



## Law

Throughout this Nation's history we have used our laws to promote and safeguard our security and our liberty. The law will both provide mechanisms for the government to act and define the appropriate limits of that action. The President, recognizing this, directed the Office of Homeland Security to review state and federal legal authorities pertinent to homeland security.

We have already taken important steps to protect our homeland. The USA PATRIOT Act, signed into law by the President on October 26, 2001, has improved government coordination in law enforcement, intelligence gathering, and information-sharing. The Aviation and Transportation Security Act, which established the Transportation Security Administration, has strengthened civil aviation security. The Enhanced Border Security and Visa Entry Reform Act will reinforce border security systems. Finally, the Public Health Security and Bioterrorism Preparedness and Response Act will better the Nation's ability to prevent, prepare for, and respond to bioterrorism.

But more needs to be done. On June 18, 2002, the President provided Congress with proposed legislation to establish a Department of Homeland Security. This new Cabinet agency would have a single, urgent mission: securing the homeland of America and protecting the American people from terrorism. Yet creation of this department does not in and of itself constitute a sufficient response to the terrorist threat. We must pass complementary legislation to address innate deficiencies in our overall ability to counter terrorism.

Where new legislation at the federal level is necessary to accomplish our counterterrorism goals, we should work carefully to ensure that newly crafted federal laws do not preempt state law unnecessarily or overly federalize counterterrorism efforts. The Tenth Amendment makes clear that each state retains substantial independent power with respect to the general welfare of its populace. States should avail themselves to the

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resources and expertise offered by their sister states and federal counterparts.

Informed by these concepts, the *National Strategy for Homeland Security* outlines several legislative actions. This section does not purport to constitute a complete survey of needed legislative changes. Rather, the actions outlined below are initial steps in an ongoing effort to identify legislative reforms and redundancies with respect to homeland security.

## National Vision

We are a Nation built on the rule of law, and we will utilize our laws to win the war on terrorism while always protecting our civil liberties. We should use our federal immigration laws and customs regulations to protect our borders and ensure uninterrupted commerce; we should strengthen state codes to protect our public welfare; we should employ local, state, and federal criminal justice systems to prosecute terrorists; and we should engage our partners around the world in countering the global threat of terrorism through treaties and mutually supporting laws. Where we find our existing laws to be inadequate in light of the terrorist threat, we should craft new laws carefully, never losing sight of our strategic purpose for waging this war—to provide security and liberty to our people. We should guard scrupulously against incursions on our freedoms, recognizing that liberty cannot exist in the absence of governmental restraint. As we move forward in the fight, we should refrain from instituting unnecessary laws, as we remain true to our principles of federalism and individual freedom.

## Major Initiatives (Federal)

*Enable critical infrastructure information sharing.* Homeland security officials need quick, complete access to information relevant to the protection of physical and cyber critical infrastructure. We must meet this need by narrowly limiting public disclosure of such information in order to facilitate its voluntary submission without compromising the principles of openness that ensure government accountability. To this end, the Attorney General will convene a panel with representatives of state attorneys general, state governors, state legislators, state law enforcement, the FBI, the Environmental Protection Agency, the

Department of Health and Human Services, and other federal agencies as necessary upon consultation with the Office of Management and Budget, to propose needed legislative reform or guidance regarding statutes governing public disclosure.

*Streamline information sharing among intelligence and law enforcement agencies.* Homeland security requires improved information sharing between the intelligence community, law enforcement agencies, and government decision-makers. Our current shortcoming in this area stems, in part, from the number of laws, regulations, and guidelines controlling intelligence operations. Congress, with the enactment of the USA PATRIOT Act, took important steps toward identifying and removing some barriers to the exchange of intelligence. The Administration will expand on this initiative by leading a review of all authorities governing the analysis, integrity, and disclosure of intelligence with the aim of improving information sharing through legislative reform while guarding against incursions on liberties.

*Expand existing extradition authorities.* The war on terrorism is and must be a global effort. Our country must continue to work cooperatively with nations around the world. To that end, the Departments of State and Justice should work with Congress to amend current extradition laws in two respects. First, new legislation should be adopted that would authorize extradition for additional crimes where the United States already has an extradition treaty, but where the treaty applies only to a limited set of crimes. Second, Congress should grant authority to extradite individuals from the United States for serious crimes in the absence of an extradition treaty, on a case-by-case basis with the approval of the Attorney General and the Secretary of State.

*Review authority for military assistance in domestic security.* Federal law prohibits military personnel from enforcing the law within the United States except as expressly authorized by the Constitution or an Act of Congress. The threat of catastrophic terrorism requires a thorough review of the laws permitting the military to act within the United States in order to determine whether domestic preparedness and response efforts would benefit from greater involvement of military personnel and, if so, how.

