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Border and Transportation Security: Overview of Congressional Issues

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This report provides a summary of selected border and transportation security (BTS) concepts and issues that may be of interest to the 109th Congress. It is the product of contributions from CRS staff in the table contained later in this report labeled **Key Policy Staff: Border and Transportation Security**.

Readers seeking further information and analysis of Border and Transportation Security, and Immigration issues should contact any of the CRS staff listed or visit the following CRS Current Legislative Issues (CLI) pages on the CRS website:

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Border and Transportation Security: Overview of Congressional Issues

Summary

Enhancing border and transportation security (BTS) are essential strategies for improving and maintaining homeland security. Border security entails regulating the flow of traffic across the nation's borders so that dangerous and unwanted goods and people are detected and denied entry. This requires a sophisticated border management system that balances the need for securing the nation's borders with facilitating the essential free flow of legitimate commerce, citizens, and authorized visitors. Transportation security involves securing the flow of people and goods along the nation's highways, railways, airways, and waterways. (For more information on the complexity of the BTS challenge, see CRS Report RL32839, *Border and Transportation Security: The Complexity of the Challenge*, by Jennifer E. Lake.) While in the immediate aftermath of 9/11 efforts primarily concentrated on an expanded federal role in aviation security (in particular on the heightened screening of passengers and baggage), increasingly attention is being turned towards other modes of transportation.

The effective implementation of border and transportation security measures requires the participation of numerous agencies. Federal responsibility for border and transportation security efforts is primarily contained within the Department of Homeland Security (DHS). DHS's Border and Transportation Security Directorate houses: the Bureau of Customs and Border Protection (CBP), which has responsibility for security at and between ports-of-entry along the border; the Bureau of Customs and Immigration Enforcement (ICE), which has responsibility for investigating and enforcing the nation's customs and immigration laws; and the Transportation Security Administration (TSA), which is responsible for the security of the nation's transportation systems. The U.S. Coast Guard is a stand-alone agency within DHS, and has primary responsibility for the maritime components of homeland security (U.S. ports, coastal and inland waterways, and territorial waters). DHS's Citizenship and Immigration Services Bureau (USCIS) is charged with approving immigrant petitions. In addition, the Department of State's (DOS) Bureau of Consular Affairs is responsible for issuing visas; and the Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR) has a significant policy role through its adjudicatory decisions on specific immigration cases. For more information on border agencies, see CRS Report RS21899, *Border Security: Key Agencies and Their Missions*, by Blas Nuñez-Neto. For more information on current BTS programs and policies, see CRS Report RL32840, *Border and Transportation Security: Selected Programs and Policies*, by Lisa Seghetti et al.

This report provides a summary of the roles and responsibilities of various federal agencies engaged in border and transportation security activities; describes selected concepts and terms prominent in border and transportation security debates; and discusses selected issues that might be of interest to the 109th Congress. For more information on BTS policy options, see CRS Report RL32841, *Border and Transportation Security: Possible New Directions and Policy Options*, by William Robinson et al. This report will be updated as significant developments occur.

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Border and Transportation Security: Overview of Congressional Issues

Overview of Key Concepts

Improving border and transportation security (BTS) are essential strategies for improving and maintaining homeland security. Border security entails regulating the flow of traffic across the nation's borders so that dangerous and unwanted goods and people are detected and denied entry. This requires a sophisticated border management system that balances the need for securing the nation's borders with facilitating the essential free flow of legitimate commerce, citizens, and authorized visitors. Transportation security involves securing the flow of people and goods along the nation's highways, railways, airways, and waterways.¹ While in the immediate aftermath of 9/11 efforts primarily concentrated on an expanded federal role in aviation security (in particular on the heightened screening of passengers and baggage), increasingly attention is being turned towards other modes of transportation.

Recent congressional actions concerning terrorism and border security fall into several categories including broad efforts to understand the terrorist threat (including several commissions: Gilmore, Bremer, and Hart-Rudman); structural changes to provide a proper framework for action (enacting legislation, P.L. 107-296, to create the Department of Homeland Security (DHS), and enacting the USA Patriot Act, P.L. 107-56); highly specific actions to prevent immediate threats (legislative activity concerning aviation security, visa policy, bioterrorism, and maritime security); and a return to broader and more comprehensive approaches (including the creation of the 9/11 Commission, and the recently passed intelligence reform bill). The indications are that in both a legislative and oversight capacity, the 109th Congress will be dealing with issues that confront border security and homeland security issues in a comprehensive and more integrated fashion.

This report is intended as an overview of selected concepts and issues that may be of interest to the 109th Congress, and should not be considered exhaustive. It provides a brief description of selected agencies and their border and transportation security responsibilities.² The paper then discusses selected concepts that are prominently featured in recent BTS debates; and provides a summary of BTS-related provisions of the 9/11 Commission Report, and the Intelligence Reform and

¹ For more information on the complexity of the BTS challenge, see CRS Report RL32839, *Border and Transportation Security: The Complexity of the Challenge*, by Jennifer E. Lake, William H. Robinson, and Lisa M. Seghetti.

² For more information on border agencies, see CRS Report RS21899 *Border Security: Key Agencies and Their Missions*, by Blas Nuñez-Neto.

Terrorism Prevention Act of 2004. Finally, this report presents some specific border and transportation security issues that may be of interest to the 109th Congress.³

DHS Border and Transportation Security Responsibilities

DHS is the primary agency responsible for the security of the borders. The Homeland Security Act of 2002 (P.L. 107-296) transferred the relevant funding and most of the personnel of 22 agencies and offices to the newly created Department of Homeland Security. DHS was organized into four main directorates: Border and Transportation Security (BTS); Emergency Preparedness and Response (EPR); Science and Technology (S&T); and Information Analysis and Infrastructure Protection (IAIP).

Border security functional responsibilities are at their most vivid at the point at which goods or people are expected to cross borders.⁴ The border and transportation security responsibilities of DHS are primarily located within the BTS Directorate. The Coast Guard is a stand alone agency within DHS, but has significant border security responsibilities.

Within the BTS Directorate, Customs and Border Protection (CBP) has responsibility for security at and between ports-of-entry along the border. These responsibilities include inspecting people and goods to determine if they are authorized to enter, and maintaining border crossing stations to process persons seeking entry to the U.S. The inspection and border-related functions of the Customs Service; the inspection functions of the former Immigration and Naturalization Service; the Border Patrol; and the inspection functions of the Animal and Plant Health Inspection Service (APHIS) program are consolidated under the CBP. Within CBP, the United States Border Patrol (USBP) is the agency responsible for the enforcement of federal immigration laws between ports of entry. As currently comprised, the USBP's primary mission is to detect and prevent the entry of terrorists, weapons of mass destruction, and unauthorized aliens into the country, and to interdict drug smugglers and other criminals.

