS was responsible for ensuring effective enforcement of immigration laws from start to finish, including apprehension,

border inspection, investigation, and prosecution of violations of immigration law. Likewise, Customs bore responsibility for a full range of customs enforcement activities, including the targeting, inspection, regulation, and investigation of all goods crossing our country's borders.

With the formation of CBP and ICE, the responsibility for customs and immigration enforcement was divided between the two organizations so that each shouldered responsibility for aspects of both customs and immigration enforcement. By the same token, neither agency was given responsibility for the full scope of customs or immigration enforcement activities. CBP received INS and Customs inspections functions and the Border Patrol. INS and Customs investigations and intelligence functions, as well as the INS detention and removal resources, were placed in ICE.

Under the new structure, the organizations depended on each other's assistance to complete enforcement actions. For example, if CBP inspectors interdicted an individual for a customs law violation, the investigation of the matter would have to be turned over to ICE or another law enforcement agency. Similarly, ICE now depended on case referrals from CBP inspectors. For their part, CBP Border Patrol agents had to rely on ICE detention and removal resources to deport the aliens whom they apprehended.

BTS, the entity responsible for integrating the interdependent CBP and ICE activities, was hobbled by inadequate staffing and lack of authorities over CBP and ICE. Consequently, BTS leadership often failed to prevent CBP and ICE from working at cross-purposes, it did not intervene to effectively synchronize CBP's and ICE's operations, and it was slow to resolve conflicts between them. In addition, with a few exceptions, it was unable to facilitate their development of mutually beneficial resource plans and priorities. As a result, the ICE and CBP chains of command pursued their own priorities when allocating resources and developing procedures. Problems with coordination between the two naturally ensued.

Problems in Coordination

A clear institutional barrier marks the division between CBP and ICE. Shortfalls in operational coordination and information sharing have fostered an environment of uncertainty and mistrust between CBP and ICE personnel. What had been collegial relationships between the different enforcement functions within INS and Customs have deteriorated. Employees at both ICE and CBP told us that enforcement units in CBP and ICE suffer from breakdowns in cooperation, competition, and, at times, interference with each other's duties. The problems are most notable in three areas: (1) the coordination of apprehension and detention and removal operations; (2) the coordination of investigative operations; and (3) the coordination of intelligence activities.

Coordination of Apprehension and Detention Removal Operations

Absent a strong integrator, the division of related enforcement functions necessitates separate planning and resource allocation. The organizations' differing priorities and

needs, coupled with ICE's funding and accounting problems, have contributed to a resource imbalance between CBP's alien apprehension and ICE's detention and removal programs. CBP grew its apprehension capabilities while ICE did not increase its detention and removal resources. The resultant increase in apprehended illegal aliens has placed an increasing strain on ICE's static detention and removal resources. It also has reduced the impact of CBP's alien apprehension efforts by allowing larger numbers of apprehended aliens to roam freely within the United States pending their immigration hearing, which many never attend. The backlog of immigration hearing absconders is continuing to grow and stood at more than 465,000 at the end of fiscal year (FY) 2004. The drop in the proportion of illegal aliens who are apprehended and removed may inspire more aliens to seek illicit entry into the United States and, in turn, may cause removal rates to spiral downward.

In the past, INS detention and removal resources were detailed to INS apprehending components in order to provide support, such as assistance with transportation, guard duty, and basic processing of aliens. At BTS' instruction, some of this support continues. According to senior CBP staff, however, the level and quality of support has declined. This declining support, combined with ICE's withdrawal of support in other areas, has prompted CBP to divert staff and resources from the functions they are best suited to perform – inspections and patrol work.

Ultimately, ICE's detention and removal functions are governed by appropriations. Improved coordination in resource allocation between CBP and ICE can better align the apprehension rates with the detention and removal services, but the value of the deterrent effect that results from their improved coordination is still limited by the funds available to buy bed space and support removal costs.