*Revive the President's reorganization authority.* Only Congress can create a new department of government; the President, however, is tasked with running the departments. Recognizing the need for flexible Presidential management authority, Congress in 1932, provided the President with the ability to reorganize the executive branch for the purpose of reducing

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expenditures and increasing efficiency. This authority, which has taken various forms over the years, lapsed in 1984. While this Administration's priority is working with Congress to restructure the federal government to create the Department of Homeland Security, reviving the reorganization authority would greatly assist Presidents in years to come to eliminate redundancies within executive agencies and address homeland security more efficiently and economically. Congress should amend Chapter 9 of Title 5 of the U.S. Code to reinvigorate the President's authority to reorganize the executive branch.

*Provide substantial management flexibility for the Department of Homeland Security.* Terrorists are opportunistic, agile, and driven. In order to respond to them effectively, the Secretary of the new Department of Homeland Security must have the advantage of modern management techniques. Therefore, the Administration's proposed legislation for the Department includes 21st-century approaches to personnel and procurement policies. It also requests broad reorganization authority to enhance operational effectiveness as needed. With these and other flexible practices, the Secretary would have the managerial freedom necessary to accomplish not only the Department's primary mission of homeland security but also the important agency functions it will absorb which are not directly related to homeland security.

## Major Initiatives (State)

Given the states' major role in homeland security, and consistent with the principles of federalism inherent to American government, the following initiatives constitute suggestions, not mandates, for state initiatives.

*Coordinate suggested minimum standards for state driver's licenses.* The licensing of drivers by the 50 states, the District of Columbia, and the United States territories varies widely. There are no national or agreed upon state standards for content, format, or license acquisition procedures. Terrorist organizations, including Al-Qaeda operatives involved in the September 11 attacks, have exploited these differences. While the issuance of driver's licenses falls squarely within the powers of the states, the federal government can assist the states in crafting solutions to curtail the future abuse of driver's licenses by terrorist organizations. Therefore, the federal government, in consultation with state government agencies and non-governmental organizations, should support state-led efforts to develop suggested minimum standards for driver's licenses, recognizing that many states should and will exceed these standards.

*Enhance market capacity for terrorism insurance.* The need for insurance coverage for terrorist events has increased dramatically. Federal support is clearly critical to a properly functioning market for terrorism insurance; nonetheless, state regulation will play an integral role in ensuring the adequate provision of terrorism insurance. To establish a regulatory approach which enables American businesses to spread and pool risk efficiently, states should work together and with the federal government to find a mutually acceptable approach to enhance market capacity to cover terrorist risk.

*Train for prevention of cyber attacks.* State and local officials have requested federal training regarding the identification, investigation, and enforcement of cyber-related crimes and terrorism. The FBI, in coordination with other relevant federal organizations, should assist state and local law enforcement in obtaining training in this area.

*Suppress money laundering.* Terrorists use unregulated financial services, among other means, to fund their operations. The Money Laundering Suppression Act (P.L. 103-325) urges states to enact uniform laws to license and regulate certain financial services. The USA PATRIOT Act also relies on state law to establish the regulatory structure necessary to combat money laundering. States should assess the current status of their regulations regarding non-depository providers of financial services and work to adopt uniform laws as necessary to ensure more efficient and effective regulation. By doing so, states would protect consumers by providing increased stability and transparency to an industry prone to abuse while at the same time providing state and local law enforcement with the tools necessary to dismantle informal and unlicensed money transmission networks.

*Ensure continuity of the judiciary.* In the aftermath of a terrorist attack, our judicial system must continue to operate effectively. Planning is critical to this continuity. As such, states, relevant non-governmental organizations, and representatives of the Department of Justice and the federal judiciary should convene a committee of representatives to consider the expedient appointment of judges; interaction and coordination among federal and state judiciaries; and other matters necessary to the continued functioning of the judiciary in times of crisis.

*Review quarantine authority.* State quarantine laws—most of which are over 100 years old—fail to address the dangers presented by modern biological warfare and terrorism. States, therefore, should update quarantine laws to improve intrastate response while working with their sister states and federal regulators

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to assure compliance with minimum public health standards. To facilitate this process, the Departments of Homeland Security, Health and Human Services, Justice, and Defense should participate in a review of quarantine statutes and regulations in conjunction with state and local authorities to establish minimum standards. In addition, legislators should provide strong federal, state, and local evacuation authority through appropriate legislation or regulation.