Also within BTS, the bureau of Immigration and Customs Enforcement (ICE) focuses on enforcement of immigration and customs laws within the United States, as well as investigations into such activities as fraud, forced labor, trade agreement noncompliance, smuggling and illegal transshipment of people and goods, and vehicle and cargo theft. In addition, this bureau oversees the building security activities of the Federal Protective Service, formerly of the General Services

³ For more information on BTS policy options, see CRS Report RL32841, *Border and Transportation Security: Possible New Directions and Policy Options*, by William H. Robinson, Lisa M. Seghetti, and Jennifer E. Lake.

⁴ For more information on current BTS programs and policies, see CRS Report RL32840, *Border and Transportation Security: Selected Programs and Policies*, by Lisa M. Seghetti, Jennifer E. Lake, and William H. Robinson.

Administration; the operations of the Air and Marine Operations unit; and the Federal Air Marshals Service (FAMS) transferred to ICE from Transportation Security Administration (TSA) in August of 2003. The bureau combined the investigations and intelligence functions of the U.S. Customs Service and the former INS, the air and marine interdiction functions of those agencies, and the immigration detention and removal programs, as well as the operations of the Federal Protective Service. ICE conducts investigations to develop intelligence to reduce illegal entry into the United States, and is responsible for locating and removing illegal aliens by inspecting places of employment for undocumented workers. ICE is responsible for identifying and finding persons who have overstayed their visas, and the Bureau also develops intelligence to combat terrorist financing and money laundering, and to enforce export laws against smuggling and fraud.

The TSA, created by the Aviation and Transportation Security Act (ATSA; P.L. 107-71), was established to increase the protection of people and commerce as they traveled into and throughout the United States. TSA's primary focus in the aftermath of the 9/11 attacks has been aviation security, which includes protecting the air transportation system against terrorist threats, sabotage and other acts of violence through the deployment of passenger and baggage screeners; detection systems for explosives, weapons, and other contraband; and other security technologies. TSA also has responsibilities for marine and land modes of transportation including assessing the risk of terrorist attacks to all non-aviation transportation modes, issuing regulations to improve the security of the modes, and enforcing these regulations to ensure the protection of the transportation system. TSA is further charged with serving as the primary liaison for transportation security to the law enforcement and intelligence communities, and with conducting research and development activities to improve security technologies.

The Coast Guard is the lead federal agency for the maritime component of homeland security. As such, it is responsible for border and transportation security as it applies to U.S. ports, coastal and inland waterways, and territorial waters. The Coast Guard also performs other missions, including some (such as fisheries enforcement and marine rescue operations) that are not related to homeland security. The law that established DHS (P.L. 107-296) directed that the Coast Guard be maintained as a distinct entity within DHS and that the Commandant of the Coast Guard report directly to the Secretary of DHS. Accordingly, the Coast Guard exists as its own agency within DHS and is not part of DHS's border and transportation security directorate. The Coast Guard does, however, work closely with the BTS directorate.

The Department of State (DOS) and the Department of Justice (DOJ) also have a role to play in border security. Foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted.⁵ Under current law, three departments — DOS, DHS, DOJ — play key

⁵ Authorities to except or to waive visa requirements are specified in law, such as the broad parole authority of the Attorney General under §212(d)(5) of the Immigration and Nationality Act (INA) and the specific authority of the Visa Waiver Program in §217 of the
(continued...)

roles in administering the law and policies on the admission of aliens.⁶ DOS's Bureau of Consular Affairs is responsible for issuing visas. DHS's Citizenship and Immigration Services Bureau (USCIS) is charged with approving immigrant petitions. In addition, DOJ's Executive Office for Immigration Review (EOIR) plays a significant policy role through its adjudicatory decisions on specific immigration cases.

With this as background, the report now turns to a discussion of selected concepts that frequently appear in BTS debates.

Selected Concepts

This section of the paper discusses several BTS-related concepts that will likely be featured during the relevant legislative debates of the 109th Congress.

Border Management

In broad terms, good border management seeks to balance the competing, but not necessarily conflicting, goals of (1) facilitating (and even expediting) access for people and goods that we both need and desire; with (2) interdicting and stopping "bad" people and "bad" things from entering the country. The key to success in this endeavor is the ability to accurately and efficiently identify high-risk passengers and cargo, target them for inspection, and prevent the entry of dangerous goods and people without impeding the flow of legitimate cross-border traffic. The task for the policy maker is to identify and promote those policies that will enhance the efficacy of the filters employed for these tasks.

More specifically, the border enforcement agent or inspector is ultimately engaged in an identification and verification process. It is an effort to determine the identity of the people or cargo seeking entry, and to verify the legitimacy of the request for entry. There are many debates about how best to do this. The current entry processing procedures for both people and cargo are complex, and involve numerous steps each of which presents both an opportunity for interference or for interception.

⁵ (...continued)
INA.

⁶ Other departments, notably the Department of Labor (DOL), and the Department of Agriculture (USDA), play roles in the approval process depending on the category or type of visa sought, and the Department of Health and Human Services (DHHS) sets policy on the health-related grounds for inadmissibility.

Breadth, Depth, Coverage, and Jurisdiction

Several of the issues that will likely confront policymakers in the 109th Congress essentially revolve around a number of themes relating to breadth, depth, coverage, and jurisdiction. As noted above, both the border and transportation security realms involve numerous actors (both public and private), and a tremendous volume of movements across the nation's borders or along the country's transportation infrastructure. The environment created by numerous actors and high volumes of traffic may lead to a potential goal conflict between security and efficiency, in the case where increased security measures impede the flow of people and goods across the border and throughout the country. Of course, this need not necessarily occur, and in fact policy choices can be made that both provide more security and speed the flow of legitimate traffic.

In the 109th Congress, breadth (what and who should be inspected), depth (what should the intensity of the inspection be), coverage (how often should things and people be inspected, and for what purpose), and jurisdiction (who should be responsible for the inspection) are likely to be key items of debate. For example, many of these debates could center around the securing of goods and people that are entering the country and being transported throughout the country, and the level of inspection that should be applied to them. There are several avenues of approach to inspections. Some argue that targeting procedures, trusted-traveler, and trusted-shipper (or known-shipper) programs are insufficient at identifying so-called high-risk people and cargo and that 100% inspection procedures should be applied. Others argue that because of limited resources (technology, people, time, space), and the potential impact on commerce, a targeted approach should be applied. If 100% inspection is not desirable, or unattainable, what should the appropriate level be? What are the appropriate targeting mechanisms, and who should apply them? If a layered approach is applied, how often should goods or individuals be inspected or screened before they enter the country, or as they are transported across the country, and what entities are or will be responsible for these inspections? These are just some of the overarching questions that can be applied to many of the issues that are discussed in greater detail near the end of this report.

Inspection and Screening. The term *inspection* can play a prominent role in discussions of border security. Confusion over the use of the term invariably arises in conflicting estimates of what proportion of goods (containers, trucks, railcars) have been *inspected*. Depending upon the context, an inspection could entail anything (and everything) from a review of the documentation attached to the entry of a particular shipment, to a more detailed document check; looking at the outside of a container; walking a K-9 unit around the container; taking an x-ray or a gamma-ray image of the contents of the container; passing the container through a radiation portal monitor; or physically unloading and examining the cargo. One often reported statistic is that “only X% of cargo containers is inspected at the nation's ports.” Does this mean that only X% was physically removed from the container and examined by inspectors? Or does this mean that X% was x-rayed or sent to what is sometimes referred to as secondary inspection.

These questions apply to the entry of people as well. In popular discussions, it is not always clear whether an inspection means a documentary review, a biometric

verification of identity, an interview, a pass through a metal detector, a search of applicable databases, and/or a personal search?⁷ As in the cargo realm, an often reported statistic is that X% of people were inspected at the nation's borders, or airports etc. Does this mean that X% were interviewed, or were sent to secondary inspection? Further, there can be differences in inspections depending upon the port of entry. For example, people arriving in the United States at an airport arguably undergo a more comprehensive examination than those arriving by car at land ports of entry.

The concepts of primary and secondary inspection can further complicate the discussion. A primary inspection typically consists of some set of standard examination protocols that are applied to every person or shipment of cargo seeking entry into the country. It follows then that the secondary inspection is a further set of protocols applied to those shipments or people, which for a variety of possible reasons were unable to be satisfactorily processed during the primary inspection. Thus, when encountering reported statistics or debating policies and procedures, it is important to understand the context in which the term *inspection* is being used, and the subset of cargo and people it applies to.

There are related issues with the use of the term *screening*. What does it mean to screen cargo or people as they enter the country? Often this term is used interchangeably with the term *inspection*, and the same questions as highlighted above apply as well. The term screening is often used to describe the querying of databases to verify the identity of the person or good seeking entry, and the legitimacy of that claim. If this is the case, then against what were the individuals or cargo screened — terrorist watchlists, criminal history databases, and/or others?

Systems Integration and Interoperability. The 9/11 Commission recommended the integration of the U.S. border security system by expanding the network of screening points to include the nation's transportation system and access to vital facilities. The Administration responded to this recommendation by issuing Homeland Security Presidential Directive 11 (HSPD-11), which in large part builds upon HSPD-6, and related measures to improve terrorist screening. Many of these measures hinge on effective information sharing and, hence, on systems integration and interoperability in a secure environment. Systems integration involves establishing standardized communication protocols and interface specifications for systems (hardware and software) that are usually part of a larger information technology (enterprise) architecture. Integrated systems are highly interoperable in that they are capable of effectively and efficiently sharing information through complementary operational systems, networks, and databases. On the other hand, interoperable systems that are not fully integrated usually involve information sharing across systems — on a smaller scale — based on standardized data formats and elements. Indeed, such systems may not be fully integrated for reasons of security and economy of scale.

⁷ Current immigration policy requires that a primary inspection consists of a brief interview with an immigration inspector, a cursory check of the traveler's documents and a query of the Interagency Border Inspection System (IBIS).

Potential Issues for the 109th Congress

This section of the report highlights some of the BTS-related issues that may be of concern to the 109th Congress. It should be noted that this list contains selected issues and should not be considered comprehensive.

Border-Related Immigration Control

US-VISIT/Entry-Exit Screening. The US-VISIT program may be the subject of congressional oversight as the Administration continues to fully implement the program at the various ports of entry. Under current practice, certain foreign nationals are exempt from the requirements of the U.S.-VISIT program (i.e., Mexican nationals who possess a Laser Visa and many Canadian nationals). However, the 108th Congress passed legislation that requires a biometrically secured document of everyone who presents themselves for entry at a U.S. port of entry (though this does not necessarily mean that everyone required to present a biometrically secured document will be included in US-VISIT). This may continue to be of concern to the next Congress. The Intelligence Reform and Terrorism Prevention Act (IRTPA) contains several provisions relating to the entry-exit system. One of the 9/11 Commission recommendations would find completing the biometric entry-exit system to be an “essential investment” and require the Secretary of DHS to develop a plan to accelerate the full implementation of the system, and to submit a report to Congress no later than 180 days after enactment on the plan.

Visa Policy, Visa Waiver and Pre-screening. Since the mid-1990s, immigration control has been shifting away from U.S. border inspections and apprehensions to overseas screening aimed at keeping inadmissible aliens from arriving in the United States. Since foreign nationals not already legally residing in the United States who wish to come to the United States generally must obtain a visa to be admitted (with some notable exceptions discussed below), strengthening visa issuance procedures has been a key element of border security. The 109th Congress will continue to oversee the implementation of several important provisions pertaining to visa policy enacted in recent years. These provisions mandated data sharing so that consular officers have access to relevant electronic information, required the development of an interoperable electronic data system to be used to share information relevant to alien admissibility, and required that all visas issued after October 2004 have biometric identifiers.⁸ Action most recently to keep inadmissible aliens abroad — the Intelligence Reform and Terrorism Prevention Act of 2004 — expanded the overseas pre-inspection of travelers destined for the United States, requested the deployment of technologies (e.g., biometrics) to detect potential terrorist indicators on travel documents, established within the Department of State (DOS) an Office of Visa and Passport Security, and required that consular officers have greater training in the detection of terrorist travel patterns.

Many visitors enter the United States without visas through the Visa Waiver Program (VWP), a provision of law that allows the visa requirements to be waived

⁸ The USA PATRIOT Act (P.L. 107-56) and the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173).

for aliens coming as visitors from 27 countries that meet certain standards (e.g., Australia, France, Germany, Italy, Japan, New Zealand, and Switzerland). Notable among these requirements is that VWP participating countries must issue passports with biometric identifiers; however, this requirement has yet to be met by any of the participating countries. The 108th Congress extended the deadline to incorporate biometric identifiers until October 26, 2005. The 109th Congress may choose to re-examine the biometric passport deadline as there are indications that some countries will be unable to meet the new deadline. Under law, there is no mechanism other than congressional action to extend the deadline. Another potential issue may be DHS's management of the VWP. A recent report by DHS's Office of Inspections detailed several security concerns related to the program including lack of adequate funding and trained personnel to administer the VWP, reliability issues with the data on lost and stolen passports, and the failure to conduct timely country reviews.⁹

Biometrics and Documentary Requirements. For over a decade, there has been a consensus that immigration documents should include biometric identifiers. Congress imposed a statutory requirement for the biometric border crossing card known as laser visas in 1996 and added requirements for biometric visas in 2001 and 2002.¹⁰ For the past several years, DOS's Bureau of Consular Affairs has been issuing machine-readable visas. Consular officers use the Consular Consolidated Database (CCD) to store data on visa applicants. Since February 2001, the CCD stores photographs of all visa applicants in electronic form, and more recently the CCD has begun storing finger prints of the right and left index fingers. The CCD is the nexus for screening aliens for admissibility, notably screening on terrorist security and criminal grounds. The laser visa, which also includes a photograph and prints for both index fingers as biometric identifiers, is issued to citizens of Mexico to gain short-term entry (up to six months) for business or tourism into the United States. The Mexican laser visa has traditionally been called a border crossing card (BCC). Since 1998, the card issued to legal permanent residents (LPRs), commonly called a "green card," has included digital photographs and fingerprints, holograms, micro-printing, and an optical memory stripe.

In addition to the VWP, there are exceptions to documentary requirements for a visa that have been established by law, treaty, or regulation — most notably with respect to citizens of Canada. The law also authorizes the Attorney General and the Secretary of State acting jointly to waive the documentary requirements, on the basis

⁹ U.S. Department of Homeland Security, Office of Inspections, *Evaluations, and Special Reviews OIG-04-26, An Evaluation of the Security Implications of the Visa Waiver Program*, Apr. 2004.

¹⁰ §414 of the USA Patriot Act (P.L. 107-56) and §303 of the Enhanced Border Security and Visa Reform Act (P.L. 107-173) require that visas and other travel documents contain a biometric identifier and are tamper-resistant.

of unforeseen emergency in individual cases.¹¹ In 2003, the Administration scaled back the circumstances in which the visa and passport requirements are waived.¹²

The 109th Congress may consider limits to the President's ability to waive general statutory requirements requiring U.S. citizens traveling abroad or attempting to enter the United States to bear a valid U.S. passport. Some would restrict such a waiver only to U.S. citizens traveling to or from foreign contiguous territories who are bearing identification documents that would be designated by DHS as reliable proof of U.S. citizenship, and would require that the documentation not be of a type issued to an unlawfully present alien within the United States. Some would also amend the present waiver authority concerning document requirements for arriving nationals from foreign contiguous countries or adjacent islands, so that such waivers may only be granted (in non-emergency situations) through a joint determination by the Secretaries of DHS and DOS on the basis of reciprocity, and then only if the arriving foreign national is in possession of identification documents deemed secure by the Secretary of DHS.

Smuggling and Trafficking. Alien smuggling and human trafficking share common elements and attributes but are different offenses. In some respects human trafficking is an aggravated form of alien smuggling, since during both offenses, aliens are smuggled (brought illegally) into the country. Those who are smuggled are free when they reach their final destination, while those who are trafficked find themselves in a servitude arrangement that does not end after they are smuggled to their final destination. ICE as the lead agency collaborates with the Department of State and the Federal Bureau of Investigation (FBI) as well as other federal and local law enforcement agencies on investigations into alien smuggling and trafficking which include an overseas investigative component. Some contend that targeting major smuggling and trafficking organizations for investigation and prosecution reduces illegal entries into the United States. Moreover some are concerned that terrorists may use human smuggling networks to clandestinely enter the United States.

In the Intelligence Reform and Terrorism Prevention Act of 2004, Congress established the interagency Human Smuggling and Trafficking Center for the purposes of combating terrorist travel, migrant smuggling and trafficking in persons. At issue may be the need for other tools to combat smuggling such as increasing the criminal penalties for alien smuggling. In addition, ICE has been developing a strategy to address alien smuggling and human trafficking at the international level.¹³

¹¹ INA §212(d)(4)(A). The Homeland Security Act (P.L. 107-296) transferred most immigration-related functions from DOJ to DHS. It is uncertain as of this writing whether this waiver authority remains, in whole or in part, with DOJ and the Attorney General or practically resides with the Secretary of DHS.

¹² Passports and visas are now required for nationals of 54 British Commonwealth countries and Ireland who are permanent residents of Canada or Bermuda and for whom the documentary requirements had previously been waived. *Federal Register*, vol. 68, no. 21, Jan. 31, 2003, pp. 5190-5194.

¹³ Testimony of Interim Assistant Director of Investigations, Bureau of Immigration and
(continued...)

At this time there is little published on the new strategy, and it is unclear how the strategy will integrate the expertise and personnel of multiple law enforcement agencies. Furthermore, the authorization for the Victims of Trafficking and Violence Protection Act of 2000,¹⁴ which contains programs to help prevent trafficking and to aid victims, expires in FY2005.

Asylum and Expedited Removal. The United States has long held to the principle that it will not return a foreign national to a country where his life or freedom would be threatened. Aliens seeking asylum must demonstrate a well-founded fear that if returned home, they will be persecuted based upon one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion. In addition, regulations implementing the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter referred to as the Torture Convention) prohibit the return of any person to a country where there are “substantial grounds” for believing that he or she would be in danger of being tortured. An immigration officer, however, can summarily exclude, through a process known as expedited removal, an alien arriving without proper documentation or an alien present in the United States for less than two years, unless the alien expresses a fear of persecution.

Although the United States Citizenship and Immigration Services Bureau (USCIS) and the Department of Justice’s Executive Office for Immigration Review (EOIR) are clearly the lead agencies in asylum policy, the first contacts many asylum seekers have with the U.S. government are with Border and Transportation Security (BTS) officials. Some have expressed concern that the CBP inspectors, U.S. Border Patrol officers, and Immigration and Customs Enforcement (ICE) agents are not adequately trained in asylum policy and other humanitarian forms of immigration relief. Others point out that the CBP inspectors, U.S. Border Patrol officers, and ICE agents follow the policy and procedural guidelines to ensure that aliens who express a fear of returning home are given the opportunity to have their fears considered by an asylum officer and/or an immigration judge.

Although there are many who would revise U.S. asylum law and policy, those advocating change have divergent perspectives. Some express concern that potential terrorists could use asylum as an avenue for entry into the United States, especially aliens from trouble spots in the Mideast, northern Africa and south Asia. Others maintain that current law does not offer adequate protections for people fleeing human rights violations. Some state that — given the religious, ethnic, and political violence in various countries around the world — it is becoming more difficult to differentiate the persecuted from the persecutors. At the crux is the extent an asylum

¹³ (...continued)

Customs Enforcement Charles H. Demore in U.S Congress, Senate Judiciary Committee, Subcommittee on Crime, Corrections, and Victims’ Rights, *Alien Smuggling/Human Trafficking: Sending a Meaningful Message of Deterrence*, hearings, 108th Cong., 1st sess., July 25, 2003. (Hereafter cited as Demore, Alien Smuggling/Human Trafficking.)

¹⁴ The Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) was reauthorized in 2002 (P.L. 107-228) and in 2003 (P.L. 108-193).

policy forged during the Cold War can adapt to a changing world and the war on terrorism.

Conferees on the intelligence reform law enacted by the 108th Congress dropped House-passed provisions to revise asylum and expedited removal, and these options are expected to be considered early in the 109th Congress. Some proponents of these revisions would expand the class of aliens subject to expedited removal without further hearing or review, by increasing the prior continuous U.S. physical presence required for exemption from such removal from two years to five years. Some also would restrict access to an interview with an asylum officers by those aliens in expedited removal who are seeking asylum to those aliens who have been physically present in the United States for less than a year. Other legislative options would raise evidentiary standards for asylum.

IDENT/IAFIS Database Integration. The current project underway to integrate CBP's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's (FBI's) Integrated Automated Fingerprint Identification System (IAFIS), has recently been of significant concern to Congress, and will likely remain a concern into the 109th Congress. The USBP uses IDENT to identify and track illegal aliens. IDENT combines a digital photograph, two flat fingerprints, and biographical data into two databases which can be used to track repeat entrants and better identify criminal aliens. The FBI's IAFIS is an automated 10 rolled fingerprint matching system linked to a database that holds over 40 million records, including wanted persons, stolen vehicles, deported felons, gang members, and terrorists. Integration of the two systems is widely regarded as a vital component of tightening border security, as it would allow frontline CBP inspectors and USBP agents to access the FBI's criminal database in order to establish whether apprehended aliens have outstanding warrants or criminal histories. However, integration has proved difficult for various technical and organizational reasons. The conference report to the FY2005 DHS Appropriations Act (P.L. 108-334), H.Rept. 108-774, adopts reporting requirements: requiring DHS to fund the full cost of achieving real time interoperability between the two systems using the US-VISIT appropriation; directing the Under Secretary of BTS to report within 90 days of enactment on the status of the integration effort including steps that will be taken to integrate IAFIS into IDENT, needed funding, and a timetable for full integration.

Cargo and Transportation-Related Border Control

Cargo and Container Security. Cargo and container security remain issues of concern. CBP is advancing its cargo security strategy primarily through two initiatives: the Customs-Trade Partnership Against Terrorism (C-TPAT), and the Container Security Initiative (CSI). C-TPAT is a public-private partnership aimed at securing the supply chain from point of origin through entry into the U.S. CSI is a CBP program stationing CBP officers in foreign sea ports to target and inspect marine containers before they are loaded onto U.S.-bound vessels. The Government Accountability Office (GAO) published a report concerning both the CSI and C-TPAT programs. GAO credited CBP for quickly rolling out the two programs but noted that CBP needs to develop: systematic human capital plans; performance measures for accountability and program achievement; and a long-term strategic plan

to successfully manage the two programs.¹⁵ The House report (H.Rept. 108-541) attached to the House-passed version of the DHS Appropriations bill requested a report from CBP detailing the implementation plan for CSI, and encourages CBP to develop an integrated network including “all relevant route, inspection, shipment, and intrusion data.”

The conference report (H.Rept. 108-774) to the DHS Appropriations Act directs the Under Secretary of BTS to submit a comprehensive report by February 8, 2005 which should include (among other items): the steps DHS has taken to enhance container security and which BTS entity has primary responsibility for implementing cargo container security measures; what steps this entity will take to implement future cargo security standards, policies, procedures, or regulations; and the security of *in-bond* shipments.¹⁶ Questions for Congress include how the CSI and C-TPAT programs can be integrated into a wider screening network; and how to maintain the security of shipments once they enter the country and are transported from the ports of entry to their final destination within the country. Also, CSI focuses on containers; and there are other forms of marine cargo including liquid or dry bulk; break bulk; and vehicles. Congress may wish to consider if there should be some type of CSI-type pre-inspection of these cargoes as well.

Targeting and Risk Assessment. CBP uses a risk assessment tool, the Automated Targeting System(ATS) to focus inspections on high-risk shipments. ATS automatically sorts shipments according to risk based on specific weighted rule sets, and assigns each shipment a risk score. The higher the score, the more attention a shipment requires, and the greater the chance it will be targeted for inspection. While many observers note the importance of developing sophisticated targeting mechanisms others have raised concerns, including GAO which recently noted that while CBP’s targeting strategy incorporated some elements of risk management, it lacked a comprehensive set of criticality, vulnerability and risk assessments, and does not follow certain recognized modeling practices.¹⁷ Potential questions for Congress concerning risk assessments in general include the efficacy of the targeting mechanisms like the ATS; how this particular mechanism might be integrated into a broader screening network; the potential applicability of this mechanism to

¹⁵ U.S. Government Accountability Office (GAO), *Container Security: Expansion of Two Key Programs will Require Greater Attention to Critical Success Factors*, GAO-03-770, July 2003, pp. 2-4.

¹⁶ The term *in-bond* is used to describe shipments which are being provisionally admitted into the United States under CBP supervision without having to immediately pay the duties associated with the shipment (the shipments are not yet entered into the commerce of the United States). The shipment must be destined for storage in a bonded warehouse or for transshipment. Duties on in-bond shipments are collected when the merchandise is withdrawn from the bonded warehouse (entered into the commerce of the United States). The importer or the broker must put up a customs bond to cover the amount of duty that will eventually be due on the shipment.

¹⁷ U.S. Government Accountability Office, *Homeland Security: Preliminary Observations on Efforts to Target Security Inspections of Cargo Containers*, GAO-04-325T, Dec. 17, 2003.

screening domestically shipped cargo; and how it might be paired with random inspections to identify potential gaps.

Cargo Inspection Technology. CBP uses a variety of inspection technologies to assist inspectors in detecting and identifying suspicious cargo. These technologies are referred to generally as non-intrusive inspection (NII) technology, and include both gamma-ray (such as the Vehicle and Cargo Inspection System), (VACIS) and x-ray systems, among others. CBP also uses radiation detection devices, both personal (PRDs) and large-scale radiation portal monitors (RPMs). Potential questions for Congress regarding these technologies include how they could possibly be integrated with a broader network of screening capabilities not just at ports of entry, but possibly used to improve the screening of domestically shipped cargoes; and how information gleaned from security risks identified during the screening of goods might be incorporated into a larger screening network; how these technologies might be inserted into the flow of cargo through ports and transportation nodes to screen more goods; and how best to systematically develop and deploy the next generation of cargo inspection technology.

Privatized Airport Screening Program. Of possible issue to Congress is the number of airports that may request to opt-out of the federal screener program after November 18, 2004. The conference report (H.Rept. 108-774) to the FY2005 DHS Appropriations Act requires TSA to report on: cost savings resulting from opt-out; the number and location of each airport applying for participation under the opt-out program; the decision by the Administrator on the application; if an application by an airport is not accepted, the reasons why the application was not approved; and the results of the competitive acquisition for contract screening services at those airports whose applications have been approved.

Computer Assisted Passenger Pre-screening System (CAPPS) and “Secure Flight”. Currently, air carriers are responsible for implementing the CAPPS system at airports. TSA had been developing a more advanced passenger pre-screening system called CAPPS-II. However, due to mounting privacy concerns and operational problems, TSA announced it was scrapping plans to implement CAPPS-II in August 2004.¹⁸ Instead, TSA Administrator David M. Stone testified that CAPPS-II is being “reshaped and repackaged” to address the privacy issues.¹⁹ TSA recently announced the replacement program, entitled “Secure Flight,” which will differ from CAPPS II because it focuses on identifying terrorists rather than on serving other law enforcement purposes.²⁰ One of the 9/11 Commission Report recommendations suggested that TSA take over the existing CAPPS system from the airlines until whatever program that replaces it becomes operational. This would probably add to TSA screener workload and may result in an increased need for funds within TSA. Possible issues for Congress include whether current

¹⁸ Chris Strohm, “DHS Scraps Computer Pre-Screening System, Starts Over,” *Government Executive Online*, July 15, 2004, at [<http://www.govexec.com/dailyfed/0704/071504c1.htm>].

¹⁹ U.S. Congress, Senate Committee on Commerce, Science, and Transportation, *Nominations*, 108th Cong., 2nd sess., July 13, 2004.

²⁰ U.S. Department of Homeland Security, Transportation Security Administration, “TSA to Test New Passenger Pre-Screening Program,” press release, Aug. 26, 2004.

appropriations levels are adequate for the “reshaping” of CAPPS-II into the recently announced “Secure Flight” program, and whether more funds should be appropriated for TSA if in fact the agency takes over the implementation of the existing CAPPS system from air carriers.

The conferees to the FY2005 DHS Appropriations Act (P.L. 108-334) agreed to provide \$35 million for Secure Flight and noted that an additional \$10 million is provided under a separate TSA account for crew vetting. The conferees note their concern that 90 days may not be sufficient to plan, test, and analyze the system before its full implementation. Therefore, the conferees encourage the TSA to focus first on getting watchlists operational and expect TSA to cooperate with GAO in its review of Secure Flight. The conferees further note that DHS is proposing to check all passengers using the new Secure Flight system as recommended by the 9/11 Commission.

Subtitle B of Title IV of The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) essentially implements the 9/11 Commission recommendations to improve passenger prescreening for both domestic and international flights, and improve the use of ‘no-fly’ and ‘automatic selectee’ lists while ensuring that passenger prescreening measures do not violate privacy or civil liberties.

Explosive Detection Systems (EDS) and Explosive Trace Detection (ETD). Explosive detection remains an issue of concern to Congress. The FY2005 DHS Appropriations Act provided \$180 million for the purchase of EDS/ETD machines for screening checked baggage. Subtitle B of the Intelligence Reform and Terrorism Prevention Act of 2004 contains a provision implementing the 9/11 Commission recommendation to give priority attention to screening passengers and their carry-on baggage for explosives. Further, this subtitle also contains provisions, requiring TSA to develop a plan for implementing enhanced explosive detection equipment. The 9/11 Commission recommended that the TSA expedite installation of in-line baggage screening systems. Potential issues for Congressional debate could include the adequacy of current funding levels, and the equity of cost-sharing for in-line EDS integration.

Air Cargo Security. Air cargo security remains an issue of significant concern to Congress. Most recently, this issue was addressed in the 9/11 Commission recommendations, the FY2005 DHS Appropriations Act, and the Intelligence reform legislation. P.L. 108-334 required (among other things) that TSA: “research, develop, and procure certified systems to inspect and screen air cargo on passenger aircraft at the earliest date possible, to enhance the known shipper program, and to triple the percentage of cargo inspected on passenger aircraft. TSA shall require cargo screened on passenger aircraft to meet the tripling threshold as measured by the average percentage of cargo inspected per day, per airline, per airport.” Additionally, the conferees (in H.Rept. 108-774) direct TSA to work more aggressively to strengthen air cargo security by: strengthening the known shipper program to include regular checks; working with indirect carriers to ensure their compliance with security directives; and validating indirect carriers’ security measures where the carriers consolidate freight and transport it to passenger and all cargo aircraft. Subtitle C of Title IV of the Intelligence Reform and Terrorism

Prevention Act of 2004 concerns air cargo security and requires TSA to develop better technologies for air cargo security; authorizes funding for equipment, research and development; requires DHS to finalize its air cargo requirements within eight months; and requires a pilot program using blast-resistant containers for suspicious cargo. Issues for Congress could include further debate over new approaches to air cargo security; levels of physical inspection of cargo; and improving efforts to identify and screen cargo.

Non-Aviation Transportation Security. In the immediate aftermath of the 9/11 attacks much focus understandably has been placed on aviation security issues. However, after the March 2004 train bombings in Madrid, Spain, attention has turned to the security of non-aviation modes of transportation. For instance, P.L. 108-334, the FY2005 DHS Appropriations Act provided specific funding amounts for TSA, and several other DHS offices, for rail security. TSA is the federal agency tasked with ensuring the security of the nation's transportation systems, and is responsible for the development of the national transportation security plan. The IRTPA addresses one of the 9/11 commission recommendations by requiring the Secretary of DHS, jointly with the Secretary of Transportation, to develop and implement a national strategy for transportation security which shall include (among other items): the identification and evaluation of all transportation assets in the country; risk-based priorities and realistic deadlines for addressing security needs; and a forward-looking strategic plan setting forth the roles and responsibilities of federal, state, regional, local authorities as well as private entities. The initial strategy is to be delivered to Congress no later than April 15, 2005. Potential issues for Congress could include the division of responsibilities for transportation security; how the national transportation security plan will be integrated with existing plans and security initiatives such as the Air Cargo Strategic plan, administered by TSA; the maritime security plans required by the Maritime Transportation Security Act, administered by the Coast Guard; and the forthcoming National Cargo Security Strategy, currently being developed by DHS.

Coast Guard Deepwater Program. The Deepwater program is a planned 22-year, multibillion-dollar project to replace or modernize 93 aging Coast Guard ships and 207 aging Coast Guard aircraft. The Deepwater program presents several potential issues for Congress. One potential issue concerns the mission requirements to be met by the program, which were established in the late 1990s and reflect a pre-9/11 understanding of the Coast Guard's future mission requirements. A 2004 RAND Corporation report on the Deepwater program states that the baseline Deepwater program "will not provide the USCG with adequate assets and capabilities to fulfill demands for traditional missions and emerging responsibilities. To satisfy these demands, the USCG will need the capabilities of twice the number of cutters and 50% more air vehicles than it has been planning to acquire over the next two decades." The Coast Guard is reassessing the program's mission requirements to take post-9/11 mission demands into account. Coast Guard officials have stated that existing deepwater-capable assets are wearing out more quickly than anticipated, suggesting that new assets might need to be procured sooner than planned.

Coast Guard Legacy and Replacement Assets. Both the Senate and House Committee reports to the FY2005 DHS Appropriations bill voiced concern

over the condition of Coast Guard legacy assets. The Senate cited a GAO report which noted that Coast Guard assets are being used 40% more intensively than originally anticipated when the Deepwater program was conceived, resulting in an accelerated deterioration. The Senate report noted that the Coast Guard is expending more Deepwater funding on maintaining legacy assets and less on acquiring replacement assets. The House Committee, conversely, is concerned that the Coast Guard is having problems maintaining its legacy assets due to a perceived need to expend all available funding on Deepwater procurement. The House Committee requires the Coast Guard to report, within 30 days of enactment of the Appropriations Act, its plans for maintenance of all legacy vessels and aircraft, including the entity responsible for the maintenance and the estimated costs. Further, the Coast Guard is directed to submit quarterly reports on its legacy maintenance plan beginning with the submission of the President's FY2006 budget. The conferees adopted this House Committee report language.

Coast Guard — Automatic Identification System. A potential issue for Congress concerns the Automatic Identification System (AIS) — a vessel-tracking system that the Coast Guard wants to implement as a key part of its strategy for achieving maritime domain awareness (MDA) at each major port. AIS is a system that will identify the ship, its size, and its cargo before it enters an American seaport. Questions include the availability of a radio frequency needed for AIS and whether the system as currently planned will adequately cover all categories of ships that might pose a threat to U.S. homeland security. The FY2005 DHS Appropriation Act (P.L. 108-334) provides \$24 million for AIS.

Non-Homeland Security Missions of the Coast Guard. A key potential issue is whether the Coast Guard's resources are sufficient to adequately perform both its homeland and non-homeland security missions (fisheries enforcement, marine environmental protection, and search and rescue, for example). The terrorist attacks of September 11, 2001, increased Coast Guard requirements for homeland-security missions without directly reducing requirements for other missions. After September 11, 2001, the Coast Guard significantly increased homeland security operations while reducing operations in other missions. GAO, in reports and testimony on this topic, have noted the reduced number of Coast Guard operating hours devoted to non-homeland security missions, and have expressed concerns regarding the Coast Guard's ability to link application of resources to performance levels achieved for various missions.

Staffing. Staffing of primary border agencies may continue to be of concern to Congress. The conference report (H.Rept. 108-774) to the FY2005 DHS Appropriations Act requires CBP to submit a comprehensive staffing plan immediately, and to submit an updated plan no later than 90 days after enactment. The Intelligence Reform and Terrorism Prevention Act (IRTPA), contains provisions authorizing, subject to the availability of appropriations, no less than 2,000 full-time Border Patrol agents, and 800 full-time Immigration and Customs Enforcement Inspectors, in fiscal years 2006-2010. With regard to the authorized increase in Border Patrol agents, the IRTPA further stipulates that no less than 20% of the net increase in agents shall be assigned to the northern border in each fiscal year.

Appendix: Provisions Relating to Border and Transportation Security in the 9/11 Commission Report, Intelligence Reform Bill, and HSPD-11

This appendix provides summaries of the BTS -related provisions of the 9/11 Commission recommendations,²¹ the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004, and a summary of HSPD-11. HSPD-11 is the Administration's response to one of the 9/11 Commission recommendations, and significant portions of the IRTPA similarly reflect these recommendations. Oversight of the changes made by the IRTPA, and legislative activity surrounding those 9/11 Commission recommendations that were not included are likely to be of interest to the 109th Congress.

9/11 Commission Recommendations

The 9/11 commission made numerous recommendations relating to border and transportation security. These recommendations include (but are not limited to the following):

- the United States should combine terrorist travel intelligence, operations, and law enforcement in a strategy to intercept terrorists, find terrorist travel facilitators and constrain terrorist mobility;
- the U.S. border security system should be integrated into a larger network of screening points that include our transportation system and access to vital facilities, such as nuclear reactors;
- the President should direct the Department of Homeland Security to lead the effort to design a comprehensive screening system, addressing common problems and setting common standards with systematic goals in mind (see the summary of HSPD-11 below);
- the Department of Homeland Security, properly supported by Congress, should complete, as quickly as possible, a biometric entry-exit system, including a single system for speeding qualified travelers, [i]t should be integrated with the system that provides benefits to foreigners seeking to stay in the United States;
- the U.S. government ... should do more to exchange terrorist information with trusted allies, and raise U.S. and global border security standards for travel and border crossing over the medium and long term through extensive international cooperation;
- the federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses;
- the U.S. government should identify and evaluate the transportation assets that need to be protected, set risk-based priorities for defending them, select the most practical and cost-effective ways of

²¹ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, (Washington, DC: U.S. Government Printing Office, 2004).

doing so, and then develop a plan, budget, and funding to implement the effort, [t]he plan should assign roles and missions to relevant authorities (federal, state, regional, and local) and to private stakeholders;

- improved use of “no-fly” and “automatic selectee” lists should not be delayed while the argument about a successor to CAPPs continues, [t]his screening function should be performed by TSA, and it should utilize the larger set of watchlists maintained by the federal government, [a]ir carriers should be required to supply the information needed to test and implement this new system;
- the TSA and the Congress must give priority attention to improving the ability of screening checkpoints to detect explosives on passengers, ... each individual selected for special screening should be screened for explosives; and
- the TSA should conduct a human factor study ... to understand problems in screener performance and set attainable objectives for individual screeners and for the checkpoints where screening takes place.

HSPD-11

The President issued Homeland Security Presidential Directive (HSPD)-11 on August 27, 2004.²² This directive was issued in response to one of the 9/11 Commission recommendations. HSPD-11 concerns “comprehensive terrorist-related screening procedures” which are defined in the directive to mean: “the collection, analysis, dissemination, and use of information related to people, cargo, conveyances, and other entities and objects that pose a threat to homeland security.” HSPD-11 states that it is the policy of the U.S. to enhance terrorist-related screening through comprehensive, coordinated procedures; while safeguarding legal rights, freedoms, civil liberties, and information privacy; in a manner that facilitates the efficient movement of people, cargo, conveyances and associated activities of commerce. HSPD-11 further states that this comprehensive and coordinated approach is to be implemented in “immigration, law enforcement, intelligence, counterintelligence, and protection of border, transportation systems, and critical infrastructure.”

HSPD-11 required the Secretary of Homeland Security (in coordination with the heads of all the appropriate departments) to submit to the President a report outlining a strategy to enhance the effectiveness of terrorist-related screening activities, and developing comprehensive, coordinated, and systematic screening procedures. This report was submitted to the President on November 9, 2004.²³ HSPD-11 required an additional report (due November 24, 2004) describing a ‘prioritized investment and implementation plan’ for the policies and activities outlined by the first report. Further, the Secretary of DHS is required to provide a status report on the

²² U.S. President George W. Bush, *Homeland Security Presidential Directive/HSPD-11*, Aug. 27, 2004, at [<http://www.whitehouse.gov/news/releases/2004/08/20040827-7.html>].

²³ Justin Rood, “Screening Report Fulfills Bush Order to Enhance Terrorist Net, Official Say,” *CQ Homeland Security — Border Security*, Nov. 15, 2004.

implementation of the plan six months after the issuance of the directive (February of 2005).

Intelligence Reform and Terrorism Prevention Act of 2004

The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) has numerous BTS-related provisions, many of which embody some of the recommendations made by the 9/11 Commission. Title IV of the act relates to Transportation Security. Subtitle A of Title IV implements the 9/11 commission recommendations by requiring the Secretary of DHS, jointly with the Secretary of Transportation, to develop and implement a national strategy for transportation security.

Subtitle B of Title IV implements the 9/11 Commission recommendations to improve passenger prescreening for both domestic and international flights, and improve the use of *no-fly* and *automatic selectee* lists while ensuring that the watchlists do not violate privacy or civil liberties. Subtitle B also contains a provision implementing the 9/11 Commission recommendation to give priority attention to screening passengers and their baggage for explosives. Further, this subtitle also contains provisions: requiring TSA to develop a plan for implementing enhanced explosive detection equipment; preserving the anonymity of federal air marshals; improving screener performance; enhancing in-line baggage screening; improving the security of pilot licenses; improving biometric technology and technology to protect against the threat of shoulder fired missiles.

Subtitle C of Title IV concerns air cargo security and: requires TSA to develop better technologies for air cargo security; authorizes funding for equipment, research and development; requires DHS to finalize its air cargo requirements within eight months; and requires a pilot program using blast-resistant containers. Subtitle D of Title IV concerns maritime security and requires TSA to begin screening cruise ship passengers and crew against consolidated terrorist databases within 180 days, and requires maritime-security plans to be submitted in a timely fashion.

Title V contains provisions relating to border protection, immigration and visa matters. Subtitle A authorizes pilot programs on the northern and southern borders which would test advanced technologies to increase border security between ports of entry. Subtitle B requires the Secretary of DHS to submit a plan to the President and the Congress to use remotely piloted aircraft to surveil the southwest border. This subtitle also authorizes funding to implement this plan as a pilot program. Subtitle B also requires the Secretary of DHS to increase staffing *each* year during fiscal years 2006-2010 (subject to the availability of appropriations) by the following amounts: the number of Border Patrol agents by not less than 2,000 each year; the number of Immigration and Customs Enforcement agents by not less than 800 agents per year; and the number of detention bed spaces by not less than 8,000 per year. Subtitle C contains provisions: requiring in-person interviews of certain applicants for nonimmigrant visas; requiring applicants for nonimmigrant visas to completely and accurately provide information requested in the application; and making the revocation of a nonimmigrant visa grounds for removal. Subtitle D contains provisions concerning the smuggling and harboring aliens, the deportation of aliens who receive military training from or on behalf of designated terrorist organizations.

Subtitle E contains provisions concerning the inadmissibility and deportation of aliens who commit acts of torture, extrajudicial killings, or other atrocities abroad.

Title VII is entitled the 9/11 Commission Implementation Act of 2004, and Subtitle B contains a number of BTS-related provisions. Subtitle B establishes the Human Smuggling and Trafficking Center, and an interagency program devoted to countering terrorist travel; and requires training improvements for border, consular, and immigration officers so they can better detect terrorist travel indicators. The provisions in Subtitle B also authorize an additional 150 consular officers in each of the fiscal years 2006-2010; requires the Secretary of DHS in consultation with the Director of the National Counter-Terrorism Center (NCC) to establish a program overseeing DHS's terrorist travel responsibilities; and establishes a Visa and Passport Security Program within the Bureau of Diplomatic Security at the Department of State. Further Subtitle B provisions call for the accelerated deployment of the biometric entry-exit system, and for individuals entering into the U.S. to bear a passport or other citizenship document (including U.S. citizens, and visitors from Canada and other Western Hemisphere countries). Subtitle B, also requires DHS to issue regulations on minimum identification standards for passengers boarding domestic flights; includes placing more U.S. immigration experts at foreign airports, and increases the number of airports where U.S.-bound passengers will be pre-inspected.