Coordination of Investigative Operations

The division of enforcement functions between CBP and ICE has also hampered the coordination of interdiction and investigation efforts. Now that they are in separate organizations, ICE investigators do not accept as many case referrals from CBP inspectors and Border Patrol agents, according to many CBP employees. Some attributed ICE's declining acceptance rate of CBP referrals to the separate chains of command. In the past, when investigators did not respond to a referral, inspectors and Border Patrol agents could appeal up their common chain of command to direct an investigative response. Now, appealing up the separate chains of command is not as effective.

Likewise, according to many staff, CBP is relying less on ICE to investigate the violations it uncovers. Many ICE investigators reported that CBP increasingly refers cases to other investigative agencies. In both the INS and Customs, investigators had the right of first refusal for cases detected by inspectors. Now, due to the decline in ICE's acceptance rate, interagency competition, growing mistrust, and a decline in feedback on case progress, CBP is referring more cases to the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and local law enforcement authorities for investigation, without first notifying ICE. In addition, CBP is developing its own

investigative capabilities to use in lieu of ICE investigators. In October 2004, CBP announced a pilot program to increase the number of CBP enforcement officers – a former INS group that investigated some immigration cases, but was restricted to the ports of entry (POEs). CBP’s pilot program would broaden the scope of these CBP enforcement officers’ authority to include criminal violations of the federal customs and drug statutes and expand their jurisdiction outside the POEs. Along the same lines, the Border Patrol has taken some steps to reconstitute its investigative capabilities in alien smuggling cases.

A large number of CBP employees and ICE investigators expressed concern about the growing antagonism between the two organizations. They told us that they fear that coordination will deteriorate further as legacy employees retire or resign, and the remnants of good working relationships held over from the former INS and Customs will lapse.

Coordination of Intelligence Activities

CBP and ICE intelligence requirements overlap to a large extent, yet coordination of intelligence activities between them has also suffered. Both CBP and ICE require intelligence regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, and import and export violations. Despite their shared intelligence needs, the two organizations have separate intelligence structures and products. Intelligence coordination between CBP and ICE at both the headquarters and field levels needs improvement. At the headquarters level, the only significant intelligence coordination effort that we could identify between the two organizations relates to intelligence received from outside agencies. Meanwhile, CBP withdrew from ICE field intelligence elements as ICE has from CBP’s.

The organizations’ primary means of sharing intelligence is the Treasury Enforcement Communications System (TECS), which was not designed for this purpose. Most CBP personnel lack the required level of access to retrieve critical information entered into TECS by ICE. As a result, valuable ICE information about criminal trends and threats is effectively withheld from most CBP employees, especially from those in the field. Furthermore, because the data system was not designed as an intelligence tool and does not highlight trends or detect anomalies, intelligence analysts often are unaware of the information it contains and must hunt through the entire system to retrieve information they might need.

CBP and ICE work independently of one another to develop intelligence products. CBP and ICE intelligence analysts told us that the two organizations have never co-authored any major intelligence products. The intelligence products each generates serve their respective needs and may not present a comprehensive picture of border security.

Improved efforts to eliminate intelligence stovepipes are needed. Intelligence and other information CBP and ICE could use to enhance their operations and improve overall

border security is sometimes retained on the other side of the interagency wall. As a result, neither agency has all of the information it needs from the other.

Conclusions and Organizational Options

We heard a surprising and notable consistency of concerns amongst the more than 600 people we interviewed in 63 sites across the country. Their comments were supported by the data we reviewed. The breadth and depth of our field work, combined with data supporting the facts we learned in the field, allow us to conclude that significant problems have arisen from the institutional gap that separates the enforcement functions maintained in CBP and in ICE. While never perfect, what had been a working continuum of immigration and customs enforcement functions has been fractured, and redundant functions, stovepiped information, and inefficient operations have ensued. These problems defeat the purpose of the current organizational structure, which according to DHS,¹ was to establish coherent policies, reduce duplication of efforts, and improve information sharing.

In addressing the task given us by the Senate Homeland Security and Governmental Affairs Committee, we considered the merits of the recommendations made by the Heritage Foundation report, as well as two other alternatives:

- Eliminate BTS and maintain CBP and ICE as separate entities reporting directly to the DHS Deputy Secretary
- Create more effective coordination mechanisms by strengthening BTS and implementing more effective memoranda of understanding
- Merge CBP and ICE and eliminate BTS

The first option would not bridge the institutional gap between the enforcement functions. We believe it would further degrade enforcement coordination, as BTS' integrator function would be further removed from day-to-day operations up to the level of the Deputy Secretary. We did not endorse this option. The second option would require providing BTS with more staff and resources, as well as authority to effectively manage the operations of both ICE and CBP, including developing policy, directing resources, resolving disputes, and dictating personnel decisions. This model would effectively strip the heads of ICE and CBP of their authority and transfer it to BTS. While the authority to direct ICE and CBP would be merged into one organization, the separation between enforcement functions would continue in each of the two organizations. We did not endorse this option, either.

We endorsed the final option. Merging CBP and ICE and eliminating BTS, in our opinion, is the optimal solution to removing the problems arising from the current organizational structure. The almost universal message that we heard from inspectors, Border Patrol agents, investigators, and DRO officers is that they perceive the current problems between CBP and ICE to be inherent to the organizational structure and

¹ DHS, "Border Reorganization Fact Sheet," January 30, 2003.

impossible to resolve absent a merger. Merging the entities would restore the continuum of enforcement functions that operated in the former INS and Customs. While costs would be associated with a merger, we believe that the costs of not merging would be greater. Allowing the current organizational structure to stand would allow ICE and CBP to continue to drift further apart, and operate too autonomously. While we acknowledge the Department's concern that merging the entities would represent a step back to the former agencies and would be wasteful because of the new costs required to accomplish merger, we disagree. We do not propose to reconstitute the INS and Customs. Further, we believe a merger can be accomplished more cheaply now than later. Merging ICE and CBP would create a true border enforcement agency enhanced not only by the seamless integration of enforcement functions, but by the melding of customs and immigration authorities, as well. With such an entity, we believe DHS would be better prepared to fulfill its mission of protecting the homeland.

In addition, our report addresses the placement of three other organizations that are currently in ICE: the Federal Protective Service (FPS), the Federal Air Marshal's Service (FAMS), and the Fraudulent Document Laboratory (FDL). The FPS mission to protect federal office buildings has no association with ICE's mission to investigate immigration and customs violations and should be separated from ICE. Similarly, because the FAMS mission to protect domestic civil aviation has little in common with the ICE mission, we suggested that FAMS be transferred back to TSA, which shares a similar mission. Finally, during the course of our fieldwork, we learned that ICE and CBP each maintain a capability for examining and analyzing fraudulent documents. To improve efficiency and information sharing, we suggested that the entities be merged into a single office located in CBP.

Recommendations for DHS Second Stage Review Implementation

While we were conducting our review, the Secretary initiated the Second Stage Review (2SR) of DHS operations and structure. On July 13, 2005, after reviewing the results of 2SR, as well as the results of our review, the Secretary decided not to merge ICE and CBP. Instead, he placed them in a direct reporting relationship to the Deputy Secretary, in a configuration similar to the first option that we considered.

In light of the Secretary's decision, we made 14 recommendations to address our organizational and operational concerns with CBP, ICE and BTS. The recommendations are designed to improve the organizations' ability to:

- Define and communicate roles and responsibilities
- Better coordinate planning and budgeting
- Set and enforce priorities
- Maintain control, monitor and arbitrate disputes
- Share information

In general, the report cautions about the need for continuing and intense attention to the management and coordination needs of the agencies. ICE and CBP operations still

require intensive monitoring, and senior management will have to be available to address unanticipated integration issues.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions you or the Members may have.